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

RECEIVED
MAY 23 2018
SC Court of Appeals

Road, LLC and Pinckney Point, LLC, Plaintiffs,

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

v.

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

RECORD ON APPEAL
VOLUME I of V

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2013-CP-07-01341
	)	
ROAD, LLC AND PINCKNEY POINT, LLC,	)	
	)	
Plaintiffs,	)	
	)	ORDER GRANTING DEFENDANT'S MOTION FOR JNOV
vs.	)	
	)	
BEAUFORT COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	
	)	

This matter comes before me on the post-trial motions of the Defendant, Beaufort County, for a judgment not withstanding the verdict. A hearing was held on this motion on August 9, 2016.

STANDARD FOR A JUDGMENT NOT WITHSTANDING THE VERDICT

A motion for JNOV should be granted when no reasonable jury could have reached the challenged verdict. Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 415 S.E.2d 393 (1992). An order granting a JNOV is appropriate when no evidence exists that sustains the factual findings implicit in its decision. Smalls v. South Carolina Dep't of Educ., 339 S.C. 208, 528 S.E.2d 682 (Ct.App.2000); Hunter v. Staples, 335 S.C. 93, 515 S.E.2d 261 (Ct.App.1999).

ANALYSIS

I. Was there any evidence to support the jury's verdict as to Road, LLC's cause of action for breach of contract or breach of the covenant of good faith and fair dealing?

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a. Breach of Contract

Beaufort County first asserts that it is entitled to JNOV because there is no evidence that the Defendant breached the Settlement Agreement as to Road, LLC or its covenant of good faith and fair dealing arising out of this Settlement Agreement. This court agrees.

Under the Settlement Agreement with the relevant parties, Beaufort County was obligated to do two (2) things: (1) to grant the road variance for Pinckney Point, LLC; and (2) to agree that the Road was private. The only evidence shows that Beaufort County had immediately and fully complied with its obligations under the Settlement Agreement by granting the variance and agreeing that the road to the property was private. Once these actions are completed, Beaufort County's obligations under the contract were fully executed.

Road, LLC has contended that a latent ambiguity existed in the Settlement Agreement which the parties agreed required the 229 acre parcel and adjacent road parcel to be used only as a residential development. However, John Kunkel, the representative of Road, LLC, testified that he did not believe the Settlement Agreement required the property to be only used as a residential development.

"When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense." C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n, 296 S.C. 373, 377–78, 373 S.E.2d 584, 586 (1988). Extrinsic evidence may not be used to create an ambiguity in an otherwise unambiguous policy. Yarborough v. Phoenix Mut. Life Ins. Co., 266 S.C. 584, 592, 225 S.E.2d

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344, 348 (1976). (finding it appropriate to consider extrinsic evidence only if an ambiguity exists within the contract). Even if an ambiguity exists in a contract, extrinsic evidence may not be considered if the ambiguity is a patent ambiguity. Smith v. Coxe, 183 S.C. 509, 516, 191 S.E. 422, 425–26 (1937) (finding parol testimony may be received in construing instrument with latent ambiguity); Polson v. Craig, 351 S.C. 433, 437 n. 2, 570 S.E.2d 190, 192 n. 2 (Ct.App.2002) (involving a will, and noting extrinsic evidence is admissible when there is a latent ambiguity, not a patent ambiguity); Bob Jones Univ. v. Strandell, 344 S.C. 224, 231, 543 S.E.2d 251, 254 (Ct.App.2001) ("A court may admit extrinsic evidence to determine whether a latent ambiguity exists.").

A patent ambiguity is one that arises upon the words of a will, deed, or contract. Smith, 183 S.C. at 516, 191 S.E. at 425–26. A latent ambiguity exists when there is no defect arising on the face of the instrument, but arising when attempting to apply the words of the instrument to the object or subject described. Id. (offering an example of a latent ambiguity as a named beneficiary in a will that is unambiguous on the face of the will, but creates a latent ambiguity where there are two people with that name). Interpretation of an unambiguous contract, or a policy contract a patent ambiguity, is for the court. Hann v. Carolina Cas. Ins. Co., 252 S.C. 518, 526–27, 167 S.E.2d 420, 423 (1969); B.L.G. Enters., Inc. v. First Fin. Ins. Co., 328 S.C. 374, 377, 491 S.E.2d 695, 697 (Ct.App.1997), aff'd

Importantly, the Settlement Agreement does not bind the property to be forever used as a residential development. This is a term that Road, LLC has alleged to be a latent ambiguity. There is no reasonable reading of the terms of

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this agreement which would support this assertion by Road, LLC. Allowing reading such a term into this agreement is clearly in violation of the rules of contract interpretation as set forth above. The Settlement Agreement is clear and unambiguous and there is no suggestion that it was the intent of the parties to bind this property to be forever used as a residential development.

Additionally, to the extent that the jury may have found that the County breached its contract with Road, LLC because its purchase of the 229 acres turned the private road into a public road, this theory is unsupported by facts or law in this matter.

First, there was no evidence at trial that the County has invited the public to use the property or that the public was using the property. Additionally, there is no legal principal which would support the notion that if a government agency has an access easement over a private road that the road has de facto become a public road as asserted by Road, LLC.

The importance of the lack of evidence that the public has ever used this road cannot be understated. The evidence in this case is that only a few members of the County staff, and a grounds keeper who lived on the property prior to the County's purchase, have ever utilized the access easement over Road, LLC's property to enter the County property. Furthermore, an alleged act of trespass by a member of the uninvited public cannot be said to amount to public use. Thus, there is no evidence to support the notion that the County breached its contract with Road, LLC by turning the private road owned by Road, LLC into a public road.

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Moreover, a review of the documents submitted during this trial indicate that the County had a twenty-five foot access easement over the Road parcel that existed prior to Road, LLC and Pinckney Point's involvement in this property that ran with the land when it was transferred from Agnes Garvin to Road, LLC. Additionally, Road, LLC gave Pinckney Point, LLC an access easement over the road property which would allow for Pinckney Point and its subtenants, licensees, customers, agents, employees, invitees, mortgagees, successors and assigns, access over the Road parcel. The Easement Agreement between Road, LLC and Pinckney Point, LLC explicitly states that the easement area is "for purposes of vehicular and pedestrian ingress and egress to and from Grantee's property [the 229 acre parcel] over Easement Area [the Road Parcel]". The Agreement further states, "[t]he rights granted herein shall be for the benefit of Grantee and for the benefit of any and all other occupants of Grantee's Property, and for respective subtenants, licensees, customers, agents, employees, invitees, mortgagees, successors and assigns." Paragraph Eight (8) of the Agreement entitled "Successors and Assigns" further indicates, "[t]his Agreement and the rights granted herein shall run with the land and be appurtenant to Grantee's property, shall run with the title to and burden the Easement Area and Grantor's Property forever, and shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their successors, successors-in-title and assigns."

Beaufort County, with the purchase of the 229 acre parcel, is a successor to Pinckney Point, LLC and the easement runs with the land. Thus, even while the road remains private, the County is within its rights to allow its subtenants,

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licensees, customers, agents, employees, invitees, mortgagees, successors and assigns to access its 229 acre parcel pursuant to the access easement. Utilization of this access easement, in and of itself, does not make this road a public road. It maintains its status as a private road.

Based on my review of the record in this matter, I do not believe a reasonable jury could have found that there was a patent or latent ambiguity in the Settlement Agreement which would support the contention that the property purchased by the county could only used as a residential development. Likewise, there is no evidence in the record that the County's purchase of the property at the end of the subject road, nor its utilization of the road, has turned a private road into a public road.

b. Breach of Covenant of Good Faith and Fair Dealing

Road, LLC also alleged breach of implied covenant of good faith and fair dealing against Beaufort County. Both Plaintiffs at trial asserted that Beaufort County breached the implied covenant of good faith and fair dealing by dealing unfairly with Pinckney Point, LLC in its permit approval, and by purchasing the 229 acres from Equity Resource Partners. I find there is no evidence that would support a jury verdict to Road in this regard.

There exists in every contract an implied covenant of good faith and fair dealing. Adams v. G.J. Creel & Sons, Inc., 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995). However, there is no breach of the implied covenant where a party to a contract has done what provisions of the contract expressly gave him the right to do. Id.; See also Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC, 414 S.C.

635, 653, 780 S.E.2d 263, 273 (Ct. App. 2015) (there is no breach of contract or implied covenant because the actions taken by the defendant, by assigning a note, were not barred by the contract and did not prohibit the other side from making payment on the note or fulfilling their obligations under the contract).

Generally, with the exception to contracts of insurance, the Courts have not set forth a hard and fast rule of what constitutes a breach of the implied covenant of good faith and fair dealing. However, the cases make clear that it is a by-product of the breach of the contract. In fact, the U.S. Supreme Court has stated that "The concept of good faith in the performance of contracts is a phrase without general meaning or meanings of its own." Northwest, Inc. v. Ginsberg, 134 S. Ct. 1422 (2014).

As to Road's contention that the County held up permitting to Pinckney Point causing Pinckney Point to be unable to find an investor because they did not have their entitlements, I find the facts in evidence do not support this contention and neither does the jury verdict in favor of the County as to Pinckney Point.

Importantly, nothing in the Settlement Agreement required Beaufort County to approve Pinckney Point's permitting requests except for the variance which was granted. With respect to the remaining permitting, all the evidence in this matter shows that Pinckney Point, LLC was to be treated as any other developer. There is no evidence that they were treated differently from any other developer by the County.

As stated previously, Beaufort County had, contemporaneous with the Settlement Agreement, given Pinckney Point the required variance and agreed to

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have the Road declared private. Moreover, while not a condition of the Settlement Agreement, the evidence in this case was that the County gave Conceptual Site Plan approval so as to allow Pinckney Point, LLC to move forward with obtaining entitlements from other agencies and to finalize their engineering plans. The County further worked out the only conditional issue, the septic versus sewer issue, within a period of a few months. Said issue arose from a DRT practice that had been used, and applied to, many other like-kind developments in Beaufort County. As of February 2012, there were no issues remaining between the County and Pinckney Point, LLC. The County was simply awaiting submission by Pinckney Point for Final Approval. In fact, Pinckney Point had well over a year to submit for Final Approval but failed to do so with no alleged "interference" from the County.

There is no evidence that Pinckney Point was treated in any way differently from any other developer. There is evidence in the record that the County's actions did not cause Pinckney Point to fail to meet their obligations under the settlement agreement, but rather, Pinckney Point's own actions did.

John Kunkel testified that Pinckney Point, LLC made no attempt to find an investor until it realized their option was about to expire. When they did find an interested investor, Pinckney Point, LLC was not willing to meet the investor's terms. Pinckney took a business gamble that did not work out to their benefit, causing them to lose the property and fail their obligations under the Settlement Agreement.

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Importantly, these actions relate to the County's alleged conduct directed at Pinckney Point, LLC. By its verdict in the County's favor as to Pinckney Point, LLC, the jury determined that there was no breach of contract or the covenant of good faith and fair dealing by the County on these grounds.

Additionally, by the time Beaufort County purchased the 229 acre parcel, the Settlement Agreement was a nullity given that the Pinckney Point, LLC, could no longer meet its obligations under the contract. Pinckney Point, LLC, through the testimony of Taylor Bush, admitted it did not have any ownership interest or an active option agreement pertaining to the 229 acres when the County purchased the property. The option agreement expired February 28, 2013 but Pinckney Point, LLC was given 11 more days by Equity Resource Partners to close. Additionally, Taylor Bush testified that as of the time Pinckney Point lost its option in early March 2013, they could not develop the property and, therefore, could not fulfill their obligations under the Settlement Agreement. This would include Pinckney Point's obligations to Dot Gnann and Road, LLC under the Settlement Agreement. The only evidence in the record is that Beaufort County performed its obligations under the settlement agreement and it was the failure of Pinckney Point to perform its obligations and subsequent loss of the property which caused Road's alleged damages. Pinckney Point, LLC failed to meet its obligations under its mortgage with BB&T and option agreements with Equity Resource Partners (hereinafter referred to as "ERP") and lost its right to and ability to perform under the Settlement Agreement. When this happened, Road's alleged damage had already occurred. Pinckney Point, LLC's business gambles are what led them to lose their interest in

the property, and along with it, Road's hope to see the anticipated return on its investment in the road parcel.

It is irrelevant that Pinckney Point hoped to recover some interest at some point in the future if someone else did not purchase the property first. When Pinckney Point can no longer perform under the contract, the contract can no longer be considered binding. Pinckney Point, rather than the County, breached the contract with Road, LLC when this occurred.

I have considered the documents and testimony in this matter and find there is no evidence that a reasonable jury could believe supported that Beaufort County breached its covenant of good faith and fair dealing arising out of the Settlement Agreement as to Road, LLC by either its actions related to permitting with Pinckney Point, LLC, or with regard to its subsequent purchase of the property.

Based on all of the above, I find there is no evidence upon which a reasonable jury could rely to find that Beaufort County breached either the terms of the Settlement Agreement or breached its implied covenant of good faith and fair dealing arising out of that agreement.

II. Was there any evidence to support the jury's finding for damages for lost profit?

Additionally, Beaufort County argues that ***even if*** there was evidence to support the jury verdict that there was a breach, Road, LLC's damages in the amount of $5 million dollars is not supported by any evidence in the record at trial. This court agrees.

The only testimony in the record as to the ***current value*** of Road's property was given by Tommy Hartnett, a certified appraiser. Mr. Hartnett testified that the

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road parcel is currently valued, with the County as the owner of the 229 acre adjacent property, at $5 million dollars. The property was purchased by Road, LLC for $1.3 million dollars. Road, LLC cannot be said to have suffered a loss in value of their property. The only testimony is that, at the time of trial, it was worth $5 million dollars even with the County owning the adjacent parcel. Thus, there is no evidence of diminished value or damage to Road, LLC and the jury's decision is not supported by the evidence in the record.

Additionally, the evidence of lost profit damages to Road is too speculative to support the verdict of the jury. Road, LLC admits it would only be paid pursuant to the settlement agreement if Pinckney Point was able to find an investor whose terms it would agree to and be able to purchase back the 229 acre parcel from ERP. The evidence of this in the record is too speculative to support this finding.

In a breach of contract action, damages serve to place the non-breaching party in the position he would have enjoyed had the contract been performed. Carolina Winds Owners' Association, Inc. v. Joe Harden Builder, Inc., 297 S.C. 74, 374 S.E.2d 897 (Ct.App.1988), questioned in dictum on other grounds, Kennedy v. Columbia Lumber Co., 299 S.C. 335, 384 S.E.2d 730 (1989). That is, damages give him the benefit of his bargain. Id. In the normal case, the damage will consist of two distinct elements: (1) out-of-pocket costs actually incurred as a result of the contract; and (2) the gain above costs that would have been realized had the contract been performed. When a plaintiff seeks special damages for breach of contract, he must plead and prove both the fact of damage and the amount of damage with a reasonable degree of certainty. Jackson v. Midlands Human

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Resources Center, 296 S.C. 526, 374 S.E.2d 505 (Ct.App.1988)(emphasis added). The fact of damage is proved by showing (1) that the plaintiff realized an actual loss he would not have incurred but for the defendant's breach of contract; and (2) the loss was a natural consequence of the breach which may reasonably be supposed to have been within the contemplation of the parties at the time the contract was made. Charles v. Texas Company, 199 S.C. 156, 18 S.E.2d 719 (1942); Goodwin v. Hilton Head Company, 273 S.C. 758, 259 S.E.2d 611 (1979); The Drews Company, Inc. v. Ledwith-Wolfe Associates, Inc., 296 S.C. 207, 371 S.E.2d 532 (1988)(emphasis added). The crucial requirement in lost profits determinations is that they be "established with reasonable certainty, for recovery cannot be had for profits that are conjectural or speculative." South Carolina Finance Corp., supra, at 122, 113 S.E. (2d) at 336. "The proof must pass the realm of conjecture, speculation, or opinion not founded on facts, and must consist of actual facts from which a reasonably accurate conclusion regarding the cause and the amount of the loss can be logically and rationally drawn." 22 Am. Jur. (2d) Damages § 641 (1988).

In this case, the Plaintiffs failed to put forth any evidence to support the requisite showing as set forth above. Initially, the Plaintiff must show that they would have realized an actual loss they would not have otherwise incurred but for the Defendant's breach of contract. In order to show breach on the part of the County, the Plaintiffs argued that if Pinckney Point, LLC had been given the 120 day extension, it would have found an investor, and it was not given the extension because of unspecified interference by the County. First, there is no evidence from

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ERP that it would have given Pinckney any further extension. In fact, they declined to do so. Next, Pinckney nor Road offered testimony from any alleged investor(s), just that they are sure they would have found one. They did not even name who these future investors would have been. In addition to speculating that Pinckney Point not only could have repurchased the property subsequent to losing their option with Equity Resource Partners, they must speculate that Equity would not have found another buyer. The testimony is clear that ERP was looking to sell, and searching for a buyer, and the Plaintiff's' witnesses admit that ERP would have sold to whomever came up with the money first. The evidence was that ERP was not willing to give further extensions to Pinckney and were looking for other options to market the property.

Pinckney Point, LLC (and with them Road, LLC) offered no reliable evidence of Pinckney Point's ability to ever re-purchase the property, and no evidence that Equity Resource Partners would not have found, and sold, the property to another purchaser. Without being able to show these two things, Road cannot show lost profit damage, given the predicament Pinckney Point had put Road, LLC in when they lost their option on the 229 acre parcel. Road's complete showing of lost profits is premised upon multi-level speculative evidence and was not established with reasonable certainty.

DETERMINATION

Based on the foregoing, I find that there is no evidence to support the jury verdict in favor of Road, LLC in this matter as there is no evidence that Beaufort County breached a contract with Road, LLC, or breached a covenant of good faith

and fair dealing. Additionally, there is no evidence that Road, LLC has suffered any damage. Thus, I find that the jury's verdict of Five Million Dollars to Road, LLC is not supported by any evidence in the record and do

GRANT Beaufort County's Motion for JNOV on Road, LLC's claims.

And it is so **ORDERED.**

By:_____
Carmen Tevis Mullen
Judge, Fourteenth Judicial Circuit

_____, South Carolina

May _____, 2017.

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Beaufort Common Pleas

Case Caption: Road LLC , plaintiff, et al VS Beaufort County , defendant, et al

Case Number: 2013CP0701341

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 **CP**-07-01341

Road, LLC, et al.

PLAINTIFF(S)

Beaufort County, et al.

DEFENDANT(S)

Submitted by: MEGAN WHITE	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

2015 AUG 12 PM 1:59

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant Beaufort County's Motion to Reconsider the Order, dated 7/7/15, Denying Summary Judgment is hereby respectfully denied without hearing or argument.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2142
Judge Code

8-12-15
Date

For Clerk of Court Office Use Only

This judgment was entered on the 12 day of 8, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 14 day of 8, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

G. Walker

ATTORNEY(S) FOR THE PLAINTIFF(S)

R Debnam
Wm Saunders

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-07-01341

Road, LLC and Pinckney Point, LLC

Beaufort County, et al

2015 JUL -8 PM 2:32

PLAINTIFF(S)

DEFENDANT(S)

BEAUFORT COUNTY, S.C.
CLERK OF COURT

Submitted by: Carmen Mullen

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's Motion for Partial Summary Judgment and Defendant Beaufort County's Motion for Summary Judgment is denied on all grounds except Beaufort County's Motion on the Sixth Cause of Action for an Order of Civil Contempt as it is premature and Road LLC's Second Cause of Action as a Beaufort County Taxpayer on its Constitutional Claim as lacking standing.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : This case shall be assigned a day certain for the week of September 28, 2015.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge | 2142 Judge Code | 7/7/15 Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	CASE NO.: 2013-CP-07-1341
ROAD, LLC and PINCKNEY POINT, LLC,)	
Plaintiffs,)	
VS.)	
)	**ORDER**
BEAUFORT COUNTY, a political sub-division of the State of South Carolina,)	
Defendant.)	

14 JAN 31 PM 4:57
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter is before the Court on the Motion to Dismiss and/or Partial Dismissal of Defendant, Beaufort County. Defendant submitted a memorandum in support of the Motion and Plaintiff a memorandum in opposition to the Motion. The Court heard oral arguments on the Motion by counsel for the parties on January 27, 2014, at the Beaufort County courthouse.

Having fully considered the allegations of the Compliant and exhibits thereto, the arguments of counsel, and the applicable law, the court denies the motion.

A court must deny a motion to dismiss under Rule 12(b)(6), SCRCP, if the "facts alleged and inferences reasonably deductible therefrom would entitle the plaintiff to any relief on any theory of the case." Plyler v. Burns, 373 SC 637, 645, 647 S.E.2d 188, 192 (2007). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the Complaint states any valid claim for relief." Id.

Accepting the well pleaded allegations of the Complaint as true for purposes of the motion, the court determines that the Complaint does state valid claims for relief.

The court's denial of the Defendant's Motion is without prejudice to the arguments made by it that may be asserted later, based on the record.

IT IS THEREFORE, ORDERED that the Defendant's Motion to Dismiss and/or Partial dismissal be, and the same is hereby, denied.

AND IT IS SO ORDERED.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 2013-CP-07-1341
ROAD, LLC and PINCKNEY POINT, LLC, Plaintiffs,	)	
VS.	)	**VOUNTARY DISMISSAL**
BEAUFORT COUNTY, a political sub-division of the State of South Carolina, and EQUITY RESOURCE PARTNERS III, LLC, Defendants.	)	

13 AUG -2 PM 3:03
BEAUFORT COUNTY, S.C.
CLERK OF COURT

NOTICE is hereby given to the Court that the Plaintiffs, by and through their undersigned counsel, hereby voluntarily dismiss without prejudice the Complaint against the Defendant Equity Resource Partners, III, LLC.

PRATT-THOMAS WALKER, P.A.

By: G. Trenholm Walker

G. Trenholm Walker (SC Bar #5777)
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: 843-727-2200
gtw@p-tw.com

Attorneys for Plaintiffs

July 31, 2013

Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT ROAD, LLC and PINCKNEY POINT, LLC Plaintiffs VS. BEAUFORT COUNTY, a political sub division of the State of South Carolina, and EQUITY SOURCE PARTNERS, III, LLC. Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: 2013-CP-07-1341 **COMPLAINT**

The Plaintiffs herein, Road, LLC and Pinckney Point, LLC, complaining against the Defendants, allege and state as follows:

1. The Plaintiff Road, LLC, is a South Carolina limited liability company and owns real property in Beaufort County, as further described herein.
2. The Plaintiff Pinckney Point, LLC, is a Florida limited liability company and holds certain rights and has an interest in certain real property in Beaufort County, South Carolina, as further described herein.
3. The Defendant Beaufort County (the "County") is a political subdivision of the State of South Carolina.
4. The Defendant Equity Resource Partners, III, LLC, ("ERP") is, upon information and belief, a limited liability company formed under the laws of Georgia and is the record owner of real property as further described herein.
5. This action seeks to prevent a breach of the public trust by Defendant County, to enforce a contractual agreement entered by Defendant County,

13 MAY 2 PM 2:28
BEAUFORT COUNTY, S.C.
CLERK OF COURT

and to protect against the expenditure of public funds for a use that is not allowed.

6. At times pertinent hereto, Pinckney Point, LLC was the owner of a 229 acre tract (hereinafter the "Pinckney Point Parcel") at the confluence of the Okatie and Colleton Rivers. The sole vehicle access to the Pinckney Point Parcel is on Pinckney Colony Road which crosses a narrow isthmus immediately adjacent to the Pinckney Point Parcel.

7. Defendant ERP is the current owner of the Pinckney Point Parcel.

8. Road, LLC, owns .85 acres immediately adjacent to the Pinckney Point Parcel that includes the last .2 miles of Pinckney Colony Road that is a private, unimproved dirt roadway.

9. In 2011, Defendant County, Pinckney Point, LLC, Agnes F. Pinckney, as guardian and conservator for John David Pinckney, Dorothy P. Gnann, and the Zoning Board of Appeals for Beaufort County settled two lawsuits, Case No.: 05-CP-07-2337 (the "Road Action) and Case No.: 07-CP-07-3474 (the "Variance Action") ending six and four years of contested proceedings, respectively.

10. The settlement among these litigants is embodied in the Settlement Agreement (the "Agreement") attached hereto as Exhibit A. Pinckney Point, LLC, the County, and Road, LLC, agreed to numerous binding terms and conditions within the Agreement that include, but are not limited to the following:

> [T]he 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. . . 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.

(Agreement, Page 2).

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.

(Agreement, Page 5).

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.

(Agreement, Page 8)

11. In reliance on the terms and conditions of the Agreement, Pinckney Point, LLC resolved the Road Action and Variance Action, Pinckney Point, LLC made arrangements for the payment to Dorothy Gnann, and Road, LLC spent $1,300,000 to acquire the Road Parcel.

12. By Limited Warranty Deed recorded in the records office for Beaufort County at Book 03028, Pages 0993-0998, Agnes F. Pinckney, as

guardian and conservator for John David Pinckney, conveyed the Road Parcel to Road, LLC for $1,300,000. A copy of the executed Limited Warranty Deed is attached as Exhibit B. The unexecuted Limited Warranty Deed was attached as an exhibit to the Agreement and its terms agreed upon by the County.

13. By Quit Claim Deed recorded in the records office for Beaufort County at Book 03028, Pages 0999-1002, Agnes F. Pinckney conveyed her interest in the Road Parcel to Road, LLC for $10. A copy of the executed Quit Claim Deed is attached hereto as Exhibit C. A copy of the unexecuted Quit Claim Deed was attached as an exhibit to the Agreement and agreed upon by the County.

14. Both the Limited Warranty Deed and the Quit Claim Deed contain the following provisions that the respective conveyances were made:

> . . . ALSO SUBJECT TO an easement for vehicular access, ingress and egress on, over and across the approximate 20 foot private dirt road extending to the north of Pinckney Colony Road as depicted in the plat referenced above ("Pinckney Colony Road")
>
> 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.

15. On or about December 29, 2011, Road, LLC entered an Access Easement Agreement, copy attached as Exhibit D, with Pinckney Point, LLC, recorded in the records office for Beaufort County at Book 03110,

Pages 1662-1679 granting Pinckney Point, LLC certain easement rights across the Road Parcel subject to the terms and conditions therein that include, but are not limited to the following:

> Grant of Easement. Grantor has granted, bargained, sold and released and by these presents does hereby grant, bargain, sell and release unto to Grantee its successors and assigns, for the benefit of Grantee's property [Pinckney Point Parcel], a non-exclusive perpetual easement (a) over, upon and across a portion of the Grantor's property constituting a 20 foot wide easement in the area depicted as the private dirt road (excluding Hayfield Road) on Exhibit "C", extending to the north of Pinckney Colony Road, which area is hereafter referred to as the "Easement Area" for purposes of vehicular and pedestrian ingress and egress to and from Grantee's property over easement area. ... The rights granted herein shall be for the benefit of Grantee and for the benefit of any and all other occupants of Grantee's property, and for its respective subtenants, licensees, customers, agents, employees, invitees, mortgagees, successors and assigns.
>
> 3. Limitations on Easement. This easement is limited to access only. . . Grantee is not permitted to make any improvements or perform any work on and to the easement area without prior approval from grantor.
>
> 4. No Dedication. This agreement is not intended to, and should not be construed to, dedicate the easement area to the general public.
>
> 8. Successors and Assigns. This Agreement and the rights granted herein shall run with the title and be appurtenant to Grantee's property, shall run with the title to and burden the easement area and grantor's property forever, and shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and

their successors, successors-in-title and assigns.

16. On or about May 6, 2011 the Court of Common Pleas entered the Consent Order in the Road Action, copy attached as Exhibit E, that found and concluded that "the unpaved portion of Pinckney Point Road is a private road."

17. Based on the foregoing, it has been conclusively adjudicated against the County and agreed upon by the County that the Road Parcel is a private road. Further, the Road Parcel may only be used for access for those uses appropriate for a private residential community.

18. Upon information and belief, on or about April 24, 2013, the County entered a contract of purchase and sale for the Pinckney Point Parcel with ERP, copy attached as Exhibit F, (the "Contract of Purchase") and intends to close and acquire the Pinckney Point Parcel imminently, in accordance with the Closing Date specified in the Contract of Purchase as follows: "The deed shall be delivered and transaction closed by commercial overnight courier (or the closing may take place in person if agreed to by the parties) on or before thirty (30) days from the execution of this Agreement, or at such time that Beaufort County has completed their due diligence and is prepared to close (but not less than three (3) business days' prior written notice to Seller), whichever is sooner." Thirty days from the execution of the Contract of Purchase is May 24, 2013.

19. The Council of Defendant County approved the purchase of the Pinckney Point Parcel in reliance on their belief that it could be accessed and used as a park open to the public.

20. The Settlement Agreement, Deeds, Access Easement Agreement, and Court Order specifically decree that the Road Parcel is a private road that necessarily does not include use and access by the general public and restricts access across the private road to the limited purposes described therein. These various agreements and the order of this Court in the Road Action serve to prohibit the general public from accessing the Pinckney Point Parcel across the 20-foot-wide dirt road easement.

21. The legal property description in the Contract of Purchase recognizes the specific limitations and conditions of the easement across the Road Parcel in providing the real property is being conveyed:

> TOGETHER WITH all rights of the Grantor in and to that certain twenty foot (20') wide easement for access, ingress, and egress, in favor of Grantor, its successors, and assigns, in Paragraph 3 entitled Right of Way in that certain First Amendment to Settlement Agreement in that certain action entitled Beaufort County v. Agnes Pinckney, et al, being Case No. 05-CP-07-2337, in the Court of Common Pleas, County of Beaufort, State of South Carolina and in any deeds, grants of right of way, easement agreements, or any other document thereto reflecting Grantor's right to cross over, through or under said twenty foot (20') wide easement.
>
> Said easement being also that easement more particularly described and shown in that Access Easement Agreement by and between Road, LLC, a South Carolina limited liability company, and Pinckney Point, LLC, a South Carolina limited liability company, dated the 29th day of December, 2011.

22. Road, LLC and Pinckney Point, LLC have met with representatives of the County and explained the limitations and prohibitions described herein. The County has responded that it intends to proceed with the closing and purchase the Pinckney Point Parcel for $6,950,000, from $25 million in new rural and critical lands bonds as specified in the Contract of Purchase.

FOR A FIRST CAUSE OF ACTION

23. Plaintiffs reallege the previous allegations as if fully set forth herein.

24. A real and actual controversy exists between these parties.

25. Plaintiffs are entitled to a declaratory adjudication as to the agreements, deeds, and order previously described, finding and concluding that Pinckney Colony Road across the Road Parcel is private, cannot be improved without permission from Road, LLC, is limited to the private uses as described herein for the private persons described therein (the "occupants" of the residential development on Pinckney Point), and does not authorize public access to the Pinckney Point Parcel.

FOR A SECOND CAUSE OF ACTION

26. Plaintiffs reallege their previous allegations as if fully stated herein.

27. Road, LLC owns property in Beaufort County, namely the Road Parcel, and is a tax payer in Beaufort County.

28. The expenditure of $6,950,000 of public funds to acquire real property to be owned by the County where the only vehicular access is limited to

private uses, necessarily constitutes the expenditure of public funds for private purposes.

29. Road, LLC, is entitled to a declaratory adjudication that such expenditures of public funds constitutes an impermissible use of those monies for private purposes under S.C. Const. Art. X, § 11.

FOR A THIRD CAUSE OF ACTION

30. Plaintiffs reallege their previous allegations as if fully set forth herein.

31. Road, LLC and Pinckney Point, LLC have no adequate remedy at law and will suffer irreparable harm if the County and ERP proceed with the sales transaction and the Road Parcel is used by the general public.

32. Plaintiffs are entitled to a preliminary and permanent injunction enjoining Defendants from using the Road Parcel for the general public to access the Pinckney Point Parcel.

FOR A FOURTH CAUSE OF ACTION

33. Plaintiffs reallege their previous allegations as if fully set forth herein.

34. Pinckney Point, LLC, Road, LLC, and the County were parties to the Agreement.

35. Road, LLC, and Pinckney Point, LLC are entitled to an order of specific performance of the Agreement, compelling the County to perform and honor its contractual obligations as set forth therein including prohibiting its invitation to the general public to use the Road Parcel and such use by the general public.

FOR A FIFTH CAUSE OF ACTION

36. Plaintiffs reallege their previous allegations as if fully set forth herein.

37. There is a reasonable probability that ERP and the County will proceed in the immediate future to close the transaction and that the County will then become the owner of the Pinckney Point Parcel.

38. Should the transaction close and the Road Parcel be used by the general public, rather than by the occupants of the residential development of Pinckney Point, for access to the Pinckney Point Parcel for public purposes, Pinckney Point, LLC, and Road, LLC, are entitled to an order of civil contempt against the County.

FOR A SIXTH CAUSE OF ACTION

39. Plaintiffs reallege their previous allegations as if fully set forth herein.

40. In the Agreement and as party to the Court Order, the County made final, binding representations that Pinckney Colony Road across the Road Parcel was a private road that is and remains subject to the further conditions set forth in the Settlement Agreement and the deeds previously described..

41. Road, LLC, and Pinckney Point, LLC had a reasonable basis to rely on those representations and did in fact rely on those representations and agreements.

42. The Plaintiffs are entitled to a declaratory adjudication that Defendant County is barred under the doctrines of equitable and judicial estoppel from allowing the public to use Pinckney Point Road, the sole vehicular access to and from the Pinckney Point Parcel.

WHEREFORE, the Plaintiffs pray for the relief described herein, for their costs and attorneys' fees under S.C. Code §§ 15-77-300 et seq., and for such further and other relief as the court deems just and proper.

G. Trenholm Walker
Pratt-Thomas Walker, P.A.
16 Charlotte Street
P. O. Drawer 22247
Charleston, SC 29413-2247
(843) 727-2200
gtw@p-tw.com

ATTORNEYS FOR PLAINTIFFS

May 21, 2013

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2013-CP-07-01341

ROAD, LLC AND PINCKNEY POINT, LLC,	)	
Plaintiffs,	)	
vs.	)	BEAUFORT COUNTY'S ANSWER TO PLAINTIFFS' COMPLAINT
BEAUFORT COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF SOUTH CAROLINA, AND EQUITY SOURCE PARTNERS, III, LLC,	)	
Defendants.	)	

The Defendant, Beaufort County, answering the Complaint of the Plaintiffs would allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. That each and every allegation contained in the Plaintiffs' Complaint not specifically admitted hereinafter is denied and strict proof demanded thereof.

2. The Plaintiffs herein lack standing to bring this action and, therefore, the Complaint of the Plaintiffs should be dismissed with costs.

FOR A SECOND DEFENSE

3. This Defendant's First Defense is hereby re-alleged and reiterated as fully as if repeated herein.

4. The Complaint of the Plaintiffs fails to state a cause of action against this Defendant, and the Complaint should be dismissed with costs.

FOR A THIRD DEFENSE

5. This Defendant's First and Second Defenses are hereby re-alleged and reiterated as fully as if repeated herein.

6. The matters set forth in the Complaint and the redress sought in the Plaintiffs' Complaint are now *moot*.

7. The Complaint of the Plaintiffs seeks declaratory and injunctive relief.

8. The Complaint of the Plaintiffs seeks to prevent Beaufort County's purchase of property described in the Complaint.

9. Beaufort County has already purchased the subject property rendering the Complaint of the Plaintiffs *moot*.

FOR A FOURTH DEFENSE

10. This Defendant's First, Second and Third Defenses are hereby re-alleged and reiterated as fully as if repeated herein.

11. To the extent the allegations of the Plaintiffs' Complaint are not now *moot* or otherwise do not constitute a cause of action, the matters complained of in the Plaintiffs' Complaint are not yet ripe for adjudication.

FOR A FIFTH DEFENSE

12. This Defendant's First, Second, Third and Fourth Defenses are hereby re-alleged and reiterated as fully as if repeated herein.

13. Upon information and belief, this Defendant admits Paragraph 1 of the Plaintiffs' Complaint.

14. Paragraph 2 of the Plaintiffs' Complaint states a conclusion of law which this Defendant is not required to admit or deny and, therefore, denies same and demand strict proof thereof.

15. This Defendant admits Paragraph 3 of the Plaintiffs' Complaint.

16. Upon information and belief, this Defendant admits so much of Paragraph 4 of the Plaintiffs' Complaint as alleges the Defendant, Equity Source Partners, III, LLC is a limited liability company formed under the laws of Georgia.

17. This Defendant denies Paragraph 5 of the Plaintiffs' Complaint and demands strict proof thereof.

18. This Defendant denies Paragraph 6 of the Plaintiffs' Complaint and demands strict proof thereof.

19. This Defendant denies Paragraph 7 of the Plaintiffs' Complaint and demands strict proof thereof.

20. Paragraph 8 of the Plaintiffs' Complaint states a conclusion of law in which this Defendant is not required to admit or

deny and, therefore, denies same and demands strict proof thereof.

21. This Defendant admits so much of Paragraph 9 of the Plaintiffs' Complaint as alleges the individuals and entities identified in Paragraph 9 of the Plaintiffs' Complaint did resolve two lawsuits.

22. In response to Paragraph 10 of the Plaintiffs' Complaint, this Defendant would allege that the referenced settlement documents speak for themselves.

23. This Defendant denies Paragraph 11 of the Plaintiffs' Complaint and demands strict proof thereof.

24. In response to Paragraph 12 of the Plaintiffs' Complaint, this Defendant would allege that the documents referenced speak for themselves.

25. In response to Paragraph 13 of the Plaintiffs' Complaint, this Defendant would allege that the documents referenced speak for themselves.

26. In response to Paragraph 14 of the Plaintiffs' Complaint, this Defendant would allege that the documents referenced speak for themselves.

27. In response to Paragraph 15 of the Plaintiffs' Complaint, this Defendant would allege that the documents referenced speak for themselves.

28. In response to Paragraph 16 of the Plaintiffs' Complaint, this Defendant would allege that the documents referenced speak for themselves.

29. Paragraph 17 of the Plaintiffs' Complaint states a conclusion of law which this Defendant is not required to admit or deny and, therefore, denies same and demands strict proof thereof.

30. In response to Paragraph 18 of the Plaintiffs' Complaint, this Defendant would allege that the documents referenced speak for themselves.

31. This Defendant denies Paragraph 19 of the Plaintiffs' Complaint and demands strict proof thereof.

32. This Defendant denies Paragraph 20 of the Plaintiffs' Complaint and demands strict proof thereof.

33. In response to Paragraph 21 of the Plaintiffs' Complaint, this Defendant would allege that the documents referenced speak for themselves.

34. This Defendant would admit so much of Paragraph 22 of the Plaintiffs' Complaint as alleges that Beaufort County has proceeded with the closing of the purchase of Pinckney Point Parcel.

35. In response to Paragraph 23 of the Plaintiffs' Complaint, this Defendant admits what has been admitted and denies what has been denied.

36. This Defendant denies Paragraph 24 of the Plaintiffs' Complaint and demands strict proof thereof.

37. This Defendant denies Paragraph 25 of the Plaintiffs' Complaint and demands strict proof thereof.

38. In response to Paragraph 26 of the Plaintiffs' Complaint this Defendant admits what has been admitted and denies what has been denied.

39. Upon information and belief, this Defendant admits so much of Paragraph 27 of the Plaintiffs' Complaint as alleges Road LLC owns property in Beaufort County and as such is responsible to pay property taxes.

40. This Defendant denies Paragraph 28 of the Plaintiffs' Complaint and demands strict proof thereof.

41. This Defendant denies Paragraph 29 of the Plaintiffs' Complaint and demands strict proof thereof.

42. In response to Paragraph 30 of the Plaintiffs' Complaint, this Defendant admits what has been admitted and denies what has been denied.

43. This Defendant denies Paragraph 31 of the Plaintiffs' Complaint and demands strict proof thereof.

44. This Defendant denies Paragraph 32 of the Plaintiffs' Complaint and demands strict proof thereof.

45. In response to Paragraph 33 of the Plaintiffs' Complaint, this Defendant admits what has been admitted denies what has been denied.

46. In response to Paragraph 34 of the Plaintiffs' Complaint, this Defendant would allege that the documents referenced speak for themselves.

47. This Defendant denies Paragraph 35 of the Plaintiffs' Complaint and demands strict proof thereof.

48. In response to Paragraph 36 of the Plaintiffs' Complaint, this Defendant admits what has been admitted and denies what has been denied.

49. This Defendant admits so much of Paragraph 37 of the Plaintiffs' Complaint as alleges the Defendant Beaufort County is the owner of the Pinckney Point Parcel.

50. This Defendant denies Paragraph 38 of the Plaintiffs' Complaint and demands strict proof thereof.

51. In response to Paragraph 39 of the Plaintiffs' Complaint, this Defendant admits what has been admitted and denies what has been denied.

52. In response to Paragraph 40 of the Plaintiffs' Complaint, this Defendant would allege that the documents referenced speak for themselves.

53. This Defendant denies so much of Paragraph 41 of the Plaintiffs' Complaint to the extent it alleges that this Defendant made any misrepresentation or violated any representation made to the Plaintiffs.

54. This Defendant denies Paragraph 42 of the Plaintiffs' Complaint and demands strict proof thereof.

WHEREFORE, the Defendant prays this Honorable Court inquire into the matters set forth herein, and enter its Order dismissing this matter, with an award of attorneys fees and costs to the Defendant.

HOWELL, GIBSON & HUGHES, P.A.

By: _____

Robert W. Achurch, III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendant, Beaufort County

Beaufort, South Carolina

May 31, 2013

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT ROAD, LLC and PINCKNEY POINT, LLC, Plaintiffs, VS. BEAUFORT COUNTY, a political sub division of the State of South Carolina, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: 2013-CP-07-01341 **AMENDED COMPLAINT** (Jury Trial Demanded)

The Plaintiffs herein, Road, LLC and Pinckney Point, LLC, complaining against the Defendant, allege and state as follows:

1. The Plaintiff Road, LLC, is a South Carolina limited liability company and owns real property in Beaufort County, as further described herein.

2. The Plaintiff Pinckney Point, LLC, is a Florida limited liability company and holds certain rights and has an interest in certain real property in Beaufort County, South Carolina, as further described herein.

3. The Defendant Beaufort County (the "County") is a political subdivision of the State of South Carolina.

4. This action seeks, among other things, to prevent a breach of the public trust by the County, to enforce a contractual agreement entered by Defendant County, to protect against the expenditure of public funds for a use that is not allowed, and to recover damages against the County for breach of contract.

5. At times pertinent hereto, Pinckney Point, LLC was the owner of a 229 acre tract (hereinafter the "Pinckney Point Parcel") at the confluence of the Okatie and Colleton Rivers. The sole vehicle access to the Pinckney Point Parcel is on Pinckney Colony Road which crosses a narrow isthmus immediately adjacent to the Pinckney Point Parcel.

6. Road, LLC, owns .85 acres immediately adjacent to the Pinckney Point Parcel that includes the last .2 miles of Pinckney Colony Road that is a private, unimproved dirt roadway.

7. In 2011, Defendant County, Pinckney Point, LLC, Agnes F. Pinckney, as guardian and conservator for John David Pinckney, Dorothy P. Gnann, and the Zoning Board of Appeals for Beaufort County settled two lawsuits, Case No.: 05-CP-07-2337 (the "Road Action) and Case No.: 07-CP-07-3474 (the "Variance Action") ending six and four years of contested proceedings, respectively.

8. The settlement among these litigants is embodied in the Settlement Agreement (the "Agreement") attached hereto as Exhibit A. Pinckney Point, LLC, the County, and Road, LLC, agreed to numerous binding terms and conditions within the Agreement that include, but are not limited to the following:

> [T]he 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. . . 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.

(Agreement, Page 2).

4. Conveyances. (a) ... 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 the right-of-way not less than fifty feet (50') wide to PPLLC upon payment of certain consideration described in said Road Agreement. ... 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.

(Agreement, Page 4).

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.

(Agreement, Page 5).

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.

(Agreement, Page 8)

9. In reliance on the terms and conditions of the Agreement, Pinckney Point, LLC resolved the Road Action and Variance Action, and Road, LLC invested $1,300,000 to acquire the Road Parcel.

10. By Limited Warranty Deed recorded in the records office for Beaufort County at Book 03028, Pages 0993-0998, Agnes F. Pinckney, as guardian and conservator for John David Pinckney, conveyed the Road Parcel to Road, LLC. A copy of the executed Limited Warranty Deed is attached as Exhibit B. The unexecuted Limited Warranty Deed was attached as an exhibit to the Agreement and its terms agreed upon by the County.

11. By Quit Claim Deed recorded in the records office for Beaufort County at Book 03028, Pages 0999-1002, Agnes F. Pinckney conveyed her interest in the Road Parcel to Road, LLC for $10. A copy of the executed Quit Claim Deed is attached hereto as Exhibit C. A copy of the unexecuted Quit Claim Deed was attached as an exhibit to the Agreement and agreed upon by the County.

12. Both the Limited Warranty Deed and the Quit Claim Deed contain the following provisions that the respective conveyances were made:

> . . . ALSO SUBJECT TO an easement for vehicular access, ingress and egress on, over and across the approximate 20 foot private dirt road extending to the north of Pinckney Colony Road as depicted in the plat referenced above ("Pinckney Colony Road")

> 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.

13. On or about December 29, 2011, Road, LLC entered an Access Easement Agreement, copy attached as Exhibit D, with Pinckney Point, LLC, recorded in the records office for Beaufort County at Book 03110, Pages 1662-1679 granting Pinckney Point, LLC certain easement rights across the Road Parcel subject to the terms and conditions therein that include, but are not limited to the following:

> Grant of Easement. Grantor has granted, bargained, sold and released and by these presents does hereby grant, bargain, sell and release unto to Grantee its successors and assigns, for the benefit of Grantee's property [Pinckney Point Parcel], a non-exclusive perpetual easement (a) over, upon and across a portion of the Grantor's property constituting a 20 foot wide easement in the area depicted as the private dirt road (excluding Hayfield Road) on Exhibit "C", extending to the north of Pinckney Colony Road, which area is hereafter referred to as the "Easement Area" for purposes of vehicular and pedestrian ingress and egress to and from Grantee's property over easement area. ... The rights granted herein shall be for the benefit of Grantee and for the benefit of any and all other occupants of Grantee's property, and for its respective subtenants, licensees, customers, agents, employees, invitees, mortgagees, successors and assigns.
>
> 3. Limitations on Easement. This easement is limited to access only. . . . Grantee is not permitted to make any improvements or perform any work on

and to the easement area without prior approval from grantor.

4. No Dedication. This agreement is not intended to, and should not be construed to, dedicate the easement area to the general public.

8. Successors and Assigns. This Agreement and the rights granted herein shall run with the title and be appurtenant to Grantee's property, shall run with the title to and burden the easement area and grantor's property forever, and shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their successors, successors-in-title and assigns.

14. On or about May 6, 2011 the Court of Common Pleas entered the Consent Order in the Road Action, copy attached as Exhibit E, that found and concluded that "the unpaved portion of Pinckney Point Road is a private road."

15. Based on the foregoing, it has been conclusively adjudicated against the County and agreed upon by the County that the Road Parcel is a private road. Further, the Road Parcel may only be used for access for those uses appropriate for a private residential community.

16. On or about May 28, 2013, the County purchased the Pinckney Point Parcel from Equity Resource Partners, III, LLC and received title to the Pinckney Point Parcel by deed recorded in the Records Office for Beaufort County at BK 03242 PGS 2216-2225 copy attached as Exhibit F, (the "Deed").

17. Upon information and belief, the Council of Defendant County may have approved the purchase of the Pinckney Point Parcel in reliance on their belief that there was public vehicular access over Pinckney Colony Road and that the Pinckney Point Parcel could be accessed and used as a park open to the public, even though the legal instruments described herein prohibit such use of the Road Parcel and use of the Pinckney Point Parcel and even though Plaintiffs notified the County of this restriction prior to closing.

18. The Settlement Agreement, Deeds, Access Easement Agreement, and Court Order specifically decree that the Road Parcel is a private road that necessarily does not include use and access by the general public and restricts access across the private road to the limited purposes described therein. These various agreements and the order of this Court in the Road Action serve to prohibit the general public from accessing the Pinckney Point Parcel across the 20-foot-wide dirt road easement.

19. The legal property description in the Contract of Purchase recognizes the specific limitations and conditions of the easement across the Road Parcel in providing the real property is being conveyed:

> TOGETHER WITH all rights of the Grantor in and to that certain twenty foot (20') wide easement for access, ingress, and egress, in favor of Grantor, its successors, and assigns, in Paragraph 3 entitled Right of Way in that certain First Amendment to Settlement Agreement in that certain action entitled Beaufort County v. Agnes Pinckney, et al, being Case No. 05-CP-07-2337, in the Court of Common Pleas, County of Beaufort, State of South Carolina and in any deeds, grants of right of way, easement agreements, or any

other document thereto reflecting Grantor's right to cross over, through or under said twenty foot (20') wide easement.

Said easement being also that easement more particularly described and shown in that Access Easement Agreement by and between Road, LLC, a South Carolina limited liability company, and Pinckney Point, LLC, a South Carolina limited liability company, dated the 29th day of December, 2011.

20. Before the County's purchase of the Pinckney Point Parcel, a representative of Road, LLC and Pinckney Point, LLC met with representatives of the County and explained the limitations and prohibitions described herein and delivered a letter to the County notifying it of the restrictions on use and access. Further, Plaintiffs filed and served this legal action before closing. Nonetheless, the County proceeded with the closing and purchased the Pinckney Point Parcel for $6,950,000, from $25 million in new rural and critical lands bonds as specified in the Contract of Purchase.

FOR A FIRST CAUSE OF ACTION

21. Plaintiffs reallege the previous allegations as if fully set forth herein.

22. A real and actual controversy exists between these parties.

23. Plaintiffs are entitled to a declaratory adjudication as to the agreements, deeds, and order previously described, finding and concluding that Pinckney Colony Road across the Road Parcel is private, cannot be improved without permission from Road, LLC, is limited to the private uses as described herein for the private persons described therein (the "occupants" of the residential development on Pinckney Point), and does not authorize public access to the Pinckney Point Parcel.

FOR A SECOND CAUSE OF ACTION

24. Plaintiffs reallege their previous allegations as if fully stated herein.

25. Road, LLC owns property in Beaufort County, namely the Road Parcel, and is a tax payer in Beaufort County.

26. The expenditure of $6,950,000 of public funds to acquire real property to be owned by the County where the only vehicular access is limited to private uses, necessarily constitutes the expenditure of public funds for private purposes.

27. Road, LLC, is entitled to a declaratory adjudication that such expenditures of public funds constitutes an impermissible use of those monies for private purposes under S.C. Const. Art. X, § 11.

FOR A THIRD CAUSE OF ACTION

28. Plaintiffs reallege their previous allegations as if fully set forth herein.

29. Road, LLC and Pinckney Point, LLC have no adequate remedy at law and will suffer irreparable harm if the Road Parcel is used by the general public for access to a park or other use of the Pinckney Point Parcel that is not a planned residential development.

30. Plaintiffs are entitled to a preliminary and permanent injunction enjoining the County from using the Road Parcel for the general public to access the Pinckney Point Parcel and from using the Pinckney Point Parcel for any use other than residential development, as agreed by the County and set forth in the Settlement Agreement.

FOR A FOURTH CAUSE OF ACTION

31. Plaintiffs reallege their previous allegations as if fully set forth herein.

32. Pinckney Point, LLC, Road, LLC, and the County were parties to the Agreement.

33. Road, LLC, and Pinckney Point, LLC are entitled to an order of specific performance of the Agreement, compelling the County to perform and honor its contractual obligations as set forth therein including prohibiting its invitation to the general public to use the Road Parcel and such use by the general public and using the Pinckney Point Parcel for any use other than residential development, as agreed by the County and set forth in the Settlement Agreement.

FOR A FIFTH CAUSE OF ACTION

34. Plaintiffs reallege their previous allegations as if fully set forth herein.

35. While it was owner of the Pinckney Point Parcel, Plaintiff Pinckney Point, LLC invested around $15,000,000 in the Pinckney Point Parcel, fully designed and planned its residential development, and secured the entitlements necessary for a high end residential development including securing dock permits.

36. Had the County not purchased the Pinckney Point Parcel for park purposes, the Pinckney Point Parcel would have been developed as a residential subdivision in accordance with the Agreement and the other previously described instruments.

37. A necessary requirement for the subdivision of the Pinckney Point Parcel and its residential development is an improved right of way of a width of fifty feet across Road Parcel owned by Plaintiff Road, LLC.

38. Based on the terms of the Settlement Agreement, Plaintiff Road, LLC further relied upon its right and ability to negotiate and charge a reasonable price, well in excess of $1,300,000 to the residential developer to provide it the necessary 50 foot right of way that would be necessary at the time of the subdivision of the Pinckney Point Parcel to accomplish its residential development.

39. At the time the Settlement Agreement was entered into the County encouraged that the controversy be resolved by deeming Pinckney Colony Road a private road and encouraging the expenditure of $1,300,000 to acquire the Road Parcel to enable the settlement of the prior litigation.

40. The County further committed to the use of the Pinckney Point Parcel as a residential subdivision by approving multiple entitlements to accomplish that residential development, including but not limited to entering the separate dock settlement agreement.

41. The County's breach of the Agreement has prevented Road, LLC from receiving a return of and a return on its investment in the Road Parcel and in Pinckney Point, LLC at such time that the Pinckney Point Parcel was subdivided and used for residential purposes, including recovering the reasonable value of providing the essential vehicular access to the Pinckney Point Parcel's residential development. The County's purchase

of the Pinckney Point Parcel for open space or park has in effect downzoned the parcel to conservation/park from residential.

42. After the parties entered the Settlement Agreement, Pinckney Point, LLC conveyed title to the Pinckney Point Parcel to Equity Resource Partners III, LLC ("ERP") and entered an option to repurchase the Pinckney Point Parcel.

43. In reliance on the Settlement Agreement, Pinckney Point, LLC continued to spend money for the future residential development of the Pinckney Point Parcel and paid ERP for the option to repurchase the Pinckney Point Parcel.

44. As a result of the County's breach of the Settlement Agreement, Pinckney Point, LLC lost its entire investment in the Pinckney Point Parcel, was deprived of the profit it would have made if it had developed the Pinckney Point Parcel as a residential subdivision, and lost the monies it paid towards the project and the option after the Settlement Agreement was entered.

45. Pinckney Point, LLC and Road, LLC are each entitled to separate judgments for an appropriate amount of actual damages against the Defendant County for its breach of the Settlement Agreement.

FOR A SIXTH CAUSE OF ACTION

46. Plaintiffs reallege their previous allegations as if fully set forth herein.

47. Should the Road Parcel be used by the general public, rather than by the occupants of the residential development of Pinckney Point, for access to

the Pinckney Point Parcel for public purposes, Pinckney Point, LLC, and Road, LLC, are entitled to an order of civil contempt against the County.

FOR A SEVENTH CAUSE OF ACTION

48. Plaintiffs reallege their previous allegations as if fully set forth herein.

49. In the Agreement and as party to the Court Order, the County made final, binding representations that Pinckney Colony Road across the Road Parcel was a private road that is and remains subject to the further conditions set forth in the Settlement Agreement and the deeds previously described.

50. Road, LLC, and Pinckney Point, LLC had a reasonable basis to rely on those representations and did in fact rely on those representations and agreements.

51. The Plaintiffs are entitled to a declaratory adjudication that Defendant County is barred under the doctrines of equitable and judicial estoppel from allowing the public to use Pinckney Point Road, the sole vehicular access to and from the Pinckney Point Parcel, and from using the Pinckney Point Parcel for anything other than a residential subdivision.

WHEREFORE, the Plaintiffs pray for the relief described herein, including but not limited to judgment against the County for actual damages, for their costs and attorneys' fees under S.C. Code §§ 15-77-300 et seq., and for such further and other relief as the court deems just and proper.

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ATTORNEYS FOR PLAINTIFFS

July 25, 2014

Charleston, South Carolina

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.

EXHIBIT A

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:

BEAUFORT COUNTY, a Political Subdivision of the State of South Carolina

By:
Its: County Administrator

WITNESSES:

Dated:

ZONING BOARD OF APPEALS FOR BEAUFORT COUNTY

By:
Its: County Administrator

WITNESSES:

Jean Bush

Dated: 1-14-11

PINCKNEY POINT, LLC, a Florida limited liability company

By:
Taylor Bush
Its: President

WITNESSES:

Dated: 1/14/2011

AGNES F. PINCKNEY, Individually and as Guardian and Conservator for JOHN DAVID PINCKNEY

By:
Its:

WITNESSES:

Dorothy P. Gnann

WITNESSES:

Dated:

ROAD, LLC, a South Carolina limited liability company

By:
Its:

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, a Florida limited liability company

By: _____
Taylor Bush
Its: President

WITNESSES:

_____

_____

Dated: _____

AGNES F. PINCKNEY, Individually and as Guardian and Conservator for JOHN DAVID PINCKNEY

By: _____
Its: _____

WITNESSES:

_____

_____

_____
Dorothy P. Gnann

WITNESSES:

_____

KEERAT KAUR
Dated: 01/13/2011

ROAD, LLC, a South Carolina limited liability company

By: Bruce Bunney
Its: President

HILTONHEAD 717692v8

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 B

ZBOA 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

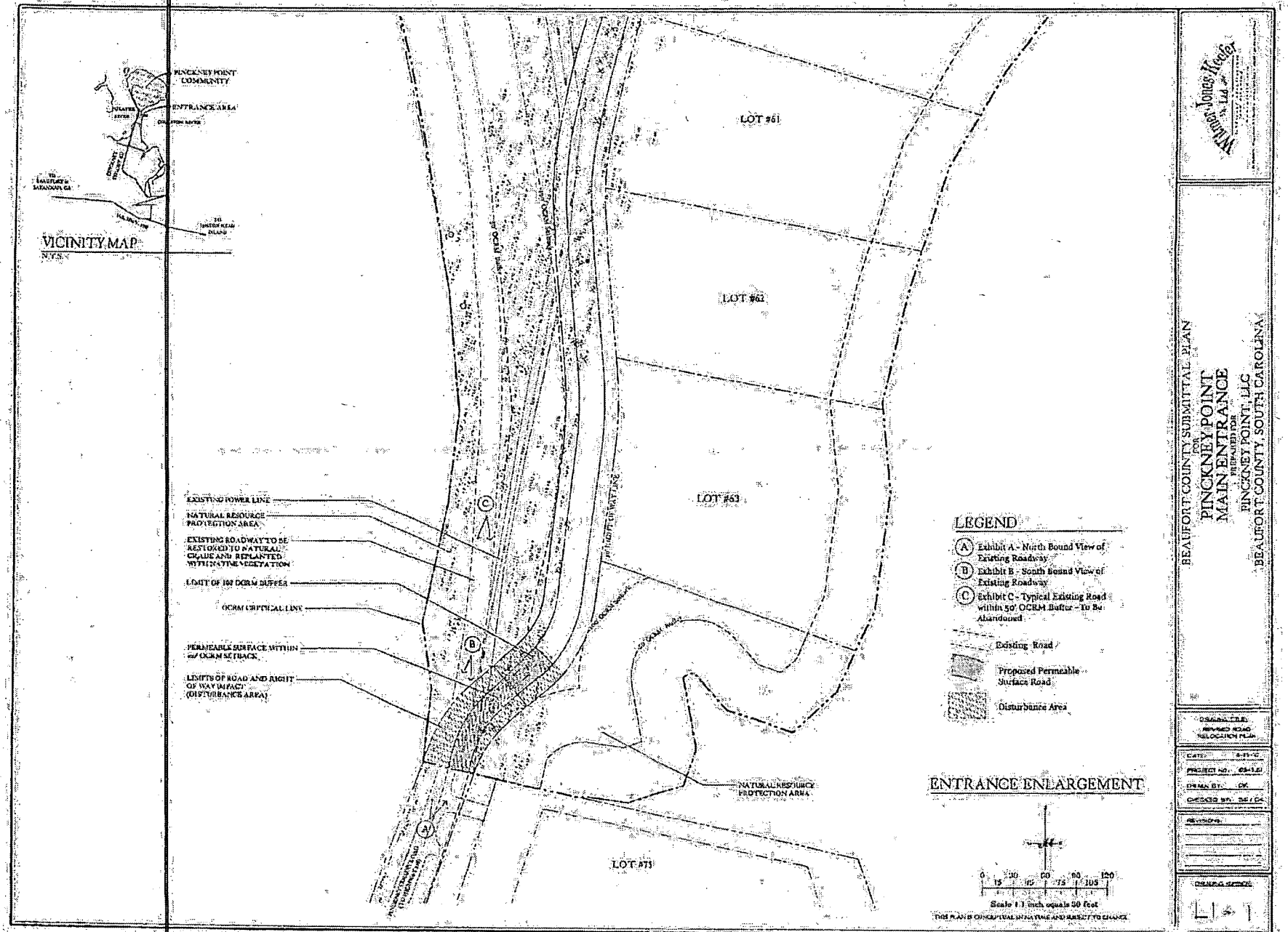
5. All utility lines and utility infrastructure shall be underground.

SCHEDULE A

to Exhibit "B"

Road Relocation Plan

Prepared by Witmer-Jones-Keefer, LTD
Dated August 25, 2010


VICINITY MAP
N.T.S.
PINCKNEY POINT COMMUNITY
ENTRANCE AREA
LOT #61
LOT #62
LOT #63
LOT #73
EXISTING POWER LINE
NATURAL RESOURCE PROTECTION AREA
EXISTING ROADWAY TO BE RESTORED TO NATURAL GRADE AND REPLANTED WITH NATIVE VEGETATION
LIMIT OF 100' OCRM BUFFER
OCRM CRITICAL LINE
PERMEABLE SURFACE WITHIN 100' OCRM SETBACK
LIMITS OF ROAD AND RIGHT OF WAY IMPACT (DISTURBANCE AREA)
NATURAL RESOURCE PROTECTION AREA
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' OCRM Buffer - To Be Abandoned
Existing Road
Proposed Permeable Surface Road
Disturbance Area
ENTRANCE ENLARGEMENT
0 15 30 60 75 90 105 120
Scale 1 1 inch equals 30 feet
THIS PLAN IS CONCEPTUAL IN NATURE AND SUBJECT TO CHANGE
Wilbur Smith Associates
BEAUFORT COUNTY SUBMITTAL PLAN
FOR
PINCKNEY POINT
MAIN ENTRANCE
PREPARED FOR
PINCKNEY POINT, LLC
BEAUFORT COUNTY, SOUTH CAROLINA
L1 of 1

0071

Exhibit "B-1"

Entrance Area Drawings

Prepared by Witmer-Jones-Keefer, LTD
Dated August 24, 2009, Last Revised March 22, 2010

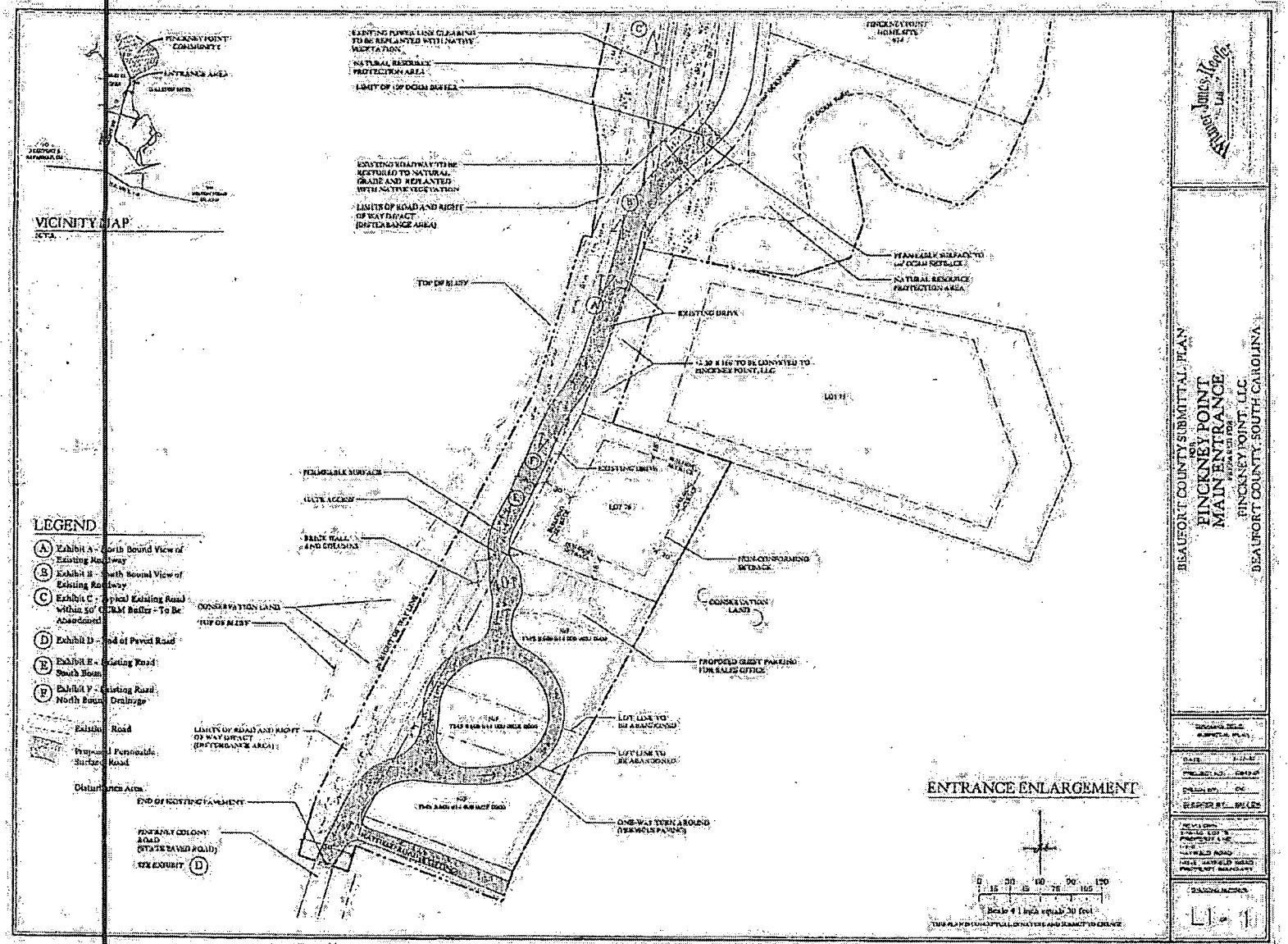

VICINITY MAP
LEGEND
ENTRANCE ENLARGEMENT
PINCKNEY POINT
MAIN ENTRANCE
BEAUFORT COUNTY SUBMITTAL PLAN
PINCKNEY POINT, LLC
BEAUFORT COUNTY, SOUTH CAROLINA
Scale: 1 inch equals 30 feet
L1 - 1

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 61/100th 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 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)
) **LIMITED WARRANTY DEED**
COUNTY OF BEAUFORT)

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:

(1)
By _____
Agnes F. Pinckney, as Guardian and Conservator for John David Pinckney

(2) _____
Signature of 1st Witness

(3) _____
Signature of 2nd Witness/Notary Public

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.

HILTONHEAD 733153

Use for paying transfer fees

STATE OF SOUTH CAROLINA)

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

COUNTY OF BEAUFORT)

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

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

2. The property being transferred is located on plat entitled "Lot 302 Berkeley Hall S/D Phase II, Bluffton, South Carolina, bearing A PORTION OF County Tax Map Number **R600-014-000-0002-0000**, was transferred by **AGNES F. PINCKNEY, as Guardian and Conservator for John David Pinckney on January 14, 2011.**

3. Check one of the following: The deed is

(a) ___X___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) _____ exempt from the deed recording fee because (See Information section of affidavit): _____

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?
Check Yes ____ or No ____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

(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:

(a) Place the amount listed in item 4 above here: **$1,300,000.00**
(b) Place the amount listed in item 5 above here: **$0.00**
(If no amount is listed, place zero here.)
(c) Subtract Line 6(b) from Line 6(a) and place result here: **$1,300,000.00**

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 734773 v1

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	)	GRANT OF RIGHT OF WAY
	)	AND
COUNTY OF BEAUFORT	)	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 61/100th 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 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

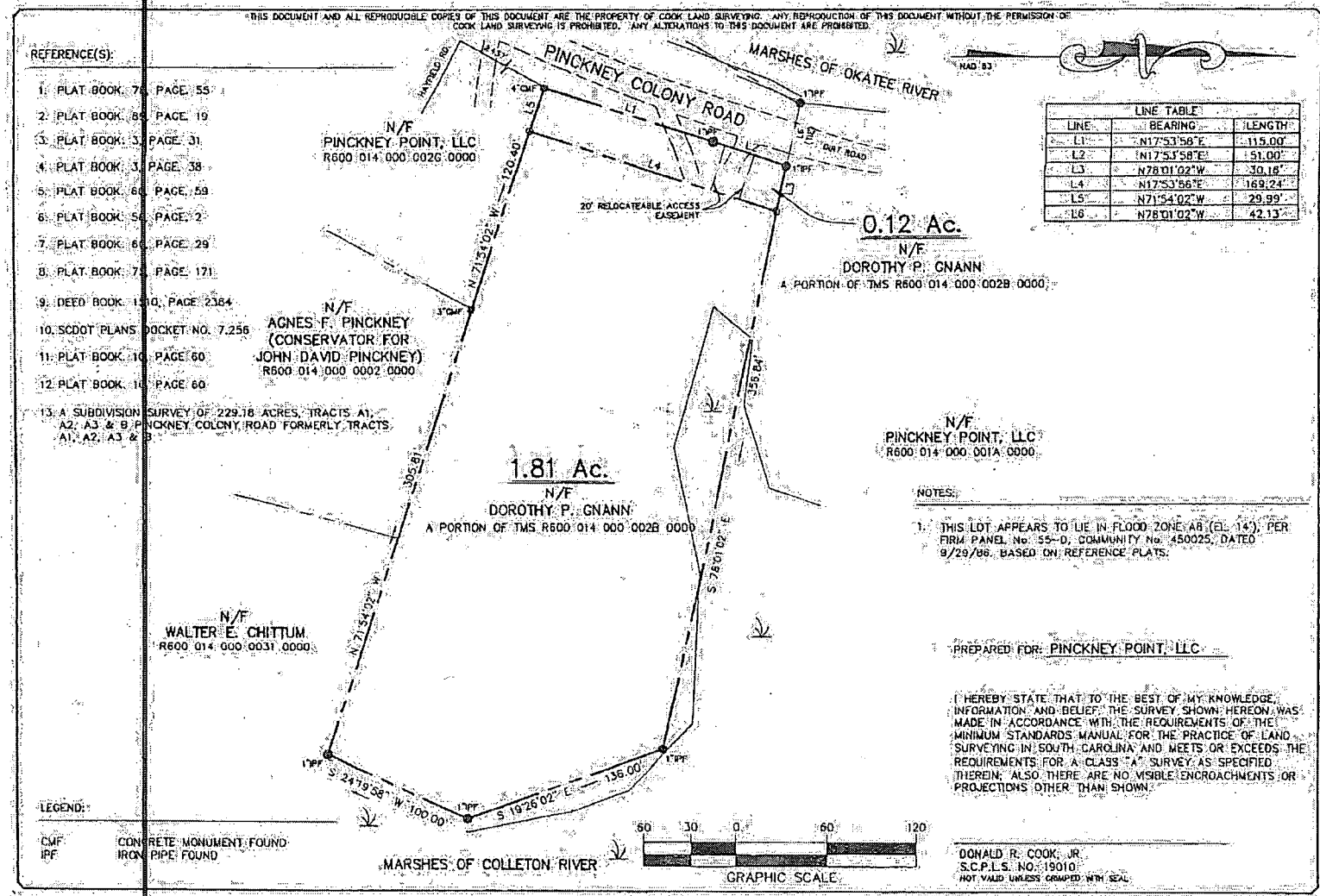
Exhibit G
Gnann Lot Diagram

Plat entitled "A Subdivision Survey of 1.93 Ac. Pinckney Colony Road" prepared by Cook Lands Surveying dated August 6th, 2010

THIS DOCUMENT AND ALL REPRODUCIBLE COPIES OF THIS DOCUMENT ARE THE PROPERTY OF COOK LAND SURVEYING. ANY REPRODUCTION OF THIS DOCUMENT WITHOUT THE PERMISSION OF COOK LAND SURVEYING IS PROHIBITED. ANY ALTERATIONS TO THIS DOCUMENT ARE PROHIBITED.

REFERENCE(S):

1. PLAT BOOK 76, PAGE 55
2. PLAT BOOK 85, PAGE 19
3. PLAT BOOK 3, PAGE 31
4. PLAT BOOK 3, PAGE 38
5. PLAT BOOK 60, PAGE 59
6. PLAT BOOK 56, PAGE 2
7. PLAT BOOK 60, PAGE 29
8. PLAT BOOK 73, PAGE 171
9. DEED BOOK 1310, PAGE 2364
10. SCDOT PLANS DOCKET NO. 7.256
11. PLAT BOOK 10, PAGE 60
12. PLAT BOOK 10, PAGE 60
13. A SUBDIVISION SURVEY OF 229.18 ACRES, TRACTS A1, A2, A3 & B PINCKNEY COLONY ROAD FORMERLY TRACTS A1, A2, A3 & B



LINE TABLE		
LINE	BEARING	LENGTH
L1	N17°53'58"E	115.00'
L2	N17°53'58"E	51.00'
L3	N78°01'02"W	30.16'
L4	N17°53'58"E	169.24'
L5	N71°54'02"W	29.99'
L6	N78°01'02"W	42.13'

LEGEND:

CMF CONCRETE MONUMENT FOUND
IPF IRON PIPE FOUND

NOTES:

1. THIS LOT APPEARS TO LIE IN FLOOD ZONE AR (EL 14'), PER FIRM PANEL No. 55--D, COMMUNITY No. 450025, DATED 9/29/86, BASED ON REFERENCE PLATS.

PREPARED FOR: PINCKNEY POINT, LLC

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

DONALD R. COOK, JR.
S.C.P.L.S. NO. 19010
NOT VALID UNLESS EMBOSSED WITH SEAL

COOK
Land Surveying
23 Trotting Hill Lane, Bluffton, SC 29910
phone: 843.815.LAND(5263)
facsimile: 843.815.5264
email: cooklandsurvey@hargray.com

DRC
DRAWN BY:
DATE: 05.05.10
SCALE: 1"=60'
PROJECT NO. 09010001
PROJECT NAME: 09010001
FILE: 09010001 05310.dwg

A PLAT OF
1.93 Ac.
PINCKNEY COLONY ROAD
TMS R600 014 000 002B 0000
BLUFFTON TOWNSHIP
BEAUFORT COUNTY, SOUTH CAROLINA

VICINITY MAP - N.T.S.

0091

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:

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

I 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

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

I 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 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), SCRCP; 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:

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:

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:

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 FOR DISMISSAL
BEAUFORT COUNTY AND ZONING 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, SCRCP.

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
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

RECORDED
2011 Feb -23 04:30 PM
Sharon G Burns
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 03028 PGS 0993-0998
FILE NUM 2011002258
01/14/2011 04:47:17 PM
REC'D BY P BAXLEY RCPT# 638433
RECORDING FEES 12.00
County Tax 1,430.00
State Tax 3,380.00

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 good and valuable 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 131 at Page 195.

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.

ADD DMP Record 2/21/2011 12:44:08 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R600	014	000	0049	0000	00

A PORTION OF TMS R600 014 000 0002 0000

EXHIBIT
B

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 extending to the north of Pinckney Colony Road, as depicted in the plat referenced above ("Pinckney Colony Road").

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.

AND ALSO FURTHER SUBJECT TO the restriction that the portion of the property conveyed herein that is known and described as the private Hayfield Road ("Hayfield Road Portion"), as depicted in the plat, be subject to the following:

1) Any improved road surfaces constructed thereon shall be no greater than fifteen feet (15') in width; and

2) No utilities may be installed therein without the prior written approval of the Grantor or her successors, heirs and assigns; and

3) No curb cuts to any adjacent property shall be constructed; and

4) Grantor, her heirs, successors and assigns shall retain the absolute right and easement for access, ingress and egress across the Hayfield Road Portion for any purpose, including farm machinery and other motor vehicles, farm and recreational traffic, including marathons and other foot traffic; and

5) No landscaping shall be constructed or installed nor trees removed without prior approval of Grantor, her heirs, successors and assigns, which approval shall not unreasonably be withheld or delayed; and

6) Except for any signage required by any governmental authority, no signs or signage shall be erected thereon without prior approval of Grantor, her heirs, successors and assigns, which approval shall not unreasonably be withheld or delayed; and

7) Except for stormwater drainage systems directing stormwater onto property owned by the Grantee or its successors and assigns, no stormwater infrastructure shall be constructed without prior written approval of Grantor, her heirs, successors and assigns.

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 14 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 14 day of January, 2011.

(4) _____
Notary Public for South Carolina
My Commission Expires: 8/27/2012

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.

HILTONHEAD 733153

Use for paying transfer fees

STATE OF SOUTH CAROLINA)

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

COUNTY OF BEAUFORT)

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

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

2. The property being transferred is located on plat entitled "Lot 302 Berkeley Hall S/D Phase II, Bluffton, South Carolina, bearing A PORTION OF County Tax Map Number **R600-014-000-0002-0000**, was transferred by **AGNES F. PINCKNEY, as Guardian and Conservator for John David Pinckney** on **January 14, 2011**.

3. Check one of the following: The deed is

(a) ___X___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b)_____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) _____ exempt from the deed recording fee because (See Information section of affidavit): _____

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?
Check Yes ___ or No ___

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

(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:

(a) Place the amount listed in item 4 above here: **$1,300,000.00**
(b) Place the amount listed in item 5 above here: **$0.00**
(If no amount is listed, place zero here.)
(c) Subtract Line 6(b) from Line 6(a) and place result here: **$1,300,000.00**

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, III
Print or Type Name Here

SWORN to before me this 14th day of January, 2011.

Notary Public for South Carolina
My Commission Expires: 8/22/2017

HILTONHEAD 734773v1

4/10 PB. McNair

RECORDED
2011 Feb -23 04:30 PM
Thora Q. Burnie
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 03028 PGS 0999-1002
FILE NUM 2011002259
01/14/2011 04:47:17 PM
REC'D BY P BAXLEY RCPT# 638433
RECORDING FEES 10.00

This deed was prepared in the law offices of
MCNAIR LAW FIRM, P.A.
23-B Shelter Cove Ln # 400, Post Office Drawer 3
Hilton Head Island, SC 29928
(843) 785-2171

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

TITLE TO REAL ESTATE
(Quit Claim)

TO ALL WHOM THESE PRESENTS MAY COME:

KNOW ALL MEN BY THESE PRESENTS, that **Agnes F. Pinckney**, hereinafter referred to as "Grantor," in the State aforesaid, in consideration of the premises and also in consideration of the sum of Ten Dollars ($10.00) and no other consideration to it in hand paid at and before the receiving of these presents by

Road, LLC
40 West 57th Street,
20th Floor
New York, NY 10019

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, subject to the easements, restrictions, reservations and conditions set forth in the legal description below, 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 131 at Page 193.

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.

ADD DMP Record 2/21/2011 03:54:09 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R600	014	000	0049	0000	00

PIN #A PORTION OF TMS R600 014 000 0002 0000

HILTON HEAD 7348 10 v1

EXHIBIT
C

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 other 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 extending to the north of Pinckney Colony Road, as depicted in the plat referenced above ("Pinckney Colony Road").

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.

AND ALSO FURTHER SUBJECT TO the restriction that the portion of the property conveyed herein that is known and described as the private Hayfield Road ("Hayfield Road Portion"), as depicted in the plat, be subject to the following:

1) Any improved road surfaces constructed thereon shall be no greater than fifteen feet (15') in width; and

2) No utilities may be installed therein without the prior written approval of the Grantor or her successors, heirs or assigns; and

3) No curb cuts to any adjacent property shall be constructed; and

4) Grantor, her heirs, successors and assigns shall retain the absolute right and easement for access, ingress and egress across the Hayfield Road Portion for any purpose, including farm machinery and other motor vehicles, farm and recreational traffic, including marathons and other foot traffic; and

5) No landscaping shall be constructed or installed nor trees removed without prior approval of Grantor, her heirs, successors and assigns, which approval shall not unreasonably be withheld or delayed; and

6) Except for any signage required by any governmental authority, no signs or signage shall be erected thereon without prior approval of Grantor, her heirs, successors and assigns, which approval shall not unreasonably be withheld or delayed; and

7) Except for stormwater drainage systems directing stormwater onto property owned by the Grantee or its successors and assigns, no stormwater infrastructure shall be constructed without prior written approval of Grantor, her heirs, successors and assigns.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the Grantee, its successors and assigns, forever - so that neither the said Grantor, nor its successors, nor any other person or persons, claiming under its, shall at any time hereafter, by any ways or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part of parcel thereof, forever.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name by its duly authorized officer and its seal to be hereto affixed, this 14 day of January, 2011.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

(2) _____
Signature of 1st Witness

AGNES F. PINCKNEY

(3) _____
Signature of 2nd Witness/Notary Public

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify AGNES F. PINCKNEY personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 14 day of January, 2011.

(4) _____
Notary Public for South Carolina
My Commission Expires: 8/22/2012

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 Witnesses sign on lines numbered (2) and (3). Notary may be one of the witnesses.

C. Notary Public signs on line numbered (4) and affixes seal and expiration date.

HILTONHEAD 754810v1

BEAUFORT COUNTY SC- ROD
BK 03110 PGS 1662-1679
DATE: 01/06/2012 01:15:17 PM
INST # 2012000725 RCPT# 665159

This instrument should be returned to:

Melissa S. Turra, Esq.
HOLLAND & KNIGHT LLP
50 N. Laura Street, Suite 3900
Jacksonville, Florida 32202

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT ("Agreement") is hereby made and executed this 29 day of December, 2011, by and between **ROAD, LLC**, a South Carolina limited liability company, whose address is 40 West 57th Street, 20th Floor, New York, New York 10019 ("Grantor"), and **PINCKNEY POINT, LLC**, a South Carolina limited liability company, whose address is 4315 Pablo Oaks Court, Suite 1, Jacksonville, Florida 32224 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the record owner of fee simple title to that certain parcel of real property located in Beaufort County, South Carolina as more particularly described on Exhibit "A" attached hereto (the "Grantor's Property"); and

WHEREAS, Grantee owns that certain parcel of real property located in Beaufort County, South Carolina as more particularly described on Exhibit "B" attached hereto (the "Grantee's Property"); and

WHEREAS, Grantee desires to have easement rights over certain portions of Grantor's Property as set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant, stipulate and agree as follows:

1. Recitals. The recitals set forth above are true and correct, and are incorporated herein by reference.

2. Grant of Easement. Grantor has granted, bargained, sold and released and by these presents does hereby grant, bargain, sell and release unto to Grantee, its successors and assigns, for the benefit of Grantee's Property, a non-exclusive perpetual easement (a) over, upon and across a portion of the Grantor's Property constituting a 20' wide easement in the area depicted as the Private Dirt Road (excluding Hayfield Road) on Exhibit "C", extending to the north of Pinckney Colony Road, which area is hereafter referred to as the "Easement Area" for purposes of vehicular and pedestrian ingress and egress to and from Grantee's Property over Easement Area; and (b) over, upon and across the Grantor's Property for the purposes of maintenance and use (but not expansion) of currently existing utilities, if any, within the Grantor's Property which shall run with the land and bind the interest of the Grantor, its successors and assigns. The rights granted herein shall be for the benefit of Grantee and for the benefit of any and all other occupants of Grantee's Property, and for its respective subtenants, licensees, customers, agents, employees, invitees, mortgagees, successors and assigns.

EXHIBIT
tabbies
D

3. Limitations on Easement. This easement is limited to access only. Neither party shall install a fence or other barrier which could prevent or obstruct the passage of pedestrian or vehicular travel for the purposes herein. Grantee is not permitted to make any improvements or perform any work on and to the Easement Area without prior approval from Grantor.

4. No Dedication. This Agreement is not intended to, and should not be construed to, dedicate the Easement Area to the general public.

5. Indemnity. Each party (the "Indemnifying Party") agrees to defend, indemnify and hold harmless the other party, together with its agents, representatives and employees (the "Indemnified Parties"), from and against any and all claims, losses, costs, expenses, damages, and liabilities, including reasonable attorneys', paralegals' and consultants' fees and costs before trial and at all trial and appellate levels, that the Indemnified Parties may suffer or incur as a result of the acts or omissions of the Indemnifying Party or its contractors, sub-contractors, agents, representatives, employees, licensees or invitees on or about the Easement Area, or the exercise by the Indemnifying Party or its contractors, sub-contractors, agents, representatives, employees, licensees or invitees of any of the rights and privileges granted or reserved by this Agreement.

6. Reservation of Grantor's Rights. Grantor hereby reserves the right to utilize the Easement Area for any and all purposes that are not inconsistent with and do not interfere with the Grantee's use of the Easement Area.

7. No Obligation to Pay Rent, Occupancy Charges or Taxes. Grantee shall not be obligated to pay any rent, taxes, operating expenses or other occupancy or use charge for the rights created by this Agreement.

8. Successors and Assigns. This Agreement and the rights granted herein shall run with the title and be appurtenant to Grantee's Property, shall run with the title to and burden the Easement Area and Grantor's Property forever, and shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their successors, successors-in-title and assigns.

9. Remedies. In the event either party fails to perform any of the covenants and agreements set forth in this Agreement on its part to be performed within the time or times specified herein, the offended party shall be entitled to enforce its rights hereunder by any remedy available at law or in equity (including, without limitation, specific performance and injunctive relief). In the event either party to this Agreement brings an action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all costs and reasonable attorneys', paralegals' and consultants' fees and costs incurred at all pre-trial, trial and appellate levels and at any administrative or bankruptcy proceedings.

10. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina without regard to principles of conflicts of laws. Venue for any action under this Agreement shall be in Beaufort County, South Carolina.

11. Counterparts. This Agreement may be executed in multiple counterparts that, when taken together, shall be regarded as one complete document.

12. Severability. If any individual term or provision of this Agreement is contrary to or in conflict with any requirement of applicable statutory or common law, then that term or provision shall be given its nearest legal meaning, and the remainder of this Agreement, or the application of such term or

provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

13. Entire Agreement. This Agreement constitutes the entire agreement between Grantor and Grantee with respect to the subject matter hereof, and this Agreement may not be amended, modified, altered or terminated except by written agreement signed by Grantor and Grantee.

14. Compliance with Law. Each party exercising any rights hereunder shall comply with all applicable laws and regulations.

15. Modifications. This Agreement may not be modified without the written consent of both Grantor and Grantee.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Access Easement Agreement to be executed in the manner and form sufficient to bind them as of the date and year first above written.

Signed, sealed and delivered in the Presence of the following witnesses:

"GRANTOR"

ROAD, LLC, a
South Carolina limited liability company

Print Name: Keerat Kaur

By: Bruce Bunner
Name: Bruce Bunner
Title: President

Print Name: Barbara Nicholas

STATE OF New York
COUNTY OF New York

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 29th day of December, 2011, by Bruce Bunner, as President of ROAD, LLC, a South Carolina limited liability company, on behalf of the limited liability company. He/~~she~~ is personally known to me or has produced _____ as identification.

Notary Public: Violeta Figueroa
Print Name: Violeta Figueroa
My Commission Expires: April 30, 2015

VIOLETA FIGUEROA
Notary Public, State of New York
No. 01FI6057972
Qualified in Bronx County
Commission Expires April 30, 2015

#10778980_v4

"GRANTEE"

PINCKNEY POINT, LLC,
a South Carolina limited liability company

By: _____
Name: JOHN C. KUNKEL
Title: VICE PRESIDENT

K Lewis
Print Name: K Lewis

Sally L Hall
Print Name: SALLY L. HALL

STATE OF Florida
COUNTY OF Duval

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 29th day of December, 2011, by John C. Kunkel, as Vice President of PINCKNEY POINT, LLC, a South Carolina limited liability company, on behalf of the limited liability company. He/she is personally known to me or has produced _____ as identification.

Notary Public: K Lewis
Print Name: _____
My Commission Expires: _____

K. LEWIS
MY COMMISSION # DD903885
EXPIRES: July 14, 2013
FL Notary Discount Assoc. Co.

#10778980_v4

EXHIBIT A

Grantor's 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 131 at Page 193.

EXHIBIT B

Grantee's Property

(see attached)

EXHIBIT "B"

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 as follows:

Parcel A1

Starting at the Northeastern intersection of the right of way of Hayfield Road and Pinckney Colony road thence traveling along the right of way approximately 605' northward to a point being the POINT OF BEGINNING of tract A1; thence
N77°56'40"W, a distance of 42.20 feet; thence N05°39'10"E, a distance of 68.86 feet; thence N08°09'53"W, a distance of 63.75 feet; thence N12°20'12"E, a distance of 117.75 feet; thence N07°30'34"E, a distance of 88.34 feet; thence N01°41'10"W, a distance of 115.39 feet; thence N10°17'18"W, a distance of 121.30 feet; thence N15°43'33"W, a distance of 97.84 feet; thence N13°16'23"W, a distance of 85.18 feet; thence N23°11'08"W, a distance of 105.28 feet; thence N17°51'58"W, a distance of 77.72 feet; thence N20°12'25"W, a distance of 108.44 feet; thence N22°52'40"W, a distance of 95.07 feet; thence N22°10'51"W, a distance of 77.43 feet; thence N19°22'21"W, a distance of 59.66 feet; thence N25°40'30"W, a distance of 59.80 feet; thence N28°03'20"W, a distance of 68.51 feet; thence N19°04'40"W, a distance of 78.61 feet; thence N25°49'18"W, a distance of 76.48 feet; thence N26°10'07"W, a distance of 69.02 feet; thence N34°39'45"W, a distance of 76.23 feet; thence N38°01'45"W, a distance of 87.13 feet; thence N26°09'30"W, a distance of 83.43 feet; thence N05°40'19"W, a distance of 67.25 feet; thence N27°07'24"W, a distance of 54.99 feet; thence N18°28'59"W, a distance of 95.05 feet; thence N24°59'45"W, a distance of 69.04 feet; thence N39°39'25"W, a distance of 26.64 feet; thence N19°14'19"W, a distance of 92.22 feet; thence N00°04'02"W, a distance of 72.98 feet; thence N84°56'13"E, a distance of 75.75 feet; thence N27°38'27"E, a distance of 96.89 feet; thence N05°32'27"E, a distance of 81.11 feet; thence N16°08'05"E, a distance of 21.55 feet; thence N30°42'34"E, a distance of 66.55 feet; thence N18°05'47"E, a distance of 55.19 feet; thence N39°51'13"E, a distance of 52.10 feet; thence N39°49'05"W, a distance of 45.04 feet; thence N06°10'44"W, a distance of 29.06 feet; thence N05°11'36"E, a distance of 50.10 feet; thence N16°01'42"W, a distance of 38.52 feet; thence N57°46'33"W, a distance of 48.61 feet; thence N07°19'18"W, a distance of 704.48 feet; thence N05°50'42"W, a distance of 333.59 feet; thence N19°38'12"E, a distance of 53.28 feet; thence N23°34'51"E, a distance of 64.08 feet; thence N30°30'51"E, a distance of 107.70 feet; thence N47°12'30"E, a distance of 84.09 feet; thence N35°52'14"E, a distance of 94.12 feet; thence N47°49'19"E, a distance of 74.43 feet; thence N17°29'52"E, a distance of 90.13 feet; thence N30°10'31"E, a distance of 61.46 feet; thence N85°07'13"E, a distance of 55.93 feet; thence S52°04'47"W, a distance of 32.70 feet; thence S59°40'16"E, a distance of 93.20 feet; thence S87°54'20"E, a distance of 85.92 feet; thence S26°43'42"E, a distance of 75.86 feet; thence S61°47'35"E, a distance of 114.26 feet; thence S29°19'02"E, a distance of 79.05 feet; thence S12°02'40"E, a distance of 54.06 feet; thence

EXHIBIT "B"

Legal Description (CONTINUED)

N53°34'55"E, a distance of 12.48 feet; thence N10°46'02"W, a distance of 49.83 feet; thence N19°27'16"W, a distance of 111.16 feet; thence N27°12'06"W, a distance of 122.12 feet; thence N12°27'00"W, a distance of 83.77 feet; thence N30°03'34"E, a distance of 82.12 feet; thence N33°06'52"E, a distance of 121.69 feet; thence N36°55'40"E, a distance of 108.56 feet; thence N60°35'28"E, a distance of 168.61 feet; thence N70°05'45"E, a distance of 129.96 feet; thence N74°31'28"E, a distance of 159.97 feet; thence S60°12'02"E, a distance of 61.53 feet; thence S56°14'50"E, a distance of 116.40 feet; thence S77°55'04"E, a distance of 78.41 feet; thence N80°48'14"E, a distance of 86.83 feet; thence S62°18'58"E, a distance of 124.83 feet; thence S86°22'54"E, a distance of 176.72 feet; thence S71°57'17"E, a distance of 54.86 feet; thence S33°51'02"E, a distance of 197.46 feet; thence S51°01'01"E, a distance of 152.73 feet; thence S74°56'21"E, a distance of 89.75 feet; thence S69°24'07"E, a distance of 156.45 feet; thence N85°27'05"E, a distance of 107.10 feet; thence S72°14'31"E, a distance of 118.29 feet; thence S79°03'58"E, a distance of 114.59 feet; thence S51°35'10"E, a distance of 113.19 feet; thence S36°39'50"E, a distance of 133.64 feet; thence S75°30'[illegible]E, a distance of 253.42 feet; thence S05°22'00"E, a distance of 180.88 feet; thence S31°[illegible]E, a distance of 110.88 feet; thence S55°18'15"E, a distance of 108.18 feet; thence S53°27'07"E, a distance of 131.24 feet; thence S57°53'22"E, a distance of 121.25 feet; thence S24°38'59"E, a distance of 76.84 feet; thence S33°00'08"E, a distance of 78.70 feet; thence S28°05'29"E, a distance of 107.99 feet; thence S17°21'42"E, a distance of 84.68 feet; thence S35°52'03"E, a distance of 113.78 feet; thence S21°43'16"E, a distance of 129.76 feet; thence S11°28'01"E, a distance of 111.48 feet; thence S04°01'19"W, a distance of 100.77 feet; thence S04°51'47"W, a distance of 124.65 feet; thence S05°40'24"W, a distance of 109.74 feet; thence S09°48'59"W, a distance of 98.84 feet; thence S22°04'49"W, a distance of 98.80 feet; thence S17°37'06"W, a distance of 172.68 feet; thence S22°40'50"W, a distance of 126.75 feet; thence S13°23'05"W, a distance of 135.05 feet; thence S14°26'30"W, a distance of 70.83 feet; thence S40°44'16"W, a distance of 88.20 feet; thence S75°35'20"W, a distance of 93.00 feet; thence N51°00'55"W, a distance of 51.27 feet; thence N16°27'51"W, a distance of 91.07 feet; thence N04°28'44"E, a distance of 112.31 feet; thence N30°22'46"W, a distance of 41.30 feet; thence S42°47'48"W, a distance of 14.39 feet; thence S15°53'24"E, a distance of 39.92 feet; thence S34°10'42"W, a distance of 52.71 feet; thence S21°41'05"W, a distance of 112.99 feet; thence S36°29'[illegible]W, a distance of 69.72 feet; thence S86°47'37"W, a distance of 104.17 feet; thence S67°25'[illegible]W, a distance of 92.72 feet; thence S60°59'29"W, a distance of 91.53 feet; thence S53°09'25"W, a distance of 136.13 feet; thence S59°21'27"W, a distance of 111.21 feet; thence S70°[illegible]W, a distance of 119.32 feet; thence S66°54'08"W, a distance of 147.76 feet; thence S67°[illegible]W, a distance of 118.60 feet; thence S79°14'03"W, a distance of 78.26 feet; thence S35°40'30"W, a distance of 31.85 feet; thence S66°37'23"W, a distance of 72.04 feet; thence S59°57'08"W, a distance of 126.39 feet; thence S76°29'14"W, a distance of 137.51 feet; thence S65°13'41"W, a distance of 151.12 feet; thence N12°02'32"W, a distance of 32.50 feet; thence N00°17'09"E, a distance of 41.33 feet; thence S69°25'33"W, a distance of 16.39 feet; thence S31°52'14"W, a distance of 48.98 feet; thence S34°12'01"W, a distance of 89.46 feet; thence S60°24'11"W, a distance of 98.30 feet; thence S74°57'02"W, a distance of 50.99 feet; thence N70°54'58"W, a distance of 35.01 feet; thence N45°05'07"W, a distance of 40.27 feet; thence S15°54'55"E, a distance of 55.09 feet; thence S40°36'32"W, a distance of 114.79 feet; thence S47°11'18"W, a distance of 104.31 feet; thence S37°09'51"W, a distance of 110.11 feet; thence S30°37'25"W, a distance of 105.28 feet; thence

EXHIBIT "B"

Legal Description (CONTINUED)

S17°44'38"W, a distance of 130.52 feet; thence S13°59'51"W, a distance of 102.57 feet; thence S05°16'28"E, a distance of 84.44 feet; thence S07°32'28"W, a distance of 114.66 feet; thence S26°05'02"W, a distance of 86.88 feet; thence S46°37'53"W, a distance of 57.56 feet; thence N72°26'33"W, a distance of 86.04 feet; thence N48°09'27"W, a distance of 48.30 feet; thence S89°33'36"W, a distance of 11.04 feet; thence S10°55'42"E, a distance of 68.07 feet; thence S19°47'52"W, a distance of 35.69 feet; thence S72°55'02"W, a distance of 56.20 feet; thence N62°20'46"W, a distance of 43.35 feet; thence S47°24'01"W, a distance of 2.14 feet; thence N77°56'40"W, a distance of 113.08 feet to the POINT OF BEGINNING.

Containing 9,607,476 square feet or 220.56 acres, more or less.

Parcel A2

Commencing at the Northeastern intersection of the right of way of Hayfield Road and Pinckney Colony road thence traveling along the right of way approximately 605' northward to a point thence N77°56'40"W, a distance of 42.20 feet; thence N06°39'10"E, a distance of 68.86 feet; thence N08°09'53"W, a distance of 83.75 feet; thence N12°28'12"E, a distance of 117.75 feet; thence N67°00'34"E, a distance of 86.24 feet; thence N04°41'16"W, a distance of 115.39 feet; thence N10°17'18"W, a distance of 121.30 feet; thence N10°19'37"W, a distance of 97.84 feet; thence N13°16'27"W, a distance of 85.38 feet; thence N11°45'28"W, a distance of 105.28 feet; thence N17°51'58"W, a distance of 97.72 feet; thence N80°12'05"W, a distance of 108.44 feet; thence N28°32'40"W, a distance of 90.67 feet; thence N22°10'51"W, a distance of 77.43 feet; thence N19°28'21"W, a distance of 59.59 feet; thence N36°56'03"W, a distance of 59.20 feet; thence N20°09'20"W, a distance of 68.51 feet; thence N19°04'16"W, a distance of 78.61 feet; thence N25°49'18"W, a distance of 76.49 feet; thence N26°50'07"W, a distance of 69.02 feet; thence N34°39'49"W, a distance of 76.23 feet; thence N36°01'45"W, a distance of 87.13 feet; thence N26°00'56"W, a distance of 83.49 feet; thence N08°08'10"W, a distance of 67.25 feet; thence N21°07'26"W, a distance of 54.09 feet; thence N14°28'59"W, a distance of 95.05 feet; thence N24°59'45"W, a distance of 69.04 feet; thence N35°55'25"W, a distance of 26.64 feet; thence N19°14'19"W, a distance of 93.22 feet; thence N00°04'02"W, a distance of 72.98 feet; thence N84°56'13"E, a distance of 75.75 feet; thence N27°36'27"E, a distance of 96.89 feet; thence N05°32'27"E, a distance of 81.11 feet; thence N16°03'08"E, a distance of 21.55 feet; thence N20°42'34"E, a distance of 66.55 feet; thence N18°05'47"E, a distance of 55.19 feet; thence N59°51'13"E, a distance of 52.10 feet; thence N36°49'05"W, a distance of 45.04 feet; thence N06°10'44"W, a distance of 29.06 feet; thence N45°11'36"E, a distance of 50.10 feet; thence N16°01'42"W, a distance of 38.32 feet; thence S67°46'35"W, a distance of 48.61 feet; being the POINT OF BEGINNING of tract A2; thence S33°06'51"W, a distance of 49.35 feet; thence S74°08'22"W, a distance of 30.80 feet; thence S34°32'48"W, a distance of 38.93 feet; thence N79°01'31"W, a distance of 73.45 feet; thence S63°27'37"W, a distance of 18.63 feet; thence N64°33'02"W, a distance of 39.19 feet; thence N30°54'59"W, a distance of 72.79 feet; thence

EXHIBIT "B"

Legal Description (CONTINUED)

N21°38'08"W, a distance of 64.92 feet; thence
N14°48'29"W, a distance of 95.28 feet; thence
N11°51'43"W, a distance of 92.49 feet; thence
N18°04'29"W, a distance of 227.02 feet; thence
N82°40'42"E, a distance of 316.00 feet; thence
S07°19'18"E, a distance of 506.32 feet to the POINT OF BEGINNING.

Containing 148,475 square feet or 3.41 acres, more or less.

Parcel A3

Commencing at the Northeastern intersection of the right of way of Hayfield Road and Pinckney Colony road thence travelling along the right of way approximately 600' northward to a point thence N78°50'40"W, a distance of 42.20 feet; thence [illegible]°35'10"E, a distance of 66.86 feet; thence N05°03'53"W, a distance of 62.75 feet; thence N72°20'12"E, a distance of 117.75 feet; thence N87°09'34"E, a distance of 68.34 feet; thence N09°01'16"W, a distance of 115.39 feet; thence N10°17'21"W, a distance of 121.30 feet; thence N19°07'01"W, a distance of 97.84 feet; thence N49°16'27"W, a distance of 65.08 feet; thence N11°40'35"W, a distance of 198.28 feet; thence N17°54'53"W, a distance of 77.72 feet; thence N[illegible]°32'29"W, a distance of 163.44 feet; thence N22°32'40"W, a distance of 93.07 feet; thence N09°10'51"W, a distance of 77.43 feet; thence N19°22'21"W, a distance of 50.66 feet; thence N56°25'30"W, a distance of 59.20 feet; thence N20°03'29"W, a distance of 68.51 feet; thence N19°04'16"W, a distance of 78.61 feet; thence N25°49'18"W, a distance of 76.48 feet; thence N26°56'07"W, a distance of 69.02 feet; thence N34°39'45"W, a distance of 76.23 feet; thence N36°01'45"W, a distance of 87.13 feet; thence N26°00'30"W, a distance of 83.43 feet; thence N08°48'10"W, a distance of 67.25 feet; thence N27°07'24"W, a distance of 54.99 feet; thence N14°28'59"W, a distance of 95.05 feet; thence N24°59'45"W, a distance of 69.04 feet; thence N39°59'25"W, a distance of 26.64 feet; thence N19°16'19"W, a distance of 92.22 feet; thence N08°[illegible]'02"W, a distance of 72.98 feet; thence N04°56'13"E, a distance of 75.75 feet; thence N27°36'27"E, a distance of 96.89 feet; thence N05°32'27"E, a distance of 81.11 feet; thence N16°03'08"E, a distance of 21.55 feet; thence N20°42'34"E, a distance of 66.55 feet; thence N18°05'47"E, a distance of 55.19 feet; thence N39°51'13"E, a distance of 52.10 feet; thence N36°49'09"W, a distance of 45.04 feet; thence N05°18'44"W, a distance of 29.95 feet; thence N45°11'38"E, a distance of 50.10 feet; thence N16°04'42"W, a distance of 30.52 feet; thence S67°48'35"W, a distance of 48.61 feet; thence N07°19'18"W, a distance of 506.32' being the POINT OF [illegible] of Tract A3; thence
S82°40'42"W, a distance of 316.00 feet; thence
N18°21'17"W, a distance of 76.11 feet; thence
N18°29'54"W, a distance of 98.65 feet; thence
N19°38'12"E, a distance of 39.37 feet; thence
N82°40'42"E, a distance of 333.59 feet; thence
S07°19'18"E, a distance of 198.16 feet to the POINT OF BEGINNING.

Containing 65,776 square feet or 1.51 acres, more or less.

EXHIBIT "B"

Legal Description (CONTINUED)

Parcel B

Commencing at the Northeastern intersection of the right of way of Hayfield Road and Pinckney Colony road thence traveling along the right of way approximately 605' northward to a point thence N79°56'40"W, a distance of 42.20 feet; thence N86°39'10"E, a distance of 68.86 feet; thence N02°09'55"W, a distance of 63.75 feet; thence N43°30'12"E, a distance of 117.75 feet; thence N09°00'08"E, a distance of 88.34 feet; thence N04°41'16"W, a distance of 115.39 feet; thence N10°17'18"W, a distance of 121.30 feet; thence N10°19'37"W, a distance of 97.84 feet; thence N15°56'27"W, a distance of 85.88 feet; thence N11°45'58"W, a distance of 105.26 feet; thence N17°58'58"W, a distance of 77.72 feet; thence N28°12'23"W, a distance of 108.44 feet; thence N22°33'46"W, a distance of 93.07 feet; thence N22°10'51"W, a distance of 77.43 feet; thence N15°22'21"W, a distance of 59.66 feet; thence N28°58'00"W, a distance of 59.20 feet; thence N20°03'20"W, a distance of 68.51 feet; thence N19°04'16"W, a distance of 78.61 feet; thence N25°49'18"W, a distance of 76.48 feet; thence N26°50'07"W, a distance of 69.02 feet; thence N34°39'45"W, a distance of 76.23 feet; thence N36°01'45"W, a distance of 87.13 feet; thence N26°00'30"W, a distance of 83.43 feet; thence N08°48'10"W, a distance of 67.25 feet; thence N27°07'24"W, a distance of 54.99 feet; thence N14°28'59"W, a distance of 95.05 feet; thence N24°59'45"W, a distance of 69.04 feet; thence N39°59'25"W, a distance of 26.64 feet; thence N19°14'19"W, a distance of 93.22 feet; thence N00°01'02"W, a distance of 72.98 feet; thence N04°56'13"E, a distance of 75.75 feet; thence N27°36'27"E, a distance of 96.89 feet; thence N65°22'27"E, a distance of 81.11 feet; thence N56°05'06"E, a distance of 21.56 feet; thence N20°42'54"E, a distance of 65.55 feet; thence N16°55'47"E, a distance of 53.19 feet; thence N39°51'13"E, a distance of 52.10 feet; thence N36°49'05"W, a distance of 45.64 feet; thence N86°40'44"W, a distance of 20.06 feet; thence N65°11'38"E, a distance of 50.14 feet; thence N16°01'42"W, a distance of 38.52 feet; thence S67°46'35"W, a distance of 48.61 feet; thence N00°19'18"W, a distance of 704.48 feet; thence S82°40'42"W, a distance of 333.59 feet; thence N19°36'12"E, a distance of 53.28 feet; thence N23°51'54"E, a distance of 64.08 feet; thence N30°30'31"E, a distance of 107.79 feet; to a tie line thence N37°25'38"W, a distance of 213.81'
being the POINT OF BEGINNING of tract B; thence

S51°07'46"W, a distance of 33.05 feet; thence
N42°27'43"W, a distance of 52.20 feet; thence
N14°14'19"W, a distance of 124.39 feet; thence
N09°58'03"W, a distance of 167.38 feet; thence
N13°37'12"W, a distance of 155.27 feet; thence
N07°00'03"W, a distance of 127.02 feet; thence
N46°27'52"E, a distance of 85.86 feet; thence
N79°00'38"E, a distance of 126.64 feet; thence
S70°30'41"E, a distance of 70.19 feet; thence
S50°25'17"E, a distance of 110.85 feet; thence
N63°09'05"E, a distance of 44.13 feet; thence
S08°56'05"E, a distance of 77.52 feet; thence

EXHIBIT "B"

Legal Description (CONTINUED)

S20°02'46"W, a distance of 85.26 feet; thence
S24°33'50"W, a distance of 68.58 feet; thence
S20°47'29"W, a distance of 141.27 feet; thence
S12°23'00"W, a distance of 115.29 feet; thence
S40°25'34"W, a distance of 94.86 feet; thence
S22°26'04"W, a distance of 58.32 feet to the POINT OF BEGINNING.

Containing 161,294 square feet or 3.70 acres, more or less.

This being the same property conveyed to the Grantor by deed from Pinckney Point Farms, Inc., dated January 25, 2005, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 2095 at page 1636.

This Deed was prepared by J. Simon Fraser, Esquire, Fraser & Allen, LLC, P.O. Box 5098, Hilton Head Island, South Carolina 29938.

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LEGAL DESCRIPTION CONTINUED ON FOLLOWING PAGE

EXHIBIT "B"

Legal Description (CONTINUED)

TOGETHER WITH:

Parcel 1:

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.

Parcel 2:

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.

Parcel 3:

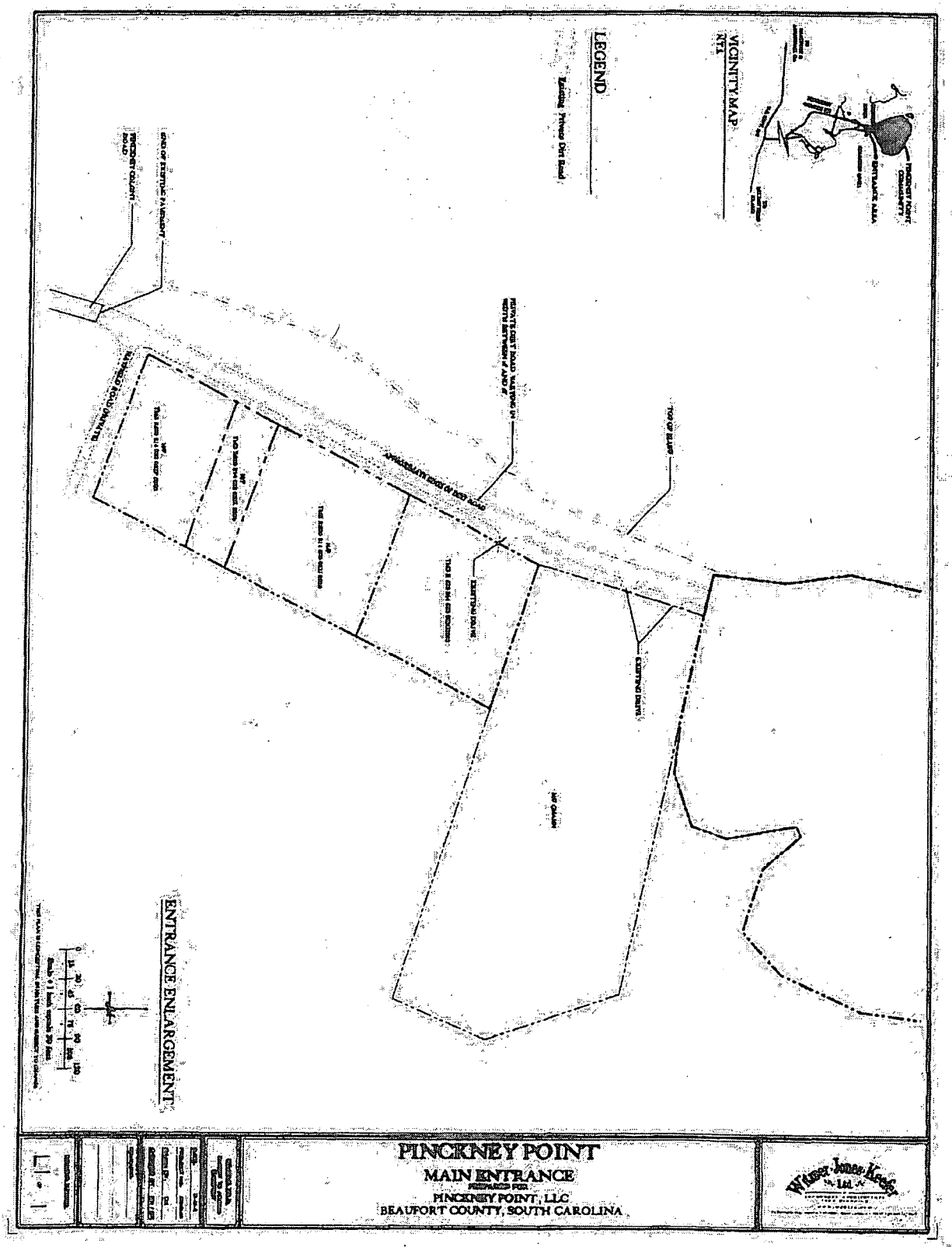
All that certain piece, parcel or lot of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, being shown as Lot No. 3 on a plat entitled "Plat of Survey – Land of Proposed Subdivision – A Portion of Land of W.E. Pinckney, Bluffton Township, Beaufort County, South Carolina" 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.

TOGETHER WITH all rights of the Grantor in and to that certain twenty foot (20') wide easement for access, ingress and egress, in favor of Grantor, its successors and assigns in Paragraph 3 entitled Right of Way in that certain First Amendment to Settlement Agreement in that certain action entitled Beaufort County v. Agnes Pinckney, et. al, being case No. 05-CP-07-2337 in the Court of Common Pleas, County of Beaufort, State of South Carolina and in any deeds, grants of right of way, easement agreements, or any other document thereto reflecting Grantor's right to cross over, through or under said twenty foot (20') wide easement.

Said easement being also that easement being more particularly described and shown in that certain Access Easement Agreement by and between Road, LLC, a South Carolina limited liability company and Pinckney Point, LLC, a South Carolina limited liability company dated the 29th day of December, 2011.

EXHIBIT C

Easement Area



Book3110/Page1677

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF BEAUFORT)

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

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

2. The property being transferred is located in Beaufort County, South Carolina, bearing various Beaufort County Tax Map Numbers and was transferred by Road, LLC to Pinckney Point , LLC on December 29, 2011.

3. Check one of the following: The deed is

(a) ____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) ____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) X exempt from the deed recording fee because (See Information section of affidavit): 1

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

(a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $_____.

(b) _____ The fee is computed on the fair market value of the realty which is _____.

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

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

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: $_____

(b) Place the amount listed in item 5 above here: 0
(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here: $_____

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $0.

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 Grantee.

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

SWORN to before me this 4th day of January, 2012

Matthew T. Mashburn: Attorney for Grantee
Print or Type Name Here

Notary Public for South Carolina GEORGIA
My Commission Expires: _____

INFORMATION

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

Exempted from the fee are deeds:

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

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

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

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

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

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

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

(8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;

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

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

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

(12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.

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

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

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

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF 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.	CONSENT ORDER

11 MAY -6 PM 3:41
JEAN ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

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

May 6, 2011

EXHIBIT
E

I MOVE:

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

I CONSENT:

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Attorneys for Agnes F. Pinckney, as Guardian ad Conservator for John David Pinckney

COUNTY OF BEAUFORT)
)
STATE OF SOUTH CAROLINA)

PURCHASE AGREEMENT

1. PARTIES: This legally binding Agreement entered into on the 24th day of April, 2013, between BEAUFORT COUNTY (hereinafter, "BUYER"), and EQUITY RESOURCE PARTNERS III, LLC. (hereinafter, "SELLER").

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the property described on Exhibit A attached hereto and incorporated herein by this reference, together with improvements and fixtures thereon (collectively, the "Property").

3. CONVEYANCE / CLOSING DATE: Conveyance shall be made subject to all easements, encumbrances (but not liens), covenants, conditions and restrictions of record (provided they do not make the title unmarketable), to all governmental statutes, ordinances, rules and regulations and to all matters that would be disclosed by a current and accurate survey and inspection of the Property ("Permitted Exceptions"). Seller agrees to convey by marketable title and deliver a proper limited warranty deed, free of encumbrances, except as herein stated, in the form attached hereto as Exhibit B and made a part hereof by this reference, based upon the legal description by which Seller took title to the Property, subject to the Permitted Exceptions. Seller agrees to also deliver a quitclaim deed for the Property based upon the legal description derived from any survey obtained by Buyer. In no event shall Seller give any indemnities to any party, including but not limited to Buyer, Buyer's title insurance company or Buyer's lender, at Closing. Except in the limited warranty deed to be delivered at Closing, any representations and warranties given by Seller shall be to the best of Seller's actual knowledge, without investigation. The deed shall be delivered and transaction closed by commercial overnight courier (or the closing may take place in person if agreed to by the parties) on or before thirty (30) days from the execution of this Agreement, or at such time that Beaufort County has completed their due diligence and is prepared to close (but not less than three (3) business days' prior written notice to Seller), whichever is sooner.

4. POSSESSION: Possession and all rights, benefits, and duties of ownership of said property shall pass to Buyer at the time of closing. Buyer agrees to take delivery of said property in its as-is, where-is condition.

Notwithstanding anything in this Agreement to the contrary, the parties acknowledge that the house located on said property is currently occupied by Charles Huggins ("Tenant"), having a telephone number of 843-422-3213, under a verbal agreement, rent-free in exchange for helping to maintain and secure said property by cutting the grass, keeping trespassers out, etc., and that possession of the Property shall be conveyed subject to such verbal agreement. Seller agrees to notify Tenant of the property transfer. Following the date of this Purchase Agreement, Buyer shall use commercially reasonable efforts to negotiate the terms of Tenant's continued occupancy of the subject premises. A mutual agreement to said terms shall be memorialized in writing between Tenant and Buyer prior to, and as a Buyer contingency of, the closing between Seller and Buyer.

EXHIBIT
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Notwithstanding anything in this Agreement to the contrary, the parties acknowledge that Michael Roler ("Farmer"), having a telephone number of 843-816-1397, has, under a verbal agreement, at no charge, planted crops on the fields located within the Property and that possession of the Property shall be conveyed subject to such verbal agreement. Seller agrees to notify Farmer of the property transfer. Following the date of this Purchase Agreement, Buyer shall use commercially reasonable efforts to negotiate the terms of Tenant's continued farming and/or harvesting of the subject premises. A mutual agreement to said terms shall be memorialized in writing between Farmer and Buyer prior to, and as a Buyer contingency of, the closing between Seller and Buyer.

5. PURCHASE PRICE shall be SIX MILLION, NINE HUNDRED AND FIFTY THOUSAND AND XX/100 ($6,950,000.00) Dollars. The parties acknowledge that the Property may be valued at an amount greater than the purchase price. Should Seller provide Buyer with a certified appraisal indicating same, and that is prepared within one year from the date of closing, Seller shall be deemed to have made a donation to Buyer in an amount equal to the difference between such value and the purchase price. At such time that said appraisal is produced, Buyer shall provide to Seller a "donation letter," acknowledging that a donation has been made by Seller to Buyer.

6. METHOD OF PAYMENT: Purchase price shall be paid as follows: [X] Cash via funds wire transferred through the Federal Reserve System; or [ ] Subject to Financing. Financing to be obtained by [ ] Conventional [ ] Seller [ ] VA [ ] FHA [ ] Other terms: Not Applicable.

7. EARNEST MONEY: This offer shall not be accompanied by an earnest money deposit.

8. CLOSING COSTS: Unless otherwise agreed, closing costs, including all loan charges, if any, and prepaid recurring items, shall be paid as follows:

(a) SELLER shall provide or pay for preparation of deed, all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing, and all legal or non-legal fees and expenses incurred by Seller in connection with the closing.

(b) BUYER shall pay, unless otherwise agreed herein, appraisal, survey, title examination and insurance premiums, inspection, escrow deposits, prepaid expenses, all recording costs, and all legal or non-legal fees and expenses incurred by Buyer in connection with the Closing.

9. TIME OF ESSENCE: Time is and shall be of the essence in this Agreement.

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

income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

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

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

13. DEFAULT: If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided in equity (but not at law for money damages) as a result of such failure to perform, including an action for specific performance of Seller's obligations under this Agreement., or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money, if any, in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

14. SURVEY, TITLE EXAMINATION, AND INSURANCE: It is recommended that Buyer have a survey of the subject property made and have examination as to the title to the property. It is further recommended that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement.

15. CONDITION OF PROPERTY:

(A) Seller's Property Condition Disclosure Statement: (check one)

[XX] Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

[ ] Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et.seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the attorneys, settlement agents nor any affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement.

(B) Inspection: Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, if any, square footage, acreage, environmental concerns including but not limited to radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, prior to the day of closing or possession. Reasonable entry on to the premises by the Buyer shall not be withheld by the Seller. To the extent permissible by law, Buyer agrees to indemnify and hold Seller harmless from any costs or damages resulting from claims arising out of rights granted to Buyer by this Paragraph. In addition, Buyer agrees to and shall promptly repair and restore any and all damage caused to the Property arising out of or related to the exercise of the rights granted to Buyer by this Paragraph. The provisions of this Paragraph shall survive any termination of this Agreement or any Closing hereunder.

(C) Maintenance: After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the premises in a like kind manner until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property until the day of closing or possession, whichever occurs first.

(D) Disclaimer: The Buyer acknowledges the Seller, except as provided in subparagraphs (B) and (C), of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, or systems thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller. Neither Buyer nor Seller will hold the attorneys, settlement agent nor any affiliated agent responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs or remediations under any circumstances.

16. APPRAISED VALUE: (check one)

[X] This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the appraisal as agreed, for the selling price.

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

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

18. ENTIRE BINDING AGREEMENT: This written instrument, including the additional terms and conditions set forth herein, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written

instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

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

20. ADDITIONAL CONTINGENCIES:

(a) The parties hereto recognize that this Agreement is contingent upon the Beaufort County Rural and Critical Lands Board, and Beaufort County Council's approval of said purchase. If the approval of the purchase of the subject premises is denied by either Board, this Agreement shall become null and void, with each party bearing their own costs and expenses.

(b) The parties hereto further recognize that this Agreement is contingent upon the outcome of a new or updated plat of survey that confirms the acreage amounts and lay of the lands described herein. The parties also acknowledge that this Agreement is contingent on the outcome of a thorough title search of the properties described herein and Seller's willingness and/or ability to cure any title defects, if any, in order to convey clean title to said properties to Buyer. Seller shall not be required to satisfy or cause to be satisfied any such title defects. If Seller does not satisfy or cause to be satisfied such title defects on or before closing, Buyer, at Buyer's election exercised on or before closing, may either: (i) terminate this Agreement by written notice to Seller, whereupon this Agreement shall be null, void and of no further force or effect as of the date of such written notice, and the parties shall have no further rights or obligations hereunder, except as to the terms of this Agreement which expressly survive termination; or (ii) waive the uncured or unsatisfied title defects and proceed under this Agreement as otherwise provided herein.

21. TAX FREE EXCHANGE: In the event Seller seeks to cause this transaction to qualify as a like-kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended ("Code"), Buyer agrees to cooperate with Seller in effectuating such like-kind exchange. In the event a like-kind exchange for some portion or all of the Property cannot be coordinated prior to the date of the Closing, then, at the request of Seller, Buyer shall cooperate with Seller in coordinating a non-simultaneous like-kind exchange under the provisions of Section 1031 of the Code. Notwithstanding anything contained in this Paragraph to the contrary, it is expressly understood and agreed that (i) the party cooperating to facilitate an exchange by the other party shall not incur or be responsible for any additional cost or expense as a result of said like-kind exchange arrangement; (ii) the party cooperating with the party seeking to make such exchange shall not be required to take title to or be in the chain of title of any like-kind property;

and (iii) the Closing Date shall not be delayed or postponed as a result of said like-kind exchange.

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

22. NOTICES. All notices, requests, demands or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by Federal Express, or by hand delivery by reputable courier, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any party may from time to time and at any time change its address for notices hereunder. Legal counsel for the respective parties may send to the other party any notices, requests, demands or other communications required or permitted to be given hereunder by such party.

To Seller:
Equity Resource Partners III, LLC
2255 Cumberland Parkway
Building 1700, 2nd Floor
Atlanta, Georgia 30339
Attention: C. Lee Wooddall
E-Mail: lwooddall@southwooddev.com

With Copy to:
John H. Irby
Wilson Brock & Irby, L.L.C.
Overlook I, Suite 700
2849 Paces Ferry Road
Atlanta, Georgia 30339
E-Mail: jirby@wbilegal.com

To Buyer:
Beaufort County
Staff Attorney
Post Office Box 1228
Beaufort, Sc 29901-1228

With Copy to:
Beaufort County Open Land Trust
Attn: Director
Post Office Box 75
Beaufort, SC 29901

Thomas A. Bendle, Jr.
Howell Gibson and Hughes, P.A.
Post Office Box 40
Beaufort, SC 29901-0040

IN WITNESS WHEREOF, the Buyer herein has caused this Agreement to be duly executed this 24th day of April, 2013.

WITNESSES:

BUYER:

Beaufort County

Print Name: Gary Kubic,
Title: County Administrator

IN WITNESS WHEREOF, the Seller herein has caused this Agreement to be duly executed as of this 23rd day of April, 2013.

WITNESSES:

SELLER:

Equity Resource Partners III, LLC

By: Tall Pine Properties, LLC, a Georgia limited liability company, Manager

By: _____ (SEAL)
John H. Troy, Managing Member

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EXHIBIT "A"

Legal Description

All those certain parcels or areas of land located in Shelton Township, Beaufort County, South Carolina and identified as Tracts A1, A2, A3 and B on a plat of 229.1 B acres prepared by Ward Edwards, Inc., dated April 8, 2005, last revised June 13, 2005, the metes and bounds of which are as follows:

Parcel A1

Starting at the Northeastern intersection of the right of way of Hayfield Road and Pinckney Colony road thence traveling along the right of way approximately 605' northward to a point being the POINT OF BEGINNING of tract A1; thence
N77°50'40"W, a distance of 42.20 feet; thence N03°39'10"E, a distance of 68.06 feet; thence
N65°07'53"W, a distance of 68.75 feet; thence N42°39'12"E, a distance of 117.75 feet; thence
N07°09'04"E, a distance of 68.34 feet; thence N[illegible]°31'18"W, a distance of 115.59 feet; thence
N10°17'16"W, a distance of 124.30 feet; thence N18°48'37"W, a distance of 97.84 feet; thence
N13°16'21"W, a distance of 65.36 feet; thence N31°48'08"W, a distance of 105.88 feet; thence
N17°51'58"W, a distance of 77.72 feet; thence N50°25'53"W, a distance of 108.85 feet; thence
N22°52'49"W, a distance of 91.07 feet; thence N02°39'51"W, a distance of 77.40 feet; thence
N19°22'21"W, a distance of 58.66 feet; thence N[illegible]°[illegible]'[illegible]"W, a distance of 59.50 feet; thence
N80°05'20"W, a distance of 61.51 feet; thence N16°34'45"W, a distance of 78.63 feet; thence
N25°49'16"W, a distance of 96.48 feet; thence N[illegible]°[illegible]'[illegible]"W, a distance of 69.63 feet; thence
N34°39'45"W, a distance of 76.23 feet; thence N[illegible]°[illegible]'[illegible]"W, a distance of 87.13 feet; thence
N25°00'30"W, a distance of 87.43 feet; thence N[illegible]°[illegible]'[illegible]"W, a distance of 67.25 feet; thence
N27°07'24"W, a distance of 54.59 feet; thence N16°20'59"W, a distance of 93.85 feet; thence
N24°59'45"W, a distance of 69.04 feet; thence N09°59'25"W, a distance of 26.64 feet; thence
N19°14'19"W, a distance of 92.22 feet; thence N03°04'02"W, a distance of 72.53 feet; thence
N04°58'15"E, a distance of 75.75 feet; thence N87°36'27"E, a distance of 96.07 feet; thence
N05°32'27"E, a distance of 81.11 feet; thence N16°09'08"E, a distance of 21.55 feet; thence
N20°42'34"E, a distance of 66.56 feet; thence N18°56'47"E, a distance of 55.19 feet; thence
N29°51'13"E, a distance of 52.10 feet; thence N05°49'05"W, a distance of 48.04 feet; thence
N89°10'44"W, a distance of 29.06 feet; thence N45°11'25"E, a distance of 50.19 feet; thence
N16°01'42"W, a distance of 94.52 feet; thence [illegible]°[illegible]'[illegible]"W, a distance of 48.61 feet; thence
N07°19'15"W, a distance of 994.48 feet; thence [illegible]°[illegible]'[illegible]"W, a distance of 708.59 feet; thence
N19°55'12"E, a distance of 53.26 feet; thence N23°04'25"E, a distance of 64.61 feet; thence
N36°38'51"E, a distance of 107.70 feet; thence N47°22'19"E, a distance of 84.05 feet; thence
N85°32'14"E, a distance of 54.12 feet; thence N[illegible]°[illegible]'[illegible]"E, a distance of 74.03 feet; thence
N17°29'52"E, a distance of 58.13 feet; thence N[illegible]°[illegible]'[illegible]"E, a distance of 61.46 feet; thence
N85°07'13"E, a distance of 35.93 feet; thence S[illegible]°[illegible]'[illegible]"W, a distance of 52.70 feet; thence
S59°40'16"E, a distance of 93.20 feet; thence S87°56'38"E, a distance of 86.52 feet; thence
S26°43'42"E, a distance of 75.86 feet; thence S61°47'35"E, a distance of 114.25 feet; thence
S29°19'02"E, a distance of 79.05 feet; thence S12°02'40"E, a distance of 54.86 feet; thence

EXHIBIT "A"

Legal Description (CONTINUED)

EXHIBIT "A"

Legal Description (CONTINUED)

S17°44'38"W, a distance of 130.52 feet; thence S15°38'51"W, a distance of 102.57 feet; thence S69°49'20"E, a distance of 88.44 feet; thence S07°38'26"W, a distance of 114.66 feet; thence S20°09'12"E, a distance of 88.68 feet; thence S42°17'58"W, a distance of 97.54 feet; thence N72°15'31"W, a distance of 88.01 feet; thence N46°09'21"W, a distance of 48.30 feet; thence N07°39'12"W, a distance of 116.01 feet; thence S15°25'04"E, a distance of 48.87 feet; thence S16°04'18"E, a distance of 28.07 feet; thence S73°49'18"W, a distance of 84.59 feet; thence N22°20'47"W, a distance of 87.52 feet; thence S47°26'31"W, a distance of 2.14 feet; thence N77°30'46"W, a distance of 119.07 feet to the POINT OF BEGINNING.

Containing 9,697,476 square feet or 222.56 acres, more or less.

Road A2

Commencing at the Northeastern intersection of the right of way of Mayfield Road and Pinetown Colony road thence traveling along the right of way approximately 667 northward to a point thence N77°30'46"W, a distance of 42.20 feet; thence N06°37'16"E, a distance of 61.85 feet; thence N12°20'39"W, a distance of 68.75 feet; thence N12°29'12"E, a distance of 117.73 feet; thence N07°09'34"E, a distance of 98.24 feet; thence N04°41'16"E, a distance of 115.59 feet; thence N10°17'16"W, a distance of 121.52 feet; thence N10°17'17"E, a distance of 91.04 feet; thence N11°[illegible]"E, a distance of [illegible] feet; thence N11°[illegible]"E, a distance of 103.24 feet; thence N14°31'[illegible]"E, a distance of [illegible] feet; thence N[illegible]"E, a distance of 77.49 feet; thence N10°[illegible]"W, a distance of 50.20 feet; thence N[illegible]"E, a distance of 72.61 feet; thence N[illegible]"E, a distance of 69.62 feet; thence N[illegible]"W, a distance of 97.13 feet; thence N[illegible]"W, a distance of 67.25 feet; thence N[illegible]"E, a distance of 95.85 feet; thence N[illegible]"W, a distance of 24.44 feet; thence N15°10'15"W, a distance of 72.97 feet; thence N02°30'15"E, a distance of 75.72 feet; thence N27°30'27"E, a distance of 66.80 feet; thence N06°35'27"E, a distance of 81.11 feet; thence N15°10'01"E, a distance of 21.55 feet; thence N07°[illegible]"E, a distance of 55.19 feet; thence N07°31'11"E, a distance of 52.10 feet; thence N36°49'03"W, a distance of 43.01 feet; thence N07°16'47"W, a distance of 28.06 feet; thence N49°11'50"E, a distance of 50.10 feet; thence N14°01'43"W, a distance of 28.52 feet; thence S67°08'25"W, a distance of 48.61 feet; being the POINT OF BEGINNING of road A2; thence

S11°03'31"W, a distance of 49.35 feet; thence
S74°[illegible]"W, a distance of [illegible] feet; thence
S3°[illegible]"W, a distance of [illegible] feet; thence
N77°01'[illegible]"E, a distance of 73.45 feet; thence
S07°27'37"W, a distance of 10.68 feet; thence
N64°31'[illegible]"W, a distance of 39.19 feet; thence
N50°34'09"W, a distance of 72.79 feet; thence

EXHIBIT "A"

Legal Description (CONTINUED)

[illegible] a distance of 64.98 feet; thence
[illegible] a distance of 175.10 feet; thence
[illegible] a distance of 92.49 feet; thence
[illegible] a distance of 227.83 feet; thence
[illegible] a distance of 316.00 feet; thence
S87°19'15"E, a distance of 261.32 feet to the POINT OF BEGINNING.

Containing 148,479 square feet or 3.41 acres, more or less.

Parcel A3

Commencing at the Northeasterly intersection of the right of way of Plainfield Boulevard (Parkway) [illegible] to a point [illegible] a distance of [illegible] feet; thence [illegible] a distance of 1,177.15 feet; thence [illegible] a distance of 111.39 feet; thence [illegible] a distance of 97.00 feet; thence [illegible] a distance of [illegible] feet; thence [illegible] a distance of [illegible] feet; thence [illegible] a distance of 77.00 feet; thence [illegible] a distance of 80.39 feet; thence [illegible] a distance of 78.61 feet; thence [illegible] a distance of [illegible] feet; thence [illegible] a distance of 87.13 feet; thence [illegible] a distance of 67.25 feet; thence [illegible] a distance of 93.65 feet; thence [illegible] a distance of 71.43 feet; thence [illegible] a distance of 72.50 feet; thence [illegible] a distance of [illegible] feet; thence [illegible] a distance of 21.55 feet; thence [illegible] a distance of 52.19 feet; thence [illegible] a distance of 45.84 feet; thence [illegible] a distance of 38.10 feet; thence [illegible] a distance of 49.01 feet; thence [illegible] a distance of 265.32 feet to the POINT OF BEGINNING; thence [illegible] a distance of 73.94 feet; thence [illegible] a distance of [illegible] feet; thence [illegible] a distance of 23.37 feet; thence [illegible] a distance of 351.99 feet; thence S87°19'15"E, a distance of 152.16 feet to the POINT OF BEGINNING.

Containing 63,776 square feet or 1.51 acres, more or less.

EXHIBIT "A"

Legal Description (CONTINUED)

Parcel B

Commencing at the Northeasterly intersection of the right of way of Mayfield Road and Pinebury Drive; thence [illegible] along the right of way of said Pinebury Drive [illegible] thence N77°[illegible]W, a distance of 42.20 feet; thence [illegible]°E, a distance of [illegible] feet; thence [illegible]°W, a distance of 63.73 feet; thence N12°20'13"E, a distance of 117.75 feet; thence [illegible]°E, a distance of [illegible].34 feet; thence N09°41'45"W, a distance of 115.39 feet; thence N10°17'10"W, a distance of 121.20 feet; thence N08°10'37"W, a distance of 97.81 feet; thence N11°[illegible]W, a distance of 65.[illegible] feet; thence [illegible]°W, a distance of [illegible] feet; thence N07°[illegible]W, a distance of 77.32 feet; thence [illegible]°W, a distance of [illegible] feet; thence [illegible]°W, a distance of [illegible] feet; thence [illegible]°W, a distance of 77.40 feet; thence [illegible]°W, a distance of [illegible] feet; thence [illegible]°W, a distance of [illegible] feet; thence [illegible]°W, a distance of 66.51 feet; thence N15°07'10"W, a distance of 75.00 feet; thence N20°07'15"W, a distance of 76.43 feet; thence N22°30'07"W, a distance of 60.00 feet; thence N24°[illegible]W, a distance of 76.23 feet; thence N25°01'05"W, a distance of 77.17 feet; thence N27°[illegible]W, a distance of [illegible].43 feet; thence N29°07'10"W, a distance of 67.25 feet; thence N30°07'34"W, a distance of 54.07 feet; thence N31°[illegible]W, a distance of 75.00 feet; thence N32°[illegible]W, a distance of [illegible] feet; thence N15°[illegible]W, a distance of [illegible] feet; thence N15°[illegible]W, a distance of 102.24 feet; thence N08°[illegible]W, a distance of 72.50 feet; thence N04°20'13"E, a distance of 71.75 feet; thence N07°32'12"E, a distance of [illegible] feet; thence N07°[illegible]E, a distance of 81.11 feet; thence [illegible]°E, a distance of 21.56 feet; thence N02°[illegible]E, a distance of [illegible].91 feet; thence N10°[illegible]E, a distance of 98.10 feet; thence N09°51'43"E, a distance of 52.10 feet; thence N07°[illegible]E, a distance of [illegible] feet; thence N07°[illegible]W, a distance of [illegible] feet; thence [illegible]°W, a distance of [illegible] feet; thence N16°[illegible]W, a distance of [illegible] feet; thence [illegible]°W, a distance of [illegible] feet; thence N19°[illegible]E, a distance of 32.[illegible] feet; thence N07°[illegible]E, a distance of 157.77 feet; to a [illegible] thence N07°25'58"W, a distance of 213.81'

being the POINT OF BEGINNING of Parcel B; thence

S51°07'46"W, a distance of 33.07 feet; thence
N62°27'43"W, a distance of 52.20 feet; thence
N14°14'19"W, a distance of 124.39 feet; thence
N5°[illegible]W, a distance of 167.38 feet; thence
N15°37'12"W, a distance of 155.27 feet; thence
N5°[illegible]W, a distance of 182.62 feet; thence
N4°29'18"E, a distance of 86.55 feet; thence
N7°[illegible]W, a distance of [illegible] feet; thence
S74°[illegible]E, a distance of 72.57.00 feet; thence
S55°29'37"E, a distance of 1[illegible] feet; thence
N83°[illegible]E, a distance of 44.13 feet; thence
S85°30'05"E, a distance of 77.32 feet; thence

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EXHIBIT "A"

Legal Description (CONTINUED)

S20°42'42"W, a distance of 65.26 feet; thence
S24°39'59"W, a distance of 81.58 feet; thence
S20°47'29"W, a distance of 141.27 feet; thence
S13°20'03"W, a distance of 115.29 feet; thence
S40°29'14"W, a distance of 94.65 feet; thence
S22°26'04"W, a distance of 58.32 feet to the POINT OF BEGINNING.

Containing 161,244 square feet or 3.70 acres, more or less.

This being the same property conveyed to the Grantor by deed from Pinckney Point Homes, Inc., dated January 29, 2004, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 2075 at page 1636.

This Deed was prepared by J. Shane Turner, Esquire, Turner & Allen, LLC, P.O. Box 5028, Hilton Head Island, South Carolina 29938.

Parcel 044 000 0091A 1/2004 GP

LEGAL DESCRIPTION CONTINUED ON FOLLOWING PAGE

EXHIBIT "A"

Legal Description (CONTINUED)

TOGETHER WITH:

Parcel 1:

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.

Parcel 2:

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.

Parcel 3:

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.

TOGETHER WITH all rights of the Grantor in and to that certain twenty foot (20') wide easement for access, ingress and egress, in favor of Grantor, its successors and assigns in Paragraph 3 entitled Right of Way in that certain First Amendment to Settlement Agreement in that certain action entitled Beaufort County v. Agnes Pinckney, et. al, being case No. 05-CP-07-2337 in the Court of Common Pleas, County of Beaufort, State of South Carolina and in any deeds, grants of right of way, easement agreements, or any other document thereto reflecting Grantor's right to cross over, through or under said twenty foot (20') wide easement.

Said easement being also that easement being more particularly described and shown in that certain Access Easement Agreement by and between Reed, LLC, a South Carolina limited liability company and Pinckney Point, LLC, a South Carolina limited liability company dated the 29 day of December, 2011.

[illegible]
EQ[illegible]

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EXHIBIT B

Form of Limited or Special Warranty Deed

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

After recordation, return to:
Thomas A. Bendle, Jr.
Howell, Gibson & Hughes, P.A.
P.O. Box 40
Beaufort, SC 29901

LIMITED WARRANTY DEED

THIS INDENTURE is made as of the _____ day of _____, 2009, by and between EQUITY RESOURCE PARTNERS _____, LLC, a Georgia limited liability company ("Grantor"), and _____, a _____("Grantee"); the designation "Grantor" and "Grantee" as used herein shall include said named parties and their respective heirs, successors and assigns, except as hereinafter set forth as to Grantor, and shall include the singular, plural, masculine, feminine or neuter as required by context.

W I T N E S S E T H :

GRANTOR, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto Grantee, all of Grantor's interest in all that tract or parcel of land lying and being in Land Lot _____, ____ District, _____ County, _____, and being more particularly described on Exhibit A, attached hereto and made a part hereof by this reference, together with all improvements now located thereon, including all electrical, mechanical, plumbing and other systems and all fixtures located therein, as well as plants, trees, and shrubbery thereon (collectively, the "Property"). This conveyance is made subject to easements, encumbrances (but not liens), covenants, conditions and restrictions of record and to all matters that would be disclosed by a current and accurate survey and inspection of the Property (collectively, the "Permitted Exceptions").

TO HAVE AND TO HOLD the Property, together with any and all of the rights, members and appurtenances thereof, to the same being, belonging or in anywise appertaining to, the only proper use, benefit and behoof of the Grantee and the heirs, legal representatives, successors and assigns of Grantee forever IN FEE SIMPLE.

Buyer's Initials:_____

Seller's Initials:_____

THE PROPERTY herein conveyed is conveyed in an "AS-IS," "WHERE-IS" condition, without any representations or warranties by Grantor, either express or implied, other than the warranty of title contained herein.

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GRANTOR, subject to the Permitted Exceptions, will warrant and forever defend the right and title to the Property unto Grantee and the heirs, legal representatives, successors and assigns of Grantee, against the claims of all persons and entities claiming by, through or under Grantor, but not further or otherwise.

[Remainder of Page Intentionally Left Blank]

Buyer's Initials: _____

Seller's Initials: _____

IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed, sealed and delivered as of the day of first above written.

Signed, sealed and delivered in the presence of:

EQUITY RESOURCE PARTNERS III, LLC, a Georgia limited liability company

By: Tall Pine Properties, LLC, a Georgia limited liability company, Manager

_____
Unofficial Witness

By: _____(SEAL)
John H. Irby, Managing Member

_____
Notary Public

My Commission Expires:

[Affix Notarial Seal]

[NOTE: EXECUTION BLOCK SUBJECT TO STATE AND COUNTY WITNESS/NOTARY REQUIREMENTS]

Buyer's Initials: _____

Seller's Initials: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2013-CP-07-01341
ROAD, LLC AND PINCKNEY POINT, LLC,	)	
	)	
Plaintiffs,	)	
	)	ANSWER TO PLAINTIFFS' AMENDED COMPLAINT
vs.	)	
	)	
BEAUFORT COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	
	)	

The Defendant, Beaufort County, answering the Amended Complaint of the Plaintiffs would allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. That each and every allegation contained in the Plaintiffs' Amended Complaint not specifically admitted hereinafter is denied and strict proof demanded thereof.

2. The Amended Complaint of the Plaintiffs fail to state a cause of action against this Defendant, and this Defendant is entitled to a dismissal as a matter of law.

FOR A SECOND DEFENSE

3. This Defendant's First Defense is hereby re-alleged and reiterated as fully as if repeated herein.

4. The Plaintiffs failed to file and serve the Complaint or Amended Complaint within the applicable statute of limitations, and this Defendant is entitled to a dismissal as a matter of law.

FOR A THIRD DEFENSE

5. This Defendant's First and Second Defenses are hereby re-alleged and reiterated as fully as if repeated herein.

6. This Defendant hereby alleges the *doctrine of unclean hands* as a complete defense to all of the Plaintiffs' causes of action.

FOR A FOURTH DEFENSE

7. This Defendant's First, Second and Third Defenses are hereby re-alleged and reiterated as fully as if repeated herein.

8. This Defendant hereby alleges the *doctrine of laches* as a full and complete defense to all of the Plaintiffs' causes of action.

FOR A FIFTH DEFENSE

9. This Defendant's First, Second, Third and Fourth Defenses are hereby re-alleged and reiterated as fully as if repeated herein.

10. This Defendant hereby pleads in an affirmative defense to all of the Plaintiffs' causes of action the South Carolina Tort Claims Act in one or more of its sub-parts.

11. This Defendant does hereby plead with particularity the following provisions of the South Carolina Tort Claims Act as a full and complete defense to all of the Plaintiffs' causes of action: S. C. Code Section 15-78-60(1); S.C. Code Section 15-78-60(2); S.C. Code Section 15-78-60(3); S.C. Code Section

15-78-60(4); S.C. Code Section 15-78-60(5); S.C. Code Section 15-78-60(17); S.C. Code Section1 5-78-60(20); and S.C. Code Section 15-78-60(22).

FOR A SIXTH DEFENSE

12. This Defendant First, Second, Third, Fourth and Fifth Defenses are hereby re-alleged and reiterated as fully as if repeated herein.

13. Upon information and belief, this Defendant admits Paragraph 1 of the Plaintiffs' Amended Complaint.

14. This Defendant denies Paragraph 2 of the Plaintiffs' Amended Complaint and demand strict proof thereof.

15. This Defendant admits Paragraph 3 of the Plaintiffs' Amended Complaint.

16. This Defendant denies Paragraph 4 of the Plaintiffs' Amended Complaint and demand strict proof thereof.

17. This Defendant denies Paragraph 5 of the Plaintiffs' Complaint and demands strict proof thereof.

18. This Defendant admits so much of Paragraph 6 of the Plaintiffs' Amended Complaint that alleges Road, LLC owns property adjacent to the Pinckney Point parcel, and the said parcel is encumbered by an easement/roadway.

19. This Defendant admits so much of Paragraph 7 of the Plaintiffs' Amended Complaint as alleges the Defendant entered into a settlement agreement with Pinckney Point, LLC, Dorothy P. Gnann and Agnes F. Pinckney as guardian and conservator for John David Pinckney.

20. In response to Paragraph 8 of the Plaintiffs' Amended Complaint this Defendant will allege that the settlement agreement referenced in Paragraph 8 of the Plaintiffs' Amended Complaint speaks for itself.

21. This Defendant denies Paragraph 9 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

22. Upon information and belief, this Defendant admits so much of Paragraph 10 of the Plaintiffs' Amended Complaint, as alleges Agnes F. Pinckney as guardian and conservator for John David Pinckney did convey the road parcel to Road, LLC by way of Limited Warranty Deed.

23. Upon information and belief, this Defendant admits so much of Paragraph 11 of the Plaintiffs' Amended Complaint as alleges Agnes F. Pinckney conveyed her interest in the Road Parcel to Road, LLC by way of a Quit Claim Deed.

24. In response to Paragraph 12 of the Plaintiffs' Amended Complaint, this Defendant would allege that the deeds cited speak for themselves.

25. Upon information and belief, this Defendant admits so much of Paragraph 13 of the Plaintiffs' Amended Complaint that alleges Road, LLC entered an Access Easement Agreement with Pinckney Point, LLC the terms which speak for themselves.

26. This Defendant admits Paragraph 14 of the Plaintiffs' Amended Complaint.

27. This Defendant denies Paragraph 15 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

28. This Defendant admits so much of Paragraph 16 of the Plaintiffs' Amended Complaint, as alleges that Beaufort County purchased the Pinckney Point Parcel from Equity Resource Partners, III, LLC.

29. This Defendant denies Paragraph 17 of the Plaintiffs' Amended and demands strict proof thereof.

30. This Defendant denies Paragraph 18 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

31. In response to Paragraph 19 of the Plaintiffs' Amended Complaint, this Defendant will allege that the documents cited in Paragraph 19 of the Plaintiffs' Amended Complaint speaks for themselves.

32. This Defendant admits so much of Paragraph 20 of the Plaintiffs' Amended Complaint as alleges that the Plaintiffs filed and served an action against Beaufort County, prior to Beaufort County's closing on the Pinckney Point Parcel and Beaufort County did proceed with the purchase of Pinckney Point Parcel using funds from Rural and Critical Land bonds.

33. In response to Paragraph 21 of the Plaintiffs' Amended Complaint, this Defendant admits what has been admitted and denies what has been denied.

34. This Defendant denies Paragraph 22 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

35. This Defendant denies Paragraph 23 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

36. In response to Paragraph 24 of the Plaintiffs' Amended Complaint this Defendant admits what has been admitted denies what has been denied.

37. Upon information and belief, this Defendant admits so much of Paragraph 25 of the Plaintiffs' Amended Complaint that alleges Road, LLC owns the "Road Parcel" in Beaufort County.

38. This Defendant denies Paragraph 26 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

39. This Defendant denies Paragraph 27 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

40. In response to Paragraph 28 of the Plaintiffs' Amended Complaint, this Defendant admits what has been admitted and denies what has been denied.

41. This Defendant denies Paragraph 29 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

42. This Defendant denies Paragraph 30 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

43. In response to Paragraph 31 of the Plaintiffs' Amended Complaint, this Defendant admits what has been admitted and denies what has been denied.

44. This Defendant admits so much of Paragraph 32 of the Plaintiffs' Amended Complaint as alleges Beaufort County and Pinckney Point, LLC were parties to the referenced Settlement Agreement.

45. This Defendant denies Paragraph 33 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

46. In response to Paragraph 34 of the Plaintiffs' Amended Complaint, this Defendant admits what has been admitted and denies what has been denied.

47. This Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 35 of the Plaintiffs' Amended Complaint and, therefore, denies same and demands strict proof thereof.

48. This Defendant denies Paragraph 36 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

49. This Defendant denies Paragraph 37 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

50. This Defendant denies Paragraph 38 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

51. This Defendant denies Paragraph 39 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

52. This Defendant denies Paragraph 40 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

53. This Defendant denies Paragraph 41 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

54. This Defendant admits so much of Paragraph 42 of the Plaintiffs' Amended Complaint as alleges the loan of Pinckney Point, LLC securing the

Pinckney Point Parcel was foreclosed upon, and Pinckney Point, LLC conveyed title to the subject Pinckney Point Parcel to Equity Resource Partners III, LLC and in lieu of foreclosure. Upon information and belief, this Defendant further admits so much of Paragraph 42 of the Plaintiffs' Amended Complaint as alleges Pinckney Point, LLC had an option to repurchase the Pinckney Point Parcel from Equity Resource Partners III, LLC, but failed or refused to follow through with the purchase.

55. This Defendant denies Paragraph 43 of the Plaintiffs' Amended Complaint and, therefore, denies same and demands strict proof thereof.

56. This Defendant denies Paragraph 44 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

57. This Defendant denies Paragraph 45 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

58. In response to Paragraph 46 of the Plaintiffs' Amended Complaint, this Defendant admits what has been admitted and denies what has been denied.

59. This Defendant denies Paragraph 47 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

60. In response to Paragraph 48 of the Plaintiffs' Amended Complaint, this Defendant admits what has been admitted and denies what has been denied.

61. This Defendant admits so much of Paragraph 49 of the Plaintiffs' Amended Complaint as alleges access over and through the Road Parcel is subject to conveyance documents in the chain of title.

62. This Defendant denies Paragraph 50 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

63. This Defendant denies Paragraph 51 of the Plaintiffs' Amended Complaint and demands strict proof thereof.

FOR A SEVENTH DEFENSE

64. This Defendant's First, Second, Third, Fourth, Fifth and Sixth Defenses are hereby re-alleged and reiterated as fully as if repeated herein.

65. The Plaintiffs herein lack standing to assert these actions and the Plaintiffs' Amended Complaint should be dismissed as a matter of law.

WHEREFORE, the Defendant prays this Honorable Court inquire into the matters set forth herein, and enter its Order dismissing this matter, with an award of attorneys fees and costs to the Defendant.

HOWELL, GIBSON & HUGHES, P.A.

By: _____
Robert W. Achurch, III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendant

Beaufort, South Carolina

August 19, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2013-CP-07-01341

ROAD, LLC AND PINCKNEY POINT, LLC,	)	
Plaintiffs,	)	
vs.	)	BEAUFORT COUNTY'S MOTION TO DISMISS AND/OR PARTIAL DISMISSAL
BEAUFORT COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF SOUTH CAROLINA, AND EQUITY SOURCE PARTNERS, III, LLC,	)	
Defendants.	)	

TO: GEORGE TRENHOLM WALKER , ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, Beaufort County, will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order of this Court dismissing the Complaint of the Plaintiff or for partial dismissal pursuant the South Carolina Rules of Civil Procedure. This motion is made upon the following grounds.

That Pinckney Point, LLC lacks standing to assert any claim in this action. Pinckney Point, LLC has no legal or equitable interest in the real property which is the subject of this action, and therefore, any claims in this matter brought against the Defendant, Beaufort County, should be dismissed.

Notwithstanding the lack of standing of Pinckney Point, LLC, the Plaintiffs' second, third, fourth, fifth and sixth causes of actions should be dismissed as

moot because neither Plaintiff has standing to assert such causes of action and/or on the grounds that the causes of action have been rendered *moot* by Beaufort County's purchase of the Pinckney Point parcel referenced in the Plaintiffs' Complaint. Finally, those causes of action fail to state a claim upon which relief can be granted. A copy of said deed from the Co-Defendant's Equity Resource Partners III, LLC to Beaufort County is attached herewith and made a part hereof as **Exhibit A** to this Motion. Said deed establishes that the Pinckney Point parcel has been conveyed to Beaufort County by Equity Resource Partners, III, LLC.

Pursuant to Paragraph 5 of the Plaintiffs' Complaint, "This action seeks to prevent a breach of the public trust by Defendant County, to enforce a contractual agreement entered by Beaufort County, and to protect against the expenditure of public funds for a use that is not allowed."

Beaufort County has now purchased the subject property from Equity Resource Partners III, LLC, therefore, any action that seeks to prevent the transaction from moving forward is *moot*.

The Plaintiffs' First Cause of Action seeks a declaratory judgment regarding the extent of an ingress or access easement obtained by Beaufort County with access to the Pinckney Point property.

The Plaintiffs have voluntarily dismissed Equity Resource Partners III, LLC as a named Defendant. A copy of said Order of Dismissal is attached herewith and made a part hereof as **Exhibit B**.

The Plaintiffs' Second Cause of Action seeks a declaration that Beaufort County's purchase of the subject property with public funds constitutes an impermissible use of the funds for private purposes.

Both Plaintiffs in this action lack standing to assert such a claim.

There is no allegation in the Plaintiffs' Complaint that the property purchased (i.e Pinckney Point property) is private nor is there an allegation of any funds allocated or paid to purchase a private roadway. The only allegation in the Plaintiffs' Complaint that references a private property is the Plaintiffs' allegation that the subject roadway is private.

The Plaintiffs' Third Cause of Action while using different language, requests the same equitable relief sought in the Plaintiffs' First Cause of Action, and that is a declaration of the scope of the easement to the subject property. Therefore, the Plaintiffs' Third Cause of Action is cumulative and subject to the same grounds for dismissal as the other causes of actions.

The Plaintiffs' Fourth Cause of Action seeks specific performance, however, the Plaintiffs have not alleged any breach of contract by Beaufort County. That cause of action, therefore, also fails to state a claim upon which relief can be granted and is not yet ripe for adjudication. To the extent that the Fourth Cause of Action seeks a declaration as to the scope of the use of the subject roadway, the Plaintiffs' Fourth Cause of Action should be dismissed on the grounds set forth above.

The Plaintiffs' Fifth Cause of Action has been rendered *moot* by Beaufort County's purchase of the subject property and should be dismissed. To the

extent the Fifth Cause of Action is not *moot*, it fails to state a claim and is not yet ripe for adjudication. The Plaintiffs seek a contempt order for something that has not happened.

The Plaintiffs' Sixth Cause of Action is requesting the relief sought in the Plaintiffs' First Cause of Action, and therefore, is cumulative, *moot* and should be dismissed.

Road, LLC is not a party to the Settlement Agreement it seeks to enforce. Page 8, Paragraph 19 of the Settlement Agreement which was made an exhibit to the Plaintiffs' Complaint states, "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,...". Road, LLC did not bind itself to the Settlement Agreement and may not seek to enforce the Settlement Agreement. No promise was made to Road, LLC in the Settlement Agreement.

This Defendant therefore respectfully requests that this Honorable Court issue an order dismissing the Complaint of the Plaintiffs.

This motion shall be based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings, affidavits and discovery documents exchanged herein.

HOWELL, GIBSON & HUGHES, P.A.

By: _____
Robert W. Achurch, III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendant, Beaufort County

Beaufort, South Carolina

September 25, 2013

LO
NDHW
Howell

BEAUFORT COUNTY SC - ROD
BK 03242 PGS 2216-2225
FILE NUM 2013029215
05/28/2013 02:48:35 PM
REC'D BY R WEBB RCPT# 712125
RECORDING FEES 0.00

APPROVED FOR RECORDING
BY:
BEAUFORT COUNTY ATTORNEY
DATE: 05/28/13

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

After recordation, return to:
Thomas A. Bendle, Jr.
Howell, Gibson & Hughes, P.A.
P.O. Box 40
Beaufort, SC 29901

LIMITED WARRANTY DEED

THIS INDENTURE is made as of the 28th day of May, 2013, by and between EQUITY RESOURCE PARTNERS III, LLC, a Georgia limited liability company "Grantor"), and BEAUFORT COUNTY ("Grantee"); the designation "Grantor" and "Grantee" as used herein shall include said named parties and their respective heirs, successors and assigns, except as hereinafter set forth as to Grantor, and shall include the singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH:

GRANTOR, for and in consideration of the sum of Six Million Nine Hundred Fifty Thousand and No/100 ($6,950,000.00) Dollars, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto Grantee, all of Grantor's interest in all that tract or parcel of land lying and being in Bluffton Township, Beaufort County, South Carolina, and being more particularly described on Exhibit A, attached hereto and made a part hereof by this reference, together with all improvements now located thereon, including all electrical, mechanical, plumbing and other systems and all fixtures located therein, as well as plants, trees, and shrubbery thereon (collectively, the "Property"). This conveyance is made subject to easements, encumbrances (but not liens), covenants, conditions and restrictions of record and to all matters that would be disclosed by a current and accurate survey and inspection of the Property (collectively, the "Permitted Exceptions").

TO HAVE AND TO HOLD the Property, together with any and all of the rights, members and appurtenances thereof, to the same being, belonging or in anywise appertaining to, the only proper use, benefit and behest of the Grantee and the heirs, legal representatives, successors and assigns of Grantee forever IN FEE SIMPLE.

THE PROPERTY herein conveyed is conveyed in an "AS-IS," "WHERE-IS" condition, without any representations or warranties by Grantor, either express or implied, other than the warranty of title contained herein.

GRANTOR, subject to the Permitted Exceptions, will warrant and forever defend the right and title to the Property unto Grantee and the heirs, legal representatives, successors and assigns of Grantee, against the claims of all persons and entities claiming by, through or under Grantor, but not further or otherwise.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed, sealed and delivered as of the day of first above written.

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My Commission Expires:

Janet Espy
Notary Public
Cobb County, Georgia
My Commission Expires 8-28-16

[Affix Notarial Seal]

EQUITY RESOURCE PARTNERS III, LLC, a Georgia limited liability company

By: Tall Pine Properties, LLC, a Georgia limited liability company, Manager

By: _____ (SEAL)
John H. Irby, Managing Member

STATE OF GEORGIA)
) ACKNOWLEDGMENT
COUNTY OF COBB)

I, the undersigned Notary Public for the State of Georgia do hereby certify that the within GRANTOR, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this 28th day of May, 2013

Notary Public for: Georgia
My Commission Expires:_____

Janet Espy
Notary Public
Cobb County, Georgia
My Commission Expires 8-28-16

Grantee Address:
Beaufort County
Post Office Box 1228
Beaufort, South Carolina 29901

89611.1 091245-000013

EXHIBIT "A"

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 as follows:

Parcel A1

Starting at the Northeastern intersection of the right of way of Hayfield Road and Pinckney Colony road thence travelling along the right of way approximately 605' northward to a point being the POINT OF BEGINNING of tract A1; thence
N77°58'40"W, a distance of 42.20 feet; thence N06°39'10"E, a distance of 68.86 feet; thence N08°09'53"W, a distance of 63.75 feet; thence N12°20'12"E, a distance of 117.75 feet; thence N07°00'34"E, a distance of 86.34 feet; thence N06°41'15"W, a distance of 115.39 feet; thence N10°17'18"W, a distance of 121.80 feet; thence N10°19'57"W, a distance of 97.84 feet; thence N13°16'27"W, a distance of 85.38 feet; thence N11°45'28"W, a distance of 105.88 feet; thence N17°51'58"W, a distance of 77.78 feet; thence N20°19'25"W, a distance of 108.44 feet; thence N22°52'40"W, a distance of 93.07 feet; thence N22°10'51"W, a distance of 77.43 feet; thence N19°22'21"W, a distance of 50.66 feet; thence N36°58'38"W, a distance of 59.20 feet; thence N20°03'20"W, a distance of 68.51 feet; thence N19°04'46"W, a distance of 78.61 feet; thence N25°49'18"W, a distance of 76.48 feet; thence N26°50'07"W, a distance of 69.02 feet; thence N34°39'45"W, a distance of 76.23 feet; thence N36°01'45"W, a distance of 87.13 feet; thence N26°00'30"W, a distance of 83.43 feet; thence N08°48'16"W, a distance of 67.25 feet; thence N27°07'24"W, a distance of 54.99 feet; thence N14°28'59"W, a distance of 95.05 feet; thence N24°59'45"W, a distance of 69.04 feet; thence N39°59'25"W, a distance of 26.64 feet; thence N19°14'19"W, a distance of 92.22 feet; thence N00°04'02"W, a distance of 72.98 feet; thence N04°56'13"E, a distance of 75.75 feet; thence N27°38'27"E, a distance of 98.89 feet; thence N05°32'27"E, a distance of 81.21 feet; thence N16°02'08"E, a distance of 21.55 feet; thence N20°42'34"E, a distance of 66.55 feet; thence N18°05'47"E, a distance of 55.19 feet; thence N39°51'13"E, a distance of 32.10 feet; thence N36°49'05"W, a distance of 45.04 feet; thence N06°10'44"W, a distance of 29.06 feet; thence N45°11'38"E, a distance of 50.10 feet; thence N16°01'42"W, a distance of 28.52 feet; thence S67°46'35"W, a distance of 48.61 feet; thence N07°19'18"W, a distance of 704.48 feet; thence S82°40'42"W, a distance of 338.59 feet; thence N19°38'12"E, a distance of 53.28 feet; thence N23°51'59"E, a distance of 164.08 feet; thence N30°30'51"E, a distance of 197.70 feet; thence N47°12'39"E, a distance of 84.05 feet; thence N33°52'14"E, a distance of 94.12 feet; thence N76°59'12"E, a distance of 74.45 feet; thence N17°29'52"E, a distance of 90.13 feet; thence N58°18'51"E, a distance of 61.46 feet; thence N88°07'13"E, a distance of 55.93 feet; thence S52°04'47"W, a distance of 32.70 feet; thence S59°40'16"E, a distance of 93.20 feet; thence S87°54'20"E, a distance of 35.92 feet; thence S26°43'42"E, a distance of 75.86 feet; thence S61°47'35"E, a distance of 114.26 feet; thence S29°19'02"E, a distance of 79.05 feet; thence S12°02'40"E, a distance of 54.06 feet; thence

EXHIBIT "A"

Legal Description (CONTINUED)

N53°34'55"E, a distance of 12.48 feet; thence N10°46'02"W, a distance of 49.83 feet; thence N19°27'16"W, a distance of 111.16 feet; thence N27°12'06"W, a distance of 122.12 feet; thence N12°27'00"W, a distance of 83.77 feet; thence N30°03'34"E, a distance of 82.12 feet; thence N33°06'52"E, a distance of 121.69 feet; thence N36°55'40"E, a distance of 108.56 feet; thence N60°35'28"E, a distance of 188.61 feet; thence N70°05'45"E, a distance of 129.96 feet; thence N74°31'28"E, a distance of 159.97 feet; thence S60°12'02"E, a distance of 61.53 feet; thence S56°16'50"E, a distance of 116.40 feet; thence S77°55'04"E, a distance of 78.41 feet; thence N80°48'14"E, a distance of 86.83 feet; thence S62°18'56"E, a distance of 124.83 feet; thence S86°22'54"E, a distance of 176.72 feet; thence S71°57'17"E, a distance of 54.86 feet; thence S33°51'02"E, a distance of 197.46 feet; thence S51°01'01"E, a distance of 152.73 feet; thence S74°36'21"E, a distance of 89.35 feet; thence S69°24'07"E, a distance of 156.45 feet; thence N85°27'08"E, a distance of 107.10 feet; thence S72°14'31"E, a distance of 118.29 feet; thence S70°05'56"E, a distance of 114.59 feet; thence S63°15'10"E, a distance of 113.19 feet; thence S38°39'50"E, a distance of 133.64 feet; thence S85°56'38"E, a distance of 253.42 feet; thence S65°22'40"E, a distance of 198.88 feet; thence S61°03'28"E, a distance of 110.88 feet; thence S55°18'45"E, a distance of 108.16 feet; thence S53°27'09"E, a distance of 131.28 feet; thence S57°53'22"E, a distance of 124.35 feet; thence S54°38'50"E, a distance of 76.84 feet; thence S33°00'08"E, a distance of 78.40 feet; thence S28°05'29"E, a distance of 107.99 feet; thence S17°21'42"E, a distance of 84.88 feet; thence S35°52'03"E, a distance of 113.78 feet; thence S21°43'16"E, a distance of 129.76 feet; thence S11°28'01"E, a distance of 111.48 feet; thence S04°01'19"W, a distance of 100.77 feet; thence S04°51'47"W, a distance of 124.65 feet; thence S05°40'24"W, a distance of 109.74 feet; thence S09°48'59"W, a distance of 98.84 feet; thence S22°04'49"W, a distance of 98.80 feet; thence S17°37'06"W, a distance of 172.68 feet; thence S22°40'56"W, a distance of 126.75 feet; thence S13°23'05"W, a distance of 135.05 feet; thence S14°26'30"W, a distance of 70.83 feet; thence S40°44'16"W, a distance of 88.20 feet; thence S75°35'26"W, a distance of 93.00 feet; thence N51°03'55"W, a distance of 51.27 feet; thence N16°27'51"W, a distance of 91.07 feet; thence N04°28'44"E, a distance of 112.31 feet; thence N30°22'46"W, a distance of 41.30 feet; thence S42°40'40"W, a distance of 14.39 feet; thence S15°53'24"E, a distance of 39.92 feet; thence S34°10'42"W, a distance of 82.71 feet; thence S21°41'05"W, a distance of 112.99 feet; thence S36°37'28"W, a distance of 69.72 feet; thence S88°47'37"W, a distance of 104.17 feet; thence S68°25'22"W, a distance of 92.72 feet; thence S60°59'29"W, a distance of 91.52 feet; thence S63°07'25"W, a distance of 126.13 feet; thence S59°21'27"W, a distance of 197.21 feet; thence S70°05'22"W, a distance of 119.32 feet; thence S68°54'48"W, a distance of 147.76 feet; thence S67°19'23"W, a distance of 118.60 feet; thence S79°14'25"W, a distance of 73.26 feet; thence S35°49'30"W, a distance of 31.85 feet; thence S66°37'28"W, a distance of 92.04 feet; thence S60°57'05"W, a distance of 126.99 feet; thence S76°29'14"W, a distance of 137.51 feet; thence S59°15'41"W, a distance of 151.12 feet; thence N12°02'32"W, a distance of 32.50 feet; thence N09°17'09"E, a distance of 41.33 feet; thence S69°25'33"W, a distance of 16.39 feet; thence S31°52'14"W, a distance of 48.98 feet; thence S34°12'01"W, a distance of 89.46 feet; thence S60°24'11"W, a distance of 98.30 feet; thence S74°57'02"W, a distance of 50.99 feet; thence N70°54'58"W, a distance of 35.01 feet; thence N45°06'07"W, a distance of 40.27 feet; thence S15°54'35"E, a distance of 56.09 feet; thence S40°36'32"W, a distance of 114.79 feet; thence S47°11'18"W, a distance of 104.31 feet; thence S37°09'51"W, a distance of 110.11 feet; thence S30°37'25"W, a distance of 105.28 feet; thence.

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EXHIBIT "A"

Legal Description (CONTINUED)

S17°44'38"W, a distance of 130.52 feet; thence S43°55'51"W, a distance of 102.57 feet; thence S05°16'28"E, a distance of 84.44 feet; thence S07°32'28"W, a distance of 114.66 feet; thence S25°05'02"W, a distance of 86.05 feet; thence S49°37'53"W, a distance of 57.56 feet; thence N72°26'33"W, a distance of 66.04 feet; thence N42°08'27"W, a distance of 48.30 feet; thence S69°33'08"W, a distance of 111.04 feet; thence S10°55'42"E, a distance of 68.07 feet; thence S19°49'52"W, a distance of 35.07 feet; thence S72°55'02"W, a distance of 56.20 feet; thence N82°20'46"W, a distance of 43.36 feet; thence S47°28'31"W, a distance of 3.14 feet; thence N73°56'40"W, a distance of 143.08 feet to the POINT OF BEGINNING.

Containing 9,607,476 square feet or 220.56 acres, more or less.

Parcel A2

Commencing at the Northeastern intersection of the right of way of Hayfield Road and Pinckney Colony road thence traveling along the right of way approximately 605' northward to a point thence N77°56'40"W, a distance of 42.20 feet; thence N06°39'10"E, a distance of 68.86 feet; thence N08°09'53"W, a distance of 63.75 feet; thence N12°20'12"E, a distance of 117.75 feet; thence N07°08'34"E, a distance of 88.34 feet; thence N04°47'16"W, a distance of 115.39 feet; thence N10°17'18"W, a distance of 121.39 feet; thence N10°19'37"W, a distance of 97.84 feet; thence N18°16'27"W, a distance of 85.38 feet; thence N41°45'28"W, a distance of 105.28 feet; thence N17°51'58"W, a distance of 72.82 feet; thence N20°12'23"W, a distance of 108.44 feet; thence N23°52'40"W, a distance of 95.92 feet; thence N22°10'51"W, a distance of 77.43 feet; thence N14°22'21"W, a distance of 50.96 feet; thence N36°56'09"W, a distance of 59.20 feet; thence N20°03'20"W, a distance of 68.51 feet; thence N19°04'16"W, a distance of 78.61 feet; thence N25°49'48"W, a distance of 76.48 feet; thence N26°50'07"W, a distance of 69.02 feet; thence N34°59'45"W, a distance of 76.23 feet; thence N36°01'45"W, a distance of 82.13 feet; thence N26°00'30"W, a distance of 83.43 feet; thence N08°48'10"W, a distance of 67.25 feet; thence N27°07'24"W, a distance of 54.99 feet; thence N14°28'58"W, a distance of 95.05 feet; thence N24°59'45"W, a distance of 69.04 feet; thence N39°59'25"W, a distance of 26.64 feet; thence N18°14'19"W, a distance of 98.22 feet; thence N00°04'02"W, a distance of 72.98 feet; thence N04°56'13"E, a distance of 75.75 feet; thence N27°38'27"E, a distance of 95.89 feet; thence N05°32'27"E, a distance of 81.11 feet; thence N16°03'08"E, a distance of 21.55 feet; thence N20°42'34"E, a distance of 66.55 feet; thence N18°05'42"E, a distance of 55.19 feet; thence N39°51'13"E, a distance of 52.10 feet; thence N36°49'05"W, a distance of 45.04 feet; thence N06°10'44"W, a distance of 29.05 feet; thence N45°11'38"E, a distance of 50.10 feet; thence N16°01'42"W, a distance of 38.52 feet; thence S67°40'35"W, a distance of 48.61 feet; being the POINT OF BEGINNING of tract A2; thence
S33°06'51"W, a distance of 49.35 feet; thence
S74°08'22"W, a distance of 30.80 feet; thence
S34°32'48"W, a distance of 36.93 feet; thence
N75°01'31"W, a distance of 73.45 feet; thence
S63°27'37"W, a distance of 18.03 feet; thence
N64°33'02"W, a distance of 39.19 feet; thence
N30°54'59"W, a distance of 72.79 feet; thence

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EXHIBIT "A"

Legal Description (CONTINUED)

N21°38'08"W, a distance of 64.92 feet; thence
N14°48'29"W, a distance of 95.26 feet; thence
N11°51'43"W, a distance of 92.49 feet; thence
N18°04'29"W, a distance of 227.02 feet; thence
N82°40'42"E, a distance of 316.00 feet; thence
S07°19'18"E, a distance of 506.32 feet to the POINT OF BEGINNING.

Containing 148,475 square feet or 3.41 acres, more or less.

Parcel A3

Commencing at the Northeastern Intersection of the right of way of Mayfield Road and Pinckney Colony road thence traveling along the right of way approximately 605 northward to a point thence N77°56'46"W, a distance of 42.20 feet; thence N06°35'10"E, a distance of 68.86 feet; thence N08°09'23"W, a distance of 263.15 feet; thence S82°20'12"E, a distance of 117.25 feet; thence N07°56'34"E, a distance of 88.34 feet; thence N04°51'16"W, a distance of 115.39 feet; thence N10°17'38"W, a distance of 121.30 feet; thence N10°12'28"W, a distance of 97.66 feet; thence N18°16'27"W, a distance of 86.68 feet; thence N11°16'28"W, a distance of 105.28 feet; thence N17°51'55"W, a distance of 77.72 feet; thence N20°12'22"W, a distance of 108.48 feet; thence N22°52'40"W, a distance of 93.07 feet; thence N32°10'54"W, a distance of 77.43 feet; thence N19°22'21"W, a distance of 50.66 feet; thence N36°58'09"W, a distance of 59.20 feet; thence N20°03'29"W, a distance of 68.51 feet; thence N19°04'16"W, a distance of 78.61 feet; thence N25°49'18"W, a distance of 76.48 feet; thence N26°50'07"W, a distance of 69.02 feet; thence N34°39'45"W, a distance of 76.23 feet; thence N36°01'45"W, a distance of 87.13 feet; thence N25°60'30"W, a distance of 83.43 feet; thence N08°48'40"W, a distance of 67.25 feet; thence N27°07'24"W, a distance of 56.99 feet; thence N14°28'59"W, a distance of 96.05 feet; thence N24°39'45"W, a distance of 69.04 feet; thence N39°59'25"W, a distance of 26.64 feet; thence N19°14'05"W, a distance of 92.22 feet; thence N00°04'02"W, a distance of 72.98 feet; thence N04°56'12"E, a distance of 75.75 feet; thence N27°38'27"E, a distance of 96.89 feet; thence N05°32'27"E, a distance of 84.11 feet; thence N16°03'08"E, a distance of 21.55 feet; thence N20°42'54"E, a distance of 66.55 feet; thence N18°05'47"E, a distance of 55.19 feet; thence N39°51'13"E, a distance of 52.10 feet; thence N36°49'05"W, a distance of 45.04 feet; thence N05°19'42"W, a distance of 29.06 feet; thence N45°11'38"E, a distance of 30.10 feet; thence N16°01'42"W, a distance of 28.62 feet; thence S87°41'05"W, a distance of 42.61 feet; thence N07°19'18"W, a distance of 506.32'
being the POINT OF BEGINNING of Parcel A3; thence
S82°40'42"W, a distance of 316.00 feet; thence
N16°21'17"W, a distance of 76.11 feet; thence
N18°29'54"W, a distance of 98.65 feet; thence
N19°38'12"E, a distance of 89.37 feet; thence
N82°40'42"E, a distance of 333.59 feet; thence
S07°19'18"E, a distance of 198.16 feet to the POINT OF BEGINNING.

Containing 65,776 square feet or 1.51 acres, more or less.

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EXHIBIT "A"

Legal Description (CONTINUED)

Parcel B

Commencing at the Northeastern intersection of the right-of-way of Hayfield Road and Pinckney Colony road thence traveling along the right of way approximately 605' northward to a point thence N27°56'39"W, a distance of 42.20 feet; thence N06°39'10"E, a distance of 68.86 feet; thence N08°09'58"W, a distance of 63.85 feet; thence N12°20'12"E, a distance of 115.75 feet; thence N07°00'38"E, a distance of 88.34 feet; thence N64°41'16"W, a distance of 115.39 feet; thence N10°17'18"W, a distance of 121.30 feet; thence N30°19'37"W, a distance of 92.84 feet; thence N13°36'25"W, a distance of 85.88 feet; thence N81°45'28"W, a distance of 105.28 feet; thence N17°51'38"W, a distance of 77.72 feet; thence N29°12'23"W, a distance of 108.44 feet; thence N22°52'40"W, a distance of 93.07 feet; thence N22°10'59"W, a distance of 77.43 feet; thence N18°22'24"W, a distance of 50.66 feet; thence N35°58'06"W, a distance of 59.20 feet; thence N20°08'20"W, a distance of 68.51 feet; thence N19°04'16"W, a distance of 78.61 feet; thence N25°49'18"W, a distance of 76.48 feet; thence N26°50'07"W, a distance of 69.02 feet; thence N34°39'45"W, a distance of 76.23 feet; thence N36°01'45"W, a distance of 87.13 feet; thence N26°00'30"W, a distance of 83.43 feet; thence N08°48'10"W, a distance of 67.25 feet; thence N27°07'24"W, a distance of 54.99 feet; thence N14°28'59"W, a distance of 95.05 feet; thence N24°59'45"W, a distance of 69.04 feet; thence N39°59'25"W, a distance of 26.64 feet; thence N19°14'19"W, a distance of 92.22 feet; thence N06°08'02"W, a distance of 72.98 feet; thence N04°56'13"E, a distance of 75.75 feet; thence N27°38'27"E, a distance of 96.89 feet; thence N05°32'22"E, a distance of 84.11 feet; thence N14°03'08"E, a distance of 21.56 feet; thence N20°42'34"E, a distance of 66.55 feet; thence N16°05'47"E, a distance of 55.19 feet; thence N39°51'43"E, a distance of 52.10 feet; thence N88°49'05"W, a distance of 45.04 feet; thence N06°10'44"W, a distance of 29.04 feet; thence N05°51'38"E, a distance of 50.10 feet; thence N16°01'48"W, a distance of 38.52 feet; thence S87°46'35"W, a distance of 48.61 feet; thence N07°19'48"W, a distance of 70.43 feet; thence S82°40'42"W, a distance of 333.59 feet; thence N19°38'12"E, a distance of 53.28 feet; thence N23°51'54"E, a distance of 64.08 feet; thence N30°30'51"E, a distance of 107.70 feet; to a point thence N37°05'38"W, a distance of 213.81'

being the POINT OF BEGINNING of tract B; thence

S51°07'46"W, a distance of 33.05 feet; thence
N42°27'43"W, a distance of 52.20 feet; thence
N14°14'19"W, a distance of 124.39 feet; thence
N09°58'03"W, a distance of 167.28 feet; thence
N13°37'12"W, a distance of 155.27 feet; thence
N07°00'03"W, a distance of 127.02 feet; thence
N46°27'52"E, a distance of 85.86 feet; thence
N79°00'38"E, a distance of 120.61 feet; thence
S70°30'41"E, a distance of 70.17 feet; thence
S50°25'17"E, a distance of 110.05 feet; thence
N63°09'05"E, a distance of 44.13 feet; thence
S08°56'05"E, a distance of 77.52 feet; thence

EXHIBIT "A"

Legal Description (CONTINUED)

S20°02'46"W, a distance of 85.26 feet; thence
S24°33'50"W, a distance of 68.58 feet; thence
S20°47'29"W, a distance of 141.27 feet; thence
S12°23'00"W, a distance of 115.29 feet; thence
S40°25'34"W, a distance of 94.86 feet; thence
S22°26'04"W, a distance of 58.32 feet to the POINT OF BEGINNING.

Containing 161,294 square feet or 3.70 acres, more or less.

This being the same property conveyed to the Grantor by deed from Pinckney Point Farms, Inc., dated January 25, 2005, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 2095 at page 1636.

This Deed was prepared by J. Simon Fraser, Esquire, Fraser & Allen, LLC, P.O. Box 5098, Hilton Head Island, South Carolina 29938.

R600 014 000 0014 0000

LEGAL DESCRIPTION CONTINUED ON FOLLOWING PAGE

EXHIBIT "A"

Legal Description (CONTINUED)

TOGETHER WITH:

Parcel 1:

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.

Parcel 2:

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.

Parcel 3:

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.

TOGETHER WITH all rights of the Grantor in and to that certain twenty foot (20') wide easement for access, ingress and egress, in favor of Grantor, its successors and assigns in Paragraph 3 entitled Right of Way in that certain First Amendment to Settlement Agreement in that certain action entitled Beaufort County v. Agnes Pinckney, et. al, being case No. 05-CP-07-2337 in the Court of Common Pleas, County of Beaufort, State of South Carolina and in any deeds, grants of right of way, easement agreements, or any other document thereto reflecting Grantor's right to cross over, through or under said twenty foot (20') wide easement.

Said easement being also that easement being more particularly described and shown in that certain Access Easement Agreement by and between Road, LLC, a South Carolina limited liability company and Pinckney Point, LLC, a South Carolina limited liability company dated the 29 day of December, 2011.

80392.2 081165-000009
EQ085:0EQ48:2405317:10:ATLANTA

600-14-2K + 2G
2F
2J

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF TRUE CONSIDERATION
COUNTY OF BEAUFORT)

PERSONALLY appeared before me Thomas A. Bendle, Jr. who, being duly sworn, deposes and says that the following is a true and correct statement concerning the consideration for the conveyance set out hereinbelow:

GRANTOR: Equity Resource Partners, III, LLC

GRANTEE: BEAUFORT COUNTY

DATE OF DEED: May 28, 2013

Recorded in Records Book ___ at Page ___

CONSIDERATION: $6,950,000.00

TMP: 600-14-1A; 600-14-2K, 600-14-2F; 600-14-2J; 600-14-2G

STATE DOCUMENT TAX EXEMPTION: This transfer is exempt from the Documentary Tax Stamp fees required by the State of South Carolina in accordance with Section 12-24-40, subparagraph 2.

T. Bendle Jr

SWORN to before me this
28th day of May, 2013
Brandene A Giles
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 3/03/2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 2013-CP-07-1341
ROAD, LLC and PINCKNEY POINT, LLC, Plaintiffs,	)	
VS.	)	
	)	**VOUNTARY DISMISSAL**
BEAUFORT COUNTY, a political sub-division of the State of South Carolina, and EQUITY RESOURCE PARTNERS III, LLC, Defendants.	)	

NOTICE is hereby given to the Court that the Plaintiffs, by and through their undersigned counsel, hereby voluntarily dismiss without prejudice the Complaint against the Defendant Equity Resource Partners, III, LLC.

PRATT-THOMAS WALKER, P.A.

By: G. Trenholm Walker

G. Trenholm Walker (SC Bar #5777)
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: 843-727-2200
gtw@p-tw.com

Attorneys for Plaintiffs

July 31, 2013

Charleston, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2013-CP-07-01341

ROAD, LLC AND PINCKNEY POINT, LLC,	)	
Plaintiffs,	)	
vs.	)	BEAUFORT COUNTY'S MEMORANDUM IN SUPPORT OF IT'S MOTION TO DISMISS
BEAUFORT COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF SOUTH CAROLINA, AND EQUITY SOURCE PARTNERS, III, LLC,	)	
Defendants.	)	

TO: GEORGE TRENHOLM WALKER, ESQ., ATTORNEY FOR PLAINTIFFS:

The Defendant, Beaufort County, by and through their undersigned counsel, respectfully submits this Memorandum in Support of Defendant's Motion to Dismiss, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. For the reasons set forth below, the Defendant requests that the matters set forth in Plaintiff's Complaint be dismissed.

NATURE OF THE CASE

This is an action arising from the County purchase of approximately 229 acres of land, commonly referred to as "Pinckney Point", along the confluence of the Okatie and Colleton Rivers in Bluffton, South Carolina. Access to and from said property is over and across a 20' wide dirt road right of way that is owned by the Plaintiff, Road, LLC. The County purchased the property in May of 2013 from Equity Resource Partners, III, LLC. In order to ensure access, and prior to the

closing, a title examination was performed revealing that an access easement for ingress and egress existed upon the property and that said easement was for the benefit of the Grantee, its successors and assigns. Relying upon the language in the easement, the County purchased the property and has taken the position that Beaufort County has unfettered access across the easement area to access the 229 acres. Road, LLC, relying upon language in a 2010 settlement agreement to which Beaufort County and Pinckney Point, LLC were parties, argues that the road has, by stipulation and an Order of the Court, received a designation as private. They further argue that the easement only provides access to "Beaufort County", meaning only its agents, employees, etc., and that the road is not accessible to the general public. Road, LLC has sued Beaufort County for the purposes of seeking a designation that the road is private, and has requested an injunction to prevent the general public from using the easement to access the 220 acres.

STATEMENT OF THE FACTS

On or about March 29, 2006, Pinckney Point, LLC acquired a 229 acre tract of land at the confluence of the Colleton and Okatie Rivers. The 229 acre parcel was commonly referred to as "Pinckney Point". Upon information and belief, the Plaintiff, Pinckney Point, LLC purchased the property with the intent to create a private, residential development.

In the following year, and after acquiring the 229 acre property, Pinckney Point, LLC filed a lawsuit against Beaufort County and Zoning Board of Appeals for Beaufort County over a request for a variance that would rezone the "rural" designated property as "residential" so that the residential development could

occur. As part of the settlement agreement, Pinckney Point, LLC agreed to improve and relocate the 20' existing right of way that provided ingress and egress to and from the 229 acres. In a separate action filed by Beaufort County in 2005, there were issues as to whose responsibility it was to maintain the right of way and the County sought a designation of such against the legal owners of the land in which the road bed actually existed or was adjacent to. In 2010, a Settlement Agreement was reached in each of the two cases. The parties agreed that Pinckney Point, LLC would get its variance to proceed with the development, that Agnus Pinckney and Dorothy Gnann (owners/adjacent land owners) would sell their interest in the right of way to Road, LLC, and that Road, LLC would provide an access easement for the benefit of Pinckney Point, LLC. Road, LLC paid Agnus Pinckney $1.3 million for the 20' wide, .8 acre right of way and received a limited warranty deed. Dorothy Gnann was never paid by Road, LLC for any interest that Ms. Gnann may have had in the right of way, or for any property that Road, LLC intended to gain for expansion and improvement purposes. The parties further agreed that the road shall be designated as "private" and that an Order to that effect be entered in to the court file. Said Order was filed on May 6, 2011.

Prior to the commencement of any work on the 20' right of way or towards efforts to develop the 229 acres, a foreclosure action was filed against Pinckney Point, LLC by its mortgagee, Bank of America (Civil Action No. 2010-CP-07-470). The foreclosure was cancelled when the property was transferred from Pinckney Point, LLC to Equity Resource Partners, III, LLC by a deed in lieu of foreclosure dated December 20, 2011 and recorded on January 6, 2012.

Subsequent to the transfer of the 229 acres by deed in lieu, and upon information and belief, there were negotiations taking place between Equity Resource Group and Pinckney Point, LLC for the purpose of Pinckney Point, LLC reacquiring the property. In the meantime, there had been some interest expressed by the general public to Beaufort County and The Open Land Trust about preserving the 229 acres through the Rural and Critical Lands Program, rather than allowing for further development in the area. Beaufort County and/or agents on their behalf, contacted Equity Resources, III, LLC who, in turn, expressed an interest in selling to Beaufort County.

On April 24, 2013 Beaufort County entered in to a purchase agreement with Equity Resources, III, LLC for the purchase of the 229 acre parcel. The purpose of said purchase was to preserve the 229 acres for conservation, to further the efforts of the Rural and Critical Program by diminishing development in the area, and to further preserve water quality in the Colleton and Okatie Rivers. It is hoped that there will be future funds available to have the 229 acres open to the public to use as a passive park with walking trails and a few picnic tables.

As previously mentioned, the property is accessed by vehicular traffic along a 20' right of way owned by Road, LLC; however, an access easement exists along the property that purports to provide access for ingress and egress to and from the said 229 acre parcel. When word of the sale to the County was reached by the Plaintiff, Pinckney Point, LLC, attorneys for Beaufort County were contacted by Counsel for Road, LLC so as to inform them that the right of way was private and that the general public would not be allowed to use the right of

way to access the 229 acre parcel. After researching the issue and ordering a title examination, Beaufort County attorneys, as well as attorneys from Title Insurance providers, concluded that the Easement Agreement created a non-exclusive, perpetual, access easement for the benefit of any and all successors in title to the original grantee, Pinckney Point, LLC. Relying upon the language in the easement, Beaufort County moved forward with the transaction and the closing for the 229 acres took place on May 28, 2013. As a direct result of the County expressing their intention to close with Equity Resources, III, LLC, Pinckney Point, LLC and Road, LLC filed this action.

ARGUMENT

The current actions filed against the Defendant, Beaufort County, should be dismissed on the various grounds as follows:

As to Plaintiff's First Cause of Action

The Plaintiff alleges that that they are entitled to a declaration that the subject 20' right of way is a private road; is unable to be improved without the permission of Road, LLC; is limited to private use for the private persons described in the collective agreements ('the "occupants" of the residential development on Pinckney Point); and that public access is not authorized by any agreement. The Plaintiff's cause of action seems to ignore the fact that a residential development at Pinckney Point never occurred as Pinckney Point, LLC was foreclosed upon and a deed in lieu was given to a successor in interest, Equity Resource, III, LLC, who sold the property to Beaufort County through the County's Rural and Critical Lands Program. There are not now, were there ever any "occupants" of any 229 acre development for the Right of Way to serve.

What the Plaintiff's also seem to conveniently ignore is that a non-exclusive, perpetual easement exists upon and over the right of way for access purposes. The Easement Agreement was granted by Road, LLC to Pinckney Point, LLC on December 29, 2011 and was recorded on January 6, 2012 with the Office of the Register of Deeds for Beaufort County in Deed Book 3110 at Page1662. A copy of said Easement is attached hereto as **EXHIBIT A**. The Easement Agreement explicitly states that the easement area is "for purposes of vehicular and pedestrian ingress and egress to and from Grantee's property over Easement Area". Further, the Agreement states that "The rights granted herein shall be for the benefit of Grantee and for the benefit of any and all other occupants of Grantee's Property, and for respective subtenants, licensees, customers, agents, employees, invitees, mortgagees, successors and assigns." Paragraph Eight (8) of the Agreement entitled "Successors and Assigns" further indicates that "This Agreement and the rights granted herein shall run with the land and be appurtenant to Grantee's property, shall run with the title to and burden the Easement Area and Grantor's Property forever, and shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their successors, successors-in-title and assigns".

Regardless of any designation of the road as a private or public right of way, and regardless of whether Beaufort County has a right to make improvements, the plain language in the Easement is clear. The County has access to their 229 acre tract. Upon title passing to the County from Equity Resources, III, LLC, the County acquired the same rights in title and to the easement as its predecessors in title. This includes the right to have any of

Beaufort County's licensees, employees, invitees and such to use the road. Invitees of Beaufort County will eventually include members of the general public, once the tract is available to be used as a passive park. Therefore, the Plaintiff's action to obtain such a contrary designation that the general public is not authorized to use this right of way, whether public or private, should be summarily dismissed.

As to Plaintiff's Second Cause of Action

In their second cause of action, Plaintiffs seek a declaration from this Court that Beaufort County impermissibly used public funds to purchase property for private purposes. More specifically, they allege that vehicular access is limited to private use. The Plaintiff's second cause of action should be dismissed on the grounds that the cause of action fails to state a claim upon which relief can be granted and for the following additional grounds.

The funds expended upon the purchase of the 229 acre tract were from an account created through funds from a bond referendum that the public voted for to conserve properties throughout Beaufort County. The transaction was part of the Beaufort County Rural and Critical Program's effort to preserve green space and reduce development in environmentally sensitive areas. For the reasons previously stated herein, Beaufort County, its licensees, employees, invitees, etc. have access of ingress and egress to and from the 229 acre parcel. The Plaintiffs misstate the purpose of the purchase by stating it was for private purposes and perhaps suggest that it is in violation of S.C. Const. Art. X, §11. However, the County purchased the property with separate Rural & Critical funds that were specifically earmarked for conservation efforts that benefit the citizens

of Beaufort County. The further intent of the County is to have the property preserved for use as a passive public park should future funding for same become available.

The Plaintiff's further allege in their second cause of action that the expenditure was impermissible because "the only vehicular access is limited to private uses, necessarily constitutes the expenditure of public funds for private purposes". Whether there is vehicular access to a particular parcel has no relevance as to whether the purchase of a piece of land is for a private or a public purpose. In this instance, the 229 acres was purchased for the public purpose of conservation, preservation, and for the public to use as a passive park. However, there have been numerous properties purchased through the Beaufort County Rural & Critical Program where there is no public access. A lack of public access does not equate to a lack of public purpose. Many of the properties purchased are to simply protect green spaces, preserve water quality, reduce development opportunities in a particular area, etc, all of which serve a public purpose. This cause of action should be dismissed as the funds expended for this purchase were done so for public purposes. Further, whether the general public has access to the property, whether vehicular or otherwise, has no relevance as to whether there has been a violation of any South Carolina constitutional provision.

As to Plaintiff's Third Cause of Action

In their third cause of action, the Plaintiff seeks a preliminary and permanent injunction enjoining Beaufort County from using the Right of Way for the general public to access the 229 acre parcel. This cause of action should be

dismissed upon the grounds that there is no basis for the request as Beaufort County, along with its licensees, employees, and invitees, acquired the right to access the 229 acre parcel via the right of way owned by Road, LLC through the easement attached hereto as EXHIBIT A. Furthermore, the transaction, or closing thereon, upon the 229 acre parcel has already taken place and there have been no motions filed with this Court requesting a TRO, Injunction, or otherwise, that would prevent the general public from using the right of way. Finally, this request is cumulative in that the Plaintiff's have once again asked for a designation as to whether the right of way is available for public access. For the reasons stated previously herein, the right of way is accessible by the County, its licensee, employees, and invitees, which would include members of the general public.

As to Plaintiff's Fourth Cause of Action

In the Plaintiff's fourth cause of action, the Plaintiff seeks an order requiring specific performance from the Settlement Agreement obligations that includes "prohibiting its [the County's] invitation to the general public to use the Road Parcel and such use by the general public". The Plaintiff's fourth cause of action should be dismissed on the grounds that there has never been any "invitation for the general public to use the road". In fact, there have been measures taken by the County, namely a lease agreement with an individual who resides on the property, to prevent the general public from accessing and being upon the 229 acre parcel. In the future, there may be such an invitation, however; the property will not be available to the public until such time that

funding becomes available to turn the property in to a passive park. Therefore, this matter is not yet ripe for adjudication and, therefore, must be dismissed.

In the future, and should the funds become available, the County can opt to open the tract up as a passive park to the general public. There will be no obligation of specific performance as there were never any contractual obligations that the County had under any agreement to prevent the general public from using the road. The Settlement Agreement, which Beaufort County believes that the Plaintiff refers to and is attached hereto as **Exhibit B**, indicates in Part I, Paragraph Three (3) that the Plaintiff never intends or has ever dedicated the road to Beaufort County. The Settlement Agreement also states 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". Beaufort County maintains that the use and benefit of the right of way includes the general public as an invitee of Beaufort County. While the Parties to the Settlement Agreement, including Beaufort County, may not have contemplated the 229 acre parcel ever being owned by Beaufort County, the Plaintiff's cannot deny access that is granted in the easement that they provided to Pinckney Point, LLC or any successors in title.

As Beaufort County never was contractually obligated to the Plaintiff to prohibit its invitation to the general public to use the right of way, and because an invitation has yet to have ever been given to the said public, this cause of action must be dismissed and the request for an order of specific performance denied.

<u>As to Plaintiff's Fifth Cause of Action</u>

In their fifth cause of action, the Plaintiffs seek an order of civil contempt against Beaufort County, "should the transaction close and the Road Parcel be used by the general public." The closing between Equity Resources, III, LLC and Beaufort County occurred on May 28, 2013. There has been no permissible entry upon the 229 acres purchased by the County to the general public. The request is not ripe.

In addition to the request not being ripe, the Plaintiff fails to recognize that there is no order that exists that Beaufort County is in violation of regarding public access. There is an Order dated April 25, 2011 from Judge Marvin H. Dukes, III (attached hereto as **EXHIBIT C**) that indicates that "the unpaved portion of Pinckney Point Road is a private road", however, this, nor any other court order, states that the general public is denied access, or that the County is required to take action to prevent access by the general public. Since there has been no violation of any order, there is no civil contempt. The Plaintiff's fifth cause of action must be dismissed and their request for an order of civil contempt denied.

As to Plaintiff's Sixth Cause of Action

In their sixth cause of action, the Plaintiff seeks a declaratory adjudication that the Defendant is barred under the doctrines of equitable and judicial estoppel from allowing the public to use the right of way, the sole vehicular access to and from the Pinckney Point Parcel. This cause of action is cumulative and should therefore be dismissed. Further, the Plaintiff mistakenly equates a private road designation with the general public's inability to use same. Even if the road is private does not necessarily prevent the general public from

using the right of way. This is especially true in instances whereby there is an easement upon the private road that grants access to a public body.

The Agreements referenced in the Plaintiff's sixth cause of action, and attached hereto as Exhibits, clearly contemplated that the users of the road would be those "occupants of the Pinckney Point Development". There are no such occupants as the development never occurred and Pinckney Point, LLC lost the property. As stated before herein, Beaufort County has never obliged itself to prevent the general public from using the Road. When Beaufort County acquired the 229 acre tract, it also acquired access rights within the right of way. Those rights, as set forth in the Easement Agreement, should control.

CONCLUSION

The real issue in this action is whether Beaufort County, as well as the general public, has acquired access to the 229 acre parcel through the easement that runs with the property. The easement has never been challenged by Road, LLC because they always contemplated that Pinckney Point, LLC would develop the property as a 75 unit development. Pinckney Point, LLC losing the property to foreclosure was never in the plan. Beaufort County acquiring the property for a public purpose was never a part of the landscape that either Road, LLC or Pinckney Point, LLC had envisioned. Road, LLC now argues that the plain rights given in the easement agreement to Pinckney Point, LLC don't translate in the same fashion as they once did as it is now County property. Arguments have been made that the burden on the easement will be greater if the 229 acres is used by the general public as opposed to as a development with 75 homes. Beaufort County does not see how that could be the case as the intended use of

the property is only that it may eventually be designated as a passive park. The easement language speaks for itself.

For all of the foregoing reasons, this action should be dismissed as to the Defendant, Beaufort County.

ATTORNEYS FOR BEAUFORT COUNTY
Thomas A. Bendle, Jr.
Robert W. Achurch
Howell, Gibson & Hughes, P.A.
PO Box 40
Beaufort, SC 29901
(843)522-2400

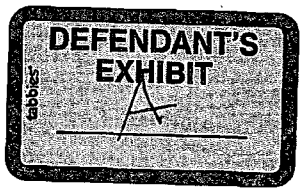
January 24, 2014

Beaufort, South Carolina

BEAUFORT COUNTY SC- ROD
BK 03110 PGS 1662-1679
DATE: 01/06/2012 01:15:17 PM
INST # 2012000725 RCPT# 665159

This instrument should be returned to:

Melissa S. Turra, Esq.
HOLLAND & KNIGHT LLP
50 N. Laura Street, Suite 3900
Jacksonville, Florida 32202



ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT ("Agreement") is hereby made and executed this 29 day of December, 2011, by and between **ROAD, LLC**, a South Carolina limited liability company, whose address is 40 West 57th Street, 20th Floor, New York, New York 10019 ("Grantor"), and **PINCKNEY POINT, LLC**, a South Carolina limited liability company, whose address is 4315 Pablo Oaks Court, Suite 1, Jacksonville, Florida 32224 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the record owner of fee simple title to that certain parcel of real property located in Beaufort County, South Carolina as more particularly described on Exhibit "A" attached hereto (the "Grantor's Property"); and

WHEREAS, Grantee owns that certain parcel of real property located in Beaufort County, South Carolina as more particularly described on Exhibit "B" attached hereto (the "Grantee's Property"); and

WHEREAS, Grantee desires to have easement rights over certain portions of Grantor's Property as set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant, stipulate and agree as follows:

1. Recitals. The recitals set forth above are true and correct, and are incorporated herein by reference.

2. Grant of Easement. Grantor has granted, bargained, sold and released and by these presents does hereby grant, bargain, sell and release unto to Grantee, its successors and assigns, for the benefit of Grantee's Property, a non-exclusive perpetual easement (a) over, upon and across a portion of the Grantor's Property constituting a 20' wide easement in the area depicted as the Private Dirt Road (excluding Hayfield Road) on Exhibit "C", extending to the north of Pinckney Colony Road, which area is hereafter referred to as the "Easement Area" for purposes of vehicular and pedestrian ingress and egress to and from Grantee's Property over Easement Area; and (b) over, upon and across the Grantor's Property for the purposes of maintenance and use (but not expansion) of currently existing utilities, if any, within the Grantor's Property which shall run with the land and bind the interest of the Grantor, its successors and assigns. The rights granted herein shall be for the benefit of Grantee and for the benefit of any and all other occupants of Grantee's Property, and for its respective subtenants, licensees, customers, agents, employees, invitees, mortgagees, successors and assigns.

3. Limitations on Easement. This easement is limited to access only. Neither party shall install a fence or other barrier which could prevent or obstruct the passage of pedestrian or vehicular travel for the purposes herein. Grantee is not permitted to make any improvements or perform any work on and to the Easement Area without prior approval from Grantor.

4. No Dedication. This Agreement is not intended to, and should not be construed to, dedicate the Easement Area to the general public.

5. Indemnity. Each party (the "Indemnifying Party") agrees to defend, indemnify and hold harmless the other party, together with its agents, representatives and employees (the "Indemnified Parties"), from and against any and all claims, losses, costs, expenses, damages, and liabilities, including reasonable attorneys', paralegals' and consultants' fees and costs before trial and at all trial and appellate levels, that the Indemnified Parties may suffer or incur as a result of the acts or omissions of the Indemnifying Party or its contractors, sub-contractors, agents, representatives, employees, licensees or invitees on or about the Easement Area, or the exercise by the Indemnifying Party or its contractors, sub-contractors, agents, representatives, employees, licensees or invitees of any of the rights and privileges granted or reserved by this Agreement.

6. Reservation of Grantor's Rights. Grantor hereby reserves the right to utilize the Easement Area for any and all purposes that are not inconsistent with and do not interfere with the Grantee's use of the Easement Area.

7. No Obligation to Pay Rent, Occupancy Charges or Taxes. Grantee shall not be obligated to pay any rent, taxes, operating expenses or other occupancy or use charge for the rights created by this Agreement.

8. Successors and Assigns. This Agreement and the rights granted herein shall run with the title and be appurtenant to Grantee's Property, shall run with the title to and burden the Easement Area and Grantor's Property forever, and shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their successors, successors-in-title and assigns.

9. Remedies. In the event either party fails to perform any of the covenants and agreements set forth in this Agreement on its part to be performed within the time or times specified herein, the offended party shall be entitled to enforce its rights hereunder by any remedy available at law or in equity (including, without limitation, specific performance and injunctive relief). In the event either party to this Agreement brings an action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all costs and reasonable attorneys', paralegals' and consultants' fees and costs incurred at all pre-trial, trial and appellate levels and at any administrative or bankruptcy proceedings.

10. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina without regard to principles of conflicts of laws. Venue for any action under this Agreement shall be in Beaufort County, South Carolina.

11. Counterparts. This Agreement may be executed in multiple counterparts that, when taken together, shall be regarded as one complete document.

12. Severability. If any individual term or provision of this Agreement is contrary to or in conflict with any requirement of applicable statutory or common law, then that term or provision shall be given its nearest legal meaning, and the remainder of this Agreement, or the application of such term or

provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

13. Entire Agreement. This Agreement constitutes the entire agreement between Grantor and Grantee with respect to the subject matter hereof, and this Agreement may not be amended, modified, altered or terminated except by written agreement signed by Grantor and Grantee.

14. Compliance with Law. Each party exercising any rights hereunder shall comply with all applicable laws and regulations.

15. Modifications. This Agreement may not be modified without the written consent of both Grantor and Grantee.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Access Easement Agreement to be executed in the manner and form sufficient to bind them as of the date and year first above written.

Signed, sealed and delivered in the
Presence of the following witnesses:

"GRANTOR"

ROAD, LLC, a
South Carolina limited liability company

Print Name: Keerat Kaur

By: Bruce Bunner
Name: Bruce Bunner
Title: President

Print Name: Barbara Nicholas

STATE OF New York
COUNTY OF New York

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 29th day of December, 2011, by Bruce Bunner, as President of ROAD, LLC, a South Carolina limited liability company, on behalf of the limited liability company. He/~~she~~ is personally known to me or has produced _____ as identification.

Notary Public: Violeta Figuerda
Print Name: Violeta Figuerda
My Commission Expires: April 30, 2015

VIOLETA FIGUEROA
Notary Public, State of New York
No. 01FI6057972
Qualified in [illegible] County
Commission Expires April 30, 2015

#10778980_v4

"GRANTEE"

PINCKNEY POINT, LLC,
a South Carolina limited liability company

By: _____
Name: John C. Kunkel
Title: Vice President

K Lewis
Print Name: K Lewis

Sally L. Hall
Print Name: Sally L. Hall

STATE OF Florida
COUNTY OF Duval

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 29th day of December, 2011, by John C. Kunkel, as Vice President of PINCKNEY POINT, LLC, a South Carolina limited liability company, on behalf of the limited liability company. He/she is personally known to me or has produced _____ as identification.

Notary Public: K Lewis
Print Name: _____
My Commission Expires:

K. LEWIS
MY COMMISSION # DD903885
EXPIRES: July 14, 2013
1-800-3-NOTARY FL Notary Discount Assoc. Co.

#10778980_v4

EXHIBIT A

Grantor's 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 131 at Page 193.

EXHIBIT B

Grantee's Property

(see attached)

EXHIBIT "B"

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 as follows:

Parcel A1

Starting at the Northeastern intersection of the right of way of Hayfield Road and Pinckney Colony road thence traveling along the right of way approximately 605' northward to a point being the POINT OF BEGINNING of tract A1; thence
N77°56'40"W, a distance of 42.20 feet; thence N06°39'10"E, a distance of 68.86 feet; thence N08°09'53"W, a distance of 63.75 feet; thence N12°20'12"E, a distance of 117.75 feet; thence N07°00'34"E, a distance of 88.34 feet; thence N00°41'16"W, a distance of 115.39 feet; thence N10°17'18"W, a distance of 121.30 feet; thence N15°48'37"W, a distance of 97.84 feet; thence N43°16'23"W, a distance of 85.36 feet; thence N13°48'24"W, a distance of 105.28 feet; thence N17°51'58"W, a distance of 77.72 feet; thence N20°32'23"W, a distance of 108.44 feet; thence N22°52'40"W, a distance of 93.07 feet; thence N22°10'51"W, a distance of 77.43 feet; thence N19°22'21"W, a distance of 50.66 feet; thence N18°28'30"W, a distance of 59.20 feet; thence N20°03'20"W, a distance of 68.51 feet; thence N19°04'46"W, a distance of 78.61 feet; thence N25°49'18"W, a distance of 76.48 feet; thence N26°30'07"W, a distance of 69.02 feet; thence N34°39'45"W, a distance of 76.23 feet; thence N30°01'45"W, a distance of 87.13 feet; thence N26°09'30"W, a distance of 83.43 feet; thence N05°48'18"W, a distance of 67.25 feet; thence N27°07'24"W, a distance of 54.99 feet; thence N16°28'59"W, a distance of 95.05 feet; thence N24°59'45"W, a distance of 69.04 feet; thence N39°59'25"W, a distance of 26.64 feet; thence N19°14'19"W, a distance of 92.22 feet; thence N00°04'02"W, a distance of 72.98 feet; thence N04°56'13"E, a distance of 75.75 feet; thence N27°38'27"E, a distance of 96.89 feet; thence N05°32'27"E, a distance of 81.11 feet; thence N16°03'05"E, a distance of 21.55 feet; thence N20°42'34"E, a distance of 66.55 feet; thence N18°09'47"E, a distance of 55.19 feet; thence N39°51'13"E, a distance of 52.10 feet; thence N50°49'05"W, a distance of 45.04 feet; thence N06°10'44"W, a distance of 29.06 feet; thence N45°11'38"E, a distance of 50.10 feet; thence N16°01'42"W, a distance of 28.52 feet; thence N07°46'25"W, a distance of 48.61 feet; thence N07°19'18"W, a distance of 704.48 feet; thence S88°40'42"W, a distance of 333.59 feet; thence N19°38'12"E, a distance of 53.28 feet; thence N23°34'57"E, a distance of 64.08 feet; thence N30°30'51"E, a distance of 107.70 feet; thence N47°12'30"E, a distance of 84.05 feet; thence N35°32'14"E, a distance of 94.12 feet; thence N08°59'19"E, a distance of 74.45 feet; thence N17°29'52"E, a distance of 90.13 feet; thence N08°16'31"E, a distance of 61.46 feet; thence N88°07'13"E, a distance of 55.93 feet; thence S52°04'47"W, a distance of 32.70 feet; thence S59°40'16"E, a distance of 93.20 feet; thence S87°54'20"E, a distance of 85.92 feet; thence S26°43'42"E, a distance of 75.86 feet; thence S61°47'35"E, a distance of 114.26 feet; thence S29°19'02"E, a distance of 79.05 feet; thence S12°02'40"E, a distance of 54.06 feet; thence

EXHIBIT "B"

Legal Description (CONTINUED)

N53°34'55"E, a distance of 12.48 feet; thence N10°46'02"W, a distance of 49.83 feet; thence N19°27'16"W, a distance of 111.16 feet; thence N27°12'06"W, a distance of 122.12 feet; thence N12°27'00"W, a distance of 83.77 feet; thence N30°03'34"E, a distance of 82.12 feet; thence N33°06'52"E, a distance of 121.69 feet; thence N36°55'40"E, a distance of 108.56 feet; thence N60°35'28"E, a distance of 188.61 feet; thence N70°05'45"E, a distance of 129.96 feet; thence N74°31'28"E, a distance of 159.97 feet; thence S60°12'02"E, a distance of 61.53 feet; thence S56°14'50"E, a distance of 116.40 feet; thence S77°55'04"E, a distance of 78.41 feet; thence N80°48'14"E, a distance of 86.83 feet; thence S62°18'56"E, a distance of 124.83 feet; thence S86°22'54"E, a distance of 176.72 feet; thence S71°57'17"E, a distance of 54.86 feet; thence S33°51'02"E, a distance of 197.46 feet; thence S51°01'01"E, a distance of 152.73 feet; thence S74°56'21"E, a distance of 89.75 feet; thence S69°24'07"E, a distance of 156.45 feet; thence N85°27'08"E, a distance of 107.10 feet; thence S72°14'31"E, a distance of 118.29 feet; thence S70°05'58"E, a distance of 114.59 feet; thence S62°35'10"E, a distance of 113.19 feet; thence S38°39'50"E, a distance of 133.64 feet; thence S75°36'38"E, a distance of 253.42 feet; thence S65°22'48"E, a distance of 198.86 feet; thence S61°03'35"E, a distance of 110.88 feet; thence S55°18'15"E, a distance of 108.16 feet; thence S53°27'02"E, a distance of 131.24 feet; thence S57°53'22"E, a distance of 121.25 feet; thence S84°38'59"E, a distance of 76.84 feet; thence S33°00'08"E, a distance of 78.70 feet; thence S28°05'29"E, a distance of 107.99 feet; thence S17°21'42"E, a distance of 84.88 feet; thence S35°52'03"E, a distance of 113.78 feet; thence S21°43'16"E, a distance of 129.76 feet; thence S11°28'01"E, a distance of 111.48 feet; thence S04°01'19"W, a distance of 100.77 feet; thence S04°51'47"W, a distance of 124.65 feet; thence S05°40'24"W, a distance of 109.74 feet; thence S09°48'59"W, a distance of 98.84 feet; thence S22°04'49"W, a distance of 98.80 feet; thence S17°37'06"W, a distance of 172.68 feet; thence S22°40'50"W, a distance of 126.75 feet; thence S13°23'05"W, a distance of 135.05 feet; thence S14°26'30"W, a distance of 70.83 feet; thence S40°41'16"W, a distance of 88.20 feet; thence S75°35'20"W, a distance of 93.00 feet; thence N51°03'35"W, a distance of 51.27 feet; thence N16°27'51"W, a distance of 91.07 feet; thence N04°28'44"E, a distance of 112.31 feet; thence N30°22'46"W, a distance of 41.30 feet; thence S62°40'[illegible]W, a distance of 14.39 feet; thence S15°53'24"E, a distance of 39.92 feet; thence S34°10'42"W, a distance of 52.71 feet; thence S21°41'05"W, a distance of 112.99 feet; thence S36°27'[illegible]W, a distance of 69.72 feet; thence S88°47'37"W, a distance of 104.17 feet; thence S64°25'[illegible]W, a distance of 92.72 feet; thence S60°59'29"W, a distance of 91.52 feet; thence S63°09'25"W, a distance of 126.13 feet; thence S59°21'27"W, a distance of 111.21 feet; thence S70°[illegible]W, a distance of 119.32 feet; thence S68°54'48"W, a distance of 147.76 feet; thence S67°[illegible]W, a distance of 118.60 feet; thence S79°19'25"W, a distance of 73.26 feet; thence S35°40'30"W, a distance of 31.85 feet; thence S66°37'28"W, a distance of 72.04 feet; thence S69°57'[illegible]W, a distance of 126.39 feet; thence S76°29'14"W, a distance of 137.51 feet; thence S69°15'41"W, a distance of 151.12 feet; thence N12°02'32"W, a distance of 32.50 feet; thence N00°17'09"E, a distance of 41.33 feet; thence S69°25'33"W, a distance of 16.39 feet; thence S31°52'14"W, a distance of 48.98 feet; thence S34°12'01"W, a distance of 89.46 feet; thence S60°24'11"W, a distance of 98.30 feet; thence S74°57'02"W, a distance of 50.99 feet; thence N70°54'58"W, a distance of 35.01 feet; thence N45°06'07"W, a distance of 40.27 feet; thence S15°54'55"E, a distance of 55.09 feet; thence S40°36'32"W, a distance of 114.79 feet; thence S47°11'18"W, a distance of 104.31 feet; thence S37°09'51"W, a distance of 110.11 feet; thence S30°37'25"W, a distance of 105.28 feet; thence

EXHIBIT "B"

Legal Description (CONTINUED)

S17°44'38"W, a distance of 130.52 feet; thence S13°55'51"W, a distance of 102.57 feet; thence S05°16'28"E, a distance of 84.44 feet; thence S07°32'28"W, a distance of 114.66 feet; thence S26°05'02"W, a distance of 86.08 feet; thence S49°37'58"W, a distance of 57.56 feet; thence N72°26'33"W, a distance of 86.04 feet; thence N42°09'27"W, a distance of 48.30 feet; thence S89°33'36"W, a distance of 11.04 feet; thence S16°35'42"E, a distance of 68.07 feet; thence S19°47'52"W, a distance of 35.69 feet; thence S72°55'02"W, a distance of 56.20 feet; thence N82°20'46"W, a distance of 42.35 feet; thence S47°24'31"W, a distance of 2.14 feet; thence N77°56'40"W, a distance of 113.08 feet to the POINT OF BEGINNING.

Containing 9,607,476 square feet or 220.56 acres, more or less.

Parcel A2

Commencing at the Northeastern intersection of the right of way of Hayfield Road and Pinckney Colony road thence traveling along the right of way approximately 685' northward to a point thence N77°56'40"W, a distance of 42.20 feet; thence N06°39'10"E, a distance of 68.86 feet; thence N08°09'53"W, a distance of 63.75 feet; thence N12°20'12"E, a distance of 117.75 feet; thence N07°00'34"E, a distance of 88.34 feet; thence N04°41'16"W, a distance of 115.39 feet; thence N10°17'18"W, a distance of 121.39 feet; thence N10°19'37"W, a distance of 97.84 feet; thence N13°16'27"W, a distance of 85.38 feet; thence N11°45'28"W, a distance of 105.28 feet; thence N17°51'98"W, a distance of 77.72 feet; thence N20°12'25"W, a distance of 108.44 feet; thence N22°52'46"W, a distance of 98.07 feet; thence N22°10'51"W, a distance of 77.43 feet; thence N19°22'21"W, a distance of 50.99 feet; thence N36°58'00"W, a distance of 59.20 feet; thence N20°03'20"W, a distance of 68.51 feet; thence N19°04'16"W, a distance of 78.61 feet; thence N25°49'18"W, a distance of 76.48 feet; thence N26°50'01"W, a distance of 69.02 feet; thence N34°39'45"W, a distance of 76.23 feet; thence N36°01'42"W, a distance of 87.13 feet; thence N26°00'30"W, a distance of 83.42 feet; thence N08°48'10"W, a distance of 67.25 feet; thence N22°07'24"W, a distance of 54.99 feet; thence N14°28'59"W, a distance of 95.05 feet; thence N24°59'45"W, a distance of 69.04 feet; thence N39°59'25"W, a distance of 26.64 feet; thence N19°14'19"W, a distance of 92.22 feet; thence N00°04'02"W, a distance of 72.98 feet; thence N04°56'13"E, a distance of 75.75 feet; thence N27°38'27"E, a distance of 96.89 feet; thence N05°32'27"E, a distance of 81.11 feet; thence N16°03'08"E, a distance of 21.55 feet; thence N20°42'34"E, a distance of 66.55 feet; thence N18°05'47"E, a distance of 55.19 feet; thence N39°51'13"E, a distance of 52.10 feet; thence N36°49'05"W, a distance of 45.04 feet; thence N06°10'44"W, a distance of 29.06 feet; thence N45°11'38"E, a distance of 50.10 feet; thence N16°01'42"W, a distance of 38.52 feet; thence S67°46'35"W, a distance of 48.61 feet; being the POINT OF BEGINNING of tract A2; thence
S33°06'51"W, a distance of 49.35 feet; thence
S74°08'22"W, a distance of 30.80 feet; thence
S34°32'48"W, a distance of 38.93 feet; thence
N79°01'31"W, a distance of 73.45 feet; thence
S63°27'37"W, a distance of 18.63 feet; thence
N64°33'02"W, a distance of 39.19 feet; thence
N30°54'59"W, a distance of 72.79 feet; thence

EXHIBIT "B"

Legal Description (CONTINUED)

N21°38'08"W, a distance of 64.92 feet; thence
N14°48'29"W, a distance of 95.28 feet; thence
N11°51'43"W, a distance of 92.49 feet; thence
N18°04'29"W, a distance of 227.02 feet; thence
N82°40'42"E, a distance of 316.00 feet; thence
S07°19'18"E, a distance of 506.32 feet to the POINT OF BEGINNING.

Containing 148,475 square feet or 3.41 acres, more or less.

Parcel A3

Commencing at the Northeastern intersection of the right of way of Hayfield Road and Pinckney Colony road thence traveling along the right of way approximately 605' northward to a point thence N73°56'40"W, a distance of 42.20 feet; thence N88°39'10"E, a distance of 68.86 feet; thence N08°08'53"W, a distance of 63.75 feet; thence N72°40'12"E, a distance of 117.75 feet; thence N07°00'34"E, a distance of 88.34 feet; thence N04°41'16"W, a distance of 115.39 feet; thence N10°17'18"W, a distance of 128.30 feet; thence N18°12'37"W, a distance of 97.84 feet; thence N18°16'27"W, a distance of 85.98 feet; thence N11°42'26"W, a distance of 105.28 feet; thence N17°34'58"W, a distance of 77.73 feet; thence N08°12'23"W, a distance of 108.44 feet; thence N22°52'40"W, a distance of 93.07 feet; thence N22°10'51"W, a distance of 77.43 feet; thence N19°22'21"W, a distance of 50.66 feet; thence N36°58'00"W, a distance of 59.20 feet; thence N20°03'20"W, a distance of 68.51 feet; thence N19°04'16"W, a distance of 78.61 feet; thence N25°49'18"W, a distance of 76.48 feet; thence N26°50'07"W, a distance of 69.02 feet; thence N34°39'45"W, a distance of 76.23 feet; thence N36°01'45"W, a distance of 87.13 feet; thence N26°00'30"W, a distance of 83.43 feet; thence N08°46'10"W, a distance of 67.25 feet; thence N27°07'24"W, a distance of 54.99 feet; thence N14°28'59"W, a distance of 95.05 feet; thence N24°59'45"W, a distance of 69.04 feet; thence N39°39'25"W, a distance of 26.64 feet; thence N19°16'19"W, a distance of 92.22 feet; thence N00°04'02"W, a distance of 72.98 feet; thence N04°56'13"E, a distance of 75.75 feet; thence N27°38'27"E, a distance of 96.89 feet; thence N05°32'27"E, a distance of 81.11 feet; thence N16°03'08"E, a distance of 21.55 feet; thence N20°42'34"E, a distance of 66.55 feet; thence N18°05'47"E, a distance of 55.19 feet; thence N39°51'13"E, a distance of 52.10 feet; thence N36°49'05"W, a distance of 45.04 feet; thence N05°10'44"W, a distance of 29.06 feet; thence N45°11'38"E, a distance of 30.10 feet; thence N16°04'42"W, a distance of 38.52 feet; thence S87°49'35"W, a distance of 48.61 feet; thence N07°19'18"W, a distance of 506.32' being the POINT OF BEGINNING of tract A3; thence
S82°40'42"W, a distance of 316.00 feet; thence
N16°21'17"W, a distance of 76.11 feet; thence
N18°29'54"W, a distance of 98.65 feet; thence
N19°38'12"E, a distance of 29.37 feet; thence
N82°40'42"E, a distance of 333.59 feet; thence
S07°19'18"E, a distance of 198.16 feet to the POINT OF BEGINNING.

Containing 65,776 square feet or 1.51 acres, more or less.

EXHIBIT "B"

Legal Description (CONTINUED)

Parcel B

Commencing at the Northeastern intersection of the right of way of Hayfield Road and Pinckney Colony road thence traveling along the right of way approximately 605' northward to a point thence N77°36'40"W, a distance of 42.20 feet; thence N06°39'10"E, a distance of 68.86 feet; thence N08°49'53"W, a distance of 63.95 feet; thence N12°20'12"E, a distance of 117.75 feet; thence N07°00'38"E, a distance of 88.34 feet; thence N04°41'16"W, a distance of 115.39 feet; thence N10°17'18"W, a distance of 121.30 feet; thence N10°19'37"W, a distance of 97.84 feet; thence N13°19'27"W, a distance of 85.28 feet; thence N11°45'28"W, a distance of 105.28 feet; thence N17°53'38"W, a distance of 77.72 feet; thence N20°12'23"W, a distance of 108.44 feet; thence N21°32'40"W, a distance of 99.07 feet; thence N22°10'51"W, a distance of 77.43 feet; thence N19°22'21"W, a distance of 50.66 feet; thence N35°38'00"W, a distance of 59.20 feet; thence N20°03'20"W, a distance of 68.51 feet; thence N19°04'16"W, a distance of 78.61 feet; thence N25°49'18"W, a distance of 76.48 feet; thence N26°50'07"W, a distance of 69.02 feet; thence N34°39'45"W, a distance of 76.23 feet; thence N36°01'45"W, a distance of 87.13 feet; thence N26°09'30"W, a distance of 83.43 feet; thence N08°48'10"W, a distance of 67.25 feet; thence N27°07'24"W, a distance of 54.99 feet; thence N14°28'59"W, a distance of 95.05 feet; thence N24°59'45"W, a distance of 69.04 feet; thence N39°59'25"W, a distance of 26.64 feet; thence N19°14'19"W, a distance of 93.22 feet; thence N00°04'02"W, a distance of 72.98 feet; thence N04°56'13"E, a distance of 75.75 feet; thence N27°38'27"E, a distance of 96.89 feet; thence N05°32'27"E, a distance of 84.11 feet; thence N16°03'08"E, a distance of 21.56 feet; thence N20°42'34"E, a distance of 66.55 feet; thence N10°59'47"E, a distance of 55.19 feet; thence N39°51'13"E, a distance of 52.10 feet; thence N36°49'05"W, a distance of 45.94 feet; thence N06°10'44"W, a distance of 29.06 feet; thence N65°11'38"E, a distance of 50.10 feet; thence N16°01'42"W, a distance of 38.52 feet; thence S67°46'35"W, a distance of 48.61 feet; thence N07°19'18"W, a distance of 704.48 feet; thence S82°40'42"W, a distance of 333.59 feet; thence N19°38'12"E, a distance of 53.28 feet; thence N23°51'54"E, a distance of 64.08 feet; thence N30°30'51"E, a distance of 107.79 feet; to a tie line thence N37°25'38"W, a distance of 213.81'
being the POINT OF BEGINNING of tract B; thence

S51°07'46"W, a distance of 33.05 feet; thence
N42°27'43"W, a distance of 52.20 feet; thence
N14°14'19"W, a distance of 124.39 feet; thence
N09°58'03"W, a distance of 167.38 feet; thence
N13°37'12"W, a distance of 155.27 feet; thence
N07°00'03"W, a distance of 127.02 feet; thence
N46°27'52"E, a distance of 85.86 feet; thence
N79°00'38"E, a distance of 126.64 feet; thence
S70°30'41"E, a distance of 70.17 feet; thence
S50°25'17"E, a distance of 110.65 feet; thence
N63°09'05"E, a distance of 44.13 feet; thence
S08°56'05"E, a distance of 77.52 feet; thence

EXHIBIT "B"

Legal Description (CONTINUED)

S20°02'46"W, a distance of 85.26 feet; thence
S24°33'50"W, a distance of 68.58 feet; thence
S20°47'29"W, a distance of 141.27 feet; thence
S12°23'00"W, a distance of 115.29 feet; thence
S40°25'34"W, a distance of 94.86 feet; thence
S22°26'04"W, a distance of 58.32 feet to the POINT OF BEGINNING.

Containing 161,294 square feet or 3.70 acres, more or less.

This being the same property conveyed to the Grantor by deed from Pinckney Point Farms, Inc., dated January 25, 2005, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 2095 at page 1636.

This Deed was prepared by J. Simon Fraser, Esquire, Fraser & Allen, LLC, P.O. Box 5098, Hilton Head Island, South Carolina 29938.

R600 014 000 001A 0001 00

LEGAL DESCRIPTION CONTINUED ON FOLLOWING PAGE

EXHIBIT "B"

Legal Description (CONTINUED)

TOGETHER WITH:

Parcel 1:

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.

Parcel 2:

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.

Parcel 3:

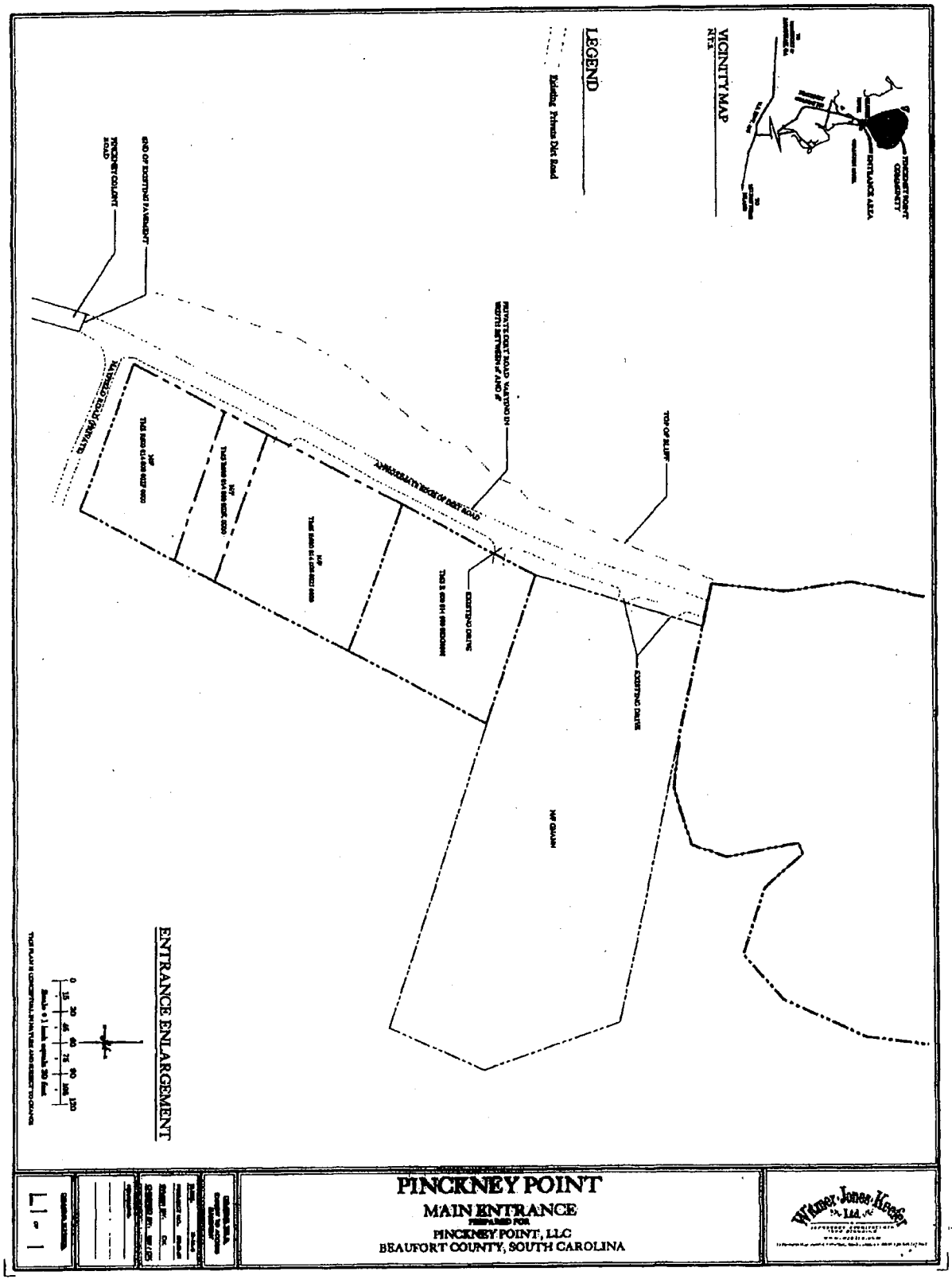
All that certain piece, parcel or lot of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, being shown as Lot No. 3 on a plat entitled "Plat of Survey – Land of Proposed Subdivision – A Portion of Land of W.E. Pinckney, Bluffton Township, Beaufort County, South Carolina" 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.

TOGETHER WITH all rights of the Grantor in and to that certain twenty foot (20') wide easement for access, ingress and egress, in favor of Grantor, its successors and assigns in Paragraph 3 entitled Right of Way in that certain First Amendment to Settlement Agreement in that certain action entitled Beaufort County v. Agnes Pinckney, et. al, being case No. 05-CP-07-2337 in the Court of Common Pleas, County of Beaufort, State of South Carolina and in any deeds, grants of right of way, easement agreements, or any other document thereto reflecting Grantor's right to cross over, through or under said twenty foot (20') wide easement.

Said easement being also that easement being more particularly described and shown in that certain Access Easement Agreement by and between Road, LLC, a South Carolina limited liability company and Pinckney Point, LLC, a South Carolina limited liability company dated the 29th day of December, 2011.

EXHIBIT C

Easement Area



Book3110/Page1677

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF BEAUFORT)

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

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

2. The property being transferred is located in Beaufort County, South Carolina, bearing various Beaufort County Tax Map Numbers and was transferred by Road, LLC to Pinckney Point , LLC on December 29, 2011.

3. Check one of the following: The deed is

(a) ___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) __X__ exempt from the deed recording fee because (See Information section of affidavit): 1

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

(a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $_____.

(b) _____ The fee is computed on the fair market value of the realty which is _____ .

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____ .

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

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: $_____

(b) Place the amount listed in item 5 above here: 0
(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here: $_____

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $0.

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 Grantee .

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

Matthew T. Mashburn; Attorney for Grantee
Print or Type Name Here

SWORN to before me this 4th day of January, 2012.

Notary Public for ~~South Carolina~~ GEORGIA
My Commission Expires: _____

INFORMATION

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

Exempted from the fee are deeds:

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

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

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

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

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

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

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

(8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;

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

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

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

(12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.

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

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

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF 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.	)	

DEFENDANT'S EXHIBIT 6

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.

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: 1-14-11

BEAUFORT COUNTY, a Political Subdivision of the State of South Carolina

By: _____
Its: County Administrator

WITNESSES:

Dated: 1-14-11

ZONING BOARD OF APPEALS FOR BEAUFORT COUNTY

By: _____
Its: County Administrator

WITNESSES:

Jean Bush

Dated: 1-14-11

PINCKNEY POINT, LLC, a Florida limited liability company

By: _____
Taylor Bush
Its: President

WITNESSES:

Dated: 1/14/2011

AGNES F. PINCKNEY, Individually and as Guardian and Conservator for JOHN DAVID PINCKNEY

By: _____
Its: _____

WITNESSES:

_____

_____

Dorothy P. Gnann

WITNESSES:

_____

_____

Dated: _____

ROAD, LLC, a South Carolina limited liability company

By: _____
Its: _____

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, a Florida limited liability company

By: _____

Taylor Bush

Its: President

WITNESSES:

_____

_____

Dated: _____

AGNES F. PINCKNEY, Individually and as Guardian and Conservator for JOHN DAVID PINCKNEY

By: _____

Its: _____

WITNESSES:

_____

_____

Dorothy P. Gnann

WITNESSES:

_____

_____

Dated: _____

ROAD, LLC, a South Carolina limited liability company

By: _____

Its: _____

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, a Florida limited liability company

By: _____

Taylor Bush

Its: President

WITNESSES:

_____

_____

Dated: _____

AGNES F. PINCKNEY, Individually and as Guardian and Conservator for JOHN DAVID PINCKNEY

By: _____

Its: _____

WITNESSES:

_____

_____

_____

Dorothy P. Gnann

WITNESSES:

_____

KEERAT KAUR

Dated: 01/13/2011

ROAD, LLC, a South Carolina limited liability company

By: Bruce Bannen

Its: President

HILTONHEAD 717692v8

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.

DEFENDANT'S EXHIBIT
tabbies

11 MAY -6 PM 3:41
JEANNE D. RAINEY ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

CONSENT ORDER

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

May 6, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2013-CP-07-01341

ROAD, LLC AND PINCKNEY POINT, LLC,	)	
Plaintiffs,	)	
vs.	)	MOTION FOR SUMMARY JUDGMENT AND/OR PARTIAL SUMMARY JUDGMENT
BEAUFORT COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF SOUTH CAROLINA,	)	
Defendants.	)	

TO: GEORGE TRENHOLM WALKER, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, Beaufort County, will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order of this Court dismissing the Plaintiffs' Amended Complaint. This motion is made upon the following grounds.

That the Amended Complaint of the Plaintiffs fails to state a cause of action upon which relief can be granted. This action was originally filed on May 21, 2013. The Plaintiff moved to amend the Complaint and said Order was filed on July 9, 2014.

Documentary evidence and testimony exchanged to date establish there is no genuine issue of material fact upon which a reasonable jury could conclude

that the Defendant, Beaufort County is liable to the Plaintiffs or that the Plaintiffs are entitled to the declaratory relief sought.

Discovery to date has concluded that at the time of Beaufort County's purchase of the subject property, Pinckney Point, LLC had no interest whatsoever in the subject Pinckney Point parcel.

The Plaintiffs have failed to establish any breach of the subject Settlement Agreement on behalf of Beaufort County and to documents relied on by the Plaintiffs to assert that the Pinckney Point parcel must be developed as a residential development are contradicted by the documents relied on.

Ingress and egress over the subject road parcel is defined delineated in the chain of title and conveyance documents.

The conveyance documents establish that Beaufort County has ingress and egress over the subject road parcel. Even if it were concluded that the general public could not use the subject road parcel for ingress and egress to the Pinckney Point parcel, it does not constitute the expenditure of public funds for private purposes.

Beaufort County's purchase of the subject Pinckney Point parcel did not breach a settlement agreement, did not violate any laws and did not impact the position or ownership interest of either defendant or harm either defendant.

This Defendant therefore respectfully requests that this Honorable Court issue an order dismissing the Complaint of the Plaintiffs.

This motion shall be based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings, affidavits and discovery documents exchanged herein.

HOWELL, GIBSON & HUGHES, P.A.

By:_____
Robert W. Achurch, III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendant, Beaufort County

Beaufort, South Carolina

August 27, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 2013-CP-07-1341
ROAD, LLC and PINCKNEY POINT, LLC, Plaintiffs,	)	
VS.	)	
	)	**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT**
BEAUFORT COUNTY, a political sub-division of the State of South Carolina,	)	
Defendant.	)	

TO: ROBERT W. ACHURCH, III, ESQUIRE, ATTORNEY FOR DEFENDANT BEAUFORT COUNTY

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Road, LLC and Pinckney Point, LLC, hereby give notice and move pursuant to Rule 56, SCRCP, for partial summary judgment on the grounds stated herein since there is no genuine dispute of material fact and Plaintiffs are entitled to partial summary judgment as a matter of law. The motion will be heard by the Court no sooner than ten (10) days after service of this notice of motion and/or at a time that may be set by the Court. This motion is based on the pleadings, discovery, record in this matter, undisputed facts, and the applicable law.

Plaintiffs seek partial summary judgment as to each of the following on the following grounds:

1. The segment of Pinckney Colony Road that traverses the land owned by Plaintiff Road, LLC, (the "subject road") is a private road as a matter of law as set forth in this Court's May 6, 2011 Order.
2. Because the subject road is private and its use is further governed by the Access Easement Agreement dated December 29, 2011 recorded in the records office for Beaufort County at Book 03110, Pages 1662-1679 as

well as the deeds into Road, LLC recorded at Book 03028, Pages 0993-0998 and Book 03028, Pages 0999-1002, the use of the subject road by the public is not authorized, as a matter of law, and Road, LLC may prohibit the use of the subject road by the public.

3. The use of the subject road by the public is not permitted under the Access Easement Agreement, and Road, LLC may prohibit the use of the subject road by the public, as a matter of law. Such use by the public is outside the scope of the use permitted by the Access Easement Agreement, would constitute an added burden on the servient parcel, and would exceed the scope of the easement.

4. The validity of the Settlement Agreement is not in dispute, and there is no genuine issue of material fact that the County acted in contravention of, and breached, the Settlement Agreement that requires that the subject road remain private and imposed the obligation on the County to facilitate the residential development of the Pinckney Point parcel. The Settlement Agreement expressly and unambiguously states that there is no dedication of – nor intent to dedicate – the subject road to the County and sets forth the parties' intent (including the County's) for the Pinckney Point parcel to be used as a private, residential community.

5. There is no genuine issue of material fact that the governing agreements, the recorded deeds and easements, and an Order of this Court provide that Pinckney Colony Road remain private; that the portion of Pinckney Colony Road owned by Road, LLC cannot be improved without

permission from Plaintiff Road, LLC; that the portion of Pinckney Colony Road owned by Road, LLC is limited to the "occupants" of the private residential development located on the Pinckney Point Parcel; and that there is no access over the portion of Pinckney Colony Road owned by Road, LLC to Pinckney Point for other than residential uses.

This Motion is supported by an affidavit as well as the statutory and common law of the state of South Carolina and other applicable authority and may be supported by a memorandum of law and other supporting material as permitted under the South Carolina Rules of Civil Procedure.

By: _____

G. Trenholm Walker
Katie F. Monoc
PRATT-THOMAS WALKER, P.A.
16 Charlotte Street
P. O. Drawer 22247
Charleston, SC 29413-2247
(843) 727-2208
gtw@p-tw.com
kfm@p-tw.com

ATTORNEYS FOR PLAINTIFFS

September 25, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 25th day of September, 2014, in Charleston, South Carolina.

_____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2013-CP-07-01341

ROAD, LLC AND PINCKNEY POINT, LLC,	)	
Plaintiffs,	)	**DEFENDANT BEAUFORT COUNTY'S AMENDED MOTION FOR SUMMARY JUDGMENT**
vs.	)	
BEAUFORT COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF SOUTH CAROLINA,	)	
Defendant.	)	

2013 JUN -3 AM 11:47

TO: GEORGE TRENHOLM WALKER, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE THAT Defendant Beaufort County will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order dismissing all causes of action from Plaintiffs Pinckney Point, LLC and Road, LLC (Plaintiffs).

This motion is made pursuant to Rule 56, SCRCP. This motion shall be based upon the following factual and legal grounds, the accompanying memorandum in support of summary judgment, the pleadings filed herein, and any and all affidavits, which may be served on or before the date of the hearing hereon.

1. Defendant is entitled to summary judgment because there is no genuine issue of material fact that Plaintiffs' claims are not ripe for adjudication. Plaintiffs' claims are not ripe for adjudication because all of Plaintiffs' claims rely

on the allegation that Defendant will allow the public to access the 229 acres by way of the easement at some undetermined time in the future. See James v. Anne's Inc., 390 S.C. 188, 192, 701 S.E.2d 730, 732 (2010) ("Before any action can be maintained, there must exist a justiciable controversy.").

2. Defendant is entitled to summary judgment against Plaintiff Pinckney Point, LLC because there is no genuine issue of material fact that Pinckney Point, LLC lacks standing to bring these claims. See Brock v. Bennett, 313 S.C. 513, 519, 443 S.E.2d 409, 412 (Ct. App. 1994) (noting that standing is a fundamental requirement for instituting an action). At the time of filing this action and under the current status quo, Pinckney Point, LLC does not have any ownership interest in the 229 acres; in Road, LLC; or in the easement of ingress and egress to the 229 acres. Because Pinckney Point, LLC willingly divested itself of any interest in the 229 acres, Defendant's purchase from Equity Resource and any future plans of using the easement to access the property do not impact Pinckney Point, LLC in any way. Accordingly, Pinckney Point, LLC cannot satisfy the elements necessary to prove standing to bring these causes of action.

3. Defendant is entitled to summary judgment because there is no genuine issue of material fact that a non-exclusive, perpetual easement exists upon and over the right of way, which gives Defendant access to the 229 acres whether the right of way is designated as public or private. See Martin v. Bay, 400 S.C. 140, 149, 732 S.E.2d 667, 672 (Ct. App. 2012) ("Clear and unambiguous language in grants of easement must be construed according to

terms which parties have used, taken, and understood in plain, ordinary, and popular sense."). By the easement's plain language and according to the intent of the original parties to the easement agreement, Defendant has unfettered access to the 229 acres by way of the easement and would be within its rights to allow the public to access the 229 acres by way of the easement, if Defendant ever decided to grant access to the public.

4. Defendant is entitled to summary judgment because there is no genuine issue of material fact that Defendant purchased the 229 acres for public purposes. Defendant purchased the property with separate Rural & Critical funds that were specifically earmarked for conservation efforts that benefit the citizens of Beaufort County. Because protecting and conserving the environment is unquestionably a public purpose, Defendant did not violate the state constitution by purchasing the 229 acres. See Ken Moorhead Oil Co. v. Federated Mut. Ins. Co., 323 S.C. 532, 546, 476 S.E.2d 481, 489 (1996) (noting the protection and conservation of our environment and natural resources is a public purpose). Further, if, in the future, Defendant transformed the 229 acres into a public park; as Plaintiffs allege is Defendant's eventual, intended purpose; the property would be for public purpose.

5. Defendant is entitled to summary judgment because there is no genuine issue of material fact that Plaintiffs are not entitled to a preliminary and permanent injunction prohibiting Defendant from both allowing the public to access the 229 acres by way of the easement and from using the 229 acres as anything except a residential neighborhood. Plaintiffs are not entitled to an

injunction for this purpose. Plaintiffs cannot dictate to Defendant how Defendant can use its property. Plaintiffs cannot prohibit Defendant from using the 229 acres for any purpose except a residential neighborhood simply because it was Pinckney Pointe, LLC's intention to develop a residential neighborhood prior to Bank of America foreclosing against Pinckney Point, LLC. Plaintiffs have no basis for requiring Defendant to develop a residential community on the 229 acres. Plaintiffs have failed to prove they will likely succeed on the merits or that they will suffer irreparable harm without an injunction. See AJG Holdings, LLC v. Dunn, 382 S.C. 43, 51, 674 S.E.2d 505, 508 (Ct. App. 2009) ("Generally, for a preliminary injunction to be granted, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law.").

6. Defendant is entitled to summary judgment because there is no genuine issue of material fact that Plaintiff is not entitled to specific performance, pursuant to any contractual obligations, preventing the public from accessing the 229 acres by way of the easement. Because there is no genuine issue of material fact that a contract between Plaintiffs and Defendant, which required Defendant to prevent the public from accessing the 229 acres by way of the easement, does not exist, Defendant is entitled to summary judgment. See Campbell v. Carr, 361 S.C. 258, 264, 603 S.E.2d 625, 628 (Ct. App. 2004) (noting a valid contract is required for a party to compel specific performance).

7. Defendant is entitled to summary judgment because there is no genuine issue of material fact that Defendant did not breach the Settlement

Agreement or any other contract between Plaintiffs and Defendant, and Plaintiffs' alleged damages are the result of Pinckney Point, LLC's failure to meet its obligations, which led Bank of America to foreclose on the 229 acres. Pinckney Point, LLC admitted it did not have any ownership interest or an active option agreement pertaining to the 229 acres when Defendant purchased the 229 acres. Defendant did not do anything improper by purchasing the 229 acres from Equity Resource. There is no evidence showing Defendant breached the Settlement Agreement.

8. Defendant is entitled to summary judgment because there is no genuine issue of material fact that Plaintiff is not entitled to an order of civil contempt should Defendant, at some point in the future, allow the public to access the 229 acres by way of the easement. Because there is no court order prohibiting Defendant from allowing the public to access the 229 acres by way of the easement, Plaintiffs would not be entitled to a civil contempt order even if Defendant allowed the public to access the 229 acres by way of the easement. See Ex parte Cannon, 385 S.C. 643, 660, 685 S.E.2d 814, 824 (Ct. App. 2009) ("Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct."). Defendant has not violated any court order, and Plaintiffs fail to allege that Defendant violated any court order.

9. Defendant is entitled to summary judgment because there is no genuine issue of material fact that Defendant is not barred under the doctrines of equitable and judicial estoppel from allowing the public to access the 229 acres

by way of the easement. Equitable estoppel is a defense to alleged improper conduct and is inappropriate in a complaint. See Janasik v. Fairway Oaks Villas Horizontal Prop. Regime, 307 S.C. 339, 345, 415 S.E.2d 384, 388 (1992) (explaining that although the doctrine of "equitable estoppel may be invoked as [an] affirmative defense to counterclaims, [it] may not be asserted in a complaint as [an] offensive weapon"). Accordingly, Defendant is not barred by equitable estoppel from allowing the public to access the 229 acres by way of the easement.

Judicial estoppel, like equitable estoppel, is inapplicable to this case. Judicial estoppel acts to prevent a party from taking a factual position that is inconsistent with a prior factual position, and in this case, Defendant has not changed its position on the facts, and Plaintiff does not allege that Defendant has done so. See Quinn v. Sharon Corp., 343 S.C. 411, 414, 540 S.E.2d 474, 475 (Ct. App. 2000) (explaining judicial estoppel "precludes a party from adopting a position in conflict with one previously taken in the same or related litigation").

Based on the foregoing, Defendant is entitled to summary judgment.

HOWELL, GIBSON & HUGHES, P.A.

By: _____
Mary Bass Lohr
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Beaufort County

Beaufort, South Carolina
June 3, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2013-CP-07-01341

2015 JUL 21 PM 2:30
BEAUFORT COUNTY CLERK OF COURT BEAUFORT, S.C.

ROAD, LLC AND PINCKNEY POINT, LLC,	)	
Plaintiffs,	)	**DEFENDANT'S MOTION TO RECONSIDER ORDER DENYING SUMMARY JUDGMENT**
vs.	)	
BEAUFORT COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF SOUTH CAROLINA,	)	
Defendant.	)	

TO: G. TRENHOLM WALKER AND KATIE F. MONOC, ESQUIRE, ATTORNEYS FOR PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that Defendant Beaufort County, by and through its undersigned counsel, Howell, Gibson and Hughes, P.A., will appear before the Honorable Carmen T. Mullen, on the tenth (10th) day after service hereof, or at such other time and place as may be directed by the Court, and then and there move for reconsideration and/or alteration or amendment of the Court's order dated July 7, 2015. This motion is made pursuant to Rule 59, SCRCP and is based upon Defendant's motion for and memorandum in support of summary judgment and the following grounds:

1. The Circuit Court failed to rule on Defendant's arguments regarding Plaintiffs' causes of action for declaratory judgment, preliminary and permanent injunction, specific performance, breach of contract, equitable estoppel, and judicial estoppel.

2. The Circuit Court misconstrued the applicable law, failed to rule on and/or failed to consider that the parties agree on the facts underlying this action. At the summary judgment hearing, the parties were arguing questions of law, rather than questions of fact. The parties agree on the underlying facts and are seeking the Circuit Court's application of the law to those facts. Thus, there is no genuine issue of material fact regarding Plaintiffs' causes of action, and the Circuit Court should have ruled as a matter of law on all of Plaintiffs' causes of action.

3. The Circuit Court misconstrued the applicable law by failing to decide Plaintiffs' cause of action for breach of contract as a matter of law. The settlement agreement unambiguously fails to require any party, including Defendant, to use the 229 acres for a residential development. Because the settlement agreement is unambiguous, the Circuit Court should have resolved Plaintiffs' cause of action for breach of contract at the summary judgment stage. See Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A., 320 S.C. 470, 477, 465 S.E.2d 765, 770 (Ct. App. 1995) ("The construction and enforcement of an unambiguous contract is a question of law for the court, and thus can be properly disposed of at summary judgment."); HK New Plan Exch. Prop. Owner I, LLC v. Coker, 375 S.C. 18, 23, 649 S.E.2d 181, 184 (Ct. App. 2007) ("Generally the construction of a contract is a question of law for the court.").

4. Defendant incorporates by reference the arguments contained in its motion for summary judgment and its memorandum in support of its motion for summary judgment.

HOWELL, GIBSON & HUGHES, P.A.

By:_____
Robert W. Aghurch, III
Mary Bass Lohr
Thomas A. Bendle
Steven A. Jordan, Jr.
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorneys for Beaufort County

2015 JUL 21 PM 2:30
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Beaufort, South Carolina

July 17, 2015

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion to Reconsider upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 17 day of July, 2015.

By:_____
Mary Bass Lohr

RULE 11 CERTIFICATION

I certify pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that

___ I have consulted with opposing counsel and have been unable to resolve the matter.

___✓ Consultation with opposing counsel would serve no useful purpose, or is not required.

___ Consultation with opposing counsel could not be timely held

___ I certify that there is no duty of consultation for the attached motion (to dismiss, for summary judgment, for new trial, for judgment NOV, in real estate foreclosures, or with pro se litigants.)

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

DEFENDANT'S POST-TRIAL MOTIONS

FILED
2013 MAY 21 P 2:51
BEAUFORT COUNTY, S.C.
CLERK OF COURT

1. **Motion for a JNOV**

A motion for JNOV should be granted when no reasonable jury could have reached the challenged verdict. Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 415 S.E.2d 393 (1992). An order granting a JNOV is appropriate when no evidence exists that sustains the factual findings implicit in its decision. Smalls v. South Carolina Dep't of Educ., 339 S.C. 208, 528 S.E.2d 682 (Ct.App.2000); Hunter v. Staples, 335 S.C. 93, 515 S.E.2d 261 (Ct.App.1999).

a. There was no breach of contract.

Defendant is entitled to JNOV because there is no genuine issue of material fact for the jury that Defendant breached the Settlement Agreement as to Road, LLC. Under the Settlement Agreement with the relevant parties, Beaufort County was obligated to do two (2) things: (1) to grant the road variance for Pinckney

Point, LLC; and (2) to agree that the Road was private. The evidence shows that Beaufort County had immediately and fully complied with its obligations under the Settlement Agreement by granting the variance and agreeing that road to the property was private. Road, LLC has contended that a latent ambiguity existed in the Settlement Agreement which the parties agreed required the 229 acre parcel and adjacent road parcel to be used only as a residential development. However, John Kunkel, the representative of Road, LLC, testified that he did not believe the Settlement Agreement required the property to be only used as a residential development.

"When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense." *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n,* 296 S.C. 373, 377–78, 373 S.E.2d 584, 586 (1988). Extrinsic evidence may not be used to create an ambiguity in an otherwise unambiguous policy. *Yarborough v. Phoenix Mut. Life Ins. Co.,* 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976). (finding it appropriate to consider extrinsic evidence only if an ambiguity exists within the contract). Even if an ambiguity exists in a contract, extrinsic evidence may not be considered if the ambiguity is a patent ambiguity. *Smith v. Coxe,* 183 S.C. 509, 516, 191 S.E. 422, 425–26 (1937) (finding parol testimony may be received in construing instrument with latent ambiguity); *Polson v. Craig,* 351 S.C. 433, 437 n. 2, 570 S.E.2d 190, 192 n. 2 (Ct.App.2002) (involving a will, and noting extrinsic evidence is admissible when there is a latent ambiguity, not a patent ambiguity); *Bob Jones Univ. v.*

Strandell, 344 S.C. 224, 231, 543 S.E.2d 251, 254 (Ct.App.2001) ("A court may admit extrinsic evidence to determine whether a latent ambiguity exists.").

A patent ambiguity is one that arises upon the words of a will, deed, or contract. *Smith,* 183 S.C. at 516, 191 S.E. at 425–26. A latent ambiguity exists when there is no defect arising on the face of the instrument, but arising when attempting to apply the words of the instrument to the object or subject described. *Id.* (offering an example of a latent ambiguity as a named beneficiary in a will that is unambiguous on the face of the will, but creates a latent ambiguity where there are two people with that name). Interpretation of an unambiguous contract, or a policy contract a patent ambiguity, is for the court. *Hann v. Carolina Cas. Ins. Co.*, 252 S.C. 518, 526–27, 167 S.E.2d 420, 423 (1969); *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 328 S.C. 374, 377, 491 S.E.2d 695, 697 (Ct.App.1997), *aff'd*

Additionally, the Plaintiffs contended that the County held up permitting causing Pinckney Point to be unable to find an investor because they did not have their entitlements. The facts in evidence do not support this contention and neither does the jury verdict in favor of the County as to Pinckney Point. Importantly, nothing in the contract required the County to approve Pinckney Point's permitting requests except for the variance which was granted. With respect to the remaining permitting, Pinckney Point, LLC was to be treated as any other developer. There is no testimony that they were treated differently. As stated previously, the County had, contemporaneous with the Settlement Agreement, given the Plaintiffs the required variance and agreed to have the

Road declared private. Moreover, while not a condition of the Settlement Agreement, the evidence in this case was that the County gave Conceptual Site Plan approval so as to allow Pinckney Point, LLC to move forward with obtaining entitlements from other agencies and to finalize their engineering plans. The County further worked out the only conditional issue, the septic versus sewer issue, within a period of a few months. Said issue arose from a DRT practice that had been used, and applied to, many other like-kind developments in Beaufort County. As of February 2012, there were no issues remaining between the County and Pinckney Point, LLC. The County was simply awaiting submission by the Plaintiff for Final Approval. In fact, the Plaintiffs had well over a year to submit for Final Approval but failed to do so with no alleged "interference" from the County. John Kunkel additionally testified that Pinckney Point, LLC made no attempt to find an investor until it realized their option was about to expire. When they did find an interested investor, Pinckney Point, LLC was not willing to meet the investor's terms. This is evidence that the County did not cause the Plaintiffs to fail to meet their obligations under the settlement agreement. Rather, Pinckney took a business gamble that did not work out to their benefit, causing them to lose the property and fail their obligations under the Settlement Agreement.

Road, LLC's alleged damages are the result of Pinckney Point, LLC's failure to meet its obligations under its mortgage with BB&T and option agreements with Equity Resource Partners (hereinafter referred to as "ERP"). Pinckney Point, LLC's business gambles are what led them to lose their interest in the property.

Pinckney Point, LLC, through the testimony of Taylor Bush, admitted it did not have any ownership interest or an active option agreement pertaining to the 229 acres when the County purchased the property. Additionally, Taylor Bush testified that as of the time Pinckney Point lost its option, they could not develop the property and, therefore, could not fulfill their obligations under the Settlement Agreement. This would include Pinckney Point's obligations to Dot Gnann and Road, LLC. It is irrelevant that Pinckney Point hoped to recover some interest. The fact of the matter is that there was no reasonable certainty that they could ever recover the property once lost.

Importantly, the settlement agreement does not bind the property to be forever used as a residential development. This is a term that Road, LLC has alleged to be a latent ambiguity. Allowing reading such a term into this is clearly in violation of the rules of contract interpretation as set forth above.

Additionally, to the extent that the jury may have found that the County breached its contract with Road LLC because its purchase of the 229 acres turned the private road into a public road, this theory is unsupported by facts or law in this matter. There was no evidence that the County has invited the public to use the property or that the public is using the property. Additionally, there is no legal principal which would support the notion that if a government agency has an access easement over a private road that the road has de facto become a public road. The importance of the lack of evidence that the public has ever used this road cannot be understated. The evidence in this case is that only a few members of the County staff and a grounds keeper who lived on the property

prior to the County's purchase have ever utilized the access easement over Road LLC's property to enter the County property. Thus, there is no evidence to support the notion that the County breached its contract with Road LLC by turning the private road owned by Road LLC into a public road.

Road, LLC also alleged breach of implied covenant of good faith and fair dealing. However, Beaufort County did not do anything improper by purchasing the 229 acres from Equity Resource as the settlement was a nullity given that the Plaintiff, Pinckney Point, LLC, could no longer meet its obligations under the contract.

There exists in every contract an implied covenant of good faith and fair dealing. Adams v. G.J. Creel & Sons, Inc., 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995). However, there is no breach of the implied covenant where a party to a contract has done what provisions of the contract expressly gave him the right to do. Id.; *See also* Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC, 414 S.C. 635, 653, 780 S.E.2d 263, 273 (Ct. App. 2015) (there is no breach of contract or implied covenant because the actions taken by the defendant, by assigning a note, were not barred by the contract and did not prohibit the other side from making payment on the note or fulfilling their obligations under the contract).

Generally, with the exception to contracts of insurance, the Courts have not set forth a hard and fast rule of what constitutes a breach of the implied covenant of good faith and fair dealing. However, the cases make clear that it is a by-product of the breach of the contract. In fact, the U.S. Supreme Court has stated that "The concept of good faith in the performance of contracts is a phrase

without general meaning or meanings of its own." Northwest, Inc. v. Ginsberg, 134 S. Ct. 1422 (2014).

The option agreement expired February 28, 2013 but Pinckney Point, LLC was given 11 more days by Equity Resource Partners to close. As stated earlier, Taylor Bush has admitted that when Pinckney Point lost the option, it could not develop the property and could not fulfill their obligations under the contracts. When Pinckney Point can no longer perform under the contract, the contract can no longer be considered binding. Pinckney Point, rather than the County, breached the contract with Road, LLC when this occurred.

There is no direct evidence in this case that the County interfered in Pinckney Point's ability to execute on the settlement agreement. There is no evidence that the financial arrangements of Pinckney Point with ERP and its inability to secure investment funds on satisfactory terms to re-purchase the property were caused by Beaufort County. The only evidence that any one related to the County had any dealing with ERP was that Garrett Budds, an independent contractor of the County, visited the property at the request ERP. The purpose of the meeting was to discuss ERP's interest in selling the parcel, if the Pinckney Point option was not acted upon. Budds had no authority to make a binding agreement on behalf of the County. Budds could only recommend property as suitable under the Rural and Critical Lands Program to the Rural and Critical Lands Committee, a citizen board. That board would in turn recommend the acquisition for approval to a committee of County Council, the Natural Resource Committee, and, ultimately, a full vote of County Council was required.

The County had no information that Pinckney Point, LLC was attempting to convince ERP to give them another option and the County had no contract with ERP until April 24, 2013, nearly two months after expiration of Pinckney Point's option. Additionally, Taylor Bush testified that as of April 3, 2013, Pinckney Point was still trying to obtain an investor and did not have the funds at that time to recover the property but believed that ERP would sell the property to whoever would pay their asking price. Most importantly, it is clear that Pinckney Point was not able *at the appropriate time* to perform under the Settlement Agreement. Therefore, there is no evidence showing the County breached either the specific terms of the Settlement Agreement or breached its implied covenant of good faith and fair dealing.

b. <u>The Defendant is entitled to a directed verdict as to the Plaintiff's claims for damages for lost profit.</u>

Even if the court was to find that there is evidence of a breach sufficient for the jury to make such a finding, Road, LLC's damages in the amount of $5 million dollars is not supported by the evidence in the record at trial. The only testimony in the record as to the value of Road's property was given by Tommy Hartnett, a certified appraiser. Mr. Hartnett testified that the road parcel is currently valued, with the County as the owner of the 229 acre adjacent property, at $5 million dollars. The property was purchased by Road, LLC for $1.3 million dollars. Road, LLC cannot be said to have suffered a loss in value of their property. The only testimony is that today it is worth $5 million dollars even with the County owning the adjacent parcel. (See attached trial testimony of Tommy Hartnett)

Thus, there is no evidence of damage to Road, LLC and the jury's decision is not supported by the evidence in the record.

Additionally, evidence of lost profit damages to Road should be excluded as it is too speculative. Road, LLC would only be paid pursuant to the settlement agreement if Pinckney Point was able to find an investor and be able to purchase back the 229 acre parcel from ERP. The evidence of this in the record is too speculative to support this finding.

In a breach of contract action, damages serve to place the non-breaching party in the position he would have enjoyed had the contract been performed. Carolina Winds Owners' Association, Inc. v. Joe Harden Builder, Inc., 297 S.C. 74, 374 S.E.2d 897 (Ct.App.1988), questioned in dictum on other grounds, Kennedy v. Columbia Lumber Co., 299 S.C. 335, 384 S.E.2d 730 (1989). That is, damages give him the benefit of his bargain. Id. In the normal case, the damage will consist of two distinct elements: (1) out-of-pocket costs actually incurred as a result of the contract; and (2) the gain above costs that would have been realized had the contract been performed. When a plaintiff seeks special damages for breach of contract, he must plead and prove both the fact of damage and the amount of damage *with a reasonable degree of certainty*. Jackson v. Midlands Human Resources Center, 296 S.C. 526, 374 S.E.2d 505 (Ct.App.1988)(emphasis added). The fact of damage is proved by showing (1) that the plaintiff realized an actual loss *he would not have incurred but for* the defendant's breach of contract; and (2) the loss was a natural consequence of the breach which may reasonably be supposed to have been within the

contemplation of the parties at the time the contract was made. Charles v. Texas Company, 199 S.C. 156, 18 S.E.2d 719 (1942); Goodwin v. Hilton Head Company, 273 S.C. 758, 259 S.E.2d 611 (1979); The Drews Company, Inc. v. Ledwith-Wolfe Associates, Inc., 296 S.C. 207, 371 S.E.2d 532 (1988)(emphasis added). The crucial requirement in lost profits determinations is that they be "established with reasonable certainty, for recovery cannot be had for profits that are conjectural or speculative." South Carolina Finance Corp., *supra*, at 122, 113 S.E. (2d) at 336. "The proof must pass the realm of conjecture, speculation, or opinion not founded on facts, and must consist of actual facts from which a reasonably accurate conclusion regarding the cause and the amount of the loss can be logically and rationally drawn." 22 Am. Jur. (2d) *Damages* § 641 (1988).

In this case, the Plaintiffs failed to put forth evidence to support the requisite showing as set forth above. Initially, the Plaintiff must show that they would have realized an actual loss they would not have otherwise incurred but for the Defendant's breach of contract. In order to show breach on the part of the County, the Plaintiff argues that if it had been given the 120 day extension, it would have found an investor and it was not given the extension because of unspecified interference by the County. Pinckney does not offer any testimony from that, or any other, alleged investor(s), just that they are sure they would have found one. In addition to speculating that Pinckney Point not only could have repurchased the property subsequent to losing their option with Equity Resource Partners, they must speculate that Equity would not have found another buyer. The testimony is clear that ERP was looking to sell and the

Plaintiff's' witnesses admit that ERP would have sold to whomever came up with the money first. The evidence was that ERP was not willing to give further extensions to Pinckney and were looking for other options to market the property.

Pinckney Point, LLC (and with them Road, LLC) offered no reliable evidence of Pinckney Point's ability to ever re-purchase the property, and no evidence that Equity Resource Partners would not have sold the property to another purchaser. Without being able to show these two things, Road cannot show damage, given the predicament Pinckney Point had put Road, LLC in when they lost their option on the 229 acre parcel. The Plaintiff's complete showing of lost profits is premised upon multi-level speculation and was not established with reasonable certainty.

Based on the foregoing, it is respectfully submitted that there is no evidence to support the jury verdict in favor of Road, LLC in this matter, and as such the Court should issue JNOV in favor of Beaufort County on Road, LLC's claims.

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May 12, 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

APRIL 28, 2016

PARTIAL TRANSCRIPT OF TRIAL

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-M
OFFICIAL COURT REPORTER

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EXHIBITS

No exhibits were admitted.

DAY FOUR, THURSDAY,

APRIL 28, 2016:

THE COURT: Call your next witness.

MR. WALKER: Thomas Hartnett.

THE COURT: Come on forward, sir.

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

THOMAS HARTNETT: I do.

MADAM CLERK: You may be seated.

THOMAS HARTNETT: Thank you.

THOMAS HARTNETT

DIRECT EXAMINATION, BY MR. WALKER:

Q Mr. Hartnett. Mr. Hartnett, where did you start your day today? Where do you live?

A I live on the Isle of Palms, in Charleston County.

Q What is your profession?

A I'm a professional real estate broker and real estate appraiser.

Q Do you hold any licenses with respect to being a real estate broker and/or appraiser?

A Yes, sir, I do. I hold a real estate broker's license, and I hold what they call a certified -- a certified appraiser's license, which is the highest appraisal license you can have in -- in the state and in

the country.

STIPULATION THAT THOMAS HARTNETT
IS AN EXPERT APPRAISER.

MR. ACHURCH: Your Honor, I'll stipulate Mr. Hartnett's an expert appraiser.

THE COURT: Okay.

MR. WALKER: I would like to get out some of his qualifications.

THE COURT: Absolutely. Ladies and gentlemen, I will just tell you, what that allows, Mr. Hartnett is being designated as an expert in real estate appraisal. That allows him to give his opinion and the reasons for his opinion. And that's for you to use as you see appropriate and as compared to the other evidence in the case.

BY MR. WALKER:

Q How many years have you been appraising property?

A Fifty years.

Q Have you appeared in court before as a witness, like you're appearing in court here?

A Yes, sir, I have.

Q And have you been qualified as an expert in federal court?

A Yes, sir, I have.

Q In state court?

A Yes, sir.
Q Have you also, in addition to being an appraiser and a real estate broker, done other things in the public realm?
A Yes, sir, I have.
Q Would you tell us about those.
A Yes, sir. As a very young man, in 1964, -- excuse me -- I was elected to the South Carolina House of Representatives. Probably the youngest member ever elected at that time. And in 19 -- I served there eight years.
Q All right.
A And in 1972, I was elected to the South Carolina State Senate, where I served for eight years. And then, in 1980, I was elected to the United States Congress, from the first congressional district of South Carolina, which included, at that time, Beaufort County, Charleston, Colleton, Hampton, Jasper, Dorchester, Berkeley, and I think that's it.
Q In your work as a consultant, do you testify only for property owners or only for government or only for anybody?
A No, sir. It's whoever calls me and hires me to -- to work with them. Sometimes it's property owners. Sometimes it's a condemning authority like a county or a

state or a city or a utility company. Certain companies, utility companies, have a right to take your property, just like the city, county, state, or other governmental organization does, but they have to pay you for it. So, I testify in cases like that.

Q Have you ever been engaged by Beaufort County?

A Yes, sir, I have.

Q Have you been engaged by my firm in other cases where we've hired you to serve as a consultant --

A Yes, I have.

Q -- and give us an opinion on value? How about Mr. Achurch's firm?

A Yes, sir, I have. In fact, I think I did Mr. Achurch's office building some years ago when the Highway Department was taking -- or widening 21 over on Lady's Island, I believe.

Q Have you testified in this courthouse before?

A I have, yes, sir.

Q Were you asked by me to render an opinion of the value on what's been referred to as the road parcel, the .85 acre?

A Yes, sir, I was.

Q Were you provided certain information about the road parcel?

A Yes, sir, I was.

Q And just to make sure everybody is aware of it, I know they've seen this countless times, if I can get this right, would that be this red, marked parcel that was subject to that survey we heard about this morning?
A I think that's a fair depiction of it, yes, sir.
Q Who is the owner of that land now?
A It's a corporation, or limited liability company, named Road, LLC.
Q Did you believe you had sufficient information to arrive at an opinion of value?
A I think I did, yes, sir.
Q Did you come to an opinion of the value of the Road, LLC, parcel?
A I did.
Q And what was your opinion?
A That it was worth at least five million dollars.
Q And what is that based on?
A Several things. First of all, that was agreed to by Road, LLC, and Pinckney Point, LLC, because they had to have it to develop the property. My understanding of most governmental agencies, you have to have adequate right of way to any subdivision that's going to have numerous houses in it. You have to have it wide enough for emergency vehicles to come and go, for automobiles to pass, trucks to pass.

And my understanding is that Beaufort County requires 50 feet for any legal access to a subdivision like Pinckney Point. Pinckney Point needed it. Road bought it in a settlement, with several residents of Beaufort County. I'm not sure how that settlement was reached, but it was reached. I'm not sure whether they wanted more for it, or whether they would have accepted less for it, but they accepted 1.3 million dollars. That told you it was worth at least 1.3 million dollars to someone.

In an agreement that Road had with -- Road, LLC, had with the developers of Pinckney Point, it referenced the fact that they would pay, that Pinckney Point would pay Road, LLC, five million dollars for the right-of-way to come and go to Pinckney Point.

If you haven't seen it, Pinckney Point is probably as attractive sight as there is in all of Beaufort County, and maybe all of the Lowcountry of South Carolina. It's a very unique property to find that many acres with that much waterfront frontage that's undeveloped. There's a house on it, but it's basically undeveloped.

Q And I just pause there for a second. Were you familiar with the Point parcel that is part of this case, as well, before I asked you to become a consultant

in this case?

A Yes, sir. I think some time in 2005-2006, a lady lawyer in Charleston, her name is Sue Teschner, called me. And said she represented Mr. and Mrs. Pinckney, who were preparing their wills, or they're trying to get their estate together, so that, when they passed way, they could be -- pay as less taxes as they needed to pay, I guess.

She needed an appraisal for estate planning purposes. So, she called me. And I came down and met with Mr. and Mrs. Pinckney. And Mr. Pinckney toured the -- I toured the property with Mr. Pinckney. So, and I did an appraisal of it then for the Pinckney's and for their attorney, a tax lawyer, Mrs. Teschner, in Charleston.

Q I just wanted you to get out that you knew this property and this area before you had this assignment.

A Correct.

Q And continue on before I interrupted you.

A No, that was really it. I mean, I spent some time there, and I've been back once since then. So, I'm familiar with the property enough to know that it's beautiful. You've probably seen the aerial photos of it, or maybe plats of it. It's a beautiful piece of property. And that's -- that's -- that has to do with

my familiarity with it. I knew --

Q Sure.

A -- the principals involved. I knew Mrs. Gnann. I knew -- I had met Ms. Agnes -- I think her name's Agnes Pinckney. So, I had met the people involved it in, and had seen the property before.

Q How is it that this piece of property, this strip of undeveloped land, the dirt track, how can that be worth that much money? How do you come up with that figure?

A Well, let me answer the first question first, how could it be worth that much money, and how I came -- and second, how I came up with that figure. Everybody knows a lot about real estate, but you've always heard somebody say, well, the most of it, there's three things important about real estate: location, location, location. And that's true, but even more important than that is highest and best use, highest and best use, highest and best use.

And I say for an example, if one of you were maybe a farmer, you owned a piece of property in the middle of Allendale County, and you thought it would be a good site for a Burgher King. Problem is, if there's no major road there, no traffic going by, not many people living in the area. So, the highest and best use was

not for Burgher King. Now, if they put crossroads out there and had the interstate highway on that same property ten years later, then, all of a sudden, it might be. The property didn't move, but things have changed around it. So, the highest and best use is what brings the highest net return in terms of dollars to the land, which is what makes it valuable.

This piece of property is a little bit less than an acre. It's eighty-five hundreds of an acre. It's very small, I guess, by standards. Not even one acre. But it is the -- it is the bridge to, it is the key to the lock, it is the front door of an incredibly beautiful piece of property that, according to all preformers I had seen, was going to be worth a lot of money when it was developed.

So, I know if I -- and I can't put myself in the minds of the jurors. But if I owned that piece of property, and I knew that the people who wanted to buy the property or who were buying the property to -- which, you had to pass my property for access, you could get anything you wanted to get for it, I assume. I mean, either that, or you would stifle the development. Because, without that, it was my understanding they really could not do the development as it was proposed with the number of houses they had.

I came up with the number for several reasons. There was a meeting of the minds between Road, LLC, and Pinckney Point, LLC, that they would pay that much money based on the preformer that I saw projected on the screen and heard Mr. Kunkel testify that they were considering that five million dollars as part of their development cost or infrastructure cost, like you would for roads and curbs and gutters and water and sewer and street lights and whatever. That was the second thing.

Also, in the original contract between the Pinckney family and I think Barnes and somebody else, --

Q That's correct. And that would have been in 2005.

A I don't -- I don't know the date.

Q Yeah.

A There somewhere in there that they agreed, that, if the contract was not closed; that, if they didn't buy the property by a certain date in March of 2006, I think it was, that the price would go from fifteen [sic] million to ten million. Five million dollars, indicating it was worth -- somebody thought it was worth at least five million dollars.

Q And was that an adjustment based on the access?

A I'm sorry, Mr. Walker?

Q Was that an adjustment based on the dispute over this access?

A I assume it was. I -- I don't know that for sure, Mr. Walker. But they were willing to pay that. And as I said, if I owned that piece of land, and I knew that you wanted it, and were buying it to build a subdivision that was going to produce 55 or 56 million dollars of gross sales in real estate lots, I sure would want five million dollars. May have paid more for it. I'm not sure. They certainly weren't being told they had to pay less for it. They -- they volunteered to pay the five million dollars that I assumed Road wanted for it.

So, you had a highest and best use now of -- of that road being accessed to a proposed residential development. That became the highest and best use. So, it was no longer just a piece of dirt that somebody could build a house or two on. That was no longer the highest and best use. The highest and best use now was this -- the entryway to -- and I put it this way. And I was asked did I appraise it as a whole.

Q What do you mean by a whole?

A Well, did I include -- appraise that separately from the entire tract.

Q The Point property.

A I did, because I was not asked to appraise the entire tract, but it is part and parcel of that tract. It would be like appraising your house and not

appraising the front steps. If you've ever seen a mobile home out in the rural areas, sometimes they have these concrete steps that they put so you can go to the mobile home. Although they're not part of the mobile home, if you take it away, and those were the only concrete steps on the planet to get into your mobile home, makes those concrete steps pretty valuable, and they become part of your home. Because, if you can't get into your home, your home doesn't have any value, or very little.

Now, you can move a mobile home, but you couldn't move Pinckney Point. The only way you can get into Pinckney Point was up those concrete steps, like you get into that mobile home. So, it had to be considered in the overall value of Pinckney Point. And as I just said, they included it in their development cost. They expected it to be part of the cost of developing Pinckney Point.

MR. WALKER: That's all I have at this time, your Honor.

THE COURT: Okay. Mr. Achurch.

THOMAS HARTNETT

CROSS-EXAMINATION, BY MR. ACHURCH:

Q Good afternoon, Mr. Hartnett.

A Mr. Achurch, good afternoon to you, sir.

Q How are you today?
A Good to see you, sir.
Q All right. Ms. Pinckney must not have got enough money for that property.
A You know, I don't know why she did settle for that, because I think she could have gotten a lot more, but maybe she already had a lot of money.
Q Maybe she did. And you believe that property is still worth five million dollars today, as we sit here today.
A Yes, sir, I do believe it, and I'll tell you -- I'll tell you why I believe that. My answer is yes, and I'll tell you why. Because at some point in time, -- now, I understand that Beaufort County has bought the property, but it's a private road, based on documents that I've seen and the discussion that I've heard here today.
Q Wait. You are a legal expert -- an appraisal expert, right?
A Correct.
Q Do you agree with that? Now, you're not a legal expert.
A That's correct.
Q Okay. Go ahead and tell me why. Sorry to interrupt.

A But what I'm telling you, I'm not saying what -- I'm not saying what they meant, but I'm just saying what it said in the judge's order, that it would be a private road.

Q Okay. Fair enough.

A I'm not saying that's what it meant, but that's what it said.

So, whoever wants to get to Pinckney Point has to cross a private road. And if Pinckney Point, LLC, doesn't buy it, -- now, Beaufort County has. I didn't factor in the factor they can take with eminent domain if they want to. But whoever wants to use Pinckney Point has to cross over what I read said was a private road.

Q Okay.

A And I assume if it's a private road, they can close off access to Pinckney Point, which makes a beautiful tract of land inaccessible, legally inaccessible.

Q And you don't know about what easements that exist or don't exist, any of that, correct?

A No. I think there was a 20-foot easement that existed before that.

Q Okay.

A But I think that's been incorporated into what now is the --

MR. ACHURCH: Your Honor, I'm going to object to him telling me what he thinks about easements being incorporated.

THE COURT: Okay.

MR. WALKER: He was just responding to what the question was.

THE COURT: You opened it.

MR. ACHURCH: I just asked him if he was a legal expert, and I agree that the road says it's a private road. And he's talking about mergers and things like that. So, all right.

BY MR ACHURCH:

Q So, you assume it's a private road, correct?

A I do, yes, sir.

Q All right. Very good. And your appraisal assumes these properties should be together, correct?

A Yes, sir, they should.

Q And but they're not together, correct? They're not owned by the same people.

A No, sir, they're not.

Q Do you know why Pinckney -- why Road, LLC, bought the property instead of Pinckney Point?

A Again, I'm going to have to interpret what I read or what I've heard. And I understood that the lenders who had loaned the money to Pinckney Point, LLC, to

purchase the property, were unwilling to put anymore money into the project, and the road had not been settled. It was still the dispute of the road. And they were in a contract to buy this property, and all of a sudden, there was a dispute on how you get there. So, they needed to buy the property, but they didn't have the money.

And I understand that Mr. Kunkel, or whoever the developers were, found an investor who was willing to pay the settlement price. Whether they knew what the settlement price was going to be at the time, or whether they just agreed to pay the settlement. But they -- they couldn't get anymore money to do what they were doing to the property.

Q Okay. And you're talking to Mr. Kunkel trying to help develop your opinions about value, correct?

A I did talk to Mr. Kunkel, yes, sir, while I was doing my work.

Q That's what Mr. Kunkel told you?

A No, I think that's what I learned from Mr. Walker when he was telling me about the case.

Q All right. Did Mr. Kunkel tell you that it was purchased in the name of Road, LLC, because they didn't want the bank to have that under their collateral?

A No, sir, he didn't tell me that.

Q Okay. And all right. And at the time Road, LLC, agreed to buy from Pinckney Point, LLC, they knew Pinckney Point, LLC, just paid 1.2 three million dollars for it, right?
A Correct.
Q And Road, LLC, is going to get them a triple, triple, return on their investment, right?
A Correct.
Q And that would -- would you agree that the return somebody expects is reflective of the risk they're taking?
A Correct.
Q Okay. So, that would be -- that would be reflective of some amount of risk, then, wouldn't it?
A I would think so, yes, sir.
Q All right. And let me ask something, because I forgot to get to this part. But you are -- you're being paid for your time here today?
A Yes, sir, I am.
Q All right. And you got paid to do your apprisal?
A I did.
Q And you told me your fee is going to be somewhere between 2,500 and $5,000.00? You were kind of trying to feel that out. Have you made a decision on how much you're going to charge?

A Yes, sir. Including everything, I think it was $6,600.00. The fee was 4,500. And the other things were deposition with you and other things at the time it was taken. But it was $6,000.00. $6,600.00.

Q And part of the -- I think you said earlier, part of the reason you came up with your value was that Ms. -- the Pinckney's, who sold the property -- there are several Pinckney's around there --

A Yeah.

Q -- the Pinckney's who sold the property to Pinckney Point, they had to reduce their purchase price by five million dollars because of the road access issue.

A Again, I'm not going to try to interpret what it said, but there was a paragraph in the agreement to buy between the Pinckney's and Bush, et al, that it would be a reduction of five million dollars in the price if legal access couldn't have been obtained by, I think it was March the 1st, 2006 or something like that.

Q Okay. So, it was reduced because of access issue.

A That was my understanding from reading what it said.

Q Okay. And the other part about one of the ways you supported your number was that there was a contract between Road, LLC, and Pinckney Point. That was to be able to buy it back for $5,000.00 [sic].

A Five million dollars, yes, sir.
Q Five million.
A Yes, sir.
Q I'm sorry. Five million dollars. All right. And now, when you did your appraisal, that contract had expired, hadn't it?
A That's correct, it had.
Q Okay. And do you know what the punishment was to Pinckney Point, LLC, if they didn't buy the property from Road, LLC?
A Do I know what the punishment?
Q Yeah, in the contract that you relied on, do you know how much it was going to cost Pinckney Point, LLC, if they didn't buy it?
A No, sir, I don't.
Q Okay. And there are many -- and you were asked -- you were asked to assume, when you valued the property, that this will be used for it's highest and best use, correct?
A Well, an appraiser, that's part of our job. We have to determine what is the highest and best use for a piece of property.
Q Okay.
A And I had determined that -- I think in my deposition you asked me did Mr. Walker asked me to

assume that, and I went back and said, no, he did not ask me to assume that. What he asked me to do was to give him my opinion of the value of that property.

First paragraph of my letter to him -- and I just read my deposition while you were cross-examining Walter, and I think I said, now, wait a minute, let me go back. Mr. Achurch, that's not what I was told to assume; that's what I determined on my own, that, that was the -- anybody could determine that. I mean, you don't have to be an appraiser to determine the highest and best use of that road, because it gets you to Pinckney Point. You know.

Q Okay. And -- and okay. And the highest and best use. I think you told me in your deposition, that's always -- you need to have a demand for it, as well.

A That's correct.

Q All right. Now, there are a number of reasons why developments don't make it, aren't there?

A Yes, sir, there is.

Q And many developments fail, don't they?

A Well, you asked me that in my deposition, too. And I -- and a lot of it has to do (a) with the location, (b) the economy, and the demand at the time. So, some fail, obviously. I think you heard Mr. Kunkel, you questioned him. He said about a third of his failed in

the 18 years that he's been in business. So, he knows more about developing than I do. So, maybe that's a good number. Maybe 30 percent do fail. Thirty-three percent do fail.

Q And I think he said that 35 percent fail, and that all started within 2006. Did you hear it?

A That was a tough time for real estate developers, but most of the time, they're picked up --

COURT REPORTER: I'm so sorry. Start over your answer.

Q Go ahead and start over again, Mr. Hartnett. Court reporter didn't hear you.

A I'm sorry.

COURT REPORTER: Sorry.

A Did you ask me a question?

COURT REPORTER: Your answer. I am so sorry.

A Yes, 33 percent may be a good number that fails, but generally, they're picked up by another developer some years later, and they seem to make it after that.

Q Okay. And most of it depends on the market, right?

A Demand and the -- well, that's the market. I guess demand would be the market. And location, and the availability of money. And in this case, we found they quit the money to Pinckney Point. They didn't want to put anymore into it. So, they had to get money

elsewhere. But it has to do with the demand, with the economy, with the availability of funds, and that type of thing.

Q Sure. Sure. And oftentimes they fail. Or isn't it true, oftentimes, the development might go bad; and then, the next developer comes along; and then, they buy it, and they make a go of it.

A Yeah. Sometimes it's poor management. You know, it's poor marketing that causes it to fail.

Q It's like you ever heard of the second mouse gets the cheese?

A Yeah, I have.

Q All right. And I know you just read through your -- so, the present value of the property, as you're standing by your appraisal, and the value of it today to Road, LLC, is five million dollars.

A Well, most of our time, our appraisals are as of a certain date, and I think I did mine of a certain date.

Q You did.

A But it's my contention and my opinion that, that property is very valuable. It has at least -- at least five million dollars. And if it's not five million dollars what we paid for it today, it would be when the second mouse came along to get the cheese, he'd have to pay the five million dollars.

Q Okay. And you knew the County owned it at the time you did your appraisal.

A Correct.

MR. ACHURCH: Okay. Thank you. That's all the questions I have.

A Thank you, sir.

MR. WALKER: No further questions, your Honor.

THE COURT: You are excused, sir. Thank you.

A Thank you, your Honor, for your patience.

END TESTIMONY OF THOMAS HARTNETT.

CERTIFICATE OF REPORTER

APRIL 28, 2016 PARTIAL TRANSCRIPT OF TRIAL

TESTIMONY OF THOMAS HARTNETT

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing April 28, 2016 Partial Transcript of Trial Testimony Thomas Hartnett is a true, accurate, and complete record of the proceedings had of the testimony of Thomas Hartnett, on said date, in the case of Road, LLC, et al, versus Beaufort County; Beaufort County, South Carolina, Court of Common Pleas, Case Number 2013-CP-07-01341; that I am of neither kin, counsel, nor interest to any party hereto.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2013-CP-07-01341

2016 MAY 26 PM 3:23
BARBARA ROSEHEAD
BEAUFORT COUNTY, S.C.
CLERK OF COURT

ROAD, LLC AND PINCKNEY POINT, LLC,

Plaintiffs,

vs.

BEAUFORT COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF SOUTH CAROLINA,

Defendant.

Plaintiff Road, LLC's Memorandum in Opposition to the County's Motion for JNOV

Plaintiff Road, LLC respectfully submits this memorandum in opposition to the County's post-trial motion for JNOV.

STANDARD ON A MOTION FOR JNOV

The County's Motion for Directed Verdict and JNOV should be denied because there is evidence to support the jury's verdict that the County breached the Settlement Agreement and that the breach caused Road, LLC's damages in the amount of $5 million.

In ruling on the motion for JNOV, all evidence and inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the non-moving party. *Creech v. South Carolina Wildlife & Marine Resources Dep't*, 328 S.C. 24, 29, 491 S.E.2d 571, 573, 1997 S.C. LEXIS 167, *4 (S.C. 1997). The trial court is "required. . . to deny the motions where either the evidence yields more than one inference or its inference is in doubt." *Id.* "When considering directed verdict motions, neither the trial court nor the

appellate court has authority to decide credibility issues[1] or to resolve conflicts in the testimony or evidence." *Erickson v. Jones St. Publrs., LLC*, 368 S.C. 444, 463, 629 S.E.2d 653, 663, 2006 S.C. LEXIS 131, *17, 34 Media L. Rep. 1610 (S.C. 2006). The trial court can only be reversed on appeal when there is *no evidence* to support the jury's determination. *Creech*, 328 S.C. at 29, 491 S.E.2d at 573, 1997 S.C. LEXIS at *4.

I. There is evidence which supports the jury verdict in favor of Road, LLC's breach of contract claim.

a. There is evidence the County expressly breached the contract.

It is undisputed that the Settlement Agreement (Pl. Ex. 78) constituted a contract. The County and Road, LCC were parties to that contract. In its motion, the County asserts for the third time that there is no evidence that would support a finding the County breached the Settlement Agreement. For the same reasons the Court denied the County's motions for directed verdict on this same ground, the Court should deny its motion for JNOV.

The County claims it only had two obligations under the Settlement Agreement and that it performed both. In addition to disputing the County's assertion that it abided by its obligation under the Settlement Agreement that the road was private in all respects, the County reads the law of breach too narrowly.

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[1] As stated in this Court's jury charge, it is up to the jury to determine the credibility of the witnesses and to choose what, if any, testimony of a witness to believe:

> You can believe as much or as little of each witness's testimony as you think proper. You may believe the testimony of a single witness against that of many witnesses, or just the opposite. You may believe a part of a witness's testimony and disbelieve the rest. You should not determine the truth merely by counting the number of witnesses presented by each side. Throughout this trial, you have but one objective, to seek the truth, regardless of its source.

As stated in the Court's jury charge on what constitutes a breach of contract (provided by the Defendant), a breach is more expansive than simply a failure to perform:

> The word "breach," as it applies to contracts, is defined ***as a failure without legal excuse to perform any promise which forms a whole or a part of a contract***, including the refusal of a party to recognize the existence of the contract ***or the doing of something inconsistent with its existence***. When performance of a duty under a contract is due, any nonperformance is a breach. In other words, a party breaches a contract when he does not perform as he agreed to perform under the contract.
>
> A party's contractual duty is found in the obligation assumed by the party to the contract. A party's failure to comply with the contractual duty constitutes the breach. Nonperformance of a valid contract is a breach thereof. A breach occurs when a party refuses or neglects to perform some duty required by the terms of the contract.
>
> ***A breach may occur when a party without legal excuse fails to perform any promise that is all or part of the contract, or knowingly prevents, hinders or makes more costly the other party's performance***, or in advance of the due date of his performance, repudiates his promise to perform-that is, repudiates or renounces the contract. (Double emphasis added)

Although Road, LLC need only demonstrate that there is evidence of a singular breach, Road, LLC submits that there was evidence that the County breached the Settlement Agreement in each of the above-described ways.

First, there was proof that the County breached the Settlement Agreement by failing to abide by its obligation that the road was private. The County expressly agreed the road was private (Pl. Ex. 78 at pp. 3, 5, Consent Order attached as Ex. I to Settlement Agreement) and not for public dedication (Pl. Ex. 78 at p. 3). However, Gruber testified to the County's position that designation of the road as private did not restrict its use but instead imposed the obligation to maintain the road parcel on its owner. According to Mr. Gruber, even though that is the County's position, the County has nonetheless repaired and improved the road parcel even though it does not own it. According to Mr. Kubic, the

County only works on roads that it considers public. Additionally, according to Mr. Kunkel, the County has not placed any signs at the entrance to the point property to communicate that it is private and has failed to keep the gate closed. In the deposition excerpts read to the jury, Kubic admitted that the County in no way restricted the public from accessing the Point parcel. (Kubic Dep. p. 76:5-8.) There was plenty of evidence to support a determination by the jury that the County breached its obligation that the road is private and that the County has allowed the public to use the road to access the open point property.

Further, there was proof the County breached the Settlement Agreement by doing something inconsistent with the purpose of the Settlement Agreement. The plain language of the Settlement Agreement communicates its purpose was that the point property be for a residential development. (Pl. Ex. 78) (*See* pgs. 3 & 4, for example, " . . . for the development of the Point Tract as contemplated herein."). The Limited Warranty Deed which was an exhibit to and incorporated in to the Settlement Agreement (Pl. Ex. 78, Ex. E) expressly provided that the road parcel was "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 . . . any purpose necessary and appropriate for an entrance area to a private residential community." In their notes to the Court, the jury made clear their understanding that the Settlement Agreement's purpose was for residential development.

This purpose was the whole reason that Road, LLC purchased the road parcel for $1.3 million. It expected to realize $5 million through the sale of the road parcel to the developer of the point parcel whether that developer was Pinckney Point, LLC or another

entity. The Settlement Agreement fully discussed this sequence of events, the financial reliance of Road, LLC, and its expected sale of the road parcel to supply the right of way of 50 feet that is necessary for the subdivision of the point parcel into a residential community:

> 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. . . 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.

(Pl. Ex. 78, p 4.)

Notwithstanding the express purpose of the contract, as Kubic testified in his deposition that was published to the jury, the County's "*primary use . . . was to prevent development of the property.*" (Kubic Dep. 80:20-22.) In addition, Plaintiffs' Exhibits 36, 105, 107, and 109 further prove that the County frustrated the purpose of the contract when it acquired the point parcel to stop development and to potentially use it as a park. For example, the Power Point presented in the Rural and Critical Land Preservation Program's executive session stated the acquisition "removes development threat – 70+ residences" and is an "opportunity for regional park." (Pl. Ex. 36.) *See also* Pl. Ex .107 (Power Point presented to the Natural Resources Committee boasting that the proposal "removes the development threat" and is an "opportunity for a regional park".) The intent to frustrate the purpose of the Settlement Agreement is also expressed in the "Proposal for Fee Simple Acquisition" that recommended the purchase of the point parcel by the

County because of its intended development: "The County currently has an approved master plan for a rural subdivision maximizing the water's edge and maritime forest – 77 units, 77 septic tanks, dozens of docks." (Pl. Ex. 105.) The Proposal further stated: "Historic Homestead could serve as a future Beaufort County Parks & Preserves headquarters, retreat, or public meeting space." (Pl. Ex. 105.) Finally, the video of the Beaufort County Council meeting (wherein the Point acquisition was approved) highlighted the program attributes and specifically noted the County's concerns regarding the number of boat landings, access to water, environmental issues, septic systems, roadways, and the build-out of a number of homes that would have been available to the developer. (Pl. Ex. 108.)

As shown, there is an abundance of evidence to support the jury's conclusion that the County breached the Settlement Agreement when it purchased the point parcel for the purpose of establishing a park or conservation land to prevent development because those purposes are inconsistent with the express purpose of the Settlement Agreement and forever prevented Road, LLC from realizing the benefit of its bargain. With the point parcel being simply conservation land – not even a park – and with the County's treating the road parcel as subject to public use, Road, LLC will not receive the return of its $1.3 million much less the $5 million that constituted the benefit of its bargain.

Finally, and as further set forth in the jury charge, a breach may also occur when a party knowingly prevents, hinders, or makes more costly the other party's performance. In purchasing the point parcel for purely conservation purposes, the County knowingly prevented and hindered the development of the point parcel as a residential subdivision. The County intentionally made it impossible for Road, LLC to realize the benefit of the

bargain it made in entering the Settlement Agreement that (1) obligated it to purchase the road parcel from Agnes Pinckney for $1.3 million and (2) contemplated that Road, LLC would later sell the road parcel to Pinckney Point, LLC or other developer of the point parcel who would need to expand the limited, unimproved 20' dirt access to the 50' right of way with an improved road (as required by ordinance to develop the point parcel).

Road, LLC clearly satisfied its burden of demonstrating that, taking the evidence and all reasonable inferences therefrom, there is evidence of a breach of the Settlement Agreement.

b. There is evidence the County breached the implied covenant of good faith and fair dealing.

In addition to proving the County breached the Settlement Agreement, the evidence also supports a determination the County breached the implied covenant of good faith and fair dealing.

The jury was properly charged (and the Defendant agreed to the charge) that a party breaches the implied covenant of good faith and fair dealing where a party fails to "do and perform those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made." *Williams v. Riedman*, 339 S.C. 251, 529 S.E.2d 28 (Ct. App. 2000) (internal citations omitted). As pointed out, in part, by the County's JNOV Motion:

> While most States recognize some form of the good faith and fair dealing doctrine, it does not appear that there is any uniform understanding of the doctrine's precise meaning. "[T]he concept of good faith in the performance of contracts 'is a phrase without general meaning (or meanings) of its own.'" Tymshare, Inc. v. Covell, 727 F. 2d 1145, 1152, 234 U.S. App. D.C. 46 (CADC 1984) (Scalia, J.) (quoting Summers, "Good Faith" in General Contract Law and the Sales Provisions of the Uniform Commercial Code, 54 Va. L. Rev. 195, 201 (1968)); see also Burton, Breach of Contract and the Common Law Duty to Perform in Good Faith, 94 Harv.

> L. Rev. 369, 371 (1980). *Of particular importance here, while some States are said to use the doctrine "to effectuate the intentions of parties or to protect their reasonable expectations," ibid., other States clearly employ the doctrine to ensure that a party does not "'violate community standards of decency, fairness, or reasonableness.'"*

Northwest, Inc. v. Ginsberg, 134 S. Ct. 1422, 1431, 188 L. Ed. 2d 538, 549-550, 2014 U.S. LEXIS 2392, *21-22, 82 U.S.L.W. 4244, 24 Fla. L. Weekly Fed. S 661, 2014 WL 1301865 (U.S. 2014) (emphasis added).

Here, there is evidence that the County acquired the point tract for the express purpose of preventing the development, which was the overriding purpose of the Settlement Agreement. The express language of the Settlement Agreement and attachments thereto make clear that the parties were all on notice that Road, LLC acquired the road tract to serve as the access to a residential development and planned to re-sell the land to the residential developer to provide the needed right of way for the subdivision of the parcel. Walter Nester testified that the County approved the subdivision of Agnes Pinckney's land to create the road parcel in conformance with the terms of the Settlement Agreement so that it could be later sold to the developer of the point parcel. Yet, as previously stated, Plaintiffs' Exhibits 36, 105, 107, and 109, along with Kubic's testimony, evidence that the purpose of the County's purchase of Pinckney Point was to stop the planned development of the point tract and to potentially use the land as a park.

Other proof of the County's bad faith appears in the video of the County Council meeting approving the purchase, when it was declared that the County considered or attempted "to acquire [the parcel] for a number of years" notwithstanding the planned development and notwithstanding Road, LLC's acquisition of the road tract to serve as the access to that residential development. (Pl. Ex. 108.) As Walter Nester testified, he

was flabbergasted, shocked, and extremely surprised to learn of the County's acquisition given the purpose of the Settlement Agreement and the parties' respective obligations under it.

Additional evidence of the County's bad faith exists because Walter Nester testified that he fully forewarned the County that its action was in violation of the Settlement Agreement. Nester testified he wrote a letter to this effect (Pl. Ex. 32), and the County nonetheless proceeded to enter a contract to purchase the point tract a week later and then closed on the property soon thereafter. As stated in the deposition of Josh Gruber published to the jury:

Q: And did Walter follow up with you with a letter?

A: I believe he followed up with a letter to Robert.

Q: Okay. Did you have any concerns after that? Did you just move on?

A: Just moved on.

Q: Closed?

A: That is correct.

Q: Proceeded?

A: (Nods head.) And was sued.

(Gruber Dep. p. 20:7-10, 15-21.)

Finally, as described on pages 3-4 *supra*, the County's bad faith is evidenced by their failure to treat the road as private following its acquisition of the point tract. The highest and best use of the road parcel is its use as the exclusive access to a high end residential development. The parties took care to be sure that the road was deemed private and that there was no public dedication of the road. The County's failure to treat

the road as private since its acquisition is further evidence of the County's failure to do "those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made."

II. There is evidence that the County's breaches caused Road, LLC's damages.

Viewing the evidence and all reasonable inferences therefrom in the light most favorable to Road, LLC, there is evidence that the County caused Road, LLC's damages when it bought the point tract for either a park or no use at all thereby depriving Road, LLC's tract of land of its highest and best use as access to a residential subdivision on the point tract.

Tommy Hartnett testified that the highest and best use of the road tract was as the exclusive access for a residential development on the point parcel. (Hartnett Testimony, p. 15:11-13.) Kubic said in his deposition that the County did not care whether or not it had access since the primary use was to prevent development. (Kubic Dep. p. 80:10-22.) Yet, the County knew the intent of the Settlement Agreement, to which it was a party, was for Road, LLC to purchase the road parcel and then sell it to the developer for exclusive access to a residential subdivision. The County's presentation of its case demonstrates that the County was well-aware of the strategic nature of the Road, LLC acquisition of the Point parcel and the inclusion of the "private road" provisions of the Settlement Agreement and accompanying consent order (i.e., "the poison pill"). The effect of the County's purchase prevented the road owned by Road, LLC from realizing its highest and best use – a private, access road for residential development.

There was testimony to the effect that the County currently has no plans to develop a park on the point parcel. The land is simply being left in its current condition and held

in conservation. (*See* Kubic Dep. p. 73:7-21.) This part of Kubic's testimony supports the jury's conclusion that the road parcel no longer could be sold as the exclusive access to a residential community, or even a public park.

The jury also could have concluded the County's actions in handling the permit process for Pinckney Point, LLC also caused the damages to Road, LLC. The permitting process was stalled for nine months to obtain resolution of the County's imposition of a condition on Pinckney Point, LLC that was not required by its ordinances. Taylor Bush testified that if he had four more months, final site plan approval probably could have been achieved. John Kunkel testified that he probably could have secured the necessary investor to fund the option price within four months if final site plan approval had been obtained. The jury could have found that this delay of nine months caused by the County kept Pinckney Point, LLC from acquiring the point parcel and, thereby, prevented it from performing its obligations to purchase the road parcel for $5 million under the Road Agreement. There was also proof from which the jury could also have found that the primary reason ERP did not ultimately grant another 120 days to Pinckney Point, LLC was because of its negotiations with the County about its purchase of the point property.

Taking the evidence and the reasonable inferences therefrom in the light most favorable to Road, LLC, there is evidence the County's breaches caused Road, LLC to lose the benefit of its bargain with Pinckney Point, LLC under the Road Agreement and to lose the benefit of its bargain in selling it to another developer of the point parcel.

III. There is evidence of Road, LLC's damages.

There is evidence that Road, LLC's loss attributable to the County's breach is $ 5 million dollars. First, Hartnett, Kunkel, and Bush testified that when Pinckney Point, LLC

acquired the point tract, the price was reduced by $ 5 million because of the access issues. Second, *the County* introduced the purchase and sale agreement between Pinckney Point, LLC and Road, LLC wherein Pinckney Point, LLC agreed to pay Road, LLC $ 5 million for the road parcel. (Def. Ex. 3.)

Finally, Road, LLC's expert Tommy Hartnett testified that the road parcel is worth $ 5 million because of its location ***if*** it serves as the sole access to the Pinckney Point tract. Hartnett testified that an important indicia of value is the property's highest and best use. (Hartnett testimony, p. 12:7-19.) Hartnett further testified that the Pinckney Point tract's highest and best use is as a residential development and therefore the access would be worth $ 5 million to a residential developer:

> And as I said, if I owned that piece of land, and I knew that you wanted it, and were buying it to build a subdivision that was going to produce 55 or 56 million dollars of gross sales in real estate lots, I sure would want five million dollars. May have paid more for it. I'm not sure. They certainly weren't being told they had to pay less for it. They -- they volunteered to pay the five million dollars that I assumed Road wanted for it. So, you had a highest and best use now of -- of that road being accessed to a proposed residential development. That became the highest and best use. So, it was no longer just a piece of dirt that somebody could build a house or two on. That was no longer the highest and best use. The highest and best use now was this -- the entryway to -- and I put it this way.

(Hartnett testimony, p. 15.)

To the extent the County argues Road, LLC is not damaged because Hartnett testified the property is still worth $ 5 million, it should be noted that the jury was charged to accept all, some, or none of a witness's testimony and there is additional proof of the actual damage to Road, LLC. "It is not unusual, of course, for a case to have contradictory evidence and inconsistent testimony from a witness. In a law case tried before a jury, it is the jury that must decide what part of the witness's testimony it wants to believe and what

part it wants to disbelieve. . . The jury could have either accepted or rejected the expert witness's opinions, depending on its view of the evidence." *Small v. Pioneer Mach.*, 316 S.C. 479, 487-489, 450 S.E.2d 609, 614-615, 1994 S.C. App. LEXIS 143, *7-9 (Ct. App. 1994). *See Berkeley Elec. Coop., Inc. v. South Carolina Pub. Serv. Comm'n*, 304 S.C. 15, 402 S.E.2d 674 (1991) (recognizing that in a law case tried before a jury, it is the jury that must decide what part of each witness's testimony it believes and what part it disbelieves).

The jury further could have considered that Hartnett was referring to its value to a developer other than Pinckney Point, LCC ***if*** the point parcel is developed as a residential subdivision, which the County has prevented from ever occurring.

It is self-evident that Road, LLC is damaged because there is no use for the access road if there is no use of the point parcel. A portion of Kubic's published deposition indicates that there is no current use of the land and that the County did not intend to use the point property as a residential subdivision:

> Q. Even though the County has not had an assessment done for the Pinckney Point property, is it fair to say that the County does not intend to use it as a residential subdivision, to develop it as a residential subdivision?
>
> A. Yes, sir.
>
> Q. Would that be contrary to the purposes for which the funds could be expended?
>
> A. Yes, sir.
>
> Q. What has happened on the Pinckney Point tract since it was acquired back in May of 2013?
>
> A. I don't believe anything.

(Kubic Dep. p. 73:7-21.) Garrett Budds testified that at some point in the future, there may be a park. Accordingly, the reasonable inference based on all of the evidence and testimony is that the County would not use the land for the purpose of residential subdivision thereby damaging Road, LLC.

The Court correctly charged the jury that actual damages are damages to compensate the Plaintiff and put them, as closely as possible, in the same position they were in before the breach of contract. For the above-stated reasons, there is evidence to support a jury finding that Road, LLC's actual damages were $ 5 million if the jury believed the County's actions prevented Road, LLC from realizing the tract's highest and best use which he said resulted in a value of at least $ 5 million.

In addition, however, there is also evidence to support a $ 5 million verdict under a lost profits scenario. To recover under a theory of lost profits, Road, LLC must have proved (1) the profits were prevented or lost as a natural consequence of the breach of contract; (2) the lost profits were reasonably supposed to have been within the contemplation of the parties at the time the contract was made as a probable result of the breach of the contract; and (3) the lost profits are established with reasonable certainty.

First, there is evidence the profits were lost as a natural consequence of the breach because the County deprived Road, LLC's land of its highest and best use when it purchased the point tract for use as a park or no use at all.

Second, there is evidence that the lost profits were within the parties' contemplation at the time of the contract because the Settlement Agreement specifically references Road, LLC's future sale of the road parcel to Pinckney Point, LLC. (Pl. Ex. 78, p. 4.) In addition, Walter Nester testified that the Settlement Agreement contemplated

a new road owner and that an easement was executed and recorded to accomplish that. Over the course of trial, the County often pointed out that Road, LLC created a separate entity to acquire the road so that the road tract would not be lost to the bank in foreclosure. John Kunkel also testified that Road, LLC's acquisition was a strategic investment in that it would have given Road, LLC bargaining strength in the future since another purchaser would have to acquire the right of way access across the Road, LLC tract. Accordingly, and given the language of the contract which continually emphasized that the contemplated use of the point tract was for residential development, there is at least a reasonable inference that Road, LLC would have, in the alternative and under the scenario of Pinckney Point losing the land, sold the land to another residential developer had the County not purchased the land for a park or no use at all.

Finally, lost profits are established with reasonable certainty when established through expert testimony. Tommy Hartnett testified that the value of the road tract at its highest and best use as access to a residential development was at least $ 5 million dollars. (Hartnett Testimony, p. 9.)

Viewing the evidence and all reasonable inferences therefrom in the light most favorable to Road, LLC, the County's Motion for JNOV should be denied.

IV. Additional Points

Road, LLC maintains that it has set forth sufficient proof which, when viewed in the light most favorable to Road, LLC, demonstrates that each element of its breach of contract claim has been satisfied. To the extent the County makes extraneous points, Road, LLC responds with the following.

a. Arguments first-raised in the County's post-trial motion should not be considered.

In its brief, the County argues for the first time that the Settlement Agreement as to Road, LLC is a "nullity" because Pinckney Point could no longer meet its obligations under the contract. (Def. JNOV Motion, p. 6.) The County cannot now raise new arguments not previously raised on directed verdict. The South Carolina Rules of Civil Procedure

> contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Elam v. S.C. DOT, 361 S.C. 9, 24, 602 S.E.2d 772, 780, 2004 S.C. LEXIS 221, *24 (S.C. 2004). Arguments not previously raised therefore do not fall within the purview of a JNOV motion and should not now be considered.

b. The Court need not reach a latent ambiguity assessment based on the evidence submitted in opposition to the County's JNOV motion.

Road, LLC's claim for breach of contract does not require a latent ambiguity assessment. All of the evidence presented in opposition to the County's JNOV motion demonstrates that Road, LLC had proof to satisfy each element of its breach of contract claim. The above-described evidence does not speak to the intent of the parties beyond the actions relating to the County's breaches as to Road, LLC arising out of the express language of the contract.

c. The contract neither contemplated nor allowed the County's purchase.

To the extent the County argues that it did not breach the Settlement Agreement when it purchased the point tract because "there is no breach of the implied covenant

where a party to a contract has done what provisions of the contract expressly gave him the right to do," it should be noted that the Settlement Agreement does not contemplate – much less allow – the County's purchase of the point tract. The only use contemplated between the parties of the Settlement Agreement is residential development. (Pl. Ex. 78) (*See* pgs. 3 & 4, for example, " . . . for the development of the Point Tract as contemplated herein.").

d. The lack of an express restriction in the contract providing that the only legal use of the point parcel was a residential development is not a defense to an action for its breach.

As to the County's other argument based on the wording of the contract, the question is not whether the Settlement Agreement expressly restricted all use of the point parcel to a residential development but whether the County's actions breached the letter, purpose, and spirit of the Settlement Agreement. A contract for the sale of a house might not expressly prohibit the seller from burning the house down, but if the seller does intentionally burn it down, the failure of the contract to expressly prohibit the specific conduct would not be a defense to an action for damages for breach by the buyer.

CONCLUSION

Based on the above, Road, LLC contends that it has supplied the Court with more than adequate proof supporting the jury's verdict and finding that there was ample evidence to support each element of its breach of contract claim. Road, LLC respectfully requests that it be able to supplement this brief upon receipt of the entire official transcript. Viewing the evidence and all reasonable inferences therefrom in the light most favorable to Road, LLC, the County's motion should be denied.

SIGNATURE TO FOLLOW

Respectfully submitted,

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May 23, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) to this action in accord with the applicable Rules of Civil Procedure by electronic transmission or by hand delivery or by regular United States Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s),
on this 23 day of May, 2016,
Charleston, South Carolina

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

APRIL 25, 26, 27, 28, 29, MAY 2, 2016

PRETRIAL MOTIONS & TRANSCRIPT OF TRIAL

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

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MS. NANCY JANE DENNIS, PARALEGAL, WAS PRESENT.

MR. DAVID C. ROBERTS OF TRIAL SOLUTIONS WAS PRESENT.

MR. JOSEPH TAYLOR, MR. JOHN C. KUNKEL, MR. WILLIAM LANIUS WERE PRESENT.

ON BEHALF OF DEFENDANT
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MR. JOSHUA ANDREW GRUBER AND MS. HILLARY AUSTIN WERE PRESENT.

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APRIL 25, 2016, 1:48 P.M.

PRETRIAL MOTIONS AND RULINGS:

BAILIFF: All rise. This court is now in session, the Honorable Carmen Mullen presiding.

THE COURT: Thank you. Please be seated. All right. Okay. Wanda, for the record, we went over voir dire back in chambers, and I think we all pretty much agreed on what we're asking. I just want to go through the motion in limine as quickly as we could, or not as quickly, but as necessary, before even the jury came in, for us to pull the jury. So, they all should be back, roughly, in about fifteen, twenty minutes or so, once they've scanned them in. So, I thought, let's go ahead and see what we can do.

So, Ms. Lohr, do you want to go ahead on the first motion in limine?

MS. LOHR: Yes, ma'am. The defendants -- and again, I apologize for my voice. If you'll just bear with me.

THE COURT: Of course.

MS. LOHR: Plaintiff has alleged the County breached the settlement agreement by purchasing the Pinckney Point parcel after having approved multiple entitlements to allow Pinckney Point to accomplish the

residential development. Plaintiff is going to use -- wants to use evidence of previous permitting disputes that predate that settlement agreement. The settlement in -- the contract in question and the breach of contract action is the settlement agreement that's dated January 14, 2011. Anything -- any disputes --

Now, I would agree that we need to give the jury some context. There was a variance action that was settled as part of the settlement agreement. There was a dock challenge that was settled as part of the settlement agreement, and there was a lawsuit over whether the road was public or private that involved the Pinckneys, the County, and Pinckney Point, LLC.

THE COURT: Okay.

MS. LOHR: To the extent that it's necessary for the jury to understand context of the settlement agreement, we would agree that they need to know that there were these disputes. But what the plaintiff is attempting to do, and they actually state it in the motion in opposition to our motion in limine, they're wanting to show breach of --

THE COURT: Okay. All right. I apologize. I don't think he is. Sir, I apologize for asking you, you are not on jury duty, are you?

UNIDENTIFIED PERSON: No, ma'am.

THE COURT: All right. I didn't think so, and I recognized you, sir. I just wanted to make sure.

UNIDENTIFIED PERSON: No, I'm not. Thank you.

THE COURT: Thank you. All right.

Thank you, Rick.

Okay. I'm sorry, go ahead.

MS. LOHR: They're attempting to use -- they want to use those predating permit requests, as well as post-dated disputes, with regard to post-settlement agreement disputes with the County over the conceptual approval and final approval to show violation of the covenant of good faith and fair dealing in the contract.

THE COURT: Right.

MS. LOHR: Nothing that happened before the settlement agreement can be relevant to whether the settlement agreement was breached. There is nothing that they can show that was with regard to those disputes, because at that time, there was no settlement agreement. We had no contractual relationship with them.

THE COURT: Okay.

MS. LOHR: With regard to the permitting process subsequent to, the contract itself, the only allegation of breach, -- and I have a copy of the amended summons and complaint for your Honor, if you'd like.

THE COURT: Thank you.

MS. LOHR: Will you hand that up to her. The only allegation of breach is that, had the County not purchased the Pinckney Point parcel for park purposes, Pinckney Point would have been developed as a residential subdivision, in accordance with the agreement. You have to, at least, plead -- none of it -- there's no pleadings in here with regard to holding up the development process. There's no pleading in here regarding breach of covenant of good faith and fair dealing. The words *fair dealing, good faith,* and *bad faith* don't show up anywhere in the breach of settlement cause of action.

The only allegation of breach is, had the County not purchased Pinckney Point parcel for park purposes, Pinckney Point would have been developed. So, your Honor, that's the only allegation we have notice of that they were trying to allege was the breach of the contract. Now, they want to bring in all this evidence, with regard to the permitting process, and completely, the ones that predate the settlement agreement cannot go to show the jury that there was any breach of covenant of good faith and fair dealing or breach of contract, period; because the settlement agreement didn't exist at that time. There was no duty or obligation owed to

anybody.

The settlement agreement required the County to do two things: approve the variance, and agree that the road was private. That's the only two things that the contract required of Beaufort County. There were separate settlement agreements that were incorporated into the bigger settlement with the Pinckneys with regard to the deed and the easements that were given. But with regard to the County, the County's one obligation was to grant that variance and any other variance that would be required.

Now, specifically, the development, the conceptual plan, and the final development plan would have to be reviewed by engineering in DRT separately. There was no agreement with regard to automatic approval for the development program. So, with regard to any permitting issues that post-date -- this is painful, sorry -- that post-date the settlement agreement, we would argue that (1) they didn't plead that those were a violation; (2) they didn't plead a violation of the breach of the duty of covenant of good faith and fair dealing; and that the only breach alleged is the breach when we purchased the property. Because their argument was, we purchased the property, and the property, we agreed in the settlement agreement, had to be used as a residential development,

which, by the way, isn't in the settlement agreement, either.

So, in that regard, I think it's more prejudicial than probative. The plaintiff is really trying to argue a tortious interference with contractual relations argument, and as you know, the County's damages would be capped on that. So, to the extent that they're making that argument, it's completely inappropriate in the context and guise of a breach of contract argument.

THE COURT: Okay.

MS. LOHR: Particularly when it wasn't planned. I mean, we weren't on notice that they were going to even try to do this. While a breach of covenant of good faith and fair dealing would be subsumed into a breach of contract action, you actually have to plead to what the breach is in the breach of contract action. You can't just, at the last minute, say you breached it by purchasing the road and turning it into a park when you knew you couldn't do that; and then, turn around and say, oh, by the way, you held up the permitting, too, and that's the breach of covenant of good faith and fair dealing.

So, do you want the plaintiffs to be heard on that?

THE COURT: Yes, I'm going to let them go ahead and respond, yes.

MS. LOHR: Thank you.

MR. WALKER: Thank you, your Honor. We agree that the prior acts can't be used as a breach of the covenant of good faith and fair dealing or breach of the settlement agreement. We do think that prior conduct and just what went on before the settlement agreement is critical for the jury to understand the context of the settlement agreement.

THE COURT: What's the difference between the prior acts and the prior conduct?

MR. WALKER: Well, it's basically the same thing. But just the whole history before it came up, because there's more history than just the County. But it gives the jury the context, because the settlement agreement was a four-way settlement agreement among my client, the County, Agnes Pinckney, and Dot Gnann. So, they need to understand who the players are and our reasons for entering the settlement agreement, and they're going to be asked to apply that settlement agreement. So, all that context is essential to give them knowledge of who the players are, what happened, the reasons we entered it, and also, to understand the significance of the provisions.

Now, we have a dispute over what that significance is, even though the language itself is what it is. We

have a fully -- a written agreement, but the implication of it is in dispute. So, we are not going to allege that what went on before was a breach. It could be and was a reason why we entered the settlement, because one of the reasons we entered the settlement agreement was, we were trying to do some things that we thought were beneficial, such as reduce the encroachment in the river buffer, and the County said, no. And one of the things that we got in the settlement agreement, we, being Pinckney Point, was, the County agreed to pass the variance and that no further variances would be required for the road.

So, we need to show, based on what had happened before, why we would have requested no further variances, because there have been holdups, but that's not a breach of settlement agreement. It couldn't be. But it is an explanation of the significance of that provision.

In terms of the covenant of good faith and fair dealing, it's implied in every contract. It's not a separate cause of action, and the purchase of the property was a violation of the covenant of good faith and fair dealing, as well as, we says they understood significance of this agreement. This agreement was to facilitate my client's development of the Point tract.

They were in the capacity of issuing permits, not being a competing land purchaser.

Agnes Pinckney and Dot Gnann, at the same time, signed on, fully recognizing and wanting it to be a private road, and also, to be, particularly with respect to Dot Gnann, a part of the community in behind the gate and to limit the traffic coming down the road. So, we want to show that. It's contained in the agreement. We can show that proof through the testimony.

But back to the covenant of good faith and fair dealing, you don't have to allege the covenant of good faith and fair dealing. It's in every contract. So, we don't think there's any legal requirement. If we allege they've breached it by buying it, that it can be because of the express terms and the implied covenant of good faith and fair dealing.

With regard to notice, it's not -- we don't require bills of particulars of every breach. I think the rules of pleading do not require that ever breach be enumerated. Taylor Bush and John Kunkel have both been deposed two times, and they've talked at length about what we're talking about here. So, there's no notice issue, and we don't think there's any pleading issue.

THE COURT: Okay. You want to briefly respond, or are you good?

MS. LOHR: Your Honor, just with regard to the permits, you can give a history without going into the how long did this take, and what did this cost us. And you can go into that without going into particulars of the permitting process. They're simply wanting to do that to confuse the jury, and to make it seem like this ongoing process. And they're trying to charge us with conduct that happened before the settlement agreement, which is what they allege was breached.

I mean, these things all occurred prior to the settlement agreement. All but one of the permitting issues that's been at issue in this case occurred prior to the settlement agreement. They were, in fact, the reason for the settlement agreement.

THE COURT: Well, I would agree that there has to be some context with this, because it's going to beg the jury's question of, why did this all start in 2005? Why is this so old? We've had this issue going on forever.

I think, to some extent, I do think some pre-settlement agreement activity can be testified to, just to give it context; and also, to show what the County knew at that time, as well.

You know, it's so hard to grant motions in limine when I tie people's hands, as you can understand. I don't think we're going to beat a dead horse on this,

but I am going to let them, to some extent, explain, because I do think it's probative, certainly more than prejudicial. But if we start going through that rabbit hole and it just takes too long, you know, we've got a jury, you know, fourteen people, and we're going to lose them. And I've got to tell you, with this topic, I think you run a real risk of losing them.

So, to the extent, as far as number one on your motion, I think, at this point, I have to deny it. If something comes up, or if there's a point where I stop you and say, we've done enough of this, if it's past context, and if it's just trying to dirty up the County, if I think it becomes more prejudicial than probative, I may stop you. But as of right now, I think, to some extent.

I'm also very interested to hear your all's opening statements. I want to see exactly how you all are focusing it. I mean, I'll tell you, I went back and re-read your summary judgment motions yesterday, just to kind of see exactly where you were focusing on. But now, I'm interested to see what you're going to tell this jury, and how we're going to limit this case.

And so, at this point, I'm not going to completely tie your hands, but I think anything that, like I said, predates the settlement agreement, we're just to put it

kind of in context of what was happening at the time, and not beat it. Okay?

I do think, anything post does matter, and I think it's relevant, and I think it's relevant to their showing their damages. And I do think, you know, an implied good faith and fair dealing is just that. It's implied, so, in a contract, so I think that's -- I think it's fair game.

I don't think there's a pleading problem. I think you also were on notice of it, and I can tell you, I certainly saw it in Kunel's or Kunkel's -- sorry -- affidavit in your summary judgment motion, and he testified to all that, and that was -- that was done awhile back. So, I think you all are on notice of what they're apparently trying to do, so.

And you also mediated this case. I'm sure that they gave an overall damages number, this is what we believe. And I think I can, through their pretrial motions, or you know, pretrial briefs, I've kind of seen, at least, where their numbers are, that we can all reasonably look at and say, this is what they're claiming, or close to it.

MS. LOHR: Your Honor?

THE COURT: Yes.

MS. LOHR: Would you at least agree that, while

context is important, and you will allow some of that, that the specific detail as to, you know, all the permitting issues that were involved and emails back and forth about it, and -- I mean, the jury does not need to know every single --

THE COURT: Well, my question is this. Are you calling witnesses to stand up here and say that we had such an issue, as far as the variance is concerned? Or, I mean, do you have people, other than your general people, that are testifying?

MR. WALKER: No.

THE COURT: Okay.

MR. WALKER: In fact, we really only have one witness to provide that background.

THE COURT: Okay. And who is that, sir?

MR. WALKER: And that would be Taylor Bush.

THE COURT: Okay.

MR. WALKER: Taylor Bush. And John --

THE COURT: Okay.

MR. WALKER: -- because Taylor was right -- he was overseeing it day-to-day.

THE COURT: Okay.

MR. WALKER: And John Kunkel was more the guy in the back office who was overseeing it from a business standpoint, and dealing with the numbers and all that

type of thing. But Taylor's the one who's going to, for lack of a better word, tell the story. And then, John Kunkel's going to talk about discreet aspects of it. Garrett Budds doesn't have anything to do with it. Walter Nester will principally testify -- he will testify principally to what happened around the settlement agreement and after the settlement agreement and some before. But no, we are not going to bring up people, we aren't going to bring up somebody from Ward Edwards or somebody from the land planning firm to say we kept doing this and that, and --

THE COURT: Right.

MR. WALKER: We aren't going to --

THE COURT: Okay.

MR. WALKER: -- run over it again and again.

THE COURT: Okay. Well, now, I know where to look for it. So, again, if you need to, and if you would want to right now, you can raise just a running objection, so we don't have to have this continual problem. But at the point where you think that, despite my ruling, they have gone past it, I want you to call it to my attention, either one of you, and say, I think now is a good time for --

MS. LOHR: Well, and so your Honor knows --

THE COURT: Yes?

MS. LOHR: I think I do have to make an objection. I would, right now --

THE COURT: Yes.

MS. LOHR: -- reserve a running objection. But we are going to have to make objections on the record, and --

THE COURT: And I understand. And I get that.

MS. LOHR: -- I don't want you to be aggravated wit us for doing it, but we're going to have to do it.

THE COURT: I'm not going to be aggravated. And I've got to -- I think, either way, this case is going to be appealed, so, regardless of what happens. So, I think we all anticipate that. So, okay.

MS. LOHR: The next issue is with regard to the asserted damages, including lost profit. The testimony in the case has been completely speculative, and not only is it speculative, it's multi-levels of speculation. We would probably have had an investor. They never would tell us who that investor would be, or who they were targeting, or who probably would have given them eight million dollars, but there would probably have been an investor, and ERP would probably have sold it back to them. That's -- I mean, there's nothing to say. ERP was actively -- the evidence says ERP was actively marketing the property. So, they would

have sold it to whoever showed up and given them the money. Would probably have been -- made a killing on these lots, because the market, you know -- Kunkel actually testifies that what dictates the success of a project is the market. And we all know, back in 2010, 2011, 2012, the market -- 2013 was when the property was purchased -- the market was just beginning --

THE COURT: To come back.

MS. LOHR: -- to come back. So, there's a lot of probably's with regard to this evidence of lost profit that are mere -- they're allegations, your Honor. There's no evidence to support them. They haven't been able to name names. They've just told us over and over again that, oh, we would probably have had the money. Well, they had had three years to get the money, and hadn't gotten the money yet. They lost it, because they couldn't pay their bank. Then, they purchased the option. And then, they had to get multiple extensions on the option. And they were asking for another extension on the option with ERP, but they would probably have done it, had the County had not come in and bought it, even though they hadn't been able to do it for three years. There's just no evidentiary support that goes beyond those allegations and speculation that we probably would have done it. And that is too

tenuous, with regard -- to reach the jury. It doesn't have to be certain to a mathematical certainty, but it does have to be more than just would probably.

THE COURT: Right.

MS. LOHR: We've got to have a name, you know. And at this point, we asked for the name. They couldn't remember the name of who would have given them eight million dollars, and so we couldn't go depose that person and find out whether they really would have given them eight million -- were really considering giving them eight million or six million or however many million dollars. You'd think if you would probably have had somebody get that money from, you'd know who that person was.

So, right now, all we have is an allegation that they probably could have come up with the money; that ERB probably wouldn't have sold it to anyone else, even though they were actively marketing it. And then, on top of that, they would have made -- the property would have sold out to its full potential, which we know that developments never do.

THE COURT: Okay. Yes.

MR. WALKER: Thank you. First on the question of, could we have obtained the option. The evidence is just not just the documents, but the reasonable inference,

both from the documents and the testimony. And we have an email from John Irby, who was spearheading this from ERP, Equity Resource Partners, who held the property. And that email was early January 2013, and the upshot of the email was, I understand that you're going to need another extension; we're willing to grant you an extension of 120 days, provided you do X, Y, and Z. And X, Y and Z required us to do more than just get back to you and say we'll do it. We had to check with the investor in the road property, because what they wanted was to make sure that there were no issues about the road. They said, if we're going to give you another extension, we don't want to be hogtied to this Road, LLC, basically, where it controls it. We want control of the road, too.

Then, when Mr. Bush got back to Mr. Irby, in mid-February, Mr. Irby said, no, we've changed our mind; we aren't going to extend; we're just going to let it ride out. Well, we didn't know at that time that the County was looking at the property. And in fact, the reasonable inference, and the jury will hear the testimony from Garrett Budds, is that Garrett Budds, as agent of the Land Trust, an agent of the County, was negotiating with Lee Wooddall of ERP at that time for the County to buy the property. So, we have proof that,

but for the County's action, we would have gotten the extension. The jury may disagree. They'll hear John Irby's testimony, but we're entitled to the reasonable inference of the evidence.

Turning to the other part of it, which is the mathematical piece of it, we submit it's not speculative. First, Mr. Kunkel has thirty years' experience and he's a CPA, and these numbers were ones that he vetted pretty hard. He obtained a reasonable estimate of cost for the infrastructure within the development from Ward Edwards. He obtained other bids on certain improvements within the development from Sanders Brothers.

And by the way, our client does not build the houses, it just completes the site, and lets somebody else come in and build their house. So, we are only looking at the site aspects of it in selling the lots.

We also had an appraisal from Atlantic Appraisals' Jody Bishop, who did the lot prices, what the estimated lot prices would be. Mr. Kunkel did an absorption study, based on his familiarity with the market, and is doing this day in and day out on a lot of projects. Yes, there is absolutely no certainty, but is there a method? Yes, there is a very, very, we think, solid method. It's not just conjecture and speculation.

You'll also hear that, had we had the 120 days, it is very likely we could have gotten the approvals necessary. We had almost all of the approvals. The last thing that was of any consequence was a site plan approval, final site plan from the County. We had a conceptual site plan.

THE COURT: But is that the issue, whether or not you had the money?

MR. WALKER: Well, he's going to testify he could have gotten the money to do it.

THE COURT: Okay. Okay.

MR. WALKER: And I would just support -- I would suggest this to the Court as a way to resolve this, and that is, if we don't show it to the Court's satisfaction for the threshold, you can always strike the testimony.

Now, a motion in limine is a very severe remedy before the proof is even put up, or hypothesizing what the proof is going to be.

THE COURT: Right.

MR. WALKER: And if your Honor decides, I just don't think they got there with it, Mr. Walker said this, and he didn't come through, then, you can always, after the fact, receive it conditionally, and we would agree that it's received conditionally. And then, you can decide whether we met it or not, and that'll save

them from doing the directed verdict motion on it. However you want to do it.

I just think it's premature when we believe we can put up a prima facie case, and we did it before in affidavits, that we should be precluded from presenting it at trial.

THE COURT: Okay. It would be much easier if this was to be bench tried, because then, it wouldn't matter, but.

MS. LOHR: Your Honor, I would suggest that he be able to proffer it, then, and let your Honor decide at that point. Because it's awfully difficult to un-ring the bell when the jury hears millions and millions and millions of dollars. You know, I think that, that would be a solution as to that particular issue.

THE COURT: I think a solution, also, would be is, if he doesn't meet it, I could direct a verdict as to it, as well. So, it wouldn't need further consideration. So, at this point, I'm just going to have to trust that you can put it up, and that you're going to be able to meet a reasonable degree of certainty as to those damages. And then, it would probably go, and if not, then, I'll just direct a verdict and take care of it, if I have to. So. Okay.

What number are you putting in the board for that,

by the way? Just for me to have an idea. I'm assuming you've shared with them, already. No?

MR. WALKER: Twenty-eight million.

THE COURT: Twenty-eight million? Okay.

MR. WALKER: We had ten million in it.

THE COURT: I understood that. Okay.

MS. LOHR: Your Honor, that actually brings me to another motion in limine that we want to make that, quite frankly, just didn't occur to us until we were at lunch. And that's with regard to any damages that they received prior to the settlement agreement, if the million dollars that they had in it, was ten million dollars coming prior to the settlement agreement, then, that's damages that don't have anything to do, again, with the breach of contract. Those are things -- money -- purchase price, for instance, that they had, they purchased, they lost all of that in the BB&T foreclosure. They lost -- they actually signed something that said we don't have any equity.

So, to the extent they're trying to argue damages that they had in legal fees that predate the settlement agreement, those obviously can't be part of the breach of settlement agreement. Those are things that weren't contemplated as the reasonable damages for the breach of settlement. It would be anything that they entered into

the settlement agreement, any expenditures after that point, that they relied on the representations of the County to enter into those, because those original ones don't have anything to do -- couldn't possibly be damages for the breach of settlement, because the settlement agreement didn't exist at that point.

THE COURT: Okay.

MR. WALKER: We have two -- two, basically, alternative theories of damages. One is the lost profits. And your Honor, the fight there is whether they're speculative or not.

THE COURT: Right.

MR. WALKER: And you're saying you will receive it, but I understand you'd have questions about it, and it may be that you don't let the jury ever consider it. You're going to wait and see whether we met the standard or not.

THE COURT: Right.

MR. WALKER: So, that's what we would have made. We also have what we put into the project, which was roughly eight hundred and -- eight million six hundred thousand, before the settlement agreement, and 959,000 after the settlement agreement. And there, your Honor, our theory is, when the County bought the land, they took the opportunity away from us to recover those

costs. And even though the profit, specific profits, are difficult to determine, we never had an opportunity to recoup our cost. We certainly would have recouped our cost. So, when we -- they took the opportunity, we couldn't even get what we had in it back. So, we think that, that is directly caused by the breach of the settlement agreement, because everything we have in it would have been recouped had they not purchased the property and taken the opportunity. And that means we get nothing for future damages; we're just recovering what we have in the property.

THE COURT: And then, the 959 post-settlement, was that the two options, and --

MR. WALKER: Two options. Engineering. We were still going full bore.

THE COURT: Okay.

MR. WALKER: We had new site plans. We had to go to Beaufort-Jasper and get our water permit renewed. We had to renew or preliminary conceptual plan. We had archaeology we had to renew when we had the road parcel and it's going to be part of the development, as a result of Dot Gnann and Agnes Pinckney. We had to go back to South Carolina Archives and History. So, we were -- all those are direct expenditures in furtherance of the project.

THE COURT: Okay. Are we separating out the damages for Road, LLC, and Pinckney Point, LLC?

MR. WALKER: Yes.

THE COURT: Okay. And so, what damages are to whom?

MR. WALKER: All this we've talked about is Pinckney Point.

THE COURT: Is Pinckney Point. Okay.

MR. WALKER: Because they were going to own and develop --

THE COURT: Right.

MR. WALKER: -- the Point parcel, and they didn't lose it through foreclosure. They deeded it over, and had an option to buy it back.

THE COURT: Okay.

MR. WALKER: And with respect to Road, their damages are related to the -- just under an acre parcel. I'll call it an acre parcel --

THE COURT: The 1.3 land?

MR. WALKER: -- that they paid 1.3 for. And they had a contract with Pinckney Point that would have paid them five million at the time that Pinckney Point did its subdivision plat, because they needed a fifty-foot right-of-way, which is something quite different from a fifty-foot paved road. And they only had a twenty-foot

right-of-way, and Road was going to sell them the real property that would have given them the fifty-foot right-of-way. And then, the County had agreed no variances were required for the improvements that were necessary, if it needed to be paved or not. So, we're saying that the highest and best use of that property would be if the Point were developed as a residential subdivision, which we say the settlement agreement clearly contemplates. And that, had that been done, whoever owned it would have had to have dealt with our people. We were the front door. There was no way to get there with vehicular access, and they would have sold it for a reasonable amount. And five million dollars is a huge amount of money, but in the projection for these 76 lots, that was not -- it was the cost of doing business.

THE COURT: Right.

MR. WALKER: And it was fully figured in whoever's pro forma, but certainly, in ours.

THE COURT: Okay. So, then, your claim damages for Road, LLC, it's the difference. It's the 3.7 million?

MR. WALKER: No, it would be -- we say it's a minimum of five million, but certainly, they had 1.3 million in it, yes.

THE COURT: In it, yeah.

MS. LOHR: Your Honor?

THE COURT: Yes.

MS. LOHR: I'm confused, then, what constitutes the other 8.6 million dollars that predates? Because to the extent that they did the deed in lieu to ERP, they signed an agreement that said they didn't have any equity in the property. So, if that's part of this 8.6 million, which I can't really figure out what else 8. -- how else you get to 8.6 million, then, certainly, that -- if they lost that in the deed in lieu, --

THE COURT: How is that your responsibility.

MS. LOHR: -- how does that -- how did we do that, because they agreed they lost that already. That was prior to any alleged breach on our part.

MR. WALKER: We could have recouped every bit of that had the County not come in and solicited this property from ERP. And there is testimony and emails where ERP said, we aren't looking; we have not solicited anybody else for this property. And that's -- Taylor Bush will testify to that and John Kunkel. So, had we not lost the opportunity, we could have purchased it back and developed it, and at least recouped our cost. Even if you find that the lost profits don't meet the standard, we think they do.

THE COURT: Let me ask you a question. Who was ERP

testifying for? For the County or the plaintiffs? From ERP?

MR. WALKER: We don't intend to use them in our case. I took his deposition.

THE COURT: Okay.

MR. WALKER: And I understood the County was going to use his deposition in their case.

THE COURT: Okay.

MS. LOHR: Your Honor, I still don't see how the 8.6 million -- because, when that money's gone, they're going to have to re-buy this property from ERP. And that would be, arguably, if they had been able to do that, and then, somehow, lost the property, that might be damages. But I don't see how that original 8.6 million dollars that they paid, because they lost that all on their own. That predated the settlement agreement.

THE COURT: Okay. And they did the deed in lieu. Okay. Okay. Well, I don't know how he's going to prove that. I'm not sure he does, but. Like I said, I think it is to this issue. Obviously, I'm going to have to hear the testimony whether or not they've met it within a reasonable degree, and if I can -- have to direct a verdict, I can direct a verdict. I can tell the jury that they're not to consider that as damages.

So, I can tell you, I think there's going to be a pretty tight jury charge in this case. It's going to have to be very much narrow for them to understand what their issues are. It might be that we just have special interrogatories to make it really so we understand and they understand what they're supposed to be considering at the end, if that occurs. So, we can do that, and just do what we have to. All right.

MS. LOHR: Lastly, your Honor, with regard to parol evidence of the intent of the parties with regard to the contract, the contract is pretty clear in what it says.

THE COURT: The problem is, neither one of you agree.

MS. LOHR: Well, but that's -- your Honor, with all due respect, that's your call. You're supposed to look at it and tell us if it's clear or not. We can disagree that it's not clear, but that's because that's self-serving positions that attorneys are taking to represent their parties. I mean, if the Court looks at it and says, yeah, that's clear, it doesn't matter what we've alleged either way. If you say it's clear in their direction, that's the ruling. If we say it's -- if you say it's clear and rule in our direction, then, that's the ruling. The first step to parol evidence is that you have to -- there has to be some question as to what

the language says.

The plaintiffs' own testimony is -- I mean, the plaintiffs' own argument in the motion in limine is that they want to add a term. They said, clearly, nobody contemplated that the County would purchase the property.

THE COURT: Probably including Beaufort County.

MS. LOHR: Including Beaufort County. So, how in the world, then, do you testify it was your intent that the County couldn't purchase the property, because you're admitting that you didn't have any idea the County would purchase the property? That was not anywhere suggested in that settlement agreement. The only thing the County was required to do in the settlement agreement, the three variances, and agree about the road, and we were going to get rid of the litigation. And to the extent you want to add a term through your argument that I didn't intend for the County to buy the property, there was -- they're asking the Court to insert a term into that contract that doesn't exist in the contract, and that's that the County couldn't buy the property.

So, that's exactly what the parol evidence rule says you can't do. You can't add terms after the fact. Now, if there's some question or ambiguity that exists

in the contract when the Court looks at it and interprets it, and there's a question in your mind --

THE COURT: And that's what their argument was, is, there was a latent ambiguity in it. So, that becomes a jury issue, so.

MS. LOHR: But there actually has to be one.

THE COURT: Right. Yes. Okay.

MR. WALKER: Well, that's an argument there's a latent --

THE COURT: So, what is the latent ambiguity? What is it?

MR. WALKER: The latent ambiguity, I'll tell you, just one, for instance, is, in the Agnes Pinckney deed, the draft deed was attached to the settlement agreement, which the County agreed to, and we disagree that the County only agreed to two things, because they signed for everything. But in any event, the provision in Agnes Pinckney's deeds to Road, LLC, says that the road is to be granted; that the right of use is for -- and it names a number of things -- necessary and appropriate for residential subdivision. And we're saying that the clear implication of that is that the -- not just that the road parcel is limited to access for a residential subdivision, but the parties intended that the Point property be used as a residential subdivision.

In fact, if you look at the ZBOA settlement of the variance agreement, which is, I think, Exhibit B to the settlement agreement, maybe C, but it goes on and on about here's what we're going to do in platting; you're going to -- the variances -- the variance is being granted; no further variances will be needed for the road. It's page after page of what's going to happen in order for the property to be developed. And we think that, that shows an intent that it was to be a residential subdivision, even if it didn't have a prohibition on the County buying it.

I mean, the reason we said it wasn't addressed is not just because nobody thought about it, but one exception to the parol evidence rule is, if there is a gap, there can be parol evidence. Well, I think that we have parol evidence admissible because there is a dispute about what was intended.

Also, getting to our breach that it would be an implied -- breach that implied covenant of good faith and fair dealing. If everybody contemplated for it to be a residential subdivision, we further spent money and went after our approvals, and they just buy it out from under us, we don't think that, that's consistent with the intent of the parties, and we can go and prove what people were doing and why they entered the agreement.

We think it's kind of the same thing as the first argument.

MS. LOHR: Your Honor, with regard to what Counsel keeps mentioning, I want to read it to you right out of the agreement. Now, this is the deed from Agnes to them.

THE COURT: To Road, LLC.

MS. LOHR: Yeah, to Pinckney Point.

THE COURT: Okay, Pinckney Point.

MS. LOHR: Pinckney Point, but then, Pinckney Point -- it eventually goes to Road, LLC.

THE COURT: Okay.

MS. LOHR: *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 the entrance area to a private residential community.*

This paragraph is a restriction on what you can do in the right-of-way. No gravity sewers, but you can put utilities there.

And any other purpose necessary and appropriate for

the entrance area of the residential community. That's what they keep referring to as the language that ties this whole settlement agreement into forever and always being a residential community.

County could never agree, as a matter of law, to buying this property to be forever a residential community because, if someone other than the County -- if they had lost it, and someone other than the County had come along and purchased it, that argument would be today, well, you can't give them any kind of development permit to do anything other than a residential community. We could have never agreed to do that.

This language that they're talking about restricts what can be put in the right-of-way to improve the right-of-way. That's all that language does. It doesn't restrict the -- it doesn't say that I'm giving you this property, only to be used as a residential community. It talks about what you can do in that narrow strip that Agnes sold to them, that fifty-foot strip. And it says it's to be used as a right-of-way or other purpose associated therewith, including to put parking there and drainage and installation of utilities, but no gravity sewers, and any other thing you want to do. It doesn't bind the whole -- this cannot bind the whole settlement agreement to all --

bind all the parties to agreeing that the property has to be used as a residential community. This has to -- this is a specific restriction to the fifty-foot strip that Agnes gave, that belongs to Road, LLC.

Also, subject to the twenty-foot easement, we were talking about this earlier, it specifically says:

And subject to an easement for vehicular access, ingress and egress, on, over, and across, approximately a twenty-foot, private dirt road, extending to the north of Pinckney Colony Road, as depicted on the plat.

So, this easement is subject to that easement.

THE COURT: Okay. And again, your position is that, regardless, you still have that twenty-foot easement.

MS. LOHR: Yes, ma'am.

THE COURT: Yes. Regardless of what happens.

MS. LOHR: Right.

THE COURT: Okay. Okay. Okay. Well, all I can say is, to the extent that there's an argument, obviously, over what the contract means, I think there is a latent ambiguity in it. I think they can -- I think they can testify to some, obviously, background. I mean, it's went on along with this problem for years, so. I think we can allow -- again, the simple fact that

you all don't agree on what it does or does not do, I think it's obviously an argument for a jury. So, I'm going to allow it. Okay. Okay. Anything else?

MS. LOHR: No, ma'am.

MR. WALKER: Nothing from the plaintiff, your Honor.

VOIR DIRE:

THE COURT: Okay. Okay. Is the jury ready to come on in?

BAILIFF: Yes, ma'am.

THE COURT: Okay. Do you all want to face this way, or? It's really tight in here, and I appreciate that, certainly. Sometimes, people like that. And I'm going to tell those of you who are in the back, there's going to be no room. So, if you want to try to find a seat inside. Thank you.

All right. Let me just go ahead and put on the record, by agreement back in chambers, it came to my attention that we had a juror that had to come from Dafauskie Island, which, as we all know, is a pony express. The ferry, and then, coming over here, it's easily a two-and-a-half to three-hour round trip, if I were driving -- or driving a boat, probably both. So, it's just too much for him. So, Co-counsel, am I correct? Mr. Walker?

MR. WALKER: That is correct, your Honor.

THE COURT: Mr. Achurch, is that correct that we've excused him? Yes?

MR. BENDLE: Yes.

THE COURT: Mr. Bendle, thank you. I appreciate it. And that juror number is Number 205, Michael Mahaffey. So, we'll go ahead, and we're going to take him off this potential list. I have no idea if he's even in this panel or not, but it appears to be Maitè. Okay.

Just so the attorneys know, I am going to ask that you introduce yourselves and introduce those that are at counsel table with you and what their position, being players, whatever they are.

MR. ACHURCH: I'll do that for our side, your Honor.

THE COURT: Absolutely. And additionally, we don't have any witnesses that are here, other than some of you that may be testifying. Certainly, when we call your name, if you'll just stand when I go through a potential witness list or if we call again. Hopefully, by then, they should have figured out who you are, but with that said, it doesn't hurt to do it twice. Okay? All right. Yeah.

BAILIFF: All jurors are present, Madam Clerk.

JURY QUALIFICATION, BY THE COURT:

THE COURT: Thank you. Good afternoon, ladies and gentlemen.

RESPONSES FROM JURORS.

THE COURT: It's a pleasure to see you all, and I apologize for the close quarters. Obviously, everyone is going to be close in this room with the number of people we have.

Ladies and gentlemen, I am going to go ahead at this time and pull the jury of the case entitled Road, LLC, and Pinckney Point, LLC, versus Beaufort County, which is, of course, a political subdivision of the State of South Carolina.

Ladies and gentlemen, under the oath you took this morning, you are required to respond to the questions, if appropriate. I remind you, ladies and gentlemen, that this is a court of record. Anything anyone says is taken down by my court reporter. If you need to respond to a question, ladies and gentlemen, simply stand, and when called upon, give me both your name and your juror number. The attorneys and parties involved in this case are interested in what you have to say. All right?

So, and again, ladies and gentlemen, I want you to err on the side of over-disclosing, if necessary. If there's any question in your mind whatsoever whether or

not you should respond to a question, I am instructing you to respond. All right? So, with that said, ladies and gentlemen, I'm going to give you a brief recitation of the facts of this case.

This is a breach of contract case, wherein the plaintiffs, Road, LLC, and Pinckney Point, LLC, allege that Beaufort County breached a January 2011 agreement with the plaintiffs when Beaufort County purchased a 229-acre plot of land called Pinckney Point, or referred to commonly as Pinckney Point.

Ladies and gentlemen, the County disagrees, and they assert that their purchasing of Pinckney Point is not a violation of the January 2011 settlement agreement. And ladies and gentlemen, that's going to be the question for you to decide, if you're chosen as jurors in the trial of this case.

Again, there's a number of questions I need to ask you, ladies and gentlemen. The following is a list of either potential witnesses, ladies and gentlemen, or people whose names may come up during the trial of this case. And our concern, ladies and gentlemen, is whether you know these people or have had any dealings with these people, and whether or not you can be fair and impartial in the trial of the case, based on any interaction you have or possibly knowing them. All

right?

So, ladies and gentlemen, those following people are -- and if they're in the courtroom, I'm going to ask that they please stand and face you, so you can identify them, if they're here, by sight.

Taylor Bush. Thank you, Mr. Bush.

John Kunkel. Thank you, Mr. Kunkel.

Walter Nester. Ken Driggers. Patty Kennedy. Joshua Gruber. Garrett Budds. Gary Kubic. John Irby. Weston Newton. Bill Herbkersman.

And ladies and gentlemen, I can tell you this, I've not even told you what my question is yet, so sit tight, and I apologize. I probably should have done that first. But I wanted you to focus on the names, rather than what the question was. So, I wanted to trigger the name first, if you know them, and then, the question will apply, and you will be able to tell. Okay?

As I said, Bill Herbkersman.

Hillary Austin. Thank you, Ms. Austin.

Dan Keefer. And Jon Rembold.

Now, ladies and gentlemen, my question is this. Is anyone related by blood or connected by marriage with any of these people? If so, please stand.

Are any of these people -- do you have a close personal relationship or special friendship or

and impartial in the trial of this case, understanding that Ms. Austin either may be involved in some way or a potential witness in this case?

JUROR NUMBER 73: Yes.

THE COURT: You're positive you can?

JUROR NUMBER 73: Sure. I'm sure.

THE COURT: Give me your number again.

JUROR NUMBER 73: Number 73.

THE COURT: Ladies and gentlemen, I need to open this question up a little bit more. Thank you, ma'am. You may be seated and stay with us.

Has anyone ever worked for or had any business dealings or current business dealings with any of these people that I just read? And again, this doesn't necessarily disqualify you, ladies and gentlemen. It's simply information that we need to know. And the key importance is, is that you can be fair and impartial in the trial of this case, regardless of who that person is testifying for or what they have to say.

Sir, if you would stand, and give me your name and juror number.

JUROR NUMBER 135: Russell Harrison, Number 135.

THE COURT: Mr. Harrison --

JUROR NUMBER 135: I'm a County employee.

THE COURT: You are a County employee.

JUROR NUMBER 135: Yes, ma'am.

THE COURT: All right. Sir, I am going to go ahead and excuse you from the trial of this case. That was my next question. So, thank you, Mr. Harrison. Anyone else a County employee, while we're at it?

JUROR NUMBER 73: I am.

THE COURT: Well, I'm going to go ahead and excuse you, as well, ma'am. Thank you very much. Number 73 is also excused. Guess we should have got to that first.

And ladies and gentlemen, also, forgive me. I did not allow the attorneys to introduce themselves. It's been a long day. So, we're going to go ahead and have the parties introduce themselves. They can certainly introduce the parties whom they represent. My question to you is going to be this.

Are you related by blood, connected by marriage, or have a close personal relationship or special friendship with any of these attorneys that are trying this case; or in the past, have you ever been employed by them; or have you ever been involved in a lawsuit, either where they were representing you or you were being sued, potentially? And what else do I need to ask, other than that? I think that's pretty much -- or if you ever were represented by their law firms, which would be the last question.

So, Mr. Walker, why don't you start?

MR. WALKER: Good afternoon. My name is Trenholm Walker. I'm here with Katie Monoc. We're are with the firm of Pratt-Thomas Walker. We're in Charleston. The other lawyers in my firm are Douglas Pratt-Thomas, Andrew Epney, and John Austen, Lindsay Smith-Yancey, Tom Hesse, Tom Gressette, and John Linton. And Andy Gowder. Thank you.

THE COURT: Thank you. All right.

MR. ACHURCH: Thank you.

THE COURT: Mr. Achurch?

MR. ACHURCH: Thank you. My name is Robert Achurch. I practice here in Beaufort at Howell, Gibson & Hughes. Mary Lohr and Tab Bendle are partners in the firm. They'll be trying the case with me. Josh has already been introduced. This is Hillary. This is Ashley Darden. She works with us. She's a paralegal.

Other lawyers in the firm are Jim Gibson, Steve Hughes, Pat Higgins, David Black. Oh, and recent, Matt Williams.

THE COURT: And do you want to introduce Mr. Keaveny, too, possibly.

MR. ACHURCH: Oh, yeah, and Andy Yoho. No slight on Andy.

THE COURT: I'm going to go ahead and introduce Mr.

Keaveny since he's sitting on the side.

MR. ACHURCH: Oh, sure.

MR. TOM KEAVENY: And I'm Tom Keaveny.

THE COURT: Thank you.

MR. WALKER: Your Honor, you had asked me to introduce the clients. I neglected to do that. If you'd like me to.

THE COURT: Please. Please.

MR. WALKER: So, here today on behalf of Pinckney Point is John Kunkel. And behalf of Road, LLC, is Bill Lanius. Thank you.

THE COURT: Thank you. I appreciate it. All right, ladies and gentlemen, now that you know who everyone is before you, again, is anyone related by blood, connected by marriage, have a close personal relationship, special friendship, ever been represented or sued by any of these attorneys, or ever been employed by their offices? If so, please stand.

Yes, ma'am, your name and juror number.

JUROR NUMBER 121: My name is Jane Greene, 121.

THE COURT: Yes, ma'am.

JUROR NUMBER 121: I personally know Robert Achurch and his family.

THE COURT: Okay. When you say *personally*, what is the nature of your relationship?

JUROR NUMBER 121: We more or less went to school together. I personally know his sister. I'm friends with his sister.

THE COURT: Okay.

JUROR NUMBER 121: His brother is a banker here in town.

THE COURT: Okay.

JUROR NUMBER 121: And he's one of our clients at Lowcountry Insurance.

THE COURT: Okay. My question to you is, can you be fair and impartial --

JUROR NUMBER 121: Yes, I can.

THE COURT: -- in the trial of the case? Are you sure?

JUROR NUMBER 121: I'm positive.

THE COURT: You are positive. Okay. You may be seated. Thank you.

Ladies and gentlemen, are there any members of the jury panel or members of your immediate family who are presently represented or have been represented by any of the attorneys in the following law firms? And it would be the McNair Law Firm; or Jones, Simpson & Newton, P.A. If so, please stand.

Yes, sir. Your name and juror number.

JUROR NUMBER 127: Michael Hall, 127.

THE COURT: All right. Mr. Hall, who is it?

JUROR NUMBER 127: It was the McNair firm and Hilton Head.

THE COURT: Who, at McNair, represents you, specifically?

JUROR NUMBER 127: I don't remember her name now. It was -- we were doing some probate-type stuff.

MS. MONOC: Ann Kelly Russell?

JUROR NUMBER 127: Ann, yeah.

MS. MONOC: She's not there anymore.

THE COURT: Okay.

JUROR NUMBER 127: She's not there anymore.

THE COURT: Okay.

MS. MONOC: Ann Kelly Russell.

THE COURT: Ann Kelly Russell. Okay. Okay. She did some probate work for you. Is that correct? Or some wills?

JUROR NUMBER 127: Wills, some estate planning.

THE COURT: Okay. Sir, the fact that -- my understanding is, McNair Law Firm may be mentioned in this case. Obviously, there's no one here from that law firm trying the case. Can you be fair and impartial in the trial of this case?

JUROR NUMBER 127: Yes, your Honor.

THE COURT: All right. Thank you, sir. I

appreciate it. Anyone else?

MR. ACHURCH: Your Honor, one of the lawyers from McNair is going to be a witness in the case.

THE COURT: I apologize. Thank you. And it's going to be Walter Nester. Is that correct?

MR. ACHURCH: Yes, your Honor.

THE COURT: Who we already listed. Is that correct?

MR. ACHURCH: Yes, your Honor.

THE COURT: Okay. I apologize. I didn't realize he'd be here.

Ladies and gentlemen, I just want to go ahead and tell you, these questions are meant to elicit responses. All right? So, with that said, has any member of the jury panel or a member or your immediate family ever been a plaintiff in a lawsuit? If so, please stand. And that would be the person who was bringing the lawsuit.

JUROR NUMBER 37: I'm currently in a lawsuit now.

THE COURT: Ma'am, give me your name and juror number.

JUROR NUMBER 37: Cynthia Bullock, 37.

THE COURT: Number -- was it 37?

JUROR NUMBER 37: 37.

THE COURT: Ma'am, what type of lawsuit is it?

JUROR NUMBER 37: Breach of contract for real estate.

THE COURT: Okay. And it's currently pending.

JUROR NUMBER 37: Yeah. I think in the next few months, we've got depositions, I think.

THE COURT: What county is it in, or what area is it in?

JUROR NUMBER 37: Hilton Head.

THE COURT: It is in Hilton Head. Okay. All right, ma'am. Thank you. You may be seated.

Anyone else?

JUROR NUMBER 205: Does magistrate court count?

THE COURT: Sir, sure. Absolutely. And if you would just give me your name and jury number.

JUROR NUMBER 205: I'm Mike Mahaffey, and Juror Number 205.

THE COURT: All right. And Mr. Mahaffey, did you come from Dafauskie?

JUROR NUMBER 205: I did.

THE COURT: Okay. That's what I thought. I had heard. You have a long drive, and a long ferry ride to get here. I appreciate it.

JUROR NUMBER 205: Long ride, yeah.

THE COURT: Okay. Okay. And your number again, Mr. Mahaffey?

JUROR NUMBER 205: 205.

THE COURT: Okay. Thank you, sir. Now, you said you have a magistrate case. What type of case is it?

JUROR NUMBER 205: Somebody borrowed my utility trailer --

THE COURT: Okay.

JUROR NUMBER 205: -- and wouldn't return it. He moved to Jasper County. So, it was all done in Jasper County.

THE COURT: Okay.

JUROR NUMBER 205: I filed, you know, did the paperwork, and I went. He didn't show up, so.

THE COURT: And is it resolved now?

JUROR NUMBER 205: Well, I've got a paper. I've got a judgment.

THE COURT: You got a judgment. Okay. Okay, sir. I appreciate it. Okay. Thank you. All right.

Ladies and gentlemen, has any member of the jury panel or any member of your immediate family ever been a defendant in a lawsuit? If so, please stand.

Ma'am, your name and juror number.

JUROR NUMBER 96: Theresa Elsen, 96.

THE COURT: 96?

JUROR NUMBER 96: Um-hmm.

THE COURT: Yes, ma'am. What type of case was it?

JUROR NUMBER 96: Real estate. We bought some land here, and found out four or five years later that we didn't really own that land. So, we got sued.

THE COURT: Okay. Is that case resolved now?

JUROR NUMBER 96: It is.

THE COURT: Was it here in Beaufort County?

JUROR NUMBER 96: It was.

THE COURT: Okay. All right. Ma'am, thank you. You may be seated.

Has any member of the jury panel ever been a member of a jury in a civil or criminal case? If so, please stand.

So, have you ever been chosen as a juror before, ladies and gentlemen?

JUROR NUMBER 205: Ever?

THE COURT: Pardon? Absolutely, ever. Exactly. So, tell me, it's Mr. Mahaffey, Number 205, correct?

JUROR NUMBER 205: Right.

THE COURT: What kind of case was it that you sat on, sir?

JUROR NUMBER 205: It was a criminal case.

THE COURT: It was --

JUROR NUMBER 205: It's a bonic (phonetic spell) it's called, what like public like fighting.

THE COURT: Oh, okay. Okay. Sir, how long ago was

that?

JUROR NUMBER 205: It was eight to ten years.

THE COURT: Anything about that experience that would affect your ability to be fair and impartial in the trial of this case?

JUROR NUMBER 205: No. No.

THE COURT: All right. Thank you, Mr. Mahaffey. You may be seated.

Yes, sir.

JUROR NUMBER 127: Michael Hall, 127.

THE COURT: Yes, sir.

JUROR NUMBER 127: A criminal case in Bucks County, Pennsylvania, about five years ago.

THE COURT: Anything about that experience that would affect your ability to be fair and impartial in the trial of this case?

JUROR NUMBER 127: No, your Honor.

THE COURT: Thank you, Mr. Hall. I appreciate it. Yes, sir.

JUROR NUMBER 197: Pat Libro, 197. About six years ago, maybe eight, I was in criminal capital murder case, here in Beaufort County.

THE COURT: Okay. Sir, anything about that process that would affect your ability to be fair and impartial in the trial of this case?

JUROR NUMBER 197: No, ma'am.

THE COURT: Thank you. I appreciate it, sir.

Yes, ma'am.

JUROR NUMBER 288: Midge Scott-Firestone, 288. Twenty-something years ago in another county, I sat on a civil court case. And I also don't know if I should say, but I used to be an employee with Beaufort County Sheriff's Office.

THE COURT: Okay.

JUROR NUMBER 288: Just FYI.

THE COURT: I appreciate that. What did you do for them?

JUROR NUMBER 288: I was the public relations, public information officer. I was a deputy sheriff.

THE COURT: Okay. Let me ask you, understanding that Beaufort County is a defendant in this case, I want to make sure that you can be fair and impartial. Can you?

JUROR NUMBER 288: Absolutely.

THE COURT: All right. Thank you. And anything about that prior jury experience that would affect your ability to be fair and impartial?

JUROR NUMBER 288: Yeah, I'm fine, ma'am.

THE COURT: Okay. You sure?

JUROR NUMBER 288: Yes, ma'am.

THE COURT: Very good. I appreciate that.

Yes, sir.

JUROR NUMBER 76: Jeffrey Dacota and Number 76.

THE COURT: Yes, sir.

JUROR NUMBER 76: And I was picked for a jury trial here in Beaufort County about eight years ago, but by the time we showed up the next morning, it -- they had already settled it.

THE COURT: All right, sir. Thank you. You may be seated.

Yes, ma'am.

JUROR NUMBER 14: Faith Ayer, Juror 14. It was in Hampton County about ten years ago, a civil case.

THE COURT: Okay. Anything about that experience that would affect your ability to be fair and impartial in the trial of this case?

JUROR NUMBER 14: No, ma'am.

THE COURT: Thank you, ma'am. You may be seated.

Yes, ma'am.

JUROR NUMBER 284: Suzanne Schroedel, Number 284. Two civil cases in Mahoney County, Ohio.

THE COURT: Okay. Anything about that experience that would affect your ability to be fair and impartial in the trial of this case?

JUROR NUMBER 14: I don't think so.

THE COURT: Okay. I need to know absolutely for sure, Ms. Schroedel.

JUROR NUMBER 14: No. It wouldn't make a difference.

THE COURT: Okay. Thank you, ma'am.

Sir.

JUROR NUMBER 3: James Adams, Juror Number 3. A shoplifting case about ten, twelve years ago.

THE COURT: All right. Anything about that experience?

JUROR NUMBER 3: No, ma'am.

THE COURT: Okay. Thank you, sir.

JUROR NUMBER 3: Yes, ma'am.

THE COURT: Lastly.

JUROR NUMBER 196: Scott Lettich, Juror 196.

THE COURT: Yes, sir.

JUROR NUMBER 196: I've been on two cases. One of them was brought was an assault case, high and aggravated, and they settled the case before, so the jury ever did anything. And the other case was a case on a DUI.

THE COURT: Okay. Anything about either one of those experiences that would affect your ability to be fair and impartial?

JUROR NUMBER 196: No, ma'am. They were over

fifteen, twenty years ago, both of them.

THE COURT: Thank you, sir. I appreciate that.

Has any member of the jury panel or any member of your immediate family ever been employed by Beaufort County? If so, please stand. Other than, I know I have my one deputy that responded.

Sir, your name and juror number.

JUROR NUMBER 335: Edward Warren, 335.

THE COURT: Yes, sir.

JUROR NUMBER 335: My wife works for Beaufort County Council.

THE COURT: She was on Beaufort County Council?

JUROR NUMBER 335: She worked for them.

THE COURT: Oh, she worked for them.

JUROR NUMBER 335: Right now.

THE COURT: She currently works for them right now.

JUROR NUMBER 335: Yes. Um-hmm.

THE COURT: And I apologize, sir. I didn't get your last name. What is your wife's name?

JUROR NUMBER 335: Crystal Warren.

THE COURT: And do you know in what capacity she works with them?

JUROR NUMBER 335: Register of deeds.

THE COURT: She works in the register of deeds. I need to see the attorneys for a moment.

OFF-THE-RECORD BENCH CONFERENCE, OUT OF HEARING OF JURORS. PRESENT: THE COURT, MS. MONOC, MR. ACHURCH.

END BENCH CONFERENCE.

THE COURT: Sir, can I ask you, the fact that your wife, I understand, works for the register of deeds. Is that correct? In that office? Is that correct?

JUROR NUMBER 335: Yes, ma'am.

THE COURT: Would that affect your ability to be fair and impartial in the trial of this case, understanding that one of the defendants, or the defendant, is Beaufort County?

JUROR NUMBER 335: No, it wouldn't affect my ability.

THE COURT: Okay. Thank you, sir. You may be seated.

Yes, ma'am.

JUROR NUMBER 261: Melissa Piper, 261. I worked for Beaufort County Dispatch.

THE COURT: You currently do?

JUROR NUMBER 261: No.

THE COURT: How long ago was that?

JUROR NUMBER 261: Nine years ago?

THE COURT: Ma'am, understanding that Beaufort County is the defendant in this case, can you be fair

and impartial in the trial of this case?

JUROR NUMBER 261: Yes.

THE COURT: All right. Thank you, ma'am. You may be seated.

Has any other member of the jury panel or member of your immediate family ever been employed by any other county or a municipality? If so, please stand.

That's all right. Again, they're meant to elicit responses. Mr. Mahaffey, go ahead and stand up. You're Number 205, sir. Where else have either you or a member of your family worked?

JUROR NUMBER 205: I've worked for Haralson County. It's in middle Georgia.

THE COURT: Okay.

JUROR NUMBER 205: I worked there seven years.

THE COURT: Okay. Thank you, sir. You may be seated.

Yes, ma'am.

JUROR NUMBER 93: I'm Delayna Early. My husband works for the City of Hardeeville.

THE COURT: Okay. What does he do for them?

JUROR NUMBER 93: He's the director of Parks and Recreation.

THE COURT: Thank you, ma'am. You may be seated.

MR. ACHURCH: What's her number, your Honor?

THE COURT: Ma'am, what was your number again? I apologize.

JUROR NUMBER 93: Oh, 93.

THE COURT: Thank you.

JUROR NUMBER 93: Um-hmm.

THE COURT: Okay. Has any member of the jury panel or any member of your immediate family ever been employed by Beaufort County Open Land Trust? If so, please stand.

Has any member of the jury panel or any member of your immediate family ever served as an elected or appointed official for Beaufort County? If so, please stand.

Has any member of the jury panel or a member of your immediate family ever worked for or hired Ward Edward? If so, please stand?

Sir, your name and juror number.

JUROR NUMBER 197: Pat Libro, 197. They surveyed for a residential transaction.

THE COURT: Surveyed for a residential. Was it yours, personally or someone from your family?

JUROR NUMBER 197: Yes. No, mine.

THE COURT: Where is the property?

JUROR NUMBER 197: Callawassie Island.

THE COURT: All right. Sir, that Ward Edwards

either might be discussed or a witness in this case, would that affect your ability to be fair and impartial in the trial of this case?

JUROR NUMBER 197: No, ma'am, it won't.

THE COURT: Thank you, sir. You may be seated.

Has any member of the jury panel or any member of your immediate family ever worked for or hired Whitmer Jones Keefer, Limited? If so, please stand.

Has any member of the jury panel or any member of your immediate family ever worked for or hired Brockington & Associates? If so, please stand.

Has any member of the jury panel or any member of your immediate family ever worked for or hired Historical Concepts, LLC?

Has any member of the jury panel or any member of your immediate family ever been employed by a title insurance company or a title search company? If so, please stand.

Has any member of the jury panel or any member of your immediate family ever been employed by BB&T? If so, please stand.

Has any member of the jury panel or a member of your immediate family ever sought or are now seeking a variance or other development permit or approval from Beaufort County? If so, please stand.

Has any member of the jury panel or any member of your immediate family ever sought a variance or other development permit or approval from any other county or a municipality? If so, please stand.

Sir.

JUROR NUMBER 197: It's probably a gray area, but I live at Callawassie Island, which is POD country.

THE COURT: Right.

JUROR NUMBER 197: I've been involved in their architectural review committee for many years.

THE COURT: Okay.

JUROR NUMBER 197: Dealings with the County in that regard, and variances are common, quite often.

THE COURT: Okay. Sir, give me your name and juror number again.

JUROR NUMBER 197: Pat Libro, 197.

THE COURT: All right. Sir, anything about the experience that you've had, maybe, within that capacity, working -- it sounds like you're on ARB -- that would affect your ability to be fair and impartial in the trial of this case to both the plaintiff and the defendant?

JUROR NUMBER 197: No, ma'am.

THE COURT: Thank you, sir. You may be seated.

Has any member of the jury panel or any member of

your immediate family ever lived on or near Pinckney Colony Road? If so, please stand.

Does any member of the jury panel have personal knowledge of the tract of land known at Pinckney Point, at the end of Pinckney Colony Road?

Ladies and gentlemen, is there any member of the jury panel who has heard about any questions over the possible development of Pinckney Point at the end of Pinckney Colony Road, or have taken a position with respect to its possible development? If so, please stand.

Has any member of the jury panel or a member of your immediate family a member of or a contributor to any conservation or environmental organizations, such as but not limited to the Sierra Club, League of Conservation Voters, the Nature Conservancy, South Carolina Coastal Conservation League, Lowcountry Open Land Trust, Beaufort County Open Land Trust, and the like? If so, please stand.

And again, the question is, are you a member of or a contributor to any of these types of organizations? If so, please stand.

Sir, your name and juror number.

JUROR NUMBER 311: Robert Speare, 311.

THE COURT: Mr. Speare, which group?

JUROR NUMBER 311: It varies from time to time, but a number of open land trusts, Sierra Club, Audubon, those sorts of conservation organizations.

THE COURT: And are you a member of those, and also contribute to them, or one or the other, or both?

JUROR NUMBER 311: Yeah. Some, one; some, the other.

THE COURT: Okay. All right. Thank you, sir. I appreciate it. You may be seated.

Has any member of the jury panel ever attended a public hearing or meeting to support or oppose development? If so, please stand.

BAILIFF: One standing, your Honor.

THE COURT: Oh, I'm sorry. I apologize, ma'am. Your name and juror number.

JUROR NUMBER 243: Nicole Hanks, 243.

THE COURT: Yes, ma'am.

JUROR NUMBER 243: It was actually to oppose a variance on an adjoining property here in Beaufort.

THE COURT: How long ago was that?

JUROR NUMBER 243: Year and a half, two years ago.

THE COURT: Okay. Thank you, ma'am. You may be seated.

Has any member of the jury panel or any member of your immediate family ever been involved in the business

of developing or selling real property? If so, please stand.

Ma'am, your name and juror number.

JUROR NUMBER 37: Cynthia Bullock, Number 37. I do have my South Carolina real estate license.

THE COURT: All right.

JUROR NUMBER 37: And my West Virginia real estate license. In South Carolina, I'm a Charter I. I'm not active. I'm taking care of my kids, but I do have my license active.

THE COURT: Okay. Thank you. You may be seated.

BAILIFF: One standing, your Honor.

THE COURT: Oh. I apologize.

JUROR NUMBER 288: I was a real estate agent for Kate Hamanian (phonetic spelling) for many years. I'm no longer there.

THE COURT: Okay. Thank you. Again, your name and juror number?

JUROR NUMBER 288: Madge Scott-Firestone, 288.

THE COURT: Thank you.

Has any member of the jury panel or any member of your immediate family ever worked as an appraiser of real property? If so, please stand.

Has any member of the jury panel or any member of your immediate family an accountant? If so, please

stand.

Your name and juror number.

JUROR NUMBER 284: Suzanne Schroedel, and I'm 284.

THE COURT: And I didn't do roll call, so I don't know what everyone in the room does or what their spouse does. So, I have to apologize.

JUROR NUMBER 284: Okay. He's a CPA in Ohio.

THE COURT: Is this your husband or?

JUROR NUMBER 284: It's my husband.

THE COURT: It's your husband. Okay.

JUROR NUMBER 284: Yes.

THE COURT: All right. Thank you, ma'am. You may be seated.

Yes, ma'am. Right behind her.

JUROR NUMBER 84: Wanda Diggs, Number 84.

THE COURT: Yes.

JUROR NUMBER 84: I'm controlling accountant at the Y.

THE COURT: Okay. I'm sorry, is it you or a family member?

JUROR NUMBER 84: Me.

THE COURT: And you are a controller?

JUROR NUMBER 84: Yes.

THE COURT: At the County Y? Is that correct?

JUROR NUMBER 84: Right.

THE COURT: Okay. Thank you, ma'am.

Sir.

JUROR NUMBER 270: Michael Reeves, Number 270. Just, mother's an accountant in Beaufort?

THE COURT: Okay. Who is she with?

JUROR NUMBER 270: It's Mellen.

THE COURT: Thank you. You may be seated, sir.

Yes, ma'am.

JUROR NUMBER 121: Jane Greene, 121. I'm a comptroller for Lowcountry Insurance.

THE COURT: Thank you. Sir.

JUROR NUMBER 3: James Allen, Juror Number 3. My son is a CPA in Hartsville, South Carolina.

THE COURT: Who does he work for? Or does he just have his own --

JUROR NUMBER 3: Sunoco.

THE COURT: Thank you. Sir.

JUROR NUMBER 196: Scott Lettich, Juror 196. My brother was a cost analysis accountant.

THE COURT: Okay.

JUROR NUMBER 196: For Eastman Kodak and Union Carbide.

THE COURT: Okay.

JUROR NUMBER 196: And another company.

THE COURT: Okay. Thank you, sir.

Ladies and gentlemen, has any member of the jury panel or any member of your immediate family ever had a dispute with a bank or other similar financial institution that resulted in litigation, and resulted in a lawsuit? If so, please stand.

Ladies and gentlemen, does any member of the jury panel or any member of your immediate family frequently use county parks within Beaufort County? If so, please stand.

Ladies and gentlemen, I know you know very little about this case. I think I've explained to you that it is a contract dispute between the plaintiffs in this case Road, LLC, and Pinckney Point, LLC, versus Beaufort County. But I need to know if anyone has any independent information about this case whatsoever through any source, whether it be the newspaper, or through word of mouth, or maybe any person that was involved in the litigation, or is involved in the litigation, or any of the parties? If so, please stand.

JUROR NUMBER 56: Well, all I can say is --

THE COURT: Sir, before you say anything -- and I apologize, I don't mean to cut you off -- sir, give me your name and juror number.

JUROR NUMBER 56: Chris Clayton, and I'm Jury [sic] Number 56.

THE COURT: Can you tell me what -- how you learned of it through something, if it was through T.V., a person, or the newspaper, or anything along those lines?

JUROR NUMBER 56: It's only through the newspaper.

THE COURT: Only through the newspaper.

JUROR NUMBER 56: The articles that I've read about it.

THE COURT: All right. Sir, what I need to know is this. Can you put anything you may have read in the newspaper or seen in the news about this case aside, and if you are chosen as a juror, decide the facts of this case as they are presented here in this courtroom?

JUROR NUMBER 56: Yes, I can.

THE COURT: Because again, it would be completely wrong for you to cite anything that isn't presented here, and based on what's presented to you. And I want to make sure you're comfortable doing that.

JUROR NUMBER 56: I am comfortable doing it.

THE COURT: All right. Sir, thank you. You may be seated. Anyone else? Yes.

BAILIFF: One standing, your Honor.

JUROR NUMBER 197: Pat Libro, 197.

THE COURT: Yes.

JUROR NUMBER 197: Excuse me. I'm sorry.

THE COURT: You're fine.

JUROR NUMBER 197: I also recall reading a newspaper. I don't recall which direction it went.

THE COURT: Okay. Okay.

JUROR NUMBER 197: But I don't feel it would impact anything on --

THE COURT: Okay. And again, sir, you can put aside anything you may have remembered or thought about or heard in any newspaper article or on the news in regards to this case, and decide the facts as they're presented in the courtroom?

JUROR NUMBER 197: Yes, ma'am.

THE COURT: All right. Thank you, sir. You may be seated.

Ladies and gentlemen, this hopefully should have covered everybody, but just out of an abundance of caution, I'd ask you whether or not you've ever been involved in a lawsuit. But now, I want to ask, specifically, I think we did have one lady back here who had been involved in a breach of contract lawsuit. But is there anyone who didn't respond earlier that has ever been involved in maybe a claim has been brought for a breach of contract either as a plaintiff or a defendant that hasn't already disclosed.

Sir, again, that's fine. Your name and juror number again, for the record?

JUROR NUMBER 56: Chris Clayton, 56.

THE COURT: Yes, sir.

JUROR NUMBER 56: I didn't respond earlier, but about ten years ago, I was involved in -- in a federal lawsuit in Trenton, New Jersey. I was president of a -- of a company, an aerospace company, and the company was sued for age discrimination.

THE COURT: Okay. All right. Thank you, sir. You may be seated.

Does any member of the jury panel or any member of your immediate family have any objection to the government buying property for conservation purposes? If so, please stand.

Again ladies and gentlemen, does any member of the jury panel have any independent knowledge whatsoever about a parcel of land that's in question in this lawsuit? It's a 229-acre tract at the end of Pinckney Colony Road. If so, please stand.

Ladies and gentlemen, has any member of the jury panel or any member of your immediate family ever been involved in a foreclosure action? If so, please stand.

Ladies and gentlemen, is there any member of the jury panel who would have objections to or reservations about rendering a verdict against Beaufort County? If so, please stand.

Ladies and gentlemen, does any member of the jury panel believe that an out-of-state company should be treated differently from an in-state company, or an in-state resident? If so, please stand.

Ladies and gentlemen, does any member of the jury panel know of any reason whatsoever that you cannot be fair and impartial to both the plaintiffs in this case Road, LLC, and Pinckney Point, LLC, and Beaufort County? If so, please stand.

Yes, ma'am? Just stand, give me your name and juror number, and I want you to come talk to me. Okay? So, don't say anything. Just come up and speak with me. All right?

JUROR NUMBER 96: You want my name first?

THE COURT: Pardon?

JUROR NUMBER 96: You want my name first?

THE COURT: Yes, ma'am.

JUROR NUMBER 96: Theresa Elsen, Number 96.

THE COURT: Thank you. Come on up, ma'am. Just come on over. Please come on up, and Wanda's going to come on a little closer.

ON-THE-RECORD BENCH CONFERENCE, OUT OF HEARING OF JURORS. PRESENT: THE COURT, MS. MONOC, MR. ACHURCH, JUROR NUMBER 96.

THE COURT: Okay.

JUROR NUMBER 96: I mentioned earlier about a lawsuit where they wound up using part of my land. It really wasn't mine to begin with.

THE COURT: Okay.

JUROR NUMBER 96: And my husband and I has long felt that it was Beaufort County's shoddy record-keeping --

THE COURT: Okay.

JUROR NUMBER 96: -- that caused us to lose the land, and six years -- go through six years of litigation. Beaufort County is not a friend of mine.

THE COURT: Okay. So, you're telling me you cannot be fair and impartial in the trial of this case?

JUROR NUMBER 96: Not to Beaufort County.

THE COURT: Okay.

JUROR NUMBER 96: I didn't -- wish I -- if I had it in me, I'd have just stayed quiet, and been unfair, but I don't want to do that.

THE COURT: And I appreciate that. Absolutely. I'm going to go ahead and excuse you. Number 96, Ms. Elsen.

JUROR NUMBER 96: Okay.

THE COURT: I'm going to excuse you, and you can go ahead and leave for the week. Okay?

JUROR NUMBER 96: Okay.

THE COURT: Thank you for being here.

JUROR NUMBER 96: Thank you.

THE COURT: All right.

END BENCH CONFERENCE.

THE COURT: Number 96 is excused.

Anyone further? Are there any further questions requested of this panel from the plaintiff?

MR. WALKER: None from the plaintiff, your Honor. Thank you.

THE COURT: Thank you. From the Defense?

MS. LOHR: Nothing from the Defense, your Honor.

THE COURT: Thank you. Ladies and gentlemen, just like we did in the last case with Maitè Murphy, those of you that have been qualified, your names are being placed into the computer. It is going to draw a random list. The attorneys are going to need roughly ten, fifteen minutes or so to look at that list to be able to choose a jury panel. You all have been through that process before, correct? I don't know if you all were a part of the panel, the general panel, before, but I'm assuming yes. You're telling me yes. All right. So, you understand what we're doing.

We are going to be at ease, ladies and gentlemen, for about fifteen minutes or so. By the clock in the

back of the courtroom, it's a little bit after 3:15. I'm just asking that you all be back in here at 3:30. We're going to seat this jury. I'm going to release the rest of you, ladies and gentlemen, for the remainder of the day, and I'll let you all know what to expect. Okay? Thank you.

JURORS LEAVE COURTROOM 3:17 P.M.

OFF THE RECORD 3:17 P.M.

BACK ON THE RECORD 3:30 P.M.

JURY SELECTION:

BAILIFF: All jurors are present, your Honor.

THE COURT: Thank you. I appreciate it. Will you invite the attorneys back in, please.

All right, tell them let's go. The invitation is over. Tell them to get in here.

All right. Ladies and gentlemen, just to remind you, you have all been assigned new numbers. So, if you think your number has been struck, it has not. Just wait and sit with us, ladies and gentlemen. Those of you that have been pulled as jurors will take a seat up here in the jury box.

So, with that said, I'm going to turn it over. Thank you.

MADAM CLERK: Thank you. We'll be using the numbers to the far left. We'll be striking between 1

and 20.

For the plaintiff?

MR. WALKER: Plaintiff strikes Juror 9.

MADAM CLERK: For the Defense?

MR. ACHURCH: Defendant strikes Number 2.

MADAM CLERK: For the plaintiff?

MR. WALKER: Plaintiff strikes Juror 5.

MADAM CLERK: For the Defense?

MR. ACHURCH: Defendant strikes Number 15.

MADAM CLERK: For the plaintiff?

MR. WALKER: Plaintiff strikes Juror 3.

MADAM CLERK: For the Defense?

MR. ACHURCH: Defendant strikes Number 19.

MADAM CLERK: For the plaintiff?

MR. WALKER: Plaintiff strikes Juror 11.

MADAM CLERK: For the Defense?

MR. ACHURCH: Defendant strikes Number 7.

MADAM CLERK: All right. We'll be striking for our first alternate, 21 to 23.

MR. WALKER: Plaintiff strikes Juror 21.

MADAM CLERK: For the Defense?

MR. ACHURCH: Defendant strikes Number 23.

MADAM CLERK: We'll be striking between 24 and 26 for our second alternate. For the plaintiff?

MR. WALKER: Plaintiff strikes 26.

MADAM CLERK: Excuse me. 26?

MR. ACHURCH: Defendant strikes 24.

MADAM CLERK: I'll read back the strikes. The plaintiff strikes 3, 5, 9, 11, 21, 26.

THE COURT: Is that correct?

MR. WALKER: That's correct.

THE COURT: Thank you.

MADAM CLERK: The Defense strikes Number 2, Number 7, Number 15, Number 19, Number 23, Number 24.

MR. ACHURCH: That's correct.

THE COURT: Thank you. Ladies and gentlemen, as your name is called, please bring all of your possessions with you, and you'll come take a seat in the jury box.

MADAM CLERK: Juror 299, Taylor Singleton.

THE COURT: Come on around, ma'am.

MADAM CLERK: Juror 310, Anthony Solomon. Juror 20, Robert Barton. Juror 290, Sean Seick. Juror 261, Melissa Piper.

Juror 98, Lindsey Farmer. Juror 335, Edward Warren. Juror 56, Christopher Clayton. Juror 284, Suzanne Schroedel. Juror 243, Nicole Olsen Hanks. Juror 127, Michael Hall. Juror 126, Adam Hart.

Our first alternate, Juror 225, Daniel Middleton. Juror 196, Scott Lettich, is our second alternate.

THE COURT: Are there any matters of law we need to take up regarding the jury selection process from the plaintiff?

MR. WALKER: None from the plaintiff, your Honor.

THE COURT: From the Defense?

MR. ACHURCH: None from the Defense, your Honor.

THE COURT: Thank you. Welcome, ladies and gentlemen. As you understand, you're my jury for the trial of this case. I am going to go ahead and dismiss the remainder of the panel for the rest of the week. Thank you for being here, ladies and gentlemen. If you need a work excuse, see the bailiffs.

JURORS NOT SELECTED LEAVE COURTROOM.

GENERAL CHARGE, BY THE COURT:

THE COURT: All right. Let's get everyone situated, please. Again, ladies and gentlemen, welcome. As you all know, I'm Carmen Mullen, and I'm going to try this case here this week.

Ladies and gentlemen, there's a few things I need to instruct you before we begin the trial of this case. What we're going to do and what we hope to do at that point, ladies and gentlemen, is, I'm going to excuse you back to your jury room. I'm going to ask you to elect a foreperson amongst you.

Ladies and gentlemen, a foreperson doesn't have

anymore say than anyone else. They're simply the person I communicate with regarding scheduling; and also, when the case gets sent to you for your deliberations, they are the person to make sure everyone is contributing to the deliberations. I'm going to ask that foreperson take this very front seat right here. My two alternates, I need to keep you in those same seats during the trial of this case. But for the rest of you, ladies and gentlemen, you are free to move around as you come and go from the trial of this case.

Ladies and gentlemen, additionally, as far as a few of the ground rules that I need to tell you, to begin with, you are not to discuss this case with anyone, and that includes each other, until you've heard all of the evidence; you've heard the arguments from the lawyers; and you've heard my charge on the law that's applicable to this case. When you go home tonight, the only thing you are permitted to tell a family member or a colleague or a neighbor is that you have been chosen as a juror in the trial of a civil case. You're not allowed to talk about what it's about, what the cause of action is, the attorneys involved, or the people that are involved. And the reason is this. Inevitably, someone is going to try to tell you something about something, when they know nothing about this case, and it would be highly

inappropriate for you to be influenced by any outside source. So, out of an abundance of caution, I tell you, you can't even discuss it and what we're doing up here. All right?

Ladies and gentlemen, also, when you break, and every time you break, I'm going to tell you this: you are not to do any independent research. If you happen to see anything in the news about this case, you are not to read it, watch it, listen to it, in any regard whatsoever. And again, I remind you, you are going to have everything you need to determine the facts in this case right here in this courtroom, and it would be highly inappropriate for you to be influenced by any outside source. All right?

Lastly, ladies and gentlemen, I can tell you that, as far as the length of this trial is concerned, I'm not sure anyone has told you that yet. Usually, I'm the one that qualifies the jury panel, so I usually disclose that ahead of time. Ladies and gentlemen, it's my understanding from these attorneys, this case will probably, for sure, take five days, and it could take a little bit longer.

Now, I don't want anyone worried about weekend plans. If you have weekend plans, you are going to do those. It's usually, and completely up to a jury if

they choose to work on a Saturday, if they chose to. Again, there's nothing wrong with bringing you back next week, and continuing again, starting Monday, if that's necessary. All right?

I just want to make sure, and I don't know, because I didn't qualify you, but they ask the question of whether or not anyone has vacation plans that they are leaving indefinitely, coming, say, this Friday, for an extended period of time. Do I have anyone with that issue?

UNIDENTIFIED JUROR: Not this Friday, but next week.

THE COURT: When are leaving next week?

UNIDENTIFIED JUROR: I'm leaving Tuesday or Wednesday.

THE COURT: Okay. I think we should be okay with you. I'm not too concerned.

Sir, what about you back there?

UNIDENTIFIED JUROR: Next Friday.

THE COURT: Next -- oh, you're fine.

UNIDENTIFIED JUROR: Okay. Good.

THE COURT: Don't worry.

UNIDENTIFIED JUROR: Next Saturday.

THE COURT: Next Saturday. And yes, you, sir?

UNIDENTIFIED JUROR: This Friday.

THE COURT: This Friday?

UNIDENTIFIED JUROR: Supposed to this Friday.

THE COURT: Supposed to. Okay. We are going to have to talk about that.

UNIDENTIFIED JUROR: Yes, ma'am.

THE COURT: To see where we're at. Again, I don't know how the case is going to unfold. And I apologize. It should have been asked to you during the qualifications, and it should have been disclosed to you how long this case was going to take. With that said, we're going to work, so don't you worry about it, and we'll fix whatever we need to do.

Ladies and gentlemen, what I am going to ask you to do at this point is excuse yourself back to the jury room. I need you to choose a foreperson. Let the bailiffs know who that person is. And then, my intent, and this is just my intent, is to go ahead and, at a minimum, do opening statements today, and possibly begin with a witness. Because we do have jurors that need to be out of here as quickly as possible, we would like to work, if you all are amenable.

But I want you to understand something. I am only going to work as hard as you are willing to work. All right? So, what I need to know -- I know, when you received your summons here this week, you had no idea

how long you would be here today. You had no idea you would be chosen on a jury.

If someone has something they have to be at tonight, I need to know what time you need to leave here to make that event, and I'm going to have you wait, and just tell your foreperson. But I need to know, not only what time you have to be somewhere, but how long it's going to take you to get there, just so I can make sure I can accommodate you.

We're going to do that every single day, so if you know some time during the week that you have to be somewhere at a certain time, I need you to tell your foreperson, and we'll talk about that.

I will also tell you, ladies and gentlemen, that I typically like to start at 9:30 in the morning, and if that's a problem for anybody, I need you to disclose that to me. And I will also, ladies and gentlemen, start earlier than that, if you are willing. I certainly am aware that some people come from Saint Helena, or some people come from Hilton Head, and I know it takes some time to get here. And sometimes, even that half an hour earlier doesn't really help, because you hit traffic.

So, my intent would be to start at 9:00, 9:30, 10:00 o'clock, depending on what you all are agreeable

to do. So, again, I'd like to know from the foreperson the jury's preference. Okay?

Ladies and gentlemen, I will tell you this. The attorneys are all well-known to me here. They've tried numbers of cases. They are going to be professional. They are going to do everything they can to put this case before you efficiently. And to that end, ladies and gentlemen, I will tell you that there are times when I may have to meet with them, and the whole goal is for us to streamline the case for you to present it to you, because you, as the jury, are going to determine the facts of this case.

So, I just want you to know that everyone in this courtroom is working hard to efficiently put the case before you, so you can do your job. All right?

So, with that said, I'm going to excuse you back to your jury room. Please elect your foreperson, and we'll bring you back in here. Okay? Thank you.

JURORS LEAVE COURTROOM 3:44 P.M.

BAILIFF: Jury is clear, your Honor.

THE COURT: All right. Let's take about five minutes, you all. We'll take five minutes, we'll come back, and then, we'll go ahead and be ready for this case to start, if you all are agreeable.

The only thing, as you're walking out, would we

like this jury to be able to take notes, or not? Does anyone have a preference?

THE COURT: Sorry. I know you were trying to walk out the door. Note taking, what do you think? They haven't asked me, but I want to know what your all's feelings are in this case.

MR. WALKER: Do you let them take the notes into the jury room?

THE COURT: When they deliberate, but not during the rest of it. We will give them pads and pencils. They can take them in their deliberations, but every day, they leave them in their seats.

Go to the restroom, come back. And once you've thought about it, tell me what you want to do.

OFF THE RECORD 3:46 P.M.

BACK ON THE RECORD 4:00 P.M.

BY THE COURT:

THE COURT: All right. Let me see if I'm missing anyone. We have a foreperson. It is Mr. Clayton. I will tell you, we do have one juror that has a doctor's appointment for her mother on Wednesday at 1:00 o'clock she has to be out. She said it will last roughly an hour. So, just you all just plan on that being lunchtime on Wednesday for certain, and for about a quarter 'til.

Anything else we need to take up? I apologize, I know we had to break quickly. Some people needed to refresh themselves. Anything from the plaintiff?

MS. MONOC: Your Honor, --

MR. WALKER: No, your Honor.

THE COURT: Okay. Anything from the defense?

MR. ACHURCH: No, your Honor. I spoke to Mr. Walker, and he's got one photograph that he's going to refer to in his opening argument, and I have no objection.

THE COURT: Thank you.

MR. WALKER: It's just to situate the jury.

THE COURT: Okay. I appreciate that. Also, this jury is willing to work 'til 5:30 today, is what they told me. Depending on how long your opening statements are going to be, do you intend on beginning with your first witness?

MR. WALKER: Yes.

THE COURT: Okay. And if you could kind of, as we're getting very close to that 5:30 mark, if you are still on direct, for some reason, you need to kind of tell me where you're at, because, really, if we could not end in the middle of something, if we don't have to, I mean, if we're getting close, I'd rather just be able to let them start up in the morning. So, if that's

amenable. Unless you want to jump in and start, Mr. Achurch.

MR. ACHURCH: No, I'm -- Judge, I'm -- I remember Mr. Walker saying in chambers that he thought it would be just a few hours with Mr. Bush, so.

THE COURT: Yeah. Okay. All right. Unless they just absolutely --

MR. ACHURCH: I would prefer not, like your Honor, get, you know, half an hour into it, and then, --

THE COURT: Okay. We've got to move along, though.

MR. ACHURCH: I understand.

THE COURT: Because obviously, we have that one juror that needs to go somewhere on Friday [sic]. Okay. Well, if everyone's ready. Is Leigh Ellen in the back?

MS. LOHR: Your Honor?

THE COURT: Yes.

MS. LOHR: Were there any issues with starting time? Did they give us any?

THE COURT: They didn't tell me any starting times. The only juror was concerned about the -- Wednesday. It's her mother, apparently, who is ill, and they're kind of doing a course of treatment action. So, she was a little bit upset when she realized that. I had to assure her that she could make her appointment, so. Okay? All right. Well, beyond that, they didn't say

what time in the morning, so we'll find out from our foreperson.

All right. Let's go. Get them ready, Rick. Let's bring them in.

Oh. Were we going to do notes or not? I apologize. What do you all think?

MR. ACHURCH: I didn't hear you, your Honor.

THE COURT: Would you like the jury to be able to take notes or not? You tell me how complex. I mean.

MR. ACHURCH: It's really involved, your Honor. I'm okay with them to take notes.

MR. WALKER: I am, too, if they want to.

THE COURT: That would be a good idea, actually. All right. You can give them pads and paper. I appreciate it.

COURT REPORTER: Mr. Walker, what did you need? What did you need, Mr. Walker?

MR. WALKER: Oh. I was going to say, this has to do when I start my direct examination. Some exhibits, we've agreed, would be joint exhibits, and I just wanted to give you, the court reporter, the heads-up that, that's where we're headed, in case you have any strong objection. And then, I was going to get that, and deal with it ahead of time.

MR. ACHURCH: And a couple of those we've talked

about, Judge, one of them, I sent Katie a thing, I don't know. I can't just mark them right off. I'd have to look at them again. One of the things was a letter from one of the plaintiffs' lawyers somewhere else I'd considered. And I've looked at it, and can't agree to the --

MR. WALKER: And we're not going to put that one in through Mr. Bush.

THE COURT: Okay. So, we agree that someone told Wanda that the way we're approaching some of these exhibits are joint exhibits and starting with A. Did we talk to her?

MR. WALKER: That's fine.

THE COURT: Unless she has some idea other than that. My understanding is, the plaintiffs have already marked some of their own exhibits, and they started at 1, Wanda, and --

COURT REPORTER: I usually -- I do the 1, because you run out of letters.

THE COURT: Yes, but no, the problem is this. There's a whole second set that they want to -- and they don't want to start with their first piece of evidence being Number 75. So, Wanda is it okay if they start with A? And then, if we go through the alphabet, we do AA?

COURT REPORTER: Okay. Sure.

THE COURT: Is that okay?

COURT REPORTER: Yes. Any way.

THE COURT: She's not happy with that.

COURT REPORTER: No, I'm --

THE COURT: I can tell you right now, she's not happy with that.

MR. WALKER: We're not going to get to the double letters, I don't think, on the joint exhibits.

THE COURT: Okay.

MR. WALKER: We don't agree that much.

COURT REPORTER: What do you have your regular exhibits marked as?

MR. WALKER: Well, we've numbered them ahead of time, but they aren't going in 1, 2, 3, 4, 5, 6, 7. They're going to come in -- we've got an exhibit list for you.

COURT REPORTER: Oh.

MR. WALKER: That we can give to you, and you can mark whether it's admitted or not.

THE COURT: She likes you now. It's her thing.

MR. WALKER: Can I just hand them to you. Would you give her an exhibit list, and the other side an exhibit list.

THE COURT: Have you got an extra one for me?

MR. WALKER: Yes.

THE COURT: Thank you.

BAILIFF: Are you ready, your Honor?

THE COURT: Yes, sir.

BAILIFF: Jury is entering the courtroom, your Honor.

JURORS ENTER COURTROOM 4:07 P.M.

THE COURT: Welcome back, ladies and gentlemen. Sir, thank you for being willing to serve as a foreperson in the trial of this case.

What we are going to do is go ahead and swear you in as the jury. I am going to make a few brief comments about how the process is going to progress and happen. And after that, ladies and gentlemen, you are going to hear the opening arguments from the attorneys, and we are going to start on the witnesses. All right?

So, if you would please all rise and raise your right hand to accept the juror's oath.

JURORS SWORN:

MADAM CLERK: Do you solemnly swear or affirm that you shall well and truly try the issues joined in this case, and give a true verdict, according to the evidence, so help you God?

RESPONSES FROM JURORS.

GENERAL CHARGE:

THE COURT: You may be seated, ladies and gentlemen. What I am going to explain to you is the procedure that we're going to follow, so that you can better understand what's happening during the trial of this case.

Ladies and gentlemen, you have been selected as fair and impartial jurors, whose job it is to find and determine the facts. You, the jury, are the sole judge of all facts in this case. If, at any time, I make any comment regarding the facts in this case, you must disregard it. And as jurors, you are to determine the facts in the case from the testimony you're going to hear on the witness stand, as well as any other evidence that's admitted into this case.

You should not be influenced by any opinions or statements you may have heard outside this courtroom, and please understand that it is especially important that you perform your duty of determining the facts diligently and conscientiously, because ordinarily, there is no way to correct an erroneous determination of the facts by a jury.

Ladies and gentlemen, the same law that makes you the judge of the facts makes me the judge of the law. The law, as the Court gives it to you, is the only law that you may consider. I cannot tell you what the facts

of this case are, and you cannot disagree with me about what the law is, or what you think the law ought to be. Your job is to take the law as I give it to you, and apply it to the facts as you find them, and from there, render a true and just verdict under the oath you took.

Now, ladies and gentlemen, until I advise you to begin your deliberations, you must not discuss this case with anyone, and that includes your fellow jurors, ladies and gentlemen. And after the case is submitted to you, you may only discuss it back in your jury room.

I will tell you that I've also instructed the attorneys, the parties, the witnesses involved in this case that, in coming and going from the courthouse over the next few days, or over the week, that they are not to speak to you. Ladies and gentlemen, the reason is this. Even an innocent conversation in the parking lot of, isn't it gorgeous out, can be misconstrued, and reported back, ladies and gentlemen. And again, I would have to ask you about it. So, out of an abundance of caution, I simply tell them, if they pass you in the hall or on the street, or you know, at some restaurant over the lunch hour, they are not to speak to you.

Ladies and gentlemen, additionally, as I told you earlier, you are not to read, listen to, or watch any news reports about this case, and this includes anything

that might be in the newspaper, the T.V., in the Internet, or on the radio. Ladies and gentlemen, you are not to consider anything you have heard about this case before you entered into this courtroom. Please understand that it is important that you keep an open mind, and not decide any issue in this case until all the parties have produced the evidence, until you have heard their closing arguments, and I have instructed you on the law that's applicable to this case.

Now, in just a moment, the plaintiffs' attorney is going to make an opening statement, where he is going to tell you what he believes the issues are in this case, and the Defense attorney is also going to make an opening statement. What I want you to understand is that what the attorneys tell you in opening statements is not evidence in this case. Again, it's their contention as to what the issues are, and what the evidence will be. Again, I remind you, evidence comes from the testimony from the witness stand; it comes from the evidence entered into this case.

I also want you to know, ladies and gentlemen, from time to time during the trial of this case, I may need to motion the attorneys up; or they may say, we have a matter of law we need to take up; or we all may need to talk; or may bring them over here; or sometimes, I may

even have to send you back to your jury room. I want you to understand something. We aren't hiding anything from you. Oftentimes, when I have to rule as a matter of law whether or not certain testimony is admitted, I may make a comment on the facts of the case, and because I would never want anything I do to influence you, the jury, in your determination of the facts, out of an abundance of caution, we just do it outside of your presence, or outside of your hearing.

Ladies and gentlemen, in determining what the true facts are in this case, you must decide whether or not the testimony of the witnesses is believable. It's my responsibility to rule as a matter of law whether or not certain testimony is admitted, but once it's admitted, whether or not you believe it is for you to determine.

In deciding whether to believe a witness's testimony, you have a right to consider whether the witness has an interest in the outcome of the trial. You can look whether the witness is prejudiced towards either the plaintiff or the Defense. And you can look at the opportunity that the witness had to have seen and heard the matters and things about which they're testifying, and you can also look at the way the witness acts on the witness stand.

Ladies and gentlemen, you have the right to

consider anything that is in the record that will help you evaluate the testimony of the witnesses. Therefore, ladies and gentlemen, I ask that you pay close attention, so, at the end of this case, you can accurately remember the testimony given.

Additionally, ladies and gentlemen, we have provided you notepads and pens. Please understand something, you are not required to take notes. These are only for you, if you wish to use them. As you come and go from the courtroom and we take our breaks, you are going to leave your notepads in your seats.

Ladies and gentlemen, the reason is this. We all know some people are better note takers than others, and I don't want, during your deliberations, you relying on someone's notes, simply because they took notes. If, for some reason, someone took a note, and what they wrote down conflicts with what you remember the testimony as, I want you to rely on your own independent recollection, and not just rely on them, simply because they took notes. All right?

I will tell you that you will have your notes back in the jury room with you at the deliberation stage, but coming back and forth during the trial, they will stay in your seat. All right?

Ladies and gentlemen, I'm going to ask the

attorneys, is there anything further, before I go ahead and open it up for --

MR. WALKER: Nothing further from the plaintiff.

THE COURT: Anything from defense?

MR. ACHURCH: Nothing for the defendant, your Honor.

THE COURT: Ladies and gentlemen, we're going to go ahead and begin the trial of this case. Mr. Walker.

MR. WALKER: Thank you, Judge Mullen.

OPENING STATEMENT ON BEHALF OF THE PLAINTIFFS, BY MR. WALKER:

MR. WALKER: Good late afternoon.

RESPONSES FROM JURORS.

MR. WALKER: My name, again, is Trenholm Walker, and I think I introduced my partner, Katie Monoc, who is here. And with us today are the representative of Road, LLC, Bill Lanius. And next to him, John Kunkel and Taylor Bush, who was intimately involved with this project that you're going to hear about over the next few days.

What's it like to spend seven years on a project, and put close to ten million dollars into it, and to learn that one of the participants, who is supposedly to help you achieve it, has decided that it doesn't want the project to happen? You're soon to hear what it's

like.

Is that acting in good faith and in compliance with the parties' agreement and understanding? At the end of the case, you get to answer that question.

You've heard, in the judge's comments earlier this afternoon, that this case is about Pinckney Point. And I don't think that any of you were familiar with Pinckney Point, which is great, because we picked you, because you don't have familiarity with these facts.

And I'm going to ask Dave Roberts, and that's this gentleman here, he is the master of electronics, and occasionally, he will put for you, up here on the screen, exhibits, or in this instance, a picture. So, I hope you can all see that.

Pinckney Island is approximately 230 acres. It's at the end of what's known as Pinckney Colony Road, and you can almost see -- I think you can see where the road comes onto the property right here, and then, comes around. The pictures shows that it was a farm, and that's the way it was when my client, Pinckney Point, LLC, acquired the property.

But there's this one isthmus, and you'll hear about it, and it's the only way to get to Pinckney Point. There were some residential lots over here, but this one large piece of property with the homestead over here,

the Pinckney family homestead.

You'll also hear that the road, Pinckney Colony Road, is paved, up until about two-tenths of a mile before it gets to the property. The property we're talking about is really the head of the tennis racket, if we call it a tennis racket.

So, for two-tenths of a mile before the road gets there, it's a dirt road. And then, once you get on the property, it's actually half a mile through the trees, up to the old homestead. And this road is going to figure prominently in this case, because soon after my clients entered a contract to buy Pinckney Point, in 2005, one of the Pinckney family members, who did not want it developed, decided that he would try to hold things up. And what he did is, he went out on that road, and right in front of where it gets to Pinckney Point, he put in fenceposts, saying, we aren't going to let anybody go onto the property. And that set forth a chain of events you're going to hear about that figures, again, very importantly in what you're going to have to decide.

My client, Pinckney Point, was a company, one of several developments, development companies, of Stokes Land Group. They are in Jacksonville. And this property was one that they saw had enormous potential.

It's a fabulous piece of property, and I don't need to tell you why. Look at it. It's at the consulates of the Okatie and Colleton Rivers. It's magnificent. It had been used most recently as a sod farm.

They were committed to making it a very high-end, residential development with 76 lots, which is what the zoning allowed. They weren't going to go in and try to put multi-family units or anything like that. And they were going to have common areas in the middle, including a lake. And the lots were principally going to be around the perimeter.

And they were going to do a couple of things that were going to improve it. One of the things that they were interested in that, also, the State wants to occur, is to regulate storm water. Now, this property had been a farm for a long time. It had chemicals, fertilizers put on it, which would just wash into the marsh. That's natural. But one of the things they wanted to do, and they planned to do, and they actually engineered, was to contain all that, and put in a storm water system that would keep the runoff from going out into the rivers. And they had something known as a hundred-year storm retention, so it would have to be some enormous rain in order for that water to reach the river.

Another thing that they were concerned about was,

well, what about sewage? If you're going to have 76 houses out there, how are you going to handle that? Well, they wanted to put in a sewer system, a sanitary sewer system. Not septic tanks, but a sanitary sewer system. And they wanted to run it down Pinckney Colony Road to where they could connect approximately, oh, I guess it was about a mile away.

They also wanted to maintain the Pinckney family homestead, and see that, that was available for not only the use of their residential community, but the Pinckney family. So, they set about doing that, and it's not an easy thing or a quick thing to develop a piece of property like this. If you want to do it right, it takes a fair amount of time, and it takes an enormous amount of effort, and a good bit of money, as you'll find out.

So, they retained some good consultants. Their names were mentioned to you, Ward Edwards, which is an engineering, a surveying firm; Whitmer Jones Keefer, which is a land planning firm. They also used Ed Pinckney & Associates, which was a land planning firm, to do the site plan.

They also had to do archaeology and history, because this piece of property, you can imagine, where it is, there might be history out here, and they hired

Brockington & Associates to take a look, and see if there were any Native American sites and the house itself. And they also hired the McNair Law Firm to help them with the permitting and any legal issues that would arise.

And to accomplish permitting like this can take, because there's so many levels of permits and different permits you have to get from local government and the State, it can take, typically, oh, one to two years. Here, it took seven years, and you will hear why.

One of the permitting entities was Beaufort County, and Beaufort County has the obligation to see that the project fits with the zoning, which it did; and also, to make sure that the site plan, the way they develop it, is in compliance with all the ordinances.

They have ordinances about roads, minimum lot size, setbacks, and all that type of thing. So, Beaufort County, when it gets a site plan, -- and by a site plan, I mean it's like a drawing that shows the lots and where the amenities are, and they look at it, and they say, you need to do this or you need to do that. So, Beaufort County was intimately involved in this, to the extent it had to approve the site plan.

Beaufort County was also very involved, because once John David Pinckney, the family member who didn't

want the development, put in fenceposts right up here, and he lived down here, once he did that, Beaufort County brought a lawsuit to have them removed. There was still somebody living in the house on the end. What if an ambulance had to get down there or a fire truck? So, they brought a suit against John David Pinckney to have the posts removed, and also, for the Court to determine whether that was a public road. And they believed they had a very good case that it was a public road.

The County had been maintaining it for over forty years, the dirt part of that road, the last seven-tenths of a mile. It also had a state highway number on it, and for decades and decades, it had been used without any impediment, and it was only when it was going to be sold that this controversy arose.

So, the County brought this suit, and they had the name the people on the road within the case. For instance, if there's a fight over this road right here and whether it's public, the County named the owner up here, which was then Pinckney F, I think it stood for Pinckney Point Farm, which was going to sell it to my client. And they named Dot Gnann, who had a lot right up here at the end of it. And they also named John David Pinckney, who was the one who had the other

property, who had put up the fenceposts. And we're going to come back to that, because that case went on and on.

But as things happened, those fenceposts weren't the only roadblocks my client hit. There were administrative roadblocks. And when I say administrative roadblocks, they were attempting to get the plans approved by the County, and there were several things that came up that they were not anticipating. Let's start with the one I just talked to you about, sewer.

They thought it would be good to run sewer out here. The County decided, after my client had designed the sewer system, that they wanted septic tanks. So, my client had to back up, re-group, and go out and test every place where there was a lot, all 76 of those, and design a master septic system, which took an enormous amount of money and a good bit of time, but they did it.

Also, I think I mentioned to you that -- or I may have forgotten -- one of the things my client wanted to do is, this road right through that area right next to the river, to the main house, Beaufort County has an ordinance called the *River Buffer Ordinance*. The *River Buffer Ordinance* does not allow anything -- it has to be a vegetative buffer for fifty feet from what's known as

the critical line, and a hundred-foot setback.

So, this road traveled for a good distance within that buffer. My client wanted to change the main entrance road, and take this area where the road went, and re-plant it with trees, next to the marsh. And they wanted to bring the road in right here, where there was a power line, but that required a variance, because of the ordinance I just mentioned. And I know it doesn't make a lot of sense, but for them to have the road less in the buffer, in fact, to have it only for a hundred or so feet, rather than 1,500 feet, they were moving it, and so, they had to get a variance in order to restore the woods right there.

Well, the variance was denied. They were denied the right to do something that they thought was very beneficial. My client appealed. There's an appeal mechanism where one can appeal a denial of a variance. And the County was on the other side of that. They thought they reached a settlement. The County Council said, no, we reject your settlement.

Site plan approval, I mentioned that to you. And that's an evolving process, where an owner will take a plan to the planning office, here in Beaufort County, and the planning staff will take a look at it, and they'll comment and give it back to you, which is what

they're supposed to do, and they do a very thorough job.

But every time we'd come in with a plan, we'd say -- they'd say, all right, you need to do X, Y, and Z. And we'd try to get Z, Y and Z done. And the next time we come back, they'd say, well, you know, how about A, B, C? Said, okay, we'll take care of A, B, C. And then, we go back, and we do A, B, C. And we come back, and they say, well, we've been thinking about that, it's G, H, I. And we go back and we do that. And this just kept going on and on.

Also, as you might imagine, on a property like this, the person who owns it and the people who are going to live in this community would want access to the water. And to get access to the water, you have to add docks. And to get a dock, you have to get a dock permit from Department of Health, DHEC, Department of Health and Environmental Control; OCRM, Ocean and Coastal Resource Management. Every turn in this case is a permitting agency.

But put that aside, they had to go to DHEC. And they applied for their docks, and DHEC said, you can have three community docks, and the County appealed the permit. The County appealed the permit. They appealed the permit. They went to Columbia before the judge, and the judge said, I think you're entitled to five

community docks, because we had applied for more than three. And also said to the County, you don't have standing to be fighting these people, and he dismissed their case appealing.

And now, we come full circle back to the road litigation, because that case was going on and on. And once the County brought the case, they took, basically, a neutral position, and everybody was a little bit stalled in that case, because they tried it in mid-2008, and the judge here, who was not our esteemed judge, it was another judge in this esteemed courthouse, wanted to the litigants to settle it. Emphatically, you'll hear, wanted the litigants to settle it.

My client was getting to the point where they were very, very stretched. They bought this property in 2006. They thought that they might be in business to do improvements in 2007 and get it online, sell some lots. But here were are in 2010. And you know what happened in 2009, 2010. The economy went (indicating) at a high rate of speed.

And so, the recession hits. They've been paying on their mortgage. They had an eight-million-dollar mortgage to BB&T. They didn't have any income coming in. They've made the payments up until the note got called in 2009 or 2010. And BB&T actually started a

foreclosure case against them, because they had not been able to develop the property and get any revenues.

The only way to get this thing moving, in their mind, in everybody's mind, particularly the way the judge was, was to settle that road case, because having that access was really, really important. You can't develop a piece of property if you don't have legal access. And John David Pinckney, when he put those fenceposts up there, took forty years of undisputed, basically, public right, in question, and the judge wouldn't rule.

And the people who were holding them up, John David Pinckney, and now Agnes Pinckney, had been appointed as conservator, said, well, we'll sell you this road; we'll sell you this two-tenths of a mile of the road; and you can make it a private road; and we'll sell it to you for 1.3 million dollars. Well, it's very difficult to come up with 1.3 million dollars, if you can't pay the big mortgage of eight million dollars.

So, what my client Pinckney Point did was, they went out, and they found an investor called Arendale. They came in and said, okay, we will help you, we will buy that property. And they set up Road, LLC, which is the other client of mine, and the Road, LLC, owns that two-tenths of a mile. And the idea was, they would buy

it, and everybody, including these good people over here, the County, agreed it would be private.

The County said, all right, even though it's been public for forty years, and that was our position, we now agree it's private. It's going to be a private road. Not only is it going to be private, we agree to let the judge, Judge Dukes, enter an order saying it's a private road, which he ultimately did.

For Road's part, they were willing to grant an easement to Pinckney Point of twenty feet to let them get to the property. And the plan was that they would be bought out for five million dollars at such time as Pinckney Point got the approvals it needed and could go to market, and that's a heck of a lot of money. But the projection showed that this project, these 76 lots, when it was enhanced the way they wanted to do it, could raise over fifty million dollars in revenues, way out of my ballpark. But if you're going to get there, five million was something that they were going to have to do and the road was private.

So, a settlement was accomplished. And it was a settlement of the road case, but also, my client was interested in being able to proceed; because, as you now understand, they were under economic pressure. They'd had this property for five years. They hadn't been able

to get their site plan approved. They were unable to realize any revenues, so they had to do something. And they went to the County, and they resolved this variance case that I told you about, that let them put in this access road. So, the County agreed, all right, you can have your variance, so that you can re-plant the buffer, and you can take your road in right there.

But we also didn't want to get tangled up with the County again. We kept butting heads with the County, and the County agreed, all right, we will agree that you won't need anymore variances if you improve the road property, if you pave it later on, when you get your final plat approved and all that, you don't have to get anymore variances. We wanted things to be cleared, so that the road ahead would be clear and we could get those approvals.

Also, as part of this global settlement, the County and my client agreed, since we're burying the hatchet all the way around, to settle that dock case I was telling you about, where the County had appealed the dock permit that was issued to my client. The County and my client got together and said, all right, we're going to settle that. And in return for that settlement, my client agreed to reduce the number of docks from five community docks to four community docks;

and also agreed that they would go back to Judge Anderson, who is the judge who said the County didn't have the right to sue, didn't have standing, and they would get the judge, as part of this settlement, to change his mind, and enter an order, vacating his decision, so that the County would not have the adverse precedent of you don't have standing to do what you did. And they did that as part of that global settlement.

And as I said, Ms. Pinckney, she got her 1.3 million dollars. And Ms. Gnann, who was up here, her property wasn't necessary for the right-of-way, but my clients agreed to pay her some money, once they got refinanced, to get thirty feet onto her property, so they can have control over the entrance to their development. And she also wanted this development to be nice, and she wanted to be part of it, and she wanted to be behind a gate; and they also agreed that she could have access to a dock. So, she was very keenly interested in it being a residential community.

So, we reached this settlement, bygones be bygones, settle all three cases, and another good thing happened in early 2011. And that is that BB&T, who had the loan to my people, actually sold the loan, and this is -- it gets involved, but they have note and a mortgage, and they sold it to an Atlanta group called Equity Resource

Partners.

I told you, they had filed the foreclosure action. Well, my clients were able to go meet with Equity Resource Partners, and they worked out an arrangement with them. The arrangement was that, if you deed us the property, we will give you an option to buy it back, and we will dismiss the foreclosure case. So, the foreclosure went by the wayside, and Equity Resources, who now owned -- they're basically where the bank was. They had bought that note -- and they said, you do this, and you do that, and you can buy the property back. So, we had an option to buy back the property. We had paid 10.6 million dollars for it in 2006. We had an option buy it back for 6.5 million dollars, and that option extended to August 31, 2012. We had to pay $125,000.00 for that option. And then, if that wasn't enough, they gave us a second option period to extend it all the way to February 28, 2013, but that was going to cost us $375,000.00. And we ended up paying another $500,000.00, so that we could extend the option, because if we were able to get the 6.5 million, then, we could buy it back, and that was always our intent. We had so much in it, we intended to finish what we started.

So, off we go again, and even though we agreed to deed the property to Equity Resources, we had the way to

get it back. The County may say, well, they got foreclosed on and this and that. We had the right to get it back, and we intended to get it back. We just had to get our permits, and then, we could get the money. And we knew we could do that, because the County had agreed to what it was going to do.

About six months into it, we started hitting a few snags with the County again. The County finally gave us conceptual approval of our site plan. That is what we've been trying to get for five years, so that's an accomplishment. But they put on that a condition, and the condition said, before we're going to give you final approval, you have to go out there and get a permit for every septic tank that you're going to put over there, and you can't get a permit for a septic tank until you know where you're going to put the house. So, it was impossible to do. You just can't do it, and they said, you've got to go get these permits. Well, wait a minute, we hadn't finished developing -- we don't -- we aren't even able to sell the lots, so these houses can't be put up there.

So, it took the McNair firm, through Walter Nester, I think I mentioned that to you, he worked with them over the next six months. It caused a six-month delay to get the County to agree that we would not have to

bring in separate permits for every septic tank; that our master septic plan that DHEC had approved -- we'd tested every lot, we'd staked it -- that the master septic plan would work. And the one thing they asked us to do, we were happy to do, and that was, don't put your drain field and your septic tank anywhere close to those trees; you're going to have a setback from the marsh. Which, the lots were big enough, that wasn't a problem, so we agreed to do. But again, it caused a big, important delay, and every second counted.

I mentioned that the clock was ticking. We had financial obligations. It looked like we were going to need another extension. And in early 2013, because it expired January -- I mean, February 28, 2013, we went back to ERP, Equity Resources, the people that had the note. In fact, they approached us, and they said, hey, we hear you're going to need more time. We'll give you 120 days more if you do certain things. We said, okay, it's going to take just a little bit to do that. And we got back to them in February, mid-February, and said, I think we can do those things. They said, I'm sorry, we aren't going to give you anymore time. Aren't going to give us anymore time? Said, yeah, we're just going to let it play out, but we'll let you -- we'll give you until March 11th to close.

My client worked very hard to go out and get the money to close. In fact, got Walter Nester, at the McNair firm, to do the work for that closing, but there just wasn't enough time to get it closed. And you will hear, had they had that 120 days more, that they believe they could have gotten that final permit approval for the site plan; and also, that, that would have been the key to getting the investor, because, then, the investor knew that it was fully -- had all the permits. It's what's called entitled.

Well, what we now know is that, back in November of 2012, the County was looking to buy our property. We didn't know it. We thought they were the permitting agency. But a local state representative, Bill Herbkersman, had gotten a hold of the County individual, the Beaufort County Open Land Trust, which looked at properties for the Rural and Critical Lands Program, and invited him -- or took him on the property.

Now, we didn't know this was going on, but the County was out there looking at this property. And then, in January, after Equity Resources said, we think we'll give you another 120 days, the County started negotiating to buy it for six million nine hundred thousand dollars. But we didn't know that. We didn't know that.

And then, I told you we had until March 11 to close. Well, on March 13th -- 14th, the County Rural and Critical Lands Program approved the purchase of this property for six million nine hundred and fifty thousand. Nobody told us. The County didn't tell us.

On August 1st, the Natural Resources Committee of Councilmen approved the purchase for six million nine hundred fifty thousand dollars. Nobody told us. In fact, Taylor Bush was out there getting somebody that same day. Got permission to take someone to the property as a potential investor. Nobody said, hey, you know, don't waste your time.

And then, on April 8th, County Council held a meeting, in executive session, and they discussed it. Came out of executive session, agreed to buy this property for six million nine hundred fifty thousand dollars.

We found out about it the next day, when it was in the newspaper. It was presented to Council as a place that could be used as a regional park; it would be good for the river. The County said it would -- it was ideal for the Rural and Critical Lands. Our client was -- was shocked, dismayed. Here was the permitting agency competing with them on this property.

Now, Equity Resources could sell, but nobody, and I

think nobody expected that the County, a party to the settlement agreement and everything I've told you about, would be going out after all this was done, the settlement agreement to facilitate this residential community, coming behind us and buying the property.

So, we gave the County what I would call just a warning session. Walter Nester met with the County and said, wait a minute; you know, we signed this settlement agreement; how can you do this under the settlement agreement; you were going to assist in the permitting; it's going to be a residential community; the documents say all this; how can you go out and do this?

And the next day, he sent a letter, and you're going to hear from Walter Nester what he did. Because if anybody in the County didn't know about it, they did after Walter Nester. He said, here, you know, yellow light, slow down, think about this. In fact, before they closed, we brought our lawsuit and said, the road is a private road; it can't be used for a regional park, all these other things. Well, the County didn't slow down for the yellow light. They just punched the gas, and they bought it.

Basically, they're saying now, you know, we don't need to use it as a regional park; I know what the settlement agreement says; and there wasn't anything in

that settlement agreement that says we couldn't go out and buy a property. Your access easement may restrict certain things, but we aren't concerned about that, either. And it really, in that order that says it's a private road, we'll just live with that; I mean, I -- we really don't care about that, either.

Well, fortunately, the County doesn't decide. You decide. And you're going to get to decide that at the end of the case. And you're going to get to decide whether what the County did was in good faith.

And the law is going to be given to you by Judge Mullen, and she's going to tell you that, in every agreement, there's an implied covenant, meaning an implied understanding, a covenant of good faith and fair dealing. And you will decide if what the County did was right in line with good faith and fair dealing or not. That's your call.

I think you're going to hear the County say, well, you didn't have your approvals; you didn't have your investor all's fair in love and war, you know; you weren't going to be able to do this, anyway. We're going to show you that they -- that the most likely thing that would have happened, had the County not come along, was that we would have gotten another option period of 120 days, and been able to do what we needed

to do in that 120-day period.

I think you're going to hear that conservation is good thing. We agree conservation is a good thing. It's a great thing. But the ends don't justify the means. And here, we aren't dealing with just anybody. We're dealing with the County, which was our permitting authority that had signed an agreement to facilitate all the permits for this residential development. And the whole premise of the settlement was this residential development.

And last, I think you're going to hear that, well, ERP could do whatever it wanted; it could sell to anybody. And we recognize, when our option ran out, that Equity Resources could sell that property, but we also would submit that the County is just not anybody. The County had an agreement with us. If Joe Developer came in, or somebody else, that's one thing. But here, the people that knew more about this property than anybody else were the ones who bought it.

And what do we also know now? We also know now that the primary purpose for them buying it was to see that Pinckney Point, LLC, never could develop it. They bought it, after taking us through the permitting process for seven years, they bought it so it could never be developed.

And you'll hear the testimony from the County Administrator, we bought it so that it could never be developed.

We plan to put up our case, call our witnesses over the next two or three days. We want to thank you ahead of time for your service. It's an inconvenience. I'm sorry it's been a long day. We'll try to move it along. I just ask you to listen to the facts.

Listen to Mr. Achurch and Ms. Lohr. And keep an open mind about this, because I think you will come to the same conclusion at the end of the case. That is the reason we brought it, and that is, that the County did not act in good faith, and as a result, neither Pinckney Point nor Road, LLC, that bought the land, will have an opportunity to realize their investment, and that they should be compensated by you for what they lost because of the County's actions. Thank you.

THE COURT: Mr. Achurch.

MR. ACHURCH: May it please the Court?

THE COURT: Yes, sir.

MR. ACHURCH: Counsel.

OPENING STATEMENT ON BEHALF OF DEFENDANT, BY MR. ACHURCH:

MR. ACHURCH: Mr. Foreman. Hey. My name is Robert Achurch. I have the pleasure of representing Beaufort

County in this case. I did introduce the folks at my table earlier. This is Mary Lohr as a partner in the firm. Tab Bendle is a partner at the firm. This is Josh Gruber. He is the deputy county administrator. And behind him is Ashley Darden. She's helping us today. She's a paralegal at the firm.

I do want to thank you for your service. I know it's not ever convenient for anyone, but it's very, very important. It's very important for the parties to be able to come to court and get a fair and impartial jury to have their case heard and render a verdict, which a verdict is to speak the truth. And you're all sworn to do that, and I'm confident that you will.

I guess you only get picked when you were eighteen, but you've got to be eighteen to be a juror. And you might have heard the Judge earlier, when we qualified everyone, say, well, if you've over sixty-five, you don't have to serve; but if you would like to serve, we'd like to have you. And the reason that is, is, we want jurors with life experiences. You want jurors -- you want people to have common sense. And one of the things you're going to be asked to do is judge this evidence.

If they say it's an apple, and we say it's an orange, you get to decide if it's an apple or an orange.

The Judge decides the law. You all decide the facts. And what's evidence in the case isn't what I say. It's not what Mr. Walker says. It's the evidence is what comes from the jury stand and the documents. Okay? That's evidence. We're up here arguing our case and setting forth our position, but the evidence is what's from the stand and the documentation.

Credibility is going to be a huge part of this case. It is a huge part of any case. What's credibility? Is that believable? That's when you put your years of experience to work for you. Does this make sense to me? Does this witness have something to gain by this testimony? Does this witness have a relationship with anyone in the lawsuit? You have to look at those things in that context.

As with any case, the plaintiff has the burden of proof. The County does not have to disprove. The County has to prove their case beyond a preponderance of the evidence. They've got to tip those scales in their favor, and they've got to prove their case to each and every juror, each and every one of you. If they don't prove it to one juror, they have not proved their case.

When you hear all the evidence, another thing is the Judge says don't start deliberating and no talking about it because the plaintiff gets to go first. And

then, the defense puts their case up. So, that's -- we'll want you to hear all the evidence before you start. Because the plaintiff has this tremendous burden of proof, they have the advantage. They get to go first. They get to go last. They get to sit by the jury. So, they have these advantages, and that's why you have to hear everything before you make a decision.

What's this case about? What's the case about? This case is about a development that didn't happen. It's about a development that lost funding and couldn't go forward. It's not about a case of we couldn't -- we couldn't develop it, because we didn't get a permit for a septic tank. Okay? It is a case where the developer ran out of money, and they ran out of time, and that's not something Beaufort County was responsible for.

When Beaufort County bought that land, the plaintiffs, Pinckney Point, LLC, had zero interest in this land. It was lost to them. If anyone else had come and bought it, it would have been the same result for Pinckney Point. They complained because the County bought it, but the truth is, if anyone else had bought it, it would be the same thing.

And now, they've come and told you again, if someone else bought it, it would have been fine. They'd be in the same boat. They would have lost their money.

When the County bought the property, we didn't buy -- we didn't buy the isthmus or the land that leads to the head of the tennis racket. They still have that. It didn't impact their title one iota, and I believe they'll admit to that.

The plaintiffs took a gamble on this property and they lost. So, how did they get started? They bought the property. You'll hear they had a contract for fifteen million dollars to buy this property, 15.5. And John David Pinckney, who owns the road that leads to it, says, well, I think that's my road; you can't use it. And they complained about it, the plaintiffs complained about it, but they actually now, then, bought the property for 10.5 million dollars. So, they got a five-million-dollar discount on the property because of the issues with the road.

When a person put -- and the County -- the County did do some maintenance on this road. We maintained it for a long time. You might be aware of this. There are lots of County roads or lots of roads in the County that the County maintains. We don't have a deed to them. We do some maintenance to keep it safe.

Mr. Pinckney puts the poles in the road. We can't just leave them there. Emergency vehicles got to come down. Somebody can go down there, run into them. It's

a safety hazard. So, we filed -- we do what we're doing here today. You don't -- what's that they said in that T.V. court show, don't settle it in on your own, you know, go to court. Don't try to do it on your -- so, we went to court.

We asked the Court for permission to move the poles out of the road for the safety issue. You can't just file a lawsuit and ask for the poles to be removed. That's a restraining order. You have to file the lawsuit that goes with it.

Well, once the County got the poles out of the road, it was really left to Pinckney Point, LLC, and the adjoining property owners there to decide what are we going to do with this road? The County really has no interest in it. It's either a county road, that's fine, we'll keep maintaining it; or it's a private road, which is fine, too, and then, the County doesn't have to maintain it anymore.

We ask the Court you decide who owns it. So, once their poles got out of the road, it was really left to these other parties. And for the plaintiffs to complain because it took a long time, that's not the County's doing. Okay? That's not the County's doing. You'll hear, as soon as the parties came to a resolution, as soon as they decided they could fix this thing, and they

could come to a settlement on it, and that Ms. Pinckney would accept a certain dollar figure, they said, great. And the County said, fine, we'll sign off on it.

It's also interesting to note that what they're really suing over is this settlement agreement. Okay? Settlement agreement. We said, yeah, we'll agree that it's a public road -- or private road. That's fine. We said, we'll give you this variance that you want. And yeah, we had denied them a variance, because they're in the river buffer. Okay?

A variance, by its nature, is, you don't necessarily get it. You're not entitled to a variance. It's moving quite a bit of stuff. It was already in the setback. It was still in the setback. That's not actionable. Okay? But to resolve it, the County said, you can have your variance. Okay? They were all set to go. They could go and develop the property. What happened from then on out, that's up to them. Okay?

It's interesting that they actually made the settlement with Ms. Pinckney for 1.3 million dollars in 2009. The settlement agreement we're here over was actually in 2011, two years later. Now, how did we stall that for two years? We didn't do that. That happened because Pinckney Point didn't have the money then. They didn't have money in 2009.

Beaufort County bought the property in 2013. They had four years to raise the money, four years, and their options ran out, and they didn't own the property. Oh, but we were really going to get it. Well, you really didn't get it. You had four years to raise the money to buy this stuff back, and you didn't do it.

The plaintiffs are gamblers. They gambled on this. They lost. Now, they're filing a lawsuit. This is another gamble with not much downside. Let's see, let's try to get this money back. They want you to pay them for a development they didn't do.

When the County bought it, they had no claim to it. By the time the County bought it, they had lost all of their rights to it. They had lost their investment. When the option expired, they lost it. You will also hear that, at the time we entered into this agreement and said, sure, you guys worked it out, that's fine, go do it, they were in foreclosure. They were already getting foreclosed on. They don't tell us they're in foreclosure, and frankly, we don't really need to know. We don't need to know. But they were in foreclosure.

So, they come up with this settlement agreement, and they agree to pay 1.3, but they don't have 1.3, either. And nor do they have the money to buy their property back, which is in foreclosure. They had none

of that, but they still agreed to pay.

Now, why did Road, LLC, buy the road? Why did they do that? You'll hear testimony from Mr. Kunkel that Road bought it because, if Pinckney Point bought it, the bank would get it. The bank would have gotten it in the foreclosure. That's why Road bought it, so that Pinckney -- to keep it from Pinckney Point. And nobody could develop this land without that. Nobody could do a residential subdivision without the road property. Okay? There's a road that goes to it that you can go up and down, but you can't subdivide.

So, they basically put a poison pill on this property. They did it so the bank couldn't use it. They did it so the bank couldn't sell it to anyone. They did it so ERP, during the middle of the proceedings -- ERP is this Equity Resource Partners. They're a group, and they go and buy bank loans. If the bank owns X dollars, they pay them less than that, and then, they try to sell it. Well, they want to sell it. Well, who are you going to sell it to? Well, they were going to sell it to Pinckney Point, LLC, but they didn't have the money.

Anyone who owns some land, -- and when these option times come and go, and they keep saying, we're going to buy, then, they don't; then, they say they're going to

buy it, and then, they don't; and then, they say they're going to buy it again, and then, they don't -- everybody's going to try and find somebody else who can buy it. And that's what Equity Resources did.

Bill Herbkersman is a local legislator, the State legislator who represents the Bluffton area down there. He contacted ERP, and he says, hey, you could buy this note from the bank and make some money, and they did. And Bill Herbkersman contacted the Beaufort County Open Land Trust, and said, these guys got some people here; they can't close; they're not buying it; would you be interested? Well, yeah, the County is interested. We're not hiding from that. We paid almost seven million dollars for it. The County did want to preserve it. They did want to preserve it. We figured it wasn't available to us. These folks were going to develop it. That was it. But then, they didn't. And then, it became available.

It's just like, I want to buy a house from Jimmy. Okay. Well, Jimmy's got a contract on it. I can't buy it. And guess what? Jimmy's buyer didn't have the money. So, I go buy it. And then, I turn around and get sued for it. So, that's where we are today. That's what this case is about.

You should know a little bit about BCOLT, or

Beaufort County Open Land Trust. The Beaufort County Open Land Trust is an entity the County hires to identify potential properties for preservation. They kind of vet the properties. And then, once they vet it and look at it and see if this is something we might want, then, they take it to a Rural and Critical Lands Committee at Beaufort County. Then, if it gets past there, it goes to County Council. So, yes, when the option expired --

Now, you'll hear the plaintiffs' option expired on February 28, 2012, the most recent one that they didn't comply with. When it expired on February 28, 2012, the sellers, even though they had talked to the County about potentially buying it, the sellers gave them eleven days they didn't have to pay for it. Then, they gave them eleven more days. Why? Because they said they could close. We got the money, we can close. Well, then, March 11th came around. You'll hear Mr. Nester say they were getting ready to close. They came around, they didn't have the money. And at that point, Equity Resources, through Mr. Herb Herbkersman, contacted Beaufort County Open Land Trust, and said we might be -- we can sell it to you guys. These guys are out. And that's as simple as it is. And the County bought it.

Equity Resources could have sold it to whoever they

want. They don't doubt that. Beaufort County could have bought it. They'll say this contract says the settlement agreement says the County couldn't buy it. No one in this trial will show you where, in that contract, it says Beaufort County couldn't buy this property. It doesn't say it. The settlement agreement -- the County got nothing out of the settlement agreement. You know what the County got? The County got to quit paying lawyers' fees. That's what the County got. We're finished. You guys move along.

Walter Nester will come and tell you, this is their lawyer and their witness, will tell you, that wasn't it. I know that wasn't it; that wasn't all the development that the permits they needed; we needed to still go through there. We agreed the road was private, and we gave them a variance.

Another thing about the road litigation you need to understand is that, what was there was a twenty-foot dirt road. Pinckney Point was always going to have to buy something. You can't subdivide with twenty feet. You need fifty feet. You need fifty feet for a major subdivision. This qualifies for a major subdivision. They were always going to have to buy something.

So, it's truly disingenuous to say, well, the County held us up with this litigation, when, in fact,

they were going to have to make an arrangement to buy this property or do something with these folks, anyway. And again, as soon as it did, -- actually, not even as soon, two years after they agreed to buy it from Ms. Pinckney, they asked the County to join in, and the County said, great, and we did.

So, it cost Pinckney Point some time. They had some time, because they had a five-million-dollar discount on the land to work with. And they'll say, well, gee, you should have just exerted your right over the property; you should have just done that. That's what Mr. Bush said. Well, they want us to basically take the property from Ms. Pinckney, the property they agreed, finally, to pay 1.3 million dollars for. And that's what they did.

They made every effort to arrange this thing so that nobody else could buy it. They made a poison pill. They made it so it was so unattractive to the bank, or to the ERP, that there was no other market for it. Okay?

Now, did the County plan on buying it when we signed the agreement? No. We figured they were going to -- they were going to develop it. Certainly, everyone anticipated that this property was going to get developed. It was only after they failed to develop it

that it became available, and the County bought it.

Many developers complain that the County doesn't give them what they want, but the County has a job to do. There were some issues with septic tanks. They got resolved within months. The settlement agreement got signed on January 14, 2011. In August 2011, they got conceptual approval. Okay? That means all you got to do is go do what you said you were going to do on that conceptual, and you're in.

The only thing that was an exception in there was, you got to deal with these septic tanks. Mr. Nester complained. You'll hear that was completely resolved by February of 2012, and they didn't lose the property until -- well, really, March 11, 2013. So any issues with septic tank and permits and all that, -- and they also didn't have other things that they needed from other agencies, as well. So, any issues with permitting, septic, any of that, was a full-on year before they lost the property. A full-on year. Okay?

They bought the 1.3 dollar -- a different entity bought a 1.3-million-dollar property, knowing they didn't have the money to buy this other land back. They paid for the options, knowing they didn't have the money to buy the land back. They spent all that money, knowing they didn't have the money that they say is ten

million more dollars to develop it. They did all those things, hoping against hope that they could raise this money, but they never did. And the County's not a part of that. If they'd have gotten the money and bought it, they'd be going up there now.

And when the County asked for some septic issues, we should appreciate, honestly, and there's some correspondence in there, you know, we have a job to do to make sure that somebody who buys a million-dollar piece of land, when they go out there to build their house on it, that they can actually flush the toilet. Okay. And we want you, when you build a house, to be able to flush the toilet. We want you to have a septic tank that works. Okay?

The issues with the sewers, they might have gone out and got some sewer stuff, but you know what, at the time, that the zoning ordinance says? you can't put sewer in here, because there's more than 300 feet. And they had a very good lawyer in Mr. Nester, who, I'm sure, could have told them easily, if they'd have just asked him before they tore off and got that, that, yeah, you can't put sewer here. Okay?

Gamble, gamble, gamble. Risk, risk, risk. What did Road do? Road paid 1.3 million dollars for a piece of property, and has a contract back with Pinckney Point

to buy for five million dollars. What kind of -- everybody, if they could get five million dollars back on 1.3, would rush out and do it every day. Well, why don't they? Well, because there's a lot of risk. That's why. There's a lot of risk. There's a lot of risk involved. Maybe they won't get the money. They didn't have the money now. Maybe they won't get it then.

They do a development, everything has to go right. You have to get the money, and you have to have it priced right. You have to sell the lots. They'll tell you market conditions are such that -- the truth is, you really don't know. Mr. Kunkel's been involved in eighty developments, and thirty-five percent of them lose money. But they're here today to ask you to pay them for a development they couldn't do, because they couldn't get the money.

I appreciate your time. It's going to -- there's a lot of documents and things like that, that we've all agreed. There are some notes and things like that.

And I appreciate your attention. I'm confident that, when you hear all the evidence, you will render a verdict that speaks the truth, and that's a verdict in favor of Beaufort County. Thank you.

BY THE COURT:

THE COURT: Thank you. Ladies and gentlemen, based on the time, it's my understanding from the bailiffs, that you all needed to be done by 5:30 today. So, based on the time, it's time for us to go.

I need to caution you, though, ladies and gentlemen, to begin with, you are not to discuss this case with anyone. When you go home, you've been chosen as a juror in a civil case, and that it is.

Additionally, ladies and gentlemen, if you were able to get into the courtroom today with cell phones, I need you to leave them back in the car or leave them at home. And the reason why is, you can get so much information off of a cell phone these days. I wouldn't want anyone to be tempted, so we ask you to just leave them outside. If you need to use a phone while you're here, ladies and gentlemen, simply ask the bailiffs, and they will take you to a phone.

Also, if you're concerned about someone reaching you emergently while you're here performing jury service, tell them to call the Clerk of Court's office. Tell them to give them your name, and that you are a juror in Carmen Mullen's case, and I assure you, I will come and get you immediately. All right?

Ladies and gentlemen, additionally, you are not to do any independent research in this case. As I told

you, you are not to read any news articles, watch anything on television, or do any other research through the Internet.

Additionally, ladies and gentlemen, you are not to post on any type of social media that you are a juror. It invites comments, and again, we wouldn't want anything or anyone to try to extend themselves to you.

Ladies and gentlemen, I hope, and Mr. Foreperson, tell me, are we okay to start at 9:30 tomorrow morning?

FOREPERSON: That would be fine.

THE COURT: Is that fine with everybody?

Ladies and gentlemen, I need to ask you all to be prompt. I can't start until all fourteen of you are here. So, if something happens over the evening, if you fall ill, or there's a problem, or if you have car trouble, call in to the Clerk of Court's office. We can't start until you are all here at 9:30. We'll be looking for you. Okay?

Ladies and gentlemen, I truly appreciate it. I don't know if the bailiffs told you, will you go ahead and just put your jury number on your notebooks. Did they ask you to do that already?

RESPONSES FROM JURORS.

THE COURT: Very good. They're way ahead of me, ladies and gentlemen. I just want to make sure we know.

And you are to leave them, obviously, with us. And at the end, when we deliberate, you will have your notebooks back.

Anyone else have any other questions, problems, concerns? We are going to break tomorrow, like we did much today, around lunchtime, at 1:00 o'clock. You're going to be free to go do whatever you need to do, and come back, obviously. And you tell me what time you can work 'til tomorrow night, just based on everyone's schedule. So, just let me know. Again, these attorneys have witnesses prepared and ready to be here, so we can keep going, if necessary, for as long as you need to. All right?

Ladies and gentlemen, I appreciate it. Mondays are always hard. I know you started not knowing what you're going to be doing, and I know that's difficult. But I want you to know this. Your willingness to serve it going to resolve this case, as well as many other cases that I started out with on the docket.

I am the Chief Administrative Judge here in Beaufort County, and it's my responsibility to make sure cases move. And again, we can't do that unless we have citizens willing to sit and listen to these cases, and help us decide these disputes. We want you to understand how important you are, and we want to thank

you for doing that.

I will see you all tomorrow morning, promptly at 9:30. If you're all here and ready, we will be, as well. All right? Thank you. Good night.

BAILIFF: You'll put your notebook in your seat, and I'll come back and get them.

THE COURT: You just leave your notebooks. They'll come get them.

JURORS LEAVE COURTROOM 5:15 P.M.

BAILIFF: Jury is clear, your Honor.

THE COURT: Thank you. All right. Do we have anymore marking of exhibits that you all need to do with Wanda? Not that I'm suggesting we do it tonight. I'm suggesting maybe we do it in the morning. But obviously, the jury is going to be here at 9:30, and if there's something you all can do ahead of time, maybe in the morning, that would be --

MR. ACHURCH: I'll can get here at 9:00, Judge. Is that's all right.

THE COURT: Okay. You all are staying what?

MR. WALKER: Yeah, we're just across -- we're across the street.

THE COURT: Okay. So, let's just, roughly, everyone get here about 9:00 o'clock. And certainly, Wanda, are you okay to be here at 9:00 if they need

anything?

COURT REPORTER: Yes, I'm good.

THE COURT: Anything else we need to do, you all? Is there anything I need to review overnight in anticipation as far as designations or anything that I need to do?

MS. MONOC: We'll circulate our designations by email this evening.

THE COURT: That's a great idea. Okay. Okay. Then, you can look at them for counters and whatever we need to do.

MR. ACHURCH: Are you going to read them tomorrow or the next day?

MR. WALKER: I don't know that we'll get to them tomorrow.

MR. ACHURCH: Okay. Because I -- all right.

MR. WALKER: But if there's any -- yeah. I understand the issue there. And it may be that we get through Taylor Bush and Garrett Budds, and we'll see at that point.

MR. ACHURCH: Okay.

MR. WALKER: Actually, we're going to publish the depositions then, but yeah. It could happen tomorrow, but given what happened today, I don't know that we'll get to them.

MS. MONOC: Well, how about this? I'm almost done typing in the ones for Kubic. So, I'll get that before I leave here right now. How about that?

THE COURT: Okay. Well, you all just need to work it out, so you can respond and look at it, and. Okay? All right. All right. Good night. I'll see everybody, roughly, a little after 9:00 o'clock tomorrow. If there are any issues you have, simply, you know, call or get a clerk to come back and get us in chambers. And we're happy to come out and do whatever you all need. Okay? Thank you. Good night.

MS. MONOC: Thank you.

END DAY ONE, MONDAY,

APRIL 25, 2016, 5:17 P.M.

BEGIN DAY TWO, TUESDAY

APRIL 26, 9:31 A.M.

BY THE COURT:

THE COURT: Is there anything we need to take up before we start this morning?

MR. WALKER: Your Honor, overnight, we went ahead and numbered all our exhibits. We just kept the numbering going, for ease of --

THE COURT: Sure.

MR. WALKER: -- just rather than trying to figure out what was joint and all that. So, we have a revised

exhibit list that -- have you provided it?

THE COURT: To Wanda? Wanda's got it?

MR. WALKER: Yeah, she's got it. And also, the first 73 or so?

MS. MONOC: 72.

MR. WALKER: 72, we've got copies of in a notebook, and I was going to hand those around, understanding that it's not in evidence. We're going to have to get every one in evidence.

THE COURT: Right.

MR. WALKER: So, that would -- I just wanted everyone to have a copy, so I don't have to walk around the courtroom every time, and hand them out.

THE COURT: Okay. Great.

MR. ACHURCH: I did have one more matter to take up, your Honor. Your Honor ruled -- we'd move, your Honor, to exclude testimony about anything that happened prior to the settlement agreement, and about getting entitlements, which is not really part of what the contract is about. And your Honor gave some leeway. And from the opening argument, I think the -- I think the leeway was abused. And we'd renew our objection, your Honor, to testimony about entitlements or frustrations or efforts that occurred prior to entering into the settlement agreement, which, if it happened

before the settlement agreement, it necessarily, couldn't possibly be a breach of the settlement contract, and that's what we're getting -- that's the nature of this lawsuit, is a breach of the contract. And anything that happened prior to, it's impossible to have done that.

THE COURT: Can you give me, really quickly, for a time line, just so I know, at what point did BB&T file a foreclosure?

MR. ACHURCH: BB&T filed a foreclosure on February 3, 2010.

THE COURT: Okay. Give me a second. February 3, 2010. When was the deed done in lieu with ERP?

MR. ACHURCH: The deed in lieu?

MS. LOHR: December 2011.

THE COURT: Thank you, Mary.

MR. ACHURCH: December 2011.

THE COURT: December of 2011.

MR. ACHURCH: Yes.

THE COURT: The first extension or the first option was given when, and when did it expire? The first 120-day option.

MR. WALKER: December 29, 2011.

THE COURT: December 29, 2011. And that was for 120 days, correct?

MR. WALKER: That expired August 31, 2012.

THE COURT: That expired -- okay. Just bear with me. Okay. And I, of course, forgot the opportune -- when was the settlement agreement signed?

MR. WALKER: January 14, '11.

THE COURT: And the second 120-day option, was that actually given? Was that given?

MR. BENDLE: It was. It was a self-terminating option agreement, Judge, and it was -- that second one expired on February 28th of 2013.

THE COURT: And that was the one that they thought they were going to get another one after that, and then, ERP just said no, right?

MR. BENDLE: Right.

MS. LOHR: They gave them eleven days.

THE COURT: They gave them eleven days. They gave them eleven days, is what I remember, too. Okay.

MR. ACHURCH: They gave them three, eleven days, and they were hoping to get another one.

THE COURT: And when was the contract signed with Beaufort County to buy the property?

MR. BENDLE: That was on April 24 -- excuse me -- April 24th of 2013.

THE COURT: Okay. Was it a letter of intent, or what was it? What was it? Because I know it had to be

passed by County Council.

MR. BENDLE: It was purchase agreement.

THE COURT: It was a purchase agreement. Beaufort County. Okay. Okay. So, let me ask you this. What I'm trying not to do is, is, what I understand, and what I hear from you saying, it seems to be your theme in your opening, is that they couldn't come up with the money.

MR. BENDLE: Right.

THE COURT: I mean, the options were extended. Anyone could have walked in and bought this property from ERP. It just so happened that it was Beaufort County at that point.

MR. ACHURCH: Right.

THE COURT: What I'm having a hard time doing, though, is not talking about how long the project took to get to the point it got to, without letting them put in that information, without saying, that's a potential and a reason why they couldn't come up with the money. I mean, the real reason why is, they couldn't get more money is because they couldn't sell any lots. I mean, they couldn't get it finished. And so, and to finish it, that's how they would be able to recoup to pay it off.

MR. ACHURCH: Well, here's the thing, your Honor.

That's to rebut this contention that we couldn't raise the money, because this is -- this is how the Court ruled. We couldn't raise the money, because we couldn't get entitlements. Okay? The truth is, we're not a party to that contract, that option contract.

THE COURT: Right.

MR. ACHURCH: We had nothing to do with it. Okay? There's a kagillion reasons people don't get money. Okay?

THE COURT: I agree, but how is that not for the jury to hear some of it? I don't agree, I don't think we're beating a dead horse, because the cause of action that the jury is considering, obviously, is the cause of action of breach of contract. And settlement agreement happened on January 14th of 2011.

MR. ACHURCH: Right. Right. And possibly, although I don't think so, and I'll tell you why in a second. Possibly, the things that happened after that, that could -- it's impossible for anything that happened before we settled the settlement agreement to even go toward good faith and fair dealing at all. Even if -- even if you allow that in this after the contract, --

THE COURT: Yes.

MR. ACHURCH: -- it's impossible. We couldn't breach a covenant of good faith and fair dealing before

we had a contract.

THE COURT: Right. Are they trying to use it to show that you all had some kind of idea going in? I mean, I know your position is, when you entered into this agreement and contract, you weren't contemplating buying it. You were contemplating it was going to be a residential development, and you all were trying to put all your litigation behind you and move forward.

MS. LOHR: And your Honor, no one at the County knew until Garret Budds was contacted in October or November of 2012, no one even knew that Pinckney Point didn't own it anymore. No one had any idea.

MR. ACHURCH: We didn't have any idea.

THE COURT: You didn't even know that ERP owned it at that point.

MS. LOHR: Right.

MR. ACHURCH: Right. We're not a party to these things, see. And your Honor, the other thing about the contract is, and I think this is for the Court, and not the jury.

THE COURT: Okay.

MR. ACHURCH: It says in the contract what the County has to do. We entered in the contract to settled two lawsuits. That's what -- and plaintiffs' -- plaintiffs' attorneys prepared the settlement agreement,

not the County. Okay?

THE COURT: Right.

MR. ACHURCH: It says we're going to do two things: we're going to give you this variance; and we're going to agree to enter into an order that says the road is private. And we did those things. That's why I don't really believe, and why I think the Court should not permit testimony about any breach of covenant of good faith and fair dealing, because we had executed -- we had fulfilled our obligations under that contract.

The issue is, they claim, well, you bought it, and it's a private road, so you can't use it for that. That's really not even a breach of contract. That's whether we get to use this road for. But they've spun it around, and now, what they are attempting to do, all these things about, oh, the County always wanted to buy it, and you didn't give us our permits, they're really trying to try the bad faith claim, a tortious interference claim. And they don't have that, and they didn't plead that.

THE COURT: Okay.

MR. ACHURCH: But it's an absolute impossibility for anything that happened before we entered into the lawsuit to be evidence of not good faith and fair dealing, when we didn't have a contract. Or they missed

their statute. I mean, if they want it all which way, you know. If they perceived that they were being slighted, they should have brought a claim for, you know, not giving me a permit. They didn't say, you didn't give me a permit, in there. What they said is -- actually, what they said in their complaint is, you agreed this was going to be a residential development, because you gave us all these entitlements. That's the complaint. Now, they're in here telling the Court, well, they frustrated us, because they didn't give us these entitlements, and that's why they breached the contract. That's not what the complaint says.

THE COURT: So, Mr. Walker, I mean, can we keep it -- I understand you're trying to show that the County was not acting in good faith. But again, it certainly comes to Mr. Achurch's point of how is he doing that, even before an agreement is entered into.

MR. WALKER: Well, as we said yesterday, we're not saying that the acts before the settlement agreement constitute breaches of the settlement agreement or breaches in the covenant of good faith and fair dealing. We are not trying to do that. We are arguing the same thing we did yesterday. We're putting that evidence in to show the context of the settlement agreement; why we entered into the settlement agreement; and to the extent

there is a dispute, a latent ambiguity in the settlement agreement, to show what the parties may have intended.

We're not saying it's a breach of the covenant of good faith and fair dealing what went on before, but we can say, we entered into the settlement agreement, because we had been frustrated in our permitting process; and once we got to the settlement agreement, we thought we were going to have a clear road ahead. But we're not going to argue to the jury that what they did before the settlement agreement was a breach. We're going to say that was incentive for us to enter the settlement agreement, because we were getting static on all fronts. They litigated the lot, the docks. They contested a variance, which was for the very good of the island and the people. And they were throwing in things in terms of conditions on our conceptual DRT approval that we didn't think were proper. So, we said, we're going to have this settlement.

But I do not intend, again -- again and again I say, I do not intend to argue that what went on is a breach. I do submit that, afterwards, when we had to, even as the County admitted yesterday, deal with six months of going back and forth over whether we had to have individual septic tank permits for each lot, that, that was unnecessary. It wasn't even in the ordinances.

That was after the settlement agreement. I think that's fair game.

THE COURT: And I appreciate you warning me that, that was only six months. And --

MR. WALKER: And also, we're doing it to prove damages.

THE COURT: Okay. Anyway.

MR. ACHURCH: That may be, your Honor, but it's exceptionally disingenuous to say they're not going to argue that, when they've stood up there and argued it all for an hour and a half yesterday that they're -- frankly, their reasons for entering into the settlement are irrelevant. Okay. The settlement says what the settlement says. They don't -- we don't -- we're not -- what we're doing here, your Honor, is, we're re-litigating that whole case back then.

MS. LOHR: In front of the jury, who wouldn't have never heard it in the first place, because this would have been all administrative.

MR. ACHURCH: Yeah. We're re-litigating that entire thing. He says, on the one side, oh, I don't have a complaint about not getting the entitlements, but that's what he's trying to show. Six -- eight of these documents are about permitting issues that occurred prior to the settlement. They're not germane to this

issue. Possibly, about the septic tanks.

THE COURT: Septic tanks.

MR. ACHURCH: Because that did happen after. Okay? But even then, frankly, that's not what we agreed to in the settlement agreement. And again, that's for the Court to decide. Mr. Nester, who --

THE COURT: Was that not even contemplated in the settlement agreement, the septic tanks?

MR. ACHURCH: No.

THE COURT: As an issue?

MR. ACHURCH: No.

THE COURT: Okay.

MR. ACHURCH: Mr. Nester, who is the lawyer for the plaintiff in this thing, says -- I asked him specifically, do you agree you had to go back through the remainder of the process? Yeah. Yeah, we had to go back through the remainder of the process. The settlement agreement says what the settlement agreement says.

They also, your Honor, under the parol evidence, they need to establish some ambiguity before they get to enter parol evidence, and they can't do that. I mean, we had very clear obligations under that settlement agreement, and when they want to -- and your Honor has the settlement agreement. And when you look at the

settlement agreement, it says, Pinckney Point by separate agreement with Agnes Pinckney.

THE COURT: Right.

MR. ACHURCH: Okay? As a matter of fact, the deed that the easement that Road gave Pinckney Point, LLC, isn't even the same attachment to the settlement. So, they changed that. Well, they didn't ask the County. They didn't ask the County about that. They just changed it. But now, they want to say, well, you agreed to everything here. When they went and changed it afterwards, they didn't ask us. I mean, the truth is, they said, we're settling with Agnes, and we're settling with Dot Gnann, and will you guys agree to settle Road? Yeah, we'll agree to settle Road and give you the variance.

And now, they're trying to hook it all in. And now, they've spun this thing to where they want to go into, you know, permitting it. And this is going to drag on and on, your Honor. It's going to drag on and on. And it's silly for them to get up here and re-try this thing. What they're trying to do is litigate, you didn't give me this thing, and I lost it. They're trying to litigate it from the get-go. Okay? And the not getting the money for the option is simply why they couldn't perform on the option. I'm not a party to the

option. I couldn't possibly have frustrated their option. I'm not a party to it. I couldn't have a covenant of good faith and fair dealing with their option. I'm not a party to it.

THE COURT: Okay. Well, I can do this. I understand your argument is that some of that is for context of the settlement agreement. I'm going to allow you to put up some testimony as to that. I need you, Mr. Achurch, just to object. I don't know what documents they're trying to get into that were pre or post. Again, make your objection at the time, and if we're beating a dead horse, if it's something other than context, again, I've already ruled that there's a latent ambiguity in the settlement agreement. Let's just put it in front of them, and let's just get going. And again, I don't want to beat a dead horse on something that, obviously, the County was, at the time, doing their job.

MR. ACHURCH: And your Honor, you did say yesterday about the settlement agreement. And could your Honor specify what the latent ambiguity is.

THE COURT: Oh, I'm not going to go through and look at it right now, but I will at the next break, if you want me to.

MR. ACHURCH: I just --

THE COURT: Sure.

MR. ACHURCH: I just want to know what the focus is so I know what -- I understand it.

THE COURT: It's just -- it's the context of it. And again, at the time, the whole problem with this whole thing is, we have no idea what the County had in mind at the time. But that's -- I heard you say to them --

MR. ACHURCH: You can bleed that from the contract, your Honor.

THE COURT: I heard you say to them through argument that the only reason why you entered into this agreement was to stop the attorneys' fees. That's what you told them.

MR. ACHURCH: I said, that's what the County got. I didn't say that's the reason. That was what we got. That was our benefit. I mean, that's after the contract. That's our benefit. And again, given the Court's ruling and plaintiffs' counsel's opening, you know, those things have to be addressed. But that is -- and that goes to this contract. That's what we've got. We've got -- and again, you can see it in the contract. What did anyone have to do for the County? Nothing. Nothing.

THE COURT: Let me ask you this. Is there any

benefit to the County from the property being developed? That's -- I mean, I would think, for taxation purposes, 75, you know, houses that -- I heard the number of over a million-dollar houses. But I didn't know if that's what we were talking about. But, you know, I mean, the taxation portion of that would be beneficial.

MR. ACHURCH: Well, the truth is, your Honor, --

THE COURT: Yes.

MR. ACHURCH: -- in a residential development, it's actually a net loss to the County.

THE COURT: Okay.

MR. ACHURCH: Some of the commercial developments, when they have taxes at six percent, and fees and things like that, they are actually a net plus to the County.

THE COURT: Okay.

MR. ACHURCH: But when a person -- when someone does a development, that there's pressure on the roads; there's pressures on the library; there's pressure on the County facilities. There are all these things that aren't taken into account. So, actually, a residential is not in that benefit, from a money standpoint. We like to have these nice people come here, but it's not in that benefit from a financial standpoint to the County to have that developed.

MR. WALKER: And we would dispute that, because

these are not big users of County services who are going to buy property, and the taxes that would be received would be significant. And the owner is paying for all of the infrastructure. Roads; would have done the sewer; installation and electricity. So, yeah, we understand, in some context, if you just have a subdivision, then, it may be cash neutral, but we don't think that's the case here. And that really -- we don't have any information one way or another, but we just don't want the Court to be left with the impression, because the County Attorney has said it, that it's definitely going to be a loss. We don't possibly see how it could be a loss here.

THE COURT: Okay.

MR. ACHURCH: Well, your Honor just asked.

THE COURT: I just asked.

MR. ACHURCH: And that's generally how it goes. And I don't -- I don't know, maybe they live in New York, and just visit here two weeks a year, don't put any stress on the infrastructure. I don't know. While they were going to built infrastructure on their land, they weren't going to build other infrastructure. As a for instance, Del Webb with a development agreement, you know, libraries, and makes donations, and a firehouse, and you know, police service, fire service, things like

ambulance service, those are things that have to be provided to the --

THE COURT: Okay. Okay. Well, let's get going with the jury this morning. Like I said, Mr. Achurch, just make your objections that you need to and at the time, and I'll rule on them. Okay?

MR. ACHURCH: Yes, ma'am.

THE COURT: Thank you. All right. Let's bring the jury in, Rick.

BAILIFF: Are you ready, your Honor?

THE COURT: Yes.

BAILIFF: Jury is entering the courtroom, your Honor.

JURORS ENTER COURTROOM 9:53 A.M.

THE COURT: Go ahead and sit down, ladies and gentlemen. Thank you. Good morning.

RESPONSES FROM JURORS.

THE COURT: It's a pleasure to see you all. At this time, we're going to go ahead and continue with the trial of this case.

Mr. Walker, if you would call your first witness for this morning, sir.

MR. WALKER: Thank you very much, your Honor. The plaintiffs call Taylor Bush.

THE COURT: Thank you. Come on forward, Mr. Bush.