

23277

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas for the Ninth Circuit

Markley R. Dennis, Jr., Circuit Court Judge

RECEIVED

Appellate Case No. 2017-000060

MAY 03 2017

Project: Intermodal Container Transfer Facility

SC Court of Appeals

Tract: 11

South Carolina Department of Commerce, Division of Public
Railways.....Respondent

v.

Clemson University Respondent

and

Charleston County School District Appellant

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ORDERS, JUDGMENTS AND DECREES

1.	April 25, 2014 Consent Order of Limited Reference and Scheduling Order	003
2.	October 27, 2015 (dated October 22, 2015) Order (John A. Massalon, Special Referee)	022
3.	March 16, 2016 (dated February 23, 2016) Order (John A. Massalon, Special Referee)	031
4.	June 2, 2016 Order for Case Assignment to the Business Court Pilot Program (Hon. Roger M. Young, Sr.)	038
5.	September 26, 2016 Consent Order Dismissing Other Condemnees (Hon. R. Markley Dennis, Jr.)	041
6.	October 21, 2016 Order Transferring Case to Non-Jury Docket (Hon. R. Markley Dennis, Jr.)	054
7.	December 16, 2016 Order Denying Motion for Reconsideration (Hon. R. Markley Dennis, Jr.)	061

PLEADINGS AND MOTIONS

8.	December 23, 2010 Condemnation Notice and Tender of Payment	063
9.	December 23, 2010 Affidavit of Keith M. Babcock, Esq.	072
10.	May 23, 2011 Notice of Appearance (Jury Trial Demanded) on behalf of Other Condemnee, Charleston County School District	074
11.	January 6, 2014 Condemnor's Memorandum in Opposition to Other Condemnee Charleston County School District's Motion for the Court to Order Condemnor to Deposit Funds Pursuant to S.C. Eminent Domain Act	076
12.	June 2, 2016 (dated May 31, 2016) Motion to Transfer Case to Non-Jury Docket	092
13.	August 23, 2016 Condemnor's Memorandum in Support of Its Motion to Transfer to the Non-Jury Docket	096
14.	September 19, 2016 Condemnor's Memorandum in Reply to Charleston County School District's Memorandum in Opposition to Transfer to the Non-Jury Docket	123

15.	November 3, 2016 Rule 59(e) Motion to Reconsider Grant of Motion to Transfer Case to the Non-Jury Docket	129
16.	December 14, 2016 Memorandum in Resp. to Charleston County School District's Motion to Reconsider Order Transferring Case to Non-Jury Docket.....	153
17.	January 9, 2017 Notice of Appeal	158

TRANSCRIPTS

18.	August 23, 2016 Hearing Transcript.....	172
19.	December 16, 2016 Hearing Transcript.....	195

EXHIBITS

20.	Settlement Agreement Between the South Carolina Department of Commerce, Division of Railways, and Clemson University (filed with the trial court on December 14, 2016)	210
21.	September 10, 1996 Sublease between the Charleston Naval Complex Redevelopment Authority and Charleston County School District (Exhibit 6 to the Hearing before the Limited Special Referee on September 22-23, 2014 and filed with the Clerk of Court on October 28, 2016)	251
22.	September 10, 1996 Lease from the United States to Charleston Naval Complex Redevelopment Authority (Exhibit 7 to the Hearing before the Limited Special Referee on September 22-23, 2014 and filed with the Clerk of Court on October 28, 2016)	263
23.	February 26, 1998 First Amendment to the Sublease between the Charleston Naval Complex Redevelopment Authority and Charleston County School District (Exhibit 9 to the Hearing before the Limited Special Referee on September 22-23, 2014 and filed with the Clerk of Court on October 28, 2016)	327

OTHER

24.	Certificate of Compliance	330

COUNTY OF CHARLESTON)

South Carolina Department of Commerce,)
Division of Public Railways,)

☒ Condemnor,)

v.)

Clemson University, Landowner and)
Charleston Naval Complex Redevelopment)
Authority, et al.)

☐ Other Condemnees)

check box above indicting submitting party)

Case No.:

2012-CP-10-5093

2012-CP-10-10495

MOTION AND ORDER INFORMATION

FORM AND COVER SHEET.

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Defendants' attorney: _____, Bar No. _____
telephone: _____ fax: _____
e-mail: _____ other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES ☐ NO

SECTION II : Motion/Order Type

☐ Written Motion Attached

☒ Form Motion—

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Condemnor

Date Submitted: 4/18/14

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause ill Child or Spousal Support

(Check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule-69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE

CODE: 2163

DATE: _____

CLERK'S VERIFICATION

DATE FILED:

Collected by: _____

(Print name)

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED-AMOUNT DUE: _____

SCCA/233

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Charleston County School District,)

Plaintiff,)

v.)

Clemson University and City of North)
Charleston,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2012-CP-10-5093

**CONSENT ORDER OF
LIMITED REFERENCE
AND SCHEDULING ORDER**

FILED
20 APR 25 AM 9:47
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Project: Intermodal Container)
Transfer Facility)

Tract: 11)

South Carolina Department of Commerce,)
Division of Public Railways,)

Condemnor,)

v.)

Clemson University,)

Landowner,)

and)

Charleston Naval Complex Redevelopment)
Authority,)

City of North Charleston,)
Commissioners of Public Works of the City)
of Charleston,)

North Charleston Sewer District,)
BellSouth Telecommunications, Inc.,)
Business Telecom, Incorporated,)
South Carolina Electric & Gas Company,)
and Charleston County School District,)

Other Condemnees.)

CIVIL ACTION NO. 2010-CP-10-10495

The two above-captioned actions involve related matters. The first action, initiated by the Charleston County School District ("District"), involves its claim to certain real property where the District previously operated its Academic Magnet High School. The other action, which is a condemnation case initiated by the South Carolina Department of Commerce, Division of Public Railways ("Railways"), includes not only the same property at issue in the action initiated by the District, but also additional property. In the condemnation case, Clemson University ("Clemson") is listed as the Landowner in the caption, and the District is one of eight Other Condemnees.

There are several issues which are critical to deciding both of these cases. The parties all agree that in 1996, a sublease was entered into between the Charleston Naval Complex Redevelopment Authority ("RDA") and the District concerning the Academic Magnet High School. However, there are various issues about which the parties do not agree, and they are presented as follows: (1) whether the sublease expired; (2) how much property was covered by the sublease ("Property"); (3) whether the District had any rights to the Property after it was conveyed from the RDA to the City of North Charleston ("North Charleston"); (4) whether the District had any rights in the Property after the Property was conveyed from North Charleston to Clemson; and (5) whether the District had any rights in the Property at the time of the filing of the Notice of Condemnation in December of 2010.

The parties all agree that judicial economy and issue resolution consistency dictate that both cases should be stayed until these questions are answered. The parties have all also agreed that the matters at issue in this Order should be referred to a Limited Special Referee. The parties have all agreed that John Massalon, Esquire should be appointed as the Limited Special Referee, and he has agreed to this appointment. However, the parties agree this Court shall

maintain jurisdiction over and authority to hear discovery matters pertaining to these cases in the event the same should arise via Motion to Compel or otherwise even while these actions are stayed pending the outcome of the Limited Special Referee Hearing.

This list of issues to be referred to the Limited Special Referee may be amended by written agreement signed by all the parties hereto without further order from the Circuit Court. Once decided, these issues can then be applied in both the above-captioned actions. The role of the Limited Special Referee shall be to resolve only these specific issues, unless the list is expanded or limited, as set forth above. The parties recognize, and I concur, that since the purpose of this Order is to resolve specific issues which are germane to the above-captioned actions, any Order of the Limited Special Referee deciding those issues would not be appealable until the entire actions themselves are resolved by the Circuit Court.

While the parties have been conducting discovery for some time, they agree that discovery should only continue at this time on those matters relevant to this reference. To that end, they have agreed on the following scheduling deadlines:

1. The District shall identify all expert witnesses to be called in the reference hearing no later than April 4, 2014;
2. Railways, Clemson, and North Charleston shall identify all expert witnesses to be called in the reference hearing no later than April 11, 2014;
3. Discovery concerning the matters at issue in this reference shall be completed by July 12, 2014;
4. The hearing by the Limited Special Referee shall be held not before August 1, 2014;
5. Within 15 days after the Limited Special Referee has issued his final order, the

parties shall contact this Court and advise the Court as to their positions as to the impact of the Special Referee's decision on each of these cases, what issues remain in either of these cases, and a proposed scheduling order to complete discovery on those cases, including a date for mediation.

IT IS THEREFORE ORDERED THAT:

1. John Massalon, Esquire shall be appointed as Limited Special Referee in deciding the issues set forth above;
2. The scheduling deadline set forth above are adopted by this Court;
3. Both of the above-captioned actions are stayed, except for the matters assigned to the Limited Special Referee;
4. This Court shall maintain jurisdiction over and authority to hear discovery matters pertaining to these cases in the event the same should arise via Motion to Compel or otherwise even while these actions are stayed pending the outcome of the Limited Special Referee Hearing; and,
5. Within 15 days after the Limited Special Referee has issued his final order, the parties shall contact this Court and advise the Court as to their positions as to the impact of the Limited Special Referee's decision on each of these cases, what issues remain in either of these cases, and a proposed scheduling order to complete discovery on those cases, including a date for mediation.
6. The Scheduling Order may be altered or amended by written consent of all parties, with the exception of the Limited Special Referee hearing date, which shall not be altered unless ordered by the Court.

AND IT IS SO ORDERED this 23rd day of April, 2014.



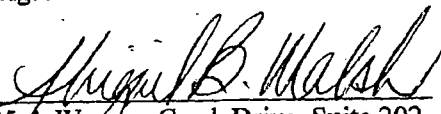
Stephanie P. McDonald
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina

April 23, 2014

**WE SO MOVE AND CONSENT IN
CIVIL ACTION NO. 2012-CP-10-5093:**

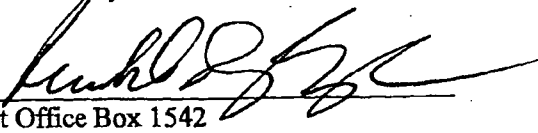
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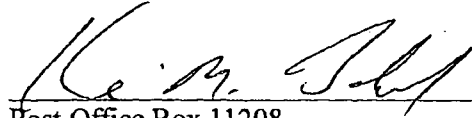
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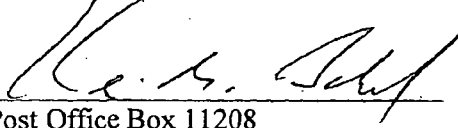
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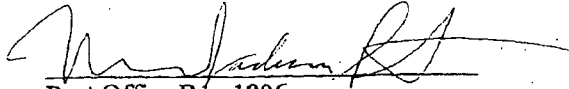
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WE CONSENT:

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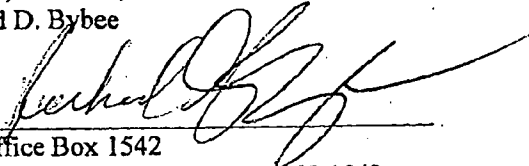
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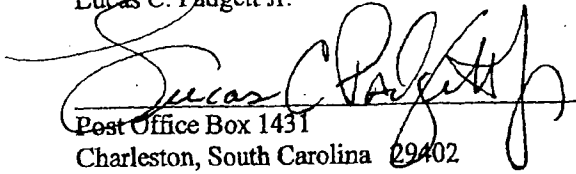
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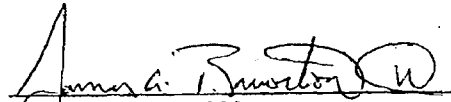
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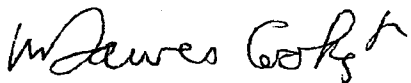
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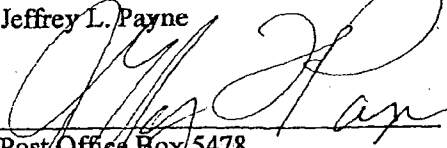
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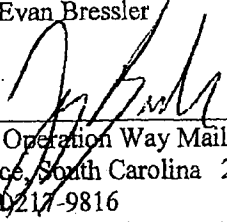
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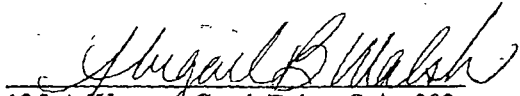
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As To ^{CASE No:} 2010-CP-10-10295

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2STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

CHARLESTON COUNTY SCHOOL)
DISTRICT,)

Plaintiff,)

vs.)

CLEMSON UNIVERSITY and CITY OF)
NORTH CHARLESTON,)

Defendants,)

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Project: Intermodel Container Transfer)
Facility)

Tract: 11)

South Carolina Department of Commerce,)
Division of Public Railways,)

Condemnor,)

vs.)

Clemson University,)

Landowner,)

and)

Charleston Naval Complex Redevelopment)
Authority, City of North Charleston,)
Commissioners of Public Works for the City)
of Charleston, North Charleston Sewer)
District, BellSouth Telecommunications,)
Inc., Business Telecom, Incorporated, South)
Carolina Electric & Gas Company and)
Charleston County School District)

Other Condemnees.)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-5093

FILED
2015 OCT 27 PM 3:22
JULIE J. ARMSTRONG
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-10495

ORDER

The following issues were referred to the undersigned as Special Referee:

1. DID THE SUBLEASE BETWEEN THE CHARLESTON COUNTY SCHOOL DISTRICT ("CCSD") AND THE REDEVELOPMENT AUTHORITY ("RDA") EXPIRE?
2. HOW MUCH PROPERTY WAS INCLUDED IN THE SUBLEASE?
3. DID CCSD HAVE ANY RIGHTS IN THE PROPERTY AFTER IT WAS CONVEYED BY RDA TO THE CITY OF NORTH CHARLESTON ("CITY")?
4. DID CCSD HAVE ANY RIGHTS TO THE PROPERTY AFTER IT WAS CONVEYED FROM THE CITY TO CLEMSON UNIVERSITY?
5. DID CCSD HAVE ANY RIGHTS TO IN THE PROPERTY AT THE TIME THAT THE CONDEMNATION NOTICE WAS FILED ON DECEMBER 22, 2010?

The parties and their attorneys appeared before me for a hearing on September 23, 2014, the hearing continued on September 24, 2014 and was then recessed until October 29, 2014. Thereafter, the hearing was reconvened on October 29, 2014 and continued through October 31, 2014. Written closing arguments were subsequently submitted by CCSD, the City, and a joint closing was submitted by the South Carolina Department of Commerce, Division of Public Railways and Clemson. CCSD also submitted a reply memorandum. Based upon the evidence received during the hearings, the arguments of counsel and the applicable law, I make the following findings of fact and conclusions of law:

DID THE SUBLEASE BETWEEN THE CHARLESTON COUNTY SCHOOL DISTRICT ("CCSD") AND THE REDEVELOPMENT AUTHORITY ("RDA") EXPIRE?

CCSD argues that both the September 10, 1996, Primary Lease between the United States of America and the RDA, and exhibits and amendments to the September 10th lease, (the "Primary Lease") and the September 10, 1996 Sublease between the Charleston Naval Complex Redevelopment Authority and the Charleston County School District (the "Sublease") remained in effect until September 3, 2006. CCSD offers the following arguments in support of this position:

- Section 6 of Sublease says term shall be for five years and shall run concurrent with the term of the Primary Lease.
- Also Section 6 says if the Primary Lease is extended, renewed or replaced, or if

the RCA shall have by any manner or means the power to lease or sublease the Prop for longer than initial term and if the sublease shall not have terminated and if there is no default, then RDA agreed that lease can be extended for a maximum of 25 years in CCSD's sole discretion by CCSD's written notice to RDA prior to expiration of initial term.

- CCSD claims that the January 29, 1998 letter from CCSD to Jack Sprott of RDA which asked to extend the maximum term of the Sublease to 50 years is sufficient notice to extend Sublease.
- Also section 3 of Sublease incorporates terms of Primary lease by reference so CCSD argues that extension of Primary automatically extended Sublease.
- Consideration of the "four corners" of Primary Lease and the Sublease makes it clear that the parties intended to incorporate all terms and conditions of Primary Lease and amendments to the Primary Lease.
- Two additional sections of sublease reflect an intent to incorporate all terms of Primary lease into the Sublease. Section 4 says upon issuance of the FOSL, the Lessee shall be deemed to have acquired all benefits and obligations of RDA under the Primary lease. Section 21 says that Lessee is subject to terms and conditions of the Primary Lease.
- Section 5.2 of the Primary Lease says that copy must be attached to any sublease and that the sublessee is subject to terms and conditions of the Primary Lease; and
- The Primary Lease, the First Amendment to the Primary Lease, the Second Amendment to the Primary Lease and Sublease all refer to the same "reference number" which shows an intent to unify the terms.

The Defendants responded with the following arguments:

- The term of the Sublease is governed by Section 6 which states plainly that "the term of this Sublease shall be for five years and shall run concurrent with the term of the Primary Lease.
- The Primary Lease was extended by amendment for five years from 9-4-01 to 9-3-06, and it is undisputed that there was no similar amendment to the Sublease.

- On February 26, 1998 the Sublease was amended and paragraph 6 of the original Sublease was replaced with a new paragraph 6 which lengthened the maximum length of the Sublease from 25 years to 50 years.
- Defendants dispute that the January 29, 1998 letter from CCSD to Jack Sprott of RDA asking to extend the maximum term to 50 years was sufficient notice to extend the Sublease.
- Further, Defendants point out that Paragraph 7 of the Sublease says that CCSD will not stock-pile the property but agrees to make a diligent and good faith effort to conduct operations on premises to enhance redevelopment of former Naval Base and that absent prior written approval by the government the property had to be used as a school.
- In 2002 Board of CCSD decided to move the Academic Magnet school to former Bonds-Wilson campus to co-locate with School of the Arts and that by the Spring of 2010 the CCSD had stopped using the property for educational purposes.
- The Defendants argue that there was no amendment to the Sublease with respect to the trailers on parcel's 12-A and 12-B.

I find that the Sublease expired on September 3, 2001, and thereafter, the CCSD continued as a tenant at will. The construction of an unambiguous written contract is a question of law for the court. J.T.M. Co. v. Vane, 323 S.E.2d 794 (S.C. Ct. App.1984). Where one construction makes the provision unusual or extraordinary and another construction that is equally consistent with the language employed would make it reasonable, fair and just, the latter construction must prevail. Farr v. Duke Power, 218 S.E.2d 431 (1975). The intent and purport of a written contract must be gathered from the contents of the entire agreement and not from any particular clause or portion of the contract. Bruce v. Blalock, 127 S.E.2d 439 (1962). In construing terms in contracts, this Court must first look at the language of the contract to determine the intentions of the parties. Superior Automobile Insurance Co. v. Maners, 199 S.E.2d 719 (1973); Farr, 218 S.E.2d 431. 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. Warner v. Weader, 311 S.E.2d 78, 79 (1983). Extrinsic evidence giving the contract a different meaning from that indicated by its plain terms is inadmissible. Superior Automobile

Insurance Co., 199 S.E.2d 719.

The term of the Sublease is clearly expressed in Section 6 of that document. I find that the January 29, 1998 letter from CCSD to Jack Sprott of RDA asking for extension to term of 50 years was not sufficient notice to extend the Sublease because it only asked to extend the maximum term from 25 years to 50 years. I further find that the provisions of the Primary Lease cited by CCSD are not sufficient proof of the parties' intent to modify the Sublease. Finally, the plain language of the First Amendment to the Sublease demonstrates an intent to only modify the maximum time period for the lease from 25 years to 50 years as requested in the January 29, 1998 letter.

HOW MUCH PROPERTY WAS INCLUDED IN THE SUBLEASE?

I conclude that the Sublease included both Building 199 (a/k/a Cochrane Hall) and parcels 12-A and 12-B as shown in the cross-hatched area on the sketch attached to Amendment Number 1 to the Primary Lease. In reaching this conclusion, I find it appropriate to consider extrinsic evidence as to this question because of the uncertainty created by the graphic depictions of the "Premises" (as that term is used in the Primary Lease and the Sublease) which were attached to both the Primary Lease and the Sublease. In considering the intent of the parties, it is clear from the language of both the Primary Lease and the Sublease, as well as testimony during the hearing, that the overriding intent of the parties was to lease property to CCSD to locate a school on the former Navy Base. The testimony was that the trailers located on parcels 12-A and 12-B were used by students at the Academic Magnet High School. Furthermore, Amendment Number 1 to the Primary Lease was executed on January 16, 1997 while the sublease was in effect. The fact that the RDA signed a License on November 21, 1996 for the use of trailers is not dispositive of this question because in my view the trailers themselves were personal property, not part of the real estate and so the fact that they were the subject of a license does not translate into a finding that the license defined CCSD's sole interest in the trailers and real estate on which they were located.

DID CCSD HAVE ANY RIGHTS IN THE PROPERTY AFTER IT WAS CONVEYED BY RDA TO THE CITY OF NORTH CHARLESTON ("CITY")?

DID CCSD HAVE ANY RIGHTS TO THE PROPERTY AFTER IT WAS CONVEYED FROM THE CITY TO CLEMSON?

DID CCSD HAVE ANY RIGHTS TO IN THE PROPERTY AT THE TIME THAT THE

CONDEMNATION NOTICE WAS FILED ON DECEMBER 22, 2010?

CCSD argues that after the RDA conveyed the Property to the City it maintained one or more of the following rights in it: equitable title to the 3.74 acre AMHS campus and 1.87 acre trailer parcel; a 50 year lease on the AMHS parcel; and/or an equitable interest in the 3.74 acre AMHS parcel because of improvements to that property during the lease. I will address those arguments in turn. Additionally, I will address the timing issue (issues #4 and #5) as part of this analysis.

I find that CCSD did not have equitable title to the Property at the time that it was conveyed by the RDA to the City. CCSD claims that RDA passed on CCSD's right to acquire title to the property in the December 21, 2004 Quit Claim Deed and Assignment Agreement to the City. However, I am persuaded by the argument and case law cited by the Defendants that as strangers to the 2004 deed from RDA to the City and the 2010 deed from the City to Clemson, the CCSD did not revive any rights under the Sublease that expired in 2001. In particular, although it is not controlling authority, I find the reasoning in Engle v. Bond-Foley Lumber Co., 173 Ky 35, 189 S.W. 1146 (1916) to be persuasive.

Likewise, I find that CCSD's argument regarding covenants which run with the land to be misplaced. I appreciate counsel's advocacy on that point, but I cannot make the connection between restrictive covenants which bind subsequent purchasers, and CCSD's claim that it has an enforceable right to purchase the property because it is mentioned in subsequent deeds between different parties. I find that argument misconstrues the law of privity.

CCSD's argument that it has a 50 year lease is foreclosed by the same reasoning that I articulated above in ruling that the Sublease expired in 2001. It is a fact that on January 29, 1998 Superintendent Zullinger wrote a letter for CCSD to Jack Sprott of RDA asking to extend the term of the lease to 50 years. However, that request was not sufficient to extend the Sublease beyond 2001, and so whether the maximum term could have been 25 years or 50 years became an academic question at that point. Subsequent amendment of the Primary Lease was not sufficient to amend the Sublease and recitals in subsequent conveyances were similarly insufficient on this point.

However, I cannot ignore that much of the evidence submitted during the hearing does not fit neatly into the analysis advocated by the Defendants and for that reason, I find that CCSD had

an equitable interest in the 3.74 acre AMHS parcel because of improvements made to that Property during the term of the Sublease and CCSD's use of the property thereafter.¹ Counsel for Clemson and Railways wrote in his Closing Argument that "[w]hile five days of evidence and argument and a 116 page brief by the District might appear to indicate that this is a complicated case, it is not." I have great respect for all of the attorneys in this case and the fine work done for their clients, but on this point counsel for Clemson and Railways misses the mark. This is quite a complicated analytical puzzle, and the extensive evidence and legal argument by both Plaintiff and the Defendants is proof of that.

Specifically, the evidence such as the following weigh in favor of an equitable resolution of this dispute²:

- In 2002 the South Carolina General Assembly passed Act No. 356 which required the RDA to convey property to the City and the South Carolina Ports Authority and in the process honor all existing leases.
- On April 20, 2004 Mark Cobb of CCSD wrote to Jack Sprott of the RDA and asked to exercise its claimed right to transfer the Property to CCSD at no cost under the Sublease.
- Defendants argue (correctly I think) that the April 20, 2004 letter was ineffective on its own to exercise an option, but in the Quitclaim Deed dated December 21, 2004 from the RDA to the City, Mr. Cobb's letter is specifically mentioned.
- The 2004 Assignment and Assumption Agreement, Exhibit A, between the RDA and the City refers to both the 50 year lease claimed by CCSD and the Sublease.
- The 2007 Quitclaim Deed from the City to Clemson states that it is expressly subject to the rights of the lessees of several properties (including Building 199) and the Sublease.
- The 2010 Assignment and Assumption Agreement, Exhibit A, between the City and Clemson again recognizes the Sublease.

I am persuaded that CCSD spent a substantial amount of money on upgrades to the

¹ In support of its equitable interest argument, CCSD argues the ultimate equitable maxim that "In Equity Good Guys Should Win and Bad Guys Should Lose." Here we have "good guys" on all sides and so in reaching this decision I relied most on the equitable maxims that equity will not suffer a wrong to be without a remedy and equity regards substance more than form.

² This list is intended to be illustrative and not exhaustive.

Academic Magnet High School campus with the reasonable expectation that it would occupy and use the property for an extended period of time. That expectation is consistent with the RDA's mission and purpose as stated in the Lease and the Sublease to revitalize the former Navy base. The proof offered at trial established conclusively that the RDA wanted CCSD to locate a school on the property and worked cooperatively with CCSD to make that a reality. In 1998 Mr. Zullinger asked to extend the maximum lease term to 50 years, and although that was not sufficient to extend the Sublease according to its terms, that letter demonstrated a long-term commitment to the property by CCSD and a shared interest by the RDA. Subsequently, in documents conveying the property first to the City and then to Clemson the RDA, the City and Clemson acknowledged that CCSD would likely have a long-term presence on the former Navy Base. In this context, I find that CCSD's investment was entirely reasonable and not consistent with short term use of the property. Moreover, I find that RDA, the City and Clemson were aware of that financial commitment and accepted or at least acquiesced in it.

The Defendants argue that CCSD's claims should be barred because it abandoned the 3.74 acre AMHS parcel after it had agreed in the Sublease to use the AMHS parcel as a school and not to "stockpile" the property. I find that argument to be unpersuasive for several reasons. First, in construing the Sublease, I am obligated to interpret it according to its terms, but not read emphasize one portion to the exclusion of another so as to give effect to the entire agreement. I therefore find, that to accomplish that one must review the last sentence of paragraph 6 of the sublease in conjunction with paragraph 7. Read in that manner, I find that the parties to the Sublease expected the CCSD to use diligence and good faith to operate the AMHS parcel for education purposes, but that such a use was not restricted solely to its use as a school. Furthermore, I find that the Sublease anticipated that the AMHS parcel did not need to be operated at "100% capacity". Second, because the CCSD exists solely to operate and manage public schools in Charleston County, it is hard for me to envision a use of property by the CCSD that is not for "educational purposes". Third, this argument is primarily a legal argument under the Sublease and so I find that it does not bar equitable relief for CCSD.

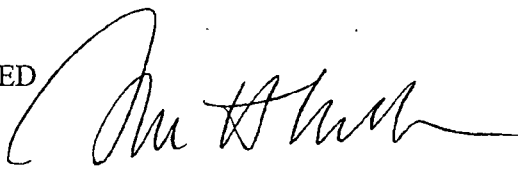
As for the length of CCSD's equitable interest, I find that it extended up to and including December 22, 2010, when the condemnation action was filed. At that time, my understanding of the evidence is that the Academic Magnet High School had relocated to the former site of Bonds-Wilson High School and CCSD was using the AMHS parcel for storage. However, for the

reasons articulated in the prior paragraph, I find that the relocation of the AMHS did not automatically trigger the reverter clause of the Sublease and does not bar CCSD's equitable claim.

My understanding of the reference to me is that my authority is limited to a determination of whether or not the CCSD had an equitable interest in the property at the time the condemnation notice was filed, but that my authority does not include whether that interest has any monetary value, and if so, how much. I do not want to exceed that authority, but I will offer the comment that some of the arguments raised by the Defendants, particularly those raised by the City, which are not addressed specifically here bear on the issue of whether CCSD's equitable interest has value or what that value may be. I point this out as an explanation for my decision not to address certain arguments and not as a comment on the merits of those arguments.

Lastly, Clemson, Railways and the City argue that the CCSD equitable claims are barred by the statute of limitations. It is well settled that the statute of limitations does not apply in equitable actions. Dixon v. Dixon, 362 S.C. 388, 608 S.E. 2d 849 (2005); citing Anderson v. Purvis, 211 S.C. 255, 44 S.E. 2d 611 (1947) and Anderson v. Purvis, 220 S.C. 259, 67 S.E. 2d 80 (1951). Therefore, I decline to dismiss CCSD's claim for an equitable interest in the AMSH parcel based on the statute of limitations arguments raised by the Defendants at trial and in their closing arguments.

AND IT IS SO ORDERED



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SPECIAL REFEREE

CHARLESTON, SC

October 22, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

CHARLESTON COUNTY SCHOOL)
DISTRICT,)

Plaintiff,)

vs.)

CLEMSON UNIVERSITY and CITY OF)
NORTH CHARLESTON,)

Defendants,)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Project: Intermodel Container Transfer)
Facility)
Tract: 11)

South Carolina Department of Commerce,)
Division of Public Railways,)

Condemnor,)

vs.)

Clemson University,)

Landowner,)

and)

Charleston Naval Complex Redevelopment)
Authority, City of North Charleston,)
Commissioners of Public Works for the)
City of Charleston, North Charleston Sewer)
District, BellSouth Telecommunications,)
Inc., Business Telecom, Incorporated,)
South Carolina Electric & Gas Company)
and Charleston County School District)

Other Condemnees.)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-5093

FILED
2016 MAR 16 AM 10:17
CLERK OF COURT
JAMES L. HARRIS, JR.

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-10495

ORDER

This matter is before me for consideration of the City of North Charleston's Motions to Alter or Amend the Order of October 22, 2015 and the Joint Motion of Clemson University and South Carolina Department of Commerce, Division of Public Railways to Alter or Amend the Limited Special Referee's October 22, 2015 Order. For the reasons set forth below, the motions are denied.

First, the City of North Charleston ("the City"), Clemson University ("Clemson"), and the South Carolina Department of Commerce, Division of Public Railways ("Railways") request that I delete the sentence on page 8 of the October 22nd order which reads: "Subsequently, in documents conveying the property first to the City and then to Clemson and the RDA, the City and Clemson acknowledged that CCSD would likely have a long term presence on the former Navy Base." The City, Clemson and Railways argue that none of the documents introduced into evidence reflect any acknowledgment by the City that the CCSD would have a long term presence on the Navy Base.

As to the City's acknowledgement that CCSD would likely have a long term presence on the former Navy Base, I refer the parties to the following documents:

- In documents which predated the transfer from the RDA to the City are evidence that the City had an expectation that the CCSD would have a long term presence on the former Navy Base. For example, on June 7, 2004, the City's Mayor sent a letter to the Superintendent of CCSD in which Mayor Summey took note of the lease between the RDA to establish the Academic Magnet High School campus. The letter specifically, refers to a 50 year term for the lease and language allowing the CCSD to acquire the property.
- On October 11, 2004, letter from Raymond Anderson, Special Assistant to the Mayor,

advised Jack Sprott of the RDA of a meeting between Mayor Summey and the Superintendent of CCSD to discuss "the future of the CCSD facilities on the former Naval Base." That letter further stated that the CCSD's plans to locate a training center for teachers should meet the terms of the lease with the Navy. Also, Mr. Anderson indicated the City's willingness to deed the property to the CCSD and suggested a method of accomplishing that transfer.

- In a letter dated October 29, 2004, Mark Cobb, Executive Director of CCSD, wrote to Mr. Sprott and authorized the transfer of Cochran Hall and the adjacent properties to the City. That letter refers to an agreement between the City and CCSD that those properties would then be transferred to CCSD by the City.
- The Quit Claim Deed from The Charleston Naval Complex Redevelopment Authority to the City of North Charleston dated December 21, 2004 states in part that "[b]y recordation of this deed Grantee [the City] agrees for the Grantee and for Grantee's heirs, successors and assigns, that Grantee and any future title holder ...is and shall be bound by, and subject to, the rights of lessees, sublessees, and entities and agencies claiming by and through any of them, including but not limited to the following:
 - (a) the right of possession and quiet enjoyment and option to purchase, pursuant to instrument entitled "Sublease Between Charleston Naval Complex Redevelopment Authority and Charleston County School District" (the "CCSD Sublease") dated September 10, 1996 as amended by "First Amendment to the Sublease Between Charleston Naval Complex Redevelopment Authority and Charleston County School District (the "First Amendment") dated February 26, 1998, receipt of a copy of which CCSD Sublease and First Amendment is acknowledged by Grantee."

- The Quit Claim Deed from The Charleston Naval Complex Redevelopment Authority to the City of North Charleston dated December 21, 2004 further states in part that “[b]y recordation of this deed Grantee [the City] acknowledges that the Charleston County School District by letter dated April 20, 2004 has exercised its option to purchase the property that is more fully described in that certain sublease from Charleston Naval Complex Redevelopment Authority, as Lessor, to Charleston County School District as Lessee” (the “CCSD Sublease”) dated September 10, 1996 as amended in writing...”.
- The December 21, 2004 Assignment and Assumption Agreement between RDA and City identified the CCSD Sublease and the notice extending the Sublease for an additional 50 years among those agreements subject to that assignment and assumption agreement.
- Finally, when the City deeded property to Clemson, as described more fully below, the references to the CCSD Sublease that were contained in the Quitclaim Deed from the RDA to the City were repeated in the transfer documentation from the City to Clemson.

As to Clemson’s acknowledgement that CCSD would likely have a long term presence on the former Navy Base, I refer the parties to the following documents:

- On February 1, 2007 a Transfer and Option Agreement was signed among the City, Clemson, the Hunley Commission and Friends of the Hunley, Inc. That Agreement contemplated the transfer of 82 acres to Clemson for the Clemson University Restoration Institute (CURI). Significantly, the 3.74 acre parcel used by the CCSD for the Academic Magnet High School (“AMHS”) was not part of the 82 acre tract described in the February 1, 2007, T&O Agreement.

- The Quit-Claim Deed from the City to Clemson dated February 28, 2007 conveyed the 82 acre tract described in the T&O agreement signed on February 1st. The property description attached to that Deed contained a specific reference to the CCSD Sublease.
- In the Quit-Claim Deed from the City to Clemson dated February 8, 2010 the City conveyed additional property to Clemson, including the 3.74 acres on which the AMHS had been located that was omitted from the 2007 Quitclaim Deed. Again, the 2010 Quitclaim Deed contained language in which by recording the deed the Grantee, Clemson, acknowledged the right of possession and quiet enjoyment of the tenants of building 199 and the CCSD Sublease.
- In the interim between the 2007 and 2010 Quitclaim deeds, evidence was introduced that documented the CCSD's plans to have a long-term presence on the former Navy Base. In particular, I refer the parties to the following exhibits: 101; 102; 105; 108; 112; 116 and 124.

Second, the City, Clemson and Railways ask me to delete the following sentence, also on page 8 of the October 22nd Order: "Moreover, I find that the RDA, the City and Clemson were aware of that financial commitment and accepted or acquiesced in it." The movants claim that there is no evidence of acceptance or acquiescence by the City in the CCSD's expenditure of funds, and that most of the funds expended by the CCSD occurred before the City or Clemson received title to the property so the City and Clemson could not have acquiesced to those expenditures. The evidence of acceptance or acquiescence is found in the communications from the City before it acquired the property and in the communications to and from Clemson between the 2007 and 2010 Quitclaim Deeds that it received from the City.

- As for the City, probably the best evidence of the City's knowledge of the CCSD's

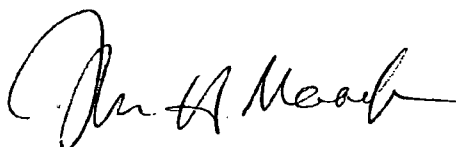
financial commitment to the property is contained in the June 7, 2004 correspondence referenced above. In particular, that letter refers to communications between the City and the District (CCSD) "during the time of the development of the large bond issue, on potential sites of various schools in the area ...". Later in that same letter, it states "I realize that CCSD has invested funds into the current campus."

- As for Clemson, several communications stand out as evidence that it was aware of the CCSD's expenditure of funds before receiving the Quitclaim Deed to the AMHS property. First, the email from Mr. Lewis of CCSD to Mr. Godfrey on October 27, 2008 states in part that "the District has made significant capital improvements to the AMHS campus and have [sic] a plan to use the campus to support another district wide magnet school to this campus once the new AMHS facility is completed in August, 2010...". The March 19, 2009 letter from Mr. Emerson to Mr. Godfrey specifically refers to the recent capital improvements that the CCSD has made to the property. Finally, the email from Mr. Godfrey to Ms. Arena dated September 2, 2009 says in part "[m]ake JK aware that preliminary contact with CCSD on the Magnet School indicated that they would want to recoup the \$5M or so capital investment in the magnet school to 'allow' it to be released from what they consider a 50 year lease."

Finally, the City, Clemson and Railways ask that the order be amended to rule on the laches defense to the CCSD equitable interest claim. "In order to establish laches as a defense, a party must show that the complaining party unreasonably delayed assertion of a right, resulting in prejudice to the party asserting the defense of laches." Historic Charleston Holdings LLC v. Mallon, 381 S.C. 417, 673 S.E.2d 448 (2009). Under the circumstances presented in this case, I find that the CCSD's delay in filing suit did not prejudice the Defendants. The

evidence proved that both the City and Clemson proceeded with their plans for the property while CCSD communicated with both regarding the interests it claimed in the AMHS parcel before and after the City and Clemson received deeds for the property. In 2004, the City received a Quitclaim Deed from the RDA. Three years later, a portion of the property was conveyed by the City to Clemson and three years after that in 2010, additional property including the AMSH parcel was conveyed to Clemson. The original condemnation action was filed in 2010, and CCSD, Clemson and the City were all named as parties. I could not discern any prejudice to either Clemson or the City from the delay. Therefore, I decline to dismiss CCSD's claim for an equitable interest in the AMSH parcel based on the laches defense.

AND IT IS SO ORDERED.



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SPECIAL REFEREE

CHARLESTON, SC

February 23, 2016

STATE OF SOUTH CAROLINA,
COUNTY OF CHARLESTON

S.C. Dept. of Commerce, Division of
Public Railways

Plaintiff

vs.

Clemson Univ., et al.

Defendants.

IN THE CIRCUIT COURT

**ORDER FOR CASE ASSIGNMENT
TO THE BUSINESS COURT
PILOT PROGRAM**

CASE NO. 2010-CP-10-10495

STATE OF SOUTH CAROLINA,
COUNTY OF CHARLESTON

Charleston Ctny. Sch. Dist.

Plaintiff

vs.

Clemson Univ., et al.

Defendants.

IN THE CIRCUIT COURT

**ORDER FOR CASE ASSIGNMENT
TO THE BUSINESS COURT
PILOT PROGRAM**

CASE NO.: 2012-CP-10-05093

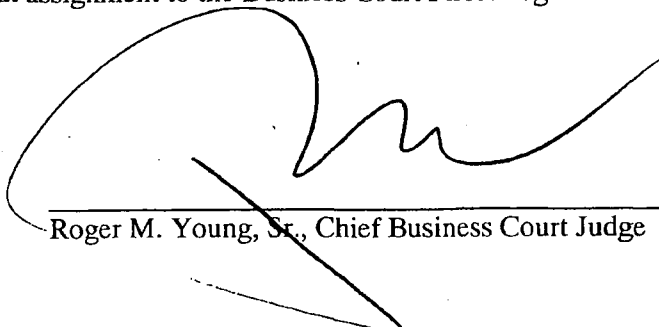
2016 JUN -2 PM 3:16
LIE J. ARMSTRONG
CLERK OF COURT

FILED

☒ On this Court's motion and with consent of all the parties, it is hereby ordered that assignment to the Business Court Pilot Program for Charleston County is **granted**. It is further ordered that exclusive jurisdiction over this case be assigned to the Honorable R. Markley Dennis, Jr. to hear and handle all pretrial motions and other matters pertaining to this case.

☐ It is hereby ordered that assignment to the Business Court Pilot Program for County is **denied**.

And it is SO ORDERED.



Roger M. Young, Sr., Chief Business Court Judge

This 2nd day of June, 2016

Charleston, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

South Carolina Department of Commerce,
Division of Public Railways,

Condemnor,)

vs.)

Clemson University,

Landowner.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-10-10495

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

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Attorney for the Landowner

Abigail B. Walsh, Esquire

Williams & Walsh, LLC

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Charleston, South Carolina 29412

Phone: (843)722-0157

Attorney for Other Condemnee Charleston County
School District

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

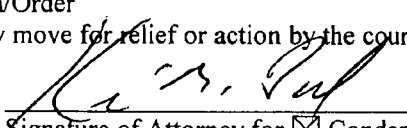
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

 Signature of Attorney for ☒ Condemnor / ☐ Defendant

9-23-16

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: \$ _____	
☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Project: Intermodal Container)
Transfer Facility)
Tract: 11)
South Carolina Department of Commerce,)
Division of Public Railways,)
Condemnor,)
vs.)
Clemson University,)
Landowner,)
and)
Charleston Naval Complex Redevelopment)
Authority,)
City of North Charleston,)
Commissioners of Public Works of the City)
of Charleston,)
North Charleston Sewer District,)
BellSouth Telecommunications, Inc.,)
Business Telecom, Incorporated,)
South Carolina Electric & Gas Company,)
and Charleston County School District,)
Other Condemnees.)

COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 10-CP-10-10495

FILED
2016 SEP 26 AM 11:25
JULIE J. ARMSTRONG
CLERK OF COURT

CONSENT ORDER DISMISSING
OTHER CONDEMNNEES
CHARLESTON NAVAL COMPLEX
REDEVELOPMENT AUTHORITY,
CITY OF NORTH CHARLESTON,
COMMISSIONERS OF PUBLIC
WORKS OF THE CITY OF
CHARLESTON, NORTH
CHARLESTON SEWER DISTRICT,
BELLSOUTH
TELECOMMUNICATIONS, INC.,
BUSINESS TELECOM,
INCORPORATED, AND SOUTH
CAROLINA ELECTRIC & GAS
COMPANY

This matter is before me by way of motion of Condemnor, South Carolina Department of Commerce, Division of Public Railways, with the consent of all parties, for an Order dismissing Other Condemnees Charleston Naval Complex Redevelopment Authority, City of North Charleston, Commissioners of Public Works of the City of Charleston, North Charleston Sewer District, BellSouth Telecommunications, Inc., Business Telecom, Incorporated, and South Carolina Electric & Gas Company. The effect of this Order will leave as parties to this condemnation case, the Condemnor, South Carolina Department of Commerce, Division of

R.M.F./

Public Railways, the Landowner, Clemson University, and one remaining Other Condemnee, Charleston County School District.

The Condemnation Notice sets forth the basis for including all of the Other Condemnees in this action. In the cases of Other Condemnees Commissioners of Public Works of the City of Charleston, North Charleston Sewer District, BellSouth Telecommunications, Inc., Business Telecom, Incorporated, and South Carolina Electric & Gas Company, these Other Condemnees were included in this condemnation as a result of certain of their interests set forth in the Condemnation Notice, and any occupation or use of the subject property as between the Condemnor and these Other Condemnees has been or will be resolved to the satisfaction of these Other Condemnees. In the cases of Other Condemnees, City of North Charleston and Charleston Naval Complex Redevelopment Authority, there are no further matters to resolve as to this condemnation case.

IT IS THEREFORE ORDERED that Other Condemnees Commissioners of Public Works of the City of Charleston, North Charleston Sewer District, BellSouth Telecommunications, Inc., Business Telecom, Incorporated, and South Carolina Electric & Gas Company are dismissed from this action. The rights and interests being acquired in this action by the Condemnor are specifically subordinate to and subject to those of Other Condemnees Commissioners of Public Works of the City of Charleston, North Charleston Sewer District, BellSouth Telecommunications, Inc., Business Telecom, Incorporated, and South Carolina Electric & Gas Company and any conflict between the occupation and use of the subject property as between the Condemnor and Other Condemnees Commissioners of Public Works of the City of Charleston, North Charleston Sewer District, BellSouth Telecommunications, Inc.,

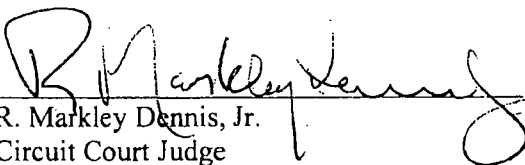
RM 12/2

Business Telecom, Incorporated, and South Carolina Electric & Gas Company has been or shall be resolved to the satisfaction of those Other Condemnees.

IT IS FURTHER ORDERED that Other Condemnees City of North Charleston and Charleston Naval Complex Redevelopment Authority are dismissed from this action.

IT IS ALSO ORDERED that the Clerk of Court for Charleston County shall amend the caption of this action to reflect the dismissal of all Other Condemnees except for Charleston County School District.

AND IT IS SO ORDERED.

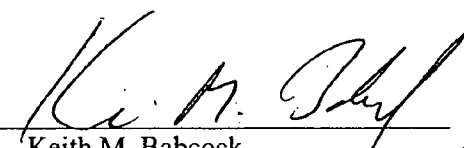

R. Markley Dennis, Jr.
Circuit Court Judge
Ninth Judicial Circuit

Charleston, South Carolina

Sept 1, 2016

WE SO MOVE:

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SIMONS & DEAN
147 Wappoo Creek Drive, Suite 604
Charleston, South Carolina 29412
(843) 762-9132

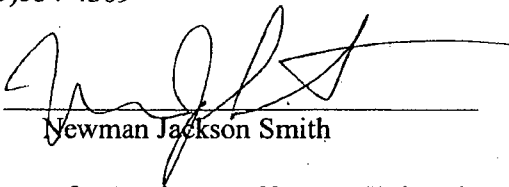
Stephen A. Spitz
Stevens & Lee
151 Meeting Street, Suite 350
Charleston, South Carolina 29401
(843)414-5080

Attorneys for Condemnor South Carolina Department
Of Commerce, Division of Public Railways

WE CONSENT:

NELSON MULLINS RILEY & SCARBOROUGH, LLP
151 Meeting Street, Suite 600
Charleston, South Carolina 29401-2239
(843)534-4309

By:



Newman Jackson Smith

Attorney for Landowner Clemson University

RM 12/5

WE CONSENT:

YOUNG CLEMENT RIVERS, L.L.P.
Post Office Box 993
Charleston, South Carolina 29402
(843)724-6659

By: 
Wilbur E. Johnson

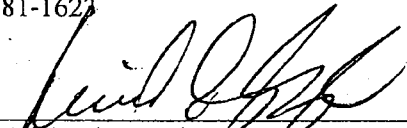
Attorneys for Other Condemnee
Charleston Naval Complex Redevelopment Authority

RM08/6

WE CONSENT:

SMITH BUNDY BYBEE & BARNETT, PC
Post Office Box 1542
Mt. Pleasant, SC 29465
(843)881-1622

By:

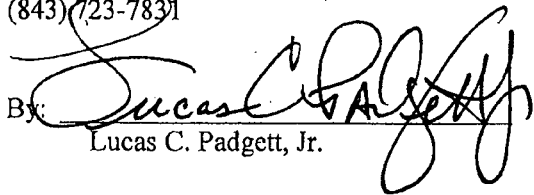

Richard D. Bybee

Attorney for Other Condemnee
City of North Charleston

WE CONSENT:

MCNAIR LAW FIRM, P.A.
Post Office Box 1431
Charleston, South Carolina 29402
(843) 723-7831

By:


Lucas C. Padgett, Jr.

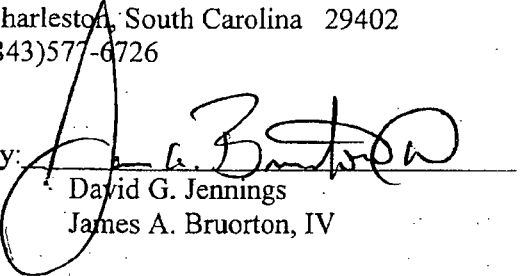
Attorneys for Other Condemnee
Commissioners of Public Works of the City of Charleston

rmog/8

WE CONSENT:

ROSEN ROSEN & HAGOOD, LLC
Post Office Box 893
Charleston, South Carolina 29402
(843)577-6726

By:


David G. Jennings
James A. Bruorton, IV

Attorneys for Other Condemnee
North Charleston Sewer District

WE CONSENT:

BARNWELL WHALEY PATTERSON & HELMS, LLC
Post Office Drawer H
Charleston, South Carolina 29402-0197
(843)577-7700

By: M. Dawes Cooke, Jr.
M. Dawes Cooke, Jr.

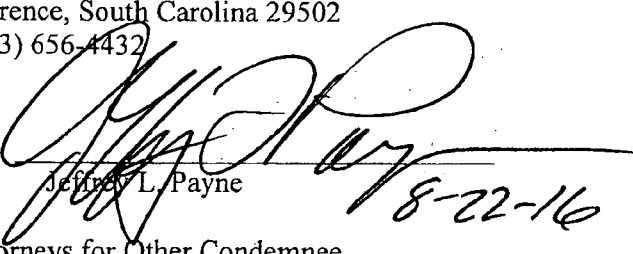
Attorney for Other Condemnee BellSouth Telecommunications, Inc.

RM08/10

WE CONSENT:

TURNER, PADGET, GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, South Carolina 29502
(843) 656-4432

By:

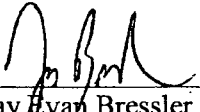

Jeffrey L. Payne

Attorneys for Other Condemnee
Business Telecom, Incorporated

Rm of 1/1

WE CONSENT:

SCANA Services, Inc.
220 Operation Way, Mail Code C222
Cayce, South Carolina 29033
(803) 217-9816

By: 
Jay Evan Bressler
~~Assistant~~ Senior General Counsel

Attorney for Other Condemnee
South Carolina Electric & Gas Company
SCANA Services, Inc.

rm 2/12

WE CONSENT:

WILLIAMS & WALSH, LLC
125-A Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
(843)722-0157

By: Abigail B. Walsh
Abigail B. Walsh

and

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
Post Office Box 2008
Mt. Pleasant, South Carolina 29465-2008
(843)278-9025
Attorneys for Other Condemnee Charleston County School District

RM 2/13

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Project: Intermodal Container
Transfer Facility

Tract: 11

South Carolina Department of Commerce,
Division of Public Railways,

Condemnor,

vs.

Clemson University,

Landowner,

and Charleston County School District,

Other Condemnee.

COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 10-CP-10-10495

ORDER TRANSFERRING CASE
TO THE NON-JURY DOCKET

FILED
2016 OCT 21 AM 9:50
JULIE J. ARMSTRONG
CLERK OF COURT

This matter is before me by way of a motion by the Condemnor, South Carolina Department of Commerce, Division of Public Railways ("Railways"), to transfer this case to the non-jury roster. This matter was heard by me on August 23, 2016. Keith M. Babcock, Esquire, Stephen A. Spitz, Esquire, and Derek F. Dean, Esquire appeared on behalf of Condemnor Railways. Newman Jackson Smith, Esquire appeared on behalf of Landowner Clemson University ("Clemson"). Abigail B. Walsh, Esquire and Christopher L. Murphy, Esquire appeared on behalf of Other Condemnee Charleston County School District ("District"). After considering the arguments of counsel and the memoranda submitted by them, I have determined that this motion should be granted.

This is a condemnation action. In December of 2010, Railways filed a Notice of Condemnation by which a 70 acre tract of land owned by Clemson was condemned. The District

was one of several Other Condemnees in this case. The District's interest pertains to a 3.74 acre portion of Clemson's property where the District previously operated its Academic Magnet High School ("School").

The parties agreed that there were certain issues common to this condemnation action and a related case (*Charleston County School District v. Clemson University*, Civil Action No. 2012-CP-10-5093) that should be decided for both cases together.¹ The parties agreed to transfer these cases to a Limited Special Referee, John A. Massalon, Esq., to decide five issues for the cases. (Consent Order of Limited Reference and Scheduling Order filed April 25, 2014). Limited Special Referee Massalon issued two Orders, one dated October 22, 2015, and the other dated February 23, 2016, which ruled upon the five issues.

At the time of the hearing, I was advised that Clemson and Railways had reached an agreement to settle the case between themselves.² A Consent Settlement Agreement was submitted to the Court and filed following the hearing. This agreement reflects that Clemson and Railways have agreed that Clemson will receive land in exchange for the condemnation of its property, in lieu of financial consideration, and that Clemson has waived its right to any monetary compensation from Railways in this action. As a result, the Condemnor and the Landowner have now resolved their differences, which would normally result in a conclusion of the condemnation case.

¹ The parties to the related case (*Charleston County School District v. Clemson University*), filed a Stipulation of Dismissal on August 5, 2016. Therefore, the only case still ongoing between Railways, Clemson, and District is this condemnation case.

² Counsel for Clemson advised the Court at the hearing that this Settlement Agreement was in accord with prior correspondence on this issue and merely reduced the agreement of Railways and Clemson to writing.

RNO/2

It is entirely appropriate for Railways and the Landowner to resolve all issues between them related to the condemnation of the property. The South Carolina Eminent Domain Act specifically permits:

At any time before or after commencement of an action, the parties may agree to and carry out, according to its terms, a compromise or settlement as to any matter, including all or any part of the compensation or other relief.

S.C. Code Ann. § 28-2-40. There is no legal basis for the District to object to a settlement between the Condemnor and the Landowner.

While Railways and Clemson may have resolved their differences, that resolution does not conclude the action for the District. As set forth in his Orders, the Limited Special Referee determined that the District had "an equitable interest in the 3.74 acre AMHS parcel." At this time, there are various issues for this Court to determine concerning this "equitable interest," including but not limited to: whether this "equitable interest" is compensable; whether it has value; and if it has value, what that value is. Therefore, any issue remaining in the case pertains to the "equitable interest."

It appears to the Court that the three arguments of Railways to transfer this case to the non-jury docket all have merit. First, South Carolina law only gives the Landowner, not an Other Condemnee, a right to a jury trial. Second, the "equitable interest" found by the Limited Special Referee calls for this Court to consider the matter sitting in equity. Finally, any compensation owed to the District should be determined by this Court in an equitable proceeding similar to that provided in S.C. Code Ann. § 28-2-460.

fnol 3

Although the District argues that it has a right to a jury trial, the applicable statutory procedural section does not support that argument. S.C. Code Ann. § 28-2-310 governs the mode of trial for condemnation actions and provides:

If the condemnor and the landowner have demanded trial by the court without a jury, the clerk shall place the action on the nonjury trial roster. Otherwise, the action must be placed on the jury trial roster.

S.C. Code Ann. § 28-2-310. In this case, the Landowner is Clemson, and Clemson advised the Court that it did not oppose the motion and had settled with the Condemnor. This Code section does not mention Other Condemnees, and there is no statutory basis to support the District's position that an Other Condemnee has a right to a jury trial. It is the Landowner that has the right to the jury trial, which may be exercised or waived. *Richland Cty. v. Lowman*, 307 S.C. 422, 424, 415 S.E.2d 433, 434 (Ct. App. 1992).

The fact that the Notice of Condemnation filed by the Condemnor initially sought a jury trial is not controlling. The initial election by the Condemnor was made almost six years ago. As Railways argues, at that time, it did not know all of the developments that were to occur in the case, and that the only matter outstanding at this point in time would involve an equitable issue of the District. The District relies on Rule 39(a), SCRCF, for its claim that it is entitled to a jury trial because one was initially sought by the Condemnor in the Condemnation Notice. However, Rule 39(a) specifically recognizes that some issues may not be appropriate for a jury trial stating: "the court upon motion or its own initiative [may find] that a right of trial by jury of some of or all of the issues does not exist." Rule 39(a), SCRCF. The issue here --the value of an equitable interest in a portion of the property -- is not a jury issue. I find that there is no

Rw/4

statutory or case law basis to support the District's objection to the Condemnor now requesting a transfer to the non-jury docket.

Second, it appears to the Court that this Court must determine issues concerning an "equitable interest" issue, which should be decided in equity. As indicated in his first Order, the Limited Special Referee made certain conclusions of equity, including that the School District had an "equitable interest" in the 3.74 acres of land at issue. The Limited Special Referee explicitly noted that he expressed no opinion as to the question as to whether the "CCSD equitable interest has value or what that value may be." (Page 9, October 22, 2015, Order of Limited Special Referee).

It is apparent that questions as to the "equitable interest" must be decided by this Court and should be done so in equity. In that sense, the issues concerning the "equitable interest" to be determined by this Court are no different than other cases involving "equitable interests." In those cases, the Court decided the issues, not a jury. See, e.g., *Kinard v. Hiers*, 3 Rich Eq. 423 (1851 Court of Appeals of Equity in S.C.); *Oskin v. Johnson*, 400 S.C. 390, 735, S.E.2d 459 (2012). Thus, any questions concerning the "equitable interest" of the District in the 3.74 acres should be decided by this Court sitting in equity without a jury.

Third, an equitable proceeding is statutorily mandated to determine the rights of the Landowner and the Other Condemnees when a dispute exists between them concerning dividing condemnation proceeds. S.C. Code Ann. § 28-2-460 provides that:

Unless the persons served with the Condemnation Notice agree in writing as to whom just compensation must be made and paid, the appraisal panel determination, verdict, or judgment must be made jointly to all the parties and may be paid to the clerk of court. Upon making the payment, the condemnor's obligation to pay interest upon the funds shall terminate. The payment of the funds so

awarded must be held by the clerk of court pending the final order of the court of common pleas in an equity proceeding to which all persons served with the Condemnation Notice must be necessary parties. From the order of the court of common pleas there may be an appeal as provided for appeals from the court in equity cases.

In this case, there is no monetary payment to the Landowner, so this precise procedure cannot be utilized. However, the "equitable interest" of the District should be determined in an equitable proceeding similar to that provided by S.C. Code Ann. § 28-2-460.

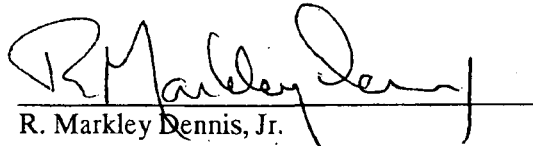
The District has argued that there must be a jury trial on the value of the entire 69.963 acres. The District's "equitable interest," however, is limited to just 3.74 acres. Since the Landowner has entered into a Settlement Agreement with the Condemnor, the value of the entire tract is not at issue, and there is no party other than the Landowner that has an interest in the entire tract. Significantly, even if a jury trial was conducted on the value of the entire 69.963 acres, the Court would still have to hold a separate proceeding in equity, pursuant to S.C. Code Ann. § 28-2-460, to determine the value, if any, of the District's "equitable interest" in the 3.74 acre parcel. Therefore, there is no basis for requiring a jury trial on the entire 69.963 acres.

Finally, the Court recognizes that this is a situation in which the only remaining issue in the case involves an "equitable interest" of an Other Condemnee to a small portion of the entire tract. While this is not a frequent condemnation scenario, the issues before this Court are similar to other equitable cases. In that regard, I have concluded that the District does not have a right to a jury trial, and this case should be transferred to the non-jury docket. However, to the extent that this issue is discretionary, I have further

determined that this case is much better suited to be resolved in a non-jury setting, and not by a jury.

IT IS THEREFORE ORDERED that the Condemnor's motion is granted, and this case is transferred to the non-jury docket.

AND IT IS SO ORDERED this 19th day of October, 2016.


R. Markley Dennis, Jr.
Circuit Court Judge
Ninth Judicial Circuit

Charleston, South Carolina

RMD/7

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Project: Intermodal Container
Transfer Facility

Tract 11

South Carolina Department of Commerce
Division of Public Railways,

Condemnor,

v.

Clemson University,

Landowner,

and

Charleston County School District,

Other Condemnee.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-10-10495

ORDER DENYING MOTION
FOR RECONSIDERATION

FILED
2016 DEC 16 PM 12:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

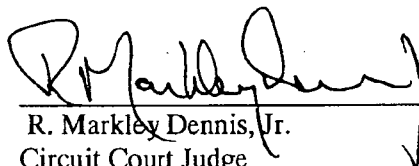
This matter is before by way of Other Condemnee Charleston County County School District's Rule 59(e) Motion to Reconsider this Court's Order dated October 19, 2016, transferring this case to the non-jury docket. This matter was heard by me on December 14, 2016. M. Dawes Cooke, Jr., Esquire, and Christopher M. Murphy, Esquire, appeared on behalf of Other Condemnee Charleston County School District. Keith M. Babcock, Esquire, Stephen A. Spitz, Esquire, and Derek F. Dean, Esquire, appeared on behalf of Condemnor, South

rmbl

Carolina Department of Commerce, Division of Public Railways. Newman Jackson Smith,
Esquire, appeared on behalf of the Landowner, Clemson University.

After considering the motion, memoranda, and previous filings by the parties, along with
arguments made by counsel at the hearing, I decline to change the Order previously issued by
this Court. As a result, the motion is denied.

IT IS SO ORDERED this ____ day of December, 2016.



R. Markley Dennis, Jr.
Circuit Court Judge
Ninth Judicial Circuit

Charleston, South Carolina

December 16, 2016

RM102

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Project: Intermodal Container)
Transfer Facility)

Tract: 11)

South Carolina Department of Commerce,)
Division of Public Railways,)

Condemnor,)

vs.)

Clemson University,)

Landowner.)

and)

Charleston Naval Complex Redevelopment)
Authority,)

City of North Charleston,)
Commissioners of Public Works of the City)
of Charleston,)

North Charleston Sewer District,)
BellSouth Telecommunications, Inc.,)
Business Telecom, Incorporated,)
South Carolina Electric & Gas Company,)
and Charleston County School District,)

Other Condemnees.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 10-CR-10-10495

**CONDEMNATION NOTICE AND
TENDER OF PAYMENT**

(Jury Trial Demanded)

FILED
2010 DEC 23 AM 10:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: CLEMSON UNIVERSITY AND OTHER CONDEMNNEES NAMED ABOVE:

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

1. The South Carolina Department of Commerce, Division of Public Railways, is the Condemnor herein and seeks to acquire the real property described herein in fee simple for public

purposes.

2. Clemson University is named as Landowner in this action by virtue of its claim of title as shown by the following deed recorded in the RMC Office for Charleston County, South Carolina:

Deed dated February 28, 2007, and recorded September 21, 2007, in Deed Book F-639 at Page 773; and Deed dated February 8, 2010, and recorded February 9, 2010, in Deed Book 106 at Page 292. Grantor - City of North Charleston.

3. Charleston Naval Complex Redevelopment Authority is named as an Other Condemnee in this action by virtue of certain easements, declarations, reservations, covenants, and restrictions on the subject property.

4. City of North Charleston is named as an Other Condemnee in this action by virtue of certain easements, declarations, reservations, covenants, and restrictions, on the subject property.

5. City of North Charleston also is named as an Other Condemnee in this action by virtue of a possible conditional right of repurchase and possible terms of a Transfer and Option Agreement on the subject property.

6. Commissioners of Public Works of the City of Charleston are named as an Other Condemnee in this action by virtue of the operation of a water distribution system and certain easements on the subject property. The rights and interest to be acquired by the Condemnor in the subject action are specifically subordinate to and subject to those of Commissioners of Public Works of the City of Charleston and any conflict between the occupation or use of the subject property as between the Condemnor and Commissioners of Public Works of the City of Charleston shall be resolved to the satisfaction of Commissioners of Public Works of the City of Charleston.

7. North Charleston Sewer District is named as an Other Condemnee in this action by virtue of the operation of a sewer system and certain easements on the subject property. The rights and interest to be acquired by the Condemnor in the subject action are specifically subordinate to and subject to those of North Charleston Sewer District and any conflict between the occupation or use of the subject property as between the Condemnor and North Charleston Sewer District shall be resolved to the satisfaction of North Charleston Sewer District.

8. BellSouth Telecommunications, Inc. is named as an Other Condemnee in this action by virtue of certain easements on the subject property. The rights and interest to be acquired by the Condemnor in the subject action are specifically subordinate to and subject to those of BellSouth Telecommunications, Inc. and any conflict between the occupation or use of the subject property as between the Condemnor and BellSouth Telecommunications, Inc. shall be resolved to the satisfaction of BellSouth Telecommunications, Inc.

9. Business Telecom, Incorporated is named as an Other Condemnee in this action by virtue of certain easements on the subject property. The rights and interest to be acquired by the Condemnor in the subject action are specifically subordinate to and subject to those of Business Telecom, Incorporated and any conflict between the occupation or use of the subject property as between the Condemnor and Business Telecom, Incorporated shall be resolved to the satisfaction of Business Telecom, Incorporated.

10. South Carolina Electric & Gas Company is named as an Other Condemnee in this action by virtue of certain easements on the subject property. The rights and interest to be acquired by the Condemnor in the subject action are specifically subordinate to and subject to those of South Carolina Electric & Gas Company and any conflict between the occupation or use of the subject

property as between the Condemnor and South Carolina Electric & Gas Company shall be resolved to the satisfaction of South Carolina Electric & Gas Company.

11. Charleston Naval Complex Redevelopment Authority and Charleston County School District are each named as an Other Condemnee in this action by virtue of a possible sublease agreement, as amended, on a portion of the subject property.

12. Exhibit A, attached hereto and incorporated herein by reference, is a description of the real property subject to this action and a description of the interest sought by the Condemnor.

13. The South Carolina Department of Commerce, Division of Public Railways, is vested with the power of eminent domain pursuant to Section 13-1-1330(5) and Section 28-2-60, South Carolina Code of Laws (1976, as amended).

14. The property sought herein is to be acquired for public purposes, more particularly for the construction and operation of an Intermodal Container Transfer Facility and associated railway lines, in Charleston County, South Carolina, as well as additional development.

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

16. The South Carolina Department of Commerce, Division of Public Railways, has complied with the requirements set forth in Section 28-2-70(A), South Carolina Code of Laws, (1976, as amended), by having the subject property interests appraised and making the appraisal available to the Landowner where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action.

17. Attached as Exhibit B to this Condemnation Notice is a sketch, map, or diagram of the property to be taken.

18. Project plans are available for inspection at 540 E. Bay Street, Charleston, South Carolina 29403

19. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE THE SUM OF NINE MILLION SIX HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$9,645,000) AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.

20. Payment of this amount will be made to the Landowner if within thirty (30) days of service of this Condemnation Notice, the Landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent first class mail with return receipt requested or delivered in person to Condemnor, care of Keith M. Babcock, Esquire, 1513 Hampton Street, Post Office Box 11208, Columbia, South Carolina 29211. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

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

22. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THIS

CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE
WAIVED THE CHALLENGE.

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

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

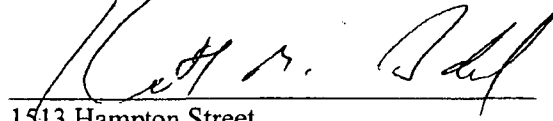
25. In the event the Landowner accepts the amount tendered in this Notice, the attached
Agreement and Request form should be signed and returned to the undersigned attorney for the
Condemnor within thirty (30) days of your receipt of this Notice.

LEWIS & BABCOCK, L.L.P.

A. Camden Lewis

Keith M. Babcock

Ariail E. King



1513 Hampton Street

Post Office Box 11208

Columbia, South Carolina 29211

(803)771-8000

Karen Blair Manning

South Carolina Department of Commerce,

Division of Public Railways

1201 Main Street, Suite 1600

Columbia, South Carolina 29201

(803)737-1603

Attorneys for the Condemnor

Columbia, South Carolina

December 22, 2010

EXHIBIT A

**REAL PROPERTY SUBJECT TO THIS ACTION
AND TO BE ACQUIRED IN FEE:**

TRACT 11:

All that piece, parcel or tract of land, together with the buildings and improvements thereon, situated, lying and being the City of North Charleston, Charleston County, South Carolina, containing **69.963 Acres**, more or less, and shown as "**NEW LOT B**" on a plat entitled "PLAT SHOWING THE ABANDONMENTS OF PROPERTY LINES AND THE COMBINING OF TMS PARCELS 400-00-00-050; 400-00-00-076; 400-00-00-077; 400-00-00-078; 400-00-00-100; 400-00-00-115 TO CREATE NEW LOT A 14.981 ACRES: LOT B 69.963 ACRES: LOT C 10.00 ACRES LOCATED FORMER NAVAL BASE COMPLEX CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SC", prepared by Forsberg Engineering and Surveying, Inc., dated July 31, 2007, and revised August 28, 2007, and recorded in the RMC Office for Charleston County in **Plat Book EK at pages 968 and 969**.

SAID parcel having such metes, bounds, buttings, dimensions and boundaries as reference to said plat more fully and at large appear.

TOGETHER WITH a non-exclusive right of access in common with the City of North Charleston, its successors and assigns and others over existing roads controlled by the United States of America that access the said parcels, as said roads may be relocated from time to time.

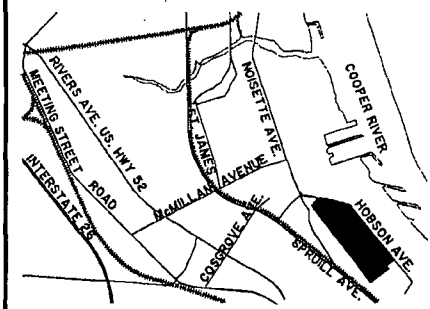
This being the same property heretofore conveyed to Clemson University by Quit-Claim Deed of the City of North Charleston, dated February 28, 2007 and recorded September 21, 2007 in **Deed Book F-639 at page 773**; and by Quit-Claim Deed of the City of North Charleston, dated February 8, 2010 and recorded February 9, 2010 in **Deed Book 106 at page 292**.

FOR INFORMATIONAL PURPOSES ONLY: **TMS Nos 400-00-00-050 and 400-00-00-180**



ADJOINING PARCEL DATA:

- ① TMS 400-00-00-075
CITY OF NORTH CHARLESTON
- ② TMS 400-00-00-174
NORTH CHARLESTON SEWER
DISTRICT



VICINITY MAP not to scale

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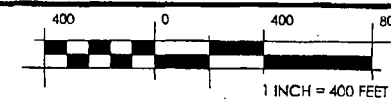
**EXHIBIT
TRACT 11
S.C. PUBLIC RAILWAYS
INTERMODAL CTF**

CITY OF NORTH CHARLESTON
CHARLESTON COUNTY, SOUTH CAROLINA
prepared for
S.C. PUBLIC RAILWAYS

THOMAS & HUTTON
Engineering | Surveying | Planning | GIS | Consulting

682 Johnnie Dodds Blvd., Suite 100
PO Box 1522
Mt. Pleasant, SC 29465-1522
p 843.849.0200 f 843.849.0203

www.thomasandhutton.com



plot 11/22/10
drawn fea/ppg
reviewed kes
job 22468

SHEET 1 OF 1

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Project: Intermodel Container
Transfer Facility)

Tract: 11)

South Carolina Department of Commerce,
Division of Public Railways,)

Condemnor,)

vs.)

Clemson University,)

Landowner,)

and)

Charleston Naval Complex Redevelopment
Authority,)

City of North Charleston,)

Commissioners of Public Works of the City
of Charleston,)

North Charleston Sewer District,)

BellSouth Telecommunications, Inc.,)

Business Telecom, Incorporated,)

South Carolina Electric & Gas Company,)

and Charleston County School District,)

Other Condemnees.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 10-CP-10-10495

AFFIDAVIT

FILED
2010 DEC 23 AM 10:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Personally appeared before me Keith M. Babcock, who, being first duly sworn, deposes and states:

1. That amount tendered by the Condemnor to the Landowners in the Condemnation

Notice has been effectively rejected;

2. That the Condemnor demands a trial no earlier than sixty (60) days after the date of

service of the affidavit upon the Landowner;

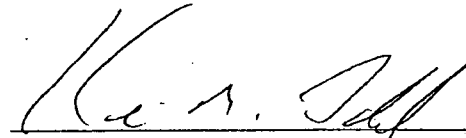
3. That the Condemnor demands a trial by jury;

4. That, at this time, the Condemnor does not demand that this action be given priority over other cases; and

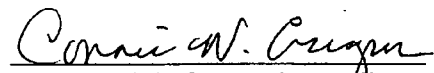
5. That the Clerk of Court should notify the following Condemnees of the call of the case:

The Honorable David H. Wilkins
c/o Ms. Angela E. Leidinger
Executive Secretary to Board of Trustees
Clemson University
1201 Main Street, Suite 1950
Columbia, South Carolina 29201

Further affiant sayeth not.


Keith M. Babcock

Sworn to and subscribed before me
this 22nd day of December, 2010.


Notary Public for South Carolina
My Commission Expires: 1/18/2016

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2010-CP-10-10495

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11

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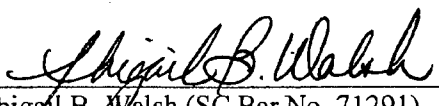
1

FILED
2011 MAY 23 PM 4:03
JULIE J. ARSTRONG
CLERK OF COURT

D 074

Respectfully submitted,

WILLIAMS & WALSH, LLC
125-A Wappoo Creek Drive, Suite 202
Charleston, SC 29412
Tel: 843-722-0157
Fax: 843-762-2198
Abigail@williamsandwalshlaw.com


Abigail B. Walsh (SC Bar No. 71291)

Attorneys for the Defendant

Charleston, South Carolina,
May 19, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Project: Intermodal Container)
Transfer Facility)
Tract 11)
South Carolina Department of Commerce,)
Division of Public Railways,)
Condemnor,)
v.)
Clemson University,)
Landowner,)
AND)
Charleston Naval Complex Redevelopment)
Authority, City of North Charleston,)
Commissioner of Public Works for the City)
of Charleston, North Charleston Sewer)
District, Bell South Telecommunications,)
Inc., South Carolina Electric & Gas)
Company, and Charleston County School)
District,)
Other Condemnees.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-10-10495

FILED
2014 JAN -6 PM 1:22
JULIE J. ARMSTRONG
CLERK OF COURT

CONDEMNOR'S MEMORANDUM
IN OPPOSITION TO OTHER
CONDEMNEE CHARLESTON
COUNTY SCHOOL DISTRICT'S
MOTION FOR THE COURT TO
ORDER CONDEMNOR
TO DEPOSIT FUNDS PURSUANT TO
SOUTH CAROLINA'S EMINENT
DOMAIN PROCEDURE ACT

This is a condemnation action. Other Condemnee Charleston County School District ("School District") has moved for an order requiring Condemnor South Carolina Department of Commerce, Division of Public Railways ("Railways") to deposit funds pursuant to South Carolina Eminent Domain Act. As set forth below, the Act does not require such a deposit, and, even if it did, School District has no standing to make such a motion.

GENERAL BACKGROUND

On December 23, 2010, pursuant to the South Carolina Eminent Domain Act, Section 28-2-10, *et. seq.*, Railways filed the above-captioned condemnation action on an *entire* 69.963 acre parcel of land on the former U.S. Naval Base in Charleston County, South Carolina, which was owned in fee simple by Clemson University. This was a total taking of the property for the public purpose of construction and operation of an Intermodal Container Transfer Facility and associated railway lines. (See Exhibit A – Condemnation Notice and Tender of Payment). No Right to Take Challenge action was filed by School District at any time to take issue with this condemnation action. *See* 28-2-220(C) and 28-2-280(C)(7).

In preparation for and as part of the overall plan to condemn the subject property for this purpose, Railways retained Whitener & Wharton, P.A., a law firm, to perform the necessary title work on the property to help determine what interests might be affected by the condemnation. As a result of that legal work, and out of an abundance of caution, School District was named an Other Condemnee in this condemnation action by virtue of a possible sublease agreement on a portion of the subject property. *See* 28-2-30(6). Condemnor Railways determined that just compensation for the entire property to be the sum of Nine Million Six Hundred Forty-Five Thousand Dollars (\$9,645,000) and tendered the same to the Landowner, Clemson University, upon the filing of the action.

Other Condemnee School District has since filed a civil action in Charleston County Court of Common Pleas to ascertain what, if any, interest it does have in the subject property. Condemnor, Landowner Clemson University, and Other Condemnee City of North Charleston strongly disagree with School District's claim to *any* portion of the subject property, believing

that any such interest was extinguished by time, breach of contract, and/or reverter. At most the only portion of the property that School District could possibly claim is what has been asserted in that related civil action. Importantly, School District's calculation and claim of its interest has continued to change since the filing of that other action, and each new calculation and claim remains unsubstantiated. Originally, the claim was for approximately 9.72 acres of the total 69.963 acres taken by Railways, but most recently School District has amended its Complaint to include an ambiguous claim to the total property, deleting the acreage calculation and relying on the term "surplus property" to identify its interest. Recently, in discovery in that action, the School District has produced a map depicting the approximately 17.5 acres to which it now claims some type of interest.

ARGUMENT

The Requirements of South Carolina Code Ann. § 28-2-230 Not Applicable to this Action

Other Condemnee School District has filed the instant Motion, citing South Carolina Code Ann. § 28-2-230, to try to force Condemnor to deposit the entire Nine Million, Six Hundred Forty-Five Thousand (\$9,645,000.00) Dollars with the Clerk of Court. School District's reliance on the requirements of §28-2-230 (South Carolina's "quick-take" statute) as the basis for its Motion is erroneous and fatal to its Motion, as the Condemnor elected to file the instant condemnation action pursuant to South Carolina Code Ann. §28-2-240 rather than seeking a "quick-take." (Notice of Condemnation at para. 15.) The distinction is vitally important to the disposition of this Motion.

South Carolina Code Ann. § 28-2-230 is a "quick-take" statute that provides a condemnor the option of immediately taking possession of property by making a permissive deposit of the

appraised value. See S.C. Code Ann §28-2-90(b)(identifying the making of a pre-condemnation payment as one of four ways a condemnor can take possession of property)¹.

S.C. Code Ann. §28-2-230 provides in part:

- (A) If the landowner rejects or does not accept the amount tendered as just compensation within the thirty-day period then the condemnor may file the Condemnation Notice with the clerk of court and deposit with the clerk the amount of just compensation stated in the notice....
- (B) The condemnor then shall serve written notice of the action upon the condemnees and may proceed to take possession of the property or interest in the property described in the Condemnation Notice pursuant to Section 28-2-90.

The provisions of this section allow a condemnor to take immediate possession of the property while providing a landowner with the sum of the just compensation stated in the notice from which to draw down during the course of the controversy.

Section 28-2-240, however, contains no such requirement of deposit, and Condemnor has complied with this section in its entirety:

(A) If the condemnor elects to proceed under this section, and the amount tendered in the Condemnation Notice is rejected, the condemnor shall file the Condemnation Notice with the clerk of court, if not already filed, and shall serve upon the landowner and file with the clerk an affidavit stating:

- (1) that the amount tendered in the Condemnation Notice has been rejected;

¹ A condemnor may take possession of property:

- (1) at any time upon receipt of written consent of the record owner or owners of fee simple title to the property;
- (2) upon payment to the owner of mutually agreed compensation;
- (3) upon deposit with the clerk of court in the county in which the property to be condemned is situated, the amount stated in the Condemnation Notice as just compensation for the property, the amount having been determined by the condemnor pursuant to Section 28-2-70(a) before initiating the action;
- (4) upon payment to the owner or deposit with the clerk of court of the amount determined by the appraisal panel or awarded by the judgment in the condemnation action.

(2) that the condemnor demands a trial not earlier than sixty days after the date of service of the affidavit, which date must be certified on the copy filed with the clerk;

(3) whether the condemnor demands a trial by jury or by the court;

(4) whether the condemnor demands that the trial be given priority over other cases; and

(5) the name and known address of each landowner whom the clerk should notify of the call of the case for trial. The affidavit may be executed by the condemnor or by its attorney.

(B) After the filing of the affidavit, the case shall proceed as provided in Article 3.

Despite School District's attempt to focus the Court's attention on an inapplicable section of the Act, Condemnor has acted pursuant to Section 28-2-240, which has no such provision or requirement of the requested deposit; Condemnor has not taken immediate possession of the subject property; and thus it should not be forced to deposit the amount of the just compensation stated in the Notice.

School District is Not the Landowner

Even *arguendo*, allowing for section 28-2-230 to somehow apply to the present case, School District is not the "landowner" as contemplated by the language of the Act.

"Landowner" is specifically defined as "one or more condemnees having a record fee simple interest in the property condemned or any part thereof, as distinguished from condemnees who possess a lien or other nonownership interest in the property...." Section 28-2-30(12) and *see* 28-2-30(6). School District does not now have nor ever did it have record fee simple title; Clemson University² does have such ownership and has made no effort to force Condemnor to deposit the amount of the just compensation stated in the Notice. Thus, School District has no standing to

²The Landowner, Clemson University, and the Condemnor Railways have been negotiating a resolution of this condemnation action, which will involve other property being given in exchange for the subject condemned property. In order to assist the Condemnor in removing some tanks from the property, Clemson recently granted a Consent to Possession by the Condemnor, pursuant to S.C. Code Ann. § 28-2-90.

make such a request as, even should the Court require the deposit, School District would have no legitimate interest in any portion of the funds.

School District's Purported Interest is Unknown

Similarly, School District's purported interest in the subject property has yet to be determined (even by it). Clemson University and Condemnor both strongly disagree that *any* School District interest exists at all and will prove that any such claim was extinguished by expiration of time, breach of contract, and/or reverter. Regardless, at the most, School District's interest would be a percentage of the overall subject property. Even should Section 28-2-230 apply, at this time it would be impossible for this Court to attempt to determine School District's interest and/or the amount of the just compensation that would need to be deposited to cover that portion.

CONCLUSION

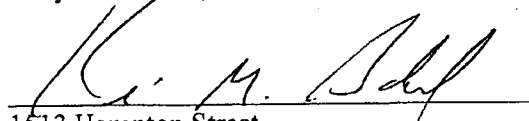
For all of the reasons discussed herein above, Condemnor respectfully asks the Court to deny Other Condemnee's Motion for the Court to Order Condemnor to Deposit Funds Pursuant to South Carolina's Eminent Domain Procedure Act.

LEWIS, BABCOCK & GRIFFIN, L.L.P.

Keith M. Babcock

Ariail E. King

J. Ryan Heiskell, of Counsel



1513 Hampton Street

Post Office Box 11208

Columbia, South Carolina 29211

(803)771-8000

Karen Blair Manning
South Carolina Department of Commerce,
Division of Public Railways
1201 Main Street, Suite 1600
Columbia, South Carolina 29201
(803)737-1603

Joseph P. Griffith, Jr.
Joe Griffith Law Firm, LLC
7 State Street
Charleston, South Carolina 29401
(843)225-5563

Derek F. Dean
Simons & Dean
147 Wappoo Creek Drive, Suite 604
Charleston, South Carolina 29412
(843)762-9132

Attorneys for the Condemnor

Columbia, South Carolina
January 6, 2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Project: Intermodal Container
Transfer Facility

Tract: 11

South Carolina Department of Commerce,
Division of Public Railways,

Condemnor,

vs.

Clemson University,

Landowner.

and

Charleston Naval Complex Redevelopment
Authority,

City of North Charleston,

Commissioners of Public Works of the City
of Charleston,

North Charleston Sewer District,

BellSouth Telecommunications, Inc.,

Business Telecom, Incorporated,

South Carolina Electric & Gas Company,

and Charleston County School District,

Other Condemnees.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 10-CR-10-10495

**CONDEMNATION NOTICE AND
TENDER OF PAYMENT**

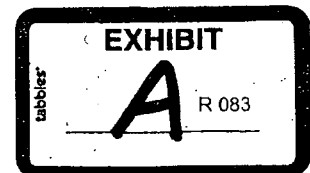
(Jury Trial Demanded)

FILED
2010 DEC 23 AM 10:14
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: CLEMSON UNIVERSITY AND OTHER CONDEMNNEES NAMED ABOVE:

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

1. The South Carolina Department of Commerce, Division of Public Railways, is the Condemnor herein and seeks to acquire the real property described herein in fee simple for public



purposes.

2. Clemson University is named as Landowner in this action by virtue of its claim of title as shown by the following deed recorded in the RMC Office for Charleston County, South Carolina:

Deed dated February 28, 2007, and recorded September 21, 2007, in Deed Book F-639 at Page 773; and Deed dated February 8, 2010, and recorded February 9, 2010, in Deed Book 106 at Page 292. Grantor - City of North Charleston.

3. Charleston Naval Complex Redevelopment Authority is named as an Other Condemnee in this action by virtue of certain easements, declarations, reservations, covenants, and restrictions on the subject property.

4. City of North Charleston is named as an Other Condemnee in this action by virtue of certain easements, declarations, reservations, covenants, and restrictions, on the subject property.

5. City of North Charleston also is named as an Other Condemnee in this action by virtue of a possible conditional right of repurchase and possible terms of a Transfer and Option Agreement on the subject property.

6. Commissioners of Public Works of the City of Charleston are named as an Other Condemnee in this action by virtue of the operation of a water distribution system and certain easements on the subject property. The rights and interest to be acquired by the Condemnor in the subject action are specifically subordinate to and subject to those of Commissioners of Public Works of the City of Charleston and any conflict between the occupation or use of the subject property as between the Condemnor and Commissioners of Public Works of the City of Charleston shall be resolved to the satisfaction of Commissioners of Public Works of the City of Charleston.

7. North Charleston Sewer District is named as an Other Condemnee in this action by virtue of the operation of a sewer system and certain easements on the subject property. The rights and interest to be acquired by the Condemnor in the subject action are specifically subordinate to and subject to those of North Charleston Sewer District and any conflict between the occupation or use of the subject property as between the Condemnor and North Charleston Sewer District shall be resolved to the satisfaction of North Charleston Sewer District.

8. BellSouth Telecommunications, Inc. is named as an Other Condemnee in this action by virtue of certain easements on the subject property. The rights and interest to be acquired by the Condemnor in the subject action are specifically subordinate to and subject to those of BellSouth Telecommunications, Inc. and any conflict between the occupation or use of the subject property as between the Condemnor and BellSouth Telecommunications, Inc. shall be resolved to the satisfaction of BellSouth Telecommunications, Inc.

9. Business Telecom, Incorporated is named as an Other Condemnee in this action by virtue of certain easements on the subject property. The rights and interest to be acquired by the Condemnor in the subject action are specifically subordinate to and subject to those of Business Telecom, Incorporated and any conflict between the occupation or use of the subject property as between the Condemnor and Business Telecom, Incorporated shall be resolved to the satisfaction of Business Telecom, Incorporated.

10. South Carolina Electric & Gas Company is named as an Other Condemnee in this action by virtue of certain easements on the subject property. The rights and interest to be acquired by the Condemnor in the subject action are specifically subordinate to and subject to those of South Carolina Electric & Gas Company and any conflict between the occupation or use of the subject

property as between the Condemnor and South Carolina Electric & Gas Company shall be resolved to the satisfaction of South Carolina Electric & Gas Company.

11. Charleston Naval Complex Redevelopment Authority and Charleston County School District are each named as an Other Condemnee in this action by virtue of a possible sublease agreement, as amended, on a portion of the subject property.

12. Exhibit A, attached hereto and incorporated herein by reference, is a description of the real property subject to this action and a description of the interest sought by the Condemnor.

13. The South Carolina Department of Commerce, Division of Public Railways, is vested with the power of eminent domain pursuant to Section 13-1-1330(5) and Section 28-2-60, South Carolina Code of Laws (1976, as amended).

14. The property sought herein is to be acquired for public purposes, more particularly for the construction and operation of an Intermodal Container Transfer Facility and associated railway lines, in Charleston County, South Carolina, as well as additional development.

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

16. The South Carolina Department of Commerce, Division of Public Railways, has complied with the requirements set forth in Section 28-2-70(A), South Carolina Code of Laws, (1976, as amended), by having the subject property interests appraised and making the appraisal available to the Landowner where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action.

17. Attached as Exhibit B to this Condemnation Notice is a sketch, map, or diagram of the property to be taken.

18. Project plans are available for inspection at 540 E. Bay Street, Charleston, South Carolina 29403

19. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE THE SUM OF NINE MILLION SIX HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$9,645,000) AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.

20. Payment of this amount will be made to the Landowner if within thirty (30) days of service of this Condemnation Notice, the Landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent first class mail with return receipt requested or delivered in person to Condemnor, care of Keith M. Babcock, Esquire, 1513 Hampton Street, Post Office Box 11208, Columbia, South Carolina 29211. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

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

22. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THIS

CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE
WAIVED THE CHALLENGE.

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

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

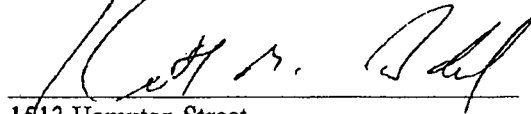
25. In the event the Landowner accepts the amount tendered in this Notice, the attached
Agreement and Request form should be signed and returned to the undersigned attorney for the
Condemnor within thirty (30) days of your receipt of this Notice.

LEWIS & BABCOCK, L.L.P.

A. Camden Lewis

Keith M. Babcock

Ariail E. King



1513 Hampton Street

Post Office Box 11208

Columbia, South Carolina 29211

(803)771-8000

Karen Blair Manning

South Carolina Department of Commerce,

Division of Public Railways

1201 Main Street, Suite 1600

Columbia, South Carolina 29201

(803)737-1603

Attorneys for the Condemnor

Columbia, South Carolina

December 22, 2010

EXHIBIT A

REAL PROPERTY SUBJECT TO THIS ACTION
AND TO BE ACQUIRED IN FEE:

TRACT 11:

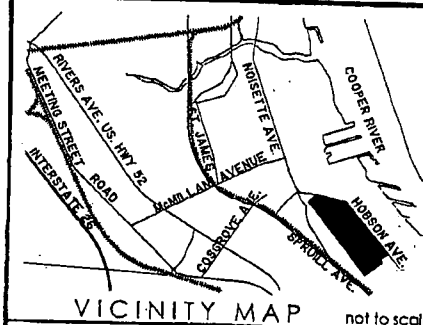
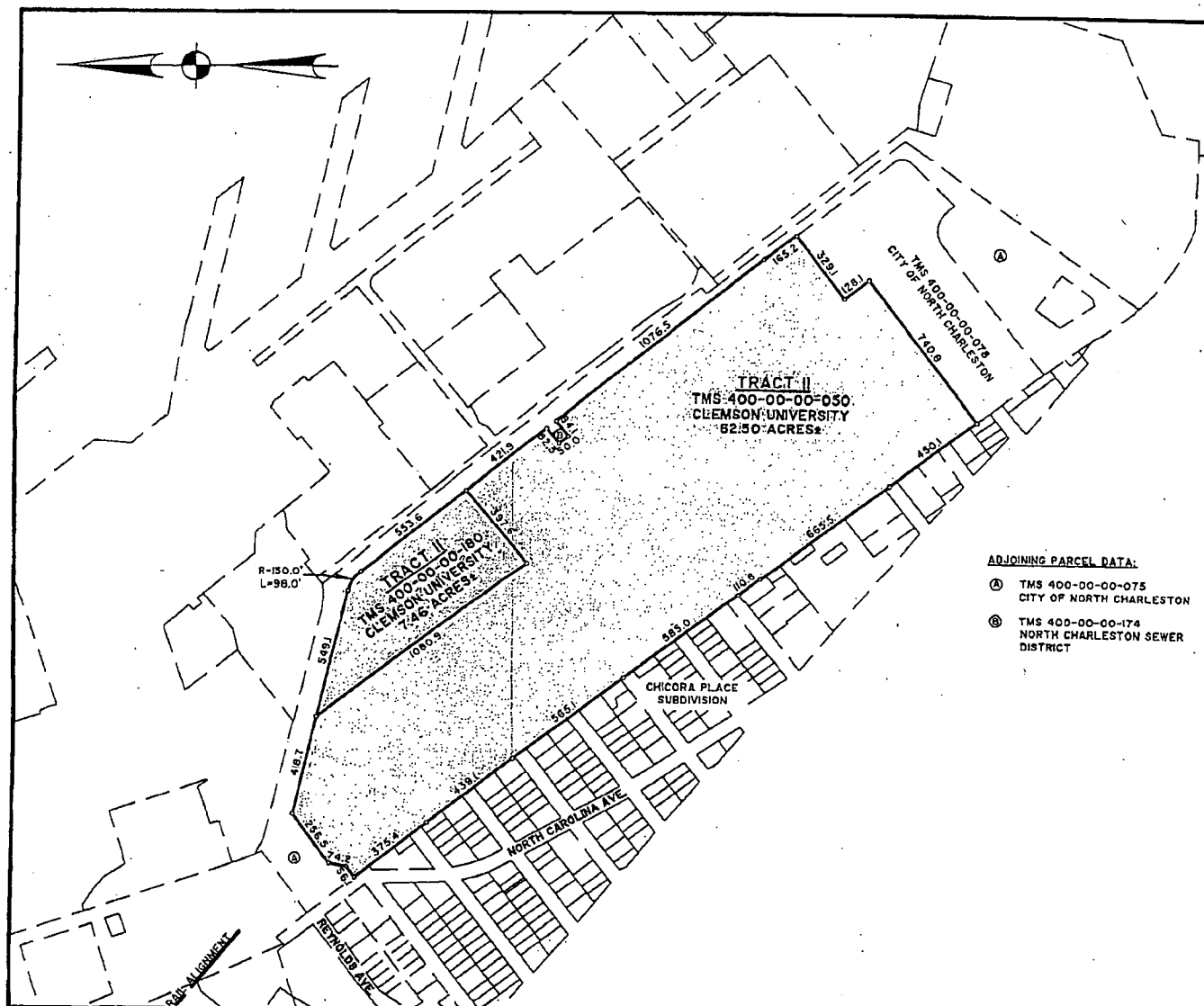
All that piece, parcel or tract of land, together with the buildings and improvements thereon, situated, lying and being the City of North Charleston, Charleston County, South Carolina, containing **69.963 Acres**, more or less, and shown as "**NEW LOT B**" on a plat entitled: "PLAT SHOWING THE ABANDONMENTS OF PROPERTY LINES AND THE COMBINING OF TMS PARCELS 400-00-00-050; 400-00-00-076; 400-00-00-077; 400-00-00-078; 400-00-00-100; 400-00-00-115 TO CREATE NEW LOT A 14.981 ACRES: LOT B 69.963 ACRES: LOT C 10.00 ACRES LOCATED FORMER NAVAL BASE COMPLEX CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SC", prepared by Forsberg Engineering and Surveying, Inc., dated July 31, 2007, and revised August 28, 2007, and recorded in the RMC Office for Charleston County in **Plat Book EK at pages 968 and 969**.

SAID parcel having such metes, bounds, buttings, dimensions and boundaries as reference to said plat more fully and at large appear.

TOGETHER WITH a non-exclusive right of access in common with the City of North Charleston, its successors and assigns and others over existing roads controlled by the United States of America that access the said parcels, as said roads may be relocated from time to time.

This being the same property heretofore conveyed to Clemson University by Quit-Claim Deed of the City of North Charleston, dated February 28, 2007 and recorded September 21, 2007 in **Deed Book F-639 at page 773**; and by Quit-Claim Deed of the City of North Charleston, dated February 8, 2010 and recorded February 9, 2010 in **Deed Book 106 at page 292**.

FOR INFORMATIONAL PURPOSES ONLY: TMS Nos 400-00-00-050 and 400-00-00-180



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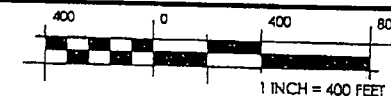
EXHIBIT
TRACT 11
S.C. PUBLIC RAILWAYS
INTERMODAL CTF

CITY OF NORTH CHARLESTON
CHARLESTON COUNTY, SOUTH CAROLINA
prepared for
S.C. PUBLIC RAILWAYS



682 Johnnie Dodds Blvd., Suite 100
PO Box 1522
Mt. Pleasant, SC 29465-1522
p 843.849.0200 f 843.849.0203

www.thomasandshutton.com



plot	drown	reviewed
11/22/10	1eq/ppg	kes
job 22468		

SHEET 1 OF 1

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

South Carolina Department of Commerce,)
Division of Public Railways,)
[X] Condemnor,)
v.)
Clemson University, et al.)
[] Landowner.)

CASE NO. 2010-CP-10-10495

MOTION ASSIGNED TO SPECIAL REFEREE

MOTION AND ORDER INFORMATION FORM
AND COVER SHEET

Condemnor's attorney: Keith M. Babcock, SC Bar No. 456 Lewis Babcock L.L.P. Post Office Box 11208 Columbia, South Carolina 29211 phone: (803)771-8000 fax: (803)733-3534 e-mail: kmb@lewisbabcock.com		Landowner's attorneys: Newman Jackson Smith, Esquire Nelson Mullins Riley & Scarborough, LLP 151 Meeting Street, Suite 600 Charleston, South Carolina 29401-2239 (843)534-4309 jack.smith@nelsonmullins.com	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III) ☐ PROPOSED ORDER / CONSENT ORDER (complete SECTIONS II AND III)			
SECTION I: Hearing Information Nature of Motion: Motion to Transfer Case to Non-Jury Docket Estimated Time Needed: 30 Minutes Court Reporter Needed: ☒ Yes / ☐ No			
SECTION II: Motion/ Order Type ☐ Written motion attached ☐ Form Motion / Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☒ Condemnor / ☐ Landowner Date Submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCPP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instruction Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		Judge _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected By: _____ DATE FILED: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Project: Intermodal Container)
Transfer Facility)
Tract 11)
South Carolina Department of Commerce,)
Division of Public Railways,)
Condemnor,)
v.)
Clemson University,)
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and)
Charleston Naval Complex Redevelopment)
Authority, City of North Charleston,)
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Inc., South Carolina Electric & Gas)
Company, and Charleston County School)
District,)
Other Condemnees.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-10-10495

CONDEMNOR'S MOTION
TO TRANSFER CASE TO THE
NON-JURY DOCKET

FILED
2016 JUN -2 PM 2:37
JULIE J. ARNSTROM
CLERK OF COURT

The Condemnor, South Carolina Department of Commerce, Division of Public Railways
("Railways"), hereby moves to transfer this case to the Non-Jury Docket.

The grounds for this motion are as follows:

This matter is a condemnation action in which Railways condemned an approximately
70-acre tract of property owned by Clemson University ("Clemson"). The condemnation notice

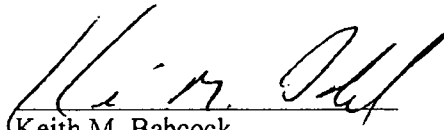
was filed by Railways on December 22, 2010. The Charleston County School District ("the District"), was one of several "Other Condemnees." The District's interest pertains to a 3.74 acre portion of Clemson's property where the District previously operated its Academic Magnet High School ("School").

Because certain issues needed to be decided for both the condemnation case and a related case (*Charleston County School District v. Clemson University*, C/A 12-CP-10-5093), the parties agreed to transfer these issues to a Limited Special Referee, John Massalon. The Limited Special Referee has now ruled on the issues before him and the instant case can proceed. However, Railways has resolved the condemnation case with regard to the Landowner, Clemson University. This resolution does not include a monetary payment to Clemson, so instead of a division of the proceeds to the "Other Condemnees" pursuant to S.C. Code Ann. § 28-2-460, this Court must determine: (1) whether the Other Condemnee District's equitable interest is compensable; (2) what the interest is; (3) whether the interest has value; and, (4) if it has value, what that value is.

The grounds for transferring this case to the non-jury roster are:

1. The South Carolina Eminent Domain Procedures Act (S.C. Code § 28-2-10, et seq.) only gives a Landowner a right to a jury trial, not the Other Condemnees.
2. The "equitable interest" found by the Limited Special Referee calls for this Court sitting in equity, not a jury, to determine the nature, extent, and value (if any) of the equitable interest, as well as whether any equitable defenses affect the equitable interest.
3. Any compensation owed to the District, if any, should be determined by this Court in an equitable proceeding similar to that provided in S.C. Code Ann. § 28-2-460.

This motion will be further supported by a memorandum of law and any oral argument permitted at a hearing on this matter.



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Columbia, South Carolina
May 31, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Project: Intermodal Container)
Transfer Facility)
)
Tract 11)
)
South Carolina Department of Commerce,)
Division of Public Railways,)
)
Condemnor,)
)
v.)
)
Clemson University,)
)
Landowner,)
)
)
and)
)
Charleston Naval Complex Redevelopment)
Authority, City of North Charleston,)
Commissioner of Public Works for the City)
of Charleston, North Charleston Sewer)
District, Bell South Telecommunications,)
Inc., South Carolina Electric & Gas)
Company, and Charleston County School)
District,)
)
Other Condemnees.)
)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-10-10495

CONDEMNOR'S MEMORANDUM
IN SUPPORT OF ITS MOTION
TO TRANSFER TO THE NON-JURY
DOCKET

FILED
2016 AUG 23 AM 11:29
JULIE J. ARMSTRONG
CLERK OF COURT
BY JS

The Condemnor, South Carolina Department of Commerce, Division of Public Railways ("Railways"), hereby submits this Memorandum in support of its Motion to Transfer this case to the Non-Jury Docket.

INTRODUCTION/PROCEDURAL HISTORY

This matter is a condemnation action in which Railways condemned an approximately 70-acre tract of property owned by Clemson University ("Clemson"). The condemnation notice

was filed by Railways on December 22, 2010. The Charleston County School District ("the District"), was one of several "Other Condemnees." The District's interest pertains to a 3.74 acre portion of Clemson's property where the District previously operated its Academic Magnet High School ("School").

Because certain issues needed to be decided for both the condemnation case and a related case (*Charleston County School District v. Clemson University*, C/A 12-CP-10-5093), the parties agreed to transfer these issues to a Limited Special Referee, John Massalon, to determine those issues. The Limited Special Referee has now ruled on the issues before him and the instant case is proceeding forward.

Railways has resolved the condemnation case in principle with regard to the Landowner Clemson. This resolution does not include a monetary payment to Clemson, so instead of a division of the proceeds to the "Other Condemnees" pursuant to S.C. Code § 28-2-460, the Court must determine whether the Other Condemnee District's equitable interest is compensable; what the interest is; whether the interest has value; and, if it has value, what that value is.

FACTUAL BACKGROUND

On September 10, 1996, the United States Government leased certain property ("Primary Lease") on the Charleston Naval Complex to the Charleston Naval Complex Redevelopment Authority ("RDA"). On September 10, 1996, the "RDA" entered into a Sublease Agreement with the District. The Sublease attached the Primary Lease and incorporated the Primary Lease by reference. The Sublease attached a map on which the area was identified by a cross-hatched marking, which identified the Property to be subleased as the building identified as Building 199 (known as Cochrane Hall) and the adjacent parking area (the "Property"). This area on the map was subsequently determined

to be 3.74 acres, and this Property is at issue in this case.

Paragraph 6 of the Sublease provided for the term of the Sublease. This paragraph 6 of the Sublease was replaced in its entirety by the First Amendment to the Sublease entered into by the RDA and the District on February 26, 1998 (the "Amendment") and provided for an initial five (5) year term with the right to extend in five year-increments upon written notice, for a maximum of fifty (50) years. The District failed to provide proper written notice for an extension and the Sublease expired on September 3, 2001. The issue of the expiration of the lease and whether the District had renewed (and whether that renewal was for a term of 50 years as the District claimed) was one of several issues referred to and resolved by the Limited Special Referee (Copies of the Limited Special Referees Orders dated October 22, 2015 and February 23, 2016 are attached). The Limited Special Referee determined that after September 3, 2001, the District continued as a tenant at will in the Property.

In 2002, the District Board decided to move the School to a new building at the former Bonds Wilson High School site ("Bonds Wilson site") along with the School of the Arts and began the master plan for that move. The Board specifically chose to construct the new joint school campus at the Bonds Wilson site over the Charleston Naval Complex, at least in part due to environmental concerns at the Naval Complex. The Board initially intended to construct both schools between 2005 and 2009.

In 2003, the District stopped paying rent due to the amount of improvements that the District had made to the Property pursuant to its agreement with the RDA. Paragraph 5 of the Sublease provided that the District's expenses for building improvements, alterations, and additions would be credited against rental payments in the event ownership had not been conveyed to the District by the end of the initial five (5) year term. In 2003, the RDA

provided the District with a refund of approximately Thirty-thousand Dollars (\$30,000.00) and notified the District that it would no longer be required to pay rent.

By quitclaim deed recorded August 19, 2004, the United States Government conveyed certain property to the RDA, including the Property used by the District. By deeds in 2007 and 2010, the RDA conveyed the entire parcel to the City. The 3.74 acre area used by the School was included in the second deed.

During this time frame, the District continued its plans to move the School away from the Naval Base property. In 2008, the District began construction on the new facility for the new School at the Bonds Wilson site, with the intention to open by 2010. The District moved the School to the new facility at the Bonds Wilson site in the spring of 2010. On December 22, 2010, the South Carolina Department of Commerce, Division of Public Railways filed its condemnation notice.

In the hearing before the Limited Special Referee, the District initially claimed that it had exercised the right to extend the lease and that the lease was extended for a 50 year term--an argument that was rejected by the Limited Special Referee. Alternatively, the District claimed that after the RDA conveyed the Property to the City, the District had either equitable title to the 3.74 acre School campus and/or an equitable interest in the 3.74 acre School parcel because of improvements to that Property. The Limited Special Referee found that the District did not have equitable title to the Property at the time it was conveyed to the City by RDA. The Limited Special Referee did find that the District "had an equitable interest in the 3.74 acre [School] parcel because of improvements made to that Property during the term of the Sublease and [the District's] use of the property thereafter." However, the Limited Special Referee did not determine whether that equitable interest had any monetary value, and if so,

how much it was worth. Thus, as a part of this case, this Court must make determinations as to the issues concerning the District's "equitable interest."

ARGUMENT

I. South Carolina law only gives the landowner a right to a jury trial, not the Other Condemnees.

South Carolina Code Ann. § 28-2-310 governs the mode of trial for condemnation actions and provides:

If the condemnor and the landowner have demanded trial by the court without a jury, the clerk shall place the action on the nonjury trial roster. Otherwise, the action must be placed on the jury trial roster.

S.C. Code § 28-2-310.¹ There is no mention of "other condemnees" in that section, nor does any other section address the mode of trial afforded to "other condemnees."² South Carolina case law also indicates that the right to a jury trial is the landowner's right to exercise or waive. Richland Cty. v. Lowman, 307 S.C. 422, 424, 415 S.E.2d 433, 434 (Ct. App. 1992) ("In a condemnation proceeding, a landowner has right to demand a trial by jury, however this right can be waived."). In other words, only the landowner, and not the "Other Condemnees," are entitled to a trial by jury.

Here, the Landowner is Clemson University. Railways and Clemson are resolving the matter as to the condemnation of Clemson's land, and there will be no trial, either jury or non-jury, as to Clemson's compensation. The only issues before this Court are: 1) whether

¹ Absent statutory authority, a party is only entitled to a jury trial for matters of law, not equity. S.C. Const. Art. 1 § 14; Lester v. Dawson, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997) ("Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions.")

² In fact, one text notes: "The statutory scheme of the Act contemplates that the landowner, and not other condemnees, is the interested party in most phases of the action." 18 S.C. Jur. Eminent Domain § 44.

District's equitable interest is compensable; 2) what the interest is; 3) whether the interest has value; and 4) if it has value, what that value is.

II. The equitable interest found by the Limited Special Referee calls for this Court to consider this matter sitting in equity.

The Limited Special Referee made certain conclusions of equity, including that the School District held an "equitable interest" but he specifically declined to determine whether that interest had any monetary value, and if so, how much. (pages 6-7, 9 of first Order).

Electing not to exceed his limited authority, the Limited Special Referee explicitly noted he expressed no opinion as to the question of whether the "CCSD equitable interest has value or what the value may be." (page 9 of first Order).

As a result of the Limited Special Referee's opinion, the questions before this Court are the very equitable questions not answered by the Limited Special Referee, including what value, if any, the equitable interest found by the Limited Special Referee has. The equitable questions not addressed by the Limited Special Referee are matters for this Court to decide, sitting in equity, without a jury.

First, the mere fact that the Special Referee explicitly held that an "equitable interest" exists in the School District squarely supports the conclusion that there is nothing for a jury to decide. It has repeatedly been determined that when no damages are awarded (as here) the questions remaining in a case are equitable in nature. See Doe v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n, 557 S.E.2d 670, (S.C. 2001) (noting, in part, that it was clearly relevant that no damages were awarded by the court as suggesting that the case's main purpose was really equitable). This is particularly true here, where the Limited Special

Referee found a “an equitable interest” existed,³ and any other conclusion would undercut this express finding by the Limited Special Referee.

Second, a review of prior cases where an “equitable interest” was found to exist has overwhelmingly been interpreted as a clear signal for a Judge to decide the nature and value of the equitable interest. There is simply nothing at all for a jury to even address or decide. *See*, e.g., Kinard v. Hiers, 3 Rich Eq. 423 (1851 Court of Appeals of Equity in S.C.) (holding that the “equitable interest” that existed was to be decided solely by the lower court with no jury); McNair v. Moore, 50 S.E.197 (S.C.1905) (finding that the claimed equitable interest was a question of law for the lower court);⁴ Gilkerson v. Connor, 24 S.C. 321 (S.C.1866) (finding that an “equitable interest” was a question of equity for the Court and not for a jury); Witsell v. City of Charleston, 7 S.C. 88 (1876) (determining whether or not an “equitable interest” of land was or was not within the scope of a married women’s right of separate use and holding this question was a question of law for the Court itself to decide); White v. Kavangh, 8 Rich. 377 (1855 S.C. Court of Errors) (holding that scope of the phrase equitable interests in land was a question for the Court); Oskin v. Johnson, 736 S.E.2d 459 (S.C. 2012) (transfer of an equitable interest of

³ It is noteworthy concerning the School District’s main purpose, that in its closing brief, it actually cited and argued that no less than nine different equitable maxims applied to its argument. When a party cites and argues nine different equitable maxims, it is obvious that they are asking the Court to sit on the “equity side” of a Circuit Court’s jurisdiction. Moreover, even though the Limited Special Referee found that an “equitable interest” existed, there are equitable defenses that may make the interest of little or no actual monetary value. *See*, for example, in Seabrook Island Property Owners Association v. Pelzer, 292 S.C. 343, 356 S.E.2d 411 (1987), the South Carolina Supreme Court held that the “equities clearly favor[ed]” the association and determined that the landowner’s refund claim had no value or merit based on equitable defenses such as estoppel and acquiescence.

⁴ Apparently, this question was twice appealed, *see McNair v. Moore*, 41 S.E.829 (S.C. 1902) (Lower Court issued a decree that both parties appealed)

land from wife to LLC and whether or not this was fraud was a question of equity for the Court)⁵.

Third, in the recent publication of the S.C. Bar, South Carolina Equity: A Practitioner's Guide, by Lowell, Reibold, and Reibold, the authors suggest that there are 10 different general questions that raise equitable jurisdiction. In that list, the very first basis for equitable jurisdiction cited by the authors is "Declarative remedies, with the objective of declaring or establishing a right or title." Id. at Pg.13. The Limited Special Referee in this case, in specifically finding that the School District did not have "equitable title," but only an "equitable interest" in the land, clearly left for this court to determine the scope and meaning of this phrase as applied to this case. The Limited Special Referee also acknowledged he did not decide various arguments previously made in this case.

In short, this matter should be transferred to the non-jury roster because:

- (1) The questions before the Court (including the nature, extent, and value, if any, of the equitable interest) are question of equity to be decided by the Court itself without the need or aid of any jury.
- (2) There are equitable defenses to the equitable interest found by the Limited Special Referee.
- (3) Since the issues present are exclusively equitable, there is nothing left for a jury to decide in this case.

⁵ Remarkably, in over 200 years of litigation, only one South Carolina case involving an "equitable interest in land" was remanded the case for a jury. *See, Bell v. Bell*, 99 S.C. 501, 84 S.E. 369, 369 (1914), appeal after remand 103 S.C. 95, 87 S.E. 540 (1915). That case is instantly distinguishable as the jury issue present in that case was a question of fact as to whether a purchaser of property had notice of a claim of title in the premises by another before the purchase paid the purchase price.

III. Any compensation owed to the District must be determined by this Court in an equitable proceeding similar to that provided in S.C. Code § 28-2-460.

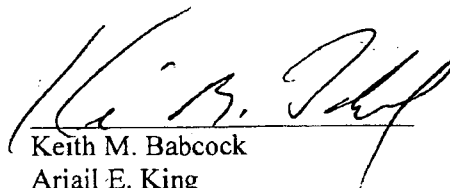
The S. C. Eminent Domain Procedures Act statutorily prescribes how just compensation is to be determined between the condemning authority and the Landowner and Other Condemnees. The Act provides for an equity proceeding to determine the rights of the Landowners or the Other Condemnees, stating:

Unless the persons served with the Condemnation Notice agree in writing as to whom just compensation must be made and paid, the appraisal panel determination, verdict, or judgment must be made jointly to all the parties and may be paid to the clerk of court. Upon making the payment, the condemnor's obligation to pay interest upon the funds shall terminate. The payment of the funds so awarded must be held by the clerk of court pending the final order of the court of common pleas in an equity proceeding to which all persons served with the Condemnation Notice must be necessary parties. From the order of the court of common pleas there may be an appeal as provided for appeals from the court in equity cases.

S.C. Code § 28-2-460.

In this case, the just compensation to Clemson, as the Landowner, is not monetary. Thus, there is no "payment" to be made to the Court under Section 28-2-460. However, an "equity proceeding" similar to that provided by Section 28-2-460 must be conducted in which to determine the issues of the District's equitable interest.

For the reasons set forth above, it is therefore respectfully requested that the case be transferred to the non-jury docket.



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Columbia, South Carolina
August 22, 2016

2STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

CHARLESTON COUNTY SCHOOL)
DISTRICT,)

Plaintiff,)

vs.)

CLEMSON UNIVERSITY and CITY OF)
NORTH CHARLESTON,)

Defendants,)

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Project: Intermodel Container Transfer)
Facility)

Tract: 11)

South Carolina Department of Commerce,)
Division of Public Railways,)

Condemnor,)

vs.)

Clemson University,)

Landowner,)

and)

Charleston Naval Complex Redevelopment)
Authority, City of North Charleston,)
Commissioners of Public Works for the City)
of Charleston, North Charleston Sewer)
District, BellSouth Telecommunications,)
Inc., Business Telecom, Incorporated, South)
Carolina Electric & Gas Company and)
Charleston County School District)

Other Condemnees.)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-5093

FILED
2015 OCT 27 PM 3:22
JULIE J. ARMSTRONG
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-10495

ORDER

The following issues were referred to the undersigned as Special Referee:

1. DID THE SUBLEASE BETWEEN THE CHARLESTON COUNTY SCHOOL DISTRICT ("CCSD") AND THE REDEVELOPMENT AUTHORITY ("RDA") EXPIRE?
2. HOW MUCH PROPERTY WAS INCLUDED IN THE SUBLEASE?
3. DID CCSD HAVE ANY RIGHTS IN THE PROPERTY AFTER IT WAS CONVEYED BY RDA TO THE CITY OF NORTH CHARLESTON ("CITY")?
4. DID CCSD HAVE ANY RIGHTS TO THE PROPERTY AFTER IT WAS CONVEYED FROM THE CITY TO CLEMSON UNIVERSITY?
5. DID CCSD HAVE ANY RIGHTS TO IN THE PROPERTY AT THE TIME THAT THE CONDEMNATION NOTICE WAS FILED ON DECEMBER 22, 2010?

The parties and their attorneys appeared before me for a hearing on September 23, 2014, the hearing continued on September 24, 2014 and was then recessed until October 29, 2014. Thereafter, the hearing was reconvened on October 29, 2014 and continued through October 31, 2014. Written closing arguments were subsequently submitted by CCSD, the City, and a joint closing was submitted by the South Carolina Department of Commerce, Division of Public Railways and Clemson. CCSD also submitted a reply memorandum. Based upon the evidence received during the hearings, the arguments of counsel and the applicable law, I make the following findings of fact and conclusions of law:

DID THE SUBLEASE BETWEEN THE CHARLESTON COUNTY SCHOOL DISTRICT ("CCSD") AND THE REDEVELOPMENT AUTHORITY ("RDA") EXPIRE?

CCSD argues that both the September 10, 1996, Primary Lease between the United States of America and the RDA, and exhibits and amendments to the September 10th lease, (the "Primary Lease") and the September 10, 1996 Sublease between the Charleston Naval Complex Redevelopment Authority and the Charleston County School District (the "Sublease") remained in effect until September 3, 2006. CCSD offers the following arguments in support of this position:

- Section 6 of Sublease says term shall be for five years and shall run concurrent with the term of the Primary Lease.
- Also Section 6 says if the Primary Lease is extended, renewed or replaced, or if

the RCA shall have by any manner or means the power to lease or sublease the Prop for longer than initial term and if the sublease shall not have terminated and if there is no default, then RDA agreed that lease can be extended for a maximum of 25 years in CCSD's sole discretion by CCSD's written notice to RDA prior to expiration of initial term.

- CCSD claims that the January 29, 1998 letter from CCSD to Jack Sprott of RDA which asked to extend the maximum term of the Sublease to 50 years is sufficient notice to extend Sublease.
- Also section 3 of Sublease incorporates terms of Primary lease by reference so CCSD argues that extension of Primary automatically extended Sublease.
- Consideration of the "four corners" of Primary Lease and the Sublease makes it clear that the parties intended to incorporate all terms and conditions of Primary Lease and amendments to the Primary Lease.
- Two additional sections of sublease reflect an intent to incorporate all terms of Primary lease into the Sublease. Section 4 says upon issuance of the FOSL, the Lessee shall be deemed to have acquired all benefits and obligations of RDA under the Primary lease. Section 21 says that Lessee is subject to terms and conditions of the Primary Lease.
- Section 5.2 of the Primary Lease says that copy must be attached to any sublease and that the sublessee is subject to terms and conditions of the Primary Lease; and
- The Primary Lease, the First Amendment to the Primary Lease, the Second Amendment to the Primary Lease and Sublease all refer to the same "reference number" which shows an intent to unify the terms.

The Defendants responded with the following arguments:

- The term of the Sublease is governed by Section 6 which states plainly that "the term of this Sublease shall be for five years and shall run concurrent with the term of the Primary Lease.
- The Primary Lease was extended by amendment for five years from 9-4-01 to 9-3-06, and it is undisputed that there was no similar amendment to the Sublease.

- On February 26, 1998 the Sublease was amended and paragraph 6 of the original Sublease was replaced with a new paragraph 6 which lengthened the maximum length of the Sublease from 25 years to 50 years.
- Defendants dispute that the January 29, 1998 letter from CCSD to Jack Sprott of RDA asking to extend the maximum term to 50 years was sufficient notice to extend the Sublease.
- Further, Defendants point out that Paragraph 7 of the Sublease says that CCSD will not stock-pile the property but agrees to make a diligent and good faith effort to conduct operations on premises to enhance redevelopment of former Naval Base and that absent prior written approval by the government the property had to be used as a school.
- In 2002 Board of CCSD decided to move the Academic Magnet school to former Bonds-Wilson campus to co-locate with School of the Arts and that by the Spring of 2010 the CCSD had stopped using the property for educational purposes.
- The Defendants argue that there was no amendment to the Sublease with respect to the trailers on parcel's 12-A and 12-B.

I find that the Sublease expired on September 3, 2001, and thereafter, the CCSD continued as a tenant at will. The construction of an unambiguous written contract is a question of law for the court. J.T.M. Co. v. Vane, 323 S.E.2d 794 (S.C. Ct. App.1984). Where one construction makes the provision unusual or extraordinary and another construction that is equally consistent with the language employed would make it reasonable, fair and just, the latter construction must prevail. Farr v. Duke Power, 218 S.E.2d 431 (1975). The intent and purport of a written contract must be gathered from the contents of the entire agreement and not from any particular clause or portion of the contract. Bruce v. Blalock, 127 S.E.2d 439 (1962). In construing terms in contracts, this Court must first look at the language of the contract to determine the intentions of the parties. Superior Automobile Insurance Co. v. Maners, 199 S.E.2d 719 (1973); Farr, 218 S.E.2d 431. 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. Warner v. Weader, 311 S.E.2d 78, 79 (1983). Extrinsic evidence giving the contract a different meaning from that indicated by its plain terms is inadmissible. Superior Automobile

Insurance Co., 199 S.E.2d 719.

The term of the Sublease is clearly expressed in Section 6 of that document. I find that the January 29, 1998 letter from CCSD to Jack Sprott of RDA asking for extension to term of 50 years was not sufficient notice to extend the Sublease because it only asked to extend the maximum term from 25 years to 50 years. I further find that the provisions of the Primary Lease cited by CCSD are not sufficient proof of the parties' intent to modify the Sublease. Finally, the plain language of the First Amendment to the Sublease demonstrates an intent to only modify the maximum time period for the lease from 25 years to 50 years as requested in the January 29, 1998 letter.

HOW MUCH PROPERTY WAS INCLUDED IN THE SUBLEASE?

I conclude that the Sublease included both Building 199 (a/k/a Cochrane Hall) and parcels 12-A and 12-B as shown in the cross-hatched area on the sketch attached to Amendment Number 1 to the Primary Lease. In reaching this conclusion, I find it appropriate to consider extrinsic evidence as to this question because of the uncertainty created by the graphic depictions of the "Premises" (as that term is used in the Primary Lease and the Sublease) which were attached to both the Primary Lease and the Sublease. In considering the intent of the parties, it is clear from the language of both the Primary Lease and the Sublease, as well as testimony during the hearing, that the overriding intent of the parties was to lease property to CCSD to locate a school on the former Navy Base. The testimony was that the trailers located on parcels 12-A and 12-B were used by students at the Academic Magnet High School. Furthermore, Amendment Number 1 to the Primary Lease was executed on January 16, 1997 while the sublease was in effect. The fact that the RDA signed a License on November 21, 1996 for the use of trailers is not dispositive of this question because in my view the trailers themselves were personal property, not part of the real estate and so the fact that they were the subject of a license does not translate into a finding that the license defined CCSD's sole interest in the trailers and real estate on which they were located.

DID CCSD HAVE ANY RIGHTS IN THE PROPERTY AFTER IT WAS CONVEYED BY RDA TO THE CITY OF NORTH CHARLESTON ("CITY")?

DID CCSD HAVE ANY RIGHTS TO THE PROPERTY AFTER IT WAS CONVEYED FROM THE CITY TO CLEMSON?

DID CCSD HAVE ANY RIGHTS TO IN THE PROPERTY AT THE TIME THAT THE

CONDEMNATION NOTICE WAS FILED ON DECEMBER 22, 2010?

CCSD argues that after the RDA conveyed the Property to the City it maintained one or more of the following rights in it: equitable title to the 3.74 acre AMHS campus and 1.87 acre trailer parcel; a 50 year lease on the AMHS parcel; and/or an equitable interest in the 3.74 acre AMHS parcel because of improvements to that property during the lease. I will address those arguments in turn. Additionally, I will address the timing issue (issues #4 and #5) as part of this analysis.

I find that CCSD did not have equitable title to the Property at the time that it was conveyed by the RDA to the City. CCSD claims that RDA passed on CCSD's right to acquire title to the property in the December 21, 2004 Quit Claim Deed and Assignment Agreement to the City. However, I am persuaded by the argument and case law cited by the Defendants that as strangers to the 2004 deed from RDA to the City and the 2010 deed from the City to Clemson, the CCSD did not revive any rights under the Sublease that expired in 2001. In particular, although it is not controlling authority, I find the reasoning in Engle v. Bond-Foley Lumber Co., 173 Ky 35, 189 S.W. 1146 (1916) to be persuasive.

Likewise, I find that CCSD's argument regarding covenants which run with the land to be misplaced. I appreciate counsel's advocacy on that point, but I cannot make the connection between restrictive covenants which bind subsequent purchasers, and CCSD's claim that it has an enforceable right to purchase the property because it is mentioned in subsequent deeds between different parties. I find that argument misconstrues the law of privity.

CCSD's argument that it has a 50 year lease is foreclosed by the same reasoning that I articulated above in ruling that the Sublease expired in 2001. It is a fact that on January 29, 1998 Superintendent Zullinger wrote a letter for CCSD to Jack Sprott of RDA asking to extend the term of the lease to 50 years. However, that request was not sufficient to extend the Sublease beyond 2001, and so whether the maximum term could have been 25 years or 50 years became an academic question at that point. Subsequent amendment of the Primary Lease was not sufficient to amend the Sublease and recitals in subsequent conveyances were similarly insufficient on this point.

However, I cannot ignore that much of the evidence submitted during the hearing does not fit neatly into the analysis advocated by the Defendants and for that reason, I find that CCSD had

an equitable interest in the 3.74 acre AMHS parcel because of improvements made to that Property during the term of the Sublease and CCSD's use of the property thereafter.¹ Counsel for Clemson and Railways wrote in his Closing Argument that "[w]hile five days of evidence and argument and a 116 page brief by the District might appear to indicate that this is a complicated case, it is not." I have great respect for all of the attorneys in this case and the fine work done for their clients, but on this point counsel for Clemson and Railways misses the mark. This is quite a complicated analytical puzzle, and the extensive evidence and legal argument by both Plaintiff and the Defendants is proof of that.

Specifically, the evidence such as the following weigh in favor of an equitable resolution of this dispute²:

- In 2002 the South Carolina General Assembly passed Act No. 356 which required the RDA to convey property to the City and the South Carolina Ports Authority and in the process honor all existing leases.
- On April 20, 2004 Mark Cobb of CCSD wrote to Jack Sprott of the RDA and asked to exercise its claimed right to transfer the Property to CCSD at no cost under the Sublease.
- Defendants argue (correctly I think) that the April 20, 2004 letter was ineffective on its own to exercise an option, but in the Quitclaim Deed dated December 21, 2004 from the RDA to the City, Mr. Cobb's letter is specifically mentioned.
- The 2004 Assignment and Assumption Agreement, Exhibit A, between the RDA and the City refers to both the 50 year lease claimed by CCSD and the Sublease.
- The 2007 Quitclaim Deed from the City to Clemson states that it is expressly subject to the rights of the lessees of several properties (including Building 199) and the Sublease.
- The 2010 Assignment and Assumption Agreement, Exhibit A, between the City and Clemson again recognizes the Sublease.

I am persuaded that CCSD spent a substantial amount of money on upgrades to the

¹ In support of its equitable interest argument, CCSD argues the ultimate equitable maxim that "In Equity Good Guys Should Win and Bad Guys Should Lose." Here we have "good guys" on all sides and so in reaching this decision I relied most on the equitable maxims that equity will not suffer a wrong to be without a remedy and equity regards substance more than form.

² This list is intended to be illustrative and not exhaustive.

Academic Magnet High School campus with the reasonable expectation that it would occupy and use the property for an extended period of time. That expectation is consistent with the RDA's mission and purpose as stated in the Lease and the Sublease to revitalize the former Navy base. The proof offered at trial established conclusively that the RDA wanted CCSD to locate a school on the property and worked cooperatively with CCSD to make that a reality. In 1998 Mr. Zullinger asked to extend the maximum lease term to 50 years, and although that was not sufficient to extend the Sublease according to its terms, that letter demonstrated a long-term commitment to the property by CCSD and a shared interest by the RDA. Subsequently, in documents conveying the property first to the City and then to Clemson the RDA, the City and Clemson acknowledged that CCSD would likely have a long-term presence on the former Navy Base. In this context, I find that CCSD's investment was entirely reasonable and not consistent with short term use of the property. Moreover, I find that RDA, the City and Clemson were aware of that financial commitment and accepted or at least acquiesced in it.

The Defendants argue that CCSD's claims should be barred because it abandoned the 3.74 acre AMHS parcel after it had agreed in the Sublease to use the AMHS parcel as a school and not to "stockpile" the property. I find that argument to be unpersuasive for several reasons. First, in construing the Sublease, I am obligated to interpret it according to its terms, but not read emphasize one portion to the exclusion of another so as to give effect to the entire agreement. I therefore find, that to accomplish that one must review the last sentence of paragraph 6 of the sublease in conjunction with paragraph 7. Read in that manner, I find that the parties to the Sublease expected the CCSD to use diligence and good faith to operate the AMHS parcel for education purposes, but that such a use was not restricted solely to its use as a school. Furthermore, I find that the Sublease anticipated that the AMHS parcel did not need to be operated at "100% capacity". Second, because the CCSD exists solely to operate and manage public schools in Charleston County, it is hard for me to envision a use of property by the CCSD that is not for "educational purposes". Third, this argument is primarily a legal argument under the Sublease and so I find that it does not bar equitable relief for CCSD.

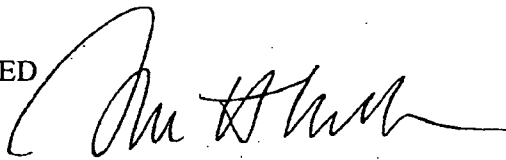
As for the length of CCSD's equitable interest, I find that it extended up to and including December 22, 2010, when the condemnation action was filed. At that time, my understanding of the evidence is that the Academic Magnet High School had relocated to the former site of Bonds-Wilson High School and CCSD was using the AMHS parcel for storage. However, for the

reasons articulated in the prior paragraph, I find that the relocation of the AMHS did not automatically trigger the reverter clause of the Sublease and does not bar CCSD's equitable claim.

My understanding of the reference to me is that my authority is limited to a determination of whether or not the CCSD had an equitable interest in the property at the time the condemnation notice was filed, but that my authority does not include whether that interest has any monetary value, and if so, how much. I do not want to exceed that authority, but I will offer the comment that some of the arguments raised by the Defendants, particularly those raised by the City, which are not addressed specifically here bear on the issue of whether CCSD's equitable interest has value or what that value may be. I point this out as an explanation for my decision not to address certain arguments and not as a comment on the merits of those arguments.

Lastly, Clemson, Railways and the City argue that the CCSD equitable claims are barred by the statute of limitations. It is well settled that the statute of limitations does not apply in equitable actions. Dixon v. Dixon, 362 S.C. 388, 608 S.E. 2d 849 (2005); citing Anderson v. Purvis, 211 S.C. 255, 44 S.E. 2d 611 (1947) and Anderson v. Purvis, 220 S.C. 259, 67 S.E. 2d 80 (1951). Therefore, I decline to dismiss CCSD's claim for an equitable interest in the AMSH parcel based on the statute of limitations arguments raised by the Defendants at trial and in their closing arguments.

AND IT IS SO ORDERED



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SPECIAL REFEREE

CHARLESTON, SC

October 22, 2015

12-5093

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 22, 2015, a copy of the attached pleading/discovery has been served upon the following via:

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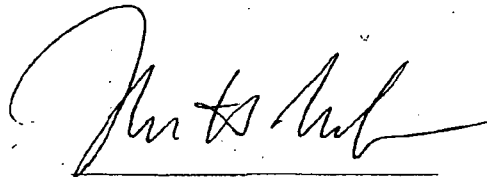
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FILED
2015 OCT 27 PM 3:23
JULE J. ARMS, CLERK OF COURT


WILLS MASSALON & ALLEN LLC

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

CHARLESTON COUNTY SCHOOL
DISTRICT,)

Plaintiff,)

vs.)

CLEMSON UNIVERSITY and CITY OF
NORTH CHARLESTON,)

Defendants,)

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Project: Intermodel Container Transfer
Facility)
Tract: 11)

South Carolina Department of Commerce,
Division of Public Railways,)

Condemnor,)

vs.)

Clemson University,)

Landowner,)

and)

Charleston Naval Complex Redevelopment
Authority, City of North Charleston,
Commissioners of Public Works for the
City of Charleston, North Charleston Sewer
District, BellSouth Telecommunications,
Inc., Business Telecom, Incorporated,
South Carolina Electric & Gas Company
and Charleston County School District)

Other Condemnees.)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-5093

FILED
2016 MAR 16 AM 10:17
JULIE J. ARMSTRONG
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-10495

ORDER

This matter is before me for consideration of the City of North Charleston's Motions to Alter or Amend the Order of October 22, 2015 and the Joint Motion of Clemson University and South Carolina Department of Commerce, Division of Public Railways to Alter or Amend the Limited Special Referee's October 22, 2015 Order. For the reasons set forth below, the motions are denied.

First, the City of North Charleston ("the City"), Clemson University ("Clemson"), and the South Carolina Department of Commerce, Division of Public Railways ("Railways") request that I delete the sentence on page 8 of the October 22nd order which reads: "Subsequently, in documents conveying the property first to the City and then to Clemson and the RDA, the City and Clemson acknowledged that CCSD would likely have a long term presence on the former Navy Base." The City, Clemson and Railways argue that none of the documents introduced into evidence reflect any acknowledgment by the City that the CCSD would have a long term presence on the Navy Base.

As to the City's acknowledgement that CCSD would likely have a long term presence on the former Navy Base, I refer the parties to the following documents:

- In documents which predated the transfer from the RDA to the City are evidence that the City had an expectation that the CCSD would have a long term presence on the former Navy Base. For example, on June 7, 2004, the City's Mayor sent a letter to the Superintendent of CCSD in which Mayor Summey took note of the lease between the RDA to establish the Academic Magnet High School campus. The letter specifically, refers to a 50 year term for the lease and language allowing the CCSD to acquire the property..
- On October 11, 2004, letter from Raymond Anderson, Special Assistant to the Mayor,

advised Jack Sprott of the RDA of a meeting between Mayor Summey and the Superintendent of CCSD to discuss "the future of the CCSD facilities on the former Naval Base." That letter further stated that the CCSD's plans to locate a training center for teachers should meet the terms of the lease with the Navy. Also, Mr. Anderson indicated the City's willingness to deed the property to the CCSD and suggested a method of accomplishing that transfer.

- In a letter dated October 29, 2004, Mark Cobb, Executive Director of CCSD, wrote to Mr. Sprott and authorized the transfer of Cochran Hall and the adjacent properties to the City. That letter refers to an agreement between the City and CCSD that those properties would then be transferred to CCSD by the City.
- The Quit Claim Deed from The Charleston Naval Complex Redevelopment Authority to the City of North Charleston dated December 21, 2004 states in part that "[b]y recordation of this deed Grantee [the City] agrees for the Grantee and for Grantee's heirs, successors and assigns, that Grantee and any future title holder ...is and shall be bound by, and subject to, the rights of lessees, sublessees, and entities and agencies claiming by and through any of them, including but not limited to the following:
 - (a) the right of possession and quiet enjoyment and option to purchase, pursuant to instrument entitled "Sublease Between Charleston Naval Complex Redevelopment Authority and Charleston County School District" (the "CCSD Sublease") dated September 10, 1996 as amended by "First Amendment to the Sublease Between Charleston Naval Complex Redevelopment Authority and Charleston County School District (the "First Amendment") dated February 26, 1998, receipt of a copy of which CCSD Sublease and First Amendment is acknowledged by Grantee."

- The Quit Claim Deed from The Charleston Naval Complex Redevelopment Authority to the City of North Charleston dated December 21, 2004 further states in part that “[b]y recordation of this deed Grantee [the City] acknowledges that the Charleston County School District by letter dated April 20, 2004 has exercised its option to purchase the property that is more fully described in that certain sublease from Charleston Naval Complex Redevelopment Authority, as Lessor, to Charleston County School District as Lessee” (the “CCSD Sublease”) dated September 10, 1996 as amended in writing...”.
- The December 21, 2004 Assignment and Assumption Agreement between RDA and City identified the CCSD Sublease and the notice extending the Sublease for an additional 50 years among those agreements subject to that assignment and assumption agreement.
- Finally, when the City deeded property to Clemson, as described more fully below, the references to the CCSD Sublease that were contained in the Quitclaim Deed from the RDA to the City were repeated in the transfer documentation from the City to Clemson.

As to Clemson’s acknowledgement that CCSD would likely have a long term presence on the former Navy Base, I refer the parties to the following documents:

- On February 1, 2007 a Transfer and Option Agreement was signed among the City, Clemson, the Hunley Commission and Friends of the Hunley, Inc. That Agreement contemplated the transfer of 82 acres to Clemson for the Clemson University Restoration Institute (CURI). Significantly, the 3.74 acre parcel used by the CCSD for the Academic Magnet High School (“AMHS”) was not part of the 82 acre tract described in the February 1, 2007, T&O Agreement.

- The Quit-Claim Deed from the City to Clemson dated February 28, 2007 conveyed the 82 acre tract described in the T&O agreement signed on February 1st. The property description attached to that Deed contained a specific reference to the CCSD Sublease.
- In the Quit-Claim Deed from the City to Clemson dated February 8, 2010 the City conveyed additional property to Clemson, including the 3.74 acres on which the AMHS had been located that was omitted from the 2007 Quitclaim Deed. Again, the 2010 Quitclaim Deed contained language in which by recording the deed the Grantee, Clemson, acknowledged the right of possession and quiet enjoyment of the tenants of building 199 and the CCSD Sublease.
- In the interim between the 2007 and 2010 Quitclaim deeds, evidence was introduced that documented the CCSD's plans to have a long-term presence on the former Navy Base. In particular, I refer the parties to the following exhibits: 101; 102; 105; 108; 112; 116 and 124.

Second, the City, Clemson and Railways ask me to delete the following sentence, also on page 8 of the October 22nd Order: "Moreover, I find that the RDA, the City and Clemson were aware of that financial commitment and accepted or acquiesced in it." The movants claim that there is no evidence of acceptance or acquiescence by the City in the CCSD's expenditure of funds, and that most of the funds expended by the CCSD occurred before the City or Clemson received title to the property so the City and Clemson could not have acquiesced to those expenditures. The evidence of acceptance or acquiescence is found in the communications from the City before it acquired the property and in the communications to and from Clemson between the 2007 and 2010 Quitclaim Deeds that it received from the City.

- As for the City, probably the best evidence of the City's knowledge of the CCSD's

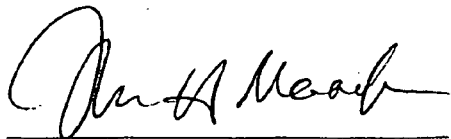
financial commitment to the property is contained in the June 7, 2004 correspondence referenced above. In particular, that letter refers to communications between the City and the District (CCSD) "during the time of the development of the large bond issue, on potential sites of various schools in the area ...". Later in that same letter, it states "I realize that CCSD has invested funds into the current campus."

- As for Clemson, several communications stand out as evidence that it was aware of the CCSD's expenditure of funds before receiving the Quitclaim Deed to the AMHS property. First, the email from Mr. Lewis of CCSD to Mr. Godfrey on October 27, 2008 states in part that "the District has made significant capital improvements to the AMHS campus and have [sic] a plan to use the campus to support another district wide magnet school to this campus once the new AMHS facility is completed in August, 2010...". The March 19, 2009 letter from Mr. Emerson to Mr. Godfrey specifically refers to the recent capital improvements that the CCSD has made to the property. Finally, the email from Mr. Godfrey to Ms. Arena dated September 2, 2009 says in part "[m]ake JK aware that preliminary contact with CCSD on the Magnet School indicated that they would want to recoup the \$5M or so capital investment in the magnet school to 'allow' it to be released from what they consider a 50 year lease."

Finally, the City, Clemson and Railways ask that the order be amended to rule on the laches defense to the CCSD equitable interest claim. "In order to establish laches as a defense, a party must show that the complaining party unreasonably delayed assertion of a right, resulting in prejudice to the party asserting the defense of laches." Historic Charleston Holdings LLC v. Mallon, 381 S.C. 417, 673 S.E.2d 448 (2009). Under the circumstances presented in this case, I find that the CCSD's delay in filing suit did not prejudice the Defendants. The

evidence proved that both the City and Clemson proceeded with their plans for the property while CCSD communicated with both regarding the interests it claimed in the AMHS parcel before and after the City and Clemson received deeds for the property. In 2004, the City received a Quitclaim Deed from the RDA. Three years later, a portion of the property was conveyed by the City to Clemson and three years after that in 2010, additional property including the AMSH parcel was conveyed to Clemson. The original condemnation action was filed in 2010, and CCSD, Clemson and the City were all named as parties. I could not discern any prejudice to either Clemson or the City from the delay. Therefore, I decline to dismiss CCSD's claim for an equitable interest in the AMSH parcel based on the laches defense.

AND IT IS SO ORDERED.



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SPECIAL REFEREE

CHARLESTON, SC

February 23, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Project: Intermodal Container)
Transfer Facility)
Tract 11)
South Carolina Department of Commerce,)
Division of Public Railways,)
Condemnor,)
v.)
Clemson University,)
Landowner,)
and)
Charleston Naval Complex Redevelopment)
Authority, City of North Charleston,)
Commissioner of Public Works for the City)
of Charleston, North Charleston Sewer)
District, Bell South Telecommunications,)
Inc., South Carolina Electric & Gas)
Company, and Charleston County School)
District,)
Other Condemnees.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-10-10495

CONDEMNOR'S MEMORANDUM
IN REPLY TO CHARLESTON
COUNTY SCHOOL DISTRICT'S
MEMORANDUM IN OPPOSITION
TO TRANSFER TO THE NON-JURY
DOCKET

FILED
2016 SEP 19 PM 2:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

The matter is before the Court on South Carolina Department of Commerce, Division of Public Railways' ("Railways") Motion to Transfer this case to the Non-Jury Docket, which was based on three principles: 1) the South Carolina Eminent Domain Act only gives the Landowner a right to a jury trial, not the Other Condemnees; 2) the only issue before this Court is equitable-- i.e., the value, if any, of the equitable interest that the Limited Special Referee found the

Charleston County School District ("the District") had in the 3.74 acre parcel at issue; and 3) any compensation owed to the District must be determined by this Court in an equitable proceeding similar to that provided in S.C. Code § 28-2-460.

This case is in a unique posture, quite different from other condemnation cases. The Condemnor and the Landowner are both state agencies, while the District was a former tenant which no longer operated on the premises at the time of the condemnation in December 2010. Recognizing that there were certain distinct issues, the resolution of which would impact the direction of the case and a related one (which has now been resolved), the parties agreed to submit five issues to the Limited Special Referee: (1) whether the District's sublease on the property had expired; (2) how much property was covered by the sublease; (3) whether the District had any rights in the property after it was conveyed from the RDA to the City of North Charleston; (4) whether the District had any rights in the property after the property was conveyed from North Charleston to Clemson; and (5) whether the District had any rights in the property at the time of the filing of the Notice of Condemnation in December of 2010.

After extensive briefing and a five-day hearing (in which both testimony and evidentiary exhibits were submitted), the Limited Special Referee determined that the only right that the District had was an "equitable interest in the 3.74 acre [School] parcel because of improvements made to that Property during the term of the Sublease and [the District's] use of the property thereafter."¹ However, the Limited Special Referee did not determine whether that equitable interest had any monetary value, and if so, the value of the equitable interest. The issues of

¹ The District's Memorandum (and attachments) contain an extensive recitation of testimony and evidence before the Special Limited Referee, which are irrelevant to the issue before this Court -- whether the determination of the value, if any, of an equitable interest in a small portion of condemned property should be made by this Court, instead of a jury.

defining the equitable interest and determining its value, if any, in a condemnation case are the remaining issues at this time.

The District argues that there must be a jury trial on the value of the entire 69.963 acres; however, the District's equitable interest is limited to just 3.74 acres. While in a typical condemnation, the "undivided-fee rule" or "unit rule" (in which property is valued as a whole regardless of varying interests therein) would apply, there are exceptions when the case "before [the Court] is not the usual situation." Federal Oil Co. v. City of Culver City, 179 Cal.App.2d 93 (1960).² This case is certainly not the "usual situation" as the Landowner (Clemson) and the Condemnor (Railways) have settled the case between them and District's interest is only in a small portion of the property. Requiring a jury trial on the value of the entire 69.963 acres would be an exercise in futility (and a waste of judicial resources) as there is no dispute between the Landowner and Railways, and the Court would still have to hold a proceeding in equity, pursuant to S.C. Code §28-2-460, to determine the value, if any, of the District's equitable interest in the 3.74 acre parcel.

The District also argues that because the Condemnation Notice sought a jury trial, Railways is bound by that decision despite the changes in the posture of the case since that Notice was filed almost six years ago. Obviously, at that time, Railways did not know all of the developments that have occurred and that the only outstanding matter at this point in time would involve an equitable interest of the District.

² In that case, the city owned land subject to an oil and gas lease held by Federal Oil. The lease accorded Federal Oil the right to use the surface of the land "to drill for, process and store thereon gas, oil and other hydrocarbons" produced from the land. When the city refused to vacate the surface, Federal Oil sued the city alleging inverse condemnation. The court found that, generally, the undivided-fee rule would apply, "[b]ut, the case which is before us is not the usual situation." The court noted that "the issue is solely as to the market value of Federal [Oil]'s rights in the surface of the subject land." Id. at 98.

It is also entirely appropriate for Railways and the Landowner to resolve all issues between them related to the condemnation of the property. The South Carolina Eminent Domain Act specifically permits:

At any time before or after commencement of an action, the parties may agree to and carry out, according to its terms, a compromise or settlement as to any matter, including all or any part of the compensation or other relief.

S.C. 28-2-40.³ In effect, the District is trying to challenge the right of two parties to settle their dispute.⁴ It is well established that "that the law favors compromise." 6 S.C. Juris. Compromise and Settlement § 18; Neal v. Clark, 199 S.C. 316, 19 S.E.2d 473, 476 (1942); *see also*, Deal v. Deal, 91 S.C. 351, 74 S.E. 482 (1912)("The law favors the avoidance or settlement of litigation...."). The District would, in essence, reject the settlement between Railways and the Landowner, which would fly in the face of the law and policy of this State established over 100 years ago.

The District relies on Rule 39(a), SCRCP, for its claim that it is entitled to a jury trial because one was initially sought by the Condemnation Notice. However, Rule 39(a) specifically recognizes that some issues may not be appropriate for a jury trial stating: "the court upon motion or its own initiative finds that a right of trial by jury of some of or all of the issues does

³ The recent settlement agreement referenced by the District was in accord with prior correspondence on the issue and merely reduced the agreement of Railways and Landowner to writing.

⁴ The District apparently recognizes that there must be a proceeding under S.C. Code § 28-2-460 to determine the compensation even when a landowner and condemnor have reached a settlement. (See, District's Memorandum, pp. 14-15 and Footnote 7). However, for some reason, the District continues to claim that a trial must first take place as to the value of the entire parcel, despite the fact that the real party in interest --Landowner Clemson-- could not actually take part, having entered into the settlement agreement.

not exist." Rule 39(a), SCRCP. The issue here --the value of an equitable interest in a portion of the property -- is not a jury issue.

The District's insistence that there must first be a trial on the value of the entire parcel, is based in part on South Carolina State Highway Dept. v. Hammond, 298 S.C. 317, 120 S.E.2d 21 (1961) and City of Greenwood v. Psomas, 249 S.C. 519, 155 S.E.2d 310 (1967).⁵ Neither of those cases addressed a situation similar to the one present here -- where the Condemnor and Landowner have settled; where the settlement is a property exchange; and where the Other Condemnee's interest (an equitable interest only) is in a small *portion* of the property.⁶ Certainly neither of those cases -- nor any others cited by the District -- provide any support that the value of an Other Condemnee's equitable interest must be determined by a jury. There is no case or statute to support the District's claim that it has the right to insist on a mode of trial and a valuation of the property as a whole, even though the Landowner has settled. Allowing the District to force a jury trial on the valuation of the entire 69.963 acres when its sole equitable interest is only in 3.74 acres -- whose value would still have to be determined in a subsequent equitable proceeding-- is simply not provided by law and constitutes a waste of judicial resources.⁷

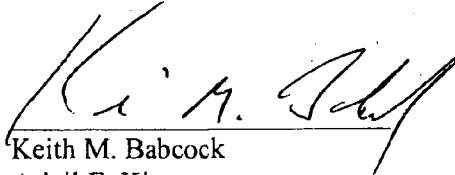
⁵ Both of the cases cited by the District are cases decided prior to the enactment of the South Carolina Eminent Domain Act.

⁶ In contrast to, for example, a mortgagee, whose interest is in the entire property.

⁷ The District improperly and inaccurately references a recently-completed appraisal which was produced in discovery and is not presently before the Court. That appraisal developed several value conclusions and determined that the market value of the District's interest at the time of the condemnation only had a nominal value. The other value conclusions involved the value of the equitable interest to the District, which is not market value.

CONCLUSION

For the reasons set forth in Railways' initial memorandum and herein, it is therefore respectfully submitted that the District has no right to a jury trial on the value, if any, of its equitable interest in 3.74 acres of a 69.693 parcel.



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Columbia, South Carolina
September 15, 2016

Attorneys for South Carolina Department of
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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

South Carolina Department of Commerce, Division
of Public Railways (Condemnor)

☐ Plaintiff)

v.)

Charleston Naval Complex Revelopment Authority,
City Of North Charleston, Charleston County School
District, Et Al (Condemnees)

☒ Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-10-10495

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

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- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

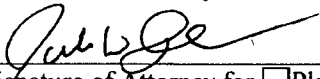
Nature of Motion: CCSD's Motion to Reconsider Grant of Motion to Transfer Case

Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

November 3, 2016

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached
order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Project: Intermodal Container
Transfer Facility

Tract 11

South Carolina Department of Commerce,
Division of Public Railways,

Condemnor,

v.

Clemson University,

Landowner,

AND

Charleston Naval Complex Redevelopment
Authority, City of North Charleston,
Commissioner of Public Works for the City of
Charleston, North Charleston Sewer District,
Bell South Telecommunications, Inc., Business
Telecom, Inc., South Carolina Electric & Gas
Company, and Charleston County School
District,

Other Condemnees.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-10495

**CONDEMNEE CHARLESTON COUNTY
SCHOOL DISTRICT'S RULE 59(E) MOTION
TO RECONSIDER GRANT OF MOTION TO
TRANSFER THIS CASE TO THE NON-JURY
DOCKET**

FILED
2016 NOV -3 PM 4:01
JULIE J. ARMSTRONG
CLERK OF COURT

TO: KEITH M. BABCOCK, ESQUIRE, ATTORNEY FOR THE CONDEMNOR:

PLEASE TAKE NOTICE THAT the Plaintiffs hereby move before the Honorable Judge R. Markley Dennis, Jr., at a time and place scheduled by the Court, in the above-captioned case, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, for an Order that modifies or alters his existing October 19, 2016 (filed on October 21, 2016) Order Transferring Case to the Non-Jury Docket as set forth below.

INTRODUCTION

1. CCSD asks the Court to reconsider its interpretation of the provision of the South Carolina Eminent Domain Act (the "Act") relating to the parties' right to a jury trial. Under the Act, a jury trial is the default method of adjudication of the value of just compensation for a taking. Unless both the Condemnor and Owner make appropriate filings seeking a nonjury trial, the required forum for trial in this matter is before a jury. In this case, the Condemnor and Owner both demanded a jury trial and then resolved their part of the contest without withdrawing their demand for a jury trial.

2. Condemnor and Owner have agreed to resolve their part of this dispute through a "land swap" arrangement, but the value of the property and CCSD's interest still need to be adjudicated. Condemnor is wrongly attempting to use its settlement with Owner — in which CCSD was not involved — to deprive CCSD of its statutory right to a jury trial on the valuation of the property at issue.

A. Procedural History

3. On December 23, 2010, South Carolina Department of Commerce, Division of Public Railways ("Condemnor") commenced this condemnation action pursuant to the South Carolina Eminent Domain Procedure Act ("Act"), S.C. Code. §§ 28-2-10, *et seq.*, condemning 69.93 acres on the former naval base (the "Entire Tract") to construct an Intermodal Container Transfer Facility.

4. In its Condemnation Notice and Tender of Payment ("Notice"), Condemnor named as a party Clemson University (the "Owner"), the fee owner of the Entire Tract.

5. Condemnor's Notice also named the movant Charleston County School District ("CCSD") and other entities ("Other Condemnees") noted in the case caption, as Other Condemnees with recorded property interests in the condemned property.

6. Specifically, Condemnor named CCSD because of a recorded Sublease that CCSD entered with Charleston Naval Complex Redevelopment Authority ("RDA") relating to a

portion of the Entire Tract ("CCSD Tract").

7. Condemnor specifically requested a jury trial in its Notice and served the Owner, CCSD and all Other Condemnees with that Notice.

8. In addition, on the same date (December 23, 2010), Condemnor filed the Affidavit of Keith M. Babcock, its counsel. In that Affidavit, Mr. Babcock affirmed that: (a) the amount tendered by the Condemnor in the Notice had been "effectively rejected"; and (b) "the Condemnor demanded a trial by jury."

9. On April 25, 2014, the parties entered a Consent Order of Limited Reference and Scheduling Order pertaining to this condemnation action and a companion case that CCSD filed against the City of North Charleston and Clemson University (which CCSD dismissed on August 5, 2016).

10. The Order of Reference noted that the parties had agreed to have John A. Massalon, Esq. appointed as Limited Special Referee ("Special Referee"), to determine five issues germane to both cases.

11. Since both cases involved the Entire Tract and CCSD Tract (which are at issue in this condemnation action), "the parties all agree[d] that judicial economy and issue resolution consistency dictate" the staying of the cases until the resolution of those issues.

12. Those issues were: "(1) whether the sublease expired; (2) how much property was covered by the sublease ("Property"); (3) whether the District had any rights to the Property after it was conveyed from the RDA to the City of North Charleston ("North Charleston"); (4) whether the District had any rights in the Property after the Property was conveyed from North Charleston to Clemson; and (5) whether the District had any rights in the Property at the time of the filing of the Notice of Condemnation in December of 2010."

13. The parties held a trial in September and October of 2014 before the Special Referee on those various issues.

14. One of the questions presented to the Special Referee was "DID CCSD HAVE ANY RIGHTS TO IN THE PROPERTY AT THE TIME THAT THE CONDEMNATION NOTICE WAS FILED ON DECEMBER 22, 2010?" (See Oct. 27, 2015 Order of Special Referee, at p.2).

15. The Special Referee concluded that CCSD did not have a sublease or title to the CCSD Tract at the time of filing the condemnation.

16. However, the Special Referee further held that "CCSD had an equitable interest in the 3.74 acre AMHS parcel because of improvements made to that Property during the term of the Sublease and CCSD's use of the property thereafter." (See Oct. 27, 2015 Order of Special Referee, at pp.6-7). This equitable interest in the CCSD Tract "extended up to and including" the date of the filing of this action. (See Oct. 27, 2015 Order of Special Referee, at p.8).

17. The Special Referee recognized that the reference to him was limited in scope and did not encompass issues remaining in this lawsuit:

My understanding of the reference to me is that my authority is limited to a determination of whether or not the CCSD had an equitable interest in the property at the time the condemnation notice was filed, but that my authority does not include whether that interest has any monetary value, and if so, how much.

(See Oct. 27, 2015 Order of Special Referee, at p.9).

18. The Condemnor, Owner and the City of North Charleston all filed Motions to Alter or Amend that Order, which the Special Referee denied in an Order dated February 23, 2016.

19. Because the Special Referee determined that CCSD held an equitable property interest in the CCSD Tract, only two issues remain for determination: (a) the monetary value of just compensation for the taking of Entire Tract acres; and (b) value of the CCSD's equitable interest in the CCSD Tract to be paid from the compensation from the Entire Tract.

20. At the outset of the condemnation action, the Condemnor submitted an appraisal valuing the Entire Tract at \$9,645,000, which the Owner rejected.

21. The Condemnor produced an appraisal dated August 8, 2016, by Deborah Haskell, MAI, valuing CCSD's interest in the CCSD Tract at \$510,000. CCSD believes that this appraisal significantly undervalues its equitable interest in the CCSD Tract.

22. CCSD intends to present its own evidence regarding the proper valuation of just compensation for both the Entire Tract and CCSD's equitable interest therein pertaining to the component CCSD Tract.

B. Condemnor's Motion to Transfer

23. On June 2, 2016, Condemnor filed a Motion to Transfer Case to the Non-Jury Docket.

24. A hearing on Condemnor's Motion to Transfer Case to Non-Jury Docket was held on August 23, 2016 before the Honorable R. Markley Dennis, Jr.

25. This Court and CCSD learned at the initial hearing on Condemnor's Motion to Transfer Case to Non-Jury Docket that Condemnor and Owner had entered a land swap settlement agreement, without any determination being made as to the value of just compensation for the Entire Tract.

26. The Consent Settlement Agreement signed by Condemnor and Owner does not reference valuation of just compensation or even value the land the Owner will receive under the "land swap" agreement. In fact, it did not contain Exhibit A to the agreement detailing the location/size etc. of the property Owner will receive under the agreement. (*See Ex. A*).

27. The Court granted Condemnor's Motion to Transfer Case to Non-Jury Docket and entered an October 19, 2016 (filed on October 21, 2016) Order Transferring Case to the Non-Jury Docket.

28. The Court noted that it believed Condemnor had raised three meritorious reasons to transfer this matter to the non-jury docket:

- (a) The Act only provides the Owner, as the "landowner," a right to a jury trial (as opposed to other condemnees).
- (b) The "equitable interest" of CCSD, which the Special Referee found, requires that this matter be decided by a judge sitting in equity.
- (c) Any compensation owed to CCSD should be determined in an equitable proceeding under South Carolina Code Section 28-2-460.

29. Counsel for CCSD received notice of entry of the Order Transferring Case to the Non-Jury Docket on October 24, 2016, via My Cases Notification from the Court.

30. For the reasons set forth below (and as may be set forth in any memorandum in support hereof), the Court should reconsider and vacate its Order Transferring Case to the Non-Jury Docket, and alter or amend that Order to deny Condemnor's request to transfer this matter to the non-jury docket.

ARGUMENTS

31. "The right of a trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived." S.C.R. Civ. P. 38(a).

32. Once a party has demanded a trial by jury under the South Carolina Rules of Civil Procedure:

as provided in Rule 38, the trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered into the record, consent to trial by the court sitting without a jury or (2) the court upon motion or its own initiative finds that a right of trial by jury of some or all of those issues does not exist.

See S.C.R. Civ. P. 39(a).

33. Under Article I, Section 14 of the South Carolina Constitution, “the right of trial by jury shall be preserved inviolate.”

34. “The right to a jury trial is protected under this provision only if such a right existed in 1868 when our constitution was adopted.” *Cobb v. South Carolina Dep’t of Transp.*, 365 S.C. 360, 364, 618 S.E.2d 299, 301 (2005); *accord Unisys Corp. v. South Carolina Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office*, 346 S.C. 158, 172, 551 S.E.2d 263, 271 (2001) (“It is well-settled that art. I, § 14, secures the right to a jury trial only in cases in which that right existed at the time of the adoption of the constitution in 1868.”).

35. The case before this court is a condemnation action under the Act, which is an action at law for the determination of the amount of just compensation for property taken. *S.C. Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 586, 340 S.E.2d 535, 537 (1986).

36. The Act is the “*exclusive procedure* whereby condemnations may be undertaken in this State.” *See* S.C. Code §28-2-60 (emphasis added).

37. The S.C. General Assembly passed the Act:

to create a uniform procedure for *all exercise* of eminent domain power in this State. It is not intended by the creation of this act to alter the substantive law of condemnation, and any uncertainty as to construction which might arise must be resolved in a manner consistent with this declaration. In the event of a conflict between this act and any other law with respect to any subject governed by this act, this act shall prevail.

S.C. Code Ann. §28-2-20 (emphasis added).

38. The Act applies to the condemnation of “property, real property, or land,” which the General Assembly defined for purposes of condemnation actions as “all lands, including every estate, **interest and right, legal or equitable** [*emphasis added*], in lands or water and all rights, interests, privileges, easements, encumbrances ... or otherwise.” *See* S.C. Code §28-2-30.

39. Where, as here, the Condemnor elects to proceed under Section 28-2-240 by way of trial (as opposed to an appraisal panel) after the Owner’s rejection of the amount tendered, the

Condemnor shall file an affidavit with the clerk of court stating whether the Condemnor demands a trial by jury or court as to the valuation of the property condemned. *See* S.C. Code §28-2-240. The Condemnor must serve written notice of the condemnation action upon all Condemnees named in the Notice. *See* S.C. Code §28-2-230. "After filing of the affidavit, the case shall proceed as provided in Article 3" of the Act. S.C. Code Ann. §28-2-240(b).

40. "Despite the fact there is no constitutional right to a jury in an eminent domain case, such a right is provided by statute." *Cobb*, 365 S.C. at 365, 618 S.E.2d at 301 (*citing* S.C. Code § 28-3-310).

41. Specifically, under Article 3 the Act, the right to a jury trial exists unless the Condemnor and Owner expressly demand *not* to try the matter to a jury:

(A) Upon the filing of the affidavit described in Section 28-2-240(A) or the filing of a Notice of Appeal under Section 28-2-260(B) or (C), the action must be tried as provided in this article.

(B) If the condemnor and the landowner have demanded trial by the court without a jury, the clerk shall place the action on the nonjury trial roster. *Otherwise, the action must be placed on the jury trial roster.*

See S.C. Code § 28-2-310(A)-(B) (emphasis added).

42. The Court based its transfer of this matter to the non-jury docket substantially upon the following provision of the Act:

Unless the persons served with the Condemnation Notice agree in writing as to whom just compensation must be made and paid, the appraisal panel determination, verdict, or judgment must be made jointly to all the parties and may be paid to the clerk of court. Upon making the payment, the condemnor's obligation to pay interest upon the funds shall terminate. *The payment of the funds so awarded must be held by the clerk of court pending the final order of the court of common pleas in an equity proceeding to which all persons served with the Condemnation Notice must be necessary parties.* From the order of the court of common pleas there may be an appeal as provided for appeals from the court in equity cases.

See S.C. Code § 28-2-460 (emphasis added).

43. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). The South Carolina Supreme Court has held:

Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted)). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992).

Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

44. This Court relied on the following three reasons in its Order Transferring Case to the Non-Jury Docket:

- (a) The Act only provides the Owner, as the "landowner," a right to a jury trial (as opposed to other condemnees).
- (b) The "equitable interest" of CCSD, which the Special Referee found, requires that this matter be decided by a judge sitting in equity.
- (c) Any compensation owed to CCSD should be determined in an equitable proceeding under South Carolina Code Section 28-2-460.

45. These reasons are incorrect and, thus, this Court should reconsider its order and set this case for jury trial.

46. First, the Act does not provide that only the Condemnor and Landowner can demand a jury trial.

47. To the contrary, South Carolina Code Section § 28-2-310(B) clearly provides only that the Condemnor and Owner may demand a *non-jury* trial. However, it does not grant them alone the right to a jury trial.

48. Under the Act, it is clear that — unless the Condemnor and Owner specifically state otherwise in accordance with the Act — the question of the valuation of just compensation for the entire tract should be tried to a jury.

49. Condemnor's Notice and the Affidavit of its counsel both expressed its desire that a *jury* decide the value of the Entire Tract.

50. Condemnor has never filed any withdrawal of its demand for a jury trial in this matter.

51. At all relevant times, CCSD has indicated its desire and intention to fully exercise its right to a jury trial.

52. In fact, none of the parties (including Condemnor) have ever expressed on the record an intention to waive their rights to a jury trial.

53. Having allegedly resolved its dispute with Condemnor, the Owner certainly cannot now elect to try this matter nonjury.

54. Condemnor's construction of the Act would allow an owner and condemnor to avoid the right to a jury trial by mutual agreement when other condemnees are involved and after already having demanded a jury trial, thereby acting in direct contravention of South Carolina Rules of Civil Procedure 38 and 39 and depriving other condemnees of the right to a jury's determination of the total value of the taking.

55. Second, the fact that CCSD's interest in the CCSD Tract is "equitable" (as determined by the Special Referee) does not mandate that the *amount* — as opposed to the *existence* — of that interest can only be decided in equity without first having a jury trial on the valuation of the Entire Tract.

56. Irrespective of the legal source for CCSD's right, the Act plainly provides that the amount of just compensation for the land acquired is a jury issue before any apportionment of the same.

57. Finally, South Carolina Code Section 28-2-460 does not mandate that the remaining issues in this case be tried to a jury.

58. The plain language of this section of the Act mandates that such there are two precedents to an "equity" proceeding under that section: (a) there must be a "verdict[] or judgment" of the value of the Entire Tract; and (b) the Condemnor must *pay* that *award* to the Clerk of Court.

59. Neither of those conditions occurred here, so Section 28-2-460 has not been triggered.

60. There has never been a determination of the amount of just compensation for the Entire Tract.

61. South Carolina follows the "undivided fee" rule, with the right of the condemning authority to have just compensation to which all parties are entitled, determined in a single proceeding, and as a single award. *See City of Greenwood v. Psomas*, 249 S.C. 519, 155 S.E.2d 310 (1967); *South Carolina State Highway Dep't v. Hammond*, 238 S.C. 317, 120 S.E.2d 21 (1961). As such, all parties to a condemnation action are entitled to present evidence of the total valuation of the real property right acquired before any apportionment so as to protect each party's respective valuation of its own real property interest. In *Psomas*, the Court stated that "the jury is concerned with the whole fair market value; the city has no voice in the distribution of the award; the allocation of the funds among the condemnees is for a court of equity." *See Psomas*, 155 S.E.2d at 313.

62. In other words, the Act presumes that the jury will adjudicate the compensation for the entire taking, prior to an equitable apportionment proceeding.

63. There has never been a determination of the amount of just compensation for the Entire Tract, from which CCSD can seek an apportionment for its equitable interest.

64. The Condemnor has argued that its Consent Settlement Agreement is a substitute for a verdict or judgment.

65. The Act does recognize the right of "the parties" to compromise or settle all or part of a condemnation action. See S.C. Code §28-2-40 ("At any time before or after commencement of a condemnation action, the parties may agree to and carry out, according to its terms, a compromise or settlement as to any matter, including all or any part of the compensation or other relief."). However, this does not permit some of the parties to reach an agreement impacting the rights of other parties without the involvement or participation of those parties.

66. The equitable procedure of Section 28-2-460 can only potentially apply where condemnor, landowner and all other condemnees collectively agree to a compensation award as to the entire property. See *South Carolina Dep't of Transp. v. M&T Enterp. of Mt. Pleasant, LLC*, 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008) (invoking Section 28-2-460 equitable procedure to allocate condemnation award between landlord and tenant, where SCDOT, *landlord and tenant* agreed to that award).

67. However, Condemnor can cite *no* South Carolina authority permitting it and the Owner to deprive CCSD of its rights by settling between themselves without CCSD's knowledge or involvement, especially in the context of an in-kind "land swap" settlement agreement.

68. CCSD was not a party to the Consent Settlement Agreement and was not involved whatsoever in its negotiation.

69. The Consent Settlement Agreement signed by Condemnor and Owner does not assign a value for just compensation for the Entire Tract.

70. In this case, it appears that Condemnor and Owner acted in their own interests, never recognizing the rights of CCSD.

71. If the Court permits Condemnor to evade a jury trial, it will encourage condemnors to prevent other condemnees from protecting their rights through skillful procedural maneuvering in blatant contravention of the Act.

71. In fact, on June 27, 2013, CCSD filed its Motion for the Court to Order Condemnor to Deposit Funds Pursuant to South Carolina's Eminent Domain Procedure Act,

seeking an order requiring Condemnor to deposit \$9,645,000.00 with the Clerk of Court pursuant to S.C. Code § 28-2-230.

72. Under that section of the Act, the Condemnor was required to "deposit with the clerk the amount of just compensation stated in the notice." *See* S.C. Code § 28-2-230(A).

73. The Court denied that request in 2014 and gave Condemnor a pass on depositing funds under the Act.

74. Thus, Condemnor has never deposited any funds with the Court pursuant to the Act.

75. The arrangement between Condemnor and Owner, involving only in-kind property transfers and not valuing the total taking, would allow clever condemnors to settle around other condemnees, and would furthermore set the precedent for condemnors to evade the Act's requirement of depositing the condemnor's appraised value with the clerk of court to protect the real property interests involved in the underlying condemnation.

76. Condemnor and Owner have created their own novel procedure in derogation of the Act.

77. This conduct would have the effect of denying CCSD its right to participate in the jury trial process of valuation of the Entire Tract and prevents CCSD from presenting evidence on value of the Entire Tract.

78. The result would be to encourage Condemnors and Owners to settle through an in-kind exchange for less than market value and deprive other condemnees of the right to an independent, jury trial determination of the total value of the taking.

79. Moreover, nothing in the Act permits settlement for non-cash, in-kind consideration and does not allow other parties to set the value of the total taking without any involvement by other condemnees.

80. Thus, it was error for this Court to use the Consent Settlement Agreement to side-step CCSD's right to have a jury determine the full compensation value of the Entire Tract.

81. Additionally, the Condemnor has never paid — in response to such a determination — the compensation for the entire taking to the Court for disbursement in an equitable proceeding.

82. For the reasons set forth above, CCSD is entitled to a jury trial on the valuation of the Entire Tract consistent with the Act and substantive case law.

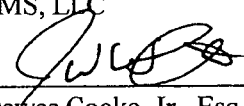
CONCLUSION

83. Therefore, CCSD respectfully requests that Judge Dennis reconsider his October 19, 2016 (filed on October 21, 2016) Order Transferring Case to the Non-Jury Docket and issue a revised order: (a) denying Condemnor's Motion to Transfer Case to the Non-Jury Docket and (b) confirming that the trial in this matter should be before a jury.

84. CCSD reserves the right to support this Motion with a Memorandum of Law, as well as exhibits, affidavits, transcripts and any other evidence properly presented to the Court.

Respectfully submitted,

BARNWELL, WHALEY, PATTERSON, AND
HELMS, LLC

By: 

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November 3, 2016
Charleston, South Carolina

2010-CP-10-10495

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Condemnee Charleston County School District's Rule 59(E) Motion to Reconsider Grant of Motion to Transfer this Case to the Non-Jury Docket** was served upon counsel via U.S. Mail on this 3rd day of November, 2016, with proper postage affixed and addressed as follows:

Keith M Babcock, Esquire
Lewis Babcock & Griffin, LLP
Post Office Box 11208
Columbia, SC 29211

Newman Jackson Smith, Esquire
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 1806
Charleston, SC 29402

FILED
2016 NOV -3 PM 4:01
JULIE J. ARMSTRONG
CLERK OF COURT



Julia G. Childers, Legal Assistant

Exhibit A

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Project: Intermodal Container
Transfer Facility)

Tract II)

South Carolina Department of Commerce,
Division of Public Railways,)

Condemnor,)

v.)

Clemson University,)

Landowner,)

and)

Charleston Naval Complex Redevelopment
Authority, City of North Charleston,
Commissioner of Public Works for the City
of Charleston, North Charleston Sewer
District, Bell South Telecommunications,
Inc., South Carolina Electric & Gas
Company, and Charleston County School
District,)

Other Condemnees.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-10-10495

CONSENT SETTLEMENT
AGREEMENT

SETTLEMENT AGREEMENT BETWEEN THE SOUTH CAROLINA DEPARTMENT OF
COMMERCE, DIVISION OF PUBLIC RAILWAYS, AND CLEMSON UNIVERSITY

This Consent Settlement Agreement (the "Agreement") is made and entered into by and between
Clemson University ("Clemson") and the South Carolina Department of Commerce
("Commerce") and its Division of Public Railways ("Railways").

WHEREAS, Clemson is the Landowner of the approximately 69.96 acres of land that is
the subject of this condemnation action as identified on attached Exhibit A (the "Property").

WHEREAS, Clemson and Railways have agreed that Clemson will receive land in exchange for the condemnation of the Property in lieu of financial consideration, and, as a result, Clemson has agreed to waive its right to any financial compensation from Railways in this action.

NOW, THEREFORE, in view of the foregoing recitals, and for and in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Department and each Defendant agrees and consents to following:

1. Clemson and Railways agree to settle the action in accordance with the following terms and conditions:

- a. Clemson will provide Railways with a quitclaim deed for the property as set forth in Exhibit A to this Agreement within thirty (30) days of the Effective Date of this Agreement.
- b. Railways will provide Clemson title to property that is mutually acceptable to Railways and the Clemson University Board of Trustees. The parties shall make best efforts to complete the transfer of such land to Clemson on or before August 1, 2017.
- c. Commerce will continue to defend Clemson in the suit brought by the Charleston County School District (the "District"), Civil Action No. 2012-CP-10-5093, and agrees to be responsible for any liability Clemson may have to the District associated with any interest the District may have in the Property.

2. This Consent Settlement Agreement shall be binding on the successors, transferees, and assigns of Clemson and Railways.

3. This Consent Settlement Agreement shall not be assignable without the express written consent of both parties, such consent not to be unreasonably withheld.

4. This Consent Settlement Agreement does not constitute an admission by any party of liability to the other, or of the validity or invalidity of any legal position asserted by a third party. This Consent Settlement Agreement is entered into solely for purposes of compromising and settling this Condemnation Action, Civil Action No. 2010-CP-10-10495, between such parties and avoiding the time and expense that would be involved in proceeding with litigation. However, nothing in this paragraph is intended or shall be construed as acting as a bar or otherwise preventing either party from enforcing compliance with this Consent Settlement Agreement.

5. Clemson and Railways have been represented by competent legal counsel of its own choosing in the negotiation, preparation, and execution of this Agreement. Clemson and Railways further agree that they have participated fully and freely in the negotiation and drafting of this Consent Settlement Agreement and, as a result, neither Clemson nor Railways can claim that the terms of this Consent Settlement Agreement were not understood and that they did not freely agree, consent, and enter to the Consent Settlement Agreement.

6. This Consent Settlement Agreement constitutes the entire agreement between the Clemson and Railways with respect to the resolution and settlement of the matters discussed herein, and supersedes all prior or contemporaneous agreements, promises, or understandings between the parties. Further, neither Clemson nor Railways are relying upon any representations,

promises, understandings, or agreements with regard to the settlement of this action except as expressly set forth within this Consent Settlement Agreement.

7. This Consent Settlement Agreement shall be construed and any disputes concerning its performance shall be determined in accordance with the laws of the State of South Carolina.

8. This Consent Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed original but all of which together shall constitute one and the same instrument.

9. The undersigned individual signing this Consent Settlement Agreement on behalf of the Clemson covenants that he/she is duly authorized to execute this Consent Settlement Agreement and lawfully bind Clemson, subject to approval of the Clemson Board of Trustees. The undersigned individuals signing this Consent Settlement Agreement on behalf of Commerce and Railways covenant that they are duly authorized to execute this Consent Settlement Agreement and lawfully bind their principals, subject to requisite state approval.

10. The Effective Date of this Consent Settlement Agreement shall be deemed the date upon which the Consent Settlement Agreement has been executed by Clemson, Commerce and Railways and has received requisite university board and state approvals, as evidenced in *Exhibit A* attached hereto.

11. In the event of the invalidity of any term or provision of this Consent Settlement Agreement, all terms and provisions shall be considered severable and the balance of this Settlement Agreement shall remain in effect.

12. Clemson and Railways also agree that dismissal of Clemson from this matter is appropriate and agree to move the Court for such dismissal of Clemson from this matter with prejudice.

WE SO AGREE AND CONSENT:

CLEMSON UNIVERSITY

Brett A. Dalton

By: BRETT A. DALTON

Its: V.P. FINANCE & OPERATIONS

August 22, 2016

SOUTH CAROLINA DEPARTMENT OF COMMERCE,
DIVISION OF PUBLIC RAILWAYS

Jeffrey M. Winters

By: Jeffrey M. Winters

Its: President & CEO

August 18, 2016

SOUTH CAROLINA DEPARTMENT OF COMMERCE

Robert M. Hilt III

By: Robert M. Hilt III

Its: Secretary of Commerce

August 17, 2016

EXHIBIT A

(Clemson University Board and State Approvals)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Project: Intermodal Container)
Transfer Facility)
)
Tract 11)
)
South Carolina Department of Commerce)
Division of Public Railways,)
)
Condemnor,)
)
v.)
)
Clemson University,)
)
Landowner,)
)
and)
)
Charleston County School District,)
)
Other Condemnee.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-10-10495

FILED
2016 DEC 14 PM 1:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY 32

CONDEMNOR'S MEMORANDUM
IN RESPONSE TO CHARLESTON
COUNTY SCHOOL DISTRICT'S
MOTION TO RECONSIDER ORDER
TRANSFERRING CASE TO THE
NON-JURY DOCKET

Condemnor South Carolina Department of Commerce, Division of Public Railways ("Railways") submits this Memorandum in response to the Charleston County County School District's ("CCSD") Motion to Reconsider the Order transferring the case to the non-jury docket. In its Motion, CCSD has failed to present any new basis to sustain its motion to alter or amend. CCSD's Motion merely repeats and rehashes the arguments previously made and rejected by this Court.

As did it in its previous memorandum, CCSD again argues that it has certain rights, including that of a jury trial, under the Eminent Domain Act ("the Act"). However, as Railways has demonstrated before, the Act simply does not provide those rights to Other Condemnees. Under the Act, only the Condemnor and the Landowner have the right to control the mode of trial -- i.e., whether it will be jury or non-jury:

If the condemnor and the landowner have demanded trial by the court without a jury, the clerk shall place the action on the nonjury trial roster. Otherwise, the action must be placed on the jury trial roster.

S.C. Code § 28-2-310. Other Condemnees are given no such control of the mode of trial by the Act.

Contrary to CCSD's claim (that it is making again), Rule 38, SCRCP does not provide any basis for a jury trial. That rule provides that "[t]he right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties...." Case law has specifically held "there is no constitutional right to a jury trial in an eminent domain case because there was no such right when our constitution was adopted." Cobb v. S.C. Dep't of Transp., 365 S.C. 360, 364, 618 S.E.2d 299, 301 (2005). In the absence of a constitutional right, a jury trial must be provided for by statute. As noted, the Act does not provide an Other Condemnee with any right to a jury trial. Thus, CCSD's claim that this Court (or Railways and Clemson) are depriving it of some right to jury trial is simply wrong.

Moreover, matters of equity are properly determined by a court, sitting in equity, rather than a jury. As Railways argued in its initial Memorandum in support of transferring the case to the non-jury docket, there have been a number of cases in which courts determined that where an "equitable interest" was found, the matter was one for a judge to decide the nature and value of

the equitable interest. CCSD would have the Court ignore that line of cases (that date back to 1851).

CCSD also seems to claim that Railways and Clemson cannot settle the case for an in-kind property swap or without the approval of the Other Condemnees, citing S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 651, 667 S.E.2d 7, 11 (Ct. App. 2008). Neither claim is correct.

The Act provides that: "At any time before or after commencement of an action, the parties may agree to and carry out, according to its terms, a compromise or settlement as to any matter, including all or any part of the compensation or other relief." S.C. Code § 28-2-40. The Act does not state that a settlement must include a cash payment (nor does it prohibit property exchanges).

As for CCSD's argument that it must consent to the settlement, CCSD's reliance on M&T Enterprises is misplaced. That case does not hold that an Other Condemnee must consent to a settlement. In fact, there is only one sentence in the entire case about the settlement: "Tenant, Landlord, and SCDOT agreed to a condemnation award of \$100,000." M&T Enterprises 379 S.C. at 652, 667 S.E.2d at 11. In that case, there is no discussion of any requirement that a tenant (or Other Condemnee) consent to a settlement because, of course, there is no code section that mandates such consent. As one treatise explains:

The statutory scheme of the Act contemplates that the landowner, and not other condemnees, is the interested party in most phases of the action. Thus, the landowner alone is served with the condemnation notice and accepts or rejects the tender or challenges the right to condemn, is served with the condemnor's election to proceed with trial, and consents to abandonment of the action.

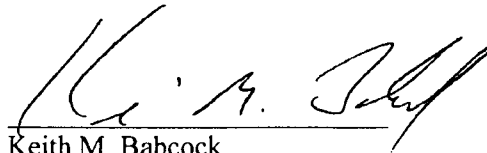
18 S.C. Jur. Eminent Domain § 44.

Finally, CCSD continues to claim that there must be a jury trial on the value of the entire 69.963 acres in order to determine the value, if any, of equitable interest in just 3.74 acres. As Railways noted in its earlier filings with the court, the “undivided-fee rule” does not necessarily apply where the case “before [the Court] is not the usual situation.” Federal Oil Co. v. City of Culver City, 179 Cal.App.2d 93 (1960).

This Court has acknowledged that this case involves an unusual situation in that the condemnation has been settled for an exchange of property and the only remaining issue is what value, if any, CCSD’s equitable interest has. Thus, pursuant to years of case law, a matter sounding in equity should be heard by the Court sitting in equity, not a jury.¹ In other words, this Court has already properly rejected CCSD’s claim that there must be a jury trial on the entire acreage and CCSD has provided no basis for alteration of that ruling.

Railways respectfully submits that the Court, in its Order of October 19, 2016, determined that this case should be transferred to its proper place – the non-jury docket. As a result, CCSD’s Motion to Reconsider should be denied.

¹ CCSD also claims that S.C. Code 28-2-460 has not been “triggered” because there has been no verdict or judgment as to the entire tract. The Court’s order did not find that it had; the Court merely indicated that an equitable proceeding, similar to that utilized Section 28-2-460, would be appropriate to determine the value of CCSD’s equitable interest.



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Columbia, South Carolina
December 12, 2016

82156

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas for the Eleventh Circuit

Markley R. Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-10495

RECEIVED

JAN 11 2017

SC Court of Appeals

Project: Intermodal Container Transfer Facility

Tract: 11

South Carolina Department of Commerce, Division of
Public Railways Condemnor

vs.

Clemson University Landowner

and

Charleston Naval Complex Redevelopment Authority, City
of North Charleston, Commissioner of Public Works for
the City of Charleston, North Charleston Sewer District,
Bell South Telecommunications, Inc., Business Telecom,
Inc., South Carolina Electric & Gas Company, and
Charleston County School District Other Condemnees

Of whom Charleston County School District is Appellant

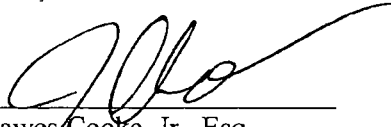
NOTICE OF APPEAL

Other Condemnee/Appellant Charleston County School District hereby appeals from: (a) the Order Transferring Case to the Non-Jury Docket, which the Honorable R. Markley Dennis, Jr. signed on October 19, 2016 and filed on October 21, 2016 in this matter (attached hereto as Exhibit A); and (b) the Order Denying Motion for Reconsideration, which the Honorable R. Markley Dennis, Jr. signed and filed on

December 16, 2016 (attached hereto as Exhibit B). Other Condemnee/Appellant Charleston County School District received written notice of entry of the Order ruling on its Rule 59 motion to reconsider (Exhibit B) on December 16, 2016.

January 9, 2017

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Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Project: Intermodal Container
Transfer Facility

Tract: 11

South Carolina Department of Commerce,
Division of Public Railways,

Condemnor,

vs.

Clemson University,

Landowner,

and Charleston County School District,

Other Condemnee.

COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 10-CP-10-10495

ORDER TRANSFERRING CASE
TO THE NON-JURY DOCKET

RECEIVED

JAN 11 2017

SC Court of Appeals

2016 OCT 21 AM 9:50
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

This matter is before me by way of a motion by the Condemnor, South Carolina Department of Commerce, Division of Public Railways ("Railways"), to transfer this case to the non-jury roster. This matter was heard by me on August 23, 2016. Keith M. Babcock, Esquire, Stephen A. Spitz, Esquire, and Derek F. Dean, Esquire appeared on behalf of Condemnor Railways. Newman Jackson Smith, Esquire appeared on behalf of Landowner Clemson University ("Clemson"). Abigail B. Walsh, Esquire and Christopher L. Murphy, Esquire appeared on behalf of Other Condemnee Charleston County School District ("District"). After considering the arguments of counsel and the memoranda submitted by them, I have determined that this motion should be granted.

This is a condemnation action. In December of 2010, Railways filed a Notice of Condemnation by which a 70 acre tract of land owned by Clemson was condemned. The District

AWD

was one of several Other Condemnees in this case. The District's interest pertains to a 3.74 acre portion of Clemson's property where the District previously operated its Academic Magnet High School ("School").

The parties agreed that there were certain issues common to this condemnation action and a related case (*Charleston County School District v. Clemson University*, Civil Action No. 2012-CP-10-5093) that should be decided for both cases together.¹ The parties agreed to transfer these cases to a Limited Special Referee, John A. Massalon, Esq., to decide five issues for the cases. (Consent Order of Limited Reference and Scheduling Order filed April 25, 2014). Limited Special Referee Massalon issued two Orders, one dated October 22, 2015, and the other dated February 23, 2016, which ruled upon the five issues.

At the time of the hearing, I was advised that Clemson and Railways had reached an agreement to settle the case between themselves.² A Consent Settlement Agreement was submitted to the Court and filed following the hearing. This agreement reflects that Clemson and Railways have agreed that Clemson will receive land in exchange for the condemnation of its property, in lieu of financial consideration, and that Clemson has waived its right to any monetary compensation from Railways in this action. As a result, the Condemnor and the Landowner have now resolved their differences, which would normally result in a conclusion of the condemnation case.

¹ The parties to the related case (*Charleston County School District v. Clemson University*), filed a Stipulation of Dismissal on August 5, 2016. Therefore, the only case still ongoing between Railways, Clemson, and District is this condemnation case.

² Counsel for Clemson advised the Court at the hearing that this Settlement Agreement was in accord with prior correspondence on this issue and merely reduced the agreement of Railways and Clemson to writing.

Page 2

It is entirely appropriate for Railways and the Landowner to resolve all issues between them related to the condemnation of the property. The South Carolina Eminent Domain Act specifically permits:

At any time before or after commencement of an action, the parties may agree to and carry out, according to its terms, a compromise or settlement as to any matter, including all or any part of the compensation or other relief.

S.C. Code Ann. § 28-2-40. There is no legal basis for the District to object to a settlement between the Condemnor and the Landowner.

While Railways and Clemson may have resolved their differences, that resolution does not conclude the action for the District. As set forth in his Orders, the Limited Special Referee determined that the District had "an equitable interest in the 3.74 acre AMHS parcel." At this time, there are various issues for this Court to determine concerning this "equitable interest," including but not limited to: whether this "equitable interest" is compensable; whether it has value; and if it has value, what that value is. Therefore, any issue remaining in the case pertains to the "equitable interest."

It appears to the Court that the three arguments of Railways to transfer this case to the non-jury docket all have merit. First, South Carolina law only gives the Landowner, not an Other Condemnee, a right to a jury trial. Second, the "equitable interest" found by the Limited Special Referee calls for this Court to consider the matter sitting in equity. Finally, any compensation owed to the District should be determined by this Court in an equitable proceeding similar to that provided in S.C. Code Ann. § 28-2-460.

fnol 3

Although the District argues that it has a right to a jury trial, the applicable statutory procedural section does not support that argument. S.C. Code Ann. § 28-2-310 governs the mode of trial for condemnation actions and provides:

If the condemnor and the landowner have demanded trial by the court without a jury, the clerk shall place the action on the nonjury trial roster. Otherwise, the action must be placed on the jury trial roster.

S.C. Code Ann. § 28-2-310. In this case, the Landowner is Clemson, and Clemson advised the Court that it did not oppose the motion and had settled with the Condemnor. This Code section does not mention Other Condemnees, and there is no statutory basis to support the District's position that an Other Condemnee has a right to a jury trial. It is the Landowner that has the right to the jury trial, which may be exercised or waived. *Richland Cty. v. Lowman*, 307 S.C. 422, 424, 415 S.E.2d 433, 434 (Cl. App. 1992).

The fact that the Notice of Condemnation filed by the Condemnor initially sought a jury trial is not controlling. The initial election by the Condemnor was made almost six years ago. As Railways argues, at that time, it did not know all of the developments that were to occur in the case, and that the only matter outstanding at this point in time would involve an equitable issue of the District. The District relies on Rule 39(a), SCRPC, for its claim that it is entitled to a jury trial because one was initially sought by the Condemnor in the Condemnation Notice. However, Rule 39(a) specifically recognizes that some issues may not be appropriate for a jury trial stating: "the court upon motion or its own initiative [may find] that a right of trial by jury of some of or all of the issues does not exist." Rule 39(a), SCRPC. The issue here --the value of an equitable interest in a portion of the property -- is not a jury issue. I find that there is no

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statutory or case law basis to support the District's objection to the Condemnor now requesting a transfer to the non-jury docket.

Second, it appears to the Court that this Court must determine issues concerning an "equitable interest" issue, which should be decided in equity. As indicated in his first Order, the Limited Special Referee made certain conclusions of equity, including that the School District had an "equitable interest" in the 3.74 acres of land at issue. The Limited Special Referee explicitly noted that he expressed no opinion as to the question as to whether the "CCSD equitable interest has value or what that value may be." (Page 9, October 22, 2015, Order of Limited Special Referee).

It is apparent that questions as to the "equitable interest" must be decided by this Court and should be done so in equity. In that sense, the issues concerning the "equitable interest" to be determined by this Court are no different than other cases involving "equitable interests." In those cases, the Court decided the issues, not a jury. See, e.g., *Kinard v. Hiers*, 3 Rich Eq. 423 (1851 Court of Appeals of Equity in S.C.); *Oskin v. Johnson*, 400 S.C. 390, 735, S.E.2d 459 (2012). Thus, any questions concerning the "equitable interest" of the District in the 3.74 acres should be decided by this Court sitting in equity without a jury.

Third, an equitable proceeding is statutorily mandated to determine the rights of the Landowner and the Other Condemnees when a dispute exists between them concerning dividing condemnation proceeds. S.C. Code Ann. § 28-2-460 provides that:

Unless the persons served with the Condemnation Notice agree in writing as to whom just compensation must be made and paid, the appraisal panel determination, verdict, or judgment must be made jointly to all the parties and may be paid to the clerk of court. Upon making the payment, the condemnor's obligation to pay interest upon the funds shall terminate. The payment of the funds so

awarded must be held by the clerk of court pending the final order of the court of common pleas in an equity proceeding to which all persons served with the Condemnation Notice must be necessary parties. From the order of the court of common pleas there may be an appeal as provided for appeals from the court in equity cases.

In this case, there is no monetary payment to the Landowner, so this precise procedure cannot be utilized. However, the "equitable interest" of the District should be determined in an equitable proceeding similar to that provided by S.C. Code Ann. § 28-2-460.

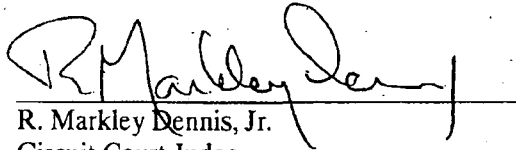
The District has argued that there must be a jury trial on the value of the entire 69.963 acres. The District's "equitable interest," however, is limited to just 3.74 acres. Since the Landowner has entered into a Settlement Agreement with the Condemnor, the value of the entire tract is not at issue, and there is no party other than the Landowner that has an interest in the entire tract. Significantly, even if a jury trial was conducted on the value of the entire 69.963 acres, the Court would still have to hold a separate proceeding in equity, pursuant to S.C. Code Ann. § 28-2-460, to determine the value, if any, of the District's "equitable interest" in the 3.74 acre parcel. Therefore, there is no basis for requiring a jury trial on the entire 69.963 acres.

Finally, the Court recognizes that this is a situation in which the only remaining issue in the case involves an "equitable interest" of an Other Condemnee to a small portion of the entire tract. While this is not a frequent condemnation scenario, the issues before this Court are similar to other equitable cases. In that regard, I have concluded that the District does not have a right to a jury trial, and this case should be transferred to the non-jury docket. However, to the extent that this issue is discretionary, I have further

determined that this case is much better suited to be resolved in a non-jury setting, and not by a jury.

IT IS THEREFORE ORDERED that the Condemnor's motion is granted, and this case is transferred to the non-jury docket.

AND IT IS SO ORDERED this 19th day of October, 2016.


R. Markley Dennis, Jr.
Circuit Court Judge
Ninth Judicial Circuit

Charleston, South Carolina

RMJ/7

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Project: Intermodal Container
Transfer Facility

Tract 11

South Carolina Department of Commerce
Division of Public Railways,

Condemnor,

v.

Clemson University,

Landowner,

and

Charleston County School District,

Other Condemnee.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-10-10495

ORDER DENYING MOTION
FOR RECONSIDERATION

RECEIVED

JAN 11 2017

SC Court of Appeals

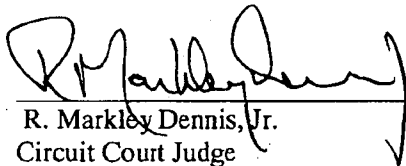
FILED
2016 DEC 16 PM 12:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter is before by way of Other Condemnee Charleston County County School District's Rule 59(e) Motion to Reconsider this Court's Order dated October 19, 2016, transferring this case to the non-jury docket. This matter was heard by me on December 14, 2016. M. Dawes Cooke, Jr., Esquire, and Christopher M. Murphy, Esquire, appeared on behalf of Other Condemnee Charleston County School District. Keith M. Babcock, Esquire, Stephen A. Spitz, Esquire, and Derek F. Dean, Esquire, appeared on behalf of Condemnor, South

Carolina Department of Commerce, Division of Public Railways. Newman Jackson Smith,
Esquire, appeared on behalf of the Landowner, Clemson University.

After considering the motion, memoranda, and previous filings by the parties, along with
arguments made by counsel at the hearing, I decline to change the Order previously issued by
this Court. As a result, the motion is denied.

IT IS SO ORDERED this ____ day of December, 2016.



R. Markley Dennis, Jr.
Circuit Court Judge
Ninth Judicial Circuit

Charleston, South Carolina

December 16, 2016

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2010-CP-10-10495

SOUTH CAROLINA DEPT.	)	
OF COMMERCE, DIVISION	)	
OF PUBLIC RAILWAYS,	)	TRANSCRIPT OF RECORD
	)	
PLAINTIFF,	)	
	)	
VS.	)	AUGUST 23, 2016
	)	CHARLESTON, SC
	)	
CLEMSON UNIVERSITY, .	)	
ET AL,	)	
	)	
DEFENDANTS.	)	

B E F O R E:

HONORABLE R. MARKLEY DENNIS, JUDGE.

A P P E A R A N C E S:

Keith Babcock, ESQUIRE
Newman Smith, ESQUIRE
Attorneys for the Plaintiff

Abigail Budd Walsh, ESQUIRE
Christopher Murphy, ESQUIRE
Attorneys for the Defendant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

1 (The following proceedings were held
2 August 23, 2016, Charleston County, South Carolina,
3 @ 11:40 a.m.)

4 THE COURT: I have had an opportunity
5 now to review most of the briefs, some arguments
6 that you submitted to the special referee, so that
7 was helpful. Just to share with you, not limit
8 anything, but I now have some familiarity with
9 where we have been and where we are now. And, Mr.
10 Babcock, I thank you all for your briefs. And all
11 briefs are incorporated and all previous briefs.
12 You can rely on the positions you have stated. I
13 am not suggesting that somebody has been delict for
14 not doing something, but your brief is incorporated
15 as well in regards to your motion.

16 MR. BABCOCK: Thank you, Your Honor.

17 THE COURT: All right. I believe it is
18 your motion.

19 MR. BABCOCK: Your Honor, there are two
20 preliminary matters before we begin with the
21 motion. As you may recall, two cases were assigned
22 to you through the business court program. And one
23 of those cases was the condemnation case and that's
24 the motion we are here on today to transfer to the
25 nonjury roster. And there was another case that

1 was a related case that was part of what was sent
2 to Mr. Massalon. That case has now been dismissed.
3 So we are down to one case.

4 THE COURT: So it is just the one case
5 with the condemnation action.

6 MR. BABCOCK: Yes, sir, although with
7 the procedural matters I'm not sure just the
8 condemnation case, but it is --

9 THE COURT: I understand. They are
10 kind of interwoven.

11 MR. BABCOCK: Yes, sir. It is the one
12 condemnation case. But there is a preliminary
13 matter on that involving Clemson and the Division
14 of Public Railways of Department of Commerce and
15 Mr. Smith represents Clemson so I will let him take
16 that.

17 THE COURT: Mr. Smith.

18 MR. SMITH: Please the Court, Your
19 Honor, an agreement in principle was always in
20 place between the landowner and the condemnee. We
21 have now written and signed it. The Board of
22 Trustees of Clemson has approved this document. We
23 are waiting for that written minutes to be approved
24 and the clerk of the Board of Trustees to give a
25 true copy to attach. Commerce has also signed the

1 document and they are waiting for the SFAA to give
2 their technical approval before it can be attached
3 here. I would like with your permission to give a
4 copy of the executed, but quite not final,
5 settlement agreement to Commerce attorney in this
6 action who could not be involved in those
7 settlement negotiations and pass it to Your Honor.

8 THE COURT: That would be fine. Thank
9 you, sir.

10 MR. SMITH: I can show you the original
11 signatures if you prefer.

12 THE COURT: I will rely on the accuracy
13 of your statement.

14 MR. SMITH: Thank you, sir. Appreciate
15 that.

16 THE COURT: Thank you very much. Now
17 the motion.

18 MR. BABCOCK: Yes, sir. May it please
19 the Court.

20 THE COURT: Yes, sir, Mr. Babcock.

21 MR. BABCOCK: Thank you for working us
22 in today, Your Honor. We appreciate that. Your
23 Honor, we are here on the motion to transfer the
24 condemnation case to the nonjury roster. And as I
25 indicated earlier, we are down now to that one

1 case. The procedural background in this case is a
2 little involved so if I can go into a little bit of
3 procedure, a little of the facts it as bears on the
4 matter before the court today.

5 The condemnation action involves
6 70 acres of land that are owned by Clemson. The
7 entire tract was taken in this case and it was
8 taken by Railways for the project involving an
9 intermodal container transfer facility to be built
10 near the port. The property is located on North
11 Hobson Avenue on the old naval base in North
12 Charleston.

13 The Charleston County School District
14 was named as an other condemnee here and their
15 interest ultimately it was determined was in 3.74
16 acres of the 70-acre tract.

17 THE COURT: Not to interrupt you, but
18 having read it, and I understand a little bit more
19 now, of course I also understand that it appears
20 because there were several motions to reconsider
21 filed, obviously there's some disagreement with
22 probably both sides with the special referee's
23 decision. But there's no question that at least as
24 I read the posture at this point concerning the
25 lease, as I understand his order he concluded the

1 lease expired.

2 MR. BABCOCK: Yes, sir.

3 THE COURT: And that basically any
4 occupancy they were tenants at will.

5 MR. BABCOCK: Yes, sir.

6 THE COURT: And we all know the basic
7 law of tenancy at will I think, it's been a long
8 time, I think it's a 30-day notice, I believe
9 that's what I was taught in Property 101 I think,
10 but there's a professor that could probably --
11 former professor probably correct me, been a long
12 time since I sat in Professor Ledbedder's class.

13 But be that as it may, that would be
14 going forward and then it no longer becomes -- and
15 I understand the -- please understand everything I
16 am saying I understand the school district
17 disagrees with that totally. You have stated your
18 position very clearly and argued that as well.

19 And I say all of that because obviously
20 this case is not going to stop here, I don't
21 believe. Maybe it will, I don't know, but there's
22 a reasonable probability it may go a little -- take
23 a trip up I-26.

24 That having been said, as I read it he
25 basically said there is no lease. At the time the

1 condemnation it was done. As I see it. But he
2 said the school district has as I understand it
3 some equitable interest in the lease based on
4 basically the improvements, and I'm summarizing and
5 probably shortening it too much primarily, but
6 didn't define what that was, didn't define the
7 amount thereof, he just said simply there was.

8 And there was also some reference, and
9 maybe you can enlighten me on this, some \$30,000
10 that was paid to the school district as I recall
11 and that as I read it had something to do with
12 basically reimburse the school. Because the
13 tenancy at will as I recall, the rent stopped and
14 said because you have improved this property, going
15 forward you are not required to pay a monthly
16 rental. And then, of course, the school district,
17 the record is clear went forward with the plans to
18 build on the old Barnes Wilson campus and that was
19 done and basically as I recall they ceased
20 occupancy of this property insofar as the school
21 purpose was concerned.

22 So I understand and really all that is
23 left as I see it is for me to consider, I
24 understand they have asked for a jury trial, and
25 quite frankly, I don't know any case that I have

1 ever seen, maybe I just haven't found it, where a
2 jury is involved in an equity issue. That's the
3 way I see this. Equity as I understand it is me or
4 the Court and because the case has been assigned
5 it's me. And I encountered this for the first
6 time, maybe I don't remember, I'm sure my professor
7 taught me that too, but I just didn't remember it,
8 until I was trying that case in Beaufort where we
9 tried a construction case. I may have mentioned
10 this to you all, but I will say it again on the
11 record. One of the actions, causes of action was
12 an equitable indemnification. And I think Judge
13 Bell wrote a very good decision on that. It says
14 the only time a Plaintiff has to decide how it
15 wants to proceed and it is very obvious because
16 different triers of fact.

17 And this came at the end of the trial
18 and they said we will just let -- can we go to the
19 jury and then we will let you know. And, of
20 course, when they got the verdict they changed
21 their mind and they wanted me to decide it.

22 So but clearly, clearly equity is not a
23 jury issue in my opinion. Now, having said that, I
24 understand y'all may have taken a different
25 position. But that's -- I have read it. I read

1 your brief. I have read the file. I really don't
2 think there's -- I think what we need to do is for
3 me to find that and then go on and have whatever
4 hearing we are going to have so you can take it
5 from there to go where it needs to go. Because the
6 case you have cited that dealt with the equitable
7 decision, they reversed it, it came back and there
8 was some issue about what they had notice of as a
9 matter of law and that was -- that's a totally
10 different situation here. Because whether we agree
11 with the terminology, the order speaks for itself
12 for me because a judge defined it and has referred
13 to it as equitable malice, equitable interest.

14 I don't know how to convert that
15 because that's -- for me going forward, that judge
16 has already ruled on it. Supreme Court may say
17 otherwise, Court of Appeals may say otherwise, but
18 I don't think I can modify his ruling. I think he
19 sits in the same capacity as I do and I can't
20 change another judge's decision.

21 I have been involved in that. That
22 doesn't happen often. Well, it does too. We hear
23 motions and we rule on them, then somebody else
24 tries it and maybe it goes up and you see two
25 judges and I have been the culprit where some of my

1 colleagues have been -- have reversals, but their
2 decision was correct and I have been on the other
3 end of that one. But I understand. Anyway I
4 interrupted you. I don't want you to shorten
5 anything you think is necessary for purposes of
6 review of what we are about to do, but that's sort
7 of where I am with this having read all this.

8 MR. BABCOCK: Yes, sir. And that is
9 the bottom line here. Judge Massalon found an
10 equitable interest in the property on behalf of the
11 school district. That equitable interest is the
12 only issue that still needs to be decided because
13 of the determination that Clemson and Railways had
14 that's been memorialized now, but goes back even
15 before the case started. That was what the
16 situation was to be.

17 So that is the only issue, and as Your
18 Honor indicated, just incorporated our memorandum
19 so we don't have to repeat those issues, but the
20 three points that we offered to the Court were
21 number one, that the statute in terms of jury trial
22 was a landowner right, not another condemnee right
23 and especially so I think, Your Honor, when you
24 have got a situation where it is equitable
25 interest.

1 THE COURT: Absolutely.

2 MR. BABCOCK: The second, and the issue
3 as Your Honor is focused on, is that it is an
4 equitable interest. And what that equitable
5 interest is, whether it's compensable, whether it
6 has value, what that value is, those are all tied
7 into the equity issue of the equitable interest
8 that Mr. Massalon found as special referee.

9 And then the final point, Your Honor,
10 was this really is an analogous situation the code
11 looks at when you have after you have resolved
12 situations between condemnor and landowner. It
13 then goes to an equitable case for division of
14 proceeds. Normally you have got a pot to divide up
15 by that point, which we don't. It still is an
16 equitable proceeding and that's where we suggest it
17 should be now. It should be transferred to the
18 nonjury roster and let Your Honor look at the
19 different issues as we go through discovery and
20 address those issues with Your Honor.

21 So that's what we respectfully request,
22 is a transfer to the nonjury roster.

23 THE COURT: Thank you. Please know I
24 am not trying to shorten anything that you want to
25 say or add on this record.

1 MR. MURPHY: I completely understand.
2 The first thing we would ask for, Your Honor, is a
3 few days to file a written response brief.

4 THE COURT: Sure.

5 MR. MURPHY: So five to ten days.

6 THE COURT: That's no problem. Take as
7 long as you need.

8 MR. MURPHY: And, Your Honor, for the
9 record, and I will be very brief, but this is an
10 unusual case where we have the Department of
11 Commerce and Clemson working together to exclude
12 the school district from any part of the award.

13 THE COURT: That's a nice statement. I
14 don't think that's where we are because what
15 excluded the school district, because I think there
16 was some reference to Mr. Hartnett's statement that
17 the values would be significantly different if you
18 had a 50-year lease.

19 MR. MURPHY: Yes.

20 THE COURT: Obviously, so I understand.

21 MR. MURPHY: But in any event, Your
22 Honor, we did have -- we agreed on the Massalon
23 hearing which is outside the realm of the eminent
24 domain statute act because there was -- the school
25 district only claimed a small interest in the

1 70 acres. So the understanding was we would let
2 Massalon determine what interest they would have
3 and then at that point whatever interest it would
4 be would go to a jury trial to be done with it.
5 That seems to be not the case anymore. Which we
6 take the position you got to go back to the default
7 which is we are stuck with the pleadings and we are
8 stuck with the eminent domain act.

9 Now, the first question Your Honor
10 answers is is an equitable interest able to be
11 condemned by a government entity. And there's
12 clearly -- it's directly referenced that a
13 government entity can condemn one's equitable
14 interest in the property. And that's listed in the
15 definition section of the statute.

16 So once you can condemn an equitable
17 interest, then you have got to follow the eminent
18 domain act. And the eminent domain act clearly
19 states in at least two sections that it prevails
20 over all procedural rules that may apply. And that
21 would include the general rule that equity matters
22 go to the Master-In-Equity, therefore, it goes to
23 the nonjury roster, Your Honor.

24 Next we have a play on words a little
25 bit with the condemnee and the landowner in this

1 case. The condemnee as defined is all people with
2 a record interest and/or a possessory interest in
3 the property. The landowner is defined as multiple
4 condemnees, it's all the condemnees. So when it
5 says landowner it refers to all the condemnees that
6 are served with the notice.

7 So we also have -- that being the case,
8 you have the City of Greenwood versus Psomas which
9 defined landowner and it says landowner is defined
10 to include the lessee and any person who has an
11 interest in the property effected by the
12 condemnation. And that makes sense because South
13 Carolina has the undivided fee rule and folks only
14 get one shot at just compensation as you know. And
15 whoever -- if you don't have an agreement of the
16 parties, everyone gets to submit evidence of just
17 compensation because like Mr. Babcock said, it is a
18 pie. And you have people whose interest are
19 directly correlative with the amount of just
20 compensation. So the higher the just compensation
21 the higher the potential for the leasehold interest
22 or what other interests they would claim as part of
23 the pie.

24 THE COURT: Let me ask you a question
25 just for my benefit because this really doesn't

1 have anything to do with -- this really has
2 something more to do with before Judge Massalon's
3 decision.

4 Because I happen to live and have
5 handled a lot of closings in my career that dealt
6 with constructions of homes on leased property
7 owned by Santee Cooper. And clearly when those --
8 it was written in the lease for that matter, but I
9 am encountering it right now. I am in the process
10 of selling my house and we constructed a dock on
11 the lease property. And it was we have -- my
12 neighbor and I went in jointly and paid for the
13 construction.

14 And the question is who owns it. I
15 said neither you or I and when we leave and let
16 that part that we can remove and cut without
17 damaging the property I think we can take maybe,
18 but I believe anything that I have affixed to the
19 land and real estate becomes part of the real
20 estate, therefore is now owned by the fee simple
21 owner of the real estate. And that's certainly the
22 case in the Santee Cooper situation. You can build
23 a beautiful home, you have improved it dramatically
24 and Santee Cooper says thank you very much. When
25 you leave we take your lease because you don't get

1 it back and you don't get paid for it either.

2 My question here -- I understand what
3 you're saying. But you don't have a lease.

4 MR. MURPHY: No, we don't.

5 THE COURT: It is over and that's -- if
6 the Supreme Court says otherwise that's fine. But
7 if you have a lease then you have got something and
8 the eminent domain, but you don't have one.

9 MR. MURPHY: No, we don't. I agree
10 with that, Your Honor. We do not have a lease.

11 THE COURT: So you referred to lessee.
12 You don't have a lessee.

13 MR. MURPHY: No, you don't have, but
14 what you have is we had a possessory interest in
15 the property.

16 THE COURT: That's what he said.

17 MR. MURPHY: So that's what we are
18 talking about. But, Your Honor, to kind of
19 shortchange, if you look at 28-2-460 which is cited
20 in their brief it talks and says unless the parties
21 agree in writing to whom just compensation is paid
22 got to get a verdict and then they can deposit that
23 in the name of all the parties. You got to have an
24 agreement and you need to get a verdict here. The
25 statute doesn't allow collusion between the

1 parties.

2 So right now this is where we go back
3 into default and we are stuck with the pleadings
4 right now. We are saying we don't have an
5 agreement so we right now by statute by the
6 pleadings we have got to get a verdict on the
7 amount of the 69.8 acres that was condemned and
8 then we will move to the apportionment hearing.
9 And that's the procedure. I don't like it and
10 that's not what we agreed for -- we agreed with the
11 Massalon hearing, but technically under the
12 procedure and the way it is pled right now that's
13 where we are, Judge.

14 THE COURT: Okay. I appreciate your
15 argument and you're arguing a very interesting
16 statutory anomaly because you are really talking
17 about something if the intent was -- you could
18 never settle a condemnation action, could you?

19 MR. MURPHY: That's not what I am
20 saying. You can settle, you got to have the
21 parties agree.

22 THE COURT: Well, again, and my feeling
23 about that is the parties have agreed. The real
24 parties in interest now.

25 MR. MURPHY: Yes, sir.

1 THE COURT: I just -- I understand, but
2 again, and you say it overrides and that's great,
3 that sets up for some good law to be made. Because
4 it's going to be interesting how a jury gets to
5 determine what's equitable when the law is very
6 clear. I hear what you are saying. The statute
7 says it overrides everything.

8 MR. MURPHY: Yes, sir.

9 THE COURT: Well, I just spent a solid
10 day watching horrible film strips and presentations
11 on human trafficking which is an abomination. It
12 is one of the worst things I have ever seen and
13 it's going on everywhere in the United States and
14 in the world. Our legislature wants to get tough
15 on this. We want to stop it so you know what the
16 first offense for human trafficking is? Fifteen
17 years. That's really going to get the attention of
18 somebody, a nonviolent offense, 15 years. That's
19 disgusting. But that's what the legislature chose
20 to do.

21 I don't have any problem. I think it's
22 analogous to murder. You take somebody's life why
23 not make it 30 to life first offense? Why not make
24 it at least a nonparolable offense. We finally get
25 that on a second offense. How about that? You get

1 to do it twice before you get to nonparolable
2 offense. That's really important.

3 I say all that to understand I think
4 the legislature does a marvelous job. It is tough
5 and we all know that they pass things and somewhere
6 it's the problem that we all know as lawyers. It
7 would be great if everything was black and white
8 and we could do it. But you can't think of every
9 possible situation. It's impossible. Humanly
10 impossible. Even with the advent of computers we
11 still can't think of it all.

12 I hear what you are saying and I
13 understand and there is -- I will confess that for
14 purposes of review, yes, it says you got to have a
15 trial. And it overrides everything and that's
16 probably a generalization. But the bottom line is
17 I don't know how you do that. Just not -- so
18 they'll have -- the Supreme Court, if that's where
19 we have to go, they will have to outline for us.
20 And I hope they will. I want to make sure we frame
21 it so they have to. That they can't dodge it on
22 another basis and sometimes they -- I don't know
23 they intentionally do that, it just happens that
24 way sometimes. But be that as it may, I hear you.
25 I understand what you are saying.

1 MR. MURPHY: Yes, sir.

2 THE COURT: So I don't want to cut you
3 off, but I am going to let you brief that fully and
4 submit that in writing so that you will have it for
5 purposes of review. But please continue. I
6 apologize for interrupting you.

7 MR. MURPHY: And the only thing I would
8 conclude with, Judge, and the reason that I am
9 saying this is important is because the school
10 district's interest is directly correlative with
11 the amount of just compensation because all we can
12 get is that piece of the pie. And it comes to
13 estoppel matters. We went to the Master-In-Equity
14 as -- we don't want Clemson arguing that or the
15 Department of Commerce saying look, the whole 69
16 acres was only nine million dollars and you are
17 asking for seven million dollars for a just and
18 equitable interest. So that's why.

19 THE COURT: Let me ask you a question.
20 What does the school district think they were
21 worth?

22 MR. MURPHY: We are having it appraised
23 right now. But the testimony at the lower court, I
24 don't know -- it was a long trial.

25 THE COURT: I did not review the

1 testimony.

2 MR. MURPHY: All the parties were
3 acting in good faith assuming that the lease was --
4 there was a 50-year lease and that they were going.
5 So when you act in good faith under those
6 conditions everybody expected that the school
7 district would have use of that property for the
8 next 40 years or so.

9 THE COURT: Even though in the lease it
10 said they got to stockpile it. Because isn't that
11 what you would be doing if you weren't using it?

12 MR. MURPHY: Well, there's testimony
13 that would have been swing space, there was talk
14 about --

15 THE COURT: I am just asking.

16 MR. MURPHY: That was already addressed
17 in the Massalon order.

18 THE COURT: Curiously, what was the
19 \$30,000 for?

20 MR. MURPHY: What happened was there
21 was a monetary -- small settlement of a monetary
22 lease that the school district had to pay. I want
23 to say it was \$24,000 a year. However, if they
24 made improvements to the property the improvement
25 -- the cost of those improvements would be deducted

1 from the annual leasehold amounts. So when they
2 put the four million dollars in that wiped all of
3 the lease remnant payment and they actually
4 overpaid the -- I can't remember which party it
5 was, but they overpaid by about \$30,000 and there
6 was a refund for that.

7 THE COURT: Okay. All right. Thank
8 you.

9 MR. MURPHY: That is all I have, Your
10 Honor.

11 THE COURT: Any response, Mr. Babcock,
12 or anyone?

13 MR. BABCOCK: Nothing in response, Your
14 Honor.

15 THE COURT: Okay. Thank you very much
16 and if necessary, Mr. Babcock, I will give you a
17 period if you feel necessary to supplement the
18 memorandum once they submit their memorandum.

19 MR. BABCOCK: Thank you, Your Honor.

20 THE COURT: Thank you.

21 (These proceedings were concluded at
22 11:59 a.m., August 23, 2016, Charleston County,
23 South Carolina.)
24
25

1 CERTIFICATE OF REPORTER

2
3 I, Ruth C. Weese, Registered Diplomate
4 Reporter for the State of South Carolina at Large,
5 do hereby certify that the foregoing transcript is
6 a true, accurate, and complete record.

7 I further certify that I am neither related
8 to nor counsel for any party to the cause pending
9 or interested in the events thereof.

10 Witness my hand, I have hereunto affixed my
11 official seal this 30th day of August, 2016 at
12 Charleston, Charleston County, South Carolina.
13

14 *Ruth C. Weese*

15 _____
16 Ruth C. Weese
17 Registered Diplomate
18 Reporter
19
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21
22
23
24
25

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF CHARLESTON) Court of Common Pleas
) Case No. 2010-CP-10-10495
 3)
 4 INTERMODAL CONTAINER TRANSFER)
 FACILITY, ET AL,)
 5)
 Plaintiffs,)
 6 vs.) Transcript of Record
 7 CLEMSON UNIVERSITY, ET AL,)
)
 8 Defendants.) DATE: December 14, 2016
 9)

10 B E F O R E:

11 THE HONORABLE R. MARKLEY DENNIS, JR.
12

13 A P P E A R A N C E:

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23 Karen V. Andersen, RMR, CRR
24 Circuit Court Reporter
25

1 THE CLERK: South Carolina Department of Commerce,
2 Division of Public Railways vs. Clemson University,
3 2010-CP-10-10495.

4 THE COURT: We will start with Mr. Cooke, start with
5 you.

6 MR. COOKE: I'm Dawes Cooke with the Barnwell,
7 Whaley, Patterson & Helms. I represent Charleston County
8 School District.

9 MR. MURPHY: Chris Murphy on behalf of Charleston
10 County School District.

11 MR. BABCOCK: Keith Babcock, Lewis & Babcock. I
12 represent South Carolina Department of Commerce, Division of
13 Public Railways.

14 MR. SPITZ: Steve Spitz from the lawfirm with
15 Stevens & Lee. And I'm co-counsel with Mr. Babcock.

16 MR. SMITH: I'm Jack Smith with Nelson Mullins Riley
17 & Scarborough for Clemson University.

18 THE COURT: All right. I have received and reviewed
19 all the memorandums filed. And you certainly stand by those.
20 They are incorporated fully, because my view of this -- I
21 don't know what's going to happen yet. I'm going to hear
22 your arguments. But, obviously, it occurred to me that some
23 of these things may be interlocutory. This deals with
24 whether a -- who is going to be the judge in this case. So
25 it probably is appealable. And I would imagine that's

1 probably what's going to happen either way. So I want to
2 afford each of you the opportunity.

3 You now have, as part of the record, what you've
4 submitted to me. So that's fully incorporated. So you can
5 rely on that for appeal purposes. But anything that you want
6 to supplement or stress, feel free to do so.

7 So, Mr. Cooke?

8 MR. COOKE: Thank you, Your Honor. If it please the
9 Court, and as always, I'm going to keep it as concise as I
10 can.

11 THE COURT: Excuse me for interrupting, but you
12 don't feel like -- because one thing I want -- what I said in
13 thinking through, I said, this one is not just, we go to
14 trial and then we appeal it. This is something that could
15 delay this thing or expedite it. I don't know, however you
16 look at it. But whatever it is, it's an issue that's going
17 to have to be addressed because it's a different judge.

18 MR. COOKE: And thanks very much for hearing us.
19 And I appreciate counsel's indulgence to this. Our
20 position -- I'm going to give you the details. Our position,
21 essentially, is that the Court's previous order transferring
22 this case to the jury roster essentially construed the term
23 "landowner" too narrowly to exclude the interest of the
24 Charleston County School District. And we've been found to
25 have an equitable ownership interest in this property that's

1 being condemned. In fact, at this time, it's the only thing
2 that's being condemned. Because of the fact that Clemson has
3 settled out, there was never a condemnation of Clemson's
4 property. Instead, they agreed to swap it. There was never
5 a compensation paid in lieu of condemnation.

6 So what we have here is, we have a situation where
7 the condemner has essentially bought the property from
8 Clemson subject to our equitable interest. And
9 interestingly, they dismissed other interests like AT&T and
10 Southern Bell and SCE&G, because they have rights-of-way or
11 easements.

12 And in their order dismissing them, they said our
13 interest, meaning the Department's interest, is subservient
14 to those other interests and are not affected by this action.

15 So our position is that that's the same thing. We
16 have an equitable interest. And that Clemson did not have
17 the power to convey our interests when they sold their
18 property or traded their property to the Department. So the
19 only way the Department can get our property from us is
20 either to buy it from us or to follow the condemnation
21 proceeding.

22 THE COURT: Well, I don't argue with your point.
23 Isn't that what this is all about?

24 MR. COOKE: That is exactly.

25 THE COURT: I'm just saying, the trial is -- the

1 question is, who's going to determine the value of that
2 interest?

3 MR. COOKE: That's exactly right.

4 THE COURT: To me, we are not defeating that by
5 changing it to -- my ruling was that I thought -- and you've
6 referred to it, I made quotes, "equitable ownership". If the
7 Court did not use the term "equitable", maybe there had been
8 an argument that it was, but, clearly, they said "an
9 equitable interest". And I think that, as I've said in my
10 previous ruling, I don't think the jury has anything to do
11 with determining the value of an equitable interest. I think
12 it's a court's determination.

13 But I don't, for one second, think -- my ruling
14 doesn't say that you are not entitled to something.

15 MR. COOKE: I understand. But what I'm about to do
16 is read some sections of the act that make it clear that once
17 it's found that we have an equitable interest, that equitable
18 interest has to follow -- you have to follow the same
19 procedure to take that equitable interest as you would any
20 other interest. And I'm going to read you the sections that
21 provide that. In other words, the equitable part has already
22 been done, and that is determining that we have an equitable
23 interest. That was done by agreement by reference to the
24 master in equity. So the equitable part of this case is over
25 with.

1 Now we are at the condemnation/valuation part. And
2 as the sections I'm about to read to you show, there's only
3 one way to do that. And that is through a jury trial.

4 THE COURT: You don't need to read it because you've
5 cited it.

6 MR. COOKE: Well, I'd like to.

7 THE COURT: You don't need to read it because I've
8 read it too.

9 MR. COOKE: Can I just put it in context?

10 THE COURT: You can tell me. But, Mr. Cooke, you
11 are relying on the section. You say it says it has to be a
12 jury trial. I don't think so. I don't think it says that.

13 MR. COOKE: I'm going to put several sections
14 together.

15 THE COURT: You can put them any way you want to put
16 them. I've read it too. I don't agree with your
17 combination. And you cited the section, so you don't need to
18 read it. Okay? But go ahead.

19 MR. COOKE: I'm going to take your invitation to go
20 ahead and make an argument anyway.

21 THE COURT: You can make your argument. But, again,
22 you've already placed all of that in the record. But go
23 ahead and do what you need to do.

24 MR. COOKE: I won't read it. I will paraphrase.
25 Section 28-2-6 it says: Provisions of this chapter are the

1 exclusive procedure for condemning property.

2 Section 220 says that: The condemner, when he
3 brings an action, can choose two pathways. He can choose to
4 go an appraisal route or the trial route.

5 In this case, they chose the trial route. They
6 filed the affidavit that's required by Section 240. And it
7 says that one of the things you are supposed to say in that
8 is whether the condemner demands a trial by jury or by court.
9 They demanded a trial by a jury.

10 At that point, it's locked in. There's nothing in
11 this Act that allows you to go back and do a do-over. They
12 chose a trial as opposed to an appraisal process. They
13 demanded a jury trial.

14 The Act then says that unless both sides, the
15 landowner and the condemner, expressly waive a jury trial,
16 the action must be tried as provided in this article. And it
17 must be tried by a jury unless they affirmatively have waived
18 that.

19 Where, with all due respect, we think that the Court
20 may have been led astray is in an over-narrow interpretation
21 of the term "landowner". Because what the Department says,
22 you are not a landowner. You don't own fee simple title.
23 But that is an unduly narrow interpretation of that section.

24 And this is one that I would like to read just a
25 short part, because it's very important. Under the

1 definitions section: A landowner means one or more
2 condemnees having a record fee simple interest in the
3 property condemned or any part thereof as distinguished from
4 condemnees who possess a lien or other nonownership interest
5 in the property.

6 And then this last phrase is critical. It says:
7 Where there are more than one, the term means the condemnees
8 collectively unless expressly provided otherwise.

9 It says: Where there are more than one --

10 THE COURT: Where there are more than what, fee
11 simple owners?

12 MR. COOKE: Condemnees.

13 THE COURT: Goes back to define what a landowner is,
14 doesn't it? Doesn't it say a fee simple owner?

15 MR. COOKE: Here's the way that the Supreme Court
16 interpreted it in *City of Greenwood v. Psomas*: From a review
17 of the entire record and the entire charge of the judge, we
18 conclude that the whole interest of all parties to the
19 proceeding was appraised and included in the jury award.

20 In the judge's opening statement to the jury, he
21 stated: Pansy Psomas and George Psomas and others will be
22 referred to as "the landowners".

23 The Court says: Now the "others" were, of course,
24 the respondents herein as evidenced by the condemnation
25 papers before the court.

1 And they were just tenants in that case. The court
2 cited the case of *South Carolina state Highway Department v.*
3 *Hammond*, in which it said South Carolina Code of Laws, South
4 Carolina requires the Highway Department in condemnation
5 proceedings to give notice to an "owner" of the land of its
6 intention to condemn.

7 The word "owner" as used in a condemnation statute
8 has been construed to embrace not only the owner of the fee,
9 but a lessee and any other person who has an interest in the
10 property which will be affected by the condemnation.

11 There's a provision in the Act that says that where
12 there's a conflict between the Act and any other provision of
13 law, this provision applies, that this Act applies.

14 There's another provision that says if there's a
15 conflict between the Act and the South Carolina Rules of
16 Civil Procedure, that provisions of this Act apply.

17 What the Department is asking this Court to do is to
18 invent a new procedure where it can come in and condemn an
19 interest, a discreet interest in land without following the
20 exclusive procedure. And this Act says it in numerous places
21 that it's the exclusive procedure to condemn land. And it
22 has to be by a jury trial unless both parties have
23 affirmatively waived it. And they have not here.

24 We would contend -- this is a bit more of a
25 technical argument. We would contend that Clemson, having

1 settled its interest, can no longer withdraw its consent.
2 But we don't think the Court even has to -- it can no longer
3 withdraw its insistence on a jury trial because it no longer
4 has an interest in this case. It's no longer a landowner
5 because its property is not being condemn.

6 So we are the only ones that own anything that is
7 subject to this condemnation. And we have not waived our
8 right to a jury trial.

9 THE COURT: Okay. Mr. Babcock.

10 MR. BABCOCK: May it please the Court, briefly.
11 First off, Clemson was condemned. This is a condemnation
12 proceeding that has progressed to this point. Clemson has
13 resolved, as Your Honor's familiar, this action in regard to
14 an exchange of property. But Clemson is still the landowner
15 and was the landowner in this proceeding.

16 THE COURT: Correct.

17 MR. BABCOCK: The school district is one of the
18 other condemnees. And I think when you look at the statute
19 first, the *Psomas* and the *Hammond* case, A, are pre-Eminent
20 Domain Code cases before we had the Eminent Domain Code.

21 Second, all they said is that when you got an
22 interest of another condemnee, like a tenant, and a
23 landowner, there's one jury trial in the condemnation
24 proceeding. You don't have separate jury trials in a
25 condemnation proceeding.

1 What the school district has asked for here is, in
2 its motion for reconsideration and in its memorandum in
3 opposition, is for a jury trial of the entire 70 -- almost
4 70-acre tract, when they only claim and have been found to
5 have an equitable interest in 3.74 acres. And what we say
6 is, there can't be a jury trial on that entire issue because
7 they don't have any interest on the entire issue.

8 What we are is a situation, as Your Honor found in
9 the order, is just like any other condemnee. There's a
10 procedure for an equitable proceeding to determine what their
11 interest is. And even under the school district's position,
12 if you had this big trial on the 70 acres, you would still
13 have to have an equitable trial on 3.74 acres, what that
14 equitable interest is and what its value is. So you still
15 have what Your Honor found.

16 And, Your Honor, it's particularly so because it's
17 an equitable interest. It only makes sense that an equitable
18 interest would be found and determined in equity.

19 So that's why, Your Honor, I think your order was
20 correct as it was initially issued. And we urge you to deny
21 the motion for reconsideration.

22 THE COURT: Thank you.

23 Response?

24 MR. COOKE: Just briefly, Your Honor. This argument
25 has been made several times. I just want to make it clear.

1 We are not demanding a trial of the entire 97 acres. We are
2 perfectly happy with a jury trial as to value of our
3 equitable interests in the --

4 THE COURT: Yeah, but doesn't that conflict with
5 what you've been arguing about the statute?

6 MR. COOKE: No, no, because we said that in the
7 brief.

8 THE COURT: I think you are using the statute where
9 it's convenient, but then you back it out when you say
10 because you don't have any title to 3.7. There's never been
11 any division of that other than the finding that you had some
12 equitable interest in that small portion of the property.
13 Correct?

14 MR. COOKE: Right, except the only equitable
15 procedure that the Act provides for is to divvy up the money
16 once there's been a --

17 THE COURT: Money for what? Money for the whole --

18 MR. COOKE: Right, exactly. And that's not going to
19 happen here.

20 THE COURT: No, it's not because that's been
21 resolved.

22 MR. COOKE: I beg your pardon?

23 THE COURT: Because it's been resolved.

24 MR. COOKE: It's been resolved. Instead of taking
25 the property by condemnation, it was traded. And we didn't

1 get any interest in that. No money was paid to the --

2 THE COURT: All that's going to happen is they are
3 going to have to find out how much they are going to have to
4 pay for the equitable interest. They may come out of the
5 proceeds. I don't know where it's coming from. But the
6 bottom line is, all we are determining is whether or not --
7 what is the value of your equitable interest. And I don't
8 know how a jury determines a value of an equitable interest.
9 That's contrary to the law. That's why I ruled the way I
10 ruled.

11 So I appreciate it. I hear you. And it's a great
12 case to make some law. And it won't be the first time that
13 I've been reversed. And probably, God willing, I would love
14 to think I would be perfect from here on out, but I probably
15 won't. But I will do the best I can.

16 And it just still makes sense to me, because we have
17 competing judges here. And I didn't create it. I inherited
18 the term "equitable interest". So that's where we are. I
19 think that's the governing part of it. And I think it is
20 distinguishable from all the others. But we may find out,
21 nope, even equitable interest, jury is going to determine the
22 value of equitable interest and master is going to be out of
23 business.

24 But, anyway, that being said, thank you very much.
25 Good luck with you all. And I look forward to reading it one

1 day. Maybe it will get resolved, but I don't know. We will
2 see. Thank you, all.

3 MR. COOKE: Thank you for your time, Your Honor.

4 THE COURT: You're very welcome. Thank you for your
5 thoroughness of your briefs. I really mean that sincerely.
6 Makes my job so much easier. And y'all are such
7 professionals, and I appreciate that.

8 MR. BABCOCK: Judge, do you need any order?

9 THE COURT: Why don't you do an order that says we
10 heard argument, additional memorandum, and after fully
11 considering all the memorandum and arguments, I declined to
12 modify the order and the order stands. Thank you very much.

13 MR. BABCOCK: Thank you.

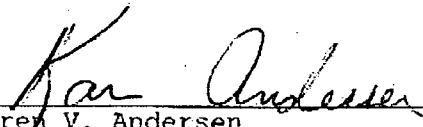
14 THE COURT: Have a great holiday season.

15 (Whereupon, proceedings are adjourned.)
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Project: Intermodal Container)
Transfer Facility)

Tract 11)

South Carolina Department of Commerce,)
Division of Public Railways,)

Condemnor,)

v.)

Clemson University,)

Landowner,)

and)

Charleston Naval Complex Redevelopment)
Authority, City of North Charleston,)
Commissioner of Public Works for the City)
of Charleston, North Charleston Sewer)
District, Bell South Telecommunications,)
Inc., South Carolina Electric & Gas)
Company, and Charleston County School)
District,)

Other Condemnees.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-10-10495

CONSENT SETTLEMENT
AGREEMENT

BY
JULIE J. ARMSTRONG
CLERK OF COURT

2016 DEC 14 AM 10:55

FILED

SETTLEMENT AGREEMENT BETWEEN THE SOUTH CAROLINA DEPARTMENT OF
COMMERCE, DIVISION OF PUBLIC RAILWAYS, AND CLEMSON UNIVERSITY

This Consent Settlement Agreement (the "Agreement") is made and entered into by and between
Clemson University ("Clemson") and the South Carolina Department of Commerce
("Commerce") and its Division of Public Railways ("Railways").

WHEREAS, Clemson is the Landowner of the approximately 69.96 acres of land that is
the subject of this condemnation action as identified on attached Exhibit A (the "Property").

WHEREAS, Clemson and Railways have agreed that Clemson will receive land in exchange for the condemnation of the Property in lieu of financial consideration, and, as a result, Clemson has agreed to waive its right to any financial compensation from Railways in this action.

NOW, THEREFORE, in view of the foregoing recitals, and for and in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Department and each Defendant agrees and consents to following:

1. Clemson and Railways agree to settle the action in accordance with the following terms and conditions:

- a. Clemson will provide Railways with a quitclaim deed for the property as set forth in Exhibit A to this Agreement within thirty (30) days of the Effective Date of this Agreement.
- b. Railways will provide Clemson title to property that is mutually acceptable to Railways and the Clemson University Board of Trustees. The parties shall make best efforts to complete the transfer of such land to Clemson on or before August 1, 2017.
- c. Commerce will continue to defend Clemson in the suit brought by the Charleston County School District (the "District"), Civil Action No. 2012-CP-10-5093, and agrees to be responsible for any liability Clemson may have to the District associated with any interest the District may have in the Property.

2. This Consent Settlement Agreement shall be binding on the successors, transferees, and assigns of Clemson and Railways.

3. This Consent Settlement Agreement shall not be assignable without the express written consent of both parties, such consent not to be unreasonably withheld.

4. This Consent Settlement Agreement does not constitute an admission by any party of liability to the other, or of the validity or invalidity of any legal position asserted by a third party. This Consent Settlement Agreement is entered into solely for purposes of compromising and settling this Condemnation Action, Civil Action No. 2010-CP-10-10495, between such parties and avoiding the time and expense that would be involved in proceeding with litigation. However, nothing in this paragraph is intended or shall be construed as acting as a bar or otherwise preventing either party from enforcing compliance with this Consent Settlement Agreement.

5. Clemson and Railways have been represented by competent legal counsel of its own choosing in the negotiation, preparation, and execution of this Agreement. Clemson and Railways further agree that they have participated fully and freely in the negotiation and drafting of this Consent Settlement Agreement and, as a result, neither Clemson nor Railways can claim that the terms of this Consent Settlement Agreement were not understood and that they did not freely agree, consent, and enter to the Consent Settlement Agreement.

6. This Consent Settlement Agreement constitutes the entire agreement between the Clemson and Railways with respect to the resolution and settlement of the matters discussed herein, and supersedes all prior or contemporaneous agreements, promises, or understandings between the parties. Further, neither Clemson nor Railways are relying upon any representations,

promises, understandings, or agreements with regard to the settlement of this action except as expressly set forth within this Consent Settlement Agreement.

7. This Consent Settlement Agreement shall be construed and any disputes concerning its performance shall be determined in accordance with the laws of the State of South Carolina.

8. This Consent Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed original but all of which together shall constitute one and the same instrument.

9. The undersigned individual signing this Consent Settlement Agreement on behalf of the Clemson covenants that he/she is duly authorized to execute this Consent Settlement Agreement and lawfully bind Clemson, subject to approval of the Clemson Board of Trustees. The undersigned individuals signing this Consent Settlement Agreement on behalf of Commerce and Railways covenant that they are duly authorized to execute this Consent Settlement Agreement and lawfully bind their principals, subject to requisite state approval.

10. The Effective Date of this Consent Settlement Agreement shall be deemed the date upon which the Consent Settlement Agreement has been executed by Clemson, Commerce and Railways and has received requisite university board and state approvals, as evidenced in *Exhibit A* attached hereto.

11. In the event of the invalidity of any term or provision of this Consent Settlement Agreement, all terms and provisions shall be considered severable and the balance of this Settlement Agreement shall remain in effect.

12. Clemson and Railways also agree that dismissal of Clemson from this matter is appropriate and agree to move the Court for such dismissal of Clemson from this matter with prejudice.

WE SO AGREE AND CONSENT:

CLEMSON UNIVERSITY

Brett A. Dalton

By: BRETT A. DALTON

Its: V.P. FINANCE & OPERATIONS

August 22, 2016

SOUTH CAROLINA DEPARTMENT OF COMMERCE,
DIVISION OF PUBLIC RAILWAYS

Jeffrey McWhorter

By: Jeffrey McWhorter

Its: President + CEO

August 18, 2016

SOUTH CAROLINA DEPARTMENT OF COMMERCE

Robert M. Hitt III

By: Robert M. Hitt III

Its: Secretary of Commerce

August 17, 2016

EXHIBIT A

(Clemson University Board and State Approvals)

Clemson University
Clemson, South Carolina

MINUTES
**TELECONFERENCE OF THE
CLEMSON UNIVERSITY BOARD OF TRUSTEES**

President's Conference Room
201 Sikes Hall
Clemson, South Carolina
January 14, 2016
8:00 a.m.

Call to Order

Notification as required by the South Carolina Freedom of Information Act was given at least twenty-four hours before the meeting by posting the notice and agenda on the bulletin board at the Office of the Board of Trustees, 300B Sikes Hall, Clemson University and on the Clemson University Board of Trustees website. Additionally notice of, and the agenda for, the meeting was sent via email to the distribution list maintained by the Office of Media Relations which includes approximately 80 reporters and editors at the major daily newspapers, television and radio stations in S.C.

After notification as required by the Freedom of Information Act, Trustee McKissick, Chairman, called the meeting to order at 8:01 a.m. with the following present:

Trustees: Smyth McKissick, *Chairman, presiding*; David Dukes; Bill Hendrix; Ronnie Lee; Nicky McCarter; Bob Peeler; Mark Richardson; Bill Smith, Joe Swann; Kim Wilkerson; and David Wilkins

Trustees Emeriti: J.J. Britton and Allen Wood

Administrative Council: James P. Clements, *President*; Angie Leidinger, *Executive Secretary to the Board of Trustees and Director of Governmental Affairs*; Brett Dalton, *Vice President for Finance and Operations*; Robert H. Jones, *Executive Vice President for Academic Affairs and Provost*; and Max Allen, *Chief of Staff and Interim Chief Diversity Officer*

Guests: Sally Mauldin, *Office of the Board of Trustees*

Media: None

Angie Leidinger called roll of the Board of Trustees.

Convene Finance and Facilities Committee

Trustee Smith convened the Finance and Facilities Committee.

Action Item

1. Review and Approval of Phase II of the ATEC Building

Brett Dalton presented the proposed project.

Executive Session

Trustee Smith said it was necessary to go into executive session to receive legal advice. No votes or action would be taken.

Trustee Hendrix moved to go into executive session. Trustee Peeler seconded the motion. The motion was approved unanimously. The committee entered into executive session at 8:28 a.m. The committee returned to open session at 8:40 a.m.

Trustee Hendrix moved to approve phase two of the ATEC building with a requirement that this phase 2 approval be ratified at the February Board meeting. Trustee Lee seconded the motion. The motion was approved unanimously.

Trustee Smith adjourned the Finance and Facilities Committee.

Chairman McKissick reconvened the Full Board meeting.

Action Item

1. Recommendation from the Finance and Facilities Committee for Phase II of the ATEC Building

Trustee Smith moved to approve the recommendation of the Finance and Facilities Committee that phase two of the ATEC building be approved with a requirement that this phase 2 approval be ratified at the February Board meeting. The motion was approved unanimously.

Adjourn

There being no further business, Chairman McKissick adjourned the meeting at 8:43 a.m.

Respectfully submitted,

Angie Leldinger
Angie Leldinger
Executive Secretary to the Board of Trustees

Approved:

Angie Leldinger
Signature

10/14/16
Date

MINUTES OF STATE FISCAL ACCOUNTABILITY AUTHORITY MEETING

November 7, 2016 – 10:00 A. M.

The State Fiscal Accountability Authority (Authority) met at 10:00 a.m. on Monday, November 7, 2016, in Room 252 in the Edgar A. Brown Building, with the following members in attendance:

Governor Nikki R. Haley, Chair;
Mr. Curtis M. Loftis, Jr., State Treasurer;
Mr. Richard Eckstrom, Comptroller General;
Senator Hugh K. Leatherman, Sr., Chairman, Senate Finance Committee; and
Representative W. Brian White, Chairman, Ways and Means Committee.

Also attending were State Fiscal Accountability Authority Director Grant Gillespie; Authority General Counsel Keith McCook; Governor's Deputy Chief of Staff Austin Smith; Treasurer's Chief of Staff Clarissa Adams; Comptroller General's Chief of Staff Eddie Gunn; Senate Finance Committee Budget Director Mike Shealy; Ways and Means Chief of Staff Beverly Smith; Authority Secretary Delbert H. Singleton, Jr., and other State Fiscal Accountability Authority staff.

Adoption of Agenda for State Fiscal Accountability Authority

Upon a motion by Senator Leatherman, seconded by Rep. White, the Authority adopted the agenda as proposed.

Minutes of Previous Meeting

Upon a motion by Mr. Eckstrom, seconded by Senator Leatherman, the Authority approved the minutes of the September 20, 2016 Authority meeting.

Blue Agenda

Mr. Eckstrom asked for blue agenda items #1, #5, and #7 to be taken up separately. Those agenda items were approved by the Authority as noted herein below.

Upon a motion by Senator Leatherman, seconded by Mr. Eckstrom, the Authority unanimously approved blue agenda items #2, #3, #4, and #6 as noted herein.

State Treasurer's Office: Bond Counsel Selection (Blue Agenda Item #1)

The Authority was asked to approve the referenced bond counsel assignment as

Minutes of State Fiscal Accountability Authority
November 7, 2016 – Page 2

recommended by the State Treasurer's Office:

CONDUIT ISSUES: (For ratification of Issuer's Counsel only)

Description of Issue	Agency/Institution (Borrower)	Borrower's Counsel	Issuer's Counsel
\$ 13,875,000 SC JEDA	GREEN Midlands, Inc.	Haynsworth Sinkler Boyd, P. A.	Nexsen Pruet
\$ 42,500,000 SC JEDA	The Lutheran Homes of South Carolina, Inc.	Haynsworth Sinkler Boyd, P.A.	Parker Poe Adams & Bernstein LLP
\$65,000,000 SC JEDA	Conway Medical Center	Katten Muchin Rosenman and McNair Law Firm	Howell Linkous & Nettles
\$ 30,250,000 SC State Housing Finance Authority	Waters at St. James, LP	Parker Poe Adams & Bernstein, LLP	Tracey Easton, Esq

OTHER REVENUE ISSUES:

Description of Issue	Agency/Institution	Approved Bond Counsel
\$ 46,000,000 Athletic Facilities Revenue Bonds	University of South Carolina	McNair Law Firm
\$ 110,000,000 SC State Housing Finance Authority	Mortgage Revenue Bonds	McNair Law Firm

Mr. Eckstrom asked how issuer's counsel is chosen. Mr. Loftis said that JEDA has a rotation set up for issuer's counsel and his office approves or does not approve the selection. Harry Huntley, JEDA Director, said there is a rotation schedule for issuer's counsel. He said that it is based upon an agreement that was done in 2009. Mr. Eckstrom asked if the rotation is done on a project by project basis or if there was effort made to balance the size of the project (5:35). Mr. Huntley said that it is generally done project by project and they look to see who was issuer's counsel before, particularly if the project involves refunding. Mr. Eckstrom asked how many firms were in the pool. Mr. Huntley said that there are six firms in the pool.

Upon a motion by Senator Leatherman, seconded by Mr. Eckstrom, the Authority approved the referenced bond counsel assignment as recommended by the State Treasurer's Office.

Information relating to this matter has been retained in these files and is identified as Exhibit 1.

Secretary of State: Notice of Expenditure of Funds (Blue Agenda Item #2)

Pursuant to S.C. Code Ann. Section 1-11-470, Secretary of State Mark Hammond advised the Authority that he will be expending funds to purchase radio public service announcements time. The radio time will be used for a public awareness campaign on charity and telemarketing fraud. Secretary Hammond expects to expend no more than \$40,000 toward the cost of the radio public service announcements. The funds are from administrative fines issued by the Secretary of State pursuant to the Solicitation of Charitable Funds Act, Code Section 1-11-470. Approval of the request must be by unanimous vote of the Authority.

The Authority unanimously approved a request from Secretary of State Mark Hammond concerning the expenditure of funds to purchase radio public service announcements not to exceed \$40,000 for a public awareness campaign on charity and telemarketing fraud.

Information relating to this matter has been retained in these files and is identified as Exhibit 2.

Department of Administration, Real Property Services: Easement (Blue Agenda Item #3)

The Authority approved granting the referenced easement as recommended by the Department of Administration, Division of General Services:

County Location:	York
From:	Department of Transportation
To:	Duke Energy Carolinas, LLC
Consideration:	\$1
Description/Purpose:	To grant a permanent 0.005 acre easement for the construction, installation, operation and maintenance of underground electric lines and facilities to provide electrical service to the new I-77 South Welcome Center. The easement is being sought by the Department of Transportation for the benefit of the property. Real Property Services has determined that the Department has complied with the requirement of the statute in that the easement does not appear to materially impair the utility of the property or damage it.

Information relating to this matter has been retained in these files and is identified as Exhibit 3.

Department of Administration, Real Property Services: Real Property Conveyances (B#4)

As recommended by the Department of Administration, Real Property Services, the Authority approved of the following real property conveyances:

- (a) **Controlling Agency:** Department of Commerce
 - Acreage: 9.323± acres
 - Location: 2600 Spruill Avenue, North Charleston
 - County: Charleston
 - Purpose: To dispose of surplus real property acquired by the Department of Commerce's Division of Public Railways through the 2012 Settlement Agreement with the City of North Charleston.
 - Price/Transferred To: Not less than appraised value/To be determined
 - Disposition of Proceeds: To be retained by the Department of Commerce pursuant to Proviso 93.23.

- (b) **Controlling Agency:** Department of Administration
 - Acreage: 4.0± acres and a 9,156 square foot office building
 - Location: 1319 South 4th Street, Hartsville
 - County: Darlington
 - Purpose: To dispose of surplus real property.
 - Price/Transferred To: \$1,100,000/McLeod Regional Medical Center of the Pee Dee, Inc.
 - Disposition of Proceeds: To be retained and/or divided accordingly between the Department of Employment and Workforce and the Department of Administration based on federally funded real property requirements and pursuant to 93.23.

Information relating to this matter has been retained in these files and is identified as Exhibit 4.

Division of Procurement Services: Adoption of the U. S. Green Building Council's Leadership in Energy and Environmental Design Rating System Version 4 (Blue Agenda #5)

Section 48-52-825 of the Energy Independence and Sustainable Construction Act (the "Act") provides that the governing board of the State Fiscal Accountability Authority (the "Authority") "shall automatically adopt by reference the most current editions of the rating systems developed by Green Building Initiative and U.S. Green Building Council's Leadership in Energy and Environmental Design used for certification" of major facility projects pursuant to the Act article. This Section further provides that the Authority shall refer new or updated rating

systems to the Energy Independence and Sustainable Construction Advisory Committee (EISCAC) for consideration pursuant to Section 48-52-865(B). The latest and most current edition of the U.S. Green Building Council's Leadership in Energy and Environmental Design Rating System is Version 4.

Mr. Eckstrom stated that he was curious to know why the Authority had to take this action given that the statute indicates that the Authority shall automatically adopt the rating system. John White, State Engineer, said the law requires automatic adoption and then referral of the rating system to the EISCAC. He said that action is needed by the Authority to adopt the rating system by reference and refer it to the committee. He noted that the word automatic as used in statute is confusing in that context. Mr. Eckstrom pointed out that according to the law the Authority has no discretion in the matter. Mr. White said that this is essentially a ministerial act. Mr. Eckstrom asked if the requirement of the governing board reporting findings to the DOA and the DOA reporting the findings to the General Assembly being done. Mr. White stated that there is an annual report that is submitted in conjunction with the Energy Office. He noted that historically before restructuring the Energy Office compiled the report. He noted that a report is currently being prepared. Mr. Eckstrom further asked how the State is able to evaluate the savings when the federal government has not yet been able to do so. Mr. White said that he would have to defer to the Energy Office because they collect the data on energy savings annually from the agencies. Mr. Gillespie advised Mr. Eckstrom that no one was present from the Energy Office but that information could be obtained.

In further discussion, Mr. Eckstrom asked when would the referral be made to the EISCAC. Mr. White said that is what this agenda item will do. He stated that the referral would be effective upon approval of the agenda item by the Authority.

Mr. Eckstrom noted that the process set forth by the statute is bureaucratic. Mr. Loftis agreed this is a bureaucratic nightmare and stated that it may not achieve any savings. Rep. White commented that he was not a big supporter of LEED because of the expense.

Mr. Eckstrom stated in further discussion that the legislation should be revisited. He asked what interest is there in seeing the Authority's hands tied and construction costs increase. He stated that if this is just theoretical savings why incur real costs to capture theoretical savings.

Upon a motion by Senator Leatherman, seconded by Rep. White, the Authority, pursuant

to Section 48-52-825, adopted the U.S. Green Building Council's Leadership in Energy and Environmental Design Rating System Version 4 and refer this edition to the Energy Independence and Sustainable Construction Advisory Committee for consideration pursuant to Section 48-52-865(B). Governor Haley, Mr. Eckstrom, and Senator Leatherman voted for the motion. Mr. Loftis and Rep. White voted against the motion.

Information relating to this matter has been retained in these files and is identified as Exhibit 5.

Division of Procurement Services: Procurement Audits and Certifications (Blue Item #6)

The Division of Procurement Services, in accord with Section 11-35-1210, audited the following agency and recommended certification within the parameters described in the audit report for the following limits (total potential purchase commitment whether single-or multi-year contracts are used):

- a. Department of Juvenile Justice (for a period of three years): supplies and services, \$500,000* per commitment; construction contract award, \$100,000 per commitment; construction contract change order, \$25,000 per change order; architect/engineer contract amendment, \$5,000 per amendment.
- b. Department of Parks, Recreation, and Tourism (for a period of three years): supplies and services, \$250,000* per commitment; construction contract award, \$250,000 per commitment; construction contract change order, \$250,000 per change order; architect/engineer contract amendment, \$50,000 per amendment.
- c. Department of Social Services (for a period of three years): services provider contracts funded from Social Services Block Grant and Child Welfare Service provider contracted funded from Federal Title IV-Service Provider being provider of services directly to a client; \$2,000,000 per contract per year, with option to extend 4 additional years; supplies and services, \$100,000* per commitment; information technology, \$100,000* per commitment; consultant services, \$100,000* per commitment.

The Authority granted procurement certification, in accord with Section 11-35-1210, for the following agencies within the parameters described in the audit report for the following limits (total potential purchase commitment whether single- or multi- year contracts are used):

- a. Department of Juvenile Justice (for a period of three years): supplies and services, \$500,000* per commitment; construction contract award, \$100,000 per commitment; construction contract change order, \$25,000 per change order; architect/engineer contract amendment, \$5,000 per amendment.
- b. Department of Parks, Recreation, and Tourism (for a period of three years): supplies and services, \$250,000* per commitment; construction contract award, \$250,000 per commitment; construction contract change order, \$250,000 per change order; architect/engineer contract amendment, \$50,000 per amendment.
- c. Department of Social Services (for a period of three years): services provider contracts funded from Social Services Block Grant and Child Welfare Service provider contracted funded from Federal Title IV-Service Provider being provider of services directly to a client; \$2,000,000 per contract per year, with option to extend 4 additional years; supplies and services, \$100,000* per commitment; information technology, \$100,000* per commitment; consultant services, \$100,000* per commitment.

Information relating to this matter has been retained in these files and is identified as Exhibit 6.

Executive Director: Revenue Bonds (Blue Agenda Item #7)

The Authority adopted resolutions approving the referenced proposals to issue revenue bonds as noted herein: The projects require approval under State law.

Mr. Eckstrom asked if the Treasurer's Office is comfortable with the fees on these issues. Mr. Loftis responded that he was not at all comfortable with the fees. Mr. Eckstrom said that he typically takes the position that the fees are borne by the borrower, but in this case there was so much variation and some of the fees were much higher as compared to what is customarily seen. He asked what is going on with the fees.

- a. Issuing Authority: Jobs-Economic Development Authority
Amount of Issue: \$65,000,000 Economic Revenue Bonds (\$10,159,584.64 refunding involved)
Allocation Needed: -0-
Name of Project: Conway Hospital, Inc.
Employment Impact: maintenance of 1,442 jobs and the creation of an estimated 20 new jobs within the next 24 months

Project Description: (i) finance, refinance or reimburse the hospital for all or a portion of the costs, including capitalized interest, if any, of the planning, design, acquisition, construction, renovation, improvement, expansion, completion and/or equipping of certain of the healthcare facilities owned by the hospital, including the renovation of existing structures, construction of new additions to existing structures and equipping of the renovated and new construction areas, which include new operating rooms, post-anesthesia care beds, support areas, rehabilitation services spaces, emergency department expansion and completion of a free standing emergency department and physician offices, (ii) refund all of the outstanding portion of the Authority Hospital Revenue Refunding Bonds (Conway Hospital, Inc.) Series 2011A, and (iii) pay certain costs of issuance of the Series 2016 bonds and the refunding of the series 2011 bonds

Note: *public or private sale*

Bond Counsel: Chad Doobay, Katten Muchin Rosenman LLP.; Michael Seezen, McNair Law Firm, P.A.

(Exhibit 7)

With regard to the Conway Hospital, Inc., bond issue, Mr. Eckstrom asked why the refinancing was being done at a higher rate of 5% than at the current rate of 3%. Michael Seezen, bond counsel, stated that this deal is part new money and part refinancing with the majority of the transaction being for new hospital expansion, construction, and renovation. He said the bond issue is being done to refinance and replace some of the covenants that are in the 2011 bond transaction. He stated that the 2011 bonds were sold to a single bond holder. Mr. Seezen stated that it is typical that bonds that are issued on parity with each other will have a common covenant package that is available for all bond holders. He said that the 2011 bond holder, as a condition of buying the bonds, required certain of those covenants to be heightened or more restricted. He stated that replacing the 2011 bonds will allow the hospital to remove the heightened covenants.

Mr. Eckstrom also asked how the true interest costs are as low as they are given that the projected average interest cost for financing bonds is 5%. Mr. Seezen said he was not sure and that the hospital prepared the numbers based on information it secured from the underwriter, Zeigler Securities. He said he believes the true interest cost is calculated differently from the average interest cost and that the average interest cost is an average of the coupons for the various maturities. Mr. Seezen further stated that true interest costs are more reflective of yield.

He said it takes into account the timing of payments, an averaging of the interest payments that are made, and projections of whether the bonds will be sold at a premium or a discount. He stated that these bonds will be sold at a premium which will affect what the true interest cost is. He further stated that the true interest cost takes into account fees and that the average interest cost solely looks at the interest payments that are made on the bonds.

Mr. Eckstrom further asked on what basis Mr. Seezen thought the bonds would be sold at a premium. Mr. Seezen replied that is based on market condition information provided to the hospital by Zeigler Securities. Mr. Eckstrom also asked why was there such a spread between the true interest cost and the average interest cost. Mr. Huntley stated that consideration is given to the premium at which the bonds may be sold and the maturity of the bonds. He said this information is provided by the underwriter. He stated that while there may appear to be a small amount of savings involved in the transaction it makes sense because it is all part of one bond deal instead of having two. Mr. Huntley said this is really a business decision as opposed to a money decision.

- b. Issuing Authority: Jobs-Economic Development Authority
- Amount of Issue: Not Exceeding \$13,875,000 Economic Development Revenue Bonds
- Allocation Needed: -0-
- Name of Project: GREEN Midlands, LLC
- Employment Impact: provide employment for approximately 30 people within 24 months when the project is placed in full operation
- Project Description: (i) purchasing, constructing, renovating and equipping of a facility located at 7820 Broad River Road, Irmo, and (ii) pay certain costs of issuance of the bonds
- Note: *private sale or underwriting*
- Bond Counsel: Kathleen C. McKinney, Haynsworth Sinkler Boyd, P. A.
(Exhibit 8)

Mr. Eckstrom asked why the cost of issuance was high for this item. Kimberly Witherspoon, bond counsel, stated that the financial advisor bases the costs on the complexity of the deal and their expectations at the time the packages are submitted to the Authority. Mr. Eckstrom asked why the transaction would be complex. Ms. Witherspoon said the transaction is complex because it will be a limited offering and that there are a number of parties involved in the transaction.

Minutes of State Fiscal Accountability Authority
November 7, 2016 – Page 10

- c. Issuing Authority: Jobs-Economic Development Authority
Amount of Issue: Not Exceeding \$42,500,000 First Mortgage Health Care Facilities Revenue Refunding Bonds (\$35,670,000 refunding involved)
Allocation Needed: -0-
Name of Project: The Lutheran Homes of South Carolina, Inc.
Employment Impact: maintain permanent employment (both direct and indirect) for approximately 1,179
Project Description: (i) refund the \$43,550,000 South Carolina Jobs-Economic Development Authority First Mortgage Health Care Facilities Refunding and Revenue Bonds (The Lutheran Homes of South Carolina, Inc.) Series 2007 currently outstanding in the principal amounts of \$35,670,000, and (ii) pay costs of issuance of the bonds.
Note: *private sale or underwriting*
Bond Counsel: Kathleen C. McKinney, Haynsworth Sinkler Boyd, P. A.
(Exhibit 9)
- d. Issuing Authority: State Housing Finance and Development Authority
Amount of Issue: Increase in Aggregate Principal Amount by \$1,250,000 Multifamily Housing Governmental Note (previously approved \$29,000,000 on 6/22/16)
Allocation Needed: \$1,250,000 (will use carryforward)
Name of Project: Waters at St. James Apartments
Employment Impact: n/a
Project Description: acquisition, construction and equipping of a 336-unit apartment development to be located in the City of Goose Creek, Berkeley County
Bond Counsel: Ray E. Jones, Parker Poe Adams and Bernstein LLP
(Exhibit 10)

Mr. Eckstrom inquired about the high fees associated with the Waters at James Apartments project. Ray Jones, bond counsel, noted that this transaction involves extremely sophisticated borrowers. He said this is a Freddie Mac forward tax-exempt loan program. He stated that there are five to six law firms and lenders that are involved in the transaction, all of whom charge fees, and that there are fees that the State Housing Authority charges. He said the deal was approved at \$29 million in June and closed at \$29 million in July. He said they are back asking for additional "allocation" because construction costs were higher than anticipated. He said from a fee standpoint a sophisticated borrower is making an extremely educated decision concerning the fees in this case. Mr. Eckstrom also asked why the placement fee is as high as it is. Mr. Jones said that it is a market based placement fee and not a fee set by him.

Mr. Loftis said that it has taken four years but the fees are now being seen. He stated that there is no downward pressure on the fees and no one is checking the costs. He said the State as the issuer should do so. He said the State's fees have been lowered and have come in line with other States. He stated, however, that JEDA's fees are off the chart. He commented the fees are outrageous and they should be illegal.

Mr. Eckstrom asked in further discussion how JEDA fees are set. Mr. Huntley stated JEDA's fees are based on a sliding scale which are some of the lowest fees nationally. He said for the first \$10 million the fee is 12.5 basis points; from \$10 million to \$50 million the fee is 8 basis points; and from \$50 million to \$100 million the fee is 4 basis points. [Secretary's Note: For issue over \$100 million the fee is 2 basis points.]

Mr. Eckstrom also asked about the cost assessed against the Waters at St. James Apartments. Richard Hutto with the State Housing Finance and Development Authority stated that the fees pay for the ongoing cost of running the housing program and that the cost has not changed in over 20 years. Mr. Eckstrom asked if it was a flat fee to which Mr. Hutto responded that it was a flat fee of .0075% of the issue.

- e. Issuing Authority: State Housing Finance and Development Authority
- Amount of Issue: Not Exceeding \$110,000,000 Mortgage Revenue Bonds
- Allocation Needed: -0-
- Name of Project: Mortgage Revenue Bonds, Series 2017A
- Employment Impact: n/a
- Project Description: Mortgage Revenue Bonds, Series 2017A
- Bond Counsel: Rion D. Foley, McNair Law Firm, P.A.
- (Exhibit 11)

Mr. Eckstrom asked about the fees for the Mortgage Revenue Bonds issue. Mr. Hutto stated that the "other fees" were associated with travel and other things involved with the offering and a contingency fee as well.

Upon a motion by Mr. Eckstrom, seconded by Senator Leatherman, the Authority adopted the resolutions approving the referenced proposals to issue revenue bonds. Governor Haley, Mr. Eckstrom, and Senator Leatherman voted for the motion. Mr. Loftis voted against the motion. Mr. White abstained from voting on the motion.

Department of Commerce: Acquisition, Construction, Real Property Exchange, and Settlements Related to Implementation of the Navy Base Intermodal Facility (R#1)

BACKGROUND:

Palmetto Railways is undertaking the implementation of an equal dual access intermodal container transfer facility now known as the Navy Base Intermodal Facility (“NBIF”) and expects the NBIF to be operational no later than year-end 2018. The NBIF is a very large and complex project. Currently pending are real property acquisitions and two settlements. All obligations involved will be undertaken exclusively with resources available to Palmetto Railways and **will not impact the State’s general fund**. Palmetto Railways will acquire all properties at or below fair market value and will initiate condemnation only when necessary for properties needed for use by the NBIF. Palmetto Railways will also continue to take steps to protect the State from environmental liability associated with properties it has acquired or will acquire by securing non-responsible party VCCs.

Palmetto Railways seeks to take title to a 69.963 acre tract owned by Clemson (“Tract 11”) (depicted in YELLOW on *Exhibit A*) that was previously subject to a “friendly condemnation” and is the primary tract needed for implementation of the NBIF. Palmetto Railways has had possession of Tract 11 since 2013 pursuant to a Consent of Possession (*Exhibit B*) approved by the Executive Director of the former Budget and Control Board (*Exhibit C*). Palmetto Railways now seeks to accept title to Tract 11 in conjunction with a Consent Settlement Agreement with Clemson (*Exhibit D*)¹ related to the condemnation.

Palmetto Railways must acquire 11 separate parcels comprising 12.5 acres (depicted in LIME GREEN on *Exhibit A*) with a total estimated FMV of \$14.88 million via purchase or condemnation in order to implement southern access to the NBIF.²

Palmetto Railways already owns most of the properties needed for northern access to the NBIF, but will or may need to acquire by purchase (not condemnation) two remaining properties (depicted in MINT GREEN on *Exhibit A*) that are impacted by the NBIF. The first property is owned by Low Country Orphan Relief (“LCOR”) and is appraised at \$956,000 (See *Exhibit E*). LCOR has so far not entertained any offer to purchase and relocate, but Palmetto Railways seeks

¹ The Clemson Board approved the Consent Settlement Agreement on August 22, 2016.

² The cost and acreage for each individual parcel has been provided to SFAA and DOA staff.

approval to acquire the property if acquisition becomes necessary. The second property is a residential property known as Tarpley House and is appraised at \$440,000 (See *Exhibit F*). Palmetto Railways has no plans to use either of these properties for state operations and will, subject to requisite state approval, market each property for sale or lease for appropriate purposes after acquisition.

In 2011, Palmetto Railways condemned a small portion of property ("Tract 18") owned by the North Charleston Sewer District ("NCSD") and eventually had to condemn the entire Tract 18 that includes an existing pump station. To settle the condemnation and compensate NCSD for the loss of its pump station, Palmetto Railways proposes to replace the condemned pump station with a new pump station constructed by Palmetto Railways on a buffer parcel of equivalent acreage (.64 acre) as depicted on *Exhibit G*. Palmetto Railways is undertaking the construction of the pump station in order to control costs and because of the critical path timelines for NBIF. Tract 18 is zoned for industrial use with an estimated value of \$250,000/acre. The new pump station will be constructed on property zoned for multi-family residential use with an estimated value of approximately \$46,000/acre.³ Including the underlying land, the new pump station is conservatively estimated to cost \$8 million.⁴ The exchange of Tract 18 and the equivalent parcel with a new pump station will be made pursuant to a Transfer and Settlement Agreement that will provide that Palmetto Railways will have no liability for the new pump station, its design or construction after transfer to the NCSD.⁵

With regard to all proposed transactions, Palmetto Railways may need to grant easements or rights-of-way for utilities or to provide access.

Mr. Eckstrom asked with regard to the two parcels needed for the northern access why acquire the property only to sell it. Robert Hitt, Secretary of the Department of Commerce, said they have offered to buy the property belonging to the Low Country Orphan Relief because the entity does not believe that the operation of a railway in the area is compatible with their

³ Values of Tract 18 and the parcel to be transferred to NCSD are based on recent appraisals of comparable property on the former Navy Base, but the estimated fair market values will be confirmed with appraisals of the specific properties involved.

⁴ On October 25, 2016, JBRC approved construction of the pump station project based on a preliminary estimate of \$6.6 million.

⁵ A copy of a draft of the Transfer and Settlement Agreement has been provided to staff of SFAA and DOA for review.

mission. He said if the entity chooses not to be bought out then it can remain. He said they are seeking the authorization to buy. Mr. Hitt stated that the other case is a private individual living in a house that is very near to the new tract and it may not be conducive to live there. He said they would sell the property because they have no use for it in the operation of the railroad.

Mr. Eckstrom asked in further discussion why the Department was asking the Authority staff to be delegated the responsibility to grant easements on behalf of the Authority. He noted that that would be a break from the Authority's process in that staff would make recommendations and the Authority would approve those recommendations in a subsequent meeting. Mr. Hitt said they are now reaching a critical path on the project which means being able to make decisions and get approvals in a timely manner would save a lot of money and time. Mr. Eckstrom commented that he is uneasy with granting the delegation. He commented that in the past easements have been requested for a nominal sum and after he got involved fair market value was paid by the utility requesting the easement. He noted the Bull Street property as an example. Mr. Eckstrom stated that he trusts the staff, but that they may not view the matter in the same manner the Authority might view it.

Mr. Eckstrom said if the authority to grant easements is delegated to the staff they must adhere to the State's policy of granting easements. He further stated that he would like to have staff contact the Authority members to let them know an easement is about to be granted. Mr. Loftis said his experience has been that when an unusual delegation is given staff has called to inform them. He said he feels comfortable with the delegation.

Upon a motion by Senator Leatherman, seconded by Rep. White, the Authority

- A. Pursuant to Chapter 47 of Title 2 of the Code of Laws of South Carolina 1976, as amended (the "Code"), approved both Phase I and II of a Permanent Improvement Project for acquisition of title to the Clemson property (Tract 11) and, pursuant to Section 11-1-45 of the Code, the related Clemson Consent Settlement Agreement; provided, however, that the liability of Commerce under Section 1.c. of that Settlement Agreement is limited to any liability Commerce may incur in the eminent domain proceedings captioned *Project: Intermodal Container Transfer Facility (Tract 11), South Carolina Department of Commerce, Condemnor v. Clemson University, Landowner, and Charleston County School District, Other Condemnee* and bearing the civil action number 2010-CP-10-10495; and provided further that responsibility for all payments required pursuant to the settlement by Commerce shall be paid from resources available to Palmetto Railways and will not impact the State's general fund.

- B. Pursuant to Chapter 47 of Title 2 of the Code, approved Phase I and II of a Permanent Improvement Project for acquisition of 11 specific properties, otherwise referenced herein, for fair market value not to exceed the sum of \$14.88 million.
- C. Pursuant to Chapter 47 of Title 2 of the Code, approved Phase I and II of a Permanent Improvement Project for acquisition of LCOR's property for not more than fair market value, if Palmetto Railways decides to proceed.
- D. Pursuant to Chapter 47 of Title 2 of the Code, approved Phase I and II of a Permanent Improvement Project for acquisition of the Tarpley House for not more than fair market value.
- E. Pursuant to Chapter 47 of Title 2 of the Code, approved Phase I and II of a Permanent Improvement Project not to exceed \$8 million for construction of a new pump station to replace the existing pump station Palmetto Railways has condemned and, after completion of construction, pursuant to Section 1-11-65 and Chapter 47 of Title 2 of the Code, transfer of the new pump station to the NCSD, such transfer to be in accordance with a Transfer and Settlement Agreement, subject to SFAA staff review and approval, pursuant to Section 11-1-45, of that Transfer and Settlement Agreement to confirm that the Agreement provides that liability of Palmetto Railways terminates upon transfer of the pump station.
- F. Delegated to SFAA staff authorization to approve the granting of easements and rights-of-way on property acquired, pursuant to the requests herein, by Palmetto Railways, such delegation subject to both existing policy and prior review and recommendation by the Department of Administration, Division of General Services.

Information relating to this matter has been retained in these files and is identified as Exhibit 12.

State Fiscal Accountability Authority: Reimbursement Resolution for Certain Expenditures from the Issuance and Sale Of Not Exceeding \$45,000,000 Lease Revenue Bonds (Department Of Mental Health Project), Series 2016 of the South Carolina State Fiscal Accountability Authority and Other Matters Relating Thereto (Regular Session Item 2)

In order to commence work in connection with its Sexually Violent Predator treatment facility to ensure the project is completed timely, the Department of Mental Health (the Department) intends to expend certain of its own funds, pending the issuance of Bonds, in accordance with its development agreement with Correct Care of South Carolina, LLC. In order to be reimbursed from Bond proceeds when available (anticipated to be in late January or early February 2017) the Department requested the State Fiscal Accountability Authority adopt the

Minutes of State Fiscal Accountability Authority
November 7, 2016 – Page 16

attached reimbursement resolution which is required by the Internal Revenue Code and related regulations in the event of a reimbursement from the proceeds of federally tax-exempt bonds.

Mr. Eckstrom noted that the bond issue was authorized at the Authority's last meeting. He asked why this resolution was not included at that time. Gary Pope, bond counsel, stated that typically the reimbursement resolution would have been done earlier in the process prior to when the Authority would have adopted the bond resolution. He said because of the timing of the CAFR coming out the timeline for the bond issuance was going to line up fairly well with when the proceeds would have been needed. He said they cannot issue bonds that would be sold pursuant to a "stale disclosure". He said the current version of the CAFR is for 2015 and that when the 2016 CAFR comes out it will need to be a part of the documents. He said that pushed their process out about two months and except for that they would not need a reimbursement resolution. Mr. Pope stated that not including the reimbursement resolution at the prior meeting was an oversight on his part. Mr. Eckstrom commented that he admired Mr. Pope for the admission.

Upon a motion by Mr. Loftis, seconded by Senator Leatherman, the Authority adopted a resolution declaring the intent of the State Fiscal Accountability Authority to reimburse the Department of Mental Health or allow the Department of Mental Health to reimburse itself for certain expenditures from the issuance and sale of not exceeding \$45,000,000 Lease Revenue Bonds (Department of Mental Health Project), Series 2016 of the South Carolina State Fiscal Accountability Authority and other matter relating thereto.

Information relating to this matter has been retained in these files and is identified as Exhibit 13.

Dept. of Administration, Executive Budget Office: Permanent Improvement Projects (R#3)

The Authority was asked to approve permanent improvement project establishment requests and budget revisions as requested by the Department of Administration, Executive Budget Office. All items had been reviewed favorable by the Joint Bond Review Committee. Upon a motion by Senator Leatherman, seconded by Mr. Eckstrom, the Authority approved the following permanent improvement project establishment requests and budget revisions.

Establish Project for A&E Design

- (a) Summary 3-2017: JBRC Item 1. (H15) College of Charleston
Project: 9665, McAlister Residence Hall Renovation
Included in Annual CPIP: No

CHE Recommended Approval: 10/24/16

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Other, Housing Revenue	0.00	0.00	0.00	88,980.00	88,980.00
All Sources	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>88,980.00</u>	<u>88,980.00</u>

Funding Source: \$88,980 Other, Housing Revenue, which is a self-supporting auxiliary enterprise generated primarily through the Student Housing Fee paid only by students who reside in on-campus housing. The Student Housing Fee is on a sliding scale based on the amenities, number of beds per room, and location of the residence hall or historic home.

Request: Establish project and budget for \$88,980 (Other, Housing Revenue Fund) to begin design work for renovations to McAlister Residence Hall at the College of Charleston. The 152,142 square foot building and system(s) to be renovated are 14 years old. This project will address HVAC issues and structural deficiencies, as well as, refresh the residence-hall's exterior and interior paint, flooring, furniture and plumbing fixtures. The elevator's electronic controls will also be upgraded. A concentration of the facility's HVAC units are discharging hot air into corridors requiring the constant use of large noisy centrifugal box fans during warm weather. This will be remedied by installing a new HVAC system on the roof for this section of the building. There will also be select replacement of failing individual suite HVAC units throughout the rest of the facility. Building envelope failures are allowing water intrusion. Visible damage can be seen at window openings and corrosion is suspected on the wall framing meter components. The building envelope will be repaired then waterproofed. The facility provides housing for approximately 535 co-ed underclassman students. The agency estimates that the completed project will cost approximately \$5,932,000.

Mr. Eckstrom commented that the building is fourteen years old and asked what happened to the building. Paul Patrick with the College of Charleston stated that they are dealing with a design issue. He noted that on two ends of the building and the interior courtyard there are residential units and each unit has its own HVAC system. He stated that those units

Minutes of State Fiscal Accountability Authority
November 7, 2016 – Page 18

dump out and intake air out of a semi-closed exterior corridor. He said they have found that as the hot air fills the corridor and the units draws back in the air to cool the space they are working at a level that is not conducive to their long-term life. Mr. Eckstrom asked who designed the building. Mr. Patrick said the building was designed by LS3P.

Mr. Eckstrom asked what was causing the envelope repairs to the windows. Mr. Patrick said they experienced issues with the windows in the October floods of 2014 [sic] with wind driven rain. He stated that the seals around some of the windows are failing. Mr. Eckstrom asked who built the windows. Mr. Patrick said that the windows were built by Holder (???). Mr. Eckstrom asked if they have spoken to the contractor. Mr. Patrick said they have had contact with the contractor but he did not know the status.

Mr. Eckstrom also asked how long will the building be offline. Mr. Patrick said they cannot function with the building being offline during the school year and this will be a summer project. Mr. Eckstrom further asked if the building was LEED certified. Mr. Patrick said he did not know. Mr. Eckstrom asked for Mr. Patrick to let the Authority know if the building was LEED certified.

- (b) Summary 3-2017: JBRC Item 2. (H51) Medical University of South Carolina
Project: 9835, MUSC/SCEO PEER Program Energy Performance Contract 2016
Included in Annual CPIP: No

CHE Recommended Approval: 10/24/16

<u>Source of Funding</u> <u>Detail</u>	<u>Original Budget</u> <u>Amount</u>	<u>Cumulative</u> <u>Changes Since</u> <u>Original Budget</u>	<u>Current Budget</u>	<u>Current Budget</u> <u>Adjustment</u> <u>Requested</u>	<u>Total Budget</u> <u>After Current</u> <u>Adjustment</u>
Other, E&F Operating Funds	0.00	0.00	0.00	675,000.00	675,000.00
All Sources	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>675,000.00</u>	<u>675,000.00</u>

Funding Source: \$675,000 Other, E&F Operating Funds, which are department generated funds for facilities services provided to others in the university.

Request: Establish project and budget for \$675,000 (Other, E&F Operating Funds) to begin design work for participation in the South Carolina Energy Office's PEER program. MUSC is requesting to enter into a contract for design work with AMERESCO Inc. of Charlotte NC to conduct an engineering study and perform an investment grade audit to identify potential energy savings measures in all MUSC buildings. AMERESCO was selected from a group of

Minutes of State Fiscal Accountability Authority
November 7, 2016 – Page 19

three applicants using the RFQ/RFP process in accordance with the SC Consolidated Procurement Code. The investment grade audit will identify potential energy conservation measures and the guaranteed yearly utility cost savings associated with each of those measures. Phase 2 approval will then be requested to implement the measures identified in the engineering study and investment grade audit that have a reasonable payback period from the guaranteed yearly utility cost savings. The agency reports that they do not have exact costs and the results of the study and audit will assist in determining a firm estimate to complete the project.

- (c) Summary 3-2017: JBRC Item 4. (J12) Department of Mental Health
Project: 9751, Crafts Farrow Campus Electrical Distribution System Renovations
Included in Annual CPIP: Yes – CPIP Priority 2 of 4 in FY17

CHE Recommended Approval: N/A

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Other, Capital Improvement & Maintenance Fund	0.00	0.00	0.00	54,000.00	54,000.00
All Sources	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>54,000.00</u>	<u>54,000.00</u>

Funding Source: \$54,000 Other, Capital Improvement & Maintenance Funds, which are comprised of irregular one time funds from legal settlements, operating revenue (Medicaid fee-for-service earned revenue), sale of land, and interest earned on the Deferred Maintenance Fund account.

Request: Establish project and budget for \$54,000 (Other, Capital Improvement & Maintenance Fund) to begin design work for the renovation of the Crafts Farrow Campus electrical distribution system located on Farrow Road in Northeast Columbia. The utilities on this campus serve multiple facilities including the G. Werber Bryan Psychiatric Hospital and the Morris Village Alcohol & Drug Addiction Treatment Center, as well as other SCDMH support functions. The Department of Mental Health owns and maintains the electrical substation, as well as the overhead and underground portions of the distribution system. Many of the existing components including the substation, transformers, wooden poles and the pole mounted switches are in poor condition and need to be replaced. Most of the supporting electrical distribution infrastructure is at least 40 years old. Over 4,000 feet of the underground feed cables to Morris Village and Bryan Hospital are over 40 years old, have exceeded their useful life and require replacement. The current population includes approximately 500 clients and approximately 1,000 staff. The agency estimates that the completed project will cost approximately

Minutes of State Fiscal Accountability Authority
November 7, 2016 – Page 20

\$3,600,000. (See attachment 1 for additional annual operating cost savings.)

(d) Summary 3-2017: JBRC Item Separate. (P28) Department of Parks, Recreation & Tourism

Project: 9760, Edisto Beach State Park – Hurricane Matthew Recovery
Included in Annual CPIP: No

CHE Recommended Approval: N/A

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Other, State Park Revenue	0.00	0.00	0.00	15,000.00	15,000.00
All Sources	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>15,000.00</u>	<u>15,000.00</u>

Funding Source: \$15,000 Other, State Park Revenue.

Request: Establish budget and project for \$15,000 (State Park Revenue) to begin design work for the reconstruction and repair efforts needed for the beachfront campground at Edisto Beach State Park as a result of Hurricane Matthew. Hurricane Matthew caused severe damage to the beach front campground, roads, the septic system and comfort stations at the park. Due to the storm surge floodwaters resting in the beach front campground, the entire utility infrastructure needs to be replaced, which includes electric and plumbing to 64 campsites and replacement of two septic tank systems. In addition, all campsite fixtures were lost so there will be a replacement cost for 64 picnic tables, fire rings/grills, etc. The roads were heavily damaged and need replacement surface material. The two comfort stations were damaged and require repairs to include painting, roofing, fixtures and walkways. The comfort stations were constructed in 1973 but were renovated within the last 5 years. The park receives 90,000 visitors at the beach front campground each year. The agency reports that the completed project will cost approximately \$1,000,000 and no additional annual operating costs will result from the project.

(e) Summary 3-2017: JBRC Item Separate. (P28) Department of Parks, Recreation & Tourism

Project: 9761, Hunting Island State Park – Hurricane Matthew Recovery
Included in Annual CPIP: No

CHE Recommended Approval: N/A

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>

Minutes of State Fiscal Accountability Authority
November 7, 2016 – Page 21

Other, State Park Revenue	0.00	0.00	0.00	37,500.00	37,500.00
All Sources	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>37,500.00</u>	<u>37,500.00</u>

Funding Source: \$37,500 Other, State Park Revenue.

Request: Establish budget and project for \$37,500 (State Park Revenue) to begin design work for reconstruction and repair efforts needed for the beachfront campground and day use areas at Hunting Island State Park as a result of Hurricane Matthew. Hurricane Matthew brought a documented nine-foot tidal surge which resulted in significant erosion and flooding. Due to these events, the entire beachfront campground needs utility replacement for 89 campsites and replacement of campsite fixtures. Two campground comfort stations are now on the edge of the high tide mark that will need to be demolished and rebuilt. In addition, due to salt-water damage, four sewer lift stations will have to be replaced. In the day use area, erosion caused permanent damage to two restrooms that will have to be rebuilt and flooding destroyed three sewer lift stations. There were also six beach access walkways in the campground and day use areas that were destroyed that will need to be built to provide safe access to the beach for visitors. The park receives 135,000 visitors at the beach front campground each year. The comfort stations were originally constructed in 1973 but were renovated within the last 5 years. The agency reports that the completed project will cost approximately \$2,500,000 and no additional annual operating costs will result from the project.

Mr. Eckstrom commented that Hunting Island is a park that has historically been on the verge of washing away. He asked if PRT has the ability to move things back away from the immediate waterline. Duane Parrish, PRT Director, stated that they do and that is some of what the process will be.

Governor Haley asked Mr. Parrish how many parks were damaged and when they might be reopened. Mr. Parrish stated that 18 out of 47 state parks had some type of damage as a result of Hurricane Matthew. He said that within a week they had all but six of the parks reopened and those six parks were primarily on the coast. He noted that all of the parks with exception of Edisto and Hunting Island were open. Governor Haley asked how much revenue is being lost. Mr. Parrish said for this fiscal year there will be a little over \$4 million in lost revenue. Governor Haley commented that Mr. Parrish had made a lot of progress in getting the parks to be self-sustaining and that every day the parks cannot be opened revenue is lost. She stated that the parks are major tourism, particularly for people in state. Mr. Parrish noted that they were 96%

Minutes of State Fiscal Accountability Authority
November 7, 2016 – Page 22

self-sufficient last year and were close to being self-sufficient this year.

Establish Construction Budget

- (f) Summary 3-2017: JBRC Item Separate. (H27) USC Columbia
Project: 6114, Football Operations Facility Construction
Included in Annual CPIP: Yes – CPIP Priority 3 of 8 in FY17

CHE Recommended Approval: 10/24/16

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Revenue Bonds, Athletic Facilities	0.00	0.00	0.00	44,000,000.00	44,000,000.00
Athletic Operating Funds	1,000,000.00	0.00	1,000,000.00	(1,000,000.00)	0.00
Other, Private Gift Funds	0.00	0.00	0.00	6,000,000.00	6,000,000.00
All Sources	<u>1,000,000.00</u>	<u>0.00</u>	<u>1,000,000.00</u>	<u>49,000,000.00</u>	<u>50,000,000.00</u>

Funding Source: \$44,000,000 Athletic Facilities Revenue Bonds, which are issued to raise money to provide permanent financing for the cost of the construction, enlargement of, and improvements to Williams-Brice Stadium and other athletic facilities. \$6,000,000 Other, Private Gift Funds which are donations/gifts to the Athletics Department.

Request: Increase budget to \$50,000,000 (add \$49,000,000 Athletic Facilities Revenue Bonds and Other Private Gift Funds) to begin final design and construction of a new Football Operations Facility to be located at the west end of Gamecock Park adjacent to the existing indoor football practice facility. This project was established in January 2016 for Phase I, which is now complete. The project will be certified for energy savings using the Green Globes system. The project will be certified at the level of two Green Globes and will have a 30 year life cycle projected cost savings of \$2,173,500. The proposed building will be approximately 105,000 gross square feet and will consolidate all training, coaching, operational and administrative activities associated with the football program. The building will contain public spaces, players lounges, locker rooms, team meeting rooms, a weight room, a nutrition area, training rooms equipped for physical therapy, an equipment storage area and administrative/coaches offices. Site work, utilities, parking and associated landscaping and hardscaping will also be included as part of the project. Consolidation will enhance operational efficiency and eliminate the need for student athletes to cross Bluff Road going from locker rooms at Williams-Brice

Minutes of State Fiscal Accountability Authority
November 7, 2016 – Page 23

Stadium to the practice fields. This facility will be an important component of the football recruiting process. The agency reports the total projected cost of this project is \$50,000,000 with additional operating costs of \$624,177 in year one, \$569,177 in year two, and \$569,177 in year three. The agency also reports the projects date for execution of the construction contract is May 2017 and for completion of construction is December 2018. (See attachment 2 for additional annual operating costs.)

Governor Haley noted that USC is number 17 in the country with regard to revenues coming in to the athletics program. She asked where is the money going for there to be so little cash available. Rick Kelly with USC stated that there are two different situations that are being talked about. He said that the \$6 million is from private gifts that have been given to the University and the athletic department for a specific program inside of athletics. He noted that the \$6 million is coming from that money. He said on the other side is the operating budget which pays for all of the expenses the athletic department has. He said that money is raised by the contracts, ticket sales, and other revenue that athletics generates. He said there is a reserve fund of about \$20 million that deals with bond resolution requirements and annual operating cash flow issues. Mr. Kelly stated that they have been out raising money but it is a matter of how fast that money comes in. He noted that there are \$13 million in pledges that are coming behind the \$6 million and that they believe there will be \$20 million available to help support this project. Governor Haley stated that other schools are pushed to give more toward projects. She said that to have so little given toward the project shows that the universities need to be more invested.

Mr. Eckstrom noted that the agenda item indicates that the project is “priority 3 of 8” and asked Mr. Kelly where do priority items 1 and 2 stand. Mr. Kelly said the projects are academic projects and they both have been done.

- (g) Summary 3-2017: JBRC Item 7. (H59) Orangeburg Calhoun Technical College
Project: 6106, OCtech Health Sciences and Nursing Building
Included in Annual CPIP: Yes – CPIP Priority 2 of 2 in FY18

CHE Recommended Approval: 10/24/16

<u>Source of Funding</u> <u>Detail</u>	<u>Original Budget</u> <u>Amount</u>	<u>Cumulative</u> <u>Changes Since</u> <u>Original Budget</u>	<u>Current Budget</u>	<u>Current Budget</u> <u>Adjustment</u> <u>Requested</u>	<u>Total Budget</u> <u>After Current</u> <u>Adjustment</u>
Capital Reserve Fund, FY15-16	0.00	0.00	0.00	5,000,000.00	5,000,000.00

Minutes of State Fiscal Accountability Authority
November 7, 2016 – Page 24

Appropriated State, Proviso 118.16 – FY14-15	1,000,000.00	0.00	1,000,000.00	0.00	1,000,000.00
Federal, EDA Grant	0.00	0.00	0.00	1,971,110.00	1,971,110.00
Other, Orangeburg County	0.00	0.00	0.00	500,000.00	500,000.00
Other, Calhoun County	0.00	0.00	0.00	32,000.00	32,000.00
Other, College Funds	0.00	0.00	0.00	3,517,010.00	3,517,010.00
Other, Private Donations	0.00	0.00	0.00	325,000.00	325,000.00
All Sources	<u>1,000,000.00</u>	<u>0.00</u>	<u>1,000,000.00</u>	<u>11,345,120.00</u>	<u>12,345,120.00</u>

Funding Source: \$1,000,000 Appropriated State FY14-15 (Proviso 118.16, nonrecurring funds). \$5,000,000 FY15-16 Capital Reserve Fund. \$1,971,110 Federal, EDA Grant. \$32,000 Other, Calhoun County, which are funds provided through an appropriation. \$500,000 Other, Orangeburg County, which are funds provided from their Capital Project Sales tax fund. \$3,517,010 Other, College Funds, which are funds from their capital projects account comprised mostly of excess operating revenues (mostly excess tuition revenues). \$325,000 Other, Private Donations from the OCtech Foundation.

Request: Increase budget to \$12,345,120 (add \$11,345,120 Appropriated State, Capital Reserve, Federal, Other, Orangeburg & Calhoun Counties, Local and Private Donation Funds) to begin construction of a new health sciences and nursing building to be constructed on the campus of OCtech. This project was established in March 2015 for Phase I, which is now complete. The college has a need for additional classroom and laboratory space in the health sciences and nursing areas. The current nursing and health science facility was constructed in the 1980s and lacks adequate space to operate current programs or add new programs. The college has been forced to use space in nearby industrial bays for its Physical Therapy Assistant, EMT and Patient Care Technician programs. The Advanced Manufacturing programs need this space back. Additional space would also allow the college to consider additional programs, such as occupational therapy, pharmacy tech, electronic health records, and others. The college has evaluated current facilities and believes new construction is the best route for obtaining this desired space. The college has worked with an architect in Phase I to obtain a schematic design and cost estimates. Specifically the proposed design includes 3 large tiered classrooms, an 8 station nursing simulation lab, a 29 bed nursing skills lab, an instructional laboratory/assessment center, faculty offices, and student study space. The proposed design is a 32,669 square foot facility that will primarily serve the nursing programs (ADN and PN) but some labs, such as the simulation lab,

Minutes of State Fiscal Accountability Authority
November 7, 2016 – Page 25

will be used by all health science programs as well. The large tiered lecture rooms will also be available to other programs requiring large capacity lecture rooms. The facility is expected to have 15 faculty offices, but classrooms and labs could serve all nursing and health science programs which is 27 full-time faculty. Three large classrooms could serve a minimum of 200+ students daily. In addition, a new simulation lab could serve 300-400 students in multiple programs. Faculty located in this building will advise approximately 1,100 students, who are either enrolled in health related programs or preparing for entrance into these programs. The agency reports the total projected cost of this project is \$12,345,120 with additional operating costs of \$104,000 in year one, \$107,000 in year two, and \$110,000 in year three. The agency also reports the projects date for execution of the construction contract is July 2017 and for completion of construction is October 2018. (See attachment 3 for additional annual operating costs.)

Mr. Eckstrom noted that the agenda item indicates that the project is “priority 2 of 2” and asked where does priority item 1 stand. Dr. Walter Tobin, Orangeburg-Calhoun Tech President, stated that they are in the process of doing the project. Mr. Eckstrom asked how long the project would take to be completed and was told it would take 9 to 12 months.

- (h) Summary 3-2017: JBRC Item 8. (E24) Office of the Adjutant General
Project: 9793, Armory Revitalization 2016-2017
Included in Annual CPIP: Yes – CPIP Priority 1 of 3 in FY17

CHE Recommended Approval: N/A

<u>Source of Funding</u> <u>Detail</u>	<u>Original Budget</u> <u>Amount</u>	<u>Cumulative</u> <u>Changes Since</u> <u>Original Budget</u>	<u>Current Budget</u>	<u>Current Budget</u> <u>Adjustment</u> <u>Requested</u>	<u>Total Budget</u> <u>After Current</u> <u>Adjustment</u>
Capital Reserve Fund, FY15-16	0.00	0.00	0.00	5,000,000.00	5,000,000.00
Federal	0.00	0.00	0.00	5,500,000.00	5,500,000.00
All Sources	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>10,500,000.00</u>	<u>10,500,000.00</u>

Funding Source: \$5,000,000 Capital Reserve Fund. \$5,500,000 Federal, which are Construction and Facilities Management Office’s Master Cooperative Agreement funds.

Request: Establish budget and project for \$10,500,000 (Capital Reserve and Federal Funds) to begin the design and repairs/replacements at ten (10) Readiness Centers (aka; Armories). This project request is being requested at Phase II because the funding is legislatively authorized. These centers have been identified as being in the worst condition of disrepair of the 63 Readiness

Minutes of State Fiscal Accountability Authority
November 7, 2016 – Page 26

Centers on the CPIP. Only 10 of these were funded fully or partially. Wellford was omitted and Easley was reduced. Each armory is an average of 65,000 square feet and over 50 years old. Each of these facilities have varying issues that need to be repaired or renovated, but the major cost items include; 1) Roof replacement or repairs. 2) HVAC systems maintenance and/or repairs. 3) Replacing existing exterior windows, doors and storefront systems. 4) Interior renovations of latrines, kitchen, lighting, fire suppression, carpeting/flooring, painting of interior & exterior walls. 5) Electrical system upgrades. 6) Site improvements and repairs of parking lots, stormwater systems, security fencing, security lighting. 7) Foundation, structure and exterior wall repairs. In most cases, items require replacement since they have exceeded their service life. The agency reports the total projected cost of this project is \$10,500,000 and no additional annual operating costs will result from the project. The agency also reports the projected date for execution of the construction contract is May 2017 and for completion of construction is May 2018.

Final Land Acquisition

- (i) Summary 3-2017: JBRC Item 12. (H59) Florence-Darlington Technical College
Project: 6122, Acquisition of property
(Cosmetology Building & Land in Darlington & Florence County)
Included in Annual CPIP: Yes – CPIP Priority 1 of 1 in FY17

CHE Recommended Approval: 09/01/16

<u>Source of Funding</u> <u>Detail</u>	<u>Original Budget</u> <u>Amount</u>	<u>Cumulative</u> <u>Changes Since</u> <u>Original Budget</u>	<u>Current Budget</u>	<u>Current Budget</u> <u>Adjustment</u> <u>Requested</u>	<u>Total Budget</u> <u>After Current</u> <u>Adjustment</u>
Other, College Funds	20,000.00	0.00	20,000.00	1,852,500.00	1,872,500.00
All Sources	<u>20,000.00</u>	<u>0.00</u>	<u>20,000.00</u>	<u>1,852,500.00</u>	<u>1,872,500.00</u>

Funding Source: \$1,872,500 Other, College Funds, which are funds coming from the College's facilities operational budget.

Request: Increase budget to \$1,872,500 (add \$1,852,500 Other, College Funds) to acquire a building currently leased for the Cosmetology program, along with 50.74 acres of vacant land adjacent to Florence-Darlington Technical College. The project was established in March 2016 for Phase I, which is now complete. The leased 11,600 square foot building and 44.38 acres of vacant land is adjacent to two other separated pieces of land, comprised of 16 acres and 1.7 acres, currently owned by the College. This acquisition would place the entire 62 acre tract under ownership of the college. The acquisition also includes a 6.36 acre tract near the college's main campus. The college has grown from 3,956 to 6,215 students in the last 7 years. From 2007 to 2014 it was the fastest growing technical college in the state system, growing by 57%. Facilities on

the existing campuses are limiting the growth in many programs. The main campus is essentially landlocked, limiting options for new buildings and parking areas. This property will allow relocation of the Continuing Education Healthcare programs from the downtown Florence Health Science Campus. Thus, opening up space there for the growth of the academic Health Science programs, which have student waiting lists. The acreage available in this acquisition will allow the college the opportunity to add additional buildings to meet academic and instructional expansion needs in the future. The property is being offered to the college by the Florence-Darlington Technical College Educational Foundation for \$1,850,000 and the appraised value of the property is \$1,932,000. The agency reports the total projected cost of this project is \$1,872,500 and no additional annual operating costs will result from the project. The agency also reports the projects date for completion is January 2017.

Mr. Loftis asked if the different programs listed in the agenda item are all Florence-Darlington Tech programs. Jack Roach with the college said that those are all Florence-Darlington Tech programs. He noted that the continuing education programs are non-credit programs and the academic programs are credit programs.

Information relating to this matter has been retained in these files and is identified as Exhibit 14.

Department of Administration, Real Property Services: Medical University of South Carolina Parking Lease - 99 WestEdge in Charleston (Regular Session Item #4)

The Medical University of South Carolina (MUSC) requested approval to lease 322 parking spaces from the City of Charleston to be located within the 99 WestEdge parking garage. The purpose of the lease is to replace parking spaces that will be lost due to the WestEdge Development Project taking place in downtown Charleston.

A solicitation was conducted for parking spaces either in close proximity to the MUSC campus or on the MUSC transit system, and the selected location was the only response received.

The term of the lease will be five (5) years beginning upon the date of substantial completion of the parking garage (estimated to be March 1, 2017) at a rate of \$125.00 per space. Thereafter, the rate per space shall increase annually by three (3) percent. MUSC will not be responsible for any operating costs. As such, the total amount the University will pay over the

Minutes of State Fiscal Accountability Authority
November 7, 2016 – Page 28

term is \$2,564,304.96 as shown in the chart below:

Period	Rate/space	# of spaces	Total
Year 1	\$125.00	322	\$483,000.00
Year 2	\$128.75	322	\$497,490.00
Year 3	\$132.61	322	\$512,405.04
Year 4	\$136.59	322	\$527,783.76
Year 5	\$140.69	322	\$543,626.16
TOTAL			\$2,564,304.96

MUSC will also have the option to add up to 100 additional spaces during the term should they become available and based on the University's need, subject to any required governmental approvals. These spaces would be charged at the rate in effect at the time.

The following chart represents comparable lease rates of similar space near the MUSC Campus:

Location	Rate/Space
106 Coming Street	\$285.00
158 Meeting Street	\$168.00
George Street	\$250.00

Lease payments will be funded from parking revenues through fees charged to employees, students and visitors. MUSC has indicated that no student fee increase will be associated with this lease, and there are adequate funds for the lease according to a Budget Approval Form submitted by MUSC. The lease was approved by the MUSC Board of Trustees on August 12, 2016, by the Commission on Higher Education on October 24, 2016, and by JBRC on October 25, 2016.

Upon a motion by Senator Leatherman, seconded by Rep. White, the Authority approved, as recommended by the Department of Administration, Real Property Services, approve the proposed parking lease for the Medical University of South Carolina at 99 WestEdge in Charleston.

Information relating to this matter has been retained in these files and is identified as Exhibit 15.

Department of Administration, Real Property Services: Office of the State Auditor - Lease at 1401 Main Street in Columbia (Regular Session Item #5)

The Office of the State Auditor requested approval to continue leasing space located at 1401 Main Street in Columbia from MS Joint Venture. The agency currently leases 10,745 SF of office space and 1,000 SF of storage space and wishes to increase its square footage to 12,200 SF of office space and 1,000 SF of storage space due to an increase in staff and to accommodate a training room. A total of fifty-six (56) employees will utilize the office space, and the training space will accommodate up to fifteen (15) people at a time.

A solicitation was conducted and eight responsive proposals were received; however, one location was eliminated based on the building condition during the site visit. While the selected location does not represent the lowest bid, it was the lowest bid for space in the downtown area. After considering moving costs, the selected location is \$319,676 more than the lowest bid over the ten (10) year term and \$430,065 less than the highest bid. The Office of the State Auditor has provided the attached justification for the site selection. In occupying this space, the agency will be below the state's space standards of 210 RSF/person, with an average of 184 RSF/person.

The term of the lease will be ten (10) years beginning January 1, 2017, and ending on December 31, 2026. Rent for the office space for the first year of the term will be at a rate of \$16.75/SF, \$9.48/SF allocated to rental space and \$7.27/SF to operating costs, and rent for the storage space for the first year of the term is \$9.00/SF. Rent will increase annually as follows:

<u>TERM</u>	<u>ANNUAL RENT</u> <u>ROUNDED</u>	<u>MONTHLY RENT</u> <u>ROUNDED</u>	<u>RENT PER</u> <u>SF</u> <u>ROUNDED</u>
YEAR 1 - Office	\$ 204,350.00	\$ 17,029.17	\$ 16.75
YEAR 1 - Storage	\$ 9,000.00	\$ 750.00	\$ 9.00
YEAR 2 - Office	\$ 208,437.00	\$ 17,369.75	\$ 17.09
YEAR 2 - Storage	\$ 9,000.00	\$ 750.00	\$ 9.00
YEAR 3 - Office	\$ 212,606.00	\$ 17,717.17	\$ 17.43

Minutes of State Fiscal Accountability Authority
November 7, 2016 – Page 30

YEAR 3 - Storage	\$ 9,000.00	\$ 750.00	\$ 9.00
YEAR 4 - Office	\$ 216,858.00	\$ 18,071.50	\$ 17.78
YEAR 4 - Storage	\$ 9,500.00	\$ 791.67	\$ 9.50
YEAR 5 - Office	\$ 221,195.00	\$ 18,432.92	\$ 18.13
YEAR 5 - Storage	\$ 9,500.00	\$ 791.67	\$ 9.50
YEAR 6 - Office	\$ 225,619.00	\$ 18,801.58	\$ 18.49
YEAR 6 - Storage	\$ 9,500.00	\$ 791.67	\$ 9.50
YEAR 7 - Office	\$ 230,131.00	\$ 19,177.58	\$ 18.86
YEAR 7 - Storage	\$ 9,500.00	\$ 791.67	\$ 9.50
YEAR 8 - Office	\$ 234,734.00	\$ 19,561.17	\$ 19.24
YEAR 8 - Storage	\$ 10,000.00	\$ 833.33	\$ 10.00
YEAR 9 - Office	\$ 239,429.00	\$ 19,952.42	\$ 19.63
YEAR 9 - Storage	\$ 10,000.00	\$ 833.33	\$ 10.00
YEAR 10 - Office	\$ 244,217.00	\$ 20,351.42	\$ 20.02
YEAR 10 - Storage	\$ 10,000.00	\$ 833.33	\$ 10.00
TOTAL	\$2,332,576.00		

The agency will be responsible for its pro rata share of any increases in building operating costs over the first year with a cap of three (3) percent. The maximum potential amount the agency could pay over the term in additional operating costs is \$129,837. The Landlord will provide up to 56 parking spaces in the adjacent garage subsidized by fifty (50) percent. The remaining fifty (50) percent of the cost for parking will be paid by employees directly to the Landlord. The current parking rate is \$40/month. Any increases in the parking rate will continue to be divided 50/50 between the Landlord and the employee. The Landlord shall also provide \$100,000 for upfitting costs.

The following chart represents comparable lease rates of similar space in the downtown Columbia area:

Location	Tenant	Rent Rate/SF
1400 Pickens Street	Vacant	\$18.00

Minutes of State Fiscal Accountability Authority
November 7, 2016 – Page 31

1813 Main Street	Vacant	\$18.34
1333 Main Street	Workers Compensation Commission	\$16.25
1201 Main Street	Clemson University	\$17.74

Above rates are subject to base rent and operating expense escalations over the term.

Additionally, the Colliers 2016 Q2 Research & Forecast Report indicates a current average asking rate of \$23.48/SF in downtown Columbia and also notes that rates are projected to increase.

There are adequate funds for the lease according to a Budget Approval Form submitted by the Office of the State Auditor. The lease was approved by JBRC on September 13, 2016.

Mr. Eckstrom asked if a cap on the parking rate has been considered in the lease. Ashlie Lancaster with the Department of Administration stated that there is no cap on the parking. She said that the landlord has agreed to provide 50% of that cost and the other 50% is paid by the employee. She said there is no additional expense for the agency but that parking could go up for the employees. Mr. Eckstrom asked what the potential is for including a provision that parking will not increase by more than a certain percentage per year. Ms. Lancaster stated that they could make that request of the landlord. She said they will go back and try to negotiate that with the landlord, but that the problem is that the landlord does not own the garages that are associated with the parking. She said the parking garages are city-owned and the landlord may be subject to increases as well.

Upon a motion by Rep. White, seconded by Senator Leatherman, the Authority approved the proposed lease for the Office of the State Auditor at 1401 Main Street in Columbia.

Information relating to this matter has been retained in these files and is identified as Exhibit 16.

University of South Carolina: Not Exceeding \$46,000,000 Principal Amount of Athletic Facilities Revenue Bonds, Series 2017A, of the University of South Carolina and Authorize the Issuance and Sale of Athletic Facilities Revenue Bond Anticipation Notes Pending the Issuance of the Athletic Facilities Revenue Bonds (Regular Session Item #6)

The Authority was asked to adopt a resolution making provision for the issuance and sale

of not exceeding \$46,000,000 Principal Amount of Athletic Facilities Revenue Bonds, Series 2017A, of the University of South Carolina and authorize the issuance and sale of Athletic Facilities Revenue Bond Anticipation Notes pending the issuance of the Athletic Facilities Revenue Bonds.

The proceeds of the bonds will be used to (i) reimburse the University for capital expenditures previously made in connection with, and paying the costs to construct and equip an approximately 105,000 square foot football operations facility, including the acquisition, parking and associated landscaping and hardscaping, located at the west end of Gamecock Park and adjacent to the Indoor Football Practice Facility, and athletic facilities revenue bond anticipation notes, including capitalized interest on the Series 2017A Bonds, if any; (ii) funding the Series 2017A Debt Service Reserve Fund or purchasing a debt service reserve fund substitute, if any; and (iii) paying certain costs and expenses relating to the issuance and Series 2017A Bonds, including a municipal bond insurance premium, if any.

Mr. Eckstrom commented the cost of issuance on the bonds is very attractive. He said that fees have been addressed very carefully. He said he hopes to see that in any bond issue that comes before the Authority. He commended USC on the issue.

Upon a motion by Mr. Eckstrom, seconded by Senator Leatherman, the Authority adopted a resolution making provision for the issuance and sale of not exceeding \$46,000,000 Principal Amount of Athletic Facilities Revenue Bonds, Series 2017A, of the University of South Carolina and authorize the issuance and sale of Athletic Facilities Revenue Bond Anticipation Notes pending the issuance of the Athletic Facilities Revenue Bonds.

Information relating to this matter has been retained in these files and is identified as Exhibit 17.

Future Meeting

Upon a motion by Mr. Eckstrom seconded Senator Leatherman, the Authority agreed to meet at 10:00 a.m. on Tuesday, December 13, 2016, in Room 252, Edgar A. Brown Building.

Adjournment

The meeting adjourned at 11:25 a.m.

Minutes of State Fiscal Accountability Authority
November 7, 2016 – Page 33

[Secretary's Note: In compliance with Code Section 30-4-80, public notice of and the agenda for this meeting were posted on bulletin boards in the office of the Governor's Press Secretary and in the Press Room, near the Authority Secretary's office in the Wade Hampton Building, and in the lobbies of the Wade Hampton Building and the Edgar A. Brown Building at 10:30 a.m. on Friday, November 4, 2016.]

All correspondence in connection
with this contract should include
reference to N62467-95-RF-00261

SUBLEASE
BETWEEN
CHARLESTON NAVAL COMPLEX REDEVELOPMENT AUTHORITY
AND
CHARLESTON COUNTY SCHOOL DISTRICT

THIS SUBLEASE, made this 10th day of September, 1996, by and between CHARLESTON NAVAL COMPLEX REDEVELOPMENT AUTHORITY, hereinafter called the "Authority" and CHARLESTON COUNTY SCHOOL DISTRICT, hereinafter called "Lessee";

WITNESSETH:

WHEREAS, the United States of America, acting by and through the Department of the Navy, hereinafter called the "Government", has declared facilities excess at the Naval Base, Charleston, South Carolina, and Lessee has immediate need to use the facilities described in Exhibit A hereto (the "Premises"); and

WHEREAS, such surplus property may be leased to State or local governments pending final disposition of such property pursuant to the provisions of Public Law 94-107, 10 U.S.C. 2667(f);

WHEREAS, the Authority is a public body, corporate and politic, created and organized under Chapter 12 of Title 31, Code of Laws of South Carolina, with the power to acquire and dispose of Federal Military Installations;

WHEREAS, Government and the Authority have entered into such a lease (the "Primary Lease").

WHEREAS, the Authority has determined that upon securing the Primary Lease for the Premises it will further the purposes and objectives of the Authority to sublease such properties to the Lessee; and

WHEREAS, the Charleston County School District approved a motion to proceed with a five year sublease of Cochran Hall located at the Naval Complex and the future acquisition of Cochran Hall and adjacent property known as the barracks building.

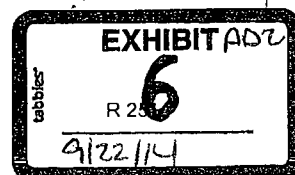
NOW, THEREFORE, in consideration of One (\$1.00) Dollar each paid to the other, the receipt of which is acknowledged and in further consideration of the terms, covenants, and conditions hereinafter set forth, the Authority and Lessee hereby agree as follows:

1. Agreement to Enter Into Lease. The Authority and Lessee agree that the Authority shall sublease, demise and rent the Premises to Lessee and the Lessee shall hire and rent the Premises from the Authority upon the terms and conditions set forth herein.

2. Agreement Contingent on Authority Securing a Primary Lease. This sublease is contingent upon the execution of the Primary Lease which is in turn contingent upon issuance by Government of a "Finding of Suitability to Lease" (the "FOSL").



YCR 049



3. Incorporation of Primary Lease by Reference. The Primary Lease is attached hereto as Exhibit B and incorporated in this Sublease by reference. This Sublease shall be subject to the terms and conditions of the Primary Lease and shall terminate immediately upon the expiration or earlier termination of the Primary Lease.

4. Lessee Acquisition and Assumption of Benefits and Liability. Upon execution and delivery of the Primary Lease and upon issuance of a FOSL, the Lessee shall be deemed to have acquired and assumed all of the benefits and obligations of the Authority under the Primary Lease upon the terms and conditions of the Primary Lease. This includes, but is not limited to, the obligation to pay taxes, assessments, fees in lieu of taxes, and other similar charges which, at any time during the term of this Sublease, may be imposed upon the Authority with respect to the Premises.

5. Rent. Lessee shall pay to the Authority at its address stated herein annual rent of \$20,000, which shall be payable in monthly installments of \$1,666.67 each, which installments shall be due and payable in advance on the first day of each month without delay, reduction or setoff and without need for any notice. First monthly payment of rent shall be due and payable on October 1, 1996. If ownership has not been conveyed to the Lessee by the end of the initial five (5) year term, all expenses for building improvements, alterations, and additions (hereinafter collectively called "Eligible Expenses"), but subject to the limitations stated herein, made during the initial five (5) year term, shall be credited against rental payments in the extended term by reducing the monthly rent in the extended term by the quotient found by dividing the total cost of Eligible Expenses by the number of months in the extended term except that monthly rent will never be reduced to less than zero. Eligible Expenses are limited to the actual out-of-pocket cost, excluding overhead and other non-direct expenses, of labor, benefits or established charges normally billed by architects, surveyors, contractors; materials used, equipment used (taking into account depreciation or pro-rata annual allowance for); outside services and other related start-up costs for building improvements, alterations, and additions. Lessee shall keep adequate records and books of accounts using an internal job numbering system, showing the actual cost of all labor, materials, equipment, services, and other items of cost of any nature constituting a usual and normal item of actual cost incurred by Lessee directly for the Eligible Expenses.

6. Term. The term of this Sublease shall be for five years and shall run concurrent with the term of the Primary Lease. If Primary lease shall be extended, renewed or replaced, or if Authority shall have by any manner or means the power to lease or sublease the Premises for a term extending beyond the initial term of the Primary Lease, and if this Sublease shall not have terminated and if there shall exist no uncured event of default nor any event which with the passage of time or the giving of notice or both would constitute an event of default, Authority agrees that this Sublease shall in Lessee's sole discretion, evidenced by Lessee's written notice to Authority given prior to expiration or termination of the original sublease term, be automatically renewed or extended for the same period of time on the same terms and conditions herein. The maximum term of the initial sublease and all extensions shall be 25 years. During the term of this Sublease and any extension or renewal if fee simple title to the Premises is conveyed to the Authority and the Authority determines that it will sell the Premises, the Premises shall be conveyed to the Lessee, with a reverter to the Authority if abandoned or not used for educational purposes, at no cost other than legal costs of transfer.

7. Duty to Operate. The agreement of Lessee to conduct operations on the Premises continuously during the term of this Sublease is a material inducement to Authority to enter into this Sublease. In order to induce Authority to enter into this Sublease, Lessee agrees to make a diligent and good faith effort to commence operations on the Premises as soon as reasonably possible after the execution of this Sublease and thereafter diligently to prosecute operations on the Premises. Authority acknowledges and agrees that there will be

order to induce Authority to enter into this Sublease, Lessee agrees to make a diligent and good faith effort to commence operations on the Premises as soon as reasonably possible after the execution of this Sublease and thereafter diligently to prosecute operations on the Premises. Authority acknowledges and agrees that there will be some unknown period of delay in beginning initial operations. Authority further acknowledges and agrees that Sublessee has no obligation to operate the Premises at 100% capacity. Sublessee acknowledges and agrees that it will not "stock pile" the Premises, but agrees to make a diligent and good faith effort to conduct operations on the Premises so as to enhance redevelopment of the former Charleston Naval Base and to provide jobs for residents of the surrounding areas. Authority agrees to expend its good faith and diligent efforts to assure routine police and fire protection from local jurisdictions but without any guarantee that such can be provided.

8. Restatement of Lease. If title to the Premises is conveyed to the Authority, this Sublease may continue in full force and effect as a lease between Authority (as landlord) and Lessee (as tenant) or, if Authority and Lessee agree, this Sublease may be amended and restated or may be conveyed to Lessee at the option of Lessee.

9. Assignment and Subletting. Lessee shall not assign or sublease its interest in the Premises or any portion thereof without the prior written consent of Authority, which consent may be withheld by Authority in its sole discretion.

10. Indemnification of Authority. Lessee shall be responsible for, and shall indemnify and hold harmless Authority against and from, any and all liability or claim of liability (including but not limited to reasonable attorneys fees and costs) arising out of (i) the use, occupancy, conduct, operation or management of the Premises during the term of this Sublease; (ii) any work or thing whatsoever done or not done on the Premises during the term of this Sublease; (iii) and breach or default by the Lessee in performing any of its obligations under the provisions of this Sublease, the Primary Lease or applicable law; (iv) any negligent, intentionally tortious or other act or omission of the Lessee or any of its agents, contractors, servants, employees, subtenants, licensees or invitees during the term of this Sublease; and (v) any injury to or death of any person or damage to any property occurring on the premises during the term of this Sublease caused by any act or omission of the Lessee or any of its agents, contractors, servants, employees, subtenants, licensees or invitees during the term of this Sublease. Authority will give Lessee notice of any claim against Authority that is covered by this indemnity as soon after learning of it as practicable. This provision shall survive the expiration or other termination of this sublease.

11. Alterations to Premises. Lessee shall make no alterations or additions to the Premises without the prior written consent of Authority, which consent Authority will not unreasonably withhold. Upon termination of this Sublease, Lessee shall promptly remove unapproved alterations and additions to the Premises and personal property and trade fixtures of Lessee and any third person and Lessee shall repair any damages to the premises resulting from such removal. Lessee agrees to fence-in the current gate access to Hobson Avenue. The Authority is not responsible for making improvements to the Premises and shall bear no cost for improvements to the Premises.

12. Utilities. Lessee acknowledges and agrees that obtaining of utilities (including but not limited to electricity, water, gas, sewer, telephone and trash removal) is and shall be the responsibility of Lessee and that Authority has no responsibility to provide any utilities. It is understood that meters will be provided by Lessee to measure that usage of electricity, water and gas.

13. Right of Entry. Authority and its agents shall be entitled to enter the Premises at any time during normal business hours (i) to inspect the Premises, (ii) to make any alteration, improvement or repair to the Premises, or (iii) for any other purpose relating to the operation, maintenance, redevelopment or marketing of the Premises or of the Charleston Naval Complex. In an emergency situation, Authority and its agents may enter the Premises at any time.

14. Default.

Each of the following events shall constitute an "Event of Default" under this Sublease:

(1) If Lessee fails to pay any rent without offset or deduction when and as due and payable hereunder and without demand therefor, or if Lessee fails to perform any of its obligations, covenants or agreements under this Sublease or under the Primary Lease as and when such performance is due and without demand therefor.

(2) If Lessee shall abandon the Premises or any portion thereof for a period of thirty (30) consecutive days.

(3) If Lessee applies for or consents to the appointment of a receiver, trustee or liquidator of Lessee or of all or a substantial part of its assets; if Lessee files a voluntary petition in bankruptcy or admits in writing its inability to pay its debts as they become due or makes an assignment for the benefit of its creditors or files a petition or an answer seeking a reorganization or other arrangement with creditors or seeks to take advantage of any bankruptcy or insolvency law or performs any other act of bankruptcy or files an answer admitting the material allegations of a petition against Lessee in any bankruptcy, reorganization or insolvency proceeding.

(4) If Lessee is adjudicated as a bankrupt or an insolvent or if there is filed a petition seeking reorganization or appointment of a receiver, trustee, or liquidator of Lessee or of all or a substantial part of its assets or if there is otherwise commenced against Lessee or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law and if any such proceeding continues unstayd for more than sixty (60) consecutive days.

(b) Upon the occurrence of an Event of Default which shall continue for seven (7) days after written notice, Authority may exercise any right provided at law or in equity or in this Sublease including, but not limited to (1) reenter and repossess any or all of the Premises; and/or (2) declare the entire balance of the rent due hereunder for the remainder of the term to be immediately due and payable and to collect such balance in any manner not inconsistent with applicable law; and/or (3) terminate this Sublease by giving written notice of such termination to Lessee, which termination shall be effective as of the date of such notice or any later date therefor specified by the Authority therein; and/or (4) relet any or all of the Premises with or without any additional premises, for any or all of the remainder of the term of this Sublease or for a period exceeding such remainder, and on such terms and subject to such conditions as are acceptable to the Authority in its sole and absolute discretion and collect and receive the rents therefor, and Lessee shall have no right in or to any surplus which may be derived by Authority from any such reletting; provided, however, Lessee's liability hereunder shall not be diminished or affected by any failure to relet or the giving or any concessions or "free rent" or reduced rent periods in the event of any such reletting; and/or (5) cure such Event of Default in any other manner; and/or (6) pursue any combination of such remedies and/or any other right or remedy available to the Authority on account of such Event of Default under this Sublease and/or at law or in equity.

(c) No expiration or termination of this Sublease shall relieve Lessee of any of its liabilities and obligations under this Sublease, and Lessee shall remain liable to Authority for all damages resulting from any Event of Default. Without limiting the generality of the foregoing, upon any termination Lessee shall be responsible to Authority to the full extent allowed or provided at law for any and all obligations arising prior to such termination and Lessee shall also be responsible to Authority for any rent or other monetary obligations which would have become due under this Sublease but for such termination.

(d) Upon the occurrence of an Event of Default, Lessee shall immediately reimburse Authority for all expenses incurred by Authority in curing or seeking to cure any Event of Default and/or in exercising or seeking to exercise any of the Authority's rights and remedies under the provisions of this Sublease and/or at law or in equity, and/or otherwise arising out of any Event of Default (including but not limited to attorney fees and costs).

15. Notices. Any notice permitted or required to be given pursuant to this Sublease shall be deemed to have been given if in writing and deposited in the United States Mail, Certified Mail, Return Receipt Requested, and addressed as follows:

If to Authority:

Chairman, Charleston Naval Complex
Redevelopment Authority
1690 Turnbull Avenue
Suite Nh-47
Charleston, S.C. 29408-1955

With copy to:

William J. Bates, Esquire
Young, Clement, Rivers & Tisdale, LLP
28 Broad Street
Charleston, S.C. 29401

If to Lessee:

Emory Haselden
Dept. Superintendent of Property & Operations
Charleston County School District
3999 Bridge View Drive
North Charleston, SC 29405

With copy to:

Geraldine H. Urbanic, Director
Legal Services
Charleston County School District
75 Calhoun Street
Charleston, SC 29401

or to such other persons or addresses as either party may direct by like notice.

Governmental Approval. This Sublease shall be of no force or effect until it shall have been approved by Government and by State of South Carolina acting through the South Carolina Budget and Control Board through the Office of General Services.

Amendment. This Sublease may be amended only by an instrument in writing executed and delivered by each party hereto and approved in writing by Government and by the State of South Carolina.

Waiver. The Authority shall not be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and no delay or omission by the Authority in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right. Without limiting the generality of the foregoing, no action taken or not taken by the Authority under the provisions of this Section or any other provision of this Sublease (including by way of example rather than of limitation, the Authority's acceptance of the payment of Rent after the occurrence of any Event of Default) shall operate as a waiver of any right to be paid a late charge or of any other right or remedy which the Authority would otherwise have against the Lessee on account of such Event of Default under the provisions of this Sublease or applicable law (the Lessee hereby acknowledging that, in the interest of maintenance of good relations between the Authority and the Lessee, there may be instances in which the Authority chooses not immediately to exercise some or all of its rights on the occurrence of an Event of Default).

Title. Authority gives no warranty as to the state of title, nor as to the physical condition of the Premises or any improvements thereon, all of which are leased "as-is." Lessee is relying entirely on its own, separate, inspection of the Premises which Lessee acknowledges it has had ample opportunity to make.

Severability. No determination by any court, governmental body or otherwise that any provision of this Sublease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other provision, or (b) such provision in any circumstance not controlled by such determination. Each provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

Compliance with Primary Lease. Lessee acknowledges that Lessee is a sublessee of the Premises and, as such, is subject to the terms and provisions of the Primary Lease. Lessee agrees to keep and to abide by each and every of the covenants and conditions of the Primary Lease, as the same may be applicable to Lessee as a sublessee; and Lessee agrees to take no action in violation of any provision of the Primary Lease. Lessee acknowledges receipt of a copy of the Primary Lease, a copy of which is attached hereto as Exhibit B and incorporated herein by reference.

22. Insurance. Lessee shall provide insurance as required by the Primary Lease, and, in addition, shall provide evidence satisfactory to the Authority of the obtaining and maintaining throughout the term of this Sublease of such insurance with an endorsement to all such insurance naming the Authority as an additional insured as its interest may appear.

23. Certain Retained Rights. Notwithstanding any provision herein to the contrary, Authority retains the rights to terminate the Primary Lease pursuant to the provisions of Section 14.2.1 and 14.2.2 of the Primary Lease.

24. Assistance to Current Occupant. Lessee shall provide assistance in the relocation of the current occupants of the Premises. Authority shall have no liability to Lessee if Authority shall be unable to deliver possession of the Premises to Lessee due to failure by current occupant to vacate the Premises.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and
year: first above.

WITNESS:

Craig Ziegler
Michael Ray

Craig Ziegler
Michael Ray

CHARLESTON NAVAL COMPLEX
REDEVELOPMENT AUTHORITY

By: James Chapman
Its: Chairman

-and-

By: Mark McLean
Its: Secretary/Treasurer

CHARLESTON COUNTY
SCHOOL DISTRICT

By: [Signature]
Its: [Signature]

Craig Ziegler
Michael Ray

Approval by The State of South Carolina

On this 15th day of April, 1997, South Carolina Budget and Control Board, Office of General Services, approves the attached ~~Sublease~~ between Charleston Naval Complex Redevelopment Authority, as Sublessor and Charleston County School District as Lessee, dated the 10th day of September, 1996.

SOUTH CAROLINA BUDGET AND
CONTROL BOARD
OFFICE OF GENERAL SERVICES

By: Alton T. H. H. H.
Title: Sec. Mgr., Gen. Sec.
Date: 4/15/97

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Approval by The United States of America

Pursuant to applicable provisions of the Lease dated Sept 10 1996 between The United States of America, as "Government," and Charleston Naval Complex Redevelopment Authority, as "Lessee", the undersigned approves the attached Sublease between Charleston Naval Complex Redevelopment Authority, as Sublessor, and Charleston County School District, as Lessee, dated the 10th day of September, 1996.

THE UNITED STATES OF AMERICA

BY: [Signature]

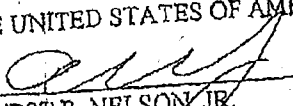
Title: Real Estate

Contracting Officer

Date: 9/10/96

In witness whereof, the parties hereto have, on the respective dates set forth duly executed this Amendment 2 of the Lease as of the date below written.

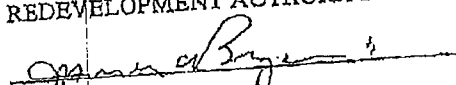
THE UNITED STATES OF AMERICA

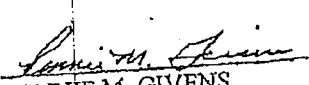

ERNEST R. NELSON, JR.
Real Estate Contracting Officer

Date:

8-31-01

CHARLESTON NAVAL COMPLEX
REDEVELOPMENT AUTHORITY


Chairman


RONNIE M. GIVENS
Secretary-Treasurer

Date:

10/3/01

YCR 058

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R 260

EXHIBITS

EXHIBIT A

Description of Leased Premises

EXHIBIT B

Copy of Executed Primary Lease

507

All correspondence in connection with
this contract should include reference
to N62467-96-RP-00261

LEASE
BETWEEN
THE UNITED STATES OF AMERICA
AND
CHARLESTON NAVAL COMPLEX REDEVELOPMENT AUTHORITY

THIS LEASE, made this 10th day of September, 1996, by and
between THE UNITED STATES OF AMERICA, acting by and through the Department of the
Navy, hereinafter called the "Government", and the CHARLESTON NAVAL COMPLEX
REDEVELOPMENT AUTHORITY, hereinafter called the "Lessee";

WITNESSETH:

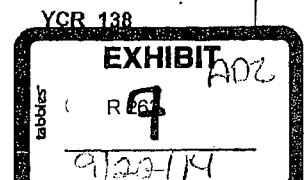
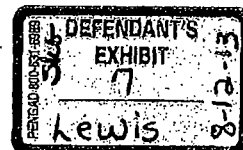
WHEREAS, Government has declared Premises surplus at the Charleston Naval
Complex, North Charleston, South Carolina, and Lessee has immediate need to use these
Premises; and

WHEREAS, the Secretary of the Navy, pursuant to the provisions of 10 U.S.C. 2667 (f)
(1), has determined that this lease will facilitate state and local economic adjustment efforts
pending its final disposition of the real and personal property; and

WHEREAS, the Secretary of the Navy, pursuant to the provisions of 10 U.S.C. 2667 (f)
(2), has determined that a public interest will be served as a result of this lease and the fair
market value of the lease is not compatible with such public benefit; consideration for this lease
will be at less than the fair market value; and

WHEREAS, the Lessee, a public body, corporate and politic, created and organized under
Chapter 12 of Title 31, Code of Laws of South Carolina, with the power to acquire and dispose
of Federal Military Installations, desires to lease certain property declared surplus by the
Government; and

WHEREAS, the Secretary of the Navy has consulted with the appropriate Environmental
Protection Agency administrator and a determination has been made that the environmental
condition of the property proposed for leasing is such that the lease of the property is advisable;
and



WHEREAS, Lessee is recognized by the Secretary of Navy, through the Office of Economic Adjustment, as the local redevelopment authority with the responsibility for the redevelopment of the Charleston Naval Complex, North Charleston, South Carolina.

NOW THEREFORE, in consideration of the terms, covenants, and conditions hereinafter set forth, Government and Lessee hereby agree as follows:

1. LEASED PREMISES. Government does hereby lease, rent, and demise to Lessee, and Lessee does hereby hire and rent from Government Building 199 together with all improvements, containing approximately 41,196 square feet of space shown on the drawing marked Exhibit "A" and associated personal property marked as Exhibit "B", attached hereto and by reference made a part hereof (the "Premises"), together with the right of ingress and egress to the premises across, adjacent or nearby roads of the Government which lead to a reasonably convenient public road or roads, and also together with parking sufficient to service operations of the Premises at one or more sites located as conveniently to the Premises as may be possible. Ingress, egress and parking will be afforded in accordance with paragraph 30 of this lease.

2. TERM. The term of this lease shall be for a period beginning on September 4, 1996, and ending at 11:59 P.M. on September 3, 2001, unless sooner terminated in accordance with the provisions of Paragraph 14, Termination.

3. RENT.

3.1 In lieu of cash rental the Lessee shall provide protection and maintenance/repair services for the leased premises as described in Paragraph 12. It is understood by the Lessee that since the subject property is being leased for less than fair market value and the lease permits the property to be sublet, the rents from the subleases must be applied to the protection, maintenance, repair, improvements, and costs of the premises leased or any property at the entire Charleston Naval Complex.

3.2 Lessee shall keep adequate records and books of account showing the actual cost to it of all items of labor, material, equipment, supplies, services, and other items of cost of any nature constituting an item of actual cost incurred by it directly in the performance of any item of work or service in the nature of the repair, protection and maintenance services described in paragraph 12 to be provided the leased premises as in-kind consideration for rent. Lessee shall provide Government with access to such records and books of account and proper facilities for inspection thereof at all reasonable times. All information obtained from said records and books of account shall be deemed confidential.

4. USE OF LEASED PREMISES.

4.1 The sole purpose for which the Premises may be used, in the absence of prior written approval by the Government, for any other use, is for use as a school. The Lessee understands and acknowledges that this lease is not and does not constitute a commitment by Government with regard to the ultimate disposal of the Premises, in whole or in part, to Lessee or

any agency or instrumentality thereof, or to any sublessee. The lease may be terminated by Government as provided by the terms of the lease, and Lessee agrees to and acknowledges such terms.

4.2 Lessee shall not undertake any activity that may affect an historic or archeological property, including excavation, construction, alteration or repairs of the Premises, without the approval of the contracting officer and compliance with Sec. 106 of the National Preservation Act, 16 U.S.C. 470, and the Archaeological Resource Protection Act, 16 U.S.C. 470 aa. Buried cultural materials may be present on the Premises. If such materials are encountered, Lessee shall stop work immediately and notify the contracting officer.

5. ASSIGNMENT OR SUBLETTING.

5.1 Lessee shall neither transfer nor assign this lease or any interest therein or any property on the Premises nor sublet the Premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this lease without the prior written consent of Government. Such consent shall not be unreasonably withheld or delayed. Every sublease shall contain the Environmental Protection provisions set forth in Paragraph 13.

5.2 Any sublease granted by Lessee shall contain a copy of this lease as an attachment and be subject to all of the terms and conditions of this lease and shall terminate immediately upon the expiration or any earlier termination of the lease, without any liability on the part of Government to Lessee or any sublessee. Under any sublease made, with or without consent, the sublessee shall be deemed to have assumed all of the obligations of Lessee under this lease. No sublease shall relieve Lessee of any of its obligations hereunder.

5.3 For any sublease, Lessee shall use only a lease form approved by Government. Lessee shall furnish Government, for its prior written consent, a copy of each sublease it proposes to execute. Such consent may include the requirement to delete, add, or change provisions in the sublease instrument as Government shall deem necessary to protect its interests. Consent to any sublease shall not be taken or construed to diminish or enlarge any of the rights or obligations of either of the parties under the lease. Should a conflict arise between the provisions of this lease and a provision of the sublease, the provisions of this lease shall take precedence. Upon its execution, a copy of the sublease shall immediately be furnished to the Government.

6. JOINT INSPECTION REPORT. A joint inspection has been conducted by representatives of Lessee and Government, of the Premises, including all personal property and a complete inventory of Government real and personal property has been made. A report has been made of the condition of the Premises, including personal property, and any deficiencies which were found to exist have been noted in such report. Each inventory is identified by building or facility number, and signed and dated by both parties to the lease. The Joint Inspection Report is attached to the lease as Exhibit "C". All related personal property in a building, unless specifically exempted by the terms and conditions of this lease, is intended to remain with that building. All real and personal property delivered to Lessee shall be delivered "as is, where is",

and, as such, Government makes no warranty as to such real and personal property either as to their usability generally or as to their fitness for any particular purpose. Any safety and/or health hazards identified shall be corrected at Lessee's expense prior to use and occupancy. Such safety and/or health hazards shall be limited to those identified in the attached Joint Inspection Report. Should this Lease terminate and not be succeeded by either another lease, or a conveyance of title to the premises, or by active negotiation for either lease or conveyance, Lessee shall turn over to Government the Premises in the same condition in which they were received, reasonable wear and tear and acts of God excepted; provided, nevertheless, Lessee may at its expense and with prior approval of Government, which approval shall not be unreasonably delayed, (a) replace any personal property with personal property of like kind and utility, (b) repair any personal property in a good and workmanlike manner, and (c) dispose of any worn out, obsolete or non-functioning personal property.

7. ENVIRONMENTAL BASELINE SURVEY REPORT AND FINDING OF SUITABILITY TO LEASE. An Environmental Baseline Survey for Lease (EBSL) and Finding of Suitability to Lease (FOSL) are attached as Exhibit "D" and made a part of this lease. The EBSL sets forth the existing environmental conditions of the Premises as represented by the baseline survey which has been conducted by the Government and the FOSL sets forth the basis for the Government's determination that the Premises is suitable for leasing. Lessee is hereby made aware of the notifications contained in the FOSL attached hereto as Exhibit "D" and shall comply with the Lease restrictions set forth therein.

8. ALTERATIONS. No additions to, or alterations of, the premises, facilities including ground excavation shall be made without the prior written consent of the Contracting Officer which consent shall not be unreasonably withheld or delayed. Such consent may involve a requirement to provide the Government with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the Government. Upon termination of the lease or by revocation or surrender of any sublease, to the extent directed by Government, Lessee shall, at the option of Government, either:

8.1 Promptly remove all alterations, additions, betterment's, and improvements made or installed and restore the premises, facilities, or related personal property to the same or as good condition as existed on the date of entry under this lease, reasonable wear and tear excepted; or

8.2 Abandon such additions or alterations in place, at which time title to said alterations, improvements, and additions shall vest in Government. Provided in either event all personal property and trade fixtures of tenant or any third person may be removed and tenant shall repair any damages to the leased premises resulting from such removal.

9. ACCESS BY GOVERNMENT. In addition to access required under Paragraph 13, at all reasonable times throughout the term of this lease, Government shall be allowed access to the Premises for any purposes upon notice to Lessee. Government normally will give Lessee or any sublessee 24-hour prior notice of its intention to enter the Premises unless it determines the entry is required for safety, environmental, operations or security purposes. Lessee shall have no claim

and, as such, Government makes no warranty as to such real and personal property either as to their usability generally or as to their fitness for any particular purpose. Any safety and/or health hazards identified shall be corrected at Lessee's expense prior to use and occupancy. Such safety and/or health hazards shall be limited to those identified in the attached Joint Inspection Report. Should this Lease terminate and not be succeeded by either another lease, or a conveyance of title to the premises, or by active negotiation for either lease or conveyance, Lessee shall turn over to Government the Premises in the same condition in which they were received, reasonable wear and tear and acts of God excepted; provided, nevertheless, Lessee may at its expense and with prior approval of Government, which approval shall not be unreasonably delayed, (a) replace any personal property with personal property of like kind and utility, (b) repair any personal property in a good and workmanlike manner, and (c) dispose of any worn out, obsolete or non-functioning personal property.

7. ENVIRONMENTAL BASELINE SURVEY REPORT AND FINDING OF SUITABILITY TO LEASE. An Environmental Baseline Survey for Lease (EBSL) and Finding of Suitability to Lease (FOSL) are attached as Exhibit "D" and made a part of this lease. The EBSL sets forth the existing environmental conditions of the Premises as represented by the baseline survey which has been conducted by the Government and the FOSL sets forth the basis for the Government's determination that the Premises is suitable for leasing. Lessee is hereby made aware of the notifications contained in the FOSL attached hereto as Exhibit "D" and shall comply with the Lease restrictions set forth therein.

8. ALTERATIONS. No additions to, or alterations of, the premises, facilities including ground excavation shall be made without the prior written consent of the Contracting Officer which consent shall not be unreasonably withheld or delayed. Such consent may involve a requirement to provide the Government with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the Government. Upon termination of the lease or by revocation or surrender of any sublease, to the extent directed by Government, Lessee shall, at the option of Government, either:

8.1 Promptly remove all alterations, additions, betterment's, and improvements made or installed and restore the premises, facilities, or related personal property to the same or as good condition as existed on the date of entry under this lease, reasonable wear and tear excepted; or

8.2 Abandon such additions or alterations in place, at which time title to said alterations, improvements, and additions shall vest in Government. Provided in either event all personal property and trade fixtures of tenant or any third person may be removed and tenant shall repair any damages to the leased premises resulting from such removal.

9. ACCESS BY GOVERNMENT. In addition to access required under Paragraph 13, at all reasonable times throughout the term of this lease, Government shall be allowed access to the Premises for any purposes upon notice to Lessee. Government normally will give Lessee or any sublessee 24-hour prior notice of its intention to enter the Premises unless it determines the entry is required for safety, environmental, operations or security purposes. Lessee shall have no claim

on account of any entries against the United States or any officer, agent, employee or contractor, therefore, all necessary keys to the buildings and Premises occupied by Lessee or any sublessee shall be made available to Government upon request.

10. UTILITIES. Procurement of utilities, i.e., electricity, water, gas, steam, sewer, telephone, and trash removal will be the responsibility of the Lessee. In the event that the Government shall furnish Lessee with any utilities or services maintained by the Government which Lessee may require in connection with its use of the Premises, Lessee shall pay the Government the cost incurred in providing such utilities or services therefore in addition to the cash rent if any required under this lease. Such charges shall not exceed commercial rates established by the local utility provider of such utility or service. Total Charges to be collected may include any overhead cost to Government to operate and maintain the service. The method of payment of such charges will be determined by the local Government representative in accordance with applicable laws and regulations on such basis as the local Government representative may reasonably establish. The Lessee at its sole cost shall install metering devices for utilities serving the leased premises prior to its occupancy of the premises, and the volume of utilities used by Lessee shall be determined by such metering devices. It is expressly agreed and understood that the Government in no way warrants the continued maintenance or adequacy of any utility or service furnished by it to Lessee.

11. NO INTERFERENCE

11.1 The Government and the Lessee will coordinate the conduct of any joint occupancy of the premises if required for the performance of environmental cleanup or restoration actions by the Government, EPA, State of South Carolina or their contractor.

11.2 Lessee shall not conduct operations, nor make any alterations, that would interfere with or otherwise restrict Navy operations or environmental clean-up or restoration actions by the Navy, Environmental Protection Agency (EPA), State of South Carolina, or their contractors. Cleanup, restoration, or testing activities for environmental purposes by these parties shall take priority over Lessee's use of the Premises in the event of any conflict.

12. PROTECTION AND MAINTENANCE SERVICES. Lessee shall furnish all labor, supervision, materials, supplies, and equipment necessary to furnish the maintenance and repair of the following building systems and appurtenances: structural, fencing, plumbing, electrical, heating and cooling systems, exterior utility systems, pavement and ground maintenance, (including grass cutting, shrub trimming, and tree removal), pest control to make sure the premises remain free from rodents, insects, termites, and animals, refuse removal and security and fire protection necessary for the protection of the Premises. Government shall not be required to furnish any services or facilities or to make any repair or alteration in or to the Premises. Lessee hereby assumes the full and sole responsibility for the protection, maintenance and repair of the Premises as set forth in this paragraph. For specifics as to such protection and maintenance and repair required to be provided by Lessee hereunder the following provisions shall apply:

12.1 Maintenance & Repair. The degree of maintenance and repair services to be furnished by Lessee hereunder shall be that which is sufficient to assure weather tightness, structural stability (excluding any seismic retrofit and/or modifications to foundations resulting from extraordinary natural occurrences such as earthquakes and landslides), protection from fire hazards or erosion, and elimination of safety and health hazards, which arise during the term of the Lease and which are not caused by the actions of the Government or its employees, contractors, or agents, so that the Premises being serviced will remain in the condition in which they exist at the commencement of the lease as documented in the Joint Inspection Report prepared pursuant to paragraph 6, ordinary wear and tear and acts of God excepted. This does not apply to any pre-existing defective conditions (exclusive of safety and/or health hazards) of the Premises belonging to the Government which were identified as defective at the time of the joint inspection, such defects being noted and included in the Joint Inspection Report. Any repair to correct such pre-existing defective conditions shall be at the Lessee's option and expense. The Government, upon due notice, may inspect the premises, facilities, and related personal property to insure performance of the maintenance set forth herein.

12.2 Exterior Utility Systems. The Lessee is responsible for the repair and maintenance of all exterior utility distribution lines, connections, and equipment which solely supports their facilities. This responsibility extends from the facilities leased to the point of connection with the utility system which serves users other than the Lessee. These systems include but are not limited to: heating plants, steam lines, traps, high voltage transformers, substations, power distribution lines (overhead and underground), poles, towers, gas mains, water and sewage mains, water tanks, fire protection systems, hydrants, lift stations, manholes, isolation valves, meters, storm water systems, catch basins, etc.

12.3 Refuse Removal. Debris, trash and other useless materials shall be promptly removed from the premises, and the area of work shall be kept reasonably clean and free of useless materials at all times. At completion of the lease, the area of work and the Premises shall be left without containers, Lessee's equipment, and other undesirable materials, and in an acceptably clean condition.

12.4 Security Protection. Lessee shall provide security to assure security and safety of the Premises. Any crimes or other offenses, including traffic offenses and crimes and offenses involving damage to or theft of Government property, shall be reported to the appropriate state or local municipal authorities for their investigation and disposition and to Government as property owner.

12.5 Fire Protection. Lessee shall be responsible for fire protection of the Premises.

13. ENVIRONMENTAL PROTECTION PROVISIONS.

13.1 Lessee and any sublessee shall comply with the applicable environmental laws and regulations and all other Federal, state, and local laws, regulations, and standards that are or may become applicable to Lessee's activities on the Premises.

13.2 Lessee and any sublessee shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under the lease, independent of any existing permits. Copies of all required permits shall be provided to the Government.

13.3 Lessee shall, to the extent permitted by South Carolina law, indemnify and hold harmless Government from any costs, expenses, liabilities, fines, or penalties resulting from discharges, emissions, spills, storage, disposal, arising from Lessee's occupancy, use or operations, or any other action by Lessee or any sublessee giving rise to Government liability, civil or criminal, or responsibility under Federal, state, or local environmental laws. This provision shall survive the expiration or termination of the lease, and Lessee's obligations hereunder shall apply whenever Government incurs costs or liabilities for Lessee's actions. The Government shall indemnify and hold harmless, Lessee to the extent authorized in Section 330 of P.L. 102-484, Division A, Title III, Subtitle C.

13.4 Government's rights under this lease specifically includes the right for Government officials to inspect upon reasonable notice the leased premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. At all reasonable times throughout the term of this lease, Government shall be allowed access to the premises for any purposes upon notice to the Lessee. Government normally will give the Lessee or sublessee twenty-four (24) hours prior notice of its intention to enter the Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee or contractor; therefore, all necessary keys to the buildings and facilities occupied by Lessee or any sublessee shall be made available to Government upon request.

13.5 The Naval Complex, Charleston, has not been identified as a National Priority List (NPL) Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended, and as such is not subject to any Inter-Agency Agreement.

13.6 The Navy, EPA, and South Carolina Department of Health and Environmental Control (DHEC) and their officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee and any sublessee, to enter upon the leased premises for the purposes enumerated below and for such other purposes consistent with any provision of the Installation Restoration Program (IRP).

13.6.1 To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, testpitting, testing soil borings, and other activities related to the IRP.

13.6.2 To inspect field activities of the Government and its contractors and subcontractors in the IRP.

13.6.3 To conduct any test or survey required by EPA or DHEC relating to the implementation of these programs or environmental conditions at the leased premises or to verify any data submitted to the EPA or DHEC by the Government relating to such conditions.

13.6.4 To construct, operate, maintain, or undertake any other response or remedial action as required or necessary under the IRP, including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

13.7 Lessee further agrees that in the event of any assignment or sublease of the Premises, it shall provide to the EPA and DHEC by certified mail a copy of the agreement or sublease of the Premises within fourteen (14) days after the effective date of such transaction. Lessee may delete the financial terms and any other proprietary information from the copy of any agreement of assignment or sublease furnished pursuant to this condition.

13.8 The Lessee shall strictly comply with the hazardous waste requirements under the Resource Conservation and Recovery Act (RCRA) and the State of South Carolina's equivalent. Except as specifically authorized by the Government in writing, the Lessee must provide at its own expense such hazardous waste management facilities, complying with all laws and regulations. Government hazardous waste management facilities will not be available to the Lessee. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.

13.9 Lessee shall not conduct or permit its sublessee's to conduct, any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of the Government

13.10 DOD Component accumulation points for hazardous and other wastes will not be used by the Lessee or any sublessee. Neither will the Lessee or sublessee permit its hazardous wastes to be commingled with hazardous waste of the DOD Component.

13.11 The Lessee shall have a Government-approved plan for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations on the Premises. Such plan shall be independent of Naval Base, Charleston, South Carolina, and, shall not rely on use of installation personnel or equipment. Should the Government provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on request of the Lessee, or because the Lessee was not, in the opinion of the said officer, conducting timely cleanup actions, the Lessee agrees to reimburse the Government for its cost.

13.12 The Lessee shall not construct or make or permit its sublessees or assigns to construct or make any substantial alterations, additions, or improvements to or installations upon or otherwise modify or alter the Premises in any way which may adversely affect the cleanup, human health, or the environment without the prior written consent of the Government. Such consent may include a requirement to provide the Government with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the Government. For construction of alterations, additions, modifications,

improvements or installations (collectively "work") in the proximity of operable units that are part of a National Priorities List (NPL) Site, such consent may include a requirement for written approval by the Government's Remedial Project Manager in addition to the approval by the Contracting Officer. Except as such written approval shall expressly provide otherwise, all such approved alterations, additions, modifications, improvements, and installations shall become Government property when annexed to the Premises.

13.13 Storage, treatment, or disposal of toxic or hazardous materials on the leased premises is prohibited except as authorized by the Government in accordance with 10 U.S.C. 2692.

13.14 The Lessee and its sublessees do not hereby assume any liability or responsibility for environmental impacts and damage caused by the Government's use of toxic or hazardous wastes, substances or materials on any portion of the Premises, or the tract of which the Premises is a part, prior to the beginning date of this lease. The Lessee and its sublessees have no obligation under this Lease to undertake the defense of any claim or action, whether in existence now or brought in the future, arising out of the use of or release of any toxic or hazardous wastes, substances, or materials on or from any part of the Premises, or the tract of which the Premises is a part, prior to the beginning date of this lease. Further, the Lessee and its sublessees have no obligation under this lease to undertake environmental response, remediation, or cleanup relating to such use or release. For the purposes of this paragraph, "defense" or "environmental response, remediation, or cleanup" include (but are not limited to) liability and responsibility for the costs of damage, penalties, legal and investigative services relating to such use or release. Provided, however, that should Lessee receive actual knowledge of any pre-existing but previously undetected environmental condition which poses an immediate and adverse impact to occupants' health or to the environment and which requires expedient response to mitigate damages, the Lessee shall provide notice to the Government as soon as may be practical under the circumstances; provided, further, Lessee shall not have any affirmative obligation to conduct any environmental investigations. For purposes of this paragraph, "actual knowledge" shall mean the actual knowledge of a person of authority with Lessee (such as an Authority member, officer, director or executive director of the Lessee) and shall exclude any facts known to an employee, contractor, sub-contractor, sub-lessee, agent, invitee, guest or licensee of Lessee which is not in fact made known to a person of authority with Lessee.

13.15 The Lessee and any sublessee shall provide prior written notification to the Government of any articles, tools, equipment, or devices brought on-site which contain radioactive material. Examples of potential radiological sources include radium-containing dials, gauges, and illuminators; tritium in illuminators and exit signs; thorium in optical lenses or welding consumables (e.g., grinding dust from thoriated electrodes); abrasive blasting material; or any radioactive source used for calibration, medical diagnosis or therapy, or industrial radiography. The Lessee is responsible for removal of any such potential radiological material upon termination of the Lease.

13.16 The Lessee agrees to comply with the provisions of any health or safety plan in effect under the IRP during the course of any of the above described response or remedial

actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee and any sublessee. The Lessee and any sublessees, assignees, licensees, or invitees shall have no claim account of such entries against the Government or any officer, agent, employee, contractor, or subcontractor thereof. In addition, the Lessee shall comply with all applicable Federal, State, and local occupational safety and health regulations applicable with respect to its use of the Premises during the term of this lease. Nothing herein shall obligate the Government to compensate Lessee or any third person for any lost profits, lost opportunities, wages or operating expenses or any other costs incurred as a result of Lessee's cooperation pursuant to this paragraph.

14. TERMINATION.

14.1 Termination by Government. The Government shall have the right to terminate this Lease without liability:

14.1.1 If the Lessee is tendered fee ownership of the leased premises and fails to accept such ownership within one hundred eighty days (180) of written notice of such offer; or

14.1.2 Upon ten (10) day notice in the event of a national emergency as declared by the President or the Congress of the United States; or

14.1.3 In the event of breach by the Lessee of any terms and conditions hereof. In the event of a breach involving the performance of any obligation, the Lessee shall be afforded thirty (30) days from the receipt of the Government's notice of intent to terminate to complete the performance of the obligation or otherwise cure the subject breach and avoid termination of this Lease. In the event that the Government shall elect to terminate this Lease on account of the breach by the Lessee of any of the terms and conditions, the Government shall be entitled to recover and the Lessee shall pay to the Government:

14.1.3.1 The costs incurred in resuming possession of the Leased Premises.

14.1.3.2 The costs incurred in performing any obligation on the part of the Lessee to be performed hereunder.

14.1.3.3 An amount equal to the aggregate of any maintenance obligations, and charges assumed hereunder and not paid or satisfied, which amounts shall be due and payable at the time when such obligations, and charges would have accrued or become due and payable under this Lease.

14.2 Termination by Lessee. The Lessee shall have the right to terminate this Lease upon thirty (30) days written notice to the Government in the event of breach by the Government of any of the terms and conditions hereof. In the event of a breach involving the performance of any obligation, the Government shall be afforded thirty (30) days from the receipt of the Lessee's notice of intent to terminate to complete performance of the obligation or otherwise cure the

subject breach and avoid termination of this Lease. The Lessee shall also have the right to terminate this Lease in the event of damage to or destruction of all of the Premises or such a substantial portion thereof as to render the Premises incapable of use for the purposes for which it is leased hereunder, provided:

(a) The Government either has not authorized or directed the repair, rebuilding, or replacement of the improvements or has made no provision for payment for such repair, rebuilding, or replacement by application of insurance proceeds or otherwise, and

(b) That such damage or destruction was not occasioned by the fault or negligence of the Lessee or any of its officers, agents, servants, employees, subtenants, licensees, or invitees, or by any failure or refusal on the part of the Lessee to fully perform its obligations under this Lease.

14.2.1 Lessee shall have the right to terminate this lease upon written notice to Government given at any time within thirty (30) days from date hereof if Lessee shall not have received a fully executed sub-lease with respect to the Premises with a sub-tenant and upon such terms and conditions as shall be acceptable to lessee in Lessee's sole discretion. This provision in no way alters the Government's right to approve the terms and conditions of each sublease under paragraph 5.3.

14.2.2 Lessee shall have the right to terminate this lease in whole or in part by thirty (30) days prior written notice to Government given at any time if any sublease of all or a portion of the leased premises shall terminate for any reason.

14.2.3 If any utility (see paragraph 10), or any municipal fire or police protection, which is necessary for Lessee's proposed use of the Premises shall be unavailable to the Premises, at any time during the term of this lease, Lessee may terminate this lease by written notice to Government. Upon the giving of such notice, this lease shall terminate and Lessee shall cease operations, except such as may be necessary to complete Lessee's operations. Lessee shall thereafter surrender possession of the leased premises within fifteen (15) days of such notice.

14.2.4 If Government shall require Lessee to vacate all or a substantial portion of the Premises pursuant to paragraph 14.3 of this lease for a period in excess of thirty (30) days, Lessee may terminate this lease by written notice to Government given at any time while Lessee shall continue to be denied use of all or a substantial portion of the Premises. Lessee shall thereafter surrender possession of the Premises within fifteen (15) days of such notice.

14.3 Environmental Contamination. In the event environmental contamination is discovered on the property which creates, in Government's determination, an imminent and substantial endangerment to human health or the environment, and notwithstanding any other termination rights and procedures contained in this lease, Lessee shall vacate, or require any sublessee to vacate, the property immediately upon notice from Government of the existence of such a condition and the requirement to so vacate the Premises. Exercise of this right by the Government shall be without liability except that Lessee shall not be responsible for the payment

of rent, the amount of deduction to be determined on a daily pro rata basis, during the period the Premises is vacated. Government's exercise of the right herein to order the property immediately vacated does not alone constitute a termination of the Lease, but such right may be exercised in conjunction with any other termination rights provided in this lease or by law.

15. INDEMNIFICATION BY LESSEE. Subject to all of the provisions, limitations and defenses applicable to tort liability under the South Carolina Tort Claims Act, to the extent sovereign immunity has been waived for tort liability by the South Carolina Tort Claims Act, and to the extent permitted by South Carolina law, the Lessee shall indemnify, defend, and save Government harmless and shall pay all costs, expenses, and reasonable attorney's fees for all trial and appellate levels and post judgment proceedings in connection with any fines, suits, actions, damages, liability, and causes of action of every nature whatsoever arising or growing out of, or in any manner connected with, the occupation or use of the Premises by Lessee and the employees, agents, servants, guests, invitees, contractors and sublessees of Lessee, including but not limited to, any fines, claims, demands, and causes of action of every nature whatsoever which may be made upon, sustained, or incurred by Government by reason of any breach, violation, omission, or non-performance of any term, covenant, or condition hereof on the part of Lessee or the employees, agents, servants, guests, invitees of Lessee. This indemnification also applies to claims arising out of the furnishing of any utilities or services by the Government or any interruption therein or failure thereof, whether or not the same shall be occasioned by the negligence or lack of diligence of Lessee, its officers, agents, servants or employees. However, this indemnity shall not extend to damages due to the fault or negligence of the Government or its contractors. This covenant shall survive the termination of this lease.

16. INSURANCE

16.1 All Risk. Lessee shall in any event and without prejudice to any other rights of Government bear all risk of loss or damage to the Premises occupied or used by Lessee or any of its sublessee's, arising from any causes whatsoever, or in any manner connected with the occupation or use of the Premises by Lessee or any sublessee's, or by a risk customarily covered by insurance in the locality in which the Premises are situated, even where such loss or damage stems from causes beyond Lessee's control. Provided, however, Lessee shall have no liability for loss or damage resulting from collapse of structures, war, riot, flood, windstorm, fire, explosion (not caused by Lessee's negligence) acts of God or natural disasters. As to damage of facilities and related personal property not part of the Premises, Lessee shall only be liable for loss or damage arising out of Lessee's occupation or use of the Premises. In the event that any item or part of the Premises shall require repair, rebuilding, or replacement resulting from loss or damage, the risk of which is assumed under this section, Lessee shall promptly give notice thereof to Government, and shall, upon demand of Government, either compensate Government for such loss or damage, or rebuild, replace, or repair the item or items of the Premises so lost or damaged.

16.2 Lessee's Insurance. During the entire period this lease shall be in effect, Lessee at its expense will carry and maintain:

16.2.1 All-risks property and casualty insurance against the risks enumerated in paragraph 16.1 above in an amount sufficient to remove debris and clear the site. Government will defer to Lessee to identify any improvements and personal property on or near the Premises which shall be insured at a value greater than the amount required by the Government in this paragraph 16.2.1 and Lessee will determine the appropriate insured value for those improvements and personal property.

16.2.2 Public liability and property damage insurance, including but not limited to, insurance against assumed or contractual liability under this lease, with respect to the Premises, to afford protection with limits of liability of not less than \$1,000,000, per occurrence in the event of bodily injury and death to any number of persons in any one accident, and not less than \$1,000,000, per occurrence for property damage.

16.2.3 If and to the extent required by law, workmen's compensation or similar insurance in form and amounts required by law.

16.3 Lessee's Contractor's and Sublessee's Insurance. During the entire period this Lease shall be in effect, Lessee shall require its contractors or sublessees or any contractor performing work at Lessee's or Sublessee's request on the leased premises to carry and maintain the insurance required below:

16.3.1 Comprehensive general liability insurance, including, but not limited to, contractor's liability coverage and contractual liability coverage, of not less than \$1,000,000, per occurrence with respect to personal injury or death, and \$1,000,000, per occurrence with respect to property damage.

16.3.2 Workmen's compensation or similar insurance in form and amounts required by law.

16.4 Policy Provisions. All insurance which this lease requires Lessee to carry and maintain or cause to be carried or maintained shall be in such form, for such periods of time, and with such insurers as Government may reasonably require or approve. All policies or certificates issued by the respective insurers for public liability and all-risks property insurance will name Government as an additional insured, provide that any losses shall be payable notwithstanding any act or failure to act or negligence of Lessee or Government or any other person, provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least 30 days after receipt by Government of written notice thereof, provide that the insurer shall have no right of subrogation against Government, and be reasonably satisfactory to Government in all other respects. In no circumstances will Lessee be entitled to assign to any third party rights of action which Lessee may have against Government.

16.5 Delivery of Policies. Lessee shall deliver or cause to be delivered promptly to Government a certificate of insurance evidencing the insurance required by this lease and shall also deliver no later than thirty (30) days prior to the expiration of any such policy, a certificate of insurance evidencing each renewal policy covering the same risks.

17. LABOR PROVISION.

17.1 Equal Opportunity. During the term of this lease Lessee agrees as follows:

17.1.1 Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Lessee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Lessee agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by Government setting forth the provisions of this nondiscrimination clause.

17.1.2 Lessee shall, in all solicitations or advertisements for employees placed at the leased premises by or on behalf of Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

17.1.3 Lessee shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by Government, advising the labor union or worker's representative of Lessee's commitments under this Equal Opportunity Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

17.1.4 Lessee shall comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

17.1.5 Lessee shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records, and accounts by Government and the Secretary of Labor for purposes of investigating to ascertain compliance with such rules, regulations, and orders.

17.1.6 In the event of Lessee's noncompliance with the Equal Opportunity Clause of this lease or with any of said rules, regulations, or orders, this lease may be canceled, terminated, or suspended in whole or in part and Lessee may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

17.1.7 Lessee will include the above provisions in every sublease unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204

of Executive order 11246 or September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each sublessee. Lessee will take such action with respect to any sublessee as Government may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Lessee becomes involved in, or is threatened with, litigation with sublessee as a result of such direction by Government, Lessee may request the United States to enter into such litigation to protect the interests of the United States.

17.2 Contract Work Hours Standards Act (40 U.S.C. 327-330). This lease, to the extent that it is a contract of a character specified in the Contract Work Hours Standards Act (40 U.S.C. 327-330) and is not covered by the Walsh-Healy Public Contracts Act (41 U.S.C. 35-45), is subject to the following provisions and exceptions of said Contract Work Hours Standards Act and to all other provisions and exceptions of said law:

17.2.1 Lessee shall not require or permit any laborer or mechanic in any workweek in which he is employed on any work under this lease to work in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours. The "basic rate of pay", as used in this clause, shall be the amount paid per hour, exclusive of Lessee's contribution or cost for fringe benefits and any cash payment made in lieu of providing fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

17.2.2 In the event of any violation of the provisions of paragraph 17.2.1, Lessee shall be liable to any affected employee for any amounts due, and to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph 17.2.1 in the sum of \$10.00 for each calendar day on which such employee was required or permitted to be employed on such work in excess of the standard workday of 8 hours or in excess of the standard work week of 40 hours without payment of the overtime wages required by paragraph 17.2.1.

17.3 Convict Labor. In connection with the performance of work required by this lease, Lessee agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

18. SUBMISSION OF NOTICES. Notices shall be sufficient under this lease if made in writing and submitted in the case of Lessee to:

Chairman,
Charleston Naval Complex
Redevelopment Authority
1690 Turnbull Avenue
Suite NH-47
Charleston, SC 29408-1955

With copy to: Mr. William J. Bates, Esquire
c/o Young, Clement, Rivers & Tisdale
28 Broad Street
Charleston, SC 29401

and in the case of the Government to:
Commanding Officer
Southern Division, Naval Facilities Engineering Command
2155 Eagle Drive P.O. Box 190010
N. Charleston, SC 29419-9010

The above-named individuals shall be the representatives of the parties and the point of contact during the period of this Lease. Such notice shall be deemed to have been given unless delivered personally, when deposited in the United States mail, postage prepared, certified mail, return receipt requested and addressed as set forth above or to such other address as either party shall have provided to the other by like notice.

19. STORAGE. Any Government property which must be removed to permit exercise of the privilege granted by this lease shall be stored, relocated, or removed from the site and returned to a specified location designated by Government within the confines of the Naval Base, Charleston, South Carolina, upon termination of this lease, at the sole cost and expense of Lessee.

20. AUDIT. This agreement shall be subject to audit by any and all cognizant Government agencies. Lessee shall make available to such agencies for use in connection with such audits all records which it maintains with respect to this lease and copies of all reports required to be filed hereunder.

21. INTEREST. Notwithstanding any other provision of this lease, unless paid within 30 days, all amounts that become payable by Lessee to Government under this lease (net of any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due. The rate of interest will be the Current Value of Funds Rate published by the Secretary of the Treasury pursuant to 31 U.S.C 3717 (Debt Collection Act of 1982). Amounts shall be due upon the earliest of (a) the date fixed pursuant to this lease, (b) the date of the first written demand for payment, consistent with this lease, including demand consequent upon default termination, (c)

the date of transmittal by Government to Lessee of a proposed supplemental agreement to confirm completed negotiations fixing the amount, or (d) if this lease provides for revision of prices, the date of written notice to Lessee stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by lease supplement.

22. AGREEMENT: This lease agreement shall not be modified unless in writing and signed by both parties. No oral statements or representation made by, or for, on behalf of either party shall be a part of this lease.

23. FAILURE TO INSIST ON COMPLIANCE. The failure of Government to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this lease shall not be construed as a waiver or relinquishment of Government's right to the future performance of any such terms, covenants, or conditions and Lessee's obligations in respect of such future performance shall continue in full force and effect.

24. DISPUTES.

24.1 Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

24.2 "Claim", as used in this clause, means a written demand or written assertion by the Lessee or the Government seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph 24.3(b) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

24.3(a) A claim by the Lessee shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Commanding Officer, Southern Division, Naval Facilities Engineering Command, for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the Commanding Officer, Southern Division, Naval Facilities Engineering Command.

(b) Lessee shall provide the following certification when submitting any claim---

(1) exceeding \$100,000; or

- (2) Regardless of the amount claimed, when using---
 - (a) Arbitration conducted pursuant to 5 U.S.C. 575-580; or
 - (b) Any other alternative mean of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

"I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Lessee believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Lessee."

(c) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

24.4 The certification may be executed by any person duly authorized to bind the Lessee with respect to the claim.

24.5 For Lessee claims of \$100,000 or less, the Commanding Officer, Southern Division, Naval Facilities Engineering Command, must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$100,000, the Commanding Officer, Southern Division, Naval Facilities Engineering Command, must, within 60 days decide the claim or notify the Lessee of the date by which the decision will be made.

24.6 The Commanding Officer, Southern Division, Naval Facilities Engineering Command decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

24.7 At the time a claim by the Lessee is submitted to the Commanding Officer, Southern Division, Naval Facilities Engineering Command, or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using arbitration conducted pursuant to 5 U.S.C. 575-580 or when using any other ADR techniques that the agency elects to handle in accordance with ADRA, any claim, regardless of amount, shall be accompanied by the certification described in Paragraph 24.3(b) of this clause and executed in accordance with Paragraph 24.4 of this clause.

24.8 The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the Commanding Officer, Southern Division, Naval Facilities Engineering Command received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that, date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Commanding Officer, Southern Division, Naval Facilities Engineering Command initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the Commanding Officer, Southern Division, Naval Facilities Engineering Command

receives the claim and then at the rate applicable for each 6 month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on RENT, if any.

24.9 The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the Commanding Officer, Southern Division, Naval Facilities Engineering Command.

25. COVENANT AGAINST CONTINGENT FEES. Lessee warrants that no person or agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by Lessee for the purpose of securing business. For breach or violation of this warranty, Government shall have the right to annul this lease without liability or in its discretion to require Lessee to pay, in addition to the rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

26. OFFICIALS NOT TO BENEFIT. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this lease or to any benefit to arise therefrom, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

27. LIENS. Lessee shall promptly discharge or cause to be discharged valid lien, right in rem, claim, or demand of any kind, except one in favor of Government, which at any time may arise or exist with respect to the leased property or materials or equipment furnished therefor, or any part thereof, and if the same shall not be promptly discharged by Lessee, or should Lessee or any sublessee be declared bankrupt or make an assignment on behalf of creditors, or should the leasehold estate be taken by execution, Government reserves the right to take immediate possession without any liability to Lessee or any sublessee. Lessee and any sublessee shall be responsible for any costs incurred by Government in securing clear title to its property.

28. TAXES. Lessee shall pay to the proper authority, when and as the same become due and payable, all taxes, assessments, and similar charges which, at any time during the term of this lease may be imposed upon Lessee with respect to the Premises. Title 10 United States Code, Section 2667 (e) contains the consent of Congress to the Taxation of Lessee's interest in the Premises, whether or not the Premises are in an area of exclusive Federal jurisdiction. Should Congress consent to taxation of Government's interest in the property, this lease will be renegotiated.

29. SUBJECTION TO EXISTING AND FUTURE EASEMENTS AND RIGHTS-OF-WAY. This lease is subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the leased property, or any portion thereof, and to the right of Government to grant such additional easements and rights-of-way over, across, in and upon the leased property as it shall determine to be in the public interest; provided that (i) any

such additional easement or right-of-way shall be conditioned on the assumption by the grantee thereof of liability to Lessee for such damages as Lessee shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such easements and rights of way as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair, or replacement of Premises located thereon, and to any Federal, state, or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the leased property as shall be necessary for the performance of their duties with regard to such Premises.

30. INGRESS - EGRESS & PARKING. Lessee and any sublessees will be granted reasonable access to Premises leased under this agreement. Such access will be coordinated with the local representative of the Government. As a condition, Lessee and any sublessee agrees to adhere to all base rules and regulations regarding Station security, ingress, egress, safety and sanitation as may be prescribed from time to time by the Contracting Officer's local representative. Parking will be coordinated with the Commanding Officer, Southern Division, Naval Facilities Engineering Command.

31. ADMINISTRATION. Except as otherwise provided for under the lease, the local Government representative shall, under the direction of the Commander, Naval Facilities Engineering Command, have complete charge of the administration of this lease, and shall exercise full supervision and general direction thereof insofar as the interests of Government are affected.

32. SURRENDER. Upon the expiration of this lease or its prior termination, Lessee shall quietly and peacefully remove itself and its property from the leased premises and surrender the possession thereof to Government; provided, in the event Government shall terminate this lease upon less than thirty (30) days notice, Lessee shall be allowed a reasonable period of time, as determined by the Local Government Representative, but in no event to be less than 30 days from receipt of notice of termination, in which to remove all of its property from and terminate its operations on the Premises. During such period prior to surrender, all obligations assumed by Lessee under this lease shall remain in full force and effect; provided, however, that if the Local Government representative shall in its sole discretion, determine that such action is equitable under the circumstances, it may suspend, in whole or in part, any further accruals of rent if any or maximum amount to be expended between the date of termination of the lease and the date of final surrender of the Premises. Government may, in its discretion, declare any property which has not been removed from the premises upon termination provided for above, as abandoned property upon an additional 90 days notice.

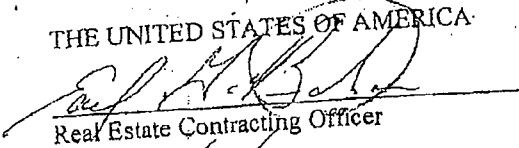
33. RAIL SERVICES. The Government shall not provide rail service nor maintain trackage to the Lessee's facilities. If the Lessee requires rail service to their facilities, the Lessee shall be responsible for leasing and maintaining all trackage which serves their facilities to a standard which allows safe operation of the rail system. The lessee shall provide their own switching services from the point of rail entry to the complex or acquire rail service to their facilities from the appropriate rail carrier.

34. Due to the potential for high lead levels in drinking water coolers within Building 199 the Lessee and its sublessees shall conduct appropriate sampling and analysis of all water coolers within this structure. Lessee and its sublessees shall conduct any remedial activities necessary to ensure that all water coolers within this structure meet federal, state, and local drinking water requirements prior to usage. Alternatively, Lessee and its sublessees can utilize bottled water within this structure rather than conduct sampling, analysis, and remedial activities. If bottled water is utilized, all water coolers within this structure shall be rendered inoperable.

35. Due to the presence of friable asbestos within Building 199, the Lessee and its sublessees shall not enter the rooms or spaces of this building which contain friable asbestos until all said friable asbestos has been properly abated by the Navy.

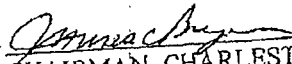
IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth below duly executed this lease as of the day and year first above written.

THE UNITED STATES OF AMERICA

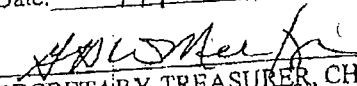

Real Estate Contracting Officer

Date: 9/10/96

CHARLESTON NAVAL COMPLEX
REDEVELOPMENT AUTHORITY


CHAIRMAN, CHARLESTON NAVAL COMPLEX
REDEVELOPMENT AUTHORITY

Date: 9/10/96


SECRETARY-TREASURER, CHARLESTON NAVAL
COMPLEX REDEVELOPMENT AUTHORITY

Date: 9/10/96

Approval by The State of South Carolina

On this 15th day of April, 1997, South Carolina Budget and Control Board, Office of General Services, approves the attached Lease between The United States of America, The Lessor, and Charleston Naval Complex Redevelopment Authority, as Lessee, dated the 10th day of September 1996.

SOUTH CAROLINA BUDGET AND
CONTROL BOARD
OFFICE OF GENERAL SERVICES

By: Alton T. Loftis
Title: Exec. Mgr., Gen. Svcs.
Date: 4/15/97

LIST OF EXHIBITS

Exhibit A	Drawing showing leased premises
Exhibit B	Personal Property Report Inventory
Exhibit C	Joint Inspection Report
Exhibit D	Environmental Baseline Survey and Finding of Suitability to Lease



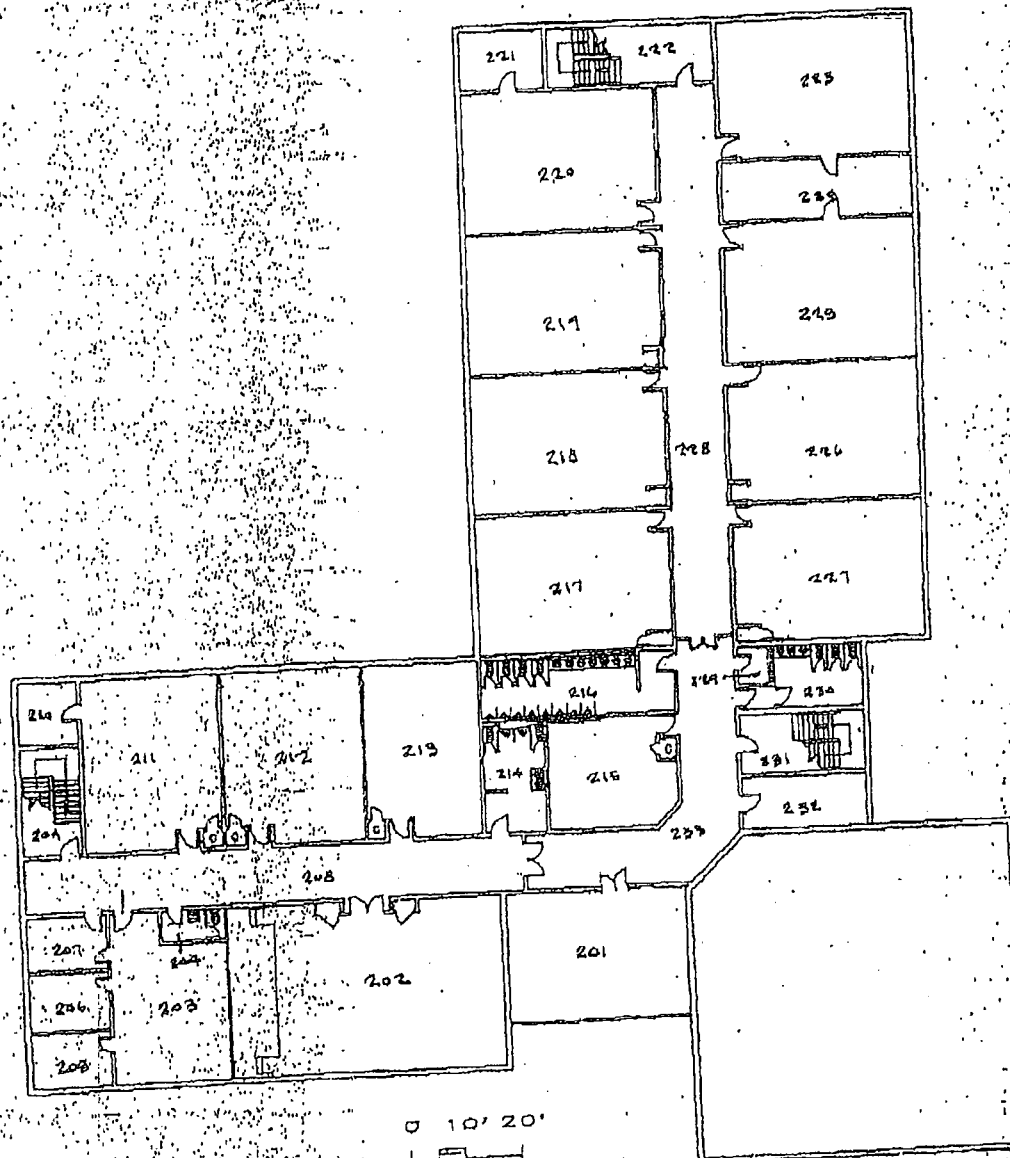
FIRST FLOOR PLAN - BLDG

BLDG 199

YCR 162

001242

R 288



0 10' 20'
SCALE IN FEET

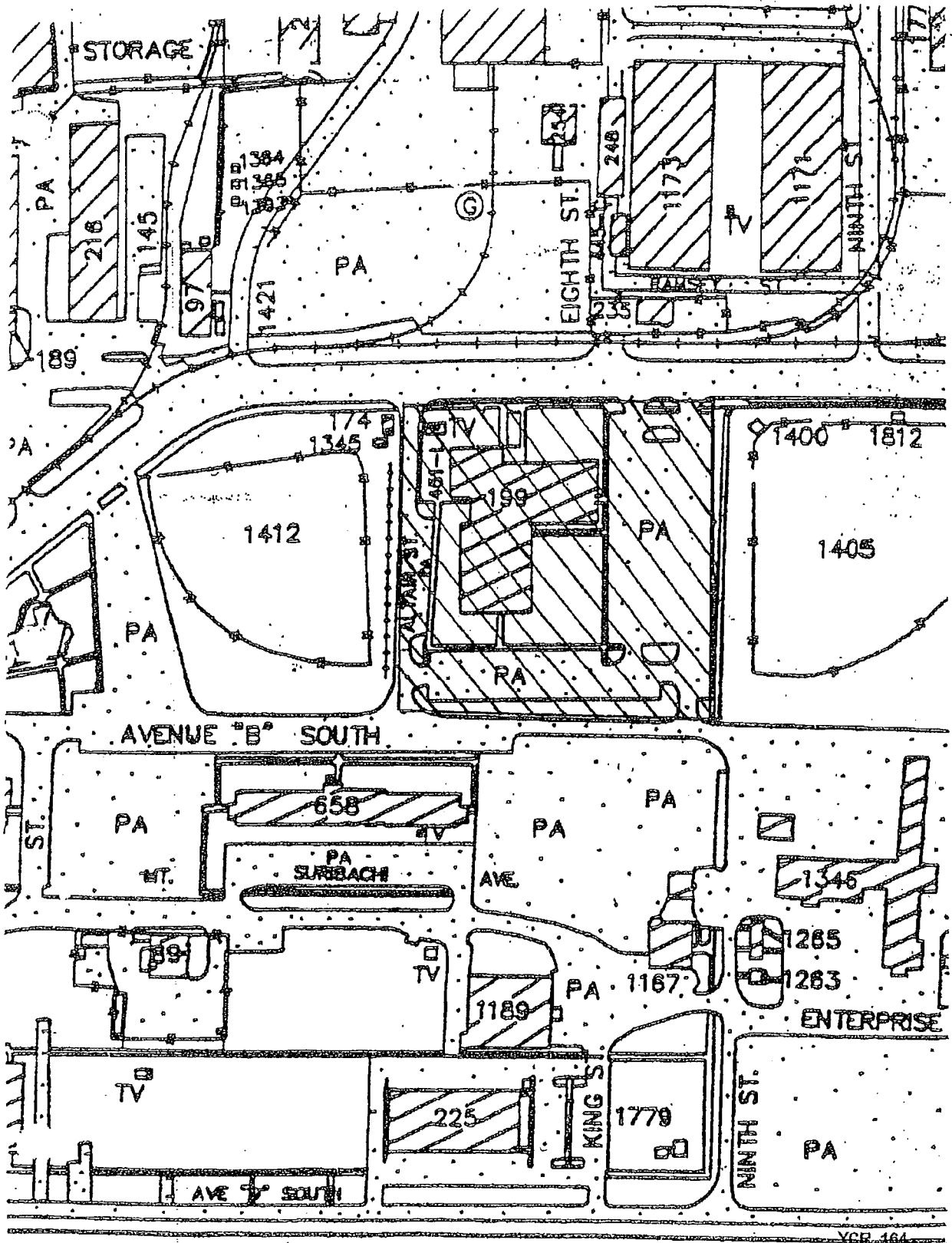
SECOND FLOOR PLAN - BLDG. 19

BLDG 199

YCR 163

001243

R 289



BLDG. 199 Inventory

PRPRTYTAG	DESC	QUANTITY	MFGNM	SERIALNBR	MODELNBR	ACQUISDT	ACQUISCOST	ITEMLOC	REMARKS
HP-000042	Microwave	1						1st Floor W-113.	
	Cabinet	1						1st Floor W-113.	4' x 6' Metal
	Cabinet	2						1st Floor W-113.	TV Stand with 3 Drawers 3' x 4'
	Computer Cabinet	1						1st Floor W-113.	2' x 4' Wood
	Credenza	1						1st Floor W-113.	3' x 5'
	Desk	1						1st Floor W-113.	3' x 5' Metal with Wood Top
	Desk	1						1st Floor W-113.	2' x 4' Metal
	File Cabinet	1						1st Floor W-113.	5 Drawer Metal
	File Cabinet	1						1st Floor W-113.	2 Drawer Metal
	Refrigerator	1	GE					1st Floor W-113.	
	Table	1						1st Floor W-113.	5' Dia.
	Dry Erase Board	1						1st Floor W-117.	3' x 7'
180-001000	Book Shelf	6						1st Floor W-117.	Metal
	Chair	2						1st Floor W-117.	Executive Swivel
	Chairs	5						1st Floor W-117.	Swivel
	Chairs	20						1st Floor W-117.	Stationary
	Coat & Hat Rack	1						1st Floor W-117.	Metal
	Computer Desk	1						1st Floor W-117.	3' x 4'
	Conference Table	1						1st Floor W-117.	4' x 10' Wood
	Credenza	2						1st Floor W-117.	2' x 5' Wood
	Credenza	1						1st Floor W-117.	2' x 5' Wood & Metal
	Desk	3						1st Floor W-117.	3' x 5' Wood & Metal
	Desk	2						1st Floor W-117.	3' x 5' Wood
	Drop Leaf Stand	1						1st Floor W-117.	2' x 2' Wood & Metal
	File Cabinet	3						1st Floor W-117.	Metal
	Oscillating Fan	1						1st Floor W-117.	18"
	Partitions	5						1st Floor W-117.	3' x 7'
	Partitions	7						1st Floor W-117.	4' x 7'
	Printer Stand	1						1st Floor W-117.	2' x 2' Wood
	Projector Screen	1						1st Floor W-117.	Wall Mount 5'
	Refrigerator	1	Excellence					1st Floor W-117.	2' x 3'
	Space Heater	2						1st Floor W-117.	
	Student Drafting Desk	1						1st Floor W-117.	2' x 3' Wood
	Table	2						1st Floor W-117.	2' x 3' Wood
	Work Station	1 unit						1st Floor W-117.	Wood
	3pc. Modular Partition	1 unit						1st Floor W-114.	Includes Hutch & Table & 4 2' x 6' Partition

YCR-165

001245

R 291

BLDG. 199 Inventory

	3pc. Work Station	1 unit					1st Floor W-114.	
	Chair	8					1st Floor W-114.	Swivel
	Chair	2					1st Floor W-114.	Folding
	Chair	1					1st Floor W-114.	Stationary
	Credenza	1					1st Floor W-114.	Wood
	Credenza	1					1st Floor W-114.	Metal
	File Cabinet	8					1st Floor W-114.	4 Drawer Metal
	File Cabinet	9					1st Floor W-114.	5 Drawer Metal
	Folding Table	1					1st Floor W-114.	3' x 5'
	Paper Cutter	1					1st Floor W-114.	18 Square
	Partitions	5					1st Floor W-114.	3' x 6'
	Partitions	4					1st Floor W-114.	4' x 6'
	Partitions	2					1st Floor W-114.	5' x 6'
	Podium	1					1st Floor W-114.	Wood
	Printer Stand	2					1st Floor W-114.	2' x 2' Wood
	Printer Stand	2					1st Floor W-114.	2' x 2' Metal
	Projector Screen	1					1st Floor W-114.	Wall Mount 5'
	Table	4					1st Floor W-114.	3' x 5' with Side Extension Wood
	Table	1					1st Floor W-114.	2' x 3' Wood
180-001120	File Cabinet	1	McNach				1st Floor W-114. A	4' x 8' Metal
	Cabinet	1					1st Floor W-114. A	2' x 4' Wood
	Conference Chair	8					1st Floor W-114. A	Stationary
	Conference Table	1					1st Floor W-114. A	3' x 6' Wood
	Desk	1					1st Floor W-114. A	2' x 5' Metal with Wood Top
	Desk	1					1st Floor W-114. A	4' x 6' Wood
	Desk	1					1st Floor W-114. A	2' x 5' Wood
	Secretary Chair	1					1st Floor W-114. A	Swivel
	Slide Projector	1	Kodak	4600			1st Floor W-110	
	Desk Top Hutch	1					1st Floor W-111	1' x 3' Wood
	Book Shelf	12					1st Floor W-112	Stackable Metal
	Cabinet	1					1st Floor W-112	2' x 2' 7' high
	Cabinet	3					1st Floor W-112	File 4 Drawer Metal
	Credenza	4					1st Floor W-112	2' x 5' Wood
	Desk & Chair	1					1st Floor W-112	Metal
	Desk & Hutch	1 unit					1st Floor W-112	3 pc. Modular 4 Station Unit
	Executive Desk	1					1st Floor W-112	4' x 6' Wood
	Printer Stand	1					1st Floor W-112	2' x 2'

YCR 166

001246

R 292

BLDG. 199 Inventory

Projector Screen	1					1st Floor W-112	5'
TV Stand	1					1st Floor W-112	3' x 4' Metal
Black Board	1					1st Floor W-115	
Cabinet	1					1st Floor W-115	File 4 Drawer Metal
Cabinet	1					1st Floor W-115	File 5 Drawer Metal
Cabinet	2					1st Floor W-115	File 2 Drawer Metal
Cabinet	1					1st Floor W-115	3' x 4' Metal
Chair	4					1st Floor W-115	Stationary
Chair	12					1st Floor W-115	Swivel
Coat & Hat Rack	1					1st Floor W-115	Metal
Credenza	4					1st Floor W-115	2' x 5' Wood
Desk	7					1st Floor W-115	3' x 5' Wood
End Table	1					1st Floor W-115	2' x 2' Wood
Folding Table	1					1st Floor W-115	3' x 5'
Partitions	8					1st Floor W-115	3' x 5'
Partitions	13					1st Floor W-115	4' x 5'
Partitions	5					1st Floor W-115	2' x 5'
Podium	1					1st Floor W-115	Wood
Printer Stand	1					1st Floor W-115	Metal
Projector Screen	1					1st Floor W-115	Wall Mount 5'
Book Shelf	1					1st Floor W-117	3' x 4' Metal
Chairs	8					1st Floor W-117	Swivel
Chairs	6					1st Floor W-117	Stationary
Computer Desk	2					1st Floor W-117	3' x 5' Wood
Desk	1					1st Floor W-117	4' x 8' Wood
Drop Leaf Stand	1					1st Floor W-117	1' x 3'
Partitions	7					1st Floor W-117	3' x 8'
Partitions	3					1st Floor W-117	4' x 8'
Chair	10					1st Floor Lobby	Lounge
Desk	1					1st Floor Lobby	3' x 5'
Desk	1					1st Floor Lobby	School Type 2' x 3' Wood
Sofa	8					1st Floor Lobby	3 Seat
Table	1					1st Floor Lobby	2' x 3' Wood
Table & Bench	4					1st Floor Lobby	2' x 7' Wood
Water Fountain	1	Elcay				1st Floor Lobby	
Book Shelf	1					1st Floor S-100	Desk Top Metal
Cabinet	1					1st Floor S-100	File 4 Drawer Metal

YCR 167

001247

R 293

BLDG. 199 Inventory

	Cart	1						1st Floor S-100.	Roll Around Metal
	Chair	2						1st Floor S-100.	Swivel
	Chair	6						1st Floor S-100.	Stationary
	Desk	1 unit						1st Floor S-100.	3pc. Computer Receptionist . Wood
	Desk	1						1st Floor S-100.	School Type 2' x 3' Wood
	Desk	1						1st Floor S-100.	2' x 3' Metal
	Flag Pole	1						1st Floor S-100.	5 Section Wood & Brass
	Table	1						1st Floor S-100.	4' Dia.
	Cart	1						1st Floor S-100B.	Overhead Projector 2' x 2' Plastic
	Chair	2						1st Floor S-100B.	Stationary
	Chair	1						1st Floor S-100B.	Swivel
	Table	2						1st Floor S-100B.	Folding 3' x 5'
	Vacuum Cleaner & Blower	1	Mastercraft		BV-88D			1st Floor S-100B.	
180-001087	Cabinet	1						1st Floor S-101.	Storage 3' x 6'
180-001528	Cabinet	1	Dennison Monarch					1st Floor S-101.	File 3' x 6' Metal
191-148368	Power File	1	Kardex	18393	LK S80M	1990	\$ 10,184.00	1st Floor S-101.	
61466-0043	Cadding Machine	1	Cannon		CP-1004D			1st Floor S-101.	
	Book Shelf	1						1st Floor S-101.	Desk Top Metal
	Adding Machine	1	Olivetti					1st Floor S-101.	
	Book Case	1						1st Floor S-101.	4' x 1' Metal
	Cabinet	3						1st Floor S-101.	File 2 Drawer Wood
	Cabinet	2						1st Floor S-101.	File 2 Drawer Metal
	Cabinet	3 units						1st Floor S-101.	3 pc. Sectional with Cabinet Tops Wood
	Cabinet	1						1st Floor S-101.	File 4 Drawer Metal
	Cart	1						1st Floor S-101.	Drop Leaf Roll Around 1' x 3'
	Chair	5						1st Floor S-101.	Stationary
	Chair	2						1st Floor S-101.	Secretary Swivel
	Chair	1						1st Floor S-101.	Swivel
	Chair	1						1st Floor S-101.	Swivel
	Computer Stand	1						1st Floor S-101.	Wood
	Desk	3						1st Floor S-101.	School Type 2' x 3' Wood
	Desk	1						1st Floor S-101.	2' x 3' Metal
	Paper Cutter	2						1st Floor S-101.	16 Square
	Partition	3						1st Floor S-101.	2' x 6'
	Printer Stand	1						1st Floor S-101.	2' x 2'
	Rack	1						1st Floor S-101.	Metal
	Refrigerator	1	Engidaira					1st Floor S-101.	

YCR 168

001248

R 294

BLDG. 199 Inventory

	Table	1					1st Floor S-101.	3 1/2" Dia.
	Table	1					1st Floor S-101.	2' x 3' Metal
MOT-141813	Typewriter	1	IBM				1st Floor S-102	Electric
	Board	2					1st Floor S-102.	3' x 6' Dry Eraser
	Book Shelf	1					1st Floor S-102.	2' x 3'
	Book Shelf	2					1st Floor S-102.	Desk Top Metal
	Cabinet	1					1st Floor S-102.	5 Drawer Metal
	Cabinet	2					1st Floor S-102.	File 2 Drawer Wood
	Chair	18					1st Floor S-102.	Plastic Swivel
	Chair	3					1st Floor S-102.	Secretary Swivel
	Computer Desk	1					1st Floor S-102.	Wood 3' x 6'
	Credenza	1					1st Floor S-102.	Wood 2' x 6'
	Credenza	1					1st Floor S-102.	Metal 2' x 6'
	Desk	3					1st Floor S-102.	School Type Wood 2' x 3'
	Desk	2sets					1st Floor S-102.	3pc. Sectional with Cabinets Wood
	Petition	5					1st Floor S-102.	3' x 8' Sections
	Petition with top Shelf	2					1st Floor S-102.	4' x 6' Sections
	Table	7					1st Floor S-102.	Folding 3' x 6'
	Table	1					1st Floor S-102.	Metal 3' x 5'
180-001100	Cabinet	1					1st Floor S-103.	Storage Metal
180-001527	Book Case	1					1st Floor S-103.	4 Shelf Metal
M-07116	Refrigerator	1	Gerald				1st Floor S-103.	
	Board	1					1st Floor S-103.	Dry Eraser 4' x 7'
	Book Case	1	CNSYD				1st Floor S-103.	Built in Wood 8' x 8'
	Book Case	1	CNSYD				1st Floor S-103.	Built in Wood 8' x 15'
	Book Case	1	CNSYD				1st Floor S-103.	Wood 7' x 1'
	Cabinet	1					1st Floor S-103.	2 x 2 6ft.
	Cabinet	1					1st Floor S-103.	2 x 2 7ft.
	Cabinet	1					1st Floor S-103.	TV/VCR Roll Around
	Cabinet	1					1st Floor S-103.	File 4 Drawer Metal
	Cabinet	2					1st Floor S-103.	File 2 Drawer Metal
	Cabinet	1					1st Floor S-103.	File 2 Drawer Wood
	Chair	11					1st Floor S-103.	Executive For Conference Table
	Chair	3					1st Floor S-103.	Stationary
	Chair	2					1st Floor S-103.	Secretary Swivel
	Desk	2sets					1st Floor S-103.	3 pc. Sectional with Top Cabinets
	Paper Cutter	2					1st Floor S-103.	16 Square

YCR 169

001249

R 295

BLDG. 199 Inventory

Projector Screen	1					1st Floor S-103.	Wall Mount 7'
Table	1					1st Floor S-103.	Conference 6' x 3' Wood
Table	1					1st Floor S-103.	Conference 8' x 4' Wood
Table	1					1st Floor S-103.	Folding 6 x 3
Table	1					1st Floor S-103.	2' x 2'
Table	1					1st Floor S-103.	2' x 3' Wood
Table	1					1st Floor S-103.	2' x 6' Wood
Book case	1					1st Floor S-104.	Metal 3' x 4'
Book Case	1					1st Floor S-104.	Desk Top Metal
Cabinet	1					1st Floor S-104.	Wood 2' x 3'
Cabinet	1					1st Floor S-104.	Metal 4 Drawer
Chair	1					1st Floor S-104.	Secretary
Chair	1					1st Floor S-104.	Executive Stationary
Chairs	14					1st Floor S-104.	Executive Swivel
Desk	2					1st Floor S-104.	Plastic Swivel
Desk	1					1st Floor S-104.	Metal 2' x 4'
Partition	4					1st Floor S-104.	Metal 2' x 5'
Partition	13					1st Floor S-104.	4' x 5'
Projection Screen	1					1st Floor S-104.	5' x 5'
Projector	1					1st Floor S-104.	Wall Mounted
Projector	2	Buhl		90		1st Floor S-104.	Overhead
Projector	2	Kodak		E-Z 5600		1st Floor S-104.	Slide
Table	10					1st Floor S-104.	3' x 5' Folding
Table	1					1st Floor S-104.	3' x 6' Folding
Board	1					1st Floor S-104.	3' 5' Computer
Cabinet	1					1st Floor S-105.	3' x 8'
Cabinet	1					1st Floor S-105.	TV/VCR Roll Around Metal
Chair	18					1st Floor S-105.	File 4 Drawer Metal
Chair	2					1st Floor S-105.	Stationary
Desk	15					1st Floor S-105.	Swivel
Desk	1					1st Floor S-105.	School Type 2' x 3' Wood
Fan	1					1st Floor S-105.	Metal 3' x 5'
Partition	27					1st Floor S-105.	Oscillating
Partition	3					1st Floor S-105.	5' x 6'
Partition	1					1st Floor S-105.	3' x 6'
						1st Floor S-105.	2' x 6'

YCR 170

001250

R 296

BLDG. 199 Inventory

	Potium	1					1st. Floor S-105.	Wood 3' x 1'
	Printer Stand	1					1st. Floor S-105.	2' x 2'
	Projector Screen	1					1st. Floor S-105.	Wall Mounted 6'
	Table	1					1st. Floor S-105.	Folding 3' x 5'
150-007431	Overhead Projector	1	Morrison				1st. Floor S-108.	
	Chair	2					1st. Floor S-108.	Stationary
	Ladder	1					1st. Floor S-108.	6' Aluminum
	Paper Shredder	1					1st. Floor S-108.	
	Partitions	3					1st. Floor S-108.	2' x 6'
	Table	1					1st. Floor S-108.	2' x 3' Metal
	Vacuum Cleaner	1	Dayton		62769A		1st. Floor S-108.	Shopvac
	Book Shelf	1					1st. Floor South Hall	Desk Top Metal
	Chairs	3					1st. Floor South Hall	Stationary
	Desk	1					1st. Floor South Hall	2' x 3' Metal
	Podium	2					1st. Floor South Hall	Wood
	Water Fountain	1	Oasis				1st. Floor South Hall	
	Book Case	1					1st. Floor W-110.	3' x 5' Wood
	Book Case	1					1st. Floor W-110.	3' x 3' Wood
	Chair	3					1st. Floor W-110.	Executive Swivel
	Chair	5					1st. Floor W-110.	Stationary
	Chair	2					1st. Floor W-110.	Executive Secretary
	Chair	1					1st. Floor W-110.	Swivel
	Coat & Hat Rack	1					1st. Floor W-110.	Folding
	Computer Table	1					1st. Floor W-110.	Metal
	Conference Chair	5					1st. Floor W-110.	3' x 4' Metal
	Credenza	3					1st. Floor W-110.	Stationary
	Dry Erase Board	1					1st. Floor W-110.	2' x 5' Metal with Wood Top
	File Cabinet	3					1st. Floor W-110.	3' x 7'
	File Cabinet	1					1st. Floor W-110.	Wood
	File Cabinet	1					1st. Floor W-110.	Metal
	Folding Chair	2					1st. Floor W-110.	Metal
	Partitions	5					1st. Floor W-110.	3' x 5' Wood & Metal
	Partitions	4					1st. Floor W-110.	4' x 7'
	Projector	1					1st. Floor W-110.	3' x 7'
	Student Draft Desk	2					1st. Floor W-110.	Wall Mounted 6'
	Table	1					1st. Floor W-110.	2' x 3'
							1st. Floor W-110.	4' Dis.

YCR 171

001251

R 297

BLDG. 199 Inventory

Work Station	4unit					1st. Floor W-110.	Wood
Board	1					1st. Floor W-111.	Dry Erase 3' x 7'
Book Case	1					1st. Floor W-111.	3' x 3' Wood
Book Case	1					1st. Floor W-111.	2' x 3' Wood
Cabinet	1					1st. Floor W-111.	2' x 3' Wood
Cabinet	1					1st. Floor W-111.	2' x 4' Wood
Chairs	13					1st. Floor W-111.	Stationary
Chairs	14					1st. Floor W-111.	Swivel
Computer Desk	2					1st. Floor W-111.	3' x 4' Metal
Computer Desk	1					1st. Floor W-111.	3' x 3'
Computer Stand	1					1st. Floor W-111.	2' x 3' Metal
Computer Stand	1					1st. Floor W-111.	2' x 2' Metal
Conference Table	1					1st. Floor W-111.	3' x 8' Metal
Credenza	1					1st. Floor W-111.	3' x 5' Wood
Desk	4					1st. Floor W-111.	3' x 5' Wood
Desk	1					1st. Floor W-111.	2' x 8' Wood
End Table	1					1st. Floor W-111.	1' x 3' Wood
Hat & Coat Rack	1					1st. Floor W-111.	Metal
Partitions	5					1st. Floor W-111.	5' x 8'
Partitions	5					1st. Floor W-111.	3' x 8'
Partitions	9					1st. Floor W-111.	4' x 8'
Projector Screen	1					1st. Floor W-111.	Wall Mounted 5'
Table	1					1st. Floor W-111.	Folding 3' x 5'
Table	1					1st. Floor W-111.	3' x 3' Wood
Book Case	1					1st. Floor W-113.	3' x 4' Metal
Book Case	1					1st. Floor W-113.	3' x 3' Metal
Cabinet	1					1st. Floor W-113.	2' x 3' Wood
Chair	5					1st. Floor W-113.	Stationary
Chair	3					1st. Floor W-113.	Folding
Chair	9					1st. Floor W-113.	Swivel
Chair & Desk	2					1st. Floor W-113.	Folding
Chairs	10					1st. Floor W-113.	Stationary
Chairs	2					1st. Floor W-113.	Swivel
Coat tree	1					1st. Floor W-113.	Metal
Computer Desk	1					1st. Floor W-113.	3' x 8' Wood & Metal
Computer desk	1					1st. Floor W-113.	3' x 5' Wood & Metal
Desk	8					1st. Floor W-113.	3' x 5' Wood

YCR 172

001252

R 298

BLDG. 199 Inventory

Desk	1					1st. Floor W-113.	Student Draft 2' x 3'
Drop Leaf Stand	2					1st. Floor W-113.	1' x 3'
Ladder	1					1st. Floor W-113.	6' Aluminum
Partition	8					1st. Floor W-113.	3' x 5'
Partitions	6					1st. Floor W-113.	4' x 5'
Partitions	2					1st. Floor W-113.	2' x 4'
Partitions	5					1st. Floor W-113.	4' x 4'
Partitions	7					1st. Floor W-113.	3' x 6'
Partitions	2					1st. Floor W-113.	4' x 6'
Partitions	3					1st. Floor W-113.	5' x 6'
Pedestal Fan	1					1st. Floor W-113.	30"
Podium	1					1st. Floor W-113.	wood
Portable Step Staircase	1					1st. Floor W-113.	4' High
Table	3					1st. Floor W-113.	Folding 3' x 5'
Table	1					1st. Floor W-113.	Executive 2' x 3' Wood
Table	1					1st. Floor W-113.	Coffe Executive 2' x 5' Wood
Table	1					1st. Floor W-113.	2' x 3' Metal
TV Stand	1					1st. Floor W-113.	2' x 2' Metal
Board	1					1st. Floor W-116.	Dry Erase 3' x 8'
Chairs	16					1st. Floor W-116.	Stationary
Chairs	15					1st. Floor W-116.	Swivel Plastic
Desk	20					1st. Floor W-116.	School Type 2' x 3'
Desk	1					1st. Floor W-116.	3' x 5' Wood
Projector Screen	1					1st. Floor W-116.	Wall Mounted 6'
Tables	8					1st. Floor W-116.	3' x 5' Folding
TV Cabinet	1					1st. Floor W-116.	2' x 5' Metal
TV Stand	1					1st. Floor W-116.	2' x 3' Metal
Credenza	1					1st. Floor W. Stainwell	2' x 5' Wood
Desk	1					1st. Floor W. Stainwell	3' x 5' Wood
Refrigerator	1	G.E.				1st. Floor W. Stainwell	3' x 5' Folding
Table	1					1st. Floor W. Stainwell	
3 Seat Racks	2					1st. Floor West Hall.	
4 Seat Racks	4					1st. Floor West Hall.	
5 Seat racks	1					1st. Floor West Hall.	
Chairs	8					1st. Floor West Hall.	Stationary
Table	1					1st. Floor West Hall.	2' x 12' Wood
Time Clock	2					1st. Floor West Hall.	Clock In & Out

YCR 173

001253

R 299

BLDG. 199 inventory

	Water Fountain	1	Oasis					1st. Floor West Hall.	
	Book Shelf	1						1st. Floor 100-A.	Desk Top Metal
	Chair	1						1st. Floor 100-A.	
	Computer Stand	1						1st. Floor 100-A.	
	Desk	2						1st. Floor 100-A.	2' x 5' Metal
	Executive Chair	1						1st. Floor 100-A.	
	Space Heater	1						1st. Floor 100-A.	
	Book Case	2						2nd. Floor S-201B.	3' x 4' Wood
	Book Case	1						2nd. Floor S-201B.	4' x 4' Wood
	Cart	1						2nd. Floor S-201B.	1' x 2' Plastic
	Computer Desk	1						2nd. Floor S-201B.	Metal with Wood Top 3' x 5'
	Conference Chair	1						2nd. Floor S-201B.	Stationary
	Conference Chair	2						2nd. Floor S-201B.	Stationary
	Executive Cabinet	1						2nd. Floor S-201B.	3' x 3' Wood
	Executive Chair	1						2nd. Floor S-201B.	Swivel
	Executive Chair	1						2nd. Floor S-201B.	Swivel
	Executive Computer Table	1						2nd. Floor S-201B.	2' x 2' Wood
	Executive Credenza	1						2nd. Floor S-201B.	2' x 6' Wood
	Executive Desk	1						2nd. Floor S-201B.	3' x 6' Wood
	Executive Desk	1						2nd. Floor S-201B.	3' x 6' Wood
	Space Heater	1						2nd. Floor S-201B.	
180-001104	File Cabinet	1						2nd. Floor S-202.	1' x 3' Metal
	Conference Chair	1						2nd. Floor S-202.	Stationary
	Executive Chair	1						2nd. Floor S-202.	Swivel
	Executive Computer Table	1						2nd. Floor S-202.	2' x 2' Wood
	Executive Credenza	1						2nd. Floor S-202.	2' x 6' Wood
	Executive Desk	1						2nd. Floor S-202.	3' x 6' Wood
180-001007	Dry Erase Board	1						2nd. Floor S-205.	3' x 7'
180-001091	File Cabinet	1						2nd. Floor S-205.	4 Drawer Metal
180-001097	File Cabinet	1						2nd. Floor S-205.	4 Drawer Metal
180-001524	File Cabinet	1						2nd. Floor S-205.	3' x 6' Metal
180-001525	File Cabinet	1						2nd. Floor S-205.	
180-001526	File Cabinet	1						2nd. Floor S-205.	4 Drawer 3' x 6' Metal
LS-180-004	Letter System	1 unit	Croy		Model 80			2nd. Floor S-205.	
	Book Case	1						2nd. Floor S-205.	2' x 4' Metal
	Cart	1						2nd. Floor S-205.	1.5' x 3' Metal
	Cart	1						2nd. Floor S-205.	1' x 1.5' x 6'

YCR 174

001254

R 300

BLDG. 199 Inventory

Chair	1					2nd. Floor S-205.	Secretary
Chair	1					2nd. Floor S-205.	Swivel
Chair	1					2nd. Floor S-205.	Stationary
Chair	1					2nd. Floor S-205.	Executive
Credenza	1					2nd. Floor S-205.	2' x 5' Metal
Desk	1					2nd. Floor S-205.	3' x 5' Metal
Drop Leaf Cart	1					2nd. Floor S-205.	1' x 1' Wood Top
File Cabinet	1					2nd. Floor S-205.	Metal
File Cabinet	2					2nd. Floor S-205.	2' x 3' Metal
Hand Truck	1					2nd. Floor S-205.	Metal
Printer Stand	1					2nd. Floor S-205.	2' x 2' Wood
Projector Screen	1					2nd. Floor S-205.	5'
Refridgerator	1	Sub-Zero				2nd. Floor S-205.	
Student Draft Desk	1					2nd. Floor S-205.	2' x 3' Wood
Table	4					2nd. Floor S-205.	Folding 3' x 5' Metal
Table	1					2nd. Floor S-205.	1' x 2' Metal
table	1					2nd. Floor S-205.	3' x 6' Wood
Video Cart	1					2nd. Floor S-205.	2' x 3' x 2'
Video Cart	1					2nd. Floor S-205.	2' x 2' x 3' Plastic
Video Cart	1					2nd. Floor S-205.	2' x 2' x 5' Metal
Video Cart	1					2nd. Floor S-205.	1' x 3' x 2.5' Metal
Video Cart	1					2nd. Floor S-205.	1' x 1.5' x 3' Metal
180-001063 Cabinet	1					2nd. Floor S-205.	2' x 3' x 3' Plastic
180-001093 File Cabinet	1					2nd. Floor S-203/204.	3' x 6' Metal
180-001095 File Cabinet	1					2nd. Floor S-203/204.	Metal
180-001101 Cabinet	1					2nd. Floor S-203/204.	Metal
180-001102 File Cabinet	1					2nd. Floor S-203/204.	2 Door 3' x 6' Metal
180-001103 File Cabinet	1					2nd. Floor S-203/204.	4 Drawer 3' x 4' Metal
180-001105 File Cabinet	1					2nd. Floor S-203/204.	3' x 4' Metal
180-001106 File Cabinet	1					2nd. Floor S-203/204.	4 Drawer 3' x 4' Metal
180-001107 File Cabinet	1					2nd. Floor S-203/204.	3' x 4' Metal
180-001109 File Cabinet	1					2nd. Floor S-203/204.	3' x 4' Metal
180-001117 File Cabinet	1					2nd. Floor S-203/204.	4 Drawer 3' x 4' Metal
180-001118 Cabinet	1					2nd. Floor S-203/204.	4 Drawer 3' x 4' Metal
180-001119 Cabinet	1					2nd. Floor S-203/204.	3' x 6' Metal
180-001122 Desk	1					2nd. Floor S-203/204.	3' x 6' Wood

YCR 175

001255

R 301

BLDG. 199 Inventory

180-001123	Credenza	3						2nd. Floor S-203/204.	2' x 5' Wood
180-001124	Cabinet	3						2nd. Floor S-203/204.	2' x 5' Wood
180-001154	Cabinet	1						2nd. Floor S-203/204.	Roll up Door 3' x 6' Metal
191-148369	Power File	1	Kardex	18371	LK-S80M	1990	\$ 10,194.00	2nd. Floor S-203/204.	
	3pc. Work Station	8unit						2nd. Floor S-203/204.	Wood Desk Top
	Book Case	3						2nd. Floor S-203/204.	2' x 3' Metal
	Book Case	4						2nd. Floor S-203/204.	2' x 6' Wood
	Cart	2						2nd. Floor S-203/204.	1.5' x 1.5' Metal
	Cart	1						2nd. Floor S-203/204.	2' x 2' Metal
	Cart	1						2nd. Floor S-203/204.	1' x 3' Metal
	Chair	6						2nd. Floor S-203/204.	Secretary
	Chair	3						2nd. Floor S-203/204.	Swivel
	Chair	3						2nd. Floor S-203/204.	Stationary
	Computer Desk	1						2nd. Floor S-203/204.	3' x 4' Wood with Hutch
	Computer Table	1						2nd. Floor S-203/204.	2' x 3' wood
	Executive Chair	7						2nd. Floor S-203/204.	Swivel
	Oscillating Fan	1						2nd. Floor S-203/204.	18"
	Printer Stand	1						2nd. Floor S-203/204.	1' x 2' Wood
	Refridgerator	1						2nd. Floor S-203/204.	
	Refridgerator	1	Gibson					2nd. Floor S-203/204.	
	Stand	1						2nd. Floor S-203/204.	1' x 2' Wood
	Student Drafting Table	1						2nd. Floor S-203/204.	2' x 3' wood
	Table	1						2nd. Floor S-203/204.	Folding 3' x 5'
	Table	1						2nd. Floor S-203/204.	1' x 3' Wood
	Table	1						2nd. Floor S-203/204.	2' x 6' Wood
	Table	2						2nd. Floor S-203/204.	3' x 5' Metal
	Table	1						2nd. Floor S-203/204.	2' x 5' Wood
	Table	1						2nd. Floor S-203/204.	2' x 4' Wood
	Table	1						2nd. Floor S-203/204.	2' x 3' Metal
	Chair	3						2nd. Floor Center Hall	Stationary
	Coat & Hat Rack	1						2nd. Floor Center Hall	Metal
	Drafting Table	1						2nd. Floor Center Hall	2' x 3'
	Table	1						2nd. Floor Center Hall	3' x 5' Metal
	Table & Bench	2						2nd. Floor Center Hall	2' x 6' Wood
	Water Fountain	1						2nd. Floor Center Hall	
OPS-COT	Coffee Maker	1	Bun-O-Matic					2nd. Floor S-200.	2 Pot
	Chair	5						2nd. Floor S-200.	Stationary

YCR 176

001256

R 302

BLDG. 199 Inventory

	Conference Chair	21				2nd. Floor S-200.	Swivel
	Dry-Erase Board	1				2nd. Floor S-200.	3' x 12'
	Easel	2				2nd. Floor S-200.	
	File Cabinet	3				2nd. Floor S-200.	Metal
	Flag Pole	1				2nd. Floor S-200.	3' x 5' Wood
	Oscillating Fan	1				2nd. Floor S-200.	15"
	Podium	1	CNSYD			2nd. Floor S-200.	Attachment to Projector
	Projector Screen	1				2nd. Floor S-200.	Ceiling Mounted 8'
	Student Desk	1				2nd. Floor S-200.	Metal
	Table	15				2nd. Floor S-200.	3' x 5' Folding Metal
	Table	2				2nd. Floor S-200.	3' x 5' Wood
	Table	2				2nd. Floor S-200.	5' Dia.
150-007428	Overhead Projector	1	3M			2nd. Floor S-200A.	
180-001003	Dry Erase Board	1				2nd. Floor S-200A.	3' x 7'
	Chair	2				2nd. Floor S-200A.	Stationary
	Conference Chair	24				2nd. Floor S-200A.	Swivel
	Podium	1				2nd. Floor S-200A.	Wood
	Projector Screen	1				2nd. Floor S-200A.	Wall Mounted 6'
	Table	10				2nd. Floor S-200A.	3' x 5' Folding Metal
	Table	1				2nd. Floor S-200A.	2' x 6' Folding Metal
180-001112	File Cabinet	1				2nd. Floor S-201.	4 Drawer 1' x 3'
180-001535	Portable Erase Board & Copier	1	Quartet Ovovics			2nd. Floor S-201.	2' x 8'
	AC/Heater	1	Comfort Aire			2nd. Floor S-201.	
	Chair	1				2nd. Floor S-201.	Lobby
	Coat & Hat Rack	1				2nd. Floor S-201.	Metal
	Conference Chair	14				2nd. Floor S-201.	Swivel
	Conference Chair	5				2nd. Floor S-201.	Stationary
	Conference Table	1				2nd. Floor S-201.	3' x 18' Wood
	Desk	1				2nd. Floor S-201.	3' x 3' Wood
	Dry Erase Board	1				2nd. Floor S-201.	3' x 7'
	End Table	1				2nd. Floor S-201.	1.5' x 1.5' Wood
	Sofa	1				2nd. Floor S-201.	3 Seat 6'
	Table	1				2nd. Floor S-201.	1' x 3' Metal
	Book Case	1				2nd. Floor S-208.	3' x 5' Wood
	Partitions	7				2nd. Floor S-208.	5' x 5'
	Partitions	6				2nd. Floor S-208.	4' x 5'
	Book Shelf	1				2nd. Floor South Hall	Metal

YCR 177

001257

R 303

BLDG. 199 Inventory

	Coal & Mat Rack	4						2nd. Floor South Hall	Metal
	Desk	1						2nd. Floor South Hall	Metal with Wood Top 2' x 4'
	Drafting Table	1						2nd. Floor South Hall	3' x 5'
	Table	1						2nd. Floor South Hall	Folding 3' x 5'
	Water Fountain	1	Oasis					2nd. Floor South Hall	
150-007495	Dry Erase Board	1						2nd. Floor W-210.	3' x 7'
	Book Case	1						2nd. Floor W-210.	2' x 4' Metal
	Chair	8						2nd. Floor W-210.	Swivel
	Chair	9						2nd. Floor W-210.	Stationary
	Chair	1						2nd. Floor W-210.	Plastic Swivel
	Credenza	4						2nd. Floor W-210.	2' x 5' Wood
	Credenza	1						2nd. Floor W-210.	2' x 6' Wood
	Desk	4						2nd. Floor W-210.	3' x 5' Wood
	Desk	1						2nd. Floor W-210.	3' x 8' Wood
	Drop Leaf Cart	1						2nd. Floor W-210.	1.5' x 1.5'
	Executive Chair	9						2nd. Floor W-210.	Stationary
	File Cabinet	3						2nd. Floor W-210.	4 Drawer Metal
	File Cabinet	3						2nd. Floor W-210.	5 Drawer Metal
	Projector Screen	1						2nd. Floor W-210.	Wall Mounted 8'
	Chair	7						2nd. Floor W-211.	Swivel
	Conference Chair	14						2nd. Floor W-211.	Executive Stationary
	Credenza	1						2nd. Floor W-211.	2' x 8' Wood
	Credenza	5						2nd. Floor W-211.	2' x 5' Wood
	Desk	3						2nd. Floor W-211.	3' x 8' Wood
	Desk	5						2nd. Floor W-211.	3' x 5' Wood
	Dry Erase Board	1						2nd. Floor W-211.	4' x 8'
	File Cabinet	2						2nd. Floor W-211.	4 Drawer Metal
	File Cabinet	2						2nd. Floor W-211.	5 Drawer Metal
	Chair	5						2nd. Floor W-212.	Stationary
	Chair	8						2nd. Floor W-212.	Swivel
	Conference Chair	11						2nd. Floor W-212.	Stationary
	Credenza	5						2nd. Floor W-212.	2' x 5' Wood
	Desk	5						2nd. Floor W-212.	3' x 5' Wood
	Dry Erase Board	1						2nd. Floor W-212.	4' x 8'
	Executive Chair	1						2nd. Floor W-212.	Swivel
	File Cabinet	3						2nd. Floor W-212.	4 Drawer Metal
	File Cabinet	3						2nd. Floor W-212.	5 Drawer Metal

BLDG. 199 Inventory

	Student Drafting Desk	1					2nd. Floor W-212.	2' x 3' Wood
	3 Seat Sofa	1					2nd. Floor W-213.	7' Long
	Book Shelf	1					2nd. Floor W-213.	3' x 5' Wood
	Chair	1					2nd. Floor W-213.	Swivel
	Coat & Hat Rack	1					2nd. Floor W-213.	Metal
	Credenza	1					2nd. Floor W-213.	2' x 6' Wood
	Desk	1					2nd. Floor W-213.	3' x 5' Wood
	Executive Chair	5					2nd. Floor W-213.	Stationary
	Executive Desk	1					2nd. Floor W-213.	3' x 6' Wood
	Oscillating Fan	1					2nd. Floor W-213.	16"
	Oscillating Fan	2					2nd. Floor W-213.	12"
	Partition	2					2nd. Floor W-213.	3' x 5'
	Partition	1					2nd. Floor W-213.	2' x 5'
	Partition	1					2nd. Floor W-213.	4' x 5'
	Partition	2					2nd. Floor W-213.	4' x 2'
	Partition	1					2nd. Floor W-213.	Corner
	Chair	4					2nd. Floor W-213B.	Swivel
	Conference Chair	8					2nd. Floor W-213B.	Stationary
	Conference Table	1					2nd. Floor W-213B.	3' x 7'
	Dry Erase Board	1					2nd. Floor W-213B.	3' x 8'
	Executive Table	1					2nd. Floor W-213B.	Stationary
	Oscillating Fan	1					2nd. Floor W-213B.	16"
	Pedestal Fan	1					2nd. Floor W-213B.	30"
180-001114	Cabinet	1	Hon				2nd. Floor W-213C.	4 Drawer 3' x 4' Metal
	Book Shelf	1					2nd. Floor W-213C.	4' x 4' Wood
	Chair	3					2nd. Floor W-213C.	Swivel
	Computer Desk	1					2nd. Floor W-213C.	3' x 5' Wood
	Computer Desk	1					2nd. Floor W-213C.	3' x 6' Wood
	Computer Table	1					2nd. Floor W-213C.	3' x 3'
	Desk	1					2nd. Floor W-213C.	3' x 5' Wood
	Folding Table	1					2nd. Floor W-213C.	3' x 5' Wood
	Partition	1					2nd. Floor W-213C.	3pc. Corner Section 2', 3', 5'
	Printer Stand	1					2nd. Floor W-213C.	Wood
	Secretary Desk	1					2nd. Floor W-214.	With Partitions
	3pc. Modular Desk	1 unit					2nd. Floor W-214.	Desk Top Metal
	Book Case	1					2nd. Floor W-214.	Swivel
	Chair	4						

YCR 179

001259

R 305

BLDG. 199 Inventory

	Coat & Hat Rack	1					2nd. Floor W-214.	
	Computer Desk	1					2nd. Floor W-214.	5' x 5' Wood
	Computer Desk	1					2nd. Floor W-214.	Metal with Wood Top 3' x 5'
	Credenza	1					2nd. Floor W-214.	2' x 8' Wood
	Credenza	2					2nd. Floor W-214.	2' x 5' Wood
	Desk	1					2nd. Floor W-214.	3' x 8' Wood
	Desk	1					2nd. Floor W-214.	3' x 5' Wood
	Executive Chair	1					2nd. Floor W-214.	Stationary
	Executive Conference Chair	6					2nd. Floor W-214.	Wood
	File Cabinet	1					2nd. Floor W-214.	2 Drawer Metal
	TV Stand	1					2nd. Floor W-214.	3' x 8' Wood
	Chair	1					2nd. Floor W-214A.	Swivel
	Conference Chairs	7					2nd. Floor W-214A.	Stationary
	Conference Chairs	2					2nd. Floor W-214A.	Highback Stationary
	Conference Table	1					2nd. Floor W-214A.	3' x 7' Wood
	Credenza	1					2nd. Floor W-214A.	2' x 8' Wood
	Desk	1					2nd. Floor W-214A.	3' x 8' Wood
	Dry Erase Board	1					2nd. Floor W-214A.	3' x 4'
	Dry Erase Board	1					2nd. Floor W-214A.	4' x 8'
	Executive Chair	1					2nd. Floor W-214A.	Swivel
	Book Case	3					2nd. Floor W-215.	1' x 3' Metal Stackable
	Chair	5					2nd. Floor W-215.	Swivel
	Conference Chair	9					2nd. Floor W-215.	Stationary
	Credenza	3					2nd. Floor W-215.	2' x 5' Wood
	Desk	4					2nd. Floor W-215.	3' x 5' Wood
	File Cabinet	1					2nd. Floor W-215.	5 Drawer Metal
	File Safe	1					2nd. Floor W-215.	4 Drawers Metal
	Chair	3					2nd. Floor W-216.	Swivel
	Chair	2					2nd. Floor W-216.	Stationary
	Credenza	2					2nd. Floor W-216.	2' x 5' Wood
	Credenza	1					2nd. Floor W-216.	2' x 8' Wood
	Desk	1					2nd. Floor W-216.	3' x 5' Wood
	Desk	1					2nd. Floor W-216.	3' x 6' Wood
	Dry Erase Board	1					2nd. Floor W-216.	3' x 8'
	Executive Chair	11					2nd. Floor W-216.	Stationary
	File Cabinet	1					2nd. Floor W-216.	2 Drawer Metal
136687	File Safe	1					2nd. Floor West Hall	Metal

YCR 180

001260

R 306

BLDG. 199 Inventory

[illegible]

YCR 181

001261

R 307

August 14, 1996

Attachment C

Joint Inspection Report

Building 199

On August 13, 1996, representatives of the Caretaker Site Office (Ray Butka), the Charleston Naval Complex Redevelopment Authority (Austin Hilligas) and Charleston County School District (Ray Anderson) performed a pre-leasing walk through of Building 199.

The following report consisting of six pages has been examined and represents the condition of the real property as observed during the walk through.

Deficiencies noted herein are recorded for protection of both the Navy and the Charleston Redevelopment Authority. Existing conditions so noted do not render the facility unsuitable for its intended purpose nor render the premises unsuitable for leasing.

Caretaker Site
Office Representative

R. Butka
(signature)

R. S. BUTKA
(printed name)

FACILITIES ENGINEER
(title)

8-14-96
(date)

Charleston Naval Complex
Redevelopment Authority Representative

Austin R. Hilligas
(signature)

Austin R. Hilligas
(printed name)

Leasing Specialist
(title)

8/15/96
(date)

YCR 182

001262

R 308

Building 199

First Floor

- Room 103 Loose, flaking or deteriorated paint on exterior wall.
- Room 104 Loose, flaking or deteriorated paint on exterior wall.
- Room 106 Vinyl composition tile damaged near exterior wall.
- Room 107 Loose, flaking or deteriorated paint on exterior wall.
- Room 109 Loose, flaking or deteriorated paint on exterior wall.
- Room 110 Loose, flaking or deteriorated paint on exterior wall.
- Room 113 Loose, flaking or deteriorated paint on exterior wall.
- Room 117 Vinyl composition tile damaged near exterior wall.
- Room 122 Vinyl composition tile damaged near exterior door.
- Room 123 Vinyl composition tile damaged near exterior wall.
- Room 126 Vinyl composition tile damaged near exterior wall.
- Room 132 Loose, flaking or deteriorated paint on two exterior walls.

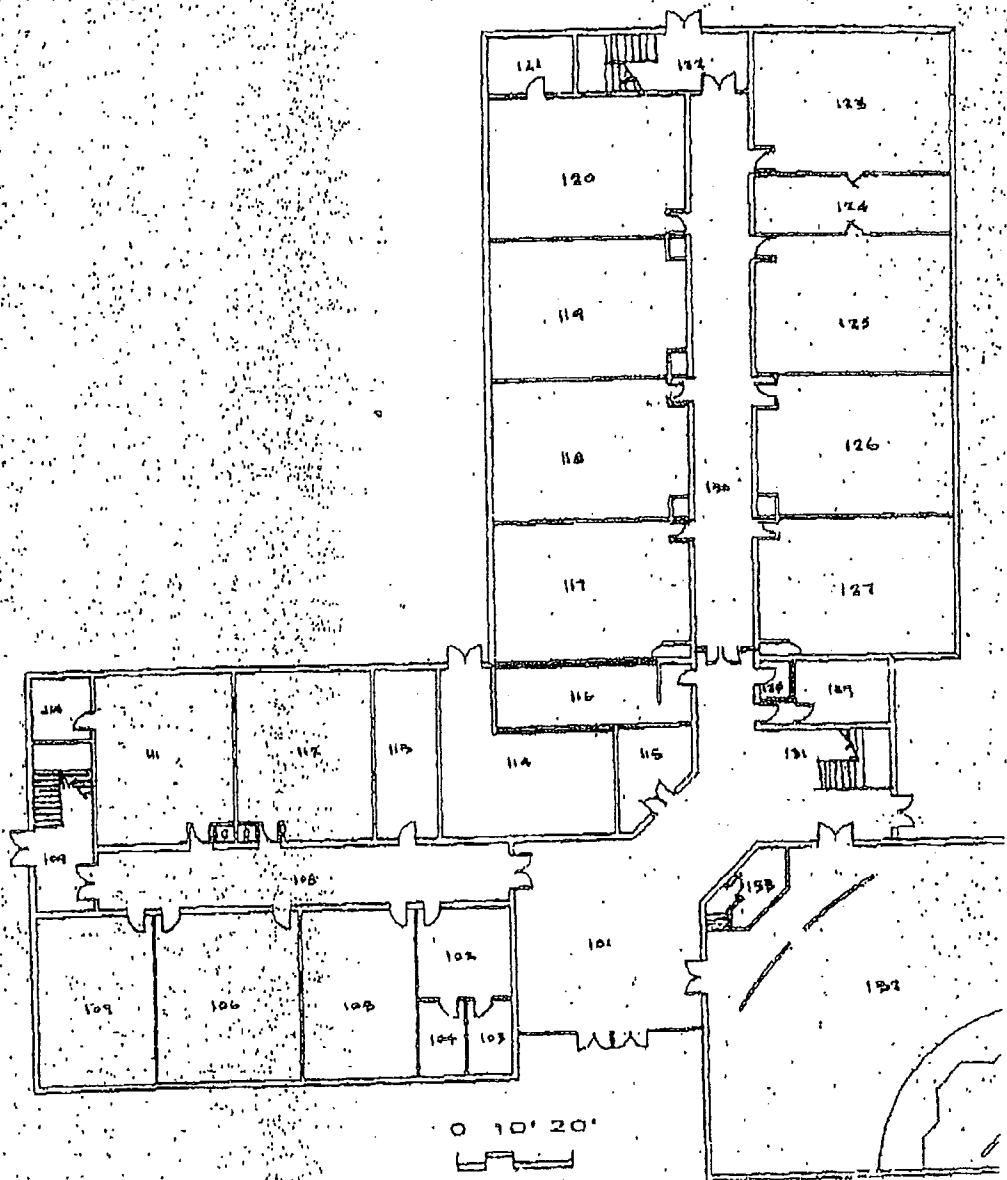
Second Floor

- Room 205 Loose, flaking or deteriorated paint on exterior wall.
- Room 206 Loose, flaking or deteriorated paint on exterior wall.
- Room 207 Loose, flaking or deteriorated paint on exterior wall.
- Room 209 Loose, flaking or deteriorated paint on exterior wall.
- Room 210 Loose, flaking or deteriorated paint on exterior wall.
- Room 211 Loose, flaking or deteriorated paint on exterior wall.
- Room 212 Loose, flaking or deteriorated paint on exterior wall.
- Room 213 Loose, flaking or deteriorated paint on exterior wall.
- Room 214 Tar-like substance on floor.
- Room 216 One or two urinals not working properly. Tar-like substance on floor.
- Room 217 Loose, flaking or deteriorated paint on exterior wall.
- Room 219 Loose, flaking or deteriorated paint on exterior wall.
- Room 227 Loose, flaking or deteriorated paint on exterior wall.
- Room 229 Janitor's sink not working properly.

- **Building 199**
cont'd

Miscellaneous

- Chiller has one compressor not functioning.
- Fan coil units not functioning properly.
- One roof top fresh air unit has damaged water coil.
- Exterior window is incomplete at Room 111.
- Exterior window missing 6" aluminum (black anodized) cover plate.
- Exterior window is incomplete at Room 203
- Various water coolers removed.



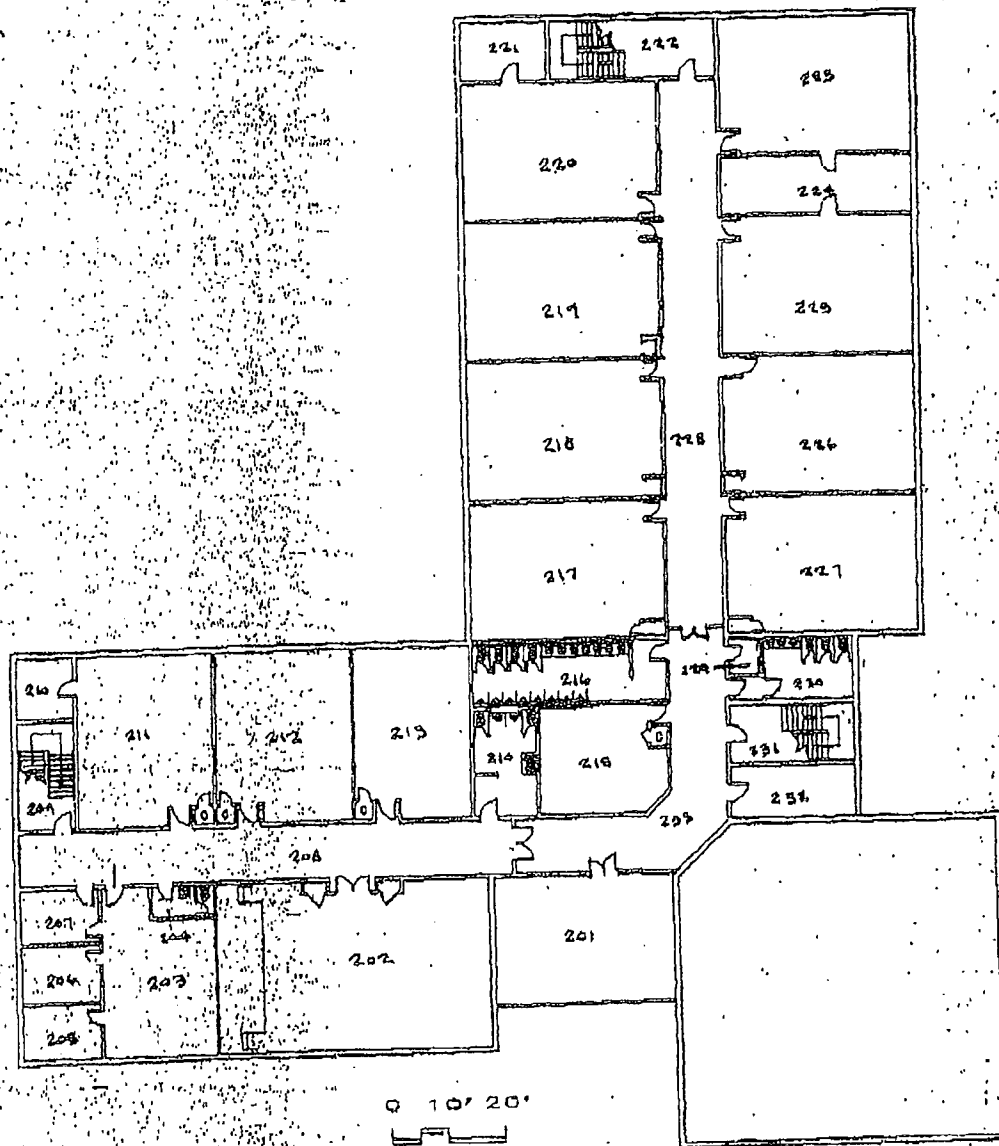
FIRST FLOOR PLAN -- BLDG.

BLDG 199

YCR 185

001265

R 311



SECOND FLOOR PLAN - BLDG. 19

BLDG 199

YCR 186

001266

R 312

BUILDING INSPECTION OR BASE CLOSURE

FINAL

BLDG.# 199

SHOP/CODE 10413

INSPECTED BY B. EDE

DATE 80495

APPROVED BY K. K. K.

LOCATION	DEFICIENCY	STANDARD VIOLATED	NDN#
AC ROOM	① RELIEF VALVE LEAKS, CONSTANT WATER FLOW		REC 104
	② CONTROLLER MISSING, COIL, WIRES (JUNK) ARE EXPOSED		REC 104
Room 101	PASSAGEWAY DOOR BETWEEN 100 & 101 IS MISSING DOOR KNOB		REC 104
Room 110	DICK TILE SOUTH WALL UNDER AC UNIT IS COMING UP		
Room 112	Ceiling TILE STAINED		
OPERATIONAL DIRECTOR OFFICE	PWR PNL IS NOT LABELED (Buckley)	Panel Board 208	REC 104
WEST ENTRANCE	HOUSEKEEPING, DISCARDED REFRIGERATOR		REC 104
WEST HALLWAY	SOUTH WALL PWR PNL NO BUCKLEY IDENTIFICATION		

Pwr 10/2

YCR 187

R 313

001267

BUILDING INSPECTION FOR BASE CLOSURE

BLDG. # 144

SHOP/CODE 10613

INSPECTED BY B. EDGE

DATE 08-04-95

APPROVED BY L. P. [Signature]

[illegible]

**FINDING OF SUITABILITY TO LEASE
110-BUILDING PARCEL
NAVAL BASE, CHARLESTON, S.C.**

I have reviewed the Environmental Baseline Survey for Lease (EBSL) prepared to facilitate the interim leasing of the below described 110 buildings or structures at the Naval Base, Charleston to the Charleston Naval Complex Redevelopment Authority (CNCRA). I have also reviewed those portions of the Reuse Plan for the Charleston Naval Complex which are pertinent to the planned reuse of these buildings and their associated realty (hereinafter subject property). Based upon these reviews and in reliance upon the specific findings contained in the EBSL, I have determined that the subject property is presently suitable for leasing to the CNCRA for those general purposes previously utilized by the Navy and that such reuse would be in conformance with said Reuse Plan. A list of these buildings and facilities is shown below.

Subject Buildings and Facilities		
Building Number	Building Use	Usage Restrictions
A	Quarters A, Commander Naval Base (Flag)	a
X2N	General Warehouse	a
M3A	Marine Maintenance Shop	a
7	Comptroller Department	a, b, d
12A	Training Building (Temporary)	a, e
12B	Training Building (Temporary)	a, e
NS-16	Administrative Office	a, e
39A	Ballast/Sludge Storage Tank, 741,000 Gallon	a
39D	Ballast/Sludge Storage Tank, 741,000 Gallon	a
39L	Diesel Tank, 6,500-gallon	a
39M	Diesel Pumphouse	a
42	Fleet Motor Pool	a
NH-45	Administrative Office (Commander Naval Base Headquarters)	a, c, d
NH-46	Administrative Office	a, b, d
NH-47	Administrative Office/Maintenance Shop	a, d
NH-48	Administrative Office	a, c
NH-49	Administrative Office (Navy Hospital)	a
NH-50	Administrative Office	a, c, d
NH-51	Administrative Office	a, c, d
NH-52	Resident Officer In Charge Of Construction	a

Subject Buildings and Facilities		
Building Number	Building Use	Usage Restrictions
NH-53	Administrative Office (Naval Investigative Service)	a
NH-54	Administration Office (Operations/Communications)	a
X56	Ammunition Storage	a, b, e
64	Warehouse	a, b
NSC-66	Warehouse	a, b
NSC-67	Warehouse	a, b, d
81	Fire Station No. 2	a, d
M82	Naval Station Security	a, b
88	Cooper River Center	a, c, e
89	Exchange Maintenance Shop	a, d
94	Substation	a
98	Fuel Oil Booster Pumphouse	a, b, d
122	Grounds Maintenance	a
133	Operational Storage	a, b
141	Union Office and Police Department Storage	a
148	Stripper Concrete Tank	a, b
172	Operational Storage	a
183	Flagpole (for Building 654)	a
184	Outdoor Swimming Pool (Cooper River Center)	a, e
186	Fire Station No. 1	a
M192	Security Training Building	a, b
193	Cold Storage Warehouse/Laboratory	a, d, e
199	Training Building (Cochrane Hall)	a, c, d
214	Filter House for Facility 184	a, e
220	Golf Pro Shop/Snack Bar	a, e
224	SERVMART	a, b, d, e
225	Navy Lodge	a
229	Bathhouse (Cooper River Center)	a, e
232	Training Aids Storage and Administration	a
233	Battery Charging Facility	a, b
240	Carwash Facility	a, b
242	Automobile Maintenance Building	a, b

Subject Buildings and Facilities		
Building Number	Building Use	Usage Restrictions
246	Fire Station Support Building	a
373	Radio Tower	a
451L	Switching Station	a
451M	Switching Station	a
684	Personnel Support Detachment/Naval Station Billing	a
658	Barracks, Marine Security Detachment	a
863	Antenna Field (Abandoned)	a, e
871	Dog Kennel	a, e
1101	Garage for Quarters "A"	a
1143	Special Services Center	a, c
1167	Exchange Warehouse	a
1172	Ships Outfitting, Clothing Storage and Fleet Purchasing	a, d
1176	Shop Stores and Grounds Maintenance	a
1179	Chapel	a, c
1189	Fire Prevention & Inspection Division/Laundry	a, b
1193	Office	a, d
1221	Recreational Building	a, e
1263	Naval Exchange Storage	a
1265	Security Detective Office	a
1346	Cochrane Field Restrooms	a
1346	Service Station/Minimart	a, b
1489	Picnic Shelter	a
1490	Restroom	a
1501	Warehouse	a
1503	Warehouse	a, d
1504	Warehouse	a
1505	Warehouse (Housing Storage)	a
1507	Warehouse	a
1509	Storage	a, c
1631	Vehicle Storage Shed	a
1633	Fuel Testing Laboratory	a, d
1654	Accounting Building	a, b

Subject Buildings and Facilities		
Building Number	Building Use	Usage Restrictions
1724	Picnic Shelter	a
1725	Picnic Shelter	a
1768	Sewer Pumping Station No. 8	a, e
1779	Playground	a
1794	Picnic Shelter	a, e
1814	Flammable Storage Shelter	a, b, e
1830	Picnic Shelter	a
1873	Flagpole (for Building NS-46)	a
1887	General Storage (Bachelor Enlisted Quarters)	a, b
1888	Indoor Pistol Range	a, b
1889	Supply Storage (Naval Station)	a, b
1893	Bachelor Enlisted Quarters Warehouse	a, b
1896	Bachelor Enlisted Quarters Storage	a, b
1897	Bachelor Enlisted Quarters Storage	a, b
1902	Sentry House, Gate 2	a
1984	Pistol Range Classroom	a, d
3900E	Diesel Oil Tank, 2,360,000 Gallon	a, b
3900F	Diesel Oil Tank, 2,360,000 Gallon	a, b
3900I	Diesel Oil Pumphouse/Laboratory	a, b, d
3901A	Ballast/Sludge Storage Tank, 103,194 Gallon	a, b
3901B	Sludge Pumphouse	a, b
3916	Lubricant Storage Tank, 1,008,000 Gallon	a, b, e
3916	Diesel Oil Tank, 4,200,000 Gallon	a, b
3917	Diesel Oil Tank, 4,200,000 Gallon	a, b
3926	Ballast Water Treatment Facility	a, b
—	Long-Term Privately Owned Vehicle Storage	a

Past usage of the subject property has involved a variety of activities, including fuel storage and transfer, general material storage, administration, training, security, food preparation, commercial activities, and various industrial and non-industrial support functions. Research of the available aerial photographs adequately demonstrates that prior land use at the subject properties primarily involved some industrial activities. A description of the history and usage of each building is included in Section 3.0 of the attached EBSL. Prior to initial

development of the subject properties by the Navy, the properties were largely undeveloped; a municipal park was located on the northern portion of the subject parcels.

A review of all available records and aerial photographs, personnel interviews and physical site conducted between 9 January 1996 and 31 January 1996 revealed the presence or likely presence of such substances and/or products on subject property and/or adjacent property(ies) which could migrate onto subject property. All reasonably ascertainable information as to the type, quantity and dates of storage, release and/or disposal of such substances and/or products has been included in Section 5 of the EBSL which supports this suitability determination. Notwithstanding the discovered presence or likely presence of such substances or products, I am satisfied that subject property can be used for its intended purpose with acceptable risk to human health and the environment and without interference with the environmental restoration process ongoing at the Charleston Naval Base with appropriate utilization of the attached lease restrictions. In light of the discovered presence and/or likely presence of such hazardous substances and/or petroleum products on subject properties, any lease agreement(s) with the CNCRA shall provide that the federal government will indemnify and hold the CNCRA harmless from future financial liability which might result from the presence of such contamination on subject properties to the extent authorized by Section 330 of P.L. 102-484.

The Charleston Naval Base currently operates under a Resource Conservation and Recovery Act (RCRA) hazardous waste management permit. A RCRA Facility Investigation (RFI) intended to identify the nature and extent of soil and/or groundwater contamination throughout the facility is presently ongoing. These environmental restoration activities are being conducted pursuant to applicable RCRA regulations. No Federal Facility Agreements or Interagency Agreements (FFAs/IAGs) pertain to this facility or these activities. Because as of the date of execution of this FOSL, investigative activities are still ongoing with regard to subject property, the Navy will provide notice to the CNCRA as Lessee of any newly discovered hazardous substance and/or petroleum product contamination found on the leased premises as a result of these efforts. The attached lease restrictions will ensure that the Navy, U.S. EPA and SCDHEC representatives or their agents will have the right to enter the leased premises to conduct all necessary investigations and surveys, including, where necessary, drilling, soil and water sampling, and other activities related to ensuring compliance with the Naval Base's RCRA permit.

Restrictions on the usage of several buildings are incorporated in the lease due to various environmental issues. These include the presence of RCRA units which require future investigation, the presence of friable asbestos, excessive lead levels in building water coolers, the presence of wetland areas, etc. The specific usage restrictions are shown below. The previous building list table provides a summary of these restrictions as they apply to each building or facility, with the letter designation shown below correlating with those shown in the table.

- a. Buildings/facilities with a potential for subsurface contamination, such that no digging, dredging, excavating, or other surficial disturbances can be conducted without

Government approval. Lease Restriction 15 states, in part, that "[l]essee shall not conduct or permit its sublessees to conduct, any subsurface excavation, digging, drilling or other disturbance of the surface without prior written approval of the Government." Additionally, Lease Restriction 16 states that "[l]essee shall not conduct or permit its sublessees to conduct any dredging of submerged materials along any waterfront areas without prior written approval of the Government."

b. Buildings/facilities with ongoing RCRA investigations associated with Areas of Concerns (AOCs) and/or Solid Waste Management Units (SWMUs). Lease Restriction 15 states that "[l]essee shall not conduct or permit its sublessees to conduct, any subsurface excavation, digging, drilling or other disturbance of the surface without prior written approval of the Government." Additionally, Lease Restriction 16 states that "[l]essee shall not conduct or permit its sublessees to conduct any dredging of submerged materials along any waterfront areas without prior written approval of the Government."

c. Buildings/facilities with limited access rooms or spaces due to the presence of friable asbestos. Lease Restriction 18 states that "[d]ue to the presence of friable asbestos within Buildings NH-45, NH-48, NH-50, NH-51, 86, 199, 1143, 1179, and 1509, the lessee and its sublessees shall not enter the rooms or spaces of these buildings which are labelled indicating that they contain friable asbestos until all said friable asbestos has been properly abated by the Navy. Should the lessee or its sublessees need to enter such space(s) prior to completion of abatement activities, all personnel entering such spaces shall be asbestos-trained and shall wear proper personal protective equipment at all times."

d. Buildings/facilities with high-lead concentrations in water coolers, requiring further investigation/remediation or the use of bottled water. Water coolers are available for reuse; however, lessees are responsible for the health of their people. Lease Restriction 17 states that "[d]ue to the potential for high lead levels in drinking water coolers within Buildings NH-45, NH-46, NH-47, NH-50, NH-51, NSC-67, 81, 89, 98, 193, 199, 224, 1172, 1193, 1503, and 3900I, the lessee and its sublessees shall conduct appropriate sampling and analysis of all water coolers within these structures. Lessee and its sublessees shall conduct any remedial activities necessary to ensure that all water coolers within these structures meet federal, state, and local drinking water requirements prior to usage. Alternatively, lessee and its sublessees can utilize bottled water within these structures rather than conduct sampling, analysis, and remedial activities. If bottled water is utilized, all water coolers within these structures shall be rendered inoperable."

e. Buildings/facilities where wetland areas have been identified in past surveys, requiring evaluation prior to any land disturbances or further development. Lease Restriction 19 states that "[d]ue to the prior identification of wetland areas at Buildings or Facilities 12A, 12B, NS-16, X-56, 86, 184, 193, 214, 220, 224, 229, 663, 671, 1221, 1768, 1794, 1814 and 3915, lessee shall not conduct or permit its sublessees to conduct, any subsurface excavation, digging, drilling, land development activities, or other

disturbance of the surface associated with these buildings or facilities other than those in accordance with federal, state, and local wetland protection laws and regulations."

Several RCRA SWMUs and AOCs are located on the Naval Base property adjacent to subject property. These sites are described in Table ES-3 and in Section 6.0 of the attached EBSL. Because these sites may present a potential for contaminant migration onto subject property, the Lessee will be restricted via the attached lease restrictions from either conducting or permitting any sublessee to conduct any subsurface excavation, digging, drilling or other disturbance of the surface without prior written approval from the Navy.

In accordance with the requirements of the National Environmental Policy Act of 1970 (NEPA), a Final Environmental Impact Statement has been prepared for disposal and reuse of the entire Naval Base with the required Record of Decision (RoD) expected to be issued in April 1996. The subject buildings and facilities were constructed for a variety of activities, including ship repair and maintenance, ship berthing, administration, security, food preparation, and various industrial and non-industrial support functions. The proposed interim reuse will not present any substantial change in usage. Therefore, it has been determined that such reuse qualifies for a categorical exclusion and no additional NEPA documentation is required to facilitate execution of the contemplated interim lease agreement.

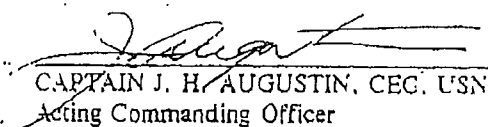
Because it is anticipated that the interim leasing of subject property will extend beyond the date established for operational closure of the Charleston Naval Base, prior to execution of any lease agreement with the CNCRA for such property, formal notification of the proposed duration of such lease along with a description of the uses that will be permitted must by law be provided to the U.S. Environmental Protection Agency (EPA) and South Carolina Department of Health and Environmental Control (SCDHEC).

In accordance with Section 120(h)(5) of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (as amended by the Superfund Amendments and Reauthorization Act of 1986 and the Community Environmental Response Facilitation Act of 1992), the United States Environmental Protection Agency and the South Carolina Department of Health and Environmental Control (SCDHEC) have been advised of the proposed lease of subject property and copies of the Environmental Baseline Survey have been provided to these agencies for review. Comments received were either incorporated directly into the final EBSL or are presently listed as unresolved comments as reflected in Section 7.0 of that document. In accordance with DoD/EPA FOSL policy, this FOSL and attached lease restrictions as well as the final EBSL for the subject property will be made part of any lease to be entered into with the CNCRA and copies of the same will be provided to the CNCRA as well as the appropriate U.S. EPA and SCDHEC representatives after execution of the same.

NOW THEREFORE, based on the information contained herein and subject to the application of the aforementioned lease restrictions, the subject buildings and facilities are suitable to lease.

4/25/96

Date


CAPTAIN J. H. AUGUSTIN, CEC, USN
Acting Commanding Officer
Southern Division
Naval Facilities Engineering Command
Charleston, South Carolina

LEASE RESTRICTIONS
Attachment to the Finding of Suitability to Lease
110-Building Lease Parcel
Naval Base, Charleston

The following restrictions as a minimum shall be included in the lease for the subject buildings and facilities to ensure protection of human health and the environment and prevent interruption of the environmental restoration process being conducted by the Navy.

1. The sole purpose for which the leased premises and any improvements thereon may be used, in the absence of prior written approval by the Government, for any other use, is for the same functions as previously conducted by the Navy, including, but not limited to, fuel storage and transfer, general material storage, administration, training, security, food preparation, commercial activities, and related support functions.
2. Lessee shall neither transfer nor assign this lease or any interest therein or any property on the leased premises without prior Government approval. Lessee may sublet the leased premises or any part thereof or any property thereon, or grant any interest, privilege, or license whatsoever in connection with this lease with the prior written consent of the Government. Any interim use and occupancy of the leased premises in each and every instance are subject to the prior approval of the Government. Such consent shall not be unreasonably withheld or delayed. Every sublease shall contain the Environmental Protection provisions set forth herein.
3. Lessee and any sublessee shall comply with the applicable environmental laws and regulations and all other Federal, state, and local laws, regulations, and standards that are or may become applicable to Lessee's activities on the leased premises.
4. Lessee and any sublessee shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operation under the lease, independent of any existing permits.
5. Government's rights under this lease specifically include the right for Government officials to inspect upon reasonable notice the leased premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections.
6. Government shall be allowed access to the premises for any purposes upon notice to the Lessee. All necessary keys to the buildings and facilities occupied by Lessee or any sublessee shall be made available to Government on request. Government normally will give Lessee or any sublessee 24 hour prior notice of its intention to enter the leased premises unless it determines the entry is required for safety, environmental, operations or security purposes. Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, or contractor.

7. The Lessee agrees that the Government assumes no liability to the Lessee or its sublessees should hazardous waste cleanup requirements, whether imposed by law, regulatory agencies, or Department of Defense (DoD) or Navy, interfere with the Lessee's use of the leased premises. The Lessee shall have no claim on account of any such interference against the Government or any officer, agent, employee, or contractor thereof.

8. The Navy, U.S. Environmental Protection Agency (EPA), and South Carolina Department of Health and Environmental Control (DHEC) and their officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee and any sublessee, to enter upon the leased premises for the purposes enumerated below and for such other purposes associated with environmental restoration activities in or around the leased premises:

(a) To conduct investigations and surveys, including, where necessary, drilling, testpitting, soil and water sampling, borings, and other activities related to the Naval Base, Charleston, Restoration Program or Resource Conservation and Recovery Act (RCRA), as amended, Corrective Action Program. These environmental restoration activities are being conducted under RCRA authority; no Federal Facility Agreements or Interagency Agreements pertain to this facility.

(b) To inspect field activities of the Navy and its contractors and subcontractors in implementing these programs.

(c) To conduct any test or survey required by EPA or DHEC relating to the implementation of these programs or environmental conditions at the leased premises or to verify any data submitted to the EPA or DHEC by the Navy relating to such conditions.

(d) To construct, operate, maintain, undertake any response or remedial action as required or necessary including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

9. Lessee agrees to comply with the provisions of any health and safety plan in effect during the course of any of the described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by Lessee and any sublessee. Lessee, any sublessees, or licensees shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof. In addition, Lessee shall comply with all applicable Federal, state, and local occupational safety and health regulations.

10. Lessee agrees that in the event of assignment or sublease of the leased premises, it shall provide to the EPA and DHEC by certified mail a copy of the agreement or sublease of the leased premises within fourteen (14) days after the effective date of such transaction. Lessee may delete the financial terms and any other proprietary information from the copy of any agreement of assignment or sublease furnished pursuant to this condition.

11. The lessee shall strictly adhere to the hazardous waste permit requirements under the Resource Conservation and Recovery Act (RCRA) and the State of South Carolina equivalent and any other applicable laws, rules or regulations. Except as specifically authorized by the Government in writing, the Lessee must provide at its own expense such hazardous waste management facilities, complying with all laws and regulations, as it may need for such management. Government hazardous waste management facilities will not be available to the Lessee. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.

12. DoD Component accumulation points for hazardous and other wastes will not be used by the Lessee or any sublessee. Neither will the Lessee or sublessee permit its hazardous wastes to be commingled with hazardous waste of the DoD Component.

13. The Lessee shall have a Government-approved plan for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations at the leased facilities. Such plan shall be independent of Naval Base, Charleston, South Carolina, and, except for initial fire response and/or spill containment, shall not rely on use of installation personnel or equipment. Should the Government provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on request of the Lessee, or because the Lessee was not, in the opinion of said officer, conducting timely cleanup actions, the Lessee agrees to reimburse the Government for its cost.

14. The Lessee shall not construct or make or permit its sublessees to construct or make any substantial alterations, additions, or improvements to or installations upon or otherwise modify or alter the leased premises in any way which may adversely affect the cleanup, human health, or the environment without prior written consent of the Government. Such consent may include a requirement to provide the Government with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the Government. For construction of alterations, additions, modifications, improvements or installations (collectively "work") in the proximity of the operable units that are part of a National Priorities List (NPL) Site, such consent may include a requirement for a written approval by the Government's Remedial Project Manager. Except as such written approval shall expressly provide otherwise, all such approved alterations, additions, modifications, improvements, and installations shall become Government property when annexed to the leased premises.

15. Lessee shall not conduct or permit its sublessees to conduct, any subsurface excavation, digging, drilling or other disturbance of the surface without prior written approval of the Government. Lessee agrees to notify the Government immediately should foreign substances (debris, hazardous waste, petroleum products, etc.) of any kind be unearthed while engaging in such excavation activities.

16. Lessee shall not conduct or permit its sublessees to conduct any dredging of submerged materials along any waterfront areas without prior written approval of the Government.

17. Due to the potential for high lead levels in drinking water coolers within Buildings NH-45, NH-46, NH-47, NH-50, NH-51, NSC-67, 81, 89, 98, 193, 199, 224, 1172, 1193, 1503, and 3900I, the lessee and its sublessees shall conduct appropriate sampling and analysis of all water coolers within these structures. Lessee and its sublessees shall conduct any remedial activities necessary to ensure that all water coolers within these structures meet federal, state, and local drinking water requirements prior to usage. Alternatively, lessee and its sublessees can utilize bottled water within these structures rather than conduct sampling, analysis, and remedial activities. If bottled water is utilized, all water coolers within these structures shall be rendered inoperable.

18. Due to the presence of friable asbestos within Buildings NH-45, NH-48, NH-50, NH-51, 86, 199, 1143, 1179, and 1509, the lessee and its sublessees shall not enter the rooms or spaces of these buildings which are labelled indicating that they contain friable asbestos until all said friable asbestos has been properly abated by the Navy. Should the lessee or its sublessees need to enter such space(s) prior to completion of abatement activities, all personnel entering such spaces shall be asbestos-trained and shall wear proper personal protective equipment at all times.

19. Due to the prior identification of wetland areas at Buildings or Facilities 12A, 12B, NS-16, X-56, 86, 184, 193, 214, 220, 224, 229, 663, 671, 1221, 1768, 1794, 1814 and 3915, lessee shall not conduct or permit its sublessees to conduct, any subsurface excavation, digging, drilling, land development activities, or other disturbance of the surface associated with these buildings or facilities other than those in accordance with federal, state, and local wetland protection laws and regulations and in accordance with Lease Restrictions 15 and 16.

COPY 2

FIRST AMENDMENT TO THE SUBLEASE
BETWEEN
CHARLESTON NAVAL COMPLEX REDEVELOPMENT AUTHORITY
AND
CHARLESTON COUNTY SCHOOL DISTRICT

THIS FIRST AMENDMENT TO THE SUBLEASE, made this 26th day of February, 1998, by and between the CHARLESTON NAVAL COMPLEX REDEVELOPMENT AUTHORITY (hereinafter called "Lessor") and the CHARLESTON COUNTY SCHOOL DISTRICT (hereinafter called "Lessee");

WITNESSETH:

WHEREAS, the Lessor and Lessee have previously entered into a Sublease for the Premises;

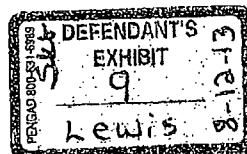
WHEREAS, the Lessor and Lessee desire to address the duration of that Sublease and desire to amend the Sublease to reflect the amendment to such term;

NOW, THEREFORE, in consideration of One Dollar (\$1.00) each paid to the other, the receipt of which is acknowledged and in further consideration of the terms, covenants, and conditions hereinafter set forth, the Lessor and Lessee hereby agree as follows:

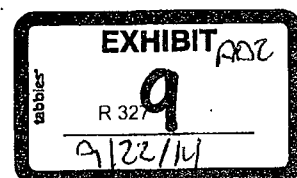
1. In conformity with Paragraph 17 (Amendment) of the Sublease, the Lessor and Lessee amend the Sublease herein. Other than the amendment to Paragraph 6 (Term) of the Sublease as contained below in Paragraph 2, the Sublease, as previously amended in writing, remains unaltered and in effect.

2. The language contained in Paragraph 6 (Term) of the Sublease is substituted, in its entirety, with the following language:

The term of this Sublease shall be for five years and shall run concurrent with the term of the Primary Lease. If Primary lease shall be extended, renewed or replaced, or if Authority shall have by any manner or means the power to lease or sublease the Premises for a term extending beyond the initial term of the Primary Lease, and if this Sublease shall not have terminated and if there shall exist no uncured event of default nor any event which with the passage of time or the giving of notice or both would constitute an event of default, Authority agrees that this Sublease shall in Lessee's sole discretion, evidenced by Lessee's written notice to Authority given prior to expiration or termination of the original sublease term, be automatically renewed or extended for the same period of time on the same terms and conditions herein. The maximum term of the initial sublease and all extensions shall be 50 years. During the term of this Sublease and any extension or renewal if fee simple title to the Premises is conveyed to the Authority and the Authority



YCR 046



determines that it will sell the Premises, the Premises shall be conveyed to Lessee, with a reverter to the Authority if abandoned or not used for educational purposes, at no cost other than legal costs of transfer.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 26th day of February, 1998.

WITNESS:

Kathryn Hardner
Mary B. Lister
Kathryn Hardner
Mary B. Lister

CHARLESTON NAVAL COMPLEX
REDEVELOPMENT AUTHORITY

James C. Bryan
JAMES C. BRYAN, Chairman

James M. Deaton
JAMES M. DEATON,
Asst. Secretary/Treasurer

CHARLESTON COUNTY
SCHOOL DISTRICT

Gerry Whelan
Idelon Page

By: C. J. [Signature]
Its: Superintendent

YCR 047

00421

R 328

APPROVAL BY THE STATE OF SOUTH CAROLINA

On this 10th day of March, 1998, South Carolina Budget and Control Board, Office of General Services, approves the attached Amendment to the Sublease between the Charleston Naval Complex Redevelopment Authority, as Lessor and the Charleston County School District as Lessee, dated the 26th day of February, 1998.

SOUTH CAROLINA BUDGET
AND CONTROL BOARD
OFFICE OF GENERAL SERVICES

By: Alton T. Loftis
Its: Manager, Appraisal Services
Date: 3/10/98

YCR .048

00422

R 329

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas for the Ninth Circuit

Markley R. Dennis, Jr., Circuit Court Judge

Appellate Case No. 2017-000060

RECEIVED

MAY 03 2017

SC Court of Appeals

Project: Intermodal Container Transfer Facility

Tract: 11

South Carolina Department of Commerce, Division of Public
Railways.....Respondent

v.

Clemson University Respondent

And

Charleston County School District Appellant

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Record on Appeal contains all materials proposed by the parties to be included in the Record on Appeal and does not contain any other materials.

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: 

M. Dawes Cooke, Jr., Esq. (SC Bar #1376)

John W. Fletcher, Esq. (SC Bar # 69550)

288 Meeting Street (29401), P. O. Drawer H
Charleston, SC 29402

(843) 577-7700 Fax: (843) 577-7708

*Attorneys for Appellant Charleston County
School District*

April 26, 2017