

ORIGINAL

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE MARVIN H. DUKES, III
MASTER IN EQUITY AND SPECIAL CIRCUIT COURT JUDGE

CASE NO.: 2010-CP-07-06274
2010-CP-07-06284

EFFIE SANDRA L. TURPIN, C.E. LOWTHER, JR.,
CLAYTON CLARK LOWTHER, and MITCHELL
SAXON LOWTHER, INDIVIDUALLY AND REPRESENTING
AS A CLASS OF BENEFICIARIES OF THE ESTATE OF C.E.
LOWTHER, SR.,

Respondents,

v.

E. LEGRAND LOWTHER, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF
C.E. LOWTHER, SR., and MARK ALLEN LOWTHER, AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF
C.E. LOWTHER, SR.

OF WHOM E. LEGRAND LOWTHER IS

Appellant.

RECORD ON APPEAL
VOLUME II

H. Fred Kuhn, Jr., Esquire
Moss, Kuhn & Fleming, P.A.
Post Office Drawer 507
Beaufort, South Carolina 29901-0507
(843)524-3373
(843)524-1302 – facsimile

Attorneys for the Appellant

Harley D. Ruff, Esquire
Carol C. Ruff, Esquire
Ruff & Ruff, LLC
17 Professional Village Circle
Beaufort, South Carolina 29907
(843)524-5400
(843)524-5401 – facsimile

Attorneys for the Respondents

RECEIVED

NOV 06 2012

SC Court of Appeals

INDEX

VOLUME I

ORDER DENYING MOTION TO RECONSIDER, ALTER OR AMEND JUDGMENT OF THE HONORABLE MARVIN H. DUKES, III, DATED MARCH 21, 2012	1
ORDER ON APPEAL; AFFIRMED IN PART, REVERSED IN PART OF THE HONORABLE MARVIN H. DUKES, III, DATED NOVEMBER 22, 2011	3
ORDER OF JUDGMENT OF THE HONORABLE KENNETH E. FULP, JR., DATED DECEMBER 21, 2010	22
ORDER OF THE HONORABLE KENNETH E. FULP, JR., DATED OCTOBER 16, 2007 ..	39
RULE 4, SOUTH CAROLINA PROBATE COURT ISSUED BY THE HONORABLE JOSEPH N. MALPHRUS, DATED MARCH 8, 2007	43
NOTICE OF APPEAL	44
SUMMONS AND COMPLAINT DATED FEBRUARY 15, 2008	68
ANSWER DATED MARCH 11, 2008	106
MOTION TO RECONSIDER, ALTER OR AMEND JUDGMENT DATED DECEMBER 9, 2011	114
RETURN TO MOTION TO RECONSIDER, ALTER OR AMEND JUDGMENT DATED DECEMBER 21, 2011	120
GROUND FOR APPEAL DATED JANUARY 24, 2011	125
GROUND FOR APPEAL DATED FEBRUARY 3, 2011	167
MEMORANDUM IN SUPPORT OF GROUNDS FOR APPEAL	187
TRANSCRIPT OF HEARING HELD JUNE 23, 2009 AND JUNE 26, 2009	196-400

VOLUME II

TRANSCRIPT OF HEARING HELD JUNE 23, 2009 AND JUNE 26, 2009	401-547

PLAINTIFF'S EXHIBIT 1 – INVENTORY AND APPRAISEMENT	548
PLAINTIFF'S EXHIBIT 2 – CALENDAR	551
PLAINTIFF'S EXHIBIT 3 – WARRANTY DEED	552
PLAINTIFF'S EXHIBIT 4 – SETTLEMENT STATEMENT	555
PLAINTIFF'S EXHIBIT 5 – WARRANTY DEED	557
PLAINTIFF'S EXHIBIT 6 – CONTRACT FOR SALE AND PURCHASE	565
PLAINTIFF'S EXHIBIT 7 – CONTRACT FOR SALE AND PURCHASE	577
PLAINTIFF'S EXHIBIT 8 – SETTLEMENT STATEMENT	583
PLAINTIFF'S EXHIBIT 9 – ESCROW CUSTOMER BALANCE DETAIL	586
DEFENDANT'S EXHIBIT 1 – LAST WILL AND TESTAMENT	587
DEFENDANT'S EXHIBIT 2 – INVENTORY AND APPRAISEMENT	590
DEFENDANT'S EXHIBIT 3 – INVENTORY AND APPRAISEMENT	597
DEFENDANT'S EXHIBIT 4 – REAL ESTATE PURCHASE AND SALE CONTRACT	604
DEFENDANT'S EXHIBIT 5 – REAL ESTATE PURCHASE AND SALE CONTRACT	607
DEFENDANT'S EXHIBIT 6 – DEED OF DISTRIBUTION	610
DEFENDANT'S EXHIBIT 7 – REAL ESTATE MORTGAGE	614
DEFENDANT'S EXHIBIT 8 – WARRANTY DEED	623
DEFENDANT'S EXHIBIT 9 – HUD UNIFORM SETTLEMENT STATEMENT	626
DEFENDANT'S EXHIBIT 10 – WARRANTY DEED	628
DEFENDANT'S EXHIBIT 11 – NOTES	637

DEFENDANT’S EXHIBIT 12 – MORTGAGE	658
DEFENDANT’S EXHIBIT 13 – NOTE	672
DEFENDANT’S EXHIBIT 14 – REAL ESTATE PURCHASE AND SALE CONTRACT	675
DEFENDANT’S EXHIBIT 15 – REAL ESTATE PURCHASE AND SALE CONTRACT	678
DEFENDANT’S EXHIBIT 16 – REAL ESTATE AND PURCHASE SALE CONTRACT	681
DEFENDANT’S EXHIBIT 17 – REAL ESTATE PURCHASE AND SALE CONTRACT	684
DEFENDANT’S EXHIBIT 18 – REAL ESTATE PURCHASE AND SALE CONTRACT	687
DEFENDANT’S EXHIBIT 19 – CONTRACT FOR SALE AND PURCHASE	690
DEFENDANT’S EXHIBIT 20 – REAL ESTATE PURCHASE AND SALE CONTRACT	702
DEFENDANT’S EXHIBIT 21 – REAL ESTATE PURCHASE AND SALE CONTRACT	705
DEFENDANT’S EXHIBIT 22 – WARRANTY DEED	708
DEFENDANT’S EXHIBIT 23 – WARRANTY DEED	711
DEFENDANT’S EXHIBIT 24 – COPIES OF NINE CHECKS	715
DEFENDANT’S EXHIBIT 25 – ECHO TANGO INTERIM ACCOUNTING	724
DEFENDANT’S EXHIBIT 26 – ECHO TANGO PROPERTY EXPENDITURES AND INTEREST CALCULATION	729
TRANSCRIPT OF HEARING HELD JUNE 28, 2011	731

1 September?

2 A. Yes.

3 Q. Okay.

4 All the way through the end of December you'd
5 never disclosed this to any of your siblings, is that
6 correct?

7 A. I did not. I did not.

8 Q. Okay.

9 Is there any other reason that you did not, other
10 than your statement a little while ago that you felt it was
11 none of their business?

12 A. There is a reason. I told you the reason, Mr.
13 Ruff.

14 Q. Okay.

15 A. Because I had a contract with my brothers and
16 sisters to buy the property from them.

17 Q. The contracts that are in evidence right now?

18 A. And the way I was going to have to pay them was
19 to sell something, is the only way I could pay them back. I
20 had to borrowed the money to pay them. To give them money.

21 They each needed money.

22 Q. Now, you testified earlier that you had this
23 agreement regarding \$800,000 to International Society of
24 Investors prior to October 12? You admitted that, right?

25 A. Yes.

000401

1 Q. Was it a concern of yours that when you met with
2 my clients on the seventeenth and eighteenth that they
3 wouldn't have gone forward with the proposal you made had
4 they known about that deal?

5 A. No, sir.

6 Q. Why wasn't that a concern of yours?

7 A. Because I had a deal and they needed money and it
8 was the quickest way to get them money. I had no written
9 contract, no signed contract from Monty Perry on the 40
10 acres. We'd already had three deals that fell through on
11 the 40 acres. And so there was no guarantee.

12 Q. I believe you did have a written agreement
13 because you say, you said that it was sent to you a week
14 later, after your conversation with them in the first week
15 of October. Is that right?

16 A. Mr. Perry had not signed the deal. He didn't
17 signature it.

18 Q. Until November?

19 A. Until November.

20 Q. But he had his attorney prepare the agreement?

21 A. He had his attorney prepare the agreement.

22 The other agreements I had from the other, the
23 other deals were made by attorneys and sent to me. And I
24 signed and sent them back and the deals fell through.

25 Q. And your refusal to disclose The International

000402

1 Society of Investors agreement to your brothers and
2 sisters, it didn't -- it didn't dawn on you that it my be
3 objectionable to them that you were gonna make the \$299,000
4 profit?

5 A. I didn't refuse to do it; I just didn't do it.

6 Q. Didn't do it?

7 A. Yes.

8 And I didn't think it would make any difference.
9 Absolutely didn't think it would make any difference.

10 Q. If you had disclosed it to them they would have
11 gone through it anyway?

12 A. Yeah.

13 Q. When you presented the contracts on the
14 seventeenth and eighteenth?

15 A. Yeah. I think they'd have gone through it
16 anyhow.

17 Q. Human nature just is, oh, sure, I'll sell it to
18 you when you're turning around and making a \$300,000 profit.
19 You think they would, really, really done that?

20 MR. KUHN: Your Honor, I object.

21 THE COURT: Well, it is, the
22 question's cumulative. I think it's been asked and
23 answered.

24 MR. RUFF: Okay.

25 I think he's already answered the

000403

1 question, Your Honor.

2 Now I'm gone move on to something else.

3 Q. Mr. Lowther, we're at the issue of the Echo Tango
4 and Wellington property and your attorney has dated that
5 we're trying to isolate the 40 acres transaction.

6 MR. RUFF: May I have a copy of the
7 exhibits of the contracts between Mr. Lowther and my
8 clients? I think they're defense exhibits.

9 They go in consecutive order. They're
10 all fairly the same.

11 MR. KUHN: Defendant's 14 through
12 18.

13 THE COURT: Thank you, Mr. Kuhn.

14 MR. KUHN: And four and five.

15 Which is an incomplete set. We have not
16 yet put Mitchell's in to evidence.

17 THE COURT: Which one is not in
18 evidence?

19 MR. RUFF: I think they are all.
20 Aren't the all in evidence?

21 THE COURT: They've all been marked
22 but I don't think they've all been sponsored and admitted
23 yet.

24 You just mentioned that Mitchell's
25 contract was not yet in evidence.

1 MR. KUHN: It's not yet in
2 evidence.

3 THE COURT: Do you know what number
4 that s?

5 MR. KUHN: I have not marked it
6 yet. I plan to put it through Mr. Lowther.

7 MR. RUFF: May we go ahead and put
8 that in now, Your Honor, with consent?

9 MR. KUHN: That'll be good,
10 certainly.

11 THE COURT: Since they've already
12 been marked.

13 Q. Mr. Lowther, the other two properties that your
14 attorney -- that y'all have asserted that is involved in
15 this case, the first one is what's been referred to,
16 throughout this trial, is Echo Tango.

17 MR. RUFF: May I hold the contract,
18 sir?

19 Q. Do you mind reading this section called Quit
20 Claim Deed on page 2 of this contract, sir?

21 MR. RUFF: And, Your Honor, I think
22 we can stipulate for the record this section marked Quit
23 Claim Deed is identical in all, in each one of the contracts
24 of the brothers and sisters.

25 THE COURT: Okay.

000405

1 Let me just make sure what I'm looking
2 at is the same.

3 This is, what he's looking at is the
4 purchase and sale agreement between E. LeGrande Lowther and
5 Clayton Clark Lowther. And I have is Mitchell Saxon
6 Lowther. If it's a spare copy of that.

7 If not, let's just go ahead and proceed
8 and I'll just take a look at it after he testified.

9 MR. RUFF: Okay.

10 Q. Will you please read the section called the Quit
11 Claim Deed, sir?

12 A. Yeah.

13 In consideration of the for the price paid herein
14 seller additional agree. To release any right which seller
15 may have in that property and lots in the Echo Tango area of
16 Beaufort County and will execute a quit claim deed to said
17 property at closing.

18 Q. Now, that means, Mr. Lowther, does it not, that
19 my clients were getting nothing under this contract to the
20 Echo Tango property, isn't that correct?

21 A. No.

22 Q. They were deeding the property to you as part of
23 this transaction?

24 A. No, sir. The whole deal -- This is not an
25 individual, for an individual piece of property. This is

1 for all interest or anything that they would have in any of
2 the property.

3 Q. Okay.

4 But the purchase price stated on page 1 which is
5 for Wellington and the 40 acres you conceded, or do you,
6 that the Echo Tango was part of this contract?

7 A. It was part of that contract.

8 Q. And none of the siblings were getting anything in
9 addition to the purchase price stated on page 1 for the Echo
10 Tango property, is that right?

11 A. I don't follow you now that, Mr. Ruff. I think
12 you're mistaken there, with the question.

13 Q. My question is the purchase price that, that your
14 siblings received, that they received under these contracts.

15 A. Yes.

16 Q. Echo Tango, their interest in Echo Tango were
17 quit-claimed to you under these contracts, is that right?

18 A. According to the contract, yeah.

19 Q. Okay.

20 And they did not receive, or did they? Did they
21 receive any purchase piece in addition to that stated on
22 page 1 in addition to that for the Echo Tango deeds going to
23 you?

24 A. Echo Tango was included in that price.

25 Q. That's my point.

000407

1 A. Yes.

2 Q. Thank you.

3 Regarding the Wellington property, sir, which is
4 the other property that your attorney has --

5 A. Yeah.

6 THE COURT: And the exhibits that he
7 was just looking at, may I see those, please?

8 MR. RUFF: Oh, I need to give them
9 back. I apologize.

10 THE COURT: Could the clerk hand
11 that up to me, please?

12 Is the quit claim provision the same in
13 all the contracts?

14 MR. KUHN: Yes, Your Honor, it's
15 the same in all six.

16 THE COURT: Yeah. That's my brief
17 look at it, indicates that.

18 Okay.

19 I'll hand those back to you.

20 Q. Mr. Lowther, do you recognize --

21 MR. RUFF: This is, this is
22 regarding, Mr. Lowther and Your Honor, the other property
23 that your attorney says is part of the Wellington property.

24 Q. You recognize this document, sir?

25 A. Yes, I do.

000408

1 Q. What is it?

2 A. It's a warranty deed for their ownership in
3 Wellington Plantation, what we call Wellington.

4 Q. Okay.

5 And what is the amount shown that you paid to
6 Mitchell plus the rest of the heirs of the estate all
7 together under that deed, sir?

8 A. Two million four hundred sixty-four thousand
9 dollars.

10 Q. Two million four hundred sixty-four thousand
11 dollars.

12 And that deal closed? Mr. Lowther?

13 A. The Wellington deal?

14 Q. With your siblings.

15 A. Yes.

16 Q. Okay.

17 MR. RUFF: And I believe the HUD 1
18 from that transaction is also an exhibit. It may be one of
19 our Plaintiff's Exhibits.

20 MR. KUHN: Well, I don't think
21 that's in yet but I don't mind making that an exhibit. I
22 just want to put that in through Mr. Lowther.

23 What exhibit numbers are the two we just put in,
24 Mitchell Lowther's contract?

25 THE COURT: Well, I don't think,

1 actually, they haven't been testified to. Was there
2 stipulation that they come in?

3 MR. RUFF: I think so.

4 MR. KUHN: Yes, Your Honor.

5 THE COURT: Okay.

6 Then they would be as Defendant's
7 Exhibits. They would be Defendant's Exhibits, whatever the
8 next number in the series is. I have up here, I have
9 through eighteen. So I believe it would be nineteen and
10 twenty, wouldn't it?

11 THE CLERK: I have a nineteen.

12 THE COURT: Okay. Then be twenty
13 and twenty-one, respectively.

14 Mr. Ruff, just so you see what's
15 happening here, the two Mitchell contracts, one of them has
16 blanks where the prices are; the other does not. And the
17 blank one is twenty; the other one is twenty-one.

18 MR. RUFF: Thank you, Your Honor.

19 THE COURT: And they're by
20 stipulation; they're admitted in evidence.

21 MR. KUHN: Yes, sir.

22 (Real Estate Purchase and Sale
23 Contract marked and entered into evidence as Defendant's
24 Exhibit 20 without objection. Real Estate Purchase and Sale
25 Contract marked and entered into evidence as Defendant's

000410

1 Exhibit 21 without objection.)

2 Q. And, Mr. Lowther, back to the two point four six
3 four million dollar deed, do you recognize this document,
4 sir?

5 A. That is the closing statement on the Wellington
6 parcel, the HUD statement.

7 Q. Closing between you and your siblings?

8 A. Yes.

9 Q. Okay.

10 MR. RUFF: I'd like this introduce
11 in to evidence as another Plaintiff's Exhibit.

12 MR. KUHN: No objection.

13 THE COURT: Okay.

14 Without objection be so admitted. It
15 will just be the next --

16 THE CLERK: Number 8.

17 THE COURT: -- number in cirratum.

18 (Settlement Statement marked and
19 entered in to evidence as Plaintiffs' Exhibit 8 without
20 objection.)

21 Q. Now, the date reflected on here for the closing
22 of this transaction, Mr. Lowther, I'd December 20. Is that
23 about right, to the best of your memory?

24 A. To the best of my knowledge, yes.

25 Q. Okay.

000411

1 THE COURT: And would you hand that
2 one up once you mark it, please?

3 Q. Mr. Lowther, were you also negotiating with The
4 International Society of Investors regarding the Wellington
5 property?

6 A. Had been since -- Talking with them since early
7 2005.

8 Q. And that's what you testified earlier.

9 A. Yes.

10 Q. That's right.

11 And I show you Plaintiff's Exhibit 6, which has
12 already been marked in to evidence. Do you recognize this
13 document?

14 A. Yes, I do.

15 Q. Okay.

16 And what is it?

17 A. This is a contract for sale and purchase of the
18 Wellington tract. Between, between myself and International
19 Society of Investors.

20 Q. Once again, Mr. Lowther, in the first paragraph
21 of this contract, Plaintiff's Exhibit 6, Mitchell Lowther et
22 al names are struck out from that contract.

23 A. Yes.

24 Q. Did you make that strike-out, also?

25 A. Yeah.

000412

1 Q. You did?

2 A. Either myself or my attorney did. I don't -- It
3 was done by, by us.

4 Q. And are those your initials --

5 A. Those are my initials.

6 Q. -- on the first paragraph?

7 All right.

8 What was the purchase price that International
9 Society of Investors was going to pay under this contract
10 for the acquisition of Wellington?

11 A. Yeah, I can read it.

12 Was going to pay \$5,450,000.

13 They never did.

14 Q. And \$5,450,000.

15 And at the time that you enter in to this
16 contract what percentage of Wellington did you own?

17 A. Fifty percent.

18 Q. Okay. Fifty percent.

19 So is it true that had this contract closed your
20 gross receipts, would they have been 50 percent of five
21 point four five million or something different from that?

22 A. No, they would've been 50 percent of that, my
23 gross receipts.

24 My gross receipts?

25 Q. From this transaction.

000413

1 A. Yes. I owned 50 percent so I would've got half
2 the money.

3 Q. Half the money.

4 And --

5 A. No. No, I wouldn't have got half the money. I'd
6 have got -- I'd have got \$5,450,000 because I was purchasing
7 this property from my brothers and sisters.

8 Q. Well, that's right. We're going there in just a
9 second.

10 A. Okay.

11 Q. But just from International Society of Investors,
12 half of five four point million, it is not two point seven
13 two five million?

14 A. Somewhere around that.

15 Q. Two point seven two five million. Okay, sir.
16 Now, you said you owned 50 percent of it?
17 Wellington.

18 A. Yeah.

19 Q. Who owned the other 50 percent, sir?

20 A. The heirs owned 25 percent and Mitchell owned 25
21 percent.

22 Q. Okay.

23 Which means that they received half in that
24 closing. Would they have received the same two point seven
25 two five million that you'd receive?

000414

1 A. If that had closed, if that had closed I would've
2 received all that. I would have bought the property from
3 them.

4 Q. All right.

5 But half of five point four five million would've
6 been two point seven two five million, right?

7 A. We've agreed to that, Mr. Ruff.

8 Q. Okay.

9 So can you explain, then, why you entered in to a
10 deed from the heirs to buy them out for two point four six
11 four million?

12 A. I agreed because I agreed with them in August to
13 buy the property from them. They needed money and it was
14 the quickest way to get them money, for me to borrow it and
15 give it to them.

16 Q. And you're defending yourself on the forty acre
17 transaction saying it's part of the larger transaction but
18 isn't it true that you would've made another \$300,000 profit
19 on Wellington had it gone forward?

20 A. No, sir.

21 Q. Why not?

22 You admitted that you would've made two point
23 seven two five million as the 1/2 owner, is that correct?

24 A. Right.

25 Q. Yet what you stood to make in this contract was

1 five point four five million minus the two point four six
2 million you paid the heirs, isn't that correct?

3 A. No, sir.

4 Q. How is that wrong?

5 A. Twenty-five percent of it is not heir property.

6 Q. I'm sorry.

7 A. Twenty-five percent of it was Mitchell's.

8 Q. Our clients.

9 A. Mitchell's has nothing to do with what I paid the
10 heirs portion of it. Mitchell's has nothing to do with
11 that. That was a deal that Mitchell and I struck separate.

12 Q. Okay.

13 Mitchell and the heirs together?

14 A. Yes.

15 Q. Two point four six million?

16 A. There was other considerations taken in to that
17 thing.

18 Q. All right.

19 Mr. Lowther, what is your understanding about the
20 role of a personal representative of a decedent's estate?

21 A. To, to represent -- To do the best I can for my
22 dad's estate for the heirs.

23 Q. To do the best you can for the heirs? Is that
24 what you said?

25 A. At the time I certainly did.

1 Q. I didn't ask you whether you did the best. I
2 asked you your belief, is to do the best that you possibly
3 could for your heirs. Did I hear you right?

4 A. Yes.

5 Q. Okay.

6 Did you act in the best interest of the heirs in
7 this case?

8 A. At the time, yes, sir, I did.

9 Q. Being personal representative, are you a
10 fiduciary for the benefit of the heirs?

11 MR. KUHN: I'm gone object because
12 that calls for a legal conclusion.

13 MR. RUFF: I'll withdraw that.

14 MR. KUHN: It has no impact. He
15 knows it has no impact.

16 THE COURT: Okay.

17 It's withdrawn.

18 Q. You admit that you had to act in their best
19 financial interest?

20 A. Not just financial, in their best interest.

21 Q. Okay.

22 But does that include financial interest, also,
23 or does it not?

24 A. Yes, yes.

25 Q. Okay.

000417

1 Do you believe that you acted in their best
2 interest?

3 A. I absolutely did. At the time I absolutely did.

4 Q. Do you believe it was acting in their best
5 interest on October 17 and 18 when you presented contracts
6 to them, do you think it was acting in their best interest
7 to not disclose the oral agreement you testified to with
8 International Society of Investors and the contract that had
9 been written up before then?

10 A. Yes, sir. I believe --

11 Q. That was in their best interest not to disclose
12 that to them?

13 A. I believe it was it was in the best interest.

14 Q. Okay.

15 Was it in their best interest, the heirs best
16 interest when that contract was signed with International
17 Society of Investors, was, ultimately, signed by you a week
18 later, after your admitted oral agreement, you think it was
19 in the heirs best interest not to disclose The International
20 Society of Investors contract at that point?

21 A. Yes.

22 I told you, Mr. Ruff, I thought what I did was
23 right. And in the best interest.

24 Q. And on December 8, when you had a meeting at Mr.
25 Kuhn's office, where all the heirs signed deeds to you for

1 \$511,000 for the 40 acres and you had a, not just your oral
2 agreement, which you've already admitted to, you had a
3 written contract in place, but do you think you're acting in
4 their best interest?

5 A. I didn't have a written contract back at the
6 time.

7 Q. Contract was signed on November 21.

8 A. I did not have a signed contract back at the
9 time.

10 Q. Contract was signed on November 21.

11 A. I did not have it had not received it.

12 Q. By December 8?

13 A. I had not received it by December 8.

14 Matter of fact, I adult Mr. Kuhn call again to
15 find out if we were gone get a contract.

16 Q. But you've already testified you had an oral deal
17 with --

18 A. I had an oral deal. I had an oral deal with my
19 brothers and sisters, also, in August.

20 Q. One that they're all mistaken about?

21 A. Yes.

22 Q. Okay.

23 Ask you, you're not a beneficiary of this estate,
24 correct?

25 A. No, I'm not.

000419

1 Q. Well, except for \$1.

2 A. One dollar. I didn't get it.

3 Q. Do you think it's unreasonable for them to want
4 to have known about these transactions from International
5 Society of Investors?

6 MR. KUHN: Your Honor, unreasonable
7 or not has no relevance.

8 THE COURT: Well, I think he's just
9 answered.

10 Q. Do you think it's unreasonable on their part to
11 have wanted to know about The International Society of
12 Investors dealings?

13 A. I don't know whether it would be unreasonable or
14 not, Mr. Ruff. I mean --

15 Q. You don't have an opinion on that?

16 A. I don't have an opinion.

17 THE COURT: Mr. Ruff, let me regress
18 myself.

19 Mr. Kuhn has objected to that, that
20 question but I'm gone overrule the objection because I think
21 we do have an action that, at least, alleges, not, not
22 proven but alleges breach of fiduciary duty and what the
23 personal representatives or one of the personal
24 representatives state of mind was regarding their duties, I
25 think is relevant so I'm gone overrule the objection.

000420

1 Q. Looking back on what transpired, is there
2 anything that you would do differently today if you had the
3 chance all over again?

4 A. No. What I knew at the time and what was
5 happening, no, I would not do anything different.

6 Q. You're content with your actions?

7 A. I'm very content. I'm very content with my
8 actions, Mr. Ruff.

9 Q. Okay.

10 You're not sorry for anything?

11 A. No, I'm not.

12 Q. The \$299,000 profit that you made or the sale of
13 the 40 acres to International Society of Investors, you
14 believe that that money is yours fair and square?

15 A. Well, I didn't make that much off of it because
16 there was a judgement against one of the brothers that I had
17 to pay off and some other bills of Daddy's I had to pay off,
18 that were in the closing statement.

19 Q. The gross profit that's shown, 299, you think
20 that's a fair transaction?

21 A. Yes, sir.

22 I was taking a risk because I did not have a
23 signed contract and I had a verbal agreement and, yeah, I
24 took a risk.

25 Q. With International Society of Investors?

000421

1 A. Yes, I was taking a risk.

2 Q. One that you never disclosed to any
3 beneficiaries?

4 A. I borrowed money to pay my brothers and sisters,
5 on a bank loan and I took a risk with it.

6 Q. And when they testified the other day had they
7 known about The International Society of Investors' contract
8 they'd had said they would've wanted that themselves, you
9 don't believe them on that?

10 A. You're asking me how -- I can't read their minds,
11 Mr. Ruff.

12 Q. Did it ever cross your mind to disclose The
13 International Society of Investors' dealings with them and
14 offer to pass that out to them a beneficiaries that you were
15 and still are personal representative of?

16 A. Did it ever cross my mind to do what?

17 Q. To assign The International Society of Investors'
18 contract out to the beneficiaries who you were legally bound
19 to protect?

20 A. No, it didn't because I already had an agreement
21 with my brothers and sisters and already made arrangements
22 with the bank to borrow money to pay them.

23 Q. And is it your belief that your role a personal
24 representative by this fiduciary did not put any extra onus
25 on you to disclose to them or to assign that contract out to

000422

1 them?

2 A. No, sir, it didn't.

3 Q. It was just like any other business transaction?

4 A. It was a business deal.

5 MR. RUFF: Give me one second, Your
6 Honor.

7 One thing, and I may have asked this
8 already and forgive me if I did. I just want to make sure
9 it gets in.

10 A. Okay.

11 Q. The oral telephone deal that you've testified
12 about striking with Mr. Perry, you admit that that predated
13 October 12?

14 A. Yes.

15 Q. Okay.

16 MR. RUFF: Those are all the
17 questions I have right now, sir.

18 THE COURT: You'll be answering Mr.
19 Kuhn's questions, Mr. Lowther, and before I do that, let me
20 get all these exhibits back down so we can keep them in
21 order and they'll be available to Mr. Kuhn.

22 All right, Mr. Kuhn, you may cross-
23 examine.

24 CROSS-EXAMINATION BY MR. KUHN:

25 Q. LeGrande, I want to back up a little bit. When

000423

1 Mike Jones contacted you in the early part 2005, that was
2 about Wellington only?

3 A. Wellington only.

4 Q. And he, apparently, found out about that through
5 his father who works at the courthouse I Ridgeland?

6 A. Yes.

7 Q. You and his father knew each other?

8 A. Very well.

9 Q. He's a friend of yours?

10 A. A very good friend of mine.

11 Q. So, apparently, he was familiar, generally, with
12 what your circumstances were?

13 A. Especially with Wellington because I'd been
14 dealing with him on that, to divide Wellington and sell
15 lots.

16 He's planning commissioner.

17 Q. All right.

18 And before your father passed y'all had been
19 trying to sell Wellington, subdivide it, do something with
20 it?

21 A. Yes.

22 Q. So Mr. Jones, Hal Jones was familiar with that
23 property through his employment?

24 A. Very much, very familiar with it.

25 Q. So when his son contacted you and you realized

1. who his father was you weren't surprised that they knew
2 about Wellington?

3 A. Not at all then.

4 Q. And the only thing that was discussed was
5 Wellington?

6 A. That's absolutely the only thing discussed, was
7 Wellington.

8 Q. And Mike Jones is the one who came down?

9 A. The first time Monty and Mike came down.

10 Q. They looked at the property?

11 A. Yes.

12 Q. Wellington?

13 A. Wellington.

14 Q. Expressed an interest in it?

15 A. Yes.

16 Q. And what did they discuss with you that they
17 wanted to do with it?

18 A. They were looking to develop it. They had
19 projects in other places and Mike said he was very
20 interested and he was gone be the project manager and
21 develop that place. He was familiar with the property from
22 when he was in Ridgeland and thought it was a beautiful
23 piece of property and he was a partner with Monty Perry and
24 ISI.

25 Q. Did you know Monty Perry before that?

000425

1 A. Never heard of him.

2 Q. Had you had any dealings with ISI before that?

3 A. Never.

4 Never heard of it.

5 Q. And these people were developers, correct?

6 A. So they told -- So they told me, they were
7 developers. I had no prior knowledge of this company at
8 all.

9 Q. This wasn't for their personal use; they wanted
10 to develop it in to a subdivision and build houses?

11 A. Yes.

12 Q. That was their express intentions?

13 A. That was ate expressions to me.

14 Q. Okay.

15 And, therefore, they wanted to, you said, do due
16 diligence. What do you mean by that, when they said they
17 want to do due diligence?

18 A. They had been talking with the county about what
19 they could do. They'd also been talking with the city, we
20 Mr. Jason Taylor, the city administrator. They told me they
21 had been talking to Jason about sewer and water and things
22 that you need to develop property, and also density, and
23 things like that.

24 Q. And during this period of time, 2005, what were
25 the development prospects, the economy prospects, generally

000426

1 speaking, in Jasper County and the area of Wellington?

2 A. It had started to pick up a little bit then, just
3 a little bit.

4 Q. And were a lot of developers expressing an
5 interest in Jasper County about that time?

6 A. Yes.

7 Q. All right.

8 How did you feel after they asked you about
9 Wellington? Were you optimistic, pessimistic or just --

10 A. I'm not a pessimistic person. I'm optimistic and
11 I always hope and wish for the best.

12 Q. And did they get right back to you?

13 A. Absolutely not.

14 Q. So that sort of when on the back burner?

15 A. That fell on a back burner. As a matter of fact,
16 I called Jason Taylor at town hall and asked him if he had
17 heard from them, if there was anything going on with
18 Wellington. And he said he hadn't heard from them in
19 awhile. He said they came in all hot and heavy to get this
20 thing done and it's been two months and we haven't heard
21 anything.

22 Q. And would you have expected them to be involved
23 with the town if they were really doing serious due
24 diligence? Or the county.

25 A. I'd expect them to be involved with the town,

000427

1 yes.

2 Q. That's a person you would expect them to have
3 contact with if they were serious?

4 A. Yes.

5 Q. So after that call were you encouraged or
6 discouraged about the prospects of selling Wellington to
7 them?

8 A. A little -- A little discouraged.

9 Q. All right.

10 In the meantime were you still trying to sell
11 Wellington and the 40 acres?

12 A. Yeah.

13 Q. All right.

14 And you mentioned that you'd had some actual
15 deals or contracts on the 40 acres in the interim?

16 A. Yes.

17 Q. Let's go through 2000.

18 A. Some time in the early spring - I believe it was
19 early spring - of 2000, some time around, maybe March, my
20 brother Clark approached me and told me he'd been trying to
21 sell the 40 acres and he said he had a -- and he has offered
22 it to John Tilton for \$250,000. And this property abuts what
23 John Tilton was doing. The 40 acres abuts a piece of
24 property he had bought couple years earlier that he was
25 developing.

000428

1 Q. John Tilton's a developer?

2 A. Yeah, he's a developer.

3 Q. Okay.

4 A. And Clark asked me to go talk with him and so I
5 went and talked with John and he told me what he had offered
6 and I said, well, John, this is heir property, and I said
7 I'm not gone sell it without consulting with all of them
8 because it's theirs.

9 Q. All of them being?

10 A. All the heirs.

11 Q. All the heirs?

12 A. Yeah.

13 I approached some of them. I told, I told
14 everyone of them about it. Some of them wanted to sell; a
15 couple of them did not.

16 Q. Who was willing to sell and who was not?

17 A. Genie didn't want to sell and Mark didn't want to
18 sell. The rest of them were ready to sell and get their
19 money.

20 Q. At that price or a better price?

21 A. At that price.

22 Q. All right.

23 And since you don't have unanimous consent what
24 did you do?

25 A. I went back and told Mr. Tilton that we weren't

1 gone sell it for that. He was upset. He said, well, I had
2 a deal with Clark, and I said Clark has no right to sell
3 this property.

4 And I went back to Clark and all during this. I
5 said, Clark, you can't do that; if you've got a buyer bring
6 him to me and I will do the negotiating but you don't have a
7 right to sell this property.

8 Q. You recall if Clark had actually signed something
9 with Mr. Tilton?

10 A. Had a verbal agreement.

11 Q. Okay.

12 And did Mr. Tilton come back and make another
13 offer or higher offer?

14 A. Yeah.

15 He said he would offer more money and it seems
16 like he went up to \$400,000. And I said, well, offer that
17 in writing and I'm see about it and we'll look it over and
18 discuss it.

19 And so while I was waiting for him to get that
20 contract to us I called my niece Jennifer who's a real
21 estate agent and asked her if she had anybody that wanted to
22 buy the 40 acres.

23 Q. What is Jennifer's full name?

24 A. Jennifer Lide Bergman (ph).

25 Q. She's a real estate agent where?

1 A. Huh?

2 Q. She's a real estate agent where?

3 A. She lives in Ridgeland right now. She had an
4 office over in, I don't know what the area it is. It's back
5 behind Walmart.

6 Q. Local South Carolina licensed real estate agent?

7 A. Yeah.

8 She's a broker.

9 Q. All right.

10 Go ahead. You called her.

11 A. I called her and said, Jennifer, the children
12 want to sell the 40 acres, have you got anybody that wants
13 to buy it and she told me, said, well, I got one guy that
14 might be interested in it and I said would you contact him
15 and see what you can do. And we talked a little bit about
16 it and I told her what we were getting, you know, what the
17 offer was supposed to be coming. And she said, well, I'll
18 call you back in a couple of days, I got a gentleman that
19 may want it.

20 So she called me back and said I've got somebody
21 that will pay \$600,000 for it.

22 Q. Okay. Let me stop right there.

23 Generally speaking, what time? What we are
24 talking about, the time frame here?

25 A. This was some time, I think this was April or

1 May, some time in there.

2 Q. All right.

3 A. Because I think in June he made an offer and sent
4 the contract but he defaulted on the contract.

5 Bear Creek Limited.

6 Q. All right.

7 And so what was the purchase price?

8 A. That price was \$600,000.

9 Q. And is that what you asked?

10 A. Yes.

11 Q. So you accepted that offer?

12 A. Well, that's, that's what Jennifer could get for
13 it. I didn't ask that. I said, Jennifer -- She said I
14 might could get you \$600,000 for it and, of course, I'd had
15 to pay her commission.

16 And I said, yes, we'll sell it for that, that's
17 more than 400.

18 Q. All right.

19 And so she actually got a contract?

20 A. Yes, she did.

21 Q. All right.

22 And they defaulted, though?

23 A. They defaulted on it.

24 Q. All right.

25 How long was it under contract, though, were you

1 thinking that I've got a sale and --

2 A. Well, when he defaulted, when he defaulted, I
3 believe it was in June when he defaulted. And it wasn't
4 long after that, there's a period, I know, that you have to
5 wait that they can cure a default.

6 Q. Contract had some sort of right to cure or
7 extension clause?

8 A. Yeah.

9 And when that time passed, when that time passed,
10 then that's when I started talking to my brothers and
11 sisters, say, well, let's see what we can do to get some
12 money, I might can borrow some money and give y'all some
13 money, like this.

14 And, and in the meantime Mr. Linguend, Bear Creek
15 filed a lawsuit, charged us in breach of contract.

16 Q. And tried to lay their default on you?

17 A. On me.

18 Q. All right.

19 And were you concerned that their contract was
20 tying up the property?

21 A. Yeah.

22 I'd always assumed that when you had a contract
23 and there was a lawsuit, you know, default and then there's
24 a lawsuit that it's tied up in legalities, that you can't do
25 anything with it until it's resolved.

1 Q. All right.

2 And did you eventually find out that the lawsuit
3 did not prevent the property going back on market?

4 A. In September, when I talked with you, you read
5 through the lawsuit and determined that there was a certain
6 wording you said had to be in there for him to tie up the
7 property and it wasn't in there.

8 Q. Do you recall if we discussed the term lis
9 pendens and specific performance, anything like that?

10 A. I can't remember, Mr. Kuhn.

11 Q. All right.

12 Anyway, you determined you could go ahead and --

13 A. Yeah.

14 Q. -- the property could be sold?

15 A. Could be sold.

16 Q. All right.

17 Let's back up a little.

18 While all this was going on was there any more
19 contact from Monty Perry or Mike Jones?

20 A. Yes. I talked with them a couple more times
21 during the summer about Wellington. We were talking about
22 prices and they were supposed -- I thought they'd had me a
23 contract a lot sooner, on Wellington, and they didn't.

24 Q. Now, you testified earlier that the 40 acres came
25 up, you told them about it --

1 A. Right.

2 Q. -- they thought it was under contract --

3 A. Yeah.

4 Q. -- and you explained that it had been but you
5 could go ahead and sell it to them.

6 A. Right.

7 Q. You had a conversation about --

8 A. Originally, when the first time I mentioned I
9 told Mike that it might become available, there was a
10 lawsuit and I was kind of figuring that when the lawsuit was
11 resolved it could be sold.

12 In the meantime, after that I talked with you and
13 you said the property is not tied up with the lawsuit.

14 Q. And, now, when you had the conversation with
15 Monty Perry about the \$800,000 on the 40 acres --

16 A. Yeah.

17 Q. Had y'all forgotten about Wellington or --

18 A. No.

19 Q. -- was that part of the conversation, too?

20 A. No.

21 They were supposed to get a contract on
22 Wellington and I didn't have a contract on Wellington,
23 either, and it was bothering me because it'd been eight or
24 nine, eight or nine months. And I said, you know, due
25 diligence and things don't take that long.

1 And so when I contacted Perry, Monty Perry, first
2 time and gave him the price and everything and he sent that
3 contract, well, I changed the contract a little bit and
4 called him back. I said, Monty, if you want -- if you want
5 to buy Wellington you've got to buy the 40 acres, you cannot
6 buy Wellington without buying the 40 acres first.

7 Q. If I can show you Plaintiff's Exhibits 6 and 7
8 which are the contracts with ISI for Wellington and the 40
9 acres --

10 THE COURT: May I see Plaintiff's 6
11 and 7?

12 Thank you.

13 Q. These two contracts follow the same format that.
14 They have the same October 12, 2005, date at the beginning.

15 Did you receive these together?

16 A. No, sir.

17 Q. I'm talking about the blank contract from them.

18 A. I can't remember, Mr. Kuhn. I think -- Let me
19 think a second on that.

20 I had received -- I can't remember if I got them
21 together or just a short time apart, Mr. Kuhn.

22 Q. Okay.

23 When you signed them, did you sign them at the
24 same time?

25 A. Yeah.

1 Q. Okay.

2 And I note that the one for the 40 acres has the
3 purchase price filled in, yet the one on Wellington
4 originally had a blank.

5 A. Yes.

6 Q. For the purchase price.

7 Is that how you received it?

8 A. Yeah.

9 Q. Who filled in this purchase price on the
10 Wellington contract?

11 A. I did.

12 Q. So did you and ISI or Monty Perry have an
13 agreement on the Wellington purchase price before you
14 received the blank forms from ISI?

15 A. No, sir. We had talked but we had not set a firm
16 price.

17 Q. And had you and Mr. Perry discussed the fact that
18 -- Or when, when did you tell him that if he wanted to buy
19 Wellington he also had to buy the 40 acres?

20 ISI or Monty Perry.

21 A. The big contract is the one I was concerned with,
22 mostly, and I told -- And sometime in -- Sometime in
23 November I got him and I told him, I said, so I could get
24 the contract back on the big piece of property I told him
25 that if he wanted to buy Wellington that he had to buy the

1 40 acres first.

2 Q. Exactly what Mr. Jones --

3 A. And had to close on it --

4 Q. -- testified to yesterday?

5 A. I told him he had to close on it within 90 days.

6 Q. All right.

7 When you received these, let's go through
8 Plaintiff's Exhibit 7 first the 40 acres. If you turn to
9 page 7, paragraph 17 talks about closing.

10 There proposal to you was that closing would take
11 place within 30 days after the receipt by them of all
12 necessary approvals on permits.

13 A. Yes.

14 Q. Was that satisfactory to you, to wait till
15 whenever they got their -- all their approvals and permits
16 in place, to wait till 30 days after that to close?

17 A. No.

18 Q. That could take years, correct?

19 A. Yeah. It could take forever.

20 Q. All right.

21 Is that why that was not agreeable with you?

22 A. That's why it was not agreeable.

23 Q. So you, you wrote in a date of January 27, 2006,
24 as the closing date?

25 A. Yes.

000438

1 Q. All right.

2 And if we look at the first page, page 1,
3 paragraph 3, there are a number of conditions precedent,
4 such as purchaser obtaining horizontal construction
5 financing, land being permitted for no less than 55 units,
6 receiving confirmation of all utilities are adequate for
7 buyers intended use. You see those conditions?

8 A. Yes, I do.

9 Q. As a result of those conditions being in there,
10 what was your opinion as to how much teeth this contract
11 had? If they decided it wasn't suitable for their use what
12 could they do?

13 A. I was hoping for the best, expecting the worst.

14 Q. All right.

15 And, likewise, the other contract, Plaintiff's
16 Exhibit 6, has similar conditions preceded in it, correct?

17 A. Yes.

18 Q. And this contract they did walk away from, right?

19 A. Yes, they did.

20 Q. And did they ever even put down the \$5,000
21 earnest money?

22 A. Never put down the earnest money, no, sir.

23 Q. And there wasn't a thing you could do about it,
24 was there?

25 A. Nothing.

000439

1 Q. On this contract, if we look on page 4, which is
2 Plaintiff's Exhibit 6, under expense provisions, you changed
3 the expenses that would be born, if closing did take place,
4 more favorable to yourself, correct?

5 A. Yes, I did.

6 Q. And if you look on page 9, you added an entirely
7 new proposal, subsection K?

8 A. Yes.

9 Q. And subsection K, basically, says that you were
10 gonna retain three lots out of Wellington?

11 A. Yes.

12 Q. They'll convey back to you three lots out of
13 Wellington?

14 A. Yes, sir.

15 Q. So, basically, you made a counter proposal back
16 to them?

17 A. I made a counter proposal.

18 Q. Okay.

19 Under the 40 acres, you wanted a firm closing
20 date as opposed to an indefinite closing date?

21 A. Yes.

22 Q. And on the Wellington property you made a
23 proposal as to the purchase price?

24 A. Right.

25 Q. And some other changes?

000440

1 A. Yes, sir.

2 Q. Both these contracts were conditioned upon them
3 being, basically, satisfied that they could develop these
4 properties?

5 A. Yes.

6 Q. And if they walked away the best you would ever
7 get would be the \$5,000 earnest money?

8 A. Exactly.

9 Q. And since they didn't post it you didn't even get
10 that on one property?

11 A. I didn't even get it on the Wellington property.

12 Q. And were you cognizant at the time that you made
13 these changes, signed it and sent back to them that you are
14 assuming a good bit of risks that these contracts didn't,
15 really, have any teeth to them?

16 A. Yes, sir, I did.

17 Q. After you -- Now, you signed them on October 24?

18 A. Yes, sir.

19 Q. And put them in the -- How did you -- Put them in
20 the mail back?

21 A. Yes.

22 Q. All right.

23 They're in North Carolina somewhere?

24 A. Yeah, Raleigh, North Carolina.

25 Q. And did you receive a prompt response from them?

000441

1 A. No, sir, I didn't.

2 Q. When did you actually get a signed contract or
3 know there was a signed contract back from them on either of
4 these two counter proposals?

5 A. Sometime around the middle of December I got -- I
6 got the contracts back. The 40 acres had a signature page.
7 The big contract on Wellington did not have a signature
8 page.

9 Q. So all you got back on Wellington, basically, the
10 same thing --

11 A. Same thing I sent up, yeah.

12 Q. At that time had you already had the meeting with
13 your brothers and sisters whereby everybody had signed all
14 the deeds, and so forth?

15 A. Yeah.

16 Q. And that had taken place on December 8?

17 A. December 8.

18 Q. So if someone had asked you on December 8 if you
19 had any other contracts with anybody and you had said no
20 you'd have been telling the truth?

21 A. I'd definitely been telling the truth.

22 Q. I'd like to show you Defendant's Exhibit 18.

23 THE COURT: Would you hand me
24 Defendant's Exhibit 18?

25 Q. This is your contract with your sister Sandra?

000442

1 A. Yes, it is.

2 Q. And you actually delivered to her the contract
3 around December -- I mean October 17 or 18?

4 A. Somewhere around that, that day.

5 Q. At the time you delivered it to her, if we look
6 at Defendant's Exhibit 18, what you would have delivered to
7 her would've been this document but without the signatures
8 and without the scratch-outs, without all the handwriting on
9 it?

10 A. Yes.

11 Q. In other words, what you would've delivered to
12 her would've been this, the typed portion of this document?

13 A. Exactly, yes.

14 Q. The purchase price of \$325,000, specifically, was
15 that already typed in to this document when you delivered it
16 to her?

17 A. Yes, it was.

18 Q. And how did you know to put that figure in this
19 document?

20 A. Because we had already made an agreement.

21 Q. So you had discussed this with her before?

22 A. At length, for a long period of time.

23 Q. And as well as the how much you'd be paying down
24 and how much would be financed and for how long, had you
25 discussed those terms, also?

000443

1 A. Yeah.

2 Q. So it was -- So what you had done in this written
3 proposal was, to the best that you could, memorialized the
4 conversations you'd had with your sister to come up with --

5 A. It was actual to memorialize the agreement we
6 had.

7 Q. Okay.

8 Of course, you understand you, really, didn't
9 have an agreement until she actually signed it and gave it
10 back to you?

11 A. Right. Exactly.

12 Q. But this was your best prediction of what you
13 thought she would accept --

14 A. Yeah.

15 Q. -- based upon your oral representation?

16 A. And we were pretty close.

17 Q. Okay.

18 Now, the scratch-outs and the handwriting we see
19 on here, who did that? On page 1?

20 A. I would assume that Sandra did because it's not
21 anything I did.

22 Q. That's how you got it back?

23 A. Yes, that's how I got it back.

24 Q. And the scratch-outs and the handwriting on page
25 2, that was --

000444

1 A. Same thing.

2 Q. All right.

3 And the amendment that's written on page 3, that
4 was not there when you gave it to her?

5 A. No.

6 Q. So it's either hers or someone on her behalf?

7 A. Mr. Kuhn, that may be my writing on there, after
8 discussing with her.

9 Q. Okay.

10 Those initials beside it, the S.L.T., that's her
11 initials?

12 A. That's her initials.

13 Q. And the witness is your brother Mitchell?

14 A. Yes.

15 Q. When she gave you her counter proposal back with
16 the change-outs, did you accept that?

17 A. Yeah. Yes, I did.

18 Q. Even though you never, really, signed the
19 contract? Went ahead and closed?

20 A. When ahead and closed.

21 Q. All right.

22 And the contract calls for her to sell you all
23 her interest in Wellington, correct?

24 A. Yes.

25 Q. It called for her to sell you all her interest in

000445

1 the 40 acres?

2 A. Yes.

3 Q. And it calls for her to convey to you all her
4 interest, if any, in Echo Tango by a quit claim deed?

5 A. Yes.

6 Q. And for that you were willing to pay her
7 \$325,000?

8 A. Yes.

9 Q. According to this, paying \$75,000 down and then
10 she would finance \$250,000 which would be due no later than
11 December 41, 2006?

12 A. Right.

13 Q. And that balance due would be secured by your
14 guarantee and a first mortgage recorded security on the
15 Wellington Road property only, is that correct?

16 A. Yes.

17 Q. That's it recites.

18 Is that right below the purchase price?

19 A. Yes.

20 Q. That the mortgage would be on the Wellington
21 property?

22 A. On the Wellington property only.

23 Q. Okay.

24 Now, that's a little unusual, if you're selling
25 property, taking back a seller finance and usually put a

000446

1 mortgage on everything you're selling. Is that usually how
2 you do --

3 A. Yes.

4 Q. All right.

5 Did you discuss with your sister Sandra the fact
6 that the mortgage you'd be giving back to her was gone be on
7 the Wellington Road property only and not on the 40 acres?

8 A. Yeah.

9 Q. And why was that?

10 A. That I was gone have to sell something to pay
11 them, you know, to pay the note that I borrowed from.

12 Q. So did you have \$75,000 in cash to give to each
13 of your seven brothers and sisters at the time you signed
14 this?

15 A. I wish. No, sir.

16 Q. Did they know that?

17 A. Yes, sir, they knew it.

18 Q. So they're aware you're gone have to do
19 something, at least, to come up with the five hundred and
20 some thousand dollars down payment?

21 A. Yes.

22 Q. And how did you come up with that five hundred
23 and some thousand dollar down payment?

24 A. I went and talked with my banker and he extended
25 me a loan. For that.

000447

1 Q. And what bank did you borrow the money from?

2 A. South Carolina Bank and Trust in Ridgeland.

3 I mortgaged the 40 acres to pay that note. I
4 mean to pay my brothers and sisters.

5 Q. I can show you Defendant's Exhibit Number 7.

6 A. That is the mortgage on the 40 acres.

7 Q. So you borrowed money from S.B. and T to pay the
8 500 some thousand dollars down payment to your brothers and
9 sisters?

10 A. Yes, I did.

11 Q. And that mortgage was signed on December 12,
12 2005?

13 A. Yes.

14 Q. That mortgage was signed by you in the conference
15 room with all your brothers and sisters sitting around while
16 you signed all the other documents, correct?

17 A. I believe so, Mr. Kuhn, yes, sir.

18 Q. So were they aware that you were borrowing money
19 by virtue of a mortgage on the 40 acres in order to pay them
20 their money?

21 A. Yeah.

22 Q. And is that why, even though, we signed
23 everything December 8 with actually closed later, because
24 you had to wait for that mortgage to go through to actually
25 get the money to pay them?

000448

1 A. Yes, I did.

2 Q. And that's why the HUD statements and all were
3 December 20?

4 A. Yes, sir.

5 Q. All right.

6 And December 20, it wasn't a great big meeting.
7 Everybody just came in individually - as far as you know -
8 and signed the HUD statement, got their Chris?

9 A. I told everybody you told me that everything
10 would be ready on the twentieth and have them come in when
11 they wanted to, that Lynn would take care of it.

12 Q. Lynn's a real estate paralegal in my office?

13 A. Yes.

14 And give them their check.

15 Q. Okay.

16 So were your brothers and sisters aware that,
17 basically, you're gonna be borrowing money on the 40 acres
18 to pay them their down payment?

19 A. Yes.

20 Q. All right.

21 And, of course, they're aware that you're gonna
22 owe them about \$2 million, collectively, in a year?

23 A. Almost two and a half million.

24 Q. The balance of the purchase price?

25 A. Yes.

000449

1 Q. And did you have that much money?

2 A. No, sir.

3 Q. All right.

4 And did they know you didn't have two and a half
5 million dollars in cash?

6 A. Yes, sir. They knew that.

7 Q. All right.

8 So was it known that, number 1, you're gone have
9 to be paying off this mortgage pretty quickly?

10 A. Yes.

11 Q. And was it known you're gonna have to be doing
12 something with Wellington pretty quickly to come up with two
13 and a half million dollars?

14 A. Definitely.

15 Q. All right.

16 So everybody's aware that you're gone have to
17 flip these properties?

18 A. Yes, sir.

19 Q. Now, the \$800,000 contract, that went through
20 eventually, correct?

21 A. Eventually.

22 Q. With ISI.

23 And it went through another company called Amber
24 Winds?

25 A. Amber Winds, yes.

000450

1 Q. All right.

2 And did you ever figure out what the connection
3 between Amber Winds and ISI was?

4 A. Monty may have told me but I don't know.

5 Q. That wasn't material to you? You just wanted to
6 close?

7 A. Yeah, yeah, I just wanted to close.

8 Q. All right.

9 Now, if you look at Defendant's Exhibit 9, this
10 is the settlement statement for the closing on the 40 acres
11 with Amber Winds?

12 A. Yes.

13 Q. And when -- The contract calls for a closing on
14 or before January 27, was your counter proposal back to
15 them, which they eventually accepted.

16 A. Yes.

17 Q. When did it actually close?

18 A. February 17.

19 Q. So they were late in closing?

20 A. Yes.

21 Q. Did that cause you concern?

22 A. I called Monty day and night trying to find out
23 if he was gone close.

24 Q. Why were you so concerned about closing?

25 A. Because I had to pay the bank.

000451

1 Q. All right.

2 The money you had --

3 A. Had borrowed to pay for --

4 Q. To pay your brothers and sisters --

5 A. To give my brothers and sisters.

6 Q. Back in December?

7 A. Yeah.

8 Q. That's what you're talking about?

9 A. To pay my brothers and sisters. The money I'd
10 borrowed to pay them on.

11 Q. And if we look on this closing statement, they're
12 showing a payoff of a first mortgage. Is that the mortgage
13 that'd be paid off?

14 A. Yeah.

15 Q. On line five oh four.

16 You also had to pay some settlement charges. You
17 had to pay a creditor claim against your father's estate?

18 A. Yes.

19 Q. And you had to pay a judgement against your
20 brother Clark?

21 A. Yes.

22 Q. So you had about -- Well, the net proceeds that
23 you actually received from the sale is th figure shown on
24 live six oh three, about \$207,000?

25 A. Yes.

000452

1 Q. And by doing this yourself there's no real estate
2 commission charge, correct?

3 A. correct.

4 Q. Typically, what would a real estate commission be
5 on vacant land in Jasper County?

6 A. Ten percent.

7 Q. The second contract with Wellington with ISI, I
8 believe you said that never did close?

9 A. Never did.

10 Q. And did you inquire to see if there was any sort
11 of lawsuit you could bring or specific performance or some
12 way you could force the deal to go through?

13 A. I did. I even tried to check on the earnest
14 money. And it never was even deposited.

15 There wasn't anything I could do.

16 Q. And as a result you figured you'd be throwing
17 good money after bad to enforce the sale?

18 A. Yeah.

19 Q. Of course, real estate started to get a little
20 tighter?

21 A. Yes, sir.

22 Q. And was one of the key factors that ISI or Amber
23 Winds was looking in was whether or not sewer would be
24 coming to that property?

25 A. Yeah.

000453

1 They had been talking with Jason Taylor at the
2 city and so had other people been talking with I mean, that
3 I knew that were developing. And Jason had told each of
4 them and even gave one of them a letter, one of the
5 developers, that sewer would be out there in October of
6 2007. And I'm sure lot of them were relying on that when
7 they agreed to buy property.

8 Q. And was that one of the gambles that the
9 developers were taken?

10 A. Yes.

11 Q. Sewer be coming out to that property?

12 A. Yes.

13 Q. Without sewer, does that affect the
14 marketability, developability of this property?

15 A. Definitely.

16 Q. Is some of this land fairly low?

17 A. The 40 acres is extremely low land.

18 Q. Okay.

19 So without sewer its marketability and its value
20 is a lot less?

21 A. And to this date sewer's still not out there.

22 Q. That's my next question.

23 They failed on their gamble?

24 A. They failed on their gamble.

25 Q. Has the 40 acres been developed to this day?

000454

1 A. Not at all.

2 Neither has a portion next to it, 13 acres that
3 my dad had owned at one time that they bought at a high
4 price that still hasn't been developed, either.

5 Q. And do you know if they regret having bought the
6 40 acres?

7 A. I know Monty said he'd like to sell it.

8 Q. All right.

9 If I could show you Plaintiff's Exhibit's 20 and
10 21. Exhibit 20, what is exhibit 20?

11 This is the one with the blanks in it.

12 A. That's the contract that I gave to Mitchell.

13 Q. Unlike the contract with your other brothers and
14 sisters, this one does not have a purchase price, an earnest
15 money amount, a down payment amount or a balance due amount
16 filled in, is that correct?

17 A. Yeah.

18 Q. Why? Why had you not filled those in before on
19 s?

20 A. Because Mitchell, I'd offered Mitchell a price
21 for his portion of the estate that was his plus his 25
22 percent interest in Wellington that was personally his and
23 he didn't like the price. He says, no, I can't do that.
24 Then I said, well, then, I can't do the deal. And later I
25 came back to him and said, all right, I'll pay you what you

000455

1 want. After we talked about it a little bit I came back
2 some days later and said okay, I'll pay you that.

3 Q. And Mitchell's contract, exhibit 20, is this how
4 you would've presented it to him? The blank version?

5 A. Yeah.

6 Q. In the blank, all right.

7 A. I presented all, yeah.

8 Q. And if we looked at exhibit 21, is that how you
9 received it back from Mitchell after y'all talked about it
10 some more?

11 A. Mr. Kuhn, I don't know whether Mitchell wrote
12 those numbers in there or I did but that is what we agreed
13 to do after negotiations and working on it.

14 Q. Mitchell's contract -- Now, your other brothers'
15 and sisters' contracts, except for the various counter
16 proposal, handwritten changes, were pretty much the same,
17 correct?

18 A. Yes.

19 Q. Mitchell's, however, is fairly significantly
20 different?

21 A. Yeah.

22 Q. And why is that?

23 A. Well, because he was not only an heir but he also
24 owned 25 percent of Wellington personally and, also, there
25 was a three point eight six acres involved. In this

000456

1 transaction.

2 Q. So with respect to Mitchell, all your brothers
3 and sisters inherited an equal interest in your father's 25
4 percent interest in Wellington?

5 A. Right.

6 Q. But Mitchell, at the time your father passed, he
7 already owned 25 percent, right?

8 A. Already owned 25 percent of Wellington.

9 Q. Then, in addition, Mitchell and his wife Carmen
10 owned a three point eight four acre parcel that was within
11 Wellington or joined Wellington?

12 A. Yeah.

13 Q. All right.

14 And you wanted to buy that, also? From Mitchell
15 and Carmen?

16 A. From Mitchell, yeah.

17 Q. All right.

18 The purchase price, one million twenty-five, that
19 was the total purchase price?

20 A. That was total purchase price.

21 Q. Same amount down, 500 earnest money, 74,500 at
22 closing that you agreed upon with your brothers and sisters?

23 A. Right.

24 Q. Correct?

25 And the \$950,000, that's significantly more than

000457

1 the 250 that your brothers and sisters contracted with you
2 for. Is that what we discussed, the reason for the
3 difference?

4 A. Yeah, it was his 25 percent of Wellington.

5 Q. And the three point eight four --

6 A. And three point eight four acres, yes.

7 Q. And you just dealt with that at one sale, one
8 contract instead of one contract for the interest he
9 acquired as an heir and one contract for what he and his
10 wife owned outright?

11 A. I said it was all a package deal.

12 Q. One deal?

13 A. One package deal.

14 Q. And, likewise, your dealings -- Was a deal with
15 any particular brother or sister contingent upon being able
16 to reach an agreement with all the brothers and sisters?

17 A. Yes.

18 Q. You wanted to buy everybody out?

19 A. Either everybody was willing to sell or I
20 wouldn't do the deal.

21 Q. You wanted it all in your name?

22 A. Yeah.

23 Q. Period. All right.

24 On Mitchell's, if we look on page 1 under
25 Premises Description, this is the same as what's in your

000458

1 other brothers and sisters contract except you've added --
2 or you both added sale will also cause to be conveyed
3 purchaser the three point eight six acres titled in the name
4 of Carmen B. Lowther in Wellington Plantation, that correct?

5 A. Yes.

6 Q. And that's this additional piece of property that
7 they owned that you wanted to acquire?

8 A. Yeah.

9 Well, I was buying property that was already
10 mine, half was already mine.

11 Q. Okay.

12 This was property that your dad had, basically,
13 given them as a gift or --

14 A. Yes.

15 Q. -- put in their name for whatever reason?

16 A. Yes.

17 Q. They made the changes and if we look on the
18 signature page, in addition to Mitchell signing this, his
19 wife Carmen signed it, correct?

20 A. Yes.

21 Q. And the reason she signed is because this
22 additional three point whatever acre parcel was involved?

23 A. Yes.

24 Q. All right.

25 THE COURT: How much more, longer

000459

1 are we gonna be with your cross-examination, Mr. Kuhn?

2 MR. KUHN: About 30 more minutes,
3 Your Honor.

4 THE COURT: Thirty more minutes on
5 cross?

6 MR. KUHN: Yes, sir.

7 I'm doing his whole thing right now.

8 THE COURT: Well, I don't know what
9 that means but --

10 MR. KUHN: I'm not gone call him as
11 my witness in my case-in-chief now, since he's already on
12 the stand.

13 THE COURT: Well, that being the
14 case, I think we've been at it almost two hours and I think
15 folks may be getting uncomfortable with the length of this.
16 Is there a good stopping place that we could take?

17 MR. KUHN: It's fine right now,
18 Your Honor.

19 THE COURT: Is this a good juncture
20 to take a break?

21 MR. KUHN: Yes.

22 THE COURT: Okay.

23 Well, let's make sure we collect all
24 these, these papers that are not being used anymore.

25 For the benefit of everyone, let's take

000460

1 a 10 minute recess and then we'll come back in to session.

2 Mr. LeGrande Lowther, I need to tell you
3 in the clearest possible terms, you may not discuss your
4 testimony with your attorney or anyone else during this
5 recess.

6 A. Yes, sir. I understand that.

7 THE COURT: Okay.

8 Nor anyone attempt to contact or talk to
9 the witness, made that clear.

10 So we're in recess until 11:30.

11 (Court recessed.)

12 THE COURT: Go ahead and resume.

13 Okay, Mr. Kuhn, you may resume your cross-examination.

14 MR. KUHN: Please The Court, Your
15 Honor, thank you.

16 Q. Mr. Lowther, if I can show you this document
17 entitled Warranty Deed, do you recognize what that is?

18 A. Yes. That's the deed warranty deed on the three
19 point eight four acres that I bought from Mitchell.

20 THE COURT: And which exhibit is
21 this?

22 MR. KUHN: I'm moving to introduce
23 it right now. I'm move to introduce this as plaintiff's
24 next exhibit.

25 THE COURT: Okay.

000461

1 I have it in my hand here, Caroline.

2 (Warranty Deed marked and entered
3 into evidence as Defendant's Exhibit 22 without objection.)

4 Q. We were just discussing how your contract with
5 Mitchell contained an additional clause that was not in the
6 contract with the other brothers and sisters that Mitchell
7 and Carmen would convey to you the approximately three acres
8 of land.

9 A. Yeah.

10 Q. As part of this transaction and is this the deed
11 whereby they did that?

12 A. Yes, it is.

13 Q. Now, the consideration cite of it gives just five
14 dollars love and affection?

15 A. Yes, it did.

16 THE COURT: May I see Defendant's
17 Exhibit 20, Defendant's Exhibit 20.

18 Q. Showing you what's already in evidence as
19 Plaintiff's Exhibit 8, this is the HUD statement on the
20 Wellington property?

21 A. Yeah.

22 Q. And as with the 40 acres, all the deeds,
23 mortgages and so forth, were signed back on December 8?

24 A. Yeah.

25 Q. And the closing statements were signed on

000462

1 December 20, the date shown on this document, right?

2 A. Yeah.

3 Q. And that's true with both the Wellington and the
4 40 acres?

5 A. Yeah.

6 Q. If you look on second page of this statement for
7 Wellington which is Plaintiff 8, the largest closing cost
8 there is nine thousand some dollars I fee stamps, is that
9 correct?

10 A. That is correct.

11 Q. And if you then carry that over to the first
12 page, largely, as a result of that you had to come up with
13 \$10,000 in order to record the documents and close this
14 transaction, correct?

15 A. Correct.

16 Q. And in your typed proposal to your brothers and
17 sisters, if we look on page 1, for example, of Plaintiff 20
18 or 21, under closing costs you had proposed that each side
19 pay their own normal, customary and allowable settlement
20 charges and closing cost.

21 A. Right.

22 Q. But some of your brothers and sisters had
23 scratched that out, correct?

24 A. Right. Correct.

25 Q. As a result of that what did you decide to do

000463

1 with respect to closing costs? Did any adjustments have to
2 be made as to the down payment?

3 A. Yes. Actually, what happened is instead of
4 \$75,000 each of us -- each of the brothers and sisters
5 decided to take more on the tail end of the mortgage so that
6 there would be money to close, to record the deeds because
7 they wanted to not leave the deeds open in case something
8 happens to anybody and hold a mortgage on this thing. And I
9 didn't have that kind of money in my pocket, to pay that.
10 That wasn't part of what I was gone do. At the time of
11 closing.

12 They were actually gone hold a deed and issue the
13 deeds whenever I paid in full.

14 Q. So they didn't have the money to pay the
15 \$10,000 --

16 A. No, they didn't.

17 Q. And you don't have the \$10,000 to pay the money
18 to close?

19 A. Not at that time.

20 Q. It was taken out of the money you had borrowed?

21 A. Yeah.

22 Q. From S.B. and T to pay them?

23 A. Yeah.

24 Q. All right.

25 And so they knew you didn't have \$10,000 to

000464

1 close?

2 A. Right.

3 Q. At the time we closed.

4 That's why the adjustment was made from 75 down
5 payment to 73 down payment?

6 A. Yes.

7 Q. Mr. Lowther, I'd like to show you Defendant's
8 Exhibit number 13. You recognize what that package of
9 documents is?

10 A. Yes. That's the note that each one of my
11 brothers and sisters received for the sale of the property.

12 Q. Okay.

13 And the note that's on top is to which brother?

14 A. Clayton Clark Lowther.

15 Q. All right.

16 And the note to him is for \$250,000?

17 A. Yes, sir.

18 Q. Due and payable in full by December 31, 2006?

19 A. Yeah.

20 Q. If you go to the second page of the note, that
21 first paragraph, it recites that the borrower - and that was
22 you, correct?

23 A. That's me.

24 Q. -- will execute a general warranty deed conveyed
25 an undivided 1/7 of a 25 percent interest to the note holder

000465

1 - that'd be Clark, right?

2 A. Right.

3 Q. -- in the Wellington Plantation property, a copy
4 of which is provided with this note. Is that what it
5 states?

6 A. Yeah.

7 Q. Okay.

8 And did you provide a copy of a general warranty
9 deed that you had executed with the note to your brother?

10 A. Yeah.

11 Q. Okay.

12 It recites that the original of this deed shall
13 be held in escrow by the closing attorney and shall be
14 voided if the borrower shall pay in full the amount due the
15 note holder, and did you execute an original deed at the
16 closing conveying your interest in Wellington back to your
17 brothers and sisters?

18 A. I absolutely did.

19 Q. Okay.

20 And you left the original of that deed with whom?

21 A. With your office.

22 Q. It further recites that in the event that
23 borrower should be in default or should fail to pay the note
24 holder in full when due, then said note holder agrees to
25 accept as his sole remedy in lieu of foreclosure the

000466

1 property conveyed to him pursuant to said deed and said deed
2 shall then be delivered and recorded.

3 Now, were you able to pay Clark \$252,000 by
4 December 31, 2006?

5 A. No, sir, I was not.

6 Q. Reason being, you didn't have the money?

7 A. I did not have the money.

8 Q. After the contract with ISI or Amber Winds on
9 Wellington fell through, did you continue to try to sell the
10 Wellington property?

11 A. Yes. When the deal fell through on the thirty-
12 first of December --

13 Q. Now, I'm talking about the contract for the
14 \$5,000,000. Did you continue to try to sell that property?

15 A. Yeah. My brothers and sisters wanted me to.

16 Q. All right.

17 Had you tried selling all the way up to December
18 31, 2006, your deadline to pay your brothers and sisters?

19 A. I had a contract on it; I couldn't. I looked to
20 see if anybody was interested and had a couple of people
21 talk about it with me but I said it's under contract and I
22 can't do anything unless you do a backup contract contingent
23 upon this one.

24 Q. Okay.

25 A. But at that time the economy was turning; nobody

000467

1 ever, really, came through with anything.

2 Q. And ISI's deadline to buy Wellington from you was
3 the same deadline you had to pay your brothers and sisters?

4 A. Yes.

5 Q. That was not coincidental; that was on purpose?

6 A. That was on purpose.

7 Q. You needed that money to pay them?

8 A. Exactly.

9 Q. So when they walked away, that put you in
10 default?

11 A. Yeah.

12 Q. After you went in to default, did they declare
13 you in default immediately?

14 A. No.

15 Q. Did you talk to them and say, look, I don't have
16 the money?

17 A. Yeah. I said the deal did not go through, we're
18 trying to pursue it to see what's gone happen, and Monty
19 finally, finally, after a couple of weeks there, Monty said
20 they're not gone do the deal.

21 He, basically, told me why, that they had split
22 up, the economy was bad and that Mike had left the company;
23 they had a parting of ways, wasn't amicable.

24 And I asked my brothers and sisters, I said I can
25 do one of two things, I can continue to try to sell the

000468

1 property like it is, we can continue with the contract or I
2 can deed your property back to you. And they said we don't
3 want our property, we want money. I said okay.

4 Q. Did you then continue to try to sell the
5 property?

6 A. Definitely.

7 Q. We're talking about a time frame now after
8 December 31, 2006?

9 A. Yes.

10 Q. You were, technically, in default?

11 A. Yes.

12 This is during 2007 I kept trying to sell the
13 property.

14 Q. And did they eventually just declare you in
15 default?

16 A. Yeah. Sometime in the fall of the year they
17 declared me in default.

18 Q. Sent a written letter to you saying -- or, at
19 least, some of them did?

20 A. Yes, some of them did. All of them didn't want
21 to declare default.

22 Q. But at least two of them, I think, did?

23 A. Yeah.

24 Q. All right.

25 As a result of that -- And they did it through

000469

1 Mr. Rivers?

2 A. Mr. Rivers.

3 Q. As a result of that, I'm gone show you
4 Defendant's Exhibit 6. You recognize what that is?

5 A. Yeah. This is the deed to deed the property back
6 to them, Wellington.

7 Q. Okay.

8 A. And, also, some of the proceeds from the Echo
9 Tango property.

10 I believe that this is part of it. I'm not
11 certain.

12 This is to deed Wellington back to them. This is
13 the warranty deed.

14 Q. Okay.

15 MR. KUHN: Your Honor, I'd move to
16 introduce this. Be Defendant's Exhibit Number 23, Your
17 Honor.

18 THE COURT: Okay.

19 Without objection, so admitted

20 (Warranty Deed marked and entered
21 into evidence as Defendant's Exhibit 23 without objection.)

22 Q. And except for filing in the recording
23 information, is this the deed that the note refers to as the
24 deed that they would accept in lieu of foreclosure as their
25 sole remedy in the event that you defaulted on the note?

000470

1 A. Yes, it is.

2 Q. And that deed was delivered to Mr. Rivers
3 approximately when, to the best of your knowledge? Sometime
4 last year?

5 A. Yeah, sometime in the fall of the year, I'm sure.

6 Q. All right.

7 Now, referring back to Defendant's Exhibit 11,
8 the note, the note goes on to recite that in the event of
9 default in addition to accepting that deed reconveying back
10 to them Wellington as their sole remedy in lieu of
11 foreclosure, it further provides that in that event, being
12 in default, said note holder agrees to manage, develop,
13 market, encumber or sell said property in accordance with
14 the majority vote of the joint owners thereof according to
15 the ownership interest. For example 10 percent owner has 10
16 votes.

17 And have you continued to try to manage, develop,
18 market, encumber or sell the Wellington property in
19 accordance with the majority vote of the owners?

20 A. I have.

21 Q. In addition to that, it provides, furthermore, in
22 the event that borrower should fail to pay the note holder
23 in full when due, then the note holder shall additionally be
24 entitled to receive share of the net proceeds for the sale
25 of any lot in the Echo Tango subdivision being developed by

000471

1 -- developed by borrower.

2 This is the property that your brothers and
3 sisters had quit-claimed to you when you closed on this
4 transaction, correct?

5 A. Yeah.

6 Q. This is the same property that's referred to in
7 the Real Estate Purchase and Sale Contract as the Echo Tango
8 property?

9 A. Yes, it is.

10 Q. Describe this property as it existed at that
11 time.

12 A. It was -- It was low. It's low property. It's
13 on the river but it's low property. It can't -- It couldn't
14 be developed because it didn't have sewer and in order to
15 develop it you had to run sewer some over 13,000 feet and
16 pay for it and fill the lots to make them come up to
17 suitable. And you had to go through all kind of permitting
18 process with Beaufort County to get it approved.

19 Q. And approximately how many acres is that
20 property?

21 A. It originally was, if I'm not mistaken, three
22 point three acres, total.

23 Q. And, eventually, how many lots were you able to
24 subdivide that property in to?

25 A. Six.

1 Q. And without sewer what were those lots worth?

2 A. You're asking me to speculate on something that
3 you can't do anything with except walk on.

4 Q. Well, let me ask you this. Were you able to sell
5 one of the lots to somebody without a promise of sewer?

6 A. Absolutely not, couldn't sell any of it.

7 Q. Were you able to sell a lot to someone with a
8 promise of sewer?

9 A. Sold one lot in '97.

10 Q. And to who was that sold?

11 A. Alfred Kohlberg?

12 Q. Okay.

13 And that's K-o-h-l-b-e-r-g?

14 A. Yeah.

15 Q. All right.

16 And how much did you sell that one lot to Alfred
17 Kohlberg for?

18 A. He put down total of a hundred and ten thousand
19 dollars. He put down a \$20,000 nonrefundable payment and
20 waited on -- and waited, some -- That was in '97 when he did
21 that, so.

22 Q. But he waited several years for sewer to come?

23 A. Yeah, over 10 years.

24 Q. All right.

25 And then he paid the balance?

000473

1 A. He paid the balance.

2 Q. All right.

3 Now, to get sewer to that property, was that your
4 burden to do?

5 A. Yes, it was.

6 Q. And did Beaufort County or Beaufort Jasper Sewer
7 and Water say, sur, go ahead and put sewer there?

8 A. They tried to but Beaufort County stopped them.

9 Q. All right.

10 And make a long story short, did you have to hire
11 an attorney, try a case, appeal it to the court of common
12 pleas then appeal all the way to South Carolina Supreme
13 Court to get sewer to the Echo Tango subdivision?

14 A. Yes, and I didn't that through you.

15 Q. That was a several year, very expensive
16 process --

17 A. Very.

18 Q. -- to force Beaufort County to give you sewer to
19 that property?

20 A. Yes, sir.

21 Q. All right.

22 A. I spent a lot of time on that sewer, trying to
23 get it down there, going through all the process of the
24 court, and everything, Mr. Kuhn.

25 Q. And did you have to pay the cost of putting sewer

1 to Echo Tango?

2 A. Yeah. Beaufort County or Beaufort Jasper would
3 bear no expense.

4 Q. And the point being, this isn't just a piece of
5 property that you had that was easily developable; there is
6 a lot of hoops you went through?

7 A. I bought the property on the premise that Dean
8 Moss had told me that probably in about six or seven years
9 we'll have sewer down that road now that was in 1986.

10 And, of course, Beaufort County came and passed a
11 DSO which prohibited sewer going through rural areas.

12 Q. Development Standards Ordinance?

13 A. Development Standards Ordinance, and it
14 prohibited us from getting sewer.

15 We applied for a permit and it was issued and
16 Beaufort County found out that it'd been issued and they put
17 a halt on it. And stopped it.

18 Q. And, again, make a long story short, you had to
19 get injunctions and --

20 A. Yeah.

21 Q. -- try the case and --

22 A. Fight this thing for --

23 Q. -- appeals and so forth?

24 A. -- 10 years.

25 Q. With sewer there, you sold one without the

000475

1 guarantee of sewer --

2 A. Right.

3 Q. -- for a hundred and ten thousand dollars, more
4 or less.

5 With sewer there, once all that was done, were
6 you able to sell another lot?

7 A. Yes, yes, sir.

8 Q. How much did that lot sell for?

9 A. That lot sold for \$700,000.

10 Q. To?

11 A. Dwayne Malphrus.

12 Q. And how many lots remain there?

13 A. Four.

14 Q. And the sale to Mr. Malphrus, that was sort of at
15 the height of the real estate boom?

16 A. Yeah.

17 Q. And that was about two years ago?

18 A. It was in -- Yeah. It was somewhere along, right
19 at the height of the end of it, right when it was -- Mr.
20 Malphrus had owned some property down there and he sold it
21 to another lady. And words to me, if I don't buy another
22 lot down here somewhere my wife's gone leave me, my
23 children's gone shoot me.

24 Q. All right.

25 The Echo Tango property, had you and your father,

000476

1 before he passed, discussed jointly developing that property
2 or jointly owning that property?

3 A. Yes.

4 Q. And y'all had -- How far had those negotiations
5 gone, or those discussions gone before he passed away? Did
6 y'all ever finalize a deal?

7 A. We never finalized. I had a couple of deals. One
8 of them he didn't like. The other one I gave to him and he,
9 he said, well, let me look this one over, I'm probably do
10 something with this one, but he never -- I signed it but he
11 never signed it.

12 Q. At the time he passed you owned that property
13 free and clear?

14 A. It was in my name, totally.

15 Q. All right.

16 But your brothers and sisters, I guess, was part
17 of the negotiations if you defaulted they wanted an interest
18 in Echo Tango?

19 A. Yeah. They wanted assurance that they could get
20 some money out of Echo Tango.

21 Q. All right.

22 And that led to the provision that if you failed
23 to pay it in full, then they are entitled to share the net
24 proceeds from the sale of any lot?

25 A. After all expenses and all costs incurred are

000477

1 paid.

2 Q. And the note goes on to define what net proceeds
3 are and what their share is, correct?

4 A. Yes.

5 Q. Have they, since you defaulted on the note,
6 received money from sales of lots in Echo Tango?

7 A. Have they received money?

8 Q. Yes, sir.

9 A. Yes, they have.

10 Q. If I could show you some checks, do you recognize
11 what these are?

12 A. Yes, I do.

13 Q. What are those?

14 A. Those checks from your escrow account where I
15 deposited the funds from the sale of that lot to different
16 brothers and sisters.

17 Q. And that money was given to them why?

18 A. Because they needed it.

19 MR. KUHN: Your Honor, move to
20 introduce these as a group.

21 MR. RUFF: No objection.

22 THE COURT: Okay.

23 Will this be 24?

24 So admitted.

25 (Copies of nine checks marked and

000478

1 entered into evidence as Defendant's Exhibit 24 without
2 objection.)

3 Q. Mr. Lowther, I note that one of the checks for
4 \$20,000 is payable to Carmen.

5 A. Yeah.

6 Q. As opposed to her husband Mitchell. Why is that?

7 A. Mitchell asked me to put in Carmen's name so she
8 could put it in her account.

9 Q. Did that check represent a payment to Mitchell as
10 a result of the Echo Tango sale?

11 A. Yeah.

12 Q. Now, the note provides if they don't get any
13 money until after you have been fully reimbursed or
14 development expenses for the subdivision, including but not
15 limited to taxes, maintenance, cost of sewer, cost of
16 litigating the sewer issue, attorney's fees, marketing
17 expenses, and so forth.

18 Have you already been reimbursed for all the
19 development expenses you've incurred on Echo Tango?

20 A. No, sir, I have not.

21 Q. Were these payments to your brothers and sisters
22 evidenced by Defendant's Exhibit 24 made by you voluntarily?

23 A. Yes, they were.

24 Q. Why did you voluntarily decide to give some of
25 your brothers and sisters money out of Echo Tango before

000479

1 they are actually entitled to receive it under the terms of
2 the note?

3 A. Because they needed it.

4 Q. Have you, as we sit here, been reimbursed for all
5 the expenses that you've incurred?

6 A. No, sir, I haven't.

7 Q. And have you periodically provided to your
8 brothers and sisters, since you went in to default, an
9 accounting of where things stand on the Echo Tango lot
10 sales?

11 A. Yes, I have.

12 Q. If I can show you this document, do you recognize
13 what that is?

14 A. Yes, sir. That's an interim accounting on Echo
15 Tango. It's not up to date but it's from awhile back.

16 Q. It's the most recent one you've given them?

17 A. It's most recent one.

18 Q. All right.

19 MR. KUHN: Your Honor, I'd move to
20 introduce.

21 THE COURT: I'm only aware of one
22 interim accounting that's ever been filed with The Court.
23 Is this the one dated November 29, 2007, I believe?

24 MR. KUHN: No, sir. That would be
25 the probate court interim accounting. This is an interim

000480

1 accounting he's given them on Echo Tango lot sales.

2 THE COURT: Okay.

3 MR. RUFF: No objection. It's not
4 a court accounting and we believe that all this is not
5 relevant but we don't object to the introduction of it in to
6 evidence.

7 THE COURT: Okay. Thank you.

8 It'll be without objection, will be so
9 admitted.

10 MR. KUHN: Defendant's Number 25,
11 Your Honor.

12 (Echo Tango Interim Accounting
13 marked and entered into evidence as Defendant's Exhibit 25
14 without objection.)

15 Q. Mr. Lowther, just to be clear, this, this is not
16 a probate court accounting; this is an accounting that you
17 provided that deals just with the Echo Tango lot sales?

18 A. Yeah.

19 Q. All right.

20 And I want to just reason through it briefly.
21 Some parts, probably, may not be self-explanatory.

22 The first thing is, you have in here is the cash,
23 your total amount received from Echo Tango lots. Does that
24 represent just what it sounds like?

25 A. Yes, that's what it is.

000481

1 Q. All the money that you've received from Echo
2 Tango?

3 A. For property sales and for development of sewer.

4 Q. Okay.

5 First thing here is Kohlberg, \$92,135.06. That's
6 the sale to Mr. Kohlberg that you referenced?

7 A. That's the sale, the final payment on his
8 property.

9 Q. Now, this is what you received after closing
10 costs and all that had been taken out?

11 A. Yeah.

12 Q. And then the next three entries are labeled
13 Malphrus. That's what you received from the sale of the
14 second lot to Mr. Malphrus?

15 A. That's earnest money. You're talking about the
16 next three? Yes.

17 Q. The next three.

18 A. The next three, yes.

19 Q. And it came in in three different checks because
20 earnest money deposits, that type of thing, is that correct?

21 A. Yes, sir.

22 Q. That's why that's broken down in three different
23 figures?

24 A. Right.

25 Q. The next entry says Kohlberg sewer, \$54,625.

000482

1 What is that?

2 A. When we sold Mr. Kohlberg the lot back in '97,
3 our agreement with him was he would have to bear expenses
4 for the sewer, his portion basing it on the lots, that he'd
5 have to pay for sewer and development costs.

6 Q. So that's what he paid?

7 A. Yes.

8 Q. And then next is Qualey (ph) sewer, \$43,050.
9 What is that?

10 A. Mr. Qualey owned a piece of property along where
11 the sewer line was running on 170, from the water treatment
12 plant to Echo Tango, and he wanted to tap in to the sewer
13 there so he could sell his property. And that was what --
14 He, actually, wanted three taps and that was his cost to do
15 it.

16 Q. If you were successful in getting sewer and if it
17 run near his property, this is what it cost to tap in to.

18 A. Yeah.

19 Q. He reimbursed for that expense?

20 A. Yes.

21 Q. Because you paid it he reimbursed you?

22 A. Yes.

23 Q. All right.

24 So total receipts, this \$889,000, that's a total
25 amount of money you got, actually, that's to don't, isn't

000483

1 it? This is old accounting but you haven't received any
2 more
3 money --

4 A. Yeah. I haven't received any more money on Echo
5 Tango; had a few more bills but received no more money.

6 Q. All right.

7 That's the total amount received, then, this 8
8 89? Is that correct?

9 A. Yes.

10 Q. Then total expenses incurred in connection with
11 Echo Tango, are these, again, what it sounds like, money
12 that you have spent out of your pocket in connection with
13 Echo Tango?

14 A. Yes, they are.

15 Q. And the largest one is Collins' Construction,
16 \$318,000. What is that?

17 A. That is the actual sewer construction down 170.

18 Q. That's the people you hired to actually dig the
19 hole and --

20 A. Put the pipe in the ground and cover it up.

21 Q. And then you also have engineering fees and some
22 other costs and expenses?

23 A. Yes.

24 Q. Another large one is Bennett (ph) Trucking,
25 76,000. What was that for?

000484

1 A. I had to fill the lots to bring them up to code.

2 When you do a development plan with Beaufort
3 County, they make you put a certain grade on the land, when
4 it's in low areas, along the coast there. And that was to
5 bring it up to grade.

6 It's still not completely up to grade. That's
7 all the money I had to do at the time.

8 Q. If we add these expenses up, you've spent, as of
9 the time this was done, about \$500,000 on Echo Tango?

10 A. Yes, sir.

11 Q. And you just mentioned, since that day you've
12 actually incurred a few more expenses?

13 A. Yes, I have, yes, sir.

14 Q. Just haven't updated your accounting.

15 Now, out of the money that's been received in,
16 you've been reimbursed some money, correct?

17 A. Yes, sir.

18 Q. You got the money from Mr. Kohlberg for the sewer
19 when he paid it?

20 A. Right

21 Q. And I guess you got the money from Mr. Qualey for
22 his expenses when he paid it?

23 A. Right.

24 Q. And then from escrow, what does that mean, from
25 escrow?

1 A. That was the money from the sale of the lot to
2 Dwayne Malphrus that was in escrow in your office.

3 Q. Okay.

4 So the total amount you've been reimbursed is 4 74
5 and some change?

6 A. Yes, sir.

7 Q. And has that changed any? Have you been
8 reimbursed any more since this --

9 A. No, sir, none.

10 Q. So as we stand here today, you're still about
11 \$26,000 out of pocket as far as what you've spent and what
12 you've been reimbursed?

13 A. Yes, sir.

14 Q. In spite of that, you have paid, if we look on,
15 this is the fourth page. You've paid some money to all of
16 your brothers and sisters?

17 A. Yes, sir.

18 Q. And that is itemized on that page?

19 A. Yes, sir, it is.

20 Q. Some of those checks we put in to evidence just a
21 minute ago, correct?

22 A. We did.

23 Q. These figures, those checks are included in these
24 figures?

25 A. Yes, they are.

000486

1 Q. All right.

2 For example, the \$20,000 check to Carmen on
3 Mitchell's behalf, that's included in the \$36,000 that
4 Mitchell's received?

5 A. Yes, it is.

6 Q. They have received a hundred and thirty-eight
7 thousand dollars out of Echo Tango, collectively?

8 A. Yes, sir.

9 Q. Since the deal was they get half the money and
10 you get half the money have you also gotten a hundred and
11 thirty-eight thousand dollars?

12 A. No, sir, I haven't.

13 Q. Why not?

14 A. It's not there to get.

15 Q. So as we stand here today, you paid your brothers
16 and sisters 500 and some thousand dollars, correct? The
17 down payment you owed?

18 A. Yes.

19 Q. You have given back to them all the Wellington
20 Plantation property that you bought from them?

21 A. Yes.

22 Q. Okay.

23 You got the three point eight four acres?

24 A. Yes.

25 Q. From Mitchell that has nothing to do with the

000487

1 estate?

2 A. Right.

3 Q. Has nothing to do with you as a fiduciary?

4 A. Right.

5 Q. That three point eight four acres?

6 A. Yes.

7 Q. You have given them a half interest, basically,
8 in the profits of Echo Tango?

9 A. Yes, sir.

10 Q. And out of that Echo Tango they have received a
11 hundred and thirty-eight thousand dollars?

12 A. Yes, sir.

13 Q. And you are still 20 some thousand dollars in the
14 hole?

15 A. Yes, sir.

16 Q. And you got the \$207,000 at closing when the 40
17 acres sold?

18 A. Yes.

19 Q. If that 40 acres had not sold, if that closing
20 had not taken place, if when they went in default they had
21 said in default instead of closing, what would have been the
22 financial impact upon you?

23 A. Been bankrupt.

24 Q. Did you have the money, other way to pay SCB and
25 T back the money you'd borrowed from them to pay your

000488

1 brothers and sisters?

2 A. No, sir, I did not.

3 Q. Was this, from your point of view - I know in
4 hindsight looked one way but in your point of view at the
5 time, how risky did you view this venture?

6 A. I considered it very risky. I didn't have any --
7 I had no contracts back in hand signed. And Wellington took
8 a long time. A contract that they told me would not take
9 long took months and months and months.

10 Q. To get the sewer to Echo Tango to get this sale
11 of Mr. Kohlberg, I guess that sale to Mr. Kohlberg, did that
12 bail you out, basically?

13 A. Yeah.

14 Q. You'd borrowed a ton of money to develop this
15 sewer.

16 A. Yeah, I helped bail me out.

17 Q. And had you been having to borrow money and sell
18 things to get the money to stay afloat?

19 A. Yeah.

20 Q. Did that cost you money, to have to front the
21 money for this?

22 A. Certainly it did. I mean any time you put out
23 money and it's years before it's paid back, you know, it
24 costs you money.

25 Q. If I can show you this document, do you recognize

000489

1 what that is?

2 A. Yes, sir, I do.

3 Q. What is that?

4 A. That is the calculation of the interest on the
5 expenses I had on Wellington starting from 1998. That's the
6 interest on the moneys I put out. It's kind of self-
7 explanatory.

8 It's based at eight point seven five percent on
9 the money and like, for instance, when I spent money in '98
10 for surveying and stuff early in the year, I didn't start
11 the interest till very first of the next year.

12 Q. So this is sort of your estimate of what the cost
13 of your money would've been?

14 A. Yeah, the cost of money would've been.

15 Q. All right.

16 This doesn't represent, actually what you
17 incurred in interest?

18 A. No, sir.

19 Q. Want to be clear on that.

20 A. Not even close.

21 Q. Okay.

22 Sometimes you borrowed money at a better rate,
23 sometimes at a worse rate?

24 A. Worse rate. Most of the time, at that time it
25 was a worse rate.

000490

1 Q. And the eight and three-quarters, you picked that
2 number why?

3 A. Kind of a --

4 THE COURT: Is this document one
5 that's already been admitted?

6 MR. KUHN: No, sir, Your Honor.

7 THE COURT: Okay.

8 Is it one your opponents have seen?

9 MR. KUHN: Yes, sir.

10 THE COURT: Okay.

11 Is it one I'm gone get to see?

12 MR. KUHN: I'm move to introduce it
13 now, Your Honor.

14 THE COURT: Would help me with the
15 testimony if I had a copy while questioning.

16 A. I didn't know all the interest rates and this is,
17 I think, basically, the legal rate that's allowed on
18 something like this. It's just a guesstimate of what --
19 It's kind of an average.

20 Q. What we call --

21 A. Yeah.

22 MR. KUHN: Your Honor, I'd move to
23 introduce this.

24 THE COURT: Without objection?

25 MR. RUFF: Your Honor, we not gonna

000491

1 object to this. These are all subjects that are part of the
2 pending litigation in the other court that Mr. Rivers and
3 Mr. Kuhn have handled and I think this is an exhibit, is it
4 not, in that, in that trial?

5 So I don't have any problem with it's
6 admission. We certainly don't want to concede that this is
7 accurate because these are issues that are hotly contested,
8 if my understanding's correct, in the circuit court.

9 THE COURT: So noted for the record.

10 Without objection will be received and
11 admitted in evidence.

12 (Echo Tango Property Expenditures
13 and Interest Calculation marked and entered into evidence as
14 Defendant's Exhibit 26 without objection.)

15 THE COURT: Subsequently, we're
16 going over a lot of documents here. I just ask both counsel
17 to provide me with a copy of what they're questioning the
18 witness about because the testimony isn't very helpful if I
19 can't see what they're testifying about.

20 Okay.

21 Q. And, Mr. Lowther, again, this document, that's
22 your best estimate of what you would have paid in interest
23 if every time you had to --

24 A. If I'd had to borrow the money.

25 Q. If you had gone somewhere and borrowed it at

1 eight and three-quarters percent interest?

2 A. Yeah.

3 Q. Is that correct?

4 A. Yes.

5 I'd have been lucky to borrow it at that, during
6 some of this time.

7 Q. And you have rounded it off to the next year?

8 A. Yeah.

9 Q. Because if you made a payment in March of '05 you
10 started interest running January 1, 'only?

11 A. Yeah, basically, yeah.

12 Q. And you've done it this way because just be too
13 complicated to go back and try to actually figure out --

14 A. Too complicated to calculate it.

15 Q. -- what you borrowed, when you borrowed and what
16 you spent on it?

17 A. I'd have to get an accountant to do all that and
18 I don't see the need for the expense.

19 Q. As we sit here today, have you made any profit
20 whatsoever on this entire transaction?

21 A. No, sir, I have not.

22 Q. As we sit here today, what is more marketable?
23 The deep water lots at Echo Tango that you now have to split
24 with your brothers and sisters or raw land in Jasper County?

25 A. Echo Tango is a lot more. I stand a better

1 chance of selling Echo Tango than I will Wellington for,
2 probably, four or five years.

3 Q. So your brothers and sisters, as we stand here
4 today - of course, the economy's uncertain - may make a ton
5 of more money with their half interest in Echo Tango than
6 they ever would've made on Wellington?

7 A. Yes, sir.

8 Q. Especially if you can maintain lot sales at
9 \$700,000 each?

10 A. If I can do that.

11 Q. How many more lots are there in Echo Tango?

12 A. It's four lots.

13 Q. And are those lots comparable to the one that Mr.
14 Malphrus bought?

15 A. Yes.

16 Q. So they could make another -- Assuming those four
17 lots sold for \$700,000 and they got half and you're
18 reimbursed for all your expenses, they could make another
19 almost one point four million dollars off Echo Tango?

20 A. Close to it, after all -- after everybody's
21 brought up, yes.

22 Q. And that's something before this deal they would
23 not have been entitled to?

24 A. No, sir.

25 Q. And on that, just to back up, you mentioned that

1 you and your father had discussed a joint development of
2 Echo Tango and had had something typed up that he did not
3 agree with? At one time?

4 A. Yeah.

5 Q. And approximately when was that, that this first
6 agreement that he did not agree with?

7 A. Somewhere in 2000.

8 Q. And then y'all continued to discuss it and you
9 made a proposal to him that you signed?

10 A. Yes.

11 Q. You said that he still was not in agreement with?

12 A. He never signed it and said he would look it
13 over.

14 Q. Approximately when was that?

15 A. Couple years later, like, 2002.

16 Q. So one's in 2000, one's in 2002?

17 A. Yes.

18 Q. And was anything ever finalized by the time he
19 passed away in 2004?

20 A. No, sir, it wasn't.

21 Q. So nothing was finalized until, basically, you
22 entered in to this transaction with your brothers and
23 sisters?

24 A. That's when it was finalized.

25 Q. Okay.

1 Finally, Mr. Lowther, please look at Defendant's
2 Exhibit 21, which is your contract with Mitchell.

3 A. Yes, sir.

4 Q. You look on page 2 at the very bottom, the very
5 last paragraph is entitled - all capital letters, all bold
6 letter's - arms' - it's misspelled but arms' length
7 transaction. Do you see that?

8 A. Yes, I do.

9 Q. Why is that clause -- Do you know why that clause
10 was put in every contract with each brother and sister?

11 A. Yeah, because I negotiated with each of them
12 separately and I was also acting as the representative for
13 the will for my brothers and sisters.

14 Q. Did you want to make it clear to them that you
15 were dealing with them in your individual capacity in this
16 purchase?

17 A. I wanted them to know that I was buying what I
18 was buying from them and not from the estate or anything
19 else.

20 Q. And did you want them to make their own decision,
21 rely on their own due diligence, for lack of a better word?

22 A. Yes, sir, and one of my siblings even had an
23 attorney.

24 Q. So at least one of them, actually, was
25 represented, independently, by an attorney in this

000496

1 transaction?

2 A. Yes, they were.

3 Q. And that was Sandra, I believe testified --

4 A. Yes, it was Sandra.

5 Q. -- yesterday Dan Saxon represented her?

6 A. Yes, sir.

7 Q. Were your brothers and sisters aware of the terms
8 of your father's will when he passed away?

9 A. Yes.

10 Q. Okay.

11 One of them, Sandra, actually wrote it?

12 A. Yes.

13 Q. And were they aware that they were the heirs of
14 his estate?

15 A. Yes.

16 Q. And did they know that he owned the 40 acres and
17 that he owned a percentage of Wellington?

18 A. Yes.

19 Q. So they knew this was their property?

20 A. Yes, they knew.

21 Q. Sounds like, from all the testimony, they treated
22 it as their property from today he passed away?

23 A. They did.

24 Q. They went out and tried to sell it?

25 A. Yes, sir.

000497

1 Q. You did not sell this property to yourself as
2 personal representative? You didn't sign anything as
3 personal representative to LeGrande Lowther and then give
4 them the money?

5 A. Absolutely not.

6 Q. You dealt with them personally?

7 A. Personally.

8 Q. They had to make their own decision?

9 A. Make their own decisions, individually.

10 Q. And you had to negotiate with them?

11 A. Yes, I did.

12 Q. There was never any take it or leave it?

13 A. No, sir, never was a take it or leave it.

14 MR. KUHN: That's all the questions
15 I have. Thank you.

16 THE COURT: Okay.

17 Mr. Ruff, I know your gonna do some
18 redirect, or since this is an adverse party, I guess better
19 rephrased recross but --

20 MR. RUFF: Very brief, Your Honor,
21 I think it's gonna be no more than 10 minutes, or so.

22 THE COURT: Okay.

23 MR. RUFF: I apologize.

24 THE COURT: No, that's okay.

25 Do we have any more witnesses for the

1 plaintiffs' case?

2 MR. RUFF: No, Your Honor.

3 THE COURT: After this one?

4 Okay.

5 REDIRECT EXAMINATION BY MR. RUFF:

6 Q. Mr. Lowther, I'm gonna go back to 2005, that you
7 referred to early in your testimony, in transactions with
8 someone named Tilton.

9 A. Yes.

10 Q. Now, did I hear you right, that Mr. Tilton made
11 an offer on what I call the 40 acres?

12 A. Yes.

13 Q. He did.

14 A. He made it, originally to Clark. Clark told me
15 what he would pay for it, that he had told John he could buy
16 the property for \$250,000.

17 Q. And then Mr. Tilton, did he subsequently come to
18 you?

19 A. I went to Mr. Tilton to talk with him about it
20 and explain to him that Clark couldn't sell the property,
21 that I would take the offer to my brothers and sisters to
22 see if they would accept it.

23 Q. All right.

24 Now, that is what you said and so is that
25 subsequently what you did?

000499

1 A. Yes.

2 Q. You gave his offer, transparently, to all your
3 brothers and sisters and I think your testimony was what do
4 you think, is that right?

5 A. No, I didn't say -- I said do you want to sell
6 the property for that.

7 Q. Okay.

8 You, you mean you being the brothers and sisters?

9 A. Yeah.

10 Q. Do you want to sell?

11 A. I asked each of them individually.

12 Q. So you were very open with them about that offer?

13 A. Yeah.

14 Q. Why didn't you do the same thing with
15 International Society of Investors?

16 A. Because I'd already had an agreement with my
17 brothers and sisters to buy them and to get them money
18 quick.

19 Q. As you allege. Okay. All right.

20 Now, let's get back to this. You referred to
21 some litigation involving the property.

22 A. Yeah.

23 Q. And a perception on your part that you're unable
24 to sell the property because of some litigation.

25 A. Yes.

000500

1 Q. Can you clarify that for me? I'm not sure my
2 notes. Clarify that for me again, Mr. Lowther.

3 A. When Mr. Linguend filed, Bear Creek, whoever was
4 to file it, filed the lawsuit --

5 Q. This regarding the 40 acres or Wellington?

6 A. The 40 acres, the 40 acres.

7 Q. Mr. Linguend?

8 A. That's the only lawsuit we had, was the 40 acres.

9 I was under the assumption that when a lawsuit's
10 filed, because of -- and they declare you in default, like
11 us the sellers in default, then the property can't be sold.
12 In other words, we have to clear the lawsuit first or go to
13 a judge and get it where we can sell it, get it cleared.

14 Q. I think your testimony was because of this
15 lawsuit you sort of didn't do much with the 40 acres
16 because --

17 A. I didn't think I could.

18 Q. And you didn't think you could through what
19 period of time?

20 A. All the way in to September, when I talked with
21 Mr. Kuhn.

22 Q. And you talked to Mr. Kuhn in September?

23 A. Yes.

24 Q. And your testimony earlier was that he gave you
25 assurance, oh, yes, Mr. Lowther, you can make --

000501

1 A. No. What he did, what he did is I asked him. I
2 said, Mr. Kuhn, can we sell the 40 acres, and he said, well,
3 he said -- I told him, you know, we got the lawsuit, what
4 can we do; can we do something, get a judge or something to
5 release it so we can do it. And he said, well, let me look
6 at the lawsuit. And he read.

7 And I'm not an expert on legal terms --

8 Q. Right.

9 A. -- but he read through it and said, well, he kind
10 of laugh and said he didn't tie the property up.

11 Q. Okay.

12 So Mr. Kuhn gave you that advice in September of
13 2005?

14 A. Yeah.

15 Q. That you could go ahead and sell it?

16 A. Late September.

17 Q. And that happens to be the same time that ISI was
18 in touch with you by phone to offer the property? Which you
19 said was the first week of October?

20 A. Yeah. It was right after that.

21 Q. If you were under the impression through
22 September, 2005, that you couldn't sell the property, then
23 how does that square with your allegation that you deal with
24 my clients from July and August to buy their interest in the
25 property out?

000502

1 A. I told them that I would buy the property from
2 them with the lawsuit pending, that I would be responsible
3 for the lawsuit.

4 Q. You weren't dealing with anyone else at this
5 point on the property, right?

6 A. No.

7 Q. Because of the lawsuit, you thought you were
8 restrained, in effect, from doing so, is that right?

9 A. Yes.

10 Q. But that didn't stop you, according to your
11 allegation, dealing with my clients, trying to buy them out?

12 A. No. I thought that we could work it out, that I
13 could get the property to get them money, since I'm their
14 brother, that we could do it that way but I had to
15 investigate, you know, but I said, I said there's a lawsuit
16 pending.

17 And it's still pending today.

18 Q. So the lawsuit kept you from - according to your
19 testimony - offering it to other people but it didn't keep
20 you from - according to your testimony - going to them
21 before October 17?

22 A. I offered to do it and fight the lawsuit and take
23 that responsibility on me so they could receive some money.
24 They were desperate. Some of them needed money.

25 Q. All right.

000503

1 Now, let's go back to the payoff of the 40 acre
2 mortgage.

3 A. Yes.

4 Q. That is a HUD 1 statement which is exhibit -- I
5 think it's defense exhibit 9, if my notes are correct.

6 MR. RUFF: All right, I've got it.

7 May I, Your Honor, pass this to -- I
8 have an additional copy I can offer.

9 THE COURT: Thank you.

10 Q. Now, Mr. Lowther, you testified earlier that what
11 you received in this payoff, as reflected in the bottom
12 right portion of this, was \$207,000.

13 Now, line 5 0 4 on the right-hand side, payoff of
14 first mortgage, what does that amount state, sir?

15 A. I can't read it because the numbers aren't all
16 there.

17 MR. RUFF: Is it clear on the
18 original exhibit, Your Honor?

19 THE COURT: It may be.

20 MR. RUFF: It's 7 93 8 72 50.

21 A. Okay.

22 THE COURT: Would you like to see
23 the original?

24 A. Yes, sir, please, Your Honor.

25 Q. Now, you testified earlier that couple things you

000504

1 did here were to pay off a Clark Lowther judgement, to pay
2 some estate costs and those, aren't those reflected on here?

3 A. Yes.

4 Q. What are the amounts of those costs, if you can
5 read them?

6 A. Clark's judgement was, it says 65 75 98.

7 Q. That's \$6,500?

8 A. Yeah, 6500

9 Q. All right.

10 A. And SCEG claim against the estate of \$1256.

11 Q. Okay.

12 Now, it's already part of the record that you
13 paid your siblings \$511,000. That's earlier exhibit.

14 A. Yes.

15 Q. Why was the mortgage \$593,000?

16 A. Because I had a note at - I call it First
17 National - South Carolina Bank and Trust.

18 Q. Okay.

19 A. And part of that's interest.

20 Q. All right.

21 A. And I had a note that I had to pay off to combine
22 with this in order for him to lend me money.

23 Q. Is that a personal note?

24 A. It was personal. It's part business and part, I
25 had been lending my brothers and sisters money and I was out

1 of money and I had to have some.

2 And that's a total separate thing because that's
3 listed separate, where I've been lending my brothers and
4 sisters money.

5 Q. Okay.

6 But this is a personal note --

7 A. Yeah.

8 Q. -- that accounting for the mortgage being so
9 high?

10 A. Yes.

11 Q. And that accounts for why you didn't -- for the
12 vast majority, why they didn't receive \$299,000, is that
13 right?

14 A. Yes, you.

15 Q. Okay. All right.

16 Now, let's go back and, again, while it's not
17 relevant to the lawsuit, I don't think, it was raised so I
18 need to point this out.

19 You mentioned on examination from Mr. Kuhn that
20 my clients got the deeds for Wellington and they got a half
21 interest in Echo Tango, is that right?

22 A. Yes, sir.

23 Q. Eventually.

24 Had you not defaulted on those notes to them,
25 though, they wouldn't have gotten either of those things

1 would they?

2 A. They'd got the money that they wanted.

3 Q. Right, but had you paid the note under the terms
4 that's been introduced they wouldn't have gotten either of
5 those properties, is that correct?

6 A. Correct.

7 Q. Okay.

8 Now, let's go back, just briefly, this Echo Tango
9 draft interim accounting that you counsel introduced as
10 defense exhibit 20 something.

11 Twenty-five. Okay.

12 Now, you allege and you got checks showing
13 distributions of a hundred thirty-eight thousand dollars to
14 other people, to other --

15 A. To my brothers and sisters.

16 Q. Right, right.

17 Did you also receive \$76,120 in distributions
18 that are not reflected on this chart?

19 A. Not that I know of. No, sir.

20 Q. I'm gone see if you recognize this. This is a
21 trust accounting from Mr. Kuhn's office. Ask whether you
22 recognize that.

23 MR. RUFF: I'm also asking Mr. Kuhn
24 for his consent to whether this can be admitted in to
25 evidence.

000507

1 A. Which one you talking about? The one with
2 little --

3 Q. This one page I've just handed you, which is an
4 exhibit from the other case.

5 A. Yeah, I've seen this.

6 Q. Okay.

7 Mr. Kuhn help you with that?

8 A. Yes.

9 THE COURT: Again, is this the only
10 copy of that?

11 MR. RUFF: It is, Your Honor.

12 THE COURT: Well, has Mr. Kuhn seen
13 it?

14 MR. KUHN: Exhibit from the circuit
15 court case.

16 No objection, Your Honor.

17 THE COURT: Okay.

18 And this is the only copy? Okay.

19 Well, go ahead and question him, then, I
20 guess.

21 Without objection it'll be admitted as
22 the next plaintiff's --

23 MR. RUFF: There's one core
24 question, Your Honor. I'm hand it immediately --

25 THE COURT: -- plaintiff's exhibit.

1 (Escrow Customer Balance Detail
2 marked and entered in to evidence as Plaintiffs' Exhibit 9
3 without objection.)

4 Q. Mr. Lowther, line 42 14 of this shows you
5 receiving \$76,120.

6 A. Yes. Okay. Yes, sir.

7 Q. With respect to Echo Tango.

8 Where is that on this accounting?

9 A. That is under the -- I can show you right where
10 it's at.

11 Q. All right.

12 A. It's under the cost to fill dirt, to Bennett's
13 Trucking. There was a typo on the Bennett's Trucking
14 originally that said ninety some thousand dollars and it
15 was, really, seventy some thousand dollars. It was 76
16 rather than 96, or whatever it was.

17 Q. Your testimony is that --

18 A. Yeah.

19 Q. -- it shows money going to you that really didn't
20 go to you?

21 A. No. It went for the fill dirt.

22 I paid for the fill dirt and was reimbursed.

23 Q. I see. This is a reimbursement of that expense?

24 A. Yes, of that expense, yes.

25 Q. All right.

000509

1 THE COURT: Give me just a moment to
2 take a look at this.

3 Q. Now, one last question, just regards the Echo
4 Tango, one last set of questions.

5 THE COURT: Give me just a second,
6 please.

7 MR. RUFF: Oh, I'm sorry, Your
8 Honor.

9 THE COURT: Okay. I'm with you now.
10 You can go ahead.

11 Q. This regards the Echo Tango property. You
12 mentioned that without any of this transactions, had none of
13 these transactions taken place would your brothers and
14 sisters have been 50 percent owners of the Echo Tango
15 property?

16 A. They wouldn't have been 50 percent owners.

17 Q. What they have been, then?

18 A. I would've given them 50 percent of the proceeds
19 out of the sale of it.

20 Q. Why would you have done that?

21 A. Because it was my dad's wishes.

22 Q. Would you characterize as an understanding and
23 agreement that you had with your father?

24 A. Agreement, understanding. That's what he wanted
25 and I -- Just like an understanding when the marina sold and

1 I gave my brothers a piece of property that was mine because
2 that was his wishes, so they could sell the marina.

3 Q. Okay.

4 One last question.

5 Mr. Lowther, you've denied or disputed the
6 testimony of all your brothers and sisters representing,
7 representing the fact that they asked you about other
8 transactions, deals and offers on the 40 acres.

9 A. Yes.

10 Q. All of them also alleged in their testimony that
11 you promised them what I referred to earlier in this trial
12 as surplusage, that is, if you were able to resell the 40
13 acres for more than 511,000 you would share that money with
14 them.

15 So you similarly deny that statement by you?

16 A. I never told any of them that if I sold the 40
17 acres for more that I would give them anything. I told
18 Sandra awhile back, before I had anything done, that I would
19 give her some money off of Wellington if we could make more
20 on it.

21 When I did that the 40 acres weren't even in
22 play. I hadn't even tried to do anything with the 40 acres.

23 I told Sandra. I told mark. I told Genie and I
24 told Rita that I would, those four. No other ones did I
25 tell.

000511

1 Clark and Mitchell had just sold the marina for
2 one point eight million dollars and I didn't feel like they
3 needed it because they owed me money they didn't pay back.
4 And that's neither here nor there.

5 Q. You promised some of the heirs what I call a
6 partial surplusage?

7 A. Yes.

8 Bube I did not promise any money. I had other
9 things in mind for him. But I didn't promise him any extra
10 money.

11 Q. So when he and Mitchell testified that you did
12 promise that to them repeatedly between October and December
13 you believe they're mistaken?

14 A. I know they're mistaken because I was distinct
15 not to tell Clark, Mitchell or Bube.

16 Bube, I was gone put money aside in a trust
17 account for him.

18 MR. RUFF: Those are all the
19 questions I have, Your Honor.

20 THE COURT: Any recross?

21 MR. KUHN: Just brief, Your Honor.

22
23 RECROSS-EXAMINATION BY MR. KUHN:

24 Q. Of course, those promises, they didn't pay you
25 any money for those promises? That was just --

000512

1 A. No, they didn't. That was something I was just
2 gone do.

3 Q. And that was on Wellington, if you ended up
4 making a bunch on Wellington?

5 A. If I made a bunch of money on Wellington.

6 Q. You would give them a gift, basically?

7 A. Yeah. Yes, sir, exactly.

8 Q. And you signed off, you said, on some property so
9 that Clark and Mitchell could sell the marina?

10 A. Yes.

11 My dad and I owned some property next to the
12 marina that, it was really valuable. It made the marina
13 worth selling.

14 Q. You're talking about the Lemon Island Marina --

15 A. Lemon Island Marina.

16 Q. -- between here and Hilton Head Island on the
17 Chechessie River?

18 A. Yeah.

19 Q. That was titled in your name?

20 A. Half of it was in my name.

21 Q. And you just signed off that, gave it to them so
22 they could sell --

23 A. It's the only way they could sell the marina.

24 They paid -- And I had them pay the other five
25 heirs \$20,000 apiece.

1 Q. For your dad's interest?

2 A. For my dad's interest.

3 And I gave them my interest.

4 Q. And you didn't receive a nickel?

5 A. Not a dime.

6 Q. Even though you owned the property?

7 A. I'd bee paying taxes on it for years and never
8 received anything.

9 Q. Likewise, do you help support your brothers and
10 sisters?

11 A. Yes, I do.

12 Q. Give me some for examples.

13 A. I've lent -- I lent all of them money along until
14 I finally ran out. And that's when these lawsuits came
15 along.

16 Q. Was Clark living in your property?

17 A. Clark is living in a store that I own uptown and
18 so is Bube. He pays no rent.

19 Q. Do either one of them pay rent?

20 A. No.

21 And, actually, I think Clark collects rent from a
22 church that's on the other side the property.

23 Q. For how long they been living rent free in your
24 property?

25 A. Clark's been there since 2006.

000514

1 Q. Okay.

2 A. Bube moved in. He was in an apartment that he
3 had. His rent was \$12 a month and he didn't make it and
4 then he moved in with Clark.

5 MR. KUHN: That's all the questions
6 I have.

7 THE COURT: Anything further for
8 this witness?

9 MR. RUFF: Nothing further, Your
10 Honor.

11 THE COURT: Okay.
12 You may step down, sir.

13 A. Thank you, Your Honor.

14 THE COURT: Any further witnesses
15 for the plaintiffs?

16 MR. RUFF: No, Your Honor.

17 THE COURT: Okay.

18 Plaintiff is resting. Plaintiffs are
19 resting. Any defense witnesses? Other than, of course, Mr.
20 Lowther's already testified.

21 MR. KUHN: May I have just a second
22 to talk to my client Your Honor?

23 MR. KUHN: Your Honor, if I could
24 at this time make a motion for directed verdict on the
25 grounds that we're viewing the evidence in the light most

000515

1 favorable to the plaintiffs and construing evidence, the
2 facts, the inferences that can reasonably drawn from the
3 facts, the plaintiffs have failed to establish a cause of
4 action under any of their causes of action.

5 This was not a transaction that was
6 entered in to by Mr. Lowther in his capacity as personal
7 representative of the estate, although at the time he was
8 personal representative of the estate. It was entered in to
9 by him in his individual capacity, dealing directly with the
10 heirs.

11 This isn't a situation where Mr. Lowther
12 as personal representative negotiated a price in terms with
13 himself and then as personal representative sold it to
14 himself and then turned to the heirs and says here's the
15 money that I received from the sale. He negotiated it with
16 them. Contracts make it clear that it's an arm's length
17 business transaction.

18 They had the opportunity - and some of
19 them took advantage of it - to be independently represented
20 by counsel in connection with this transaction so there's no
21 breach of any fiduciary duty. There's no knowledge that he
22 had that was a fiduciary type knowledge.

23 They were free to market, sell this
24 particular, negotiate as high a price as they want and
25 they've tried to isolate this transaction as a forty acre

000516

1 deal stand alone when, in fact, it's much more complicated
2 than that.

3 And as we sit here today he has not been
4 unjustly enriched. He made no representations to them that
5 they had a right to rely upon and I move for a directed
6 verdict.

7 And, likewise, there's no evidence of
8 any constructive trust. I don't think any of the elements
9 of a constructive trust have been established so as to each
10 cause of action I'd move for a directed verdict.

11 THE COURT: Okay.

12 Of course, this being trial by court
13 without a jury there's no motion for directed verdict. I'll
14 entertain it as motion to dismiss under rule 41, which may be
15 made after the plaintiffs' case and, Mr. Ruff, agreement
16 with respect to the motion.

17 MR. RUFF: Thank, Your Honor.

18 Our evidence has shown what we said it
19 was going to show when this trial started, that is, that
20 LeGrande Lowther as personal representative of this estate
21 arranged to sell the 40 acres - which is the relevant
22 property here - to ISI for \$810,000. It's been admitted,
23 Your Honor, that they had an oral deal prior to October 12
24 which is the date of that contract.

25 The amount never changed in any of these

000517

1 contracts. They don't happen in a vacuum and that deal was
2 established.

3 It's also been established, Your Honor,
4 that Mr. Lowther approached our clients on October 17,
5 according to all their testimony, as well as Miss Turpin's
6 calendar, approached them with contracts and it's been
7 established and he admitted that he never, ever disclosed
8 the ISI deal to them, despite many opportunities that he had
9 to do so on October 17, on October 18, at what I call the
10 deed meeting on December 8, at the closing meeting on
11 December 21 or at any other time between October to
12 December.

13 Worse, Your Honor, he denied, according
14 to our clients, he denied repeatedly those deals.

15 The elements of our causes of action,
16 Your Honor, we think we've established every single last one
17 of them. On our equitable causes of action we think we have
18 right down the middle constructive trust case and
19 circumstances of this case we believe do make it inequitable
20 that Mr. LeGrande Lowther retained the profits he made on
21 the 40 acre transaction because of his lack of disclosure,
22 fraud, bad faith and his breach of fiduciary duty, his
23 personal representative of the estate.

24 THE COURT: Okay. Yeah.

25 I'm just gone ask you to stop there

000518

1 because on a motion to dismiss, under these circumstances,
2 the standard under rule 41 B is that on the facts and law
3 the plaintiff has shown no right to relief. Now, that,
4 essentially, the same standard as motion for summary
5 judgement but, in any event, in a motion, in any motion to
6 dismiss, such as that, I have to view the evidence in the
7 light most favorable to the plaintiffs without, of course,
8 ruling on the case. I have to view the evidence in the
9 light most favorable to the plaintiffs, including all
10 reasonable inferences that might be drawn there from, and to
11 grant the motion would require me to find that based on
12 viewing the evidence in the light most favorable to the
13 plaintiffs that there is no theory of law under which the
14 plaintiffs could recover.

15 I cannot make that finding at this time.
16 That does not mean I'm making the converse finding. I
17 simply cannot grant the motion to dismiss at this time. So
18 it is, it is denied.

19 MR. RUFF: Thank you, Your Honor.

20 MR. KUHN: Thank you, Your Honor.

21 And we rest, Your Honor.

22 THE COURT: You rest. Okay.

23 At this time, since there's no more
24 evidence to be presented, attorneys be allowed to make their
25 closing arguments.

000519

1 May I ask what your pleasure is,
2 gentlemen, whether you want to do that now or whether you'd
3 prefer to break for lunch and then do it. I'm amenable
4 either way. I think if we don't break for lunch we,
5 probably, ought to take a 10 minute, another 10 minutes
6 convenience recess.

7 MR. RUFF: Your Honor, I'd prefer
8 going on through and taking a short recess.

9 MR. KUHN: I defer to everybody
10 else. I'm agreeable with that.

11 THE COURT: Okay.

12 Without objection, as we've heard many
13 times. What we'll do is recess for 10 minutes, then, and
14 we'll hear the closing arguments then.

15 (Court recessed for approximately
16 10 minutes.)

17 THE COURT: All right.

18 We're here for closing arguments. For
19 the plaintiffs will it be Mr. Ruff or Mr. Rivers?

20 Mr. Ruff.

21 MR. RUFF: I'll take that, Your
22 Honor. Thank you.

23 May it please The Court, again, Your
24 Honor, the evidence has showed what we said it was going to
25 show in our opening statement, the fact that Mr. LeGrande

000520

1 Lowther, the defendant, sold what we've kept calling the 40
2 acres to inside for \$810,000 and that he did that on the
3 heels of an agreement that he reached with the ISI
4 principals prior to October 12, by his own admission.

5 The amount and the terms of that
6 contract, by his admission, didn't change; there was no
7 negotiation of that contract after the initial agreement was
8 made. Subsequently, it was put in writing but it's clear
9 that he sold the property by agreement to ISI.

10 It's also been established, Your Honor,
11 through my clients' testimony that on October 17 - this is
12 back up by Miss Turpin's calendar that was made at the same
13 time - he approached his siblings with contracts to solicit
14 them to enter in to contracts to sell the 40 acres, as well
15 as the Wellington property, to himself.

16 He never disclosed the ISI transactions
17 to the siblings - he's admitted that - although he could've
18 disclosed the ISI transactions at several times, on the
19 seventeenth, when he first solicited his siblings; on the
20 eighteenth, when it's been purported that they signed these
21 contracts. He could've disclosed these ISI transactions at
22 - what I've called earlier - the deed meeting on December 8.
23 He also could've disclosed the ISI transactions to them on -
24 what I've called earlier, Your Honor - the closing meeting
25 on December 21, or any other time between, between early

000521

1 October and the end of December.

2 And, worse, our clients have testified,
3 Your Honor, that he denied repeatedly those deals.

4 Now, in fairness, Mr. Lowther has denied
5 and Your Honor will have to find what -- whose the more
6 credible on this but, nevertheless, you know, those, those
7 facts have all, have all come out in this trial today.

8 We believe with proven the elements of
9 all, not just one but every single one of our causes of
10 action, Your Honor. This is, like I said earlier, a right-
11 down-the-middle constructive trust case.

12 We believe the circumstances of what's
13 gone on here make it inequitable for Mr. Lowther to retain
14 the profits on the sale of the 40 acres through his
15 nondisclosure, through his fraud, through bad faith and
16 through the breach of fiduciary duty toward, toward the
17 estate's beneficiaries. All this was done at the same time
18 that the property was part of the probate estate. It was
19 all done at the same time that Mr. LeGrande Lowther was the
20 personal representative of the estate and still is personal
21 representative of the estate.

22 The unjust enrichment is also valid. We
23 believe that our clients, through their going along with
24 their individual contracts, because they did know about the
25 ISI transactions, that through that they conferred a

000522

1 financial benefit on LeGrande Lowther, one that hear
2 realized and retained and one that we submit is inequitable
3 for him to continue to retain and, thus, our cause of action
4 for unjust enrichment.

5 Your Honor, we believe this is a breach
6 of fiduciary duty, as well. I think it's not controversial
7 that LeGrande Lowther is a fiduciary. That's so in the
8 statute and as Your Honor and everyone in this room knows.
9 And it's our position that he's violated his fiduciary
10 duties by, in essence, taking profits on the 40 acre sale to
11 ISI for entitled, taking those profits and not disclosing
12 that sale to my clients, by his own admission and according
13 to my clients, denying that transaction repeatedly.

14 We believe that his conduct does amount
15 to fraud, also, Your Honor, and we recognize that fraud is
16 often difficult to prove but we believe that through both
17 his representations to my clients that he had no pending
18 sales, transactions or dealings with ISI, as well as his
19 silence regarding the ISI transactions, which he's admitted
20 to, we believe that these representations, either outright
21 or by silence, were false, were material, that he knew the
22 falsity of his representations because he's admitted he had
23 a deal with ISI prior to October 12, that he intended that
24 my clients act on his representations by soliciting them to
25 sign the contracts presented to them on October 17, that my

000523

1 clients were ignorant of the falsity of his representations.
2 They've all said they were ignorant of it. Mr. Lowther
3 admits that he didn't make them aware of the ISI
4 transactions.

5 My clients have all testified that they
6 relied on the truth of Mr. LeGrande Lowther in dealing with
7 them and we believe that, that as a sibling of someone they
8 knew and trusted for many years, as well as given his role
9 as personal representative and the fiduciary duties that
10 that entails, that they had the right to rely on his
11 representations and my clients were, consequently and
12 proximately, injured to the tune of \$299,000.

13 Your Honor, I've heard three defenses,
14 three defenses during this trial, to our causes of action,
15 the first of which is that these contracts, these
16 arrangements between Mr. Lowther and his siblings were
17 entered into voluntarily. Mr. Kuhn keeps saying at arm's
18 length. And it's true, Your Honor, that the contracts
19 between Mr. Lowther and his siblings were entered in to
20 voluntarily. That is true. But we submit, and it's the
21 crux of our case, that a different level of conduct is
22 required when one is serving as a fiduciary.

23 We're not attacking the old American
24 system of capitalism where people sometimes do prearrange
25 what we call flipping transactions and make money off those

000524

1 transactions. That's done in the business world; we all
2 know that, but it's the very heart of our case, Your Honor,
3 that when one is a personal representative of the estate he
4 or she is charged with the duty to act in the best financial
5 interest of those people he's supposed protect and,
6 certainly, not appropriate estate opportunities away from
7 them. So we believe that the defense that this is a
8 voluntary transaction goes nowhere and misses our very point
9 that there are fiduciary principals involved here.

10 The second defense I've heard, Your
11 Honor, is we're isolating somehow the 40 acre transaction
12 from the other lands. Well, Your Honor, in fact, I submit
13 if we bring all the other lands in to the price, that makes
14 the situation even worse for the defendant because under
15 these transactions and under the contracts that are in
16 evidence now, for the Echo Tango property that we keep
17 talking about, the contracts provide that our clients, as
18 part of this contract, were quit-claiming it, quit-claiming
19 it back to Mr. LeGrande Lowther. They weren't getting one
20 extra dollar - been admitted - from the contracts above and
21 beyond the purchase prices that are stated therein for Echo
22 Tango. So if they want to bring Echo Tango in I say be my
23 guest because we got nothing else for that. That benefitted
24 Mr. LeGrande Lowther, not my clients.

25 For the Wellington property, we've made

000525

1 clear through the exhibits, Your Honor, both the deed where
2 Mr. LeGrande Lowther bought Wellington from my clients
3 collectively, both as beneficiaries of the estate and
4 Mitchell Lowther individually for two point four six four
5 million. And he did that when he had an arrangement with
6 ISI for them to purchase that property for five point four
7 five million. Half of that would've meant two point seven
8 two five million to my clients. So this defense of bringing
9 in Wellington - now, I don't mean to be too comparative
10 about this, Your Honor - it's a little bit like the person
11 who breaks into a home and steals the TV trying to defend
12 himself saying I didn't get to steal the stereo, also.

13 He would have made an additional
14 \$300,000 had the Wellington deal gone through, based on the
15 evidence that's in front of Your Honor, the controverted
16 contracts and the closing with the siblings for two point
17 four six four million. So, in fact, Your Honor, to isolate
18 the 40 acres is to present the facts in light that's,
19 actually, most favorable to Mr. LeGrande Lowther.

20 Now, the third defense I've heard is
21 that the contracts with these family members predate
22 November 21, 2005, which is the date on which Mr. Monty
23 Perry of ISI signed the 40 acres contract with Mr. Lowther.
24 And since the contracts with the family predate November 21,
25 2005, we don't have any right to complain about the contract

000526

1 entered in to November 21, 2005. Well, Your Honor, number
2 1, I submit that even Mr. LeGrande Lowther had no idea who
3 ISI was, if they had come to him on November 21, a full
4 month after my clients signed their contracts agreeing to
5 sell the 40 acres to him, even if ISI had come to him one
6 month later as a first contact, I submit that is fiduciary
7 duties as personal representative of the estate would have
8 required him have disclosed that contact, disclose that bona
9 fide offer to my clients and, further, to have offered to
10 have assigned that contract to my clients. That's why
11 fiduciary duties would have required and he didn't do that.

12 But, Your Honor, we don't even need to
13 go there because we know that's not what happened. ISI
14 didn't come to him on November 21. ISI came to him, Mr.
15 Mike Jones says it started in June. I think Mr. LeGrande
16 Lowther said the Wellington property started in early 2005.
17 And it's been admitted, Your Honor, that there were phone
18 calls and it's been admitted by the defendant himself that
19 there was a deal in place to purchase the 40 acres as of the
20 first week of October which predates both the preparation of
21 that contract by ISI's North Carolina attorney and it
22 predates October 17 which was when Mr. Lowther came to my
23 clients soliciting them to sell their interests in the 40
24 acres.

25 Again, he had a deal. It's

000527

1 uncontroverted. He had a deal with ISI. He had been
2 dealing with them for awhile and, once again, his fiduciary
3 duties, Your Honor, compelled him, in my view, to disclose
4 that to my clients, at a bare minimum.

5 In summary, Your Honor, the case is
6 about what I said it was about when I started my opening
7 statement, which is what does it mean under South Carolina
8 law to be a fiduciary and to be required to act in the best
9 interest of beneficiaries. The statute says that personal
10 representative is a fiduciary who has to act in the best
11 interest of the beneficiaries but it doesn't go on to offer
12 a hundred point laundry list of exactly what that means.

13 And Mr. Lowther still is and at all
14 times was during 2005 and before and since the personal
15 representative of this estate with these fiduciary duties
16 toward his siblings, my clients.

17 Your Honor, at a bare minimum we contend
18 that his fiduciary duties would've required him to, number
19 1, fully disclose, fully disclose all estate property
20 dealings, the contacts with ISI, his negotiations, his
21 agreements. He did that, apparently, with this Tilton
22 agreement. He disclosed all that and came and solicited the
23 input from the beneficiaries but once he got a deal that he
24 knew he wanted to act upon, for whatever reason, his
25 behavior was, unfortunately, quite different.

000528

1 It would have required, number 1, full
2 disclosure, Your Honor, and it would require what I call no
3 appropriation of estate opportunities. This opportunity to
4 sell the property to ISI for \$810,000 came along when the
5 property was part of the probate estate, when he was the
6 personal representative and when my clients were awaiting
7 ultimate distribution of the estate. This opportunity which
8 came along and was agreed to orally, by admission, in early
9 October was simply appropriated by the fiduciary to his own
10 account and we think, Your Honor, that the fiduciary duties,
11 at a bear minimum, require full disclosure and no
12 appropriation of estate opportunities and we further submit,
13 Your Honor, that, you know, a big part of the reason why
14 this court exists is to protect the interest of
15 beneficiaries of probate estates. And to protect them from
16 the kind of conduct that, unfortunately, rears its head
17 sometimes where personal representatives don't treat them
18 fairly.

19 He had the opportunity to do so. They
20 weren't treated fairly and they lost out to the tune of
21 \$299,000, and, Your Honor, that's the crux of our case and I
22 thank you for your attention.

23 THE COURT: Thank you.

24 Mr. Kuhn.

25 MR. KUHN: Please The Court, Your

000529

1 Honor, I'm not going to go back through the facts of detail.
2 Your Honor, paid careful attention during the last day and a
3 half, the testimony, and I appreciate that. In fact, I was
4 tempted to simply stand up and say burden of proof and sit
5 down but, being a lawyer, I can't keep myself that succinct.

6 The gravamen of the plaintiffs' case, no
7 matter under what legal theory it is couched, is that my
8 client, by either statement or by silence, made a
9 representation to them and that they relied upon that
10 representation to their detriment. And, more specifically,
11 that my client misrepresented the fact that he had an
12 \$810,000 deal or failed to make that representation and that
13 if they knew that they would not have gone forward with this
14 transaction.

15 At the conclusion of every jury trial,
16 as Your Honor knows, the judge instructs the jury that while
17 the judge is the judge of the law, the jury is the judge of
18 the facts and as the judge of the facts it is their
19 providence to determine the facts and, in doing so, they
20 weigh the evidence and they determine the credibility of
21 the witnesses and that is their sole providence.

22 Well, Your Honor, in this particular
23 case, does not have that luxury. You are judge of the law
24 and judge of the facts and you have to determine credibility
25 of the witnesses. In a jury trial one of the standard

1 charges, as Your Honor knows, is you don't do that by
2 counting witnesses and I would respectfully submit that this
3 is a good case where it would be inappropriate to weigh the
4 evidence by counting witnesses.

5 The plaintiffs, in support of their
6 claim that they were defrauded by a representation or lack
7 of a representation and that they relied upon to their
8 detriment, rely solely on their own self-serving oral
9 testimony. And I can hear the plaintiffs said, well, the
10 defendant is relying upon his own self-serving oral
11 testimony. But in this case, Your Honor, I respectfully
12 submit that the tiebreaker is the documents. That is why,
13 in real estate transactions as well as in any significant
14 transactions, we, generally, have contracts so that is clear
15 to people who can read the contracts, understand them, just
16 what everybody's rights and responsibilities are.

17 The plaintiffs wants Your Honor to find
18 and conclude that they relied upon a representation that my
19 client made, even though they signed, each of them, all
20 seven of them signed a document that says that although my
21 client is there brother and although my client is a co-
22 personal representative of their father's estate, well, they
23 acknowledge that this is an arm's length business
24 transaction and that the purchaser, Mr. Lowther, has made no
25 promises, representations or statement except those set

000531

1 forth herein, in writing, upon which the seller is relying.

2 They want to come into court and say I
3 know I signed this; my initials are immediately below that
4 paragraph; I can read, write and understand that paragraph
5 and even though I have signed something saying that he has
6 said nothing to me upon which I am relying and even though I
7 am not relying upon anything, I've changed my mind; I want
8 you to ignore the contract that I signed, as to all seven of
9 us, and, instead, find that yes, he did make a
10 representation and yes, we did rely upon it.

11 So this case, Your Honor, I respectfully
12 submit that the contract is the tiebreaker, the
13 representation, and I, really, don't think Your Honor needs
14 to go any further than that. They signed a contract and
15 Your Honor's allowed it in to evidence, their parole
16 testimony, if you allow it and weigh, the tiebreaker in this
17 case is the written document which they signed, all seven of
18 them.

19 Even if you look at their testimony in
20 the light most favorable to them, it's, basically, that Mr.
21 Lowther was negotiating with ISI for the sale of both of
22 these properties, that they had reached a tentative
23 agreement as to the price on the 40 acres, they had not
24 reached a price on Wellington. They were going to send to
25 him contracts to look over and he was going to look those

1 over and that was the status in which the negotiations were
2 at the time in October - in the light most favorable to them
3 - when he brought them the contracts that they had, again,
4 tentatively agreed to sell their interest to him on.

5 Now, the plaintiffs, on one hand they
6 want you to conclude that, obviously, the negotiations with
7 ISI were ongoing before the written contracts were prepared,
8 which they were, but on the other hand, the contracts that
9 they signed were not in negotiation until the day the
10 contracts miraculously appeared and, equally miraculously,
11 just happen to mirror the terms upon which they were willing
12 to agree, some minor, minor exceptions done at the closing
13 cost.

14 At the time of closing, on December 8 -
15 which I submit that's the time of closing because that's
16 when everything was signed, we just had to let the mortgage
17 to through so we could, actually, cut the checks and deliver
18 to them their money - Mr. Lowther did have and did not know
19 that they had signed the contracts. The contracts were
20 dated November 21 but he did not get them until after that
21 date. So even if they had asked him if he had a contract,
22 he did not. At that point in time, as his testimony,
23 uncontradicted by Mr. Jones, was that he was, some wise, on
24 pins and needles because he had sent it back. He had made
25 some rather significant changes, allowing some lots

000533

1 retained, sold back to him, wanted a firm closing date and
2 had not heard anything and that he was concerned about that.

3 And these contracts, as Your Honor can
4 see from reading them, as the testimony was having no teeth.
5 Basically, if the buyer is satisfied that they can develop
6 these properties as they wish, then there'll be a closing.
7 But if it's not, if they determine that utilities and
8 financing is not suitable to them, then they can walk away,
9 which is what they did on Wellington.

10 And the second part of their case, the
11 second linchpin that they have to establish is that if,
12 assuming, Mr. Lowther had this contract with ISI for
13 \$800,000 in hand and said here, read it before we go forward
14 with our transaction, here it is, if they had sat down and
15 known about it and seen the contract and read it and knew
16 about it that they would not have gone forward with this
17 transaction.

18 Again, Your Honor, that's pure self-
19 serving testimony unsupported by anything in the record
20 except their own assertion and it is absolutely true and, I
21 think, firmly establish that this was not a sale of 40 acres
22 for a set price. This was a sale of 40 acres, a sale of a
23 25 percent interest in Wellington that was owned equally by
24 all seven brothers and sisters, a sale of 25 percent
25 interest in Wellington that was owned by Mitchell Lowther

000534

1 and a sale of three point eight acres that was owned by
2 Mitchell and Carmen Lowther and the prices was a set price
3 as to each individual person as to what they would receive
4 for their share with the prices as to everybody but Mitchell
5 being the same and Mitchell price being different because he
6 was selling, not just what he had received from the estate
7 but what he had owned and his wife owned outright, his wife
8 not even being an heir of the estate.

9 This was all one transaction. The
10 contracts all mirror each other. The closing took place with
11 everybody in the same room. Mr. Lowther testified this was
12 an all-or-nothing deal, sell to one person, not sell it to
13 another.

14 So to say that if they had known about
15 this \$800,000 contract, that one portion of the property is
16 being transferred they would have walked away is not a
17 given. And if we look at it in hindsight, I submit that's
18 not the way it should be looked at. It should be looked at,
19 what would they have done at that time, would they have
20 said, no, we're gone stop and wait and see what happens.

21 All the testimony, even from them, is
22 that they were hurting for money and been trying to sell
23 this property for a long time. So would they have taken
24 the bird in the hand, which is usually the best advice,
25 according to the proverb, or would they have taken the pig

000535

1 in the poke, which is usually not the best advice? So to
2 credit their testimony you've got to assume that they would
3 have taken the gamble. And the testimony, just not to
4 support that.

5 They received \$500,000 more or less, up
6 front, cash money and my client fears bankruptcy and,
7 fortunately, one property closed. And if the other property
8 had closed, he had promised some of the brothers and sisters
9 that he would give them excess money. Some of them he did
10 not promise because he felt they had received enough money,
11 \$2,000,000 from the sale of the marina property. The other,
12 he wanted to put it in trust but it did not close.

13 He went in to default and, as a result,
14 they received cash money, a hundred and thirty-eight
15 thousand dollars from Echo Tango which, otherwise, would not
16 have received.

17 So to say they would've given up their
18 interest in Echo Tango, that they would've taken the risk is
19 not a given. It's not a 40 acre transaction. It's got to
20 be looked at under the totality of the circumstances.

21 And in weighing credibility, Your Honor,
22 I hope you will look at some of the facts that are
23 undisputed, which is that four of the brothers and sisters
24 refused to join this lawsuit. My client voluntarily gave
25 two of the people, one, Mitchell who's suing him, and Clark

1 who is not, conveyed his half interest in a point of the
2 marina so they could sell it, without any compensation.

3 Clark and Bube, who is one of the people
4 who is suing him, he houses for free, voluntarily. This is
5 not the sign of someone who is a cheat and a fraud. We know
6 that much about his character, that he has voluntarily done
7 things for his brothers and sisters and that, even as we
8 stood here and sat on the stand, he admitted that if
9 Wellington had sold he was gonna give them some more
10 proceeds, voluntarily, as a gift, no consideration for that
11 promise. It defies logic to think he's just sitting here
12 doing this and trying to cheat them.

13 The money was needed to develop Echo
14 Tango. He had to come half a million dollars out of pocket
15 to get sewer to Echo Tango so that all of them can now share
16 in those proceeds. That is a tremendous benefit that they
17 received under this.

18 And, Your Honor, again, with three
19 words, burden of proof, and I respectfully submit they had
20 not satisfied be burden of proof considering the written
21 documents in this case and, of course, the reason we have
22 written documents, so people can't come into court and say
23 just ignore the contract, this is what the real deal was.

24 Let me end with two words which is
25 cherry picking and that's what they want to do in this case.

000537

1 They want to say, all right, we've got this transaction, 40
2 acres, Wellington, Echo Tango; let's break that up in to
3 three prices and segregate the 40 acres and give us the
4 profits, so to speak, that was made on the 40 acres but,
5 Your Honor, don't rescind the whole transaction - which is
6 what you'd have to do is you find there's fraud - don't
7 rescind the whole transaction, let us keep Wellington, which
8 we've gotten free and clear, no risk, returned right back to
9 where we were today of closing, and don't touch our half
10 interest in Echo Tango, we want to keep that because that's
11 been a hundred and thirty-eight thousand dollar cash cow so
12 far; that's potential one point four million dollar cash cow
13 down the road, so don't rescind the whole transaction for
14 fraud, let's just take this one piece and, you know, give us
15 our money on that, and I respectfully submit that's totally
16 improper, Your Honor.

17 They can't cherry-pick what part of this
18 transaction they would have ratified, so to speak, or have
19 you predict what they would have done with the benefit of
20 hindsight or how the deal would have been structured if they
21 had known about this and that's, in essence, what they want
22 you to do, is look in to a crystal ball and decide if they
23 had known about \$810,000 the offer would have happened.
24 They want you to conclude that they would've just sold the
25 \$810,000, they would've kept Wellington and they would,

1 somehow, miraculously, gotten half interest in Echo Tango.

2 But if the deal had to be restructured,
3 if they had known about it, there's no telling, there's no
4 way to know what the new deal - so to speak - would have
5 been. I respectfully submit that would have been did they
6 know at that point in time.

7 If they had known about spoke with Monty
8 Perry, here's the contract, we would have what? Increased
9 the purchase price by \$300,000 and Mr. LeGrande Lowther
10 would still have gone along with it? Speculation. We would
11 have sold the 40 acres for \$810,000, kept Wellington and not
12 have any interest in Echo Tango? That's more likely but
13 then they would've given up the half interest in Echo Tango
14 in exchange for a \$300,000 kicker that'd be split seven
15 ways, \$20,000 each. They'd have given up a potential one
16 point four million dollar interest in Echo Tango which would
17 be \$200,000 each, 10 times more valuable to them down the
18 road. It's pure speculation, Your Honor, which gets me back
19 to where I started, total lack of burden of proof on the
20 plaintiffs' part.

21 Thank you very much.

22 THE COURT: Okay.

23 Plaintiffs are entitled to reply, if you
24 wish.

25 MR. RUFF: Your Honor, just

000539

1 briefly.

2 This recision versus non-rescission,
3 Your Honor, our clients all together were one-half owners of
4 Wellington at Mr. Lowther's death, either as outright owners
5 or as beneficiaries under the will. They're still one-half
6 owners of Wellington today, in light of Mr. LeGrande Lowther
7 default on the promissory notes that came out earlier. So
8 that, sort of smoking mirrors to say that Wellington would v
9 changed somehow. It hasn't changed at all.

10 Regarding Echo Tango, Mr. Lowther
11 admitted that he was following through on his father's
12 direction and it's called for in the will, as a matter of
13 fact, to pass one-half of the Echo Tango profits to our
14 clients under the will. That's the position they're in
15 today, again, in light of his default under the note. So,
16 again, regarding Echo Tango and Wellington, this is just,
17 this is just all smoking mirrors and, again, we reiterate
18 that we want to bring them in, well, let's bring them in
19 because it makes our case even stronger, we believe, because
20 Mr. Lowther bargained for in the contracts with the
21 children, Echo Tango to be quit-claimed to him for no extra
22 purchase price.

23 Also, Wellington, it's already
24 introduced in evidence that he stood to make an additional
25 \$300,000 profit. Not only did he do that, but the contract

000540

1 that's in evidence show that he was getting three lots back
2 after closing from the ultimate purchaser. So that would've
3 even been more of the profit for Mr. Lowther.

4 So if we want to consider all of these
5 together, Your Honor, it does nothing but make our case even
6 stronger.

7 Thank you.

8 THE COURT: Okay.

9 Clearly, we've got a lot of documentary
10 evidence. I'm mindful of my duty to weigh and consider the
11 evidence, including determining the credibility of the
12 witnesses and apply the applicable law. I need to review
13 and carefully consider the evidence to do that.

14 About the only determination I'm
15 prepared to make at this point in time is that at all times
16 relevant to the action of both defendants LeGrande Lowther
17 and Mark Lowther were court appointed personal
18 representatives of the decedent's estate and had ongoing
19 fiduciary responsibilities with respect to the estate, it's
20 beneficiaries and creditors.

21 The extent to which the personal
22 representatives contemporaneously discharged their fiduciary
23 duties - and I mean contemporaneously with the events in
24 issue - is not completely clear but I'm going to go through
25 the evidence to help with those determinations.

000541

1 Of course, it's not completely clear
2 because there was no timely accounting to the probate court
3 which -- as required by law, which, ultimately, resulted in
4 Judge Malphrus striking the estate case under rule 4.

5 This Court's reappointment of the
6 personal representatives was solely for the purpose of
7 calling them to account.

8 I believe LeGrande Lowther was in a
9 position of trust and confidence with respect to the
10 plaintiffs but granting the relief requested does not
11 necessarily flow from that. That's what I have to
12 determine, whether, whether any of the causes of action have
13 been proven.

14 The findings, you know, clearly don't
15 alone entitle the plaintiffs to relief but that's, again, I
16 have to, again, under advisement whether, whether there is a
17 entitlement to recovery here.

18 I haven't see that any evidence has been
19 offered against the codefendant Mark Allen Lowther as to, at
20 least, causes of action 3, 5, 6 and 8. That's the causes of
21 action for fraud, fraud and the inducement, negligent
22 misrepresentation and unjust enrichment.

23 The other causes of action, of course,
24 are taken under advisement but the causes of action I
25 mentioned are dismissed as against Mark Allen Lowther.

000542

1 All the causes of action, judgement on
2 the remaining causes of action and all of them that are
3 alleged against E. LeGrande Lowther is reserved. I'm
4 reserving judgement. It's taken under advisement, pending a
5 review of the record, the evidence and the applicable law.

6 Now, it's gone take a little time to go
7 through this. In the interim, I can see no reason why this
8 action can't be settled among the parties. Once I make the
9 determination, you know, they, they lose control over what
10 the outcome is going to be. Any judgement I render and, of
11 course, I have to consider all the equities involved. I've
12 been asked and it's been asserted that the transactions
13 other than the forty acre transaction are not relevant here
14 and, of course, I understand Mr. Ruff said that if they are
15 to be considered, he's argued that that places the
16 plaintiffs case in a better light.

17 Well, I have to consider, I'm being
18 asked to do equity here so I have to consider all the
19 relevant equities and that I will do, as evidence has been
20 admitted to allow me to do so and as the law allows me to do
21 so.

22 I am going to refrain from entering any
23 judgement for at least 20 days to give the parties an
24 opportunity to - and I guess it'll be a final opportunity -
25 to negotiate a settlement on terms that are mutually

000543

1 agreeable to them, rather than me making a decision that may
2 not be agreeable to anyone.

3 I wish all parties, all the individuals
4 involved were still in the courtroom just so that I could
5 indicate to them that I believe it's in their best interest
6 to consider trying to resolve this, rather than my going to
7 the final judgement.

8 Now, that does not indicate a
9 predisposition for or against either side; however, it seems
10 to me that everyone has a stake in this and getting it
11 resolve on terms they can agree to without The Court
12 entering judgement and then the appeal process proceeding
13 and we all know what that means, if the case is appealed.

14 All the parties have in their control,
15 still, and they have shown, by their participation in
16 mediation up to this point, that it is possible to resolve
17 their differences, at least, to some items, and they've done
18 so.

19 They've, obviously, been able to resolve
20 a lot of issues. I think they can settle this one. When I
21 say they, I mean everybody. Both sides, obviously, have to
22 show some willingness to yield.

23 This is not an open-and-shut case. All
24 this is very complicated. It is not, as Mr. Kuhn pointed
25 out, simply a matter of weighing the number of witnesses on

000544

1 one side or the other. There's more involved in weighing
2 the evidence than simply counting.

3 And I need to do that. If I have to do
4 that, I, certainly, will but I think the best resolution of
5 any of these matters is always a resolution that the parties
6 have some control over and the variable to negotiate without
7 further expense.

8 It's my duty to encourage settlement and
9 that's what I'm doing. I have a duty under the judicial
10 canons. And I am gonna allow, at least, a period of 20
11 days. If I am not informed of any, any settlement within
12 the next 20 days, then I'll proceed to make a decision.

13 I'll try my best to get a decision
14 within 30 days from now but we'll try our best but that can
15 be avoided if the parties take advantage of this
16 opportunity.

17 Now, I'm not, necessarily, requiring
18 that the matter be resolved in mediation. It could be,
19 otherwise, resolved, by negotiation. But I leave that up to
20 the parties and there attorneys to determine.

21 So that's where we are. The matter's
22 taken under advisement, except to the extent that I've
23 dismissed four of the causes of action against Mark Allen
24 Lowther.

25 Is there any question to this point

000545

1 about how I propose to proceed?

2 MR. RUFF: No questions, Your
3 Honor.

4 I will say, Your Honor, I don't know, it
5 came to the clerk's attention. We apologize. Mr. Mitchell
6 Lowther had a shoulder surgery with a friend of mine, Dr.
7 Mark Dean, at noon today --

8 THE COURT: Oh, I'm not holding it
9 against him because he's --

10 MR. RUFF: Oh, no. I just wanted
11 to say that. I think I neglected to point that out to The
12 Court after we took that break earlier but no questions
13 about this, Your Honor.

14 THE COURT: No, it wasn't necessary
15 for them to remain, no. The only reason I said I wished
16 they'd remained is because, you know, I think it's important
17 for everybody to know what's at stake here and I know
18 you'll, faithfully, advise them, accordingly, but I just
19 hope and encourage everybody to make one last effort to try
20 to resolve this, which is, apparently, the last leg of the
21 differences that have been resolved.

22 So with that encouragement, this matter
23 is adjourned.

24 -- END OF TRANSCRIPT OF RECORD --

25 000546

STATE OF SOUTH CAROLINA)

CERTIFICATE OF TRANSCRIPTION

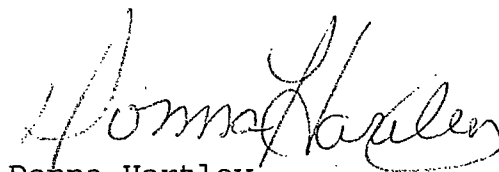
COUNTY OF BEAUFORT)

I, THE UNDERSIGNED, DONNA HARTLEY, do hereby
certify that I transcribed the proceedings in the captioned
case from compact discs provided to me by H. Fred Kuhn, Esq.

I FURTHER CERTIFY that the foregoing pages
constitute a true, accurate and complete transcript of said
hearing.

I FURTHER CERTIFY that I am neither kin, counsel,
nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal at Beaufort County, this thirtieth day of May,
2012.



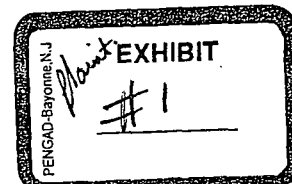
Donna Hartley,
Court Reporter and Notary Public
for the State of South Carolina.
My Commission expires
April 23, 2017.

000547

COUNTY OF JASPER

IN THE MATTER OF C.E. LOWTHER

CASE NUMBER 2004-ES-27-00068



2004 DEC 17 PM 3:54

INVENTORY AND APPRAISEMENT, PROBATE COURT, JR.
JASPER COUNTY, S.C.

☒ ORIGINAL

☐ SUPPLEMENTAL #

Personal Representative (s): Edward LeGrand Lowther and Mark Allen Lowther

Decedent's Social Security Number: 250-14-3273

Was there a will? ☒ YES ☐ NO

Decedent's Date of Death: 6-11-04

Domicile at death: Jasper County, S.C.
(county) (state)

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed: that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to me this 17th day of
December, 20 04

Dillon Kuyt
Notary Public for South Carolina
My Commission Expires: 3/20/2013

Signature: E. LeGrand Lowther
Name: E. LeGrand Lowther
Address: P.O. Box 995
Ridgeland, SC 29936

E-Mail: _____
Telephone (O): 843-247-5706 - Cell
(H): 843-726-5028

Signature: Mark Allen Lowther
Name: Mark Allen Lowther
Address: Ridgeland, SC 29936

E-Mail: _____
Telephone (O): _____
(H): 843-987-0044

Attorney: _____
Address: _____
E-Mail: _____
Telephone: _____

For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following appointment, a copy of the inventory and appraisal shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

RECAPITULATION

	Non-Probate	Probate
Schedule A - Real Estate	\$	\$ <u>454,075.00</u>
Schedule B - Stocks and Bonds		
Schedule C - Notes Due Decedent and Cash		
Schedule D - Insurance on Person's Life: Part 1 - Payable to Estate		
Part 2 - Payable to Beneficiary		
Schedule E - Jointly Owned Property		
Schedule F - Other Miscellaneous		
Other Assets Payable to Estate		
Schedule G - Transfers during Decedent's life		
Schedule H - Powers of Appointment		
Schedule I - Annuities and Retirement Accounts		
TOTAL GROSS VALUE	\$	
ENCUMBRANCES	(	)
TOTAL NET WORTH	\$	\$ <u>454,075.00</u>

SCHEDULE D - Insurance (If none, so state.)**Part 1 - Life Insurance Payable to the Estate**

Item No.	Description	Value

TOTAL PART 1

\$ 0

(also enter under recapitulation, page 1)

Part 2 - Life Insurance Payable to Beneficiaries

Item No.	Description	Beneficiary	Value

TOTAL PART 2

\$ 0

(also enter under recapitulation, page 1)

SCHEDULE E - Jointly owned Property (with right of survivorship) (if none, so state.)

NOTE: You must complete Schedule E if the Decedent owned any property jointly with right of survivorship at the time of death, whether or not the decedent's interest is included in the gross estate.

Percentage includible:

1 - Joint interest held by decedent and spouse - the amount included is one-half (50%) of the value in all cases.

2 - Other joint interest - Generally you must include the full value of the jointly owned property in the gross estate. However, the full value should not be included if you can show that a part of the property originally belonged to the other tenant(s). The amount included is the amount of the decedent's contribution to the joint account(s).

Item No.	Description	Joint Owner(s)	Percentage Includible	Appraised Value of Decedent's Interest

TOTAL SCHEDULE E

\$ 0

(also enter under recapitulation, page 1)

(If more space is required, insert tax schedules or additional sheets of same size.)

000549



9
\$1500 FF
1890 20

200500005092
Filed for Record in
JASPER COUNTY
PATSYE M GREENE
12-28-2005 At 09:24 am.
DEED 1905.70
Volume 337 Page 1 - 9

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER) WARRANTY DEED

Know All Men by These Presents, that we, VIVIAN GENE L TILLOTSON, RITA ELIZABETH L ROGERS, MARK ALLEN LOWTHER, EFFIE SANDRA L TURPIN, CLAYTON CLARK LOWTHER, C. E. LOWTHER, JR and MITCHELL SAXON LOWTHER, hereinafter referred to as Grantor(s) in the State aforesaid, for and in consideration of the sum of Five Hundred Eleven Thousand Dollars (\$511,000.00) to us paid by E LEGRAND LOWTHER, hereinafter referred to as Grantee(s) in the State aforesaid and (the receipt of which is hereby acknowledged) have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said E LEGRAND LOWTHER, his heirs and assigns, forever, the following described real property, to-wit:

SEE ATTACHED EXHIBIT A

This being the identical property conveyed to the Grantor(s) herein by Deed of Distribution of the Estate of C E Lowther dated 11-9-05 and recorded in Deed Book 336 at Page 291, Office of the Clerk of Court of Jasper County, South Carolina.

Grantee's Address: Po Box 995, Ridgeland, SC 29936

This Deed prepared by the law office of Moss, Kuhn & Fleming, P.A., Post Office Drawer 507, Beaufort, South Carolina 29901-0507

TMS No: 063-39-04-010

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said E LEGRAND LOWTHER, his Heirs and Assigns forever.

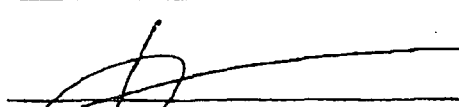
And we, VIVIAN GENE L TILLOTSON, RITA ELIZABETH L ROGERS, MARK ALLEN LOWTHER, EFFIE SANDRA L TURPIN, CLAYTON CLARK LOWTHER, C. E. LOWTHER, JR. and MITCHELL SAXON LOWTHER do hereby bind our Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said E LEGRAND LOWTHER, his Heirs and Assigns, against us and our Heirs and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

000552

WITNESS our Hand(s) and Seals(s) this ^{24th} 8 day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:





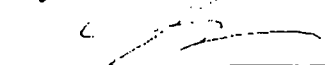
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)


MITCHELL SAXON LOWTHER (Seal)

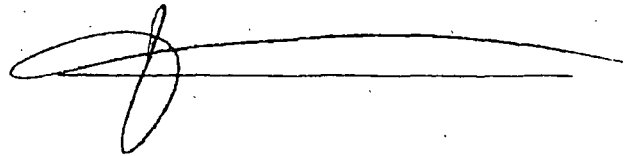
(Seal)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this ^{24th} 8 day of December, 2005



Notary Public for South Carolina)
My Commission expires: 12/12)



000553

WITNESS our Hand(s) and Seals(s) this 8th day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:

[Signature]

[Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

RITA ELIZABETH L ROGERS

(Seal)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 8th
day of December, 2005

Notary Public for South Carolina
My Commission expires: 1-3-06

DEED BOOK 337 PAGE 0040
DATE 1-3-06
AUDITOR [Signature] JASPER COUNTY SC

000554

A. Settlement Statement

U.S. Department of Housing
and Urban Development

HUD-1 (3/86) OMB No. 2502-0265

B. Type of Loan

1. FHA 2. FmHA 3. Conv. Unins. 6. File Number 7. Loan Number 8. Mortgage Insurance Case Number
4. VA 5. Conv. Ins. Lowther-heirs 40 acres

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower E. Name and Address of Seller F. Name and Address of Lender
E. Legend Lowther
PO Box 955
Ridgeland, SC 29936
Vivian Gene L. Tilloison,
Rita Elizabeth L. Rogers,
Mark Allen Lowther, et al

G. Property Location H. Settlement Agent I. Settlement Date
40.81 acres
Jasper County SC
063 39 04 010
Moss & Kuhn, P.A.
Place of Settlement
Moss, Kuhn & Fleming, P.A.
1501 North St
Beaufort, SC 29902
12 20 05

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due From Borrower		400. Gross Amount Due To Seller	
101. Contract sales price	511,000.00	401. Contract sales price	511,000.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	3,405.70	403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due From Borrower	514,405.70	420. Gross Amount Due To Seller	511,000.00

200. Amounts Paid By Or In Behalf Of Borrower		500. Reductions In Amount Due To Seller	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	0.00
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207. pd per closing 12/8/05 w/SCB&T	511,000.00	507. pd per closing 12/8/05 w/SCB&T	511,000.00
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower	511,000.00	520. Total Reduction Amount Due To Seller	511,000.00

300. Cash At Settlement From/To Borrower		600. Cash At Settlement To/From Seller	
301. Gross Amount due from borrower (line 120)	514,405.70	601. Gross amount due to seller (line 420)	511,000.00
302. Less amounts paid by/for borrower (line 220)	(511,000.00)	602. Less reductions in amt. due seller (line 520)	(511,000.00)
303. Cash From To Borrower	3,405.70	603. Cash To From Seller	0.00



000555

This page is attached to and made part of the Settlement Statement in the matter described on Page 1 of the Settlement Statement.

I have carefully reviewed this Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the Settlement Statement.

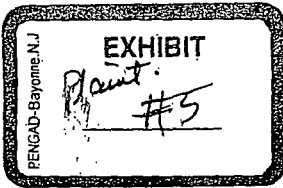
Borrower(s)	<u>E. Legend Lowther</u>	12/20/05	Seller(s)	<u>Vivian (Mrs) L Tillotson</u>	12/20/05
				<u>Rita Elizabeth L Rogers</u>	12/20/05
				<u>Mark Allen Lowther</u>	12/20/05
				<u>Erin Sandra L. Turpin</u>	12/20/05
				<u>Clayton Clark Lowther</u>	12/20/05
				<u>C. E. Lowther, Jr</u>	12/20/05
				<u>Mitchell Saxon Lowther</u>	12/20/05

The Settlement Statement which I have prepared is a true and accurate account of funds received and funds disbursed or to be disbursed for this transaction.

12/20/05

11 Fred Kuhn, Jr, Settlement Agent

000556



9
15-00 FF 200500005094
Filed for Record in
JASPER COUNTY
PATSYE M GREENE
12-28-2005 At 09:36 am.
DEED 9131.80
Volume 337 Page 10 - 18

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER) WARRANTY DEED

Know All Men by These Presents, that we, VIVIAN GENE L TILLOTSON, RITA ELIZABETH L ROGERS, MARK ALLEN LOWTHER, EFFIE SANDRA L TURPIN, CLAYTON CLARK LOWTHER, C. E. LOWTHER, JR and MITCHELL SAXON LOWTHER, hereinafter referred to as Grantor(s) in the State aforesaid, for and in consideration of the sum of Two Million Four Hundred Sixty Four Thousand Dollars (\$2,464,000.00) to us paid by E LEGRAND LOWTHER, hereinafter referred to as Grantee(s) in the State aforesaid and (the receipt of which is hereby acknowledged) have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said E LEGRAND LOWTHER, his heirs and assigns, forever, the following described real property, to-wit:

SEE ATTACHED EXHIBIT A

This being the identical property conveyed to the Grantor(s) herein by Deed of Distribution of the Estate of C E Lowther dated 12-7-05 and recorded in Deed Book 336 at Page 291, Office of the Clerk of Court of Jasper County, South Carolina.

Grantee's Address: PO Box 995, Ridgeland, SC 29936

This Deed prepared by the law office of Moss, Kuhn & Fleming, P.A., Post Office Drawer 507, Beaufort, South Carolina 29901-0507

TMS No: 069-00-07-003

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said E LEGRAND LOWTHER, his Heirs and Assigns forever.

And we, VIVIAN GENE L TILLOTSON, RITA ELIZABETH L ROGERS, MARK ALLEN LOWTHER, EFFIE SANDRA L TURPIN, CLAYTON CLARK LOWTHER, C. E. LOWTHER, JR. and MITCHELL SAXON LOWTHER do hereby bind our Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said E LEGRAND LOWTHER, his Heirs and Assigns, against us and our Heirs and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

000557

Exhibit A

ALL that certain piece, parcel or tract of land, situate, lying and being in Jasper County, South Carolina, containing (226.35) acres, more or less, known as Wellington Plantation and being bounded and described as follows: On the North by Wellington road, a dedicated Jasper County road; on the East by lands now or formerly of Pittman; on the South by lands now or formerly of Westvaco; and on the West by lands now or formerly of Westvaco and lands now or formerly of South Carolina Electric and Gas Co.. For a more particular description of metes, bounds, courses and distances, reference is made to that certain boundary survey prepared by Richard Kesselring, RLS for E Legrand Lowther and C. E. Lowther dated February 20, 1997, and recorded in the Office of the Clerk of Court for Jasper County South Carolina Book 22 at Page 293. The metes, bounds and distances appearing on the aforementioned plat are incorporated herein by reference.

LESS AND EXCEPT (3.84) acres thereof conveyed by C. E. Lowther to Mitchell S Lowther and Carmon B Lowther by deed recorded in the Office of the Clerk of Court for Jasper County, South Carolina in Deed Book 156 at Page 157 and more particularly described as Lot No (34) on that certain preliminary subdivision plat prepared by Connor & Associates, Inc., a copy of which is attached to said Deed and made a part of Deed Book 156 at Page 157.

ALSO LESS AND EXCEPT, any out conveyances as recorded in the Office of the Clerk of Court for Jasper County, South Carolina prior to the date of this deed.

This being the same property conveyed as 50% undivided interest to E Legrand Lowther, 25% undivided interest to Mitchell S Lowther and 25% undivided interest to C E Lowther by Deed of Albert L Kleckley recorded on September 18, 2003 in Book 282 at Page 154 in the Office of the Clerk of Court for Jasper County, South Carolina.

TMP 069-00-07-003

000558

WITNESS our Hand(s) and Seals(s) this 20 day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:

RYTA ELIZABETH L ROGERS

(Seal)

(Seal)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 20
day of December, 2005

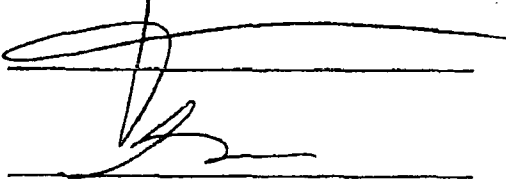
Notary Public for South Carolina
My Commission expires: 7-29-12

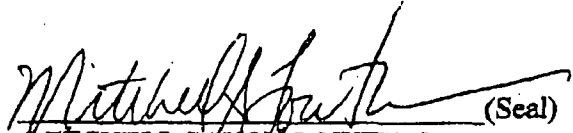
The within Instrument has been transferred
this 5 day of Jan. 2006 at
9:30 o'clock A. M., and recorded
in Transfer Book 3 Page 539
in Assessor's Office. Tax Map No. 069-00-07-003
Transfer No. 5-27-1486
Deddie B. Pinkney
JASPER COUNTY, S.C.

000559

WITNESS our Hand(s) and Seals(s) this 20 day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:



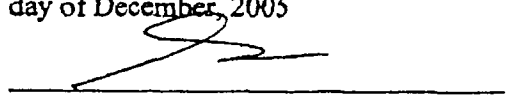
 (Seal)
MITCHELL SAXON LOWTHER

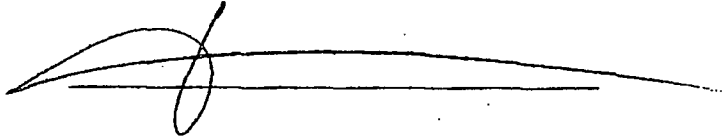
____ (Seal)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 20
day of December, 2005


Notary Public for South Carolina)
My Commission expires: 1-29-06)



000560

WITNESS our Hand(s) and Seals(s) this 20 day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:

CELOWTHER, JR

(Seal)

(Seal)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

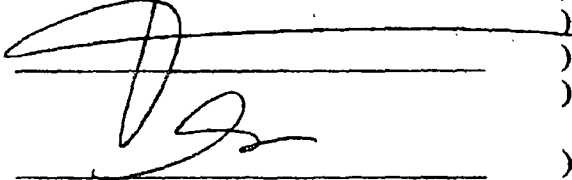
SWORN to before me this 5th
day of December, 2005

Notary Public for South Carolina
My Commission expires: 1.21

000561

WITNESS our Hand(s) and Seals(s) this 20 day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:


_____)
_____)
_____)

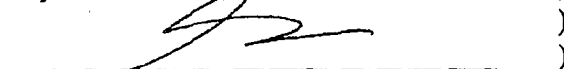
 (Seal)
VIVIAN GENE L TILLOTSON

_____ (Seal)

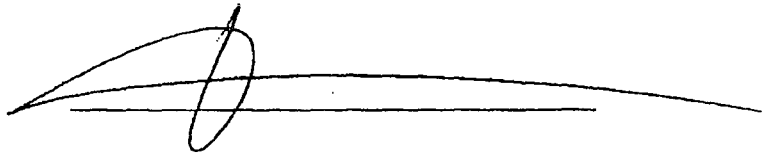
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 20
day of December, 2005



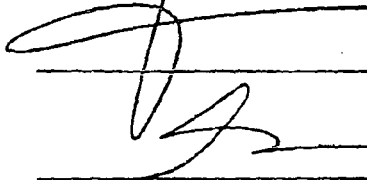
Notary Public for South Carolina)
My Commission expires: 1-29-12)



000562

WITNESS our Hand(s) and Seals(s) this 20 day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:



)
)
)
)
)
)
)

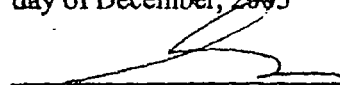
 (Seal)
EFFIE SANDRA L TURPIN

(Seal)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 20
day of December, 2005



Notary Public for South Carolina
My Commission expires: 1-29-12

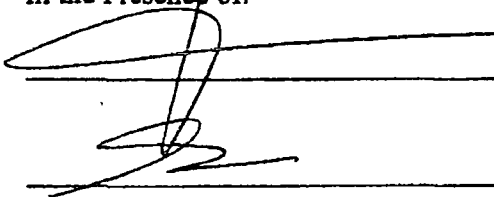
)
)
)
)
)
)
)



000563

WITNESS our Hand(s) and Seals(s) this 23 day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:



CLAYTON CLARK LOWTHER

(Seal)

(Seal)

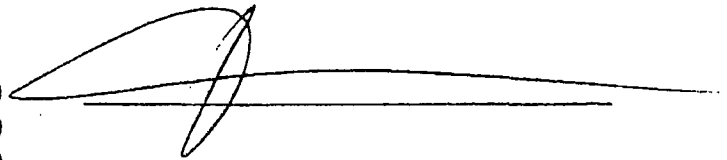
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

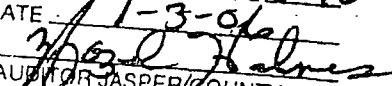
SWORN to before me this 23)
day of December, 2005)

Notary Public for South Carolina)

My Commission expires: 1-29-12)

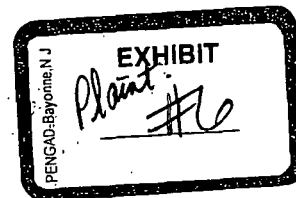


DEED BOOK 337 PAGE 0040

DATE 1-3-06

AUDITOR JASPER COUNTY SC

000564

CONTRACT FOR SALE AND PURCHASE



THIS CONTRACT FOR SALE AND PURCHASE made and entered into this 12th day of October, 2005, by and between Lagrande Lowther, ~~Mitchell Lowther, et al~~, hereinafter referred to as ("Seller"), and International Society of Investors, a North Carolina Limited Liability Company, or its designee or assigns hereinafter referred to as ("Purchaser").

WITNESSETH:

Subject to the terms and conditions of this Agreement, and in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Seller and Purchaser agree as follows:

1. **PREMISES, IMPROVEMENTS AND CHATTELS.** Seller shall sell and convey to Purchaser, and Purchaser shall purchase from Seller, the land specifically described as Wellington Estates, approximately 241 acres, being in the County of Jasper, South Carolina (the "Property").

2. **PURCHASE PRICE.** Purchaser hereby agrees to pay to Seller as the purchase price for the Premises the sum of Five Million Four Hundred Fifty Thousand Dollars (\$5,450,000.00) subject to adjustments, credits, and pro-rations as set forth herein below (the "Purchase Price"), to be paid as follows:

2.1. Within Forty Eight (48) hours after the execution of this Agreement (Effective Date), Purchaser shall deposit into the Russell Law Firm Trust Account, the Escrow Agent, the sum of Five Thousand Dollars (\$5,000) as a good faith deposit to be held pursuant to the terms of this Contract.

2.2. The balance of the Purchase Price (including a credit for the amount of the Deposits of \$ 5,000), shall be financed by the Seller as explained in attached Seller Financing Addendum.

2.3. Seller Financing: A promissory note from Purchaser to Seller of \$5,445,000.00 bearing 0% interest per annum, secured by mortgage, and containing the terms and condition described in the attached Seller Financing Addendum.

3. **CONDITIONS PRECEDENT.** This Contract For Sale and Purchase is subject to and conditional upon:

3.1. The Purchaser obtaining horizontal construction financing.

3.2. The land being permitted for no less than 300 units.

3.3. The Purchaser receiving confirmation that all utilities (including electrical, water, and telephone services) are available to the property and are adequate for Buyers intended use.

3.4. The Purchaser receiving all permits, licenses, approvals or consent from any

do file
Search

Gave request
to Pam on

3-20-06

000565

and all governmental authorities and agencies having jurisdiction over the property and which are necessary to allow development, construction of the Property, such permits, licenses, approvals and consents to include, without limitation, building permits, storm water management permits, concurrence approvals, etc.

- 3.5. The Purchaser being satisfied in its absolute discretion with the results of soil tests, subsurface water tests and a level 1 Environmental Site Assessment.
- 3.6. However, and notwithstanding anything herein to the contrary, the Buyer has the option to waive one or more of the said conditions.
- 3.7. The Seller agrees to cooperate with Purchaser as reasonably requested and without expense in obtaining the satisfaction, fulfillment, and/or compliance with any or all conditions or contingencies hereunder. Seller hereby authorizes Purchaser to make any applications, petitions or submissions as may be required to obtain any and all such land use changes or amendments, permits, licenses, consents or approvals which may be required to allow the development of Purchaser's Intended Use. To the extent required, Seller agrees to execute or join in any such applications, petitions or submissions, or similar documentation.
- 3.8. This offer shall be null and void if Purchaser does not acquire 40 acre parcel on Bee's Creek Road currently contracted with Seller.

4. **INSPECTION PERIOD.** Purchaser shall have a period of 30 days from and after the Effective Date (The Inspection Period) within which to satisfy itself as to the Conditions Precedent in paragraph 3 herein. If on or before the end of the Inspection Period the Conditions Precedent are not satisfied or waived; and/or Purchaser in Purchaser's sole and absolute discretion determines that the Premises are not suitable or acceptable in all respects, or that Purchaser's intended use thereof is not feasible, all in Purchaser's sole judgment, then Purchaser shall have the right to terminate this Contract, in which event the deposit will be returned to Purchaser, and thereafter the parties shall have no further obligations, duties or liability hereunder except under paragraph 14 below.

- 4.1 In order to allow Purchaser to expeditiously and timely complete such tests, studies, etc., as referred to herein above, Seller shall deliver to Purchaser within five (5) days after the Effective Date copies of any and all surveys, title policies or commitments, appraisals, environmental audits or studies, engineering reports, studies, plans or drawings, site plans or layouts, zoning or land use documentation or information, soil tests, studies or reports, studies, plans or drawings, site plans or layouts, zoning or land use documentation or information, soil tests, studies or reports, wetlands jurisdictional determinations or reports, feasibility studies, concurrence evaluations, documentation or information concerning the Premises or any correspondence concerning any of such topics, which Seller, or any agent or representative of Seller has in its possession.

000566

8.7.7

5. **EXTENSIONS.** In the event the Purchaser does not have the, site plan approval, building permits, and all other permits (as required) within the Inspection Period then Purchaser may elect to extend said Period until December 27, 2006, after which date the closing conditions apply, with all other terms conditions and dates to be adjusted accordingly.

6. **SURVEY.** Purchaser shall obtain a boundary survey (the "Survey") of the Premises within 30 days after expiration of Inspection Period (Paragraph. 4,) and compliance and/or waiver of conditions in Paragraph. 3. certified by the surveyor to the Purchaser, Purchaser's counsel, the Seller and the Title Insurance Company as having been made in compliance with the minimum technical standards adopted for surveys conducted in the State of South Carolina, which survey shall also be in form and content satisfactory to the Title Insurance Company for the purposes of issuing the owner's title insurance policy required by this Agreement, and deleting there from the standard general exceptions for matters which might be revealed by the accurate survey of the Premises and shall deliver a sealed copy of same to Seller. Said survey shall show and designate any and all of the Permitted Exceptions, and any and all other easements, rights of way, encroachments, overlaps or improvements pertaining to the boundaries of the Premises by metes and bounds or other appropriate legal description. In the event the legal description contained in the Survey describes the Premises as more than one parcel, the Survey shall contain the surveyor's certification to the effect that all such parcels which comprise the Premises are contiguous each to the other, and that there are no gaps, gores, overlaps or hiatuses. Moreover, in the event that the legal description of the Premises describes the Property as more than one parcel, the title insurance policy to be issued in accordance with Paragraph 3 above shall contain a contiguity endorsement and a survey endorsement insuring that all the parcels comprising the Premises are contiguous each to the other, with no gaps, gores, overlaps or hiatuses. The Survey shall certify the acreage for the entire Premises to the second decimal place. The Survey shall further certify that no portion of the Premises is located within the one hundred (100) year flood plain or within any Special Flood Hazard Area as established by the local, state or federal government; or, if any portion of the Premises does lie in the one hundred (100) year flood plain, the Survey shall delineate such areas, and certify the amount of acreage lying within each or either of such areas. The cost of the Survey shall be borne by Purchaser and paid by Purchaser on or before Closing.

8. **CURING OF UNPERMITTED EXCEPTIONS AND SURVEY DEFECTS.** Purchaser shall have fifteen (15) days after the delivery of the last to be delivered of the Survey and the Title Commitment to examine same. If the Title Commitment or Survey discloses either unpermitted exceptions, exceptions or encroachments which are unacceptable to Purchaser, or matters that render the title unmarketable (herein referred to as "title defects"), Purchaser shall so notify Seller on or before the end of the applicable fifteen (15) day period, and Seller shall thereafter use its best efforts to have the defects removed. In the event Seller is unable to have such title defects removed or corrected on or before 60 days after said notice, Purchaser shall have the right to either: (a) terminate this Agreement upon written notice to Seller, and all sums paid or deposited by Purchaser hereunder shall be returned to Purchaser with neither party having any further obligation hereunder; or (b) waive such objection and proceed to closing of this transaction in accordance with the terms hereof without any reduction in the Purchase Price.

9. **SELLER'S DOCUMENTS.** Seller shall execute and deliver to Purchaser at closing, the following:

000567

E. L.

- 9.1. A General Warranty Deed executed by Seller conveying fee simple title of the Premises to Purchaser, subject only to the Permitted Exceptions, in form satisfactory to the Purchaser and the title Insurance company;
- 9.2. A Seller's affidavit sufficient in form and content to satisfy the requirements of the applicable South Carolina Statutes, and to permit deletion of all of the standard ALTA general exceptions from the Title Commitment and the Title Policy;
- 9.3. Such other closing documents as reasonably may be required to consummate the transaction contemplated by this Agreement, or which may be required by the Title Company in order to issue the Title Policy as required by the Title Commitment.

877.
10. **EXPENSE PROVISIONS.** ~~State documentary stamps required on the deed, The cost and expenses of any corrective instruments or actions, the title insurance premium and title search charges shall be paid by Seller on or before Closing. The cost of recording the deed and the cost of the Survey shall be paid by the Purchaser on or before closing. Each party shall bear and pay its own attorneys' fees and expenses. Title insurance premium and title search charges shall be paid by Purchaser. Purchaser shall also pay the documentary stamps and millage taxes.~~

11. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER.** The Seller hereby represents, warrants and covenants to and with the Purchaser as follows:

- 11.1. Prior to Closing, the Seller shall hold fee simple title to the Premises subject to no liens, contracts, mortgages, Agreements, pledges, encumbrances, charges or defects of any kind other than those to be removed at closing except the Permitted Exceptions. From and after the Effective Date hereof, Seller shall not enter into any contracts, Agreements, encumbrances, liens, or other documents or instruments for or regarding the sale, transfer, disposition, assignment, conveyance, encumbrance, lien, pledge of the Premises, or any part thereof or any interest therein, or which may result in any lien or encumbrance with regard to the Premises, or any part thereof, or an interest therein, without the prior written consent of the Purchaser.
- 11.3. Seller has paid (or covenants that he will pay prior to Closing) any and all taxes (excluding taxes not yet due) which have or could become a lien or charge against the Premises, subject to the pro-ration herein provided.
- 11.4. Except for the liens, encumbrances or charges against the Premises shown on the public records, there are no other liens, encumbrances, unpaid bills to vendors, outstanding obligations or charges (contingent or absolute) in existence against such Seller or any business

conducted thereon, or any existing undisclosed or unrecorded liens, encumbrances or charges, which could adversely affect title to the Premises after the Effective Date hereof or the Closing Date, and Seller has no knowledge of any matters pending that could result in a lien against the Premises, or in any way substantially adversely affect title to the Premises.

- 11.5. From and after the Effective Date hereof, Seller will not cause, permit, suffer, or allow any change, modification, or alteration to be made to the Premises, or any part or portion thereof, or its physical condition without the prior written consent of Purchaser.
- 11.6. No notice from governmental body has been served upon Seller claiming any violation of any law, ordinance, code or regulations as to the Premises, and Sellers have no knowledge that any such violation exists with regard to the Premises.
- 11.7. That there are no leases of the Premises, or any portion thereof, other than are disclosed herein.
- 11.8. Seller has not received any notice, and has no knowledge, that the Premises, or any portion thereof, is or will be subject to or affected by: (i) any special assessments, whether or not presently a lien thereon; or (ii) any condemnation, eminent domain, change in grade of public streets, or similar proceeding.
- 11.9. That there are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, to which Seller is a party, affecting the Premises, or any portion thereof, or relating to or arising out of the ownership of the Premises, in any court or before or by any Federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality.
- 11.10. Seller has the full right, power and authority to enter into and deliver this Agreement and to consummate the purchase and sale of the Property in accordance herewith and to perform all covenants and Agreements of Seller hereunder.
- 11.11. Seller has no knowledge or notice that any present default or breach exists under any mortgage or other encumbrance encumbering the Premises, or any covenants, conditions, restrictions, rights-of-way or easements which may affect the Premises.
- 11.12. The Property has access to a publicly dedicated road right-of-way.

12. **REPRESENTATIONS.** Purchaser hereby represents and warrants to Seller as follows:

12.1. To the best of Purchaser's knowledge, no consent to the transaction contemplated by this Agreement by any person or entity other than Purchaser is required;

12.2. The person executing this Agreement on behalf of the Purchaser is fully and duly authorized to do so by Purchaser, and any and all actions required to make this Agreement and the performance thereof legally binding obligations of Purchaser, have been duly and Legally taken. No further consent, authorization or approval of any person or entity is required for Purchaser to enter into or perform this transaction.

13. **CONTINUING REPRESENTATIONS AND WARRANTIES.** The representations and warranties of the parties contained herein shall be deemed to be continuing representations and warranties up to and including the Closing Date and at all times between the Effective Date hereof and the Closing Date, with the same force and effect as though such representations and warranties had been made as of Closing.

14. **ACCESS TO THE PREMISES.** Seller covenants and agrees that from and after the date hereof, and until the Closing Date, it will afford Purchaser, and its authorized representatives and agents, entry upon and access to the Premises for the purpose of satisfying itself with respect to the representations, warranties and covenants of the Seller contained herein, and to take soil tests, borings, make surveys or layouts for the improvements, or such other tests, evaluations, or investigations as Purchaser may deem necessary or desirable. Purchaser hereby agrees to repair any damage to the premises occasioned by the Purchasers conducting test borings or otherwise being on the property during the inspection period and indemnify and hold Seller harmless from and against any and all loss, damage, injury, claim, cost or expense of any nature whatsoever including attorneys' fees (whether incurred before, during or after trials, or upon any appellate level) arising from or pertaining to Purchaser's exercise of its rights granted by this Paragraph 14 which obligation shall survive any termination of this Agreement.

15. **General Conditions to Obligations of the Purchaser.** The obligations of Purchaser hereunder are, at the option of Purchaser, subject to and contingent upon the conditions that:

15.1. The representation and warranties made by Seller herein shall be correct statements of fact as said facts exist as of the Closing Date, and at all times between the Effective Date hereof and the Closing Date, and with the same force and effect as though such representations and warranties had been made as of the Closing Date;

15.2. All terms, covenants, Agreements and provisions of this Agreement to be complied with and performed by the Seller on or before the Closing Date shall have been duly complied with and performed.

15.3. If these conditions are not met then, at

Purchaser's option, the Deposit shall be returned to Purchaser upon Purchaser's notice of termination of the Contract given prior to Closing.

16. **REAL ESTATE COMMISSION.**

9.1. Both Seller and Purchaser hereby represent and warrant that neither Seller nor Purchaser have engaged or dealt with any agent, broker or finder with regard to this Agreement or to the sale and purchase of the Property contemplated hereby.

17. **CLOSING.** Subject to the terms and conditions hereof, including Paragraph 5 herein the Closing of this transaction shall be held at such time as may be mutually agreed upon by Seller and Purchaser, at the office of a closing agent to be determined by the buyer, on or before December 27, 2006, so long as Purchaser is satisfied with all permits and approvals from the local presiding jurisdiction for the Purchaser's intended use. At Purchaser's option, the closing may be held sooner than the foregoing dates, provided Purchaser gives Seller not less than ten (10) days notice of the Closing date. Seller shall deliver possession of the Premises to Purchaser on the Closing Date.

18. **PRORATIONS.**

18.1. Real estate taxes for the year of Closing shall be Pro-rated on an accrual basis as of the Closing Date, based upon the most recent ascertainable taxes. The parties agree to a reprobation and adjustment of the real estate taxes when the actual tax bill for the year of closing is received.

18.2. If at any time before the date hereof, the Premises, or any part thereof, shall be the subject of any assessment or assessments which are payable in annual installments, other than ad valorem real estate taxes, then for the purposes of this Agreement all of the unpaid installments of any such assessment including those which are to become due and payable after closing, shall be deemed to be due and payable and shall be paid and discharged by Seller on or before closing.

18.3. With regard to Closing, each party shall pay the fees of its attorney and the costs of preparing all documents which this Agreement requires such party to furnish. If there is any dispute regarding this Agreement, the prevailing party shall be entitled to collect its costs and attorneys' fees, through trial and all appeals, from the losing party.

19. **CONDEMNATION.** If, prior to Closing, the Premises or any portion thereof is condemned or taken under power of eminent domain, or if Seller receives any notice or knowledge that any such taking is threatened or contemplated by any governmental agency or entity or any other entity having the power of eminent domain, then, in any such event, Seller shall promptly give notice thereof to Purchaser in writing. Purchaser shall then have the options of either (a) terminating this Contract and receiving a refund of any and all Deposits paid hereunder, with neither party thereafter

having any further obligations to the other hereunder, or (b) waiving such matters and proceeding to close this transaction without reduction in the Purchase Price, but with the right to receive any and all awards or monies payable as a result of any such taking. Purchaser shall make such election by giving written notice thereof to Seller at any time prior to Closing.

21. ESCROW AGENT AND ESCROW PROCEDURE. In the event of any dispute under this Agreement, the Escrow Agent shall have the right to interplead the Deposit into the registry of any court of competent jurisdiction. The interpleading of said Deposit into the registry of the court shall release the Escrow Agent from any further or continuing liability with respect to the disposition of such Deposit. In such event only, Escrow Agent will be entitled to reimbursement to the extent of all costs and expenses reasonably incurred to obtain an order of interpleader, including reasonable attorneys fees, to be reimbursed by the party at fault. Escrow Agent shall exercise ordinary care with respect to the custody and delivery of the Deposits and any other duties of Escrow Agent under this Contract. Escrow Agent will not be liable for any act or omission that is undertaken in good faith and with ordinary care. Without limitation, Escrow Agent may assume, without verification, the genuineness of any signatures on any writings that are regular on their face and may maintain the deposits in interest thereon in a federally insured, commingled trust account. Escrow Agent will not be liable for any act, omission, or failure of the depository institution unless specifically authorized or directed by Escrow Agent. No provision of this Contract by itself authorizes recovery of monetary damages, costs, expenses, or attorney's fees from or against Escrow Agent. Escrow Agent will have a reasonable period of time to comply with all further instructions received pursuant to this Contract, which in all events will be not less than five (5) working days. Escrow Agent's sole duty of collection with respect to any instrument payable to Escrow Agent is to present such instrument promptly for payment and to advise the parties promptly if it is not then collected in the ordinary course of banking business. Escrow Agent shall not be responsible for the performance of any financial institution into which the Deposit is deposited. Seller acknowledges and agrees that the Escrow Agent is Seller's attorney, and that the Escrow Agent's status as such shall not disqualify the Escrow Agent from acting as Seller's attorney with regard to this transaction, or any dispute or litigation arising from or concerning this transaction or this Agreement, including, without limitation, a dispute with regard to the Deposit.

22. CONTRACT CONSTRUCTION. Buyer and Seller acknowledge that this Contract was prepared after substantial negotiations between the parties. This Contract shall not be interpreted against either party solely because such party or its counsel drafted the Contract.

23. MISCELLANEOUS.

(a) Notices. Any notice required or permitted to be given under this Agreement shall be in writing, and shall be deemed to have been given when delivered, if delivered by hand delivery, or when deposited in the United States Post Office, registered or certified mail, postage prepaid, return receipt requested, if mailed. Notices shall be addressed as follows:

If to Seller:

If to Purchaser:

International Society of Investors
1304 Paddock Drive Suite F103
Raleigh, NC 27616

With copy to: Kathie L. Russell, Esq.
327 West Morgan Street, Suite 200
Raleigh, NC 27601

or at such other address which either party may from time to time specify in writing to the other.

(b) Assignment. All or any portion of Purchaser's rights and duties under this Agreement shall be transferable and assignable.

(c) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(d) Amendments and Termination. Except as otherwise provided herein, this Agreement may be amended or modified by, and only by, a written instrument executed by Seller and Purchaser, acting by their respective duly authorized agents or representatives.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

(f) Section Headings. The section headings inserted in this Agreement are for convenience only and are intended to, and shall not be construed to, limit, enlarge or affect the scope or intent of this Agreement, nor the meaning of any provision hereof.

(g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

(h) Merger of Prior Agreements. This Agreement supersedes all prior Agreements and understandings between the parties hereto relating to the subject matter hereof.

(i) Attorneys' Fees and Costs. In any litigation arising out of or pertaining to this Agreement, the prevailing party shall be entitled to an award of its attorneys' fees, whether incurred before, after or during trial, or upon any appellate level.

(j) Time. Time is of the essence of this Agreement. When any time period specified herein falls or ends upon a Saturday, Sunday or legal holiday, the time period shall be automatically extend to 5:00 P.M. on the next ensuing business day.

E.L.F.

(k) Three Lots - Purchaser shall, at closing or as soon thereafter as is practicable, convey back to Seller all the conveyed property (including the 10-lot developed Lots free of encumbrances with all associated amenities, and utilities, said 9 Lots to be selected by Seller after consultation with Purchaser near the existing subdivision known as Wollington Estates Phase I.

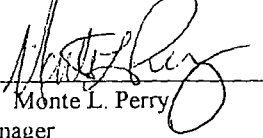
000573

E.H.

(k) ~~Acceptance~~ If this Agreement is not executed and delivered by both parties on or before October 18, 2005, it shall be null and void.

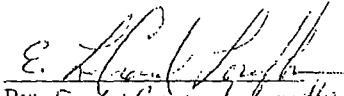
WITNESS, the due execution hereof as of the day and year below written.

International Society of Investors, LLC.


By: Monte L. Perry
Manager

Date: 11/21/05

SELLER


By: E. LeGrand Leath

Date: 24 Oct 2005

E.H.

Exhibit A

Legal description to be determined by closing agent

SELLER FINANCING ADDENDUM

A. PROMISSORY NOTE: The promissory note (Note) described in Paragraph 2 of this contract payable by Purchaser to the order of Seller will be payable at the place designated by Purchaser. Purchaser may prepay the Note in whole or in part at any time without penalty. Any prepayments are to be applied to the payment of the installments of principal last maturing and interest will immediately cease on the prepaid principal. The Note will be payable as follows: (5,445,000)

E.H. a) Note final payment is due in full (~~5,500,000~~) on December 31, 2006.

B. SECURING INSTRUMENT: A mortgage instrument:

E.H. (1) PROPERTY TRANSFERS: [check only one:] only with

The Property may be sold or conveyed ~~without~~ the consent of Seller, provided any subsequent purchasing entities assume the Note.

(2) TAX AND INSURANCE ESCROW: [check only one:]

Purchaser shall furnish Seller annually, before the taxes become delinquent, evidence that all taxes on the Property have been paid. Purchaser shall furnish Seller annually evidence of paid-up casualty insurance naming Seller as an additional loss payee.

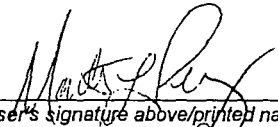
E.H. (3) PRIOR LIENS: Any default under any lien superior to the lien securing the Note constitutes default under the deed of trust securing the Note.

does not agree

C. SUBORDINATION: Seller ~~agrees~~ to subordinate this note and deed of trust to any new financing by the purchaser.

PURCHASER:

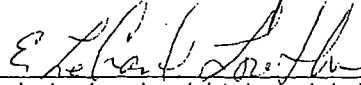
11/21/05
Date


[purchaser's signature above/printed name below]

Monte L. Perry
[purchaser's signature above/printed name below]

SELLER:

24 Oct 2005
Date


[seller's signature above/printed name below]

[seller's signature above/printed name below]

CONTRACT FOR SALE AND PURCHASE



E.L.L. **THIS CONTRACT FOR SALE AND PURCHASE** made and entered into this 12th day of October, 2005, by and between **Lagrande Lowther, Mitchell Lowther, et al**, hereinafter referred to as ("Seller"), and **International Society of Investors, a North Carolina Limited Liability Company**, or its designee or assigns hereinafter referred to as ("Purchaser").

WITNESSETH:

Subject to the terms and conditions of this Agreement, and in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Seller and Purchaser agree as follows:

1. **PREMISES, IMPROVEMENTS AND CHATTELS.** Seller shall sell and convey to Purchaser, and Purchaser shall purchase from Seller, the land specifically described as Lowther Property, approximately 40 acres fronting Bee's Creek Road, being in the County of Jasper, South Carolina (the "Property").

2. **PURCHASE PRICE.** Purchaser hereby agrees to pay to Seller as the purchase price for the Premises the sum of **Eight Hundred Ten Thousand Dollars** (\$810,000.00) subject to adjustments, credits, and pro-rations as set forth herein below (the "Purchase Price"), to be paid as follows:

- 2.1. Within Forty Eight (48) hours after the execution of this Agreement (Effective Date), Purchaser shall deposit into the Russell Law Firm Trust Account, the Escrow Agent, the sum of Five Thousand Dollars (\$5,000) as a good faith deposit to be held pursuant to the terms of this Contract.
- 2.2. The balance of the Purchase Price (including a credit for the amount of the Deposits of \$ 5,000), shall be due at closing.

3. **CONDITIONS PRECEDENT.** This Contract For Sale and Purchase is subject to and conditional upon:

- 3.1. The Purchaser obtaining horizontal construction financing.
- 3.2. The land being permitted for no less than 55 units.
- 3.3. The Purchaser receiving confirmation that all utilities (including electrical, water, and telephone services) are available to the property and are adequate for Buyers intended use.
- 3.4. The Purchaser receiving all permits, licenses, approvals or consent from any and all governmental authorities and agencies having jurisdiction over the property and which are necessary to allow development, construction of the Property, such permits, licenses, approvals and consents to include, without limitation, building permits, storm water management permits, concurrence

000577

E.L.L.

30 days after expiration of Inspection Period (Paragraph. 4,) and compliance and/or waiver of conditions in Paragraph. 3. certified by the surveyor to the Purchaser, Purchaser's counsel, the Seller and the Title Insurance Company as having been made in compliance with the minimum technical standards adopted for surveys conducted in the State of South Carolina, which survey shall also be in form and content satisfactory to the Title Insurance Company for the purposes of issuing the owner's title insurance policy required by this Agreement, and deleting there from the standard general exceptions for matters which might be revealed by the accurate survey of the Premises and shall deliver a sealed copy of same to Seller. Said survey shall show and designate any and all of the Permitted Exceptions, and any and all other easements, rights of way, encroachments, overlaps or improvements pertaining to the boundaries of the Premises by metes and bounds or other appropriate legal description. In the event the legal description contained in the Survey describes the Premises as more than one parcel, the Survey shall contain the surveyor's certification to the effect that all such parcels which comprise the Premises are contiguous each to the other, and that there are no gaps, gores, overlaps or hiatuses. Moreover, in the event that the legal description of the Premises describes the Property as more than one parcel, the title insurance policy to be issued in accordance with Paragraph 3 above shall contain a contiguity endorsement and a survey endorsement insuring that all the parcels comprising the Premises are contiguous each to the other, with no gaps, gores, overlaps or hiatuses. The Survey shall certify the acreage for the entire Premises to the second decimal place. The Survey shall further certify that no portion of the Premises is located within the one hundred (100) year flood plain or within any Special Flood Hazard Area as established by the local, state or federal government; or, if any portion of the Premises does lie in the one hundred (100) year flood plain, the Survey shall delineate such areas, and certify the amount of acreage lying within each or either of such areas. The cost of the Survey shall be borne by Purchaser and paid by Purchaser on or before Closing.

8. CURING OF UNPERMITTED EXCEPTIONS AND SURVEY DEFECTS.

Purchaser shall have fifteen (15) days after the delivery of the last to be delivered of the Survey and the Title Commitment to examine same. If the Title Commitment or Survey discloses either unpermitted exceptions, exceptions or encroachments which are unacceptable to Purchaser, or matters that render the title unmarketable (herein referred to as "title defects"), Purchaser shall so notify Seller on or before the end of the applicable fifteen (15) day period, and Seller shall thereafter use its best efforts to have the defects removed. In the event Seller is unable to have such title defects removed or corrected on or before 60 days after said notice, Purchaser shall have the right to either: (a) terminate this Agreement upon written notice to Seller, and all sums paid or deposited by Purchaser hereunder shall be returned to Purchaser with neither party having any further obligation hereunder; or (b) waive such objection and proceed to closing of this transaction in accordance with the terms hereof without any reduction in the Purchase Price.

9. SELLER'S DOCUMENTS. Seller shall execute and deliver to Purchaser at closing, the following:

- 9.1. A General Warranty Deed executed by Seller conveying fee simple title of the Premises to Purchaser, subject only to the Permitted Exceptions, in form satisfactory to the Purchaser and the title Insurance company;

- 11.5. From and after the Effective Date hereof, Seller will not cause, permit, suffer, or allow any change, modification, or alteration to be made to the Premises, or any part or portion thereof, or its physical condition without the prior written consent of Purchaser.
- 11.6. No notice from governmental body has been served upon Seller claiming any violation of any law, ordinance, code or regulations as to the Premises, and Sellers have no knowledge that any such violation exists with regard to the Premises.
- 11.7. That there are no leases of the Premises, or any portion thereof, other than are disclosed herein.
- 11.8. Seller has not received any notice, and has no knowledge, that the Premises, or any portion thereof, is or will be subject to or affected by: (i) any special assessments, whether or not presently a lien thereon; or (ii) any condemnation, eminent domain, change in grade of public streets, or similar proceeding.
- 11.9. That there are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, to which Seller is a party, affecting the Premises, or any portion thereof, or relating to or arising out of the ownership of the Premises, in any court or before or by any Federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality.
- 11.10. Seller has the full right, power and authority to enter into and deliver this Agreement and to consummate the purchase and sale of the Property in accordance herewith and to perform all covenants and Agreements of Seller hereunder.
- 11.11. Seller has no knowledge or notice that any present default or breach exists under any mortgage or other encumbrance encumbering the Premises, or any covenants, conditions, restrictions, rights-of-way or easements which may affect the Premises.
- 11.12. The Property has access to a publicly dedicated road right-of-way.
12. **REPRESENTATIONS.** Purchaser hereby represents and warrants to Seller as follows:
- 12.1. To the best of Purchaser's knowledge, no consent to the transaction contemplated by this Agreement by any person or entity other than Purchaser is required;
- 12.2. The person executing this Agreement on behalf

that neither Seller nor Purchaser have engaged or dealt with any agent, broker or finder with regard to this Agreement or to the sale and purchase of the Property contemplated hereby.

E-L
17. **CLOSING.** Subject to the terms and conditions hereof, including Paragraph 5 herein the Closing of this transaction shall be held at such time as may be mutually agreed upon by Seller and Purchaser, at the office of a closing agent to be determined by the buyer, ~~30 days after the receipt by Purchaser of all necessary site approvals and permits.~~ At Purchaser's option, the closing may be held sooner than the foregoing dates, so long as Purchaser gives Seller not less than ten (10) days notice of the Closing date. Seller shall deliver possession of the Premises to Purchaser on the Closing Date.

18. **PRORATIONS.**

18.1 Real estate taxes for the year of Closing shall be

Pro-rated on an accrual basis as of the Closing Date, based upon the most recent ascertainable taxes. The parties agree to a reprobation and adjustment of the real estate taxes when the actual tax bill for the year of closing is received.

18.2 If at any time before the date hereof, the

Premises, or any part thereof, shall be the subject of any assessment or assessments which are payable in annual installments, other than ad valorem real estate taxes, then for the purposes of this Agreement all of the unpaid installments of any such assessment including those which are to become due and payable after closing, shall be deemed to be due and payable and shall be paid and discharged by Seller on or before closing.

18.3 With regard to Closing, each party shall pay the

fees of its attorney and the costs of preparing all documents which this Agreement requires such party to furnish. If there is any dispute regarding this Agreement, the prevailing party shall be entitled to collect its costs and attorneys' fees, through trial and all appeals, from the losing party.

19. **CONDEMNATION.** If, prior to Closing, the Premises or any portion thereof is condemned or taken under power of eminent domain, or if Seller receives any notice or knowledge that any such taking is threatened or contemplated by any governmental agency or entity or any other entity having the power of eminent domain, then, in any such event, Seller shall promptly give notice thereof to Purchaser in writing. Purchaser shall then have the options of either (a) terminating this Contract and receiving a refund of any and all Deposits paid hereunder, with neither party thereafter having any further obligations to the other hereunder, or (b) waiving such matters and proceeding to close this transaction without reduction in the Purchase Price, but with the right to receive any and all awards or monies payable as a result of any such taking. Purchaser shall make such election by giving written notice thereof to Seller at any time prior to Closing.

Raleigh, NC 27616

With copy to: Kathie L. Russell, Esq.
327 West Morgan Street, Suite 200
Raleigh, NC 27601

or at such other address which either party may from time to time specify in writing to the other.

(b) Assignment. All or any portion of Purchaser's rights and duties under this Agreement shall be transferable and assignable.

(c) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(d) Amendments and Termination. Except as otherwise provided herein, this Agreement may be amended or modified by, and only by, a written instrument executed by Seller and Purchaser, acting by their respective duly authorized agents or representatives.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

(f) Section Headings. The section headings inserted in this Agreement are for convenience only and are intended to, and shall not be construed to, limit, enlarge or affect the scope or intent of this Agreement, nor the meaning of any provision hereof.

(g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

(h) Merger of Prior Agreements. This Agreement supersedes all prior Agreements and understandings between the parties hereto relating to the subject matter hereof.

(i) Attorneys' Fees and Costs. In any litigation arising out of or pertaining to this Agreement, the prevailing party shall be entitled to an award of its attorneys' fees, whether incurred before, after or during trial, or upon any appellate level.

(j) Time. Time is of the essence of this Agreement. When any time period specified herein falls or ends upon a Saturday, Sunday or legal holiday, the time period shall be automatically extend to 5:00 P.M. on the next ensuing business day.

E.L.
(k) Acceptance. If this Agreement is not executed and delivered by both parties on or before October 18, 2005, it shall be null and void.

Exhibit A

Legal description to be determined by closing agent

A. Settlement Statement

U.S. Department of Housing
and Urban Development

HUD-1 (3/86) OMB No. 2502-0265

B. Type of Loan

1. ☐ FHA 2. ☐ FmHA 3. ☐ Conv. Unins.
4. ☐ VA 5. ☐ Conv. Ins.

6. File Number

Lowther-heirs

7. Loan Number

8. Mortgage Insurance Case Number

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower

E Legrand Lowther
PO Box 955
Ridgeland, SC 29936

E. Name and Address of Seller

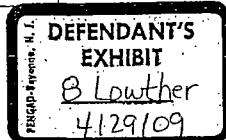
Vivian Gene L Tillotson,
Rita Elizabeth L Rogers,
Mark Allen Lowther, et al

F. Name and Address of Lender

Gene Tillotson, Rita Rogers
Sandra Turpin, Mark Lowther
Clark Lowther, C E Lowther, Jr
Mitchell Lowther

G. Property Location

226.35 acres +/-
Jasper County SC
069 00 07 003



H. Settlement Agent

Moss & Kuhn, P.A.

Place of Settlement

Moss, Kuhn & Fleming, PA
1501 North St
Beaufort, SC 29902

I. Settlement Date

12/20/05

J. Summary of Borrower's Transaction

100. Gross Amount Due From Borrower

101. Contract sales price	2,464,000.00
102. Personal property	
103. Settlement charges to borrower (line 1400)	10,644.80
104.	
105.	

Adjustments for items paid by seller in advance

106. City/town taxes to	
107. County taxes to	
108. Assessments to	
109.	
110.	
111.	
112.	

120. Gross Amount Due From Borrower 2,474,644.80

200. Amounts Paid By Or In Behalf Of Borrower

201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
207. Seller financing	2,464,000.00
208.	
209.	

Adjustments for items unpaid by seller

210. City/town taxes to	
211. County taxes to	
212. Assessments to	
213.	
214.	
215.	
216.	
217.	
218.	
219.	

220. Total Paid By/For Borrower 2,464,000.00

300. Cash At Settlement From/To Borrower

301. Gross Amount due from borrower (line 120)	2,474,644.80
302. Less amounts paid by/for borrower (line 220)	(2,464,000.00)
303. Cash ☒ From ☐ To Borrower	10,644.80

K. Summary of Seller's Transaction

400. Gross Amount Due To Seller

401. Contract sales price	2,464,000.00
402. Personal property	
403.	
404.	
405.	

Adjustments for items paid by seller in advance

406. City/town taxes to	
407. County taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	

420. Gross Amount Due To Seller 2,464,000.00

500. Reductions In Amount Due To Seller

501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	0.00
503. Existing loan(s) taken subject to	
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506.	
507. Seller Financing	2,464,000.00
508.	
509.	

Adjustments for items unpaid by seller

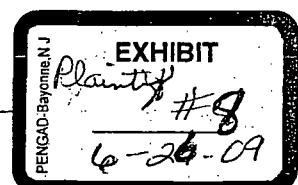
510. City/town taxes to	
511. County taxes to	
512. Assessments to	
513.	
514.	
515.	
516.	
517.	
518.	
519.	

520. Total Reduction Amount Due To Seller 2,464,000.00

600. Cash At Settlement To/From Seller

601. Gross amount due to seller (line 420)	2,464,000.00
602. Less reductions in amt. due seller (line 520)	(2,464,000.00)
603. Cash ☐ To ☐ From Seller	0.00

000583



L. Settlement Charges				Paid From Borrower's Funds At Settlement	Paid From Seller's Funds At Settlement
700. Total Sales/Broker's Commission based on price \$ @ % =					
Division of Commission (line 700) as follows:					
701. \$	to				
702. \$	to				
703. Commission paid at Settlement					
704.					
800. Items Payable In Connection With Loan					
801. Loan Origination Fee	%				
802. Loan Discount	%				
803. Appraisal Fee	to				
804. Credit Report	to				
805. Lender's Inspection Fee					
806. Mortgage Insurance Application Fee to					
807. Assumption Fee					
808.					
809.					
810.					
811.					
900. Items Required By Lender To Be Paid In Advance					
901. Interest from	to	@ \$	/day		
902. Mortgage Insurance Premium for	months to				
903. Hazard Insurance Premium for	years to				
904.	years to				
905.					
1000. Reserves Deposited With Lender					
1001. Hazard Insurance	months @ \$	per month			
1002. Mortgage Insurance	months @ \$	per month			
1003. City property taxes	months @ \$	per month			
1004. County property taxes	months @ \$	per month			
1005. Annual assessments	months @ \$	per month			
1006.	months @ \$	per month			
1007.	months @ \$	per month			
1008. Aggregate adjustment	months @ \$	per month			
1100. Title Charges					
1101. Settlement or closing fee	to				
1102. Abstract or title search	to				
1103. Title examination	to				
1104. Title insurance binder	to				
1105. Document preparation	to				
1106. Notary fees	to				
1107. Attorney's fees	to Moss, Kuhn & Fleming/L. Davidson			1,500.00	
(includes above items numbers:)					
1108. Title insurance	to				
(includes above items numbers:)					
1109. Lender's coverage	\$				
1110. Owner's coverage	\$				
1111.					
1112.					
1113.					
1200. Government Recording and Transfer Charges					
1201. Recording fees: Deed \$15.00	; Mortgage \$ 13.00	; Release \$		28.00	
1202. City/county tax/stamps: Deed \$ 9,116.80	; Mortgage \$			9,116.80	
1203. State tax/stamps: Deed \$	; Mortgage \$				
1204.					
1205.					
1300. Additional Settlement Charges					
1301. Survey	to				
1302. Pest inspection	to				
1303.					
1304.					
1305.					
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)				10,644.80	0.00

000584

465.2

This page is attached to and made part of the Settlement Statement in the matter described on Page 1 of the Settlement Statement.

I have carefully reviewed this Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the Settlement Statement.

Borrower(s) E. Legrand Lowther 12/20/05
E Legrand Lowther

Seller(s) Vivian Gene L. Tillotson 12/20/05
Vivian Gene L. Tillotson

Rita Elizabeth L. Rogers 12/20/05
Rita Elizabeth L. Rogers

Mark Allen Lowther 12/20/05
Mark Allen Lowther

Ernie Sandra L. Turpin 12/20/05
Ernie Sandra L. Turpin

Clayton Clark Lowther 12/20/05
Clayton Clark Lowther

C. E. Lowther, Jr. 12/20/05
C. E. Lowther, Jr.

Mitchell Saxon Lowther 12/20/05
Mitchell Saxon Lowther

The Settlement Statement which I have prepared is a true and accurate account of funds received and funds disbursed or to be disbursed for this transaction.

12/20/05

H Fred Kuhn, Jr, Settlement Agent

000585

465.3

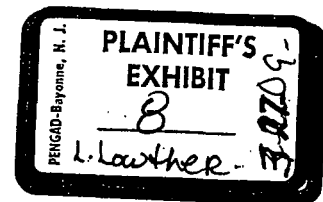
03/26/09

ESCROW

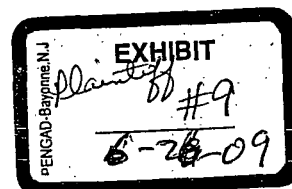
Customer Balance Detail

All Transactions

Type	Date	Num	Source Name	Debit	Credit	Balance
EchoTango						
Payment	7/1/2006	Kolberg	EchoTango		92,135.06	-92,135.06
Check	7/6/2006	3686	Beaufort County Register of Deeds	417.00		-91,718.06
Check	7/6/2006	3677	RIVER TITLE	1,725.00		-89,993.06
Check	7/6/2006	3687	Beaufort County Register of Deeds	13.00		-89,980.06
Check	7/6/2006	3688	MOSS, KUHN & FLEMING	500.00		-89,480.06
Check	7/6/2006	3689	LYNN DAVIDSON	200.00		-89,280.06
Check	5/4/2007	3909	Mitchell Lowther	0.00		-89,280.06
Check	5/7/2007	3910	Carmon Lowther	20,000.00		-69,280.06
Check	5/10/2007	3911	C E Lowther & Son	20,000.00		-49,280.06
Check	5/30/2007	3943	SC Bank & Trust	10,000.00		-39,280.06
Check	5/30/2007	3944	Collins Construction	39,280.06		0.00
Check	1/16/2008	4119	Eversole Law Firm	1,000.00		1,000.00
Payment	1/16/2008	Malphrus	EchoTango		1,000.00	0.00
Check	1/17/2008	4120	E Legrand Lowther	350,000.00		350,000.00
Payment	1/17/2008	Eversole	EchoTango		698,046.65	-348,046.65
Payment	1/17/2008	Eversole	EchoTango		750.00	-348,796.65
Check	1/17/2008	4121	MOSS, KUHN & FLEMING	550.00		-348,246.65
Check	1/17/2008	4122	LYNN DAVIDSON	200.00		-348,046.65
Check	1/18/2008	4123	Sandra Turpin	6,000.00		-342,046.65
Check	3/14/2008	4186	Vivian Gene L Tillotson	15,000.00		-327,046.65
Check	3/14/2008	4187	Rita Elizabeth L Rogers	15,000.00		-312,046.65
Check	3/14/2008	4188	Mark Allen Lowther	15,000.00		-297,046.65
Check	3/14/2008	4189	Effie Sandra L Turpin	15,000.00		-282,046.65
Check	3/14/2008	4190	Clayton Clark Lowther	15,000.00		-267,046.65
Check	3/14/2008	4191	C E Lowther, Jr.	15,000.00		-252,046.65
Check	3/14/2008	4192	Mitchell Saxon Lowther	15,000.00		-237,046.65
Check	5/22/2008	4214	E Legrand Lowther	76,120.00		-160,926.65
Check	5/29/2008	4223	AGSOUTH FARM CREDIT	3,327.57		-157,599.08
Check	8/8/2008	4229	Collins Construction	8,644.94		-148,954.14
Check	9/25/2008	4236	Carolina Engineering Consultants	3,226.40		-145,727.74
Check	9/25/2008	4237	E Legrand Lowther	3,500.00		-142,227.74
Check	9/25/2008	4238	E Legrand Lowther	4,013.50		-138,214.24
Check	9/25/2008	4239	E Legrand Lowther	0.00		-138,214.24
Check	9/25/2008	4240	E Legrand Lowther	0.00		-138,214.24
Check	9/25/2008	4241	E Legrand Lowther	2,946.50		-135,267.74
Check	9/25/2008	4242	AGSOUTH FARM CREDIT	0.00		-135,267.74
Check	9/25/2008	4243	AGSOUTH FARM CREDIT	3,327.57		-131,940.17
Check	12/18/2008	4271	AGSOUTH FARM CREDIT	3,327.57		-128,612.60
Check	12/22/2008	4272	Mark Allen Lowther	1,000.00		-127,612.60
Check	12/22/2008	4273	Vivian Gene L Tillotson	1,000.00		-126,612.60
Check	12/22/2008	4274	Rita Elizabeth L Rogers	1,000.00		-125,612.60
Check	12/22/2008	4275	Effie Sandra L Turpin & R Thayer Rivers	1,000.00		-124,612.60
Check	12/22/2008	4276	Clayton Clark Lowther & R Thayer Rivers	1,000.00		-123,612.60
Check	12/22/2008	4277	C E Lowther, Jr & R Thayer Rivers	1,000.00		-122,612.60
Check	12/22/2008	4278	Mitchell Saxon Lowther & R Thayer Rivers	1,000.00		-121,612.60
Check	12/22/2008	4279	E Legrand Lowther	7,000.00		-114,612.60
Total EchoTango				677,319.11	791,931.71	-114,612.60
TOTAL				677,319.11	791,931.71	-114,612.60



000586



STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

2001 JUN 17 PM 2:35
LAST WILL AND TESTAMENT OF
JASPER COUNTY, SC

I, Charles Eugene Lowther, a resident of and domiciled in the town of Ridgeland in the STATE OF SOUTH CAROLINA and the aforesaid county, do hereby make, publish and declare this to be my Last Will and Testament, and I do hereby revoke expressly and permanently all Wills and Codicils at any time heretofore made by me, whether destroyed or not.

I. I direct that all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any request or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), or on any insurance upon my life or on any property held jointly by me during my lifetime or on any other property or interests in property included in my estate for such tax purposes be paid out of my residuary estate, and shall not be charged to or against any recipient, beneficiary, transferee or owner of any such property included in my estate for such tax purposes.

II. I give, devise, and bequeath the following money or personal property:
One-fourth (1/4) of Wellington Plantation property on S.C. Hwy 336. Forty acres of land (adjoining property owed by Jeffery and Reneau Barker) on S.C. Hwy 13/Beescreek Road, Jasper County. One half (1/2) of acreage on waterfront at Chechessee River in the settlement known as Barri-Tarri (Echotango), Beaufort County, SC. One (1) lot on left of S.C. Hwy 336 at Lemon Island Marina and Chechessee River, Beaufort County. One building (approximately 4000 sqft) on property at S.C. Hwy 17/Jacob Smart Blvd, city of Ridgeland, Jasper County, SC. Personal possessions such as furniture, appliances, tools, backhoe, tractor with attachments, dump truck, keepsakes, etc. One burial plot in Ridgeland Cemetery, Jasper County.

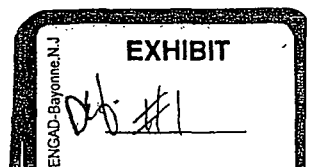
to:

Vivian Gene Lowther Tillotson
Effie Sandra Lowther Turpin
Charles Eugene Lowther, Jr.
Rita Elizabeth Lowther Rogers
Clayton Clark Lowther
Mitchell Saxon Lowther
Mark Allen Lowther

Edward LeGrande Lowther, my son and partner in business shall recieve the sum of \$1.00 and shall not share in my estate. This fulfills his desire to be excluded from any further inheritance.

HOWEVER, in the event that the above person or persons predeceases me, I give

000587



that same money or personal property to his or her surviving beneficiaries. If there are no surviving beneficiaries, this money or personal property shall go to:

The American Cancer Society shall inherit my estate if all of my children, grandchildren, and great grandchildren predecease me in death.

III. I direct all my just debts and funeral expenses be paid as soon as possible after my death.

IV. I name Edward LeGrande Lowther as personal representative (executor) of this will without bond. If this person or institution shall for any reason fail to qualify or cease to act as personal representative, I name Mark Allen Lowther as personal representative, again without bond, instead.

V. I hereby empower my Executor to sell property, real or personal, for cash or on time, without and order of Court, at such time and upon such terms and conditions as shall seem best. I desire my estate be placed in a company or corporation, my property sold at market value as expediently as possible. The net proceeds should then be divided among my heirs equally and as timely as possible. Should any of my heirs desire to receive property in lieu of cash, my personal representatives shall consider what is in the best interest of my heirs, collectively, and act in accordance.

I further state my desire that my children use their inheritance wisely. Should a brother or sister be unable to provide for themselves or family, I desire that the remaining children assist them financially, emotionally, physically, and spiritually. Each child should contribute as equally as possible. I do not require this be imposed on my heirs but I strongly urge they take care of one another.

The burial plot in Ridgeland Cemetery is to be given to Charles Eugene Lowther, Jr., Effie Sandra Turpin, and Rita Elizabeth Lowther Rogers as their final resting places. Should there be space, they are to decide who may be buried there. The adjoining burial plot has previously been given to Mitchell and Carmon Lowther.

I, Charles E. Lowther, the testator, sign my name to this will, consisting of 3 pages, this 11 day of June, 2004.

Being duly sworn, I declare to the undersigned authority that I sign this document as my last will, that I sign it willingly, and that I execute it as my free and voluntary act for the purposes therein expressed.

I declare that I am of the age and majority or otherwise legally empowered to make a will, and under no constraint or undue influence.

Charles E. Lowther
(Signed)

000588

2004 JUN 17 PM 2:35
JAS. E. LOWTHER, JR.
JAS. E. LOWTHER, JR.
JAS. E. LOWTHER, JR.

We, the witnesses, sign our name to this document, and we declare under penalty of perjury, that the foregoing is true and correct, this 11 day of June, 2004.

Naomi Williams residing at: Billingsville, S.C.

Eva Lee residing at: Green Pond, SC

_____ residing at: _____

FOR NOTARY PUBLIC

THE STATE OF SC, COUNTY OF Jasper

Subscribed, sworn to and acknowledged before me by
and, Eva Lee Naomi Williams, witnesses, personally known to me (or proved to me on the basis of satisfactory evidence to be the persons), this 11 day of June, 2004.

SIGNED:

Charles L. Malheur
Notary expires 1-7-2007
Official Capacity of Officer

000589

2004 JUN 17 PM 2:35
JASPER COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF: BEAUFORT
IN THE MATTER OF: C. E. LOWTHER

IN THE PROBATE COURT
INVENTORY AND APPRAISEMENT
CASE NUMBER: 2004-ES-27--00068

2004 JUN -5 PM 1:42
PROBATE COURT
JASPER COUNTY, S.C.

☐ ORIGINAL

☒ SUPPLEMENTAL # 1 (AMENDED ORIGINAL)

Personal Representative (s): Edward LeGrand Lowther and Mark Allen Lowther

Decedent's Social Security Number: 250-14-3273

Was there a will? ☒ YES ☐ NO

Decedent's Date of Death: June 11, 2004

Domicile at death:

Jasper
(county)

South Carolina
(state)

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed: that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to me this _____ day of
April, 20 06

[Signature]
Notary Public for South Carolina
My Commission Expires: 3/20/2013

Signature:

Name: E. LeGrand Lowther

Address: P. O. Box 995

Ridgeland, South Carolina 29936

E-Mail:

Telephone (O): 843-247-5706

(H): 843-726-5028

Signature:

Name: Mark Allen Lowther

Address: Ridgeland, South Carolina 29936

E-Mail:

Telephone (O):

(H): 843-987-0044

Attorney: H. Fred Kuhn, Jr.
Address: P. O. Drawer 507
Beaufort, South Carolina 29901
E-Mail: fred@mossandkuhn.com
Telephone: 843-524-3373

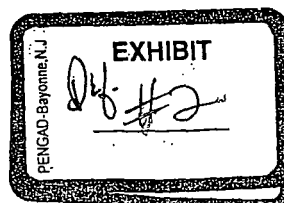
For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following appointment, a copy of the inventory and appraisal shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

RECAPITULATION

	Non-Probate	Probate
Schedule A - Real Estate	\$ 0	\$ 1,499,800
Schedule B - Stocks and Bonds	0	0
Schedule C - Notes Due Decedent and Cash	0	0
Schedule D - Insurance on Person's Life: Part 1 - Payable to Estate	0	0
Part 2 - Payable to Beneficiary	0	0
Schedule E - Jointly Owned Property	0	0
Schedule F - Other Miscellaneous	0	0
Other Assets Payable to Estate	0	0
Schedule G - Transfers during Decedent's life	0	0
Schedule H - Powers of Appointment	0	0
Schedule I - Annuities and Retirement Accounts	0	0
TOTAL GROSS VALUE	\$ 1,499,800	
ENCUMBRANCES	(0)	
TOTAL NET WORTH	\$ 1,499,800	

000590



NOTE: WHEN COMPLETING THE FOLLOWING SCHEDULES, PLEASE REMEMBER TO LIST ALL ASSETS, REGARDLESS OF SITUS. ALL OUT-OF-STATE ASSETS MUST BE DISCLOSED.

SCHEDULE A - Real Estate (All interest in real property except those held with right of survivorship) (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description (include county and state)	Tax Assessor's Fair Market Value for year of Decedent's Death	Appraised Value	Appraised Value of Decedent's Interest
1	40.79 acres, Grahamsille Jasper County, South Carolina 063-39-04-010	163,100	400,000	400,000
2	241.22 acres +/- known as Wellington Plantation Jasper County, South Carolina (25% interest) 063-00-07-003	185,675.00	3,976,000	994,000
3	1.3 acres beside Lemon Isl. Marina Beaufort County, South Carolina (50% interest) R600-006-000-002C-0000	105,300	210,600	105,300
4	Burial Plot, Ridgeland Cemetary Jasper County, South Carolina		500	500

TOTAL SCHEDULE A \$ 1,499,800
(also enter under recapitulation, page 1)

SCHEDULE B - Stocks and Bonds (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description	Face Value	Appraised Value

TOTAL SCHEDULE B \$ 0
(also enter under recapitulation, page 1)

SCHEDULE C - Notes due to Decedent, and Money on hand and in banks (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description	Value

TOTAL SCHEDULE C

(also enter under recapitulation, page 1)

\$ 0

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE D - Insurance (If none, so state.)

Part 1 - Life Insurance Payable to the Estate

Item No.	Description	Value

TOTAL PART 1

(also enter under recapitulation, page 1)

\$ 0

Part 2 - Life Insurance Payable to Beneficiaries

Item No.	Description	Beneficiary	Value

TOTAL PART 2

(also enter under recapitulation, page 1)

\$ 0

SCHEDULE E - Jointly owned Property (with right of survivorship) (if none, so state.)

NOTE: You must complete Schedule E if the Decedent owned any property jointly with right of survivorship at the time of death, whether or not the decedent's interest is included in the gross estate.

Percentage includible:

1 - Joint interest held by decedent and spouse - the amount included is one-half (50%) of the value in all cases.

2 - Other joint interest - Generally you must include the full value of the jointly owned property in the gross estate. However, the full value should not be included if you can show that a part of the property originally belonged to the other tenant(s). The amount included is the amount of the decedent's contribution to the joint account(s).

Item No.	Description	Joint Owner(s)	Percentage Includible	Appraised Value of Decedent's Interest

TOTAL SCHEDULE E
\$
0

(also enter under recapitulation, page 1)

(If more space is required, insert tax schedules or additional sheets of same size.)

[illegible]

\$ 0

NOTE: FOR SCHEDULES G, H, AND I. LIST VALUES ONLY IF PAYABLE TO ESTATE.

Did Decedent make any transfers during lifetime as described above? ☐ YES ☒ NO

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

\$ 0

(If more space is required, insert tax schedules or additional sheets of same size.)

Page 5 of 7

SCHEDULE H - Powers of Appointment - Property, both real and personal, over which Decedent possessed a Power of Appointment whether Testamentary or otherwise.

Did Decedent possess a Power of Appointment? ☐ YES ☒ NO

If "yes", did Decedent exercise the power of appointment in favor of estate? ☐ YES ☐ NO

If "yes", please describe and list total amount payable to estate. \$ _____
(If more space is required, insert additional sheets of same size.)

TOTAL SCHEDULE H \$ 0
(also enter amounts payable to estate under recapitulation, page 1)

SCHEDULE I - Annuities and retirement (IRA's, 401(k), Etc.)

Did Decedent own any accounts as described above? ☐ YES ☒ NO

If "yes", is the estate designated as the beneficiary of these accounts? ☐ YES ☐ NO

If "yes", please describe and list total amount payable to estate. \$ _____
(If more space is required, insert additional sheets of same size.)

TOTAL SCHEDULE I \$ 0
(also enter amounts payable to estate under recapitulation, page 1)

(If more space is required, insert tax schedules or additional sheets of same size.)

ENCUMBRANCES - (e.g., mortgages, liens, judgments, etc., but not general debts of the estate) - List specific assets encumbered.

[illegible]

TOTAL ENCUMBRANCES

(also enter under recapitulation, page 1)

\$ _____ 0

MANIFESTLY NON-TAXABLE

(To be executed by the Probate Court Judge in those cases where it appears that the estate is NOT REPORTABLE to the South Carolina Tax Commission under the provisions of the Estate Tax Laws of the State of South Carolina, i.e., the total gross value is indicated to be less than prescribed limits.)

It appears from the foregoing record of the above captioned estate on file in the Probate Court of this county, such estate is not reportable to the South Carolina Department of Revenue.

Executed this day of April, 2006.

Honorable Joseph N. Malphrus, Probate Judge

(If more space is required, insert tax schedules or additional sheets of same size.)

000596

STATE OF SOUTH CAROLINA
COUNTY OF: BEAUFORT
IN THE MATTER OF: C.E. LOWTHER

)
) IN THE PROBATE COURT
)
) INVENTORY AND APPRAISEMENT
)
) CASE NUMBER: 2007-ES-07-00655

☐ ORIGINAL

☒ SUPPLEMENTAL # 2 (AMENDED ORIGINAL)

Personal Representative (s): Edward: Legrand Lowther and Mark Allen Lowther

Decedent's Social Security Number: 250-14-3273

Was there a will? ☒ YES ☐ NO

Decedent's Date of Death: June 11, 2004

Domicile at death:

Jasper

South Carolina

(county)

(state)

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed: that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to me this 29 day of November, 2007

Notary Public for South Carolina

My Commission Expires: 2-26-12
CS. to Legrand Lowther.

Attorney: H. Fred Kuhn, Jr.

Address: P. O. Drawer 507

Beaufort, South Carolina

E-Mail: fred@mossandkuhn.com

Telephone: 843-524-3373

Signature: E. Legrand Lowther

Name: E. LeGrand Lowther

Address: P. O. Box 995

Ridgeland, South Carolina 29936

E-Mail:

Telephone (O): 843-247-5706

(H): 843-726-5028

Signature: Mark Allen Lowther

Name: Mark Allen Lowther

Address: Ridgeland, South Carolina

E-Mail:

Telephone (O):

(H): 843-987-0044

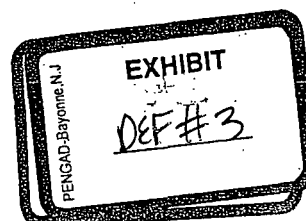
For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following appointment, a copy of the Inventory and appraisal shall be sent to each Interested person who requests it, and the original Inventory filed with the Probate Court.

RECAPITULATION

	Non-Probate	Probate
Schedule A - Real Estate	\$ 0	\$ 1,499,300
Schedule B - Stocks and Bonds	0	0
Schedule C - Notes Due Decedent and Cash	0	0
Schedule D - Insurance on Person's Life: Part 1 - Payable to Estate	0	0
Part 2 - Payable to Beneficiary	0	0
Schedule E - Jointly Owned Property	0	866.55
Schedule F - Other Miscellaneous	0	0
Other Assets Payable to Estate		
Schedule G - Transfers during Decedent's life	0	0
Schedule H - Powers of Appointment	0	0
Schedule I - Annuities and Retirement Accounts	0	0
TOTAL GROSS VALUE	\$ 1,500,166.55	
ENCUMBRANCES	(57,879.64)	
TOTAL NET WORTH	\$ 1,442,286.91	

000597



NOTE: WHEN COMPLETING THE FOLLOWING SCHEDULES, PLEASE REMEMBER TO LIST ALL ASSETS, REGARDLESS OF SITUS. ALL OUT-OF-STATE ASSETS MUST BE DISCLOSED.

SCHEDULE A - Real Estate (All interest in real property except those held with right of survivorship) (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description (include county and state)	Tax Assessor's Fair Market Value for year of Decedent's Death	Appraised Value	Appraised Value of Decedent's Interest
1	40.79 acres, Grahamsille Jasper County, South Carolina 063-39-04-010	163,100	400,000	400,000
2	241.22 acres +/- known as Wellington Plantation Jasper County, South Carolina (25% interest) 063-00-07-003	185,672.00	3,976,000	994,000
3	1/3 acres beside Lemon Isl. Marina Beaufort County, South Carolina (50% interest) R600-006-000-002C-0000	105,300	210,600	105,300

TOTAL SCHEDULE A \$ 1,499,300
(also enter under recapitulation, page 1)

SCHEDULE B - Stocks and Bonds (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description	Face Value	Appraised Value

TOTAL SCHEDULE B \$ 0
(also enter under recapitulation, page 1)

SCHEDULE C - Notes due to Decedent, and Money on hand and in banks (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description	Value

TOTAL SCHEDULE C

(also enter under recapitulation, page 1)

\$ 0

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE D - Insurance (If none, so state.)

Part 1 - Life Insurance Payable to the Estate

Item No.	Description	Value

TOTAL PART 1

(also enter under recapitulation, page 1)

\$ 0

Part 2 - Life Insurance Payable to Beneficiaries

Item No.	Description	Beneficiary	Value

TOTAL PART 2

(also enter under recapitulation, page 1)

\$ 0

SCHEDULE E - Jointly owned Property (with right of survivorship) (if none, so state.)

NOTE: You must complete Schedule E if the Decedent owned any property jointly with right of survivorship at the time of death, whether or not the decedent's interest is included in the gross estate.

Percentage includible:

1 - Joint interest held by decedent and spouse - the amount included is one-half (50%) of the value in all cases.

2 - Other joint interest - Generally you must include the full value of the jointly owned property in the gross estate. However, the full value should not be included if you can show that a part of the property originally belonged to the other tenant(s). The amount included is the amount of the decedent's contribution to the joint account(s).

Item No.	Description	Joint Owner(s)	Percentage Includible	Appraised Value of Decedent's Interest
1	SCB&T Checking Account	Genie Tillotson	100%	866.55

TOTAL SCHEDULE G

(also enter amounts payable to estate under recapitulation, page 1)

\$ 0

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE H - Powers of Appointment - Property, both real and personal, over which Decedent possessed a Power of Appointment whether Testamentary or otherwise.

Did Decedent possess a Power of Appointment? ☐ YES ☒ NO

If "yes", did Decedent exercise the power of appointment in favor of estate? ☐ YES ☐ NO

If "yes", please describe and list total amount payable to estate. \$
(If more space is required, insert additional sheets of same size.)

TOTAL SCHEDULE H

(also enter amounts payable to estate under recapitulation, page 1)

\$ 0

SCHEDULE I - Annuities and retirement (IRA's, 401(k), Etc.)

Did Decedent own any accounts as described above? ☐ YES ☒ NO

If "yes", is the estate designated as the beneficiary of these accounts? ☐ YES ☐ NO

If "yes", please describe and list total amount payable to estate. \$
(If more space is required, insert additional sheets of same size.)

000601

\$ 0

(If more space is required, insert tax schedules or additional sheets of same size.)

[illegible]

\$ 57,879.64

(also enter under recapitulation, page 1)

(To be executed by the Probate Court Judge in those cases where it appears that the estate is NOT REPORTABLE to the South Carolina Tax Commission under the provisions of the Estate Tax Laws of the State of South Carolina, i.e., the total gross value is indicated to be less than prescribed limits.)

It appears from the foregoing record of the above captioned estate on file in the Probate Court of this county, such estate is not reportable to the South Carolina Department of Revenue.

Executed this day of April, 202006.

, Probate Judge

(If more space is required, insert tax schedules or additional sheets of same size.)

000603

STATE OF SOUTH CAROLINA) REAL ESTATE PURCHASE
) AND SALE CONTRACT
COUNTY OF JASPER)

This Purchase and Sale Agreement is entered into on the date hereinafter set forth between E. Legrand Lowther, (hereinafter "Purchaser") and Effie Sandra L. Turpin, (hereinafter "Seller").

PREMISES DESCRIPTION. Purchaser agrees to purchase, and Seller agrees to sell, the real property, with all improvements thereon if any, situated in Jasper County, County, State of South Carolina, and described as follows:

All of the Seller's right, title and interest in and to that 230, more or less, acre parcel of land which is the balance of land referenced in that Deed from Mary B. Wilcox in Deed Book 75 at page 2004 (sometimes called the Wellington Road property): and also

All of the Seller's right, title and interest in and to that 40.79, more or less, acre parcel of land on Bees Creek Road known as Tax ID# 063-39-04-010,

PURCHASE PRICE. The purchase price is \$325,000.00 payable as follows:

A) \$500.00 as an earnest money shall be paid upon the written acceptance of this Contract and applied toward the purchase price at closing.

B) \$74,500.00 shall be paid at closing or on December 5, 2005, whichever occurs first.

Received \$73,000.

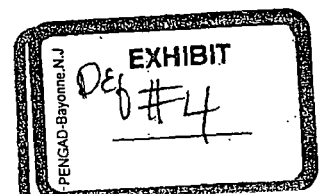
C) \$250,000.00, representing the Balance Due, shall be paid no later than December 31, 2006

The aforesaid Balance Due shall be secured by Purchaser's personal guarantee and a first mortgage recorded security on the Wellington Road Property only. *Buyer pays any mortgages, liens, encumbrances, etc., as to provide seller 1st mortgage on Wellington Property.*
EARNEST MONEY. The earnest money will be deposited the closing attorney within forty-eight (48) hours after the execution of this Agreement.

~~**CLOSING COSTS.** Purchaser and Seller shall each pay their own normal, customary and allowable settlement charges or closing costs.~~

~~**PRORATIONS.** Taxes, rents, homeowners association fees, and other assessments shall be prorated as of the date of the closing.~~

CONVEYANCE AND CONDITION OF TITLE. Seller agrees to convey a good fee simple marketable title to the premises by General Warranty Deed, with Deed Recording Fee paid, subject only to applicable zoning ordinances, covenants and restrictions of record, and utility easements. Title is good and marketable if insurable by an ALTA title insurance company licensed in South Carolina.



CLOSING. The transaction shall be closed on or before December 5, 2005, if title can be passed at that date from the Estate of C. E. Lowther to Seller, or within 14 days of title so passing if later, and possession of the premises will be given to Purchaser at that time. Time is of the essence; however, a party, for reasonable cause specifically set forth in a written notice delivered to the other prior to the scheduled closing date, may extend the closing for up to fourteen (14) days. Thereafter, the closing date can be extended only if both parties sign an Extension Agreement.

FIRE OR CASUALTY. If the premises is destroyed wholly or partially by fire or other casualty prior to closing, then Purchaser shall have the right to terminate this Contract and receive a refund of the earnest money deposit.

ASSIGNMENT. This Agreement may be assigned by Purchaser.

SELLER'S TITLE. It is acknowledged that Seller may not presently hold record title to the conveyed property, but will acquire record title as a beneficiary of the Estate of C. E. Lowther, either by Will or through intestacy as an heir-at-law, and Seller agrees to convey title upon receipt of the same as set forth above in the Closing paragraph.

CONTINGENCY. Purchaser's obligation to perform is contingent upon all owners of the conveyed property entering into agreements to sell the subject property to Purchaser upon mutually agreeable terms so that Purchaser acquires a sole, undivided interest.

DEFAULT. Upon default by Purchaser, Seller shall have the option of suing for damages or specific performance, or of rescinding this Contract and retaining Seller's portion of the earnest money as liquidated damages. Upon default by Seller, Purchaser shall have the option of suing for damages or specific performance, or of rescinding this Contract and recovering from Seller all costs and obligations incurred in anticipation of closing, including, without limitation, the earnest money and the costs of the credit report, appraisal, survey, title examination and attorney's fees. The prevailing party in any litigation shall be entitled to recover from the other the costs of litigation, including a reasonable sum for attorney's fees.

QUIT CLAIM DEED. In consideration for the price paid herein, Seller, additionally agrees to release any right which Seller may have in that property and lots in the Echo Tango area of Beaufort County and will execute a Quit Claim deed to said property at

5H ~~at the time of the payment of final balance~~ on or before 31 DEC 2006.

ASSUMPTION OF LIABILITIES. Seller assumes all liabilities incurred for legal expenses and costs incurred in connection with past and threatened litigation over these properties and all development expenses.

ARM'S LENGTH TRANSACTION. Although Purchaser and Seller are related, and although Purchaser is a co-Personal Representative of the Estate of C.E. Lowther, the Seller acknowledges that this is an arm's length business transaction and Purchaser has made no promises, representations or statements, except those set forth herein in writing, upon which Seller is relying, and Seller has conducted Seller's own due diligence prior to entering into this Agreement.

000605

MISCELLANEOUS. This contract shall be binding on both parties, their principals, heirs, personal representatives and assigns, and expresses the entire agreement between the parties, and there is no other agreement, oral or otherwise, modifying the terms hereunder. Negotiations may be conducted using a facsimile machine and will be considered binding on the parties. (A facsimiled offer shall be deemed delivered as of the moment it is transmitted.) If any portion of this Contract is not understood, the party should seek competent advice. Any altered terms must be initialed and dated.

SIGNATURES BELOW SIGNIFY ACCEPTANCE OF ALL TERMS AND CONDITIONS STATED HEREIN AS OF THE DATE STATED.

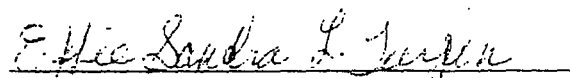
**SIGNED, SEALED AND DELIVERED THIS _____ DAY OF OCTOBER, 2005
IN THE PRESENCE OF:**

Witness to Purchaser



Witness to Seller

E. Legrand Lowther, Purchaser



E. Legrand Lowther, Seller

AMENDMENT: BUYER to pay ALL Closing
Costs AND PRORATIONS SLT

000606

STATE OF SOUTH CAROLINA) REAL ESTATE PURCHASE
COUNTY OF JASPER) AND SALE CONTRACT

This Purchase and Sale Agreement is entered into on the date hereinafter set forth between E. Legrand Lowther, (hereinafter "Purchaser") and Charles Eugene Lowther, Jr., (hereinafter "Seller").

PREMISES DESCRIPTION. Purchaser agrees to purchase, and Seller agrees to sell, the real property, with all improvements thereon if any, situated in Jasper County, State of South Carolina, and described as follows:

All of the Seller's right, title and interest in and to that 230, more or less, acre parcel of land which is the balance of land referenced in that Deed from Mary B. Wilcox in Deed Book 75 at page 2004 (sometimes called the Wellington Road property): and also

All of the Seller's right, title and interest in and to that 40.79, more or less, acre parcel of land on Bees Creek Road known as Tax ID# 063-39-04-010,

PURCHASE PRICE. The purchase price is \$325,000.00 payable as follows:

A) \$500.00 as an earnest money shall be paid upon the written acceptance of this Contract and applied toward the purchase price at closing.

B) \$74,500.00 shall be paid at closing or on December 5, 2005, whichever occurs first.

C) \$250,000.00, representing the Balance Due, shall be paid no later than December 31, 2006

The aforesaid Balance Due shall be secured by Purchaser's personal guarantee and a first mortgage recorded security on the Wellington Road Property only.

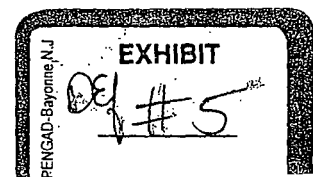
EARNEST MONEY. The earnest money will be deposited the closing attorney within forty-eight (48) hours after the execution of this Agreement.

CLOSING COSTS. Purchaser and Seller shall each pay their own normal, customary and allowable settlement charges or closing costs.

PRORATIONS. Taxes, rents, homeowners association fees, and other assessments shall be prorated as of the date of the closing.

CONVEYANCE AND CONDITION OF TITLE. Seller agrees to convey a good fee simple marketable title to the premises by General Warranty Deed, with Deed Recording Fee paid, subject only to applicable zoning ordinances, covenants and restrictions of record, and utility easements. Title is good and marketable if insurable by an ALTA title insurance company licensed in South Carolina.

AFTER ALL IS SAID & DONE



CLOSING. The transaction shall be closed on or before December 5, 2005, if title can be passed at that date from the Estate of C. E. Lowther to Seller, or within 14 days of title so passing if later, and possession of the premises will be given to Purchaser at that time. Time is of the essence; however, a party, for reasonable cause specifically set forth in a written notice delivered to the other prior to the scheduled closing date, may extend the closing for up to fourteen (14) days. Thereafter, the closing date can be extended only if both parties sign an Extension Agreement.

FIRE OR CASUALTY. If the premises is destroyed wholly or partially by fire or other casualty prior to closing, then Purchaser shall have the right to terminate this Contract and receive a refund of the earnest money deposit.

ASSIGNMENT. This Agreement may be assigned by Purchaser.

SELLER'S TITLE. It is acknowledged that Seller may not presently hold record title to the conveyed property, but will acquire record title as a beneficiary of the Estate of C. E. Lowther, either by Will or through intestacy as an heir-at-law, and Seller agrees to convey title upon receipt of the same as set forth above in the Closing paragraph.

* **CONTINGENCY.** Purchaser's obligation to perform is contingent upon all owners of the conveyed property entering into agreements to sell the subject property to Purchaser upon mutually agreeable terms so that Purchaser acquires a sole, undivided *
interest.

DEFAULT. Upon default by Purchaser, Seller shall have the option of suing for damages or specific performance, or of rescinding this Contract and retaining Seller's portion of the earnest money as liquidated damages. Upon default by Seller, Purchaser shall have the option of suing for damages or specific performance, or of rescinding this Contract and recovering from Seller all costs and obligations incurred in anticipation of closing, including, without limitation, the earnest money and the costs of the credit report, appraisal, survey, title examination and attorney's fees. The prevailing party in any litigation shall be entitled to recover from the other the costs of litigation, including a reasonable sum for attorney's fees.

QUIT CLAIM DEED. In consideration for the price paid herein, Seller, additionally agrees to release any right which Seller may have in that property and lots in the Echo Tango area of Beaufort County and will execute a Quit Claim deed to said property at closing.

ASSUMPTION OF LIABILITIES. Seller assumes all liabilities incurred for legal expenses and costs incurred in connection with past and threatened litigation over these properties and all development expenses.

ARM'S LENGTH TRANSACTION. Although Purchaser and Seller are related, and although Purchaser is a co-Personal Representative of the Estate of C.E. Lowther, the Seller acknowledges that this is an arm's length business transaction and Purchaser has made no promises, representations or statements, except those set forth herein in writing, upon which Seller is relying, and Seller has conducted Seller's own due diligence prior to entering into this Agreement.

MISCELLANEOUS. This contract shall be binding on both parties, their principals, heirs, personal representatives and assigns, and expresses the entire agreement between the parties, and there is no other agreement, oral or otherwise, modifying the terms hereunder. Negotiations may be conducted using a facsimile machine and will be considered binding on the parties. (A facsimiled offer shall be deemed delivered as of the moment it is transmitted.) If any portion of this Contract is not understood, the party should seek competent advice. Any altered terms must be initialed and dated.

SIGNATURES BELOW SIGNIFY ACCEPTANCE OF ALL TERMS AND CONDITIONS STATED HEREIN AS OF THE DATE STATED.

**SIGNED, SEALED AND DELIVERED THIS ____ DAY OF OCTOBER, 2005
IN THE PRESENCE OF:**

Vivian Lowther
Witness to Purchaser

Witness to Seller

E. Legrand Lowther, Purchaser

Charles Eugene Lowther, Jr.
Charles Eugene Lowther, Jr., Seller

000609

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE MATTER OF C. E. LOWTHER

CASE NUMBER 2004ES2700068

4
\$10.00
Miss Kuhn

PROBATE COURT

200500005091
Filed for Record in
JASPER COUNTY
PATSYE M GREENE
12-28-2005 At 09:19 am.
DEED OF DIS 10.00
Volume 336 Page 291 - 294

DEED OF DISTRIBUTION

WHEREAS, the decedent died on June 11, 2004; and,

WHEREAS, the estate of the decedent is being administered in the Probate Court for Jasper County, South Carolina in File #2004ES2700068; and,

WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and,

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release to:

Name:	Vivian Gene L. Tillotson	Effie Sandra L. Turpin	C. E. Lowther, Jr.
Address:	PO Box 669 Ridgeland, SC 29936	PO Box 542 Ridgeland, SC 29936	PO Box 1268 Ridgeland, SC 29936
	Rita Elizabeth L. Rogers 7 Willow Run Bluffton, SC 29910	Clayton Clark Lowther 310 Okatie Hwy. Okatie, SC 29902	Mitchell Saxon Lowther PO Box 207 Ridgeland, SC 29927
	Mark Allen Lowther 44 Old Cooler Road Okatie, SC 29909		

the following described property:

See Legal Description provided in Exhibit A

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

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Vivian Gene L. Tillotson, Effie Sandra L. Turpin, C. E. Lowther, Jr., Rita Elizabeth L. Rogers, Clayton Clark Lowther, Mitchell Saxon Lowther, and Mark Allen Lowther, their heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 8th day of December, 2005.

SIGNED, SEALED AND DELIVERED Estate of:
IN THE PRESENCE OF

CHARLES EUGENE LOWTHER

by Signature:

E. Legrand Lowther
E. Legrand Lowther
Mark Allen Lowther
Mark Allen Lowther

Witness:

Carol J. Heshin

Witness:

[Signature]

000610



TE OF SOUTH CAROLINA

INTY OF BEAUFORT

Instrument Volume Page
200500005091 336 292

PROBATE

PERSONALLY appeared before me and made oath that he/she saw the within named Personal Representative(s), seal, and as their act and deed, deliver the within written Deed, and that he/she with witnessed the execution thereof.

ORN to before me this 8th
of Dec, 2005.

Witness Signature: Carol J. Hedin

[Signature]
ary Public for South Carolina
ommission Expires:

Form #400PC

MAX
E.L.L.

000611

EXHIBIT A

ALL right, title and interest of C. E Lowther in and to:

ALL that certain piece, parcel or tract of land, lying and being situate in the Grahamville Section, Jasper County, South Carolina, containing 40.81 acres, more or less, and being shown as Map and Parcel No 063-39-04-010 in the Office of the Jasper County Tax Assessor.

This being the balance of that certain 43 acre parcel which was conveyed to Mitchell S Lowther by deed recorded in Deed Book 176 at Page 100 in the Office of the Clerk of Court for Jasper County, South Carolina.

SAVE AND EXCEPT all that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, Jasper County, containing (0.75) acres, and being shown and designated as "Area = 0.75 A.C." On that certain plat entitled *Survey of (0.75)Ac being subdivided from C. E. Lowther property located in Grahamville, Jasper County, South Carolina Tax Map #063-00-04-010*. Said plat was prepared for Gerald C & Genie Tillotson, Sr, by Harold R Johnson Surveying and is dated April 29, 2002. This plat is recorded in the Office of the Clerk of Court for Jasper County, South Carolina in Plat Book 28 at Page 145.

This being a portion of the property conveyed to C E Lowther by Deed recorded in Deed Book 282 at Page 142 and Deed Book 282 at Page 146 in the Office of the Clerk of Court for Jasper County, South Carolina.
This property is a portion of Jasper County Tax Map No 063-39-04-010

The within Instrument has been trans red
this 5 day of Jan 2006 at
9:20 o'clock A M., and recorded
in Transfer Book 3 Page 539
In Assessor's Office. Tax Map No. 063-39-04-010
Transfer No. 5-27-1484
Debbie A. Pinckney
JASPER COUNTY, S.C.

1

MA
ELL

000612

AND ALSO ALL right, title and interest of C. E. Lowther in and to:

ALL that certain piece, parcel or tract of land, situate, lying and being in Jasper County, South Carolina, containing (226.35) acres, more or less, known as Wellington Plantation and being bounded and described as follows: On the North by Wellington road, a dedicated Jasper County road; on the East by lands now or formerly of Pittman; on the South by lands now or formerly of Westvaco; and on the West by lands now or formerly of Westvaco and lands now or formerly of South Carolina Electric and Gas Co.. For a more particular description of metes, bounds, courses and distances, reference is made to that certain boundary survey prepared by Richard Kesselring, RLS for E Legrand Lowther and C. E. Lowther dated February 20, 1997, and recorded in the Office of the Clerk of Court for Jasper County South Carolina Book 22 at Page 293. The metes, bounds and distances appearing on the aforementioned plat are incorporated herein by reference.

LESS AND EXCEPT (3.84) acres thereof conveyed by C. E. Lowther to Mitchell S Lowther and Carmon B Lowther by deed recorded in the Office of the Clerk of Court for Jasper County, South Carolina in Deed Book 156 at Page 157 and more particularly described as Lot No (34) on that certain preliminary subdivision plat prepared by Connor & Associates, Inc., a copy of which is attached to said Deed and made a part of Deed Book 156 at Page 157.

ALSO LESS AND EXCEPT, any out conveyances as recorded in the Office of the Clerk of Court for Jasper County, South Carolina prior to the date of this deed.

This being the same property conveyed as 50% undivided interest to E Legrand Lowther, 25% undivided interest to Mitchell S Lowther and 25% undivided interest to C E Lowther by Deed of Albert L Kleckley recorded on September 18, 2003 in Book 282 at Page 154 in the Office of the Clerk of Court for Jasper County, South Carolina.

TMP 069-00-07-003

DEED BOOK 336 PAGE 0040
DATE 1-3-06
Carol Watson
AUDITOR JASPER COUNTY SC

L. F.
mk

000613

9
\$15.00
Mortgage

200500005093
Filed for Record in
JASPER COUNTY
PATSYE M. GREENE
12-28-2005 At 09:29 a.m.
MORTGAGE 15.00
Volume 394 Page 240 - 248

This document was prepared by (name, address, phone):

SOUTH CAROLINA BANK AND TRUST, N.A.
950 JOHN C. CALHOUN DRIVE
ORANGEBURG, SC 29118
(803) 534-2175

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE

(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 12-08-2005 and the parties and their addresses are as follows:

MORTGAGOR: E. LEGRAND LOWTHER
P.O. BOX 995
RIDGELAND, SC 29938

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgagors.

LENDER: SOUTH CAROLINA BANK AND TRUST, N.A.
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
950 JOHN C. CALHOUN DRIVE
PO BOX 9007 ORANGEBURG, SC 29118

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:

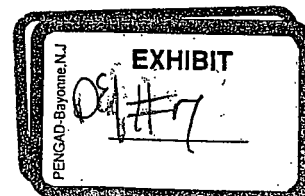
SEE ATTACHMENT FOR FULL LEGAL DESCRIPTION

The property is located in BEAUFORT Jasper at 40 ACRES ON HIGHWAY 13
(County)
(Address) BEES CREEK (City) South Carolina (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT (NOT FOR FIMA, FILMC, FHA OR VA USE, AND NOT FOR CONSUMER PURPOSES) (page 1 of 8)
EX-104 © 1994, 2001 Bankers Systems, Inc., St. Cloud, MN Form AGCO-RES-SC 1/21/2003 E76

000614



3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 1,000,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgages shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.
4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:
- A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) *(e.g., borrower's name, note amount, interest rate, maturity date)*:

NOTE DATED 12-08-2005 IN THE AMOUNT OF \$585,000.00 IN THE NAME OF E. LEGRAND LOWTHER

- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
- C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
- E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
- A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
 - C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 691), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

EXX

000615

10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
- B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

16. DEFAULT. Mortgagor will be in default if any of the following occur:

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgage is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has

characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. INSURANCE. Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

(page 5 of 8)

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. **NO ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

25. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. **WAIVER OF HOMESTEAD.** Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. **U.C.C. PROVISIONS.** If checked, the following are applicable to, but do not limit, this Mortgage:

- ☐ **Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- ☐ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- ☐ **Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment In Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

- ☐ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- ☐ **Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

29. OTHER TERMS. If checked, the following are applicable to this Mortgage:

- ☐ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- ☒ **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.
- ☐ **Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- ☐ **Additional Terms.**

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

- ☐ Actual authority was granted to the parties signing below by resolution signed and dated _____.

Entity Name: _____

E. LeGrand Lowther (Signature) E. LEGRAND LOWTHER (Date) (Seal) _____ (Signature) _____ (Date) (Seal)

Signed, Sealed and delivered in the presence of:

[Signature] (Witness) _____ (Witness) _____

- ☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

000620

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF Jasper) ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this BTH day

of DECEMBER, 2005

[Signature]
Notary Public for South Carolina

My commission expires: 1.29.12

000621

EXHIBIT A

ALL that certain piece, parcel or tract of land, lying and being situate in the Grahamville Section, Jasper County, South Carolina, containing 40.81 acres, more or less, and being shown as Map and Parcel No 063-39-04-010 in the Office of the Jasper County Tax Assessor.

This being the balance of that certain 43 acre parcel which was conveyed to Mitchell S Lowther by deed recorded in Deed Book 176 at Page 100 in the Office of the Clerk of Court for Jasper County, South Carolina.

SAVE AND EXCEPT all that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, Jasper County, containing (0.75) acres, and being shown and designated as "Area = 0.75 A.C." On that certain plat entitled *Survey of (0.75)Ac being subdivided from C. E. Lowther property located in Grahamville, Jasper County, South Carolina Tax Map #063-00-04-010*. Said plat was prepared for Gerald C & Genie Tillotson, Sr, by Harold R Johnson Surveying and is dated April 29, 2002. This plat is recorded in the Office of the Clerk of Court for Jasper County, South Carolina in Plat Book 28 at Page 145.

This being the property conveyed to E Legrand Lowther by deed of Vivian Gene L Tillotson, Rita Elizabeth L Rogers, Mark Allen Lowther, Effie Sandra L Turpin, Clayton Clark Lowther, C E Lowther, Jr and Mitchell Saxon Lowther dated December 8, 2005 and recorded in Book 337 at Page 1-9 on 12-8, 2005 in the Office of the Clerk of Court for Jasper County, South Carolina.

TMP 063 39 04 010

This mortgage prepared by the Law Offices of Mos, Kuhn, & Fleming, PA
1501 North St, PO Drawer 507, Beaufort, SC 29901

000622

3
\$10.00 FF
2997.00

200600000760
PATSYE M GREENE
REGISTER OF DEEDS
JASPER COUNTY
02-24-2006 01:01 PM.
REC FEE: 10.00
STATE TAX \$ 2106.00
LOCAL TAX \$ 891.00

200600000760
Filed for Record in
JASPER COUNTY
PATSYE M GREENE
02-24-2006 At 01:01 PM.
DEED 3007.00
Volume 341 Page 14 - 16

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

WARRANTY DEED

Know All Men by These Presents, that I, **E LEGRAND LOWTHER**, hereinafter referred to as Grantor(s) in the State aforesaid, for and in consideration of the sum of Eight Hundred Ten Thousand Dollars (\$810,000.00) to me paid by **AMBERWINDS, LLC**, hereinafter referred to as Grantee(s) in the State aforesaid and (the receipt of which is hereby acknowledged) have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said **AMBERWINDS, LLC**, its successors and assigns, forever, the following described real property, to-wit:

See Attached Exhibit A for Property description

This being the identical property conveyed to the Grantor(s) herein by Deed of Vivian Gene L Tillotson, Rita Elizabeth L Rogers, Mark Allen Lowther, Effie Sandra L Turpin, Clayton Clark Lowther, C E Lowther, Jr, and Mitchell Saxon Lowther dated December 8, 2005 and recorded on December 28, 2005 in Deed Book 337 at Pages 1 - 9 in the Office of the Clerk of Court for Jasper County, South Carolina.

Grantee's Address: 1304 Paddock Drive Suite F-103
Raleigh, NC 27609

This Deed prepared by the law office of Moss, Kuhn & Fleming
P.A., Post Office Drawer 507, Beaufort, South Carolina 29901-0507

TMS No: 063 39 04 010

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said **AMBERWINDS, LLC**, its Successors and Assigns forever.

And I, **E LEGRAND LOWTHER** do hereby bind my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said **AMBERWINDS, LLC**, its Successors and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

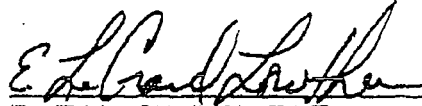
200600000760
THAYER RIVERS

000623



WITNESS my Hand(s) and Seals(s) this _____ day of _____ in the year of our Lord two thousand and six.

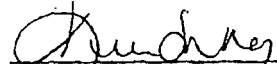
Signed, Sealed and Delivered
in the Presence of:

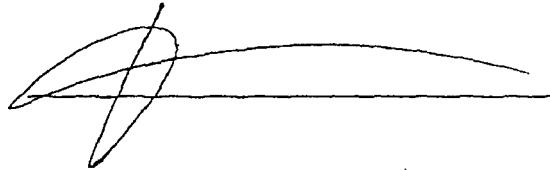
 (Seal)
E LEGRAND LOWTHER

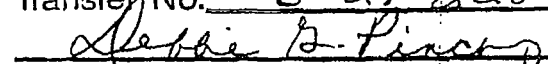
(Seal)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 14th)
day of May, 2006)
)
Notary Public for South Carolina)
My Commission expires: 8-22-12)



The within instrument has been transferred
this 9 day of June 2006 at
10:25 o'clock A. M., and recorded
in Transfer Book 3 Page 546
in Assessor's Office. Tax Map No. 063-39-04-A18
Transfer No. 6-27-228

JASPER COUNTY, S.C.

000624

EXHIBIT A

ALL that certain piece, parcel or tract of land, lying and being situate in the Grahamville Section, Jasper County, South Carolina, containing 40.81 acres, more or less, and being shown as Map and Parcel No 063-39-04-010 in the Office of the Jasper County Tax Assessor.

This being the balance of that certain 43 acre parcel which was conveyed to Mitchell S Lowther by deed recorded in Deed Book 176 at Page 100 in the Office of the Clerk of Court for Jasper County, South Carolina. ✓

SAVE AND EXCEPT all that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, Jasper County, containing (0.75) acres, and being shown and designated as "Area = 0.75 A.C." On that certain plat entitled *Survey of (0.75)Ac being subdivided from C. E. Lowther property located in Grahamville, Jasper County, South Carolina Tax Map #063-00-04-010*. Said plat was prepared for Gerald C & Genie Tillotson, Sr, by Harold R Johnson Surveying and is dated April 29, 2002. This plat is recorded in the Office of the Clerk of Court for Jasper County, South Carolina in Plat Book 28 at Page 145.

This being a portion of the property conveyed to C E Lowther by Deed recorded in Deed Book 282 at Page 142 and Deed Book 282 at Page 146 in the Office of the Clerk of Court for Jasper County, South Carolina.

TMP 063 39 04 010

DEED BOOK 341 PAGE 083
DATE 2/28/06
Harold R Johnson

000625

A. HUD-1 UNIFORM SETTLEMENT STATEMENT

B. Type of Loan

1. ☐ FHA 2. ☐ FmHA 3. ☐ Conv. Unins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:
4. ☐ VA 5. ☐ Conv. Ins.	2006-13		

C. NOTE: This form furnishes a statement of settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown for informational purposes and are not included in the totals.

D. Name & Address of Borrower: Amberwinds, LLC	E. Name, Address & TIN of Seller: E. Legrande Lowther	F. Name & Address of Lender:

G. Property Location: Grahamville Section 40.81 Acres, more or less TMS: 063-39-04-010	TIN of Seller: Place of Settlement 304 Russell Street Ridgeland, South Carolina	H. Settlement Agent: R. Thayer Rivers, Jr., Esquire
I. Settlement Date: February 17, 2006		

J. Summary of Borrower's Transaction

100. Gross Amount Due from Borrower:		K. Summary of Seller's Transaction	
101. Contract sales price		400. Gross Amount Due to Seller:	
	810,000.00	401. Contract sales price	
102. Personal Property		402. Personal Property	
103. Borrower's settlement charges (line 1400)		403.	
	\$7,622.00	404.	
104.		405.	
105.			
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes	to \$ 0.00	406. City/town taxes	to \$ 0.00
107. County taxes	1-1-06 to 1-17-06 \$ 6.24	407. County taxes	1-1-06 to 1-17-06 \$ 6.24
108. Assessments	to \$ 0.00	408. Assessments	to \$ 0.00
109.	to \$ 0.00	409.	to \$ 0.00
110.		410.	
111.		411.	
112.		412.	
113.		413.	
120. Gross Amount Due from Borrower	\$817,628.24	420. Gross Amount Due to Seller	\$810,006.24
200. Amounts Paid by or in Behalf of Borrower:		500. Reductions In Amount Due to Seller:	
201. Deposits or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage	
205.		505. Payoff of second mortgage	
206.		506. Clark Lowther Judgment	
207.		507. SCE&G Creditor Claim (Lowther Estate)	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes	to \$ 0.00	510. City/town taxes	to \$ 0.00
211. County taxes	to \$ 0.00	511. County taxes	to \$ 0.00
212. Assessments	to \$ 0.00	512. Assessments	to \$ 0.00
213.	to \$ 0.00	513.	to \$ 0.00
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/for Borrower	\$ 0.00	520. Total Reduction Amount Due Seller	\$602,955.09
300. Cash at Settlement From/to Borrower		600. Cash at Settlement To/from Seller	
301. Gross amount due from borrower (line 120)		601. Gross amount due to seller (line 420)	
	\$817,628.24		\$810,006.24
302. Less amounts paid by/for borrower (line 220)		602. Less reductions in amount due seller (line 520)	
	\$ 0.00		\$602,955.09
303. Cash ☒ from ☐ to Borrower		603. Cash ☒ to ☐ from Seller	
	\$817,628.24		\$207,051.15

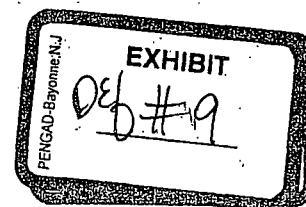
Substitute Form 1099 Seller Statement

The information in Blocks E, G, H, I & line 401 (or, if line 401 is asterisked, line 403 and 404) is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported. If this real estate is your principal residence, file Form 2119, *Sale or Exchange of Principal Residence*, for any gain, with your income tax return; for other transactions, complete the applicable parts of Form 4797, *Form 6252* and/or *Schedule D (Form 1040)*. You are required to provide the Settlement Agent (named above) with your correct taxpayer identification number. If you do not provide the Settlement Agent with your taxpayer identification number, you may be subject to civil or criminal penalties imposed by law. Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.

E. Legrande Lowther (Seller)
E. Legrande Lowther

(Seller)

000626



L. Settlement Charges

700. Total Sales/Broker's Commission: (based on price)	\$810,000.00 @	%	Paid from	Paid from
Division of Commission (line 700) as follows:			Borrower's	Seller's
701.			Funds at	Funds at
702.			Settlement	Settlement
703. Commission paid at Settlement				\$ 0.00
704.				
800. Items Payable In Connection with Loan				
801. Loan Origination Fee				
802. Loan Discount				
803. Appraisal Fee				
804. Credit Report				
805. Lender's Inspection Fee				
806. Mortgage Insurance Application Fee				
807.				
808.				
809.				
810.				
811.				
812.				
813.				
814.				
900. Items Required by Lender to Be Paid In Advance				
901. Interest from	to	@ \$	per day	
902. Mortgage Insurance Premium for				
903. Hazard Insurance Premium for				
904.				
905.				
1000. Reserves Deposited with Lender				
1001. Hazard insurance	months @ \$	per month	\$ 0.00	
1002. Mortgage insurance	months @ \$	per month	\$ 0.00	
1003. City property taxes	months @ \$	per month	\$ 0.00	
1004. County property taxes	months @ \$	per month	\$ 0.00	
1005. Annual assessments	months @ \$	per month	\$ 0.00	
1006.	months @ \$	per month	\$ 0.00	
1007.				
1008.				
1009. Aggregate Accounting Adjustment				
1100. Title Charges				
1101. Settlement/closing fee				
1102. Abstract/Title search to Freelance Abstracting Services			175.00	
1103. Title examination				
1104. Title insurance binder				
1105. Document preparation				
1106. Notary fees				
1107. Attorney's fees to R. Thayer Rivers, Jr., Esquire (includes above item numbers)			3,000.00	
1108. Title insurance (includes above item numbers)				
1109. Lender's coverage				
1110. Owner's coverage \$810,000.00			1,440.00	
1111. Attorney fees to Moss, Kuhn & Fleming, P.A.				1,250.00
1112.				
1113.				
1200. Government Recording and Transfer Charges				
1201. Recording fees: Deed 10.00 Mortgage Release			\$ 10.00	\$ 0.00
1202. City/county tax/stamps: Deed Mortgage			\$ 0.00	
1203. State tax/stamps: Deed Mortgage			\$ 0.00	
1204. Documentary Stamps			2,997.00	
1205.				
1206.				
1300. Additional Settlement Charges				
1301. Survey				
1302. Pest Inspection				
1303.				
1304.				
1305.				
1306.				
1307.				
1308.				
1400. Total Settlement Charges (This Number Transfers to Lines 103 & 502 Above)			\$7,622.00	\$1,250.00

CERTIFICATION

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

E. Legrande Lowther
E. Legrande Lowther

Seller

Borrower

Monte Perry for Amberwinds, LLC

Seller

Borrower

To the best of my knowledge the HUD-1 Settlement Statement which I have prepared is true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.

R. Thayer Rivers, Jr.
R. Thayer Rivers, Jr.

Settlement Agent

February 17, 2009

Date

WARNING: This document contains statements in the United States and the other similar form. Parties are responsible for the accuracy of the information provided.

000627

9
15-00 FF

200500005094
Filed for Record in
JASPER COUNTY
PATSYE M GREENE
12-28-2005 At 09:36 am.
DEED 9131.80
Volume 337 Page 10 - 18

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER) WARRANTY DEED

Know All Men by These Presents, that we, VIVIAN GENE L TILLOTSON, RITA ELIZABETH L ROGERS, MARK ALLEN LOWTHER, EFFIE SANDRA L TURPIN, CLAYTON CLARK LOWTHER, C. E. LOWTHER, JR and MITCHELL SAXON LOWTHER, hereinafter referred to as Grantor(s) in the State aforesaid, for and in consideration of the sum of Two Million Four Hundred Sixty Four Thousand Dollars (\$2,464,000.00) to us paid by E LEGRAND LOWTHER, hereinafter referred to as Grantee(s) in the State aforesaid and (the receipt of which is hereby acknowledged) have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said E LEGRAND LOWTHER, his heirs and assigns, forever, the following described real property, to-wit:

SEE ATTACHED EXHIBIT A

This being the identical property conveyed to the Grantor(s) herein by Deed of Distribution of the Estate of C E Lowther dated ~~12-9-05~~ and recorded in Deed Book 336 at Page 291, Office of the Clerk of Court of Jasper County, South Carolina.

Grantee's Address: PO Box 995, Ridgeland, SC 29936

This Deed prepared by the law office of Moss, Kuhn & Fleming, P.A., Post Office Drawer 507, Beaufort, South Carolina 29901-0507

TMS No: 069-00-07-003

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said E LEGRAND LOWTHER, his Heirs and Assigns forever.

And we, VIVIAN GENE L TILLOTSON, RITA ELIZABETH L ROGERS, MARK ALLEN LOWTHER, EFFIE SANDRA L TURPIN, CLAYTON CLARK LOWTHER, C. E. LOWTHER, JR. and MITCHELL SAXON LOWTHER do hereby bind our Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said E LEGRAND LOWTHER, his Heirs and Assigns, against us and our Heirs and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

000628

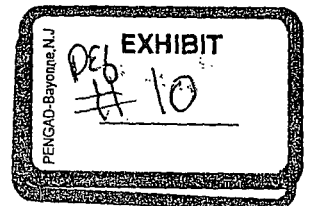


Exhibit A

ALL that certain piece, parcel or tract of land, situate, lying and being in Jasper County, South Carolina, containing (226.35) acres, more or less, known as Wellington Plantation and being bounded and described as follows: On the North by Wellington road, a dedicated Jasper County road; on the East by lands now or formerly of Pittman; on the South by lands now or formerly of Westvaco; and on the West by lands now or formerly of Westvaco and lands now or formerly of South Carolina Electric and Gas Co.. For a more particular description of metes, bounds, courses and distances, reference is made to that certain boundary survey prepared by Richard Kesselring, RLS for E Legrand Lowther and C. E. Lowther dated February 20, 1997, and recorded in the Office of the Clerk of Court for Jasper County South Carolina Book 22 at Page 293. The metes, bounds and distances appearing on the aforementioned plat are incorporated herein by reference.

LESS AND EXCEPT (3.84) acres thereof conveyed by C. E. Lowther to Mitchell S Lowther and Carmon B Lowther by deed recorded in the Office of the Clerk of Court for Jasper County, South Carolina in Deed Book 156 at Page 157 and more particularly described as Lot No (34) on that certain preliminary subdivision plat prepared by Connor & Associates, Inc., a copy of which is attached to said Deed and made a part of Deed Book 156 at Page 157.

ALSO LESS AND EXCEPT, any out conveyances as recorded in the Office of the Clerk of Court for Jasper County, South Carolina prior to the date of this deed.

This being the same property conveyed as 50% undivided interest to E Legrand Lowther, 25% undivided interest to Mitchell S Lowther and 25% undivided interest to C E Lowther by Deed of Albert L Kleckley recorded on September 18, 2003 in Book 282 at Page 154 in the Office of the Clerk of Court for Jasper County, South Carolina.

TMP 069-00-07-003

WITNESS our Hand(s) and Seals(s) this 20 day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:

[Signature]

[Signature] (Seal)
RYA ELIZABETH L ROGERS

_____ (Seal)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 20
day of December, 2005

[Signature]
Notary Public for South Carolina)
My Commission expires: 1-29-12)

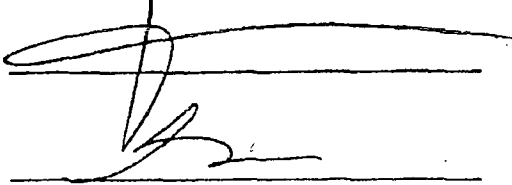
[Signature]

The within Instrument has been trans red
this 5 day of Jan 2006 at
9:30 o'clock A. M., and recorded
In Transfer Book 3 Page 539
In Assessor's Office. Tax Map No. 069-00-07-003
Transfer No. 5-27-1486
Debbie B. Pinner
JASPER COUNTY, S.C.

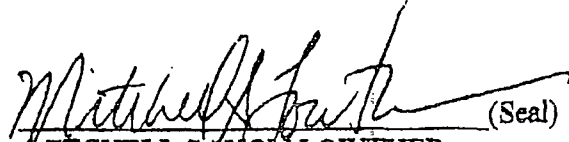
000630

WITNESS our Hand(s) and Seals(s) this 20 day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:



)
)
)
)
)
)


(Seal)
MITCHELL SAXON LOWTHER

(Seal)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

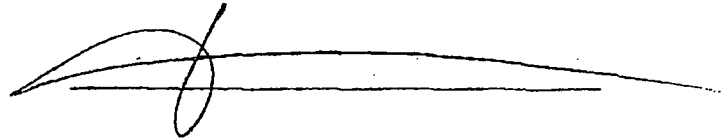
PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 20
day of December, 2005



Notary Public for South Carolina
My Commission expires: 1-29-06

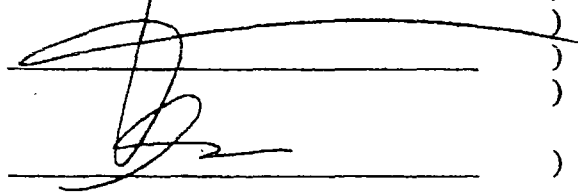
)
)
)
)
)
)

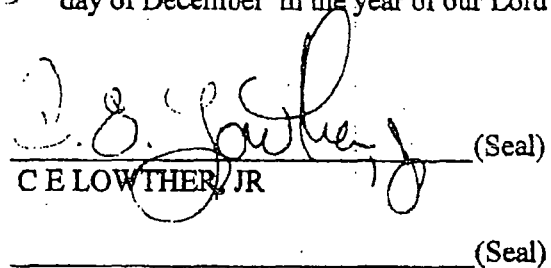


000631

WITNESS our Hand(s) and Seals(s) this 25 day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:




C E LOWTHER, JR (Seal)

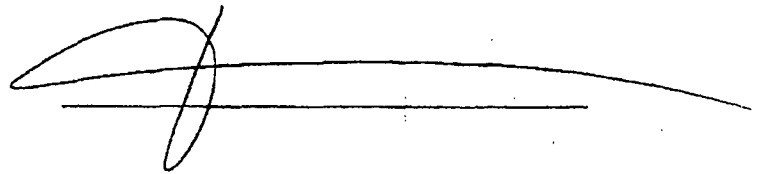
_____ (Seal)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 25 day of December, 2005)

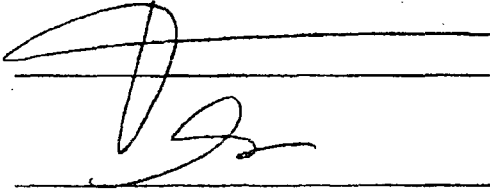
Notary Public for South Carolina)
My Commission expires: 1-2-12)



000632

WITNESS our Hand(s) and Seals(s) this 20 day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:



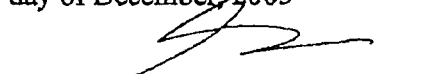
 (Seal)
VIVIAN GENE L TILLOTSON

____ (Seal)

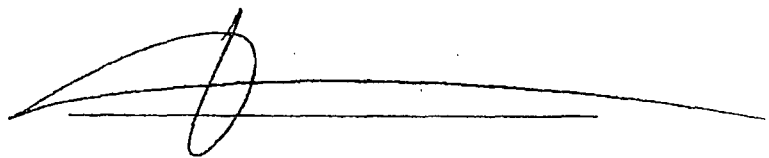
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 20 day of December, 2005



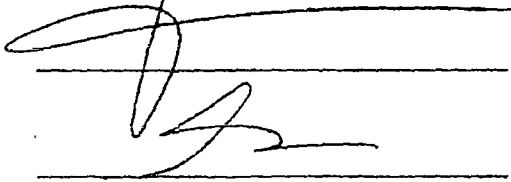
Notary Public for South Carolina
My Commission expires: 1-29-12



000633

WITNESS our Hand(s) and Seals(s) this 20 day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:



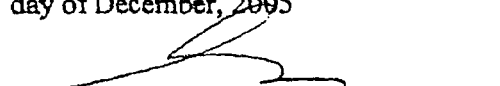
Effie Sandra L. Turpin (Seal)
EFFIE SANDRA L TURPIN

____ (Seal)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 20
day of December, 2005

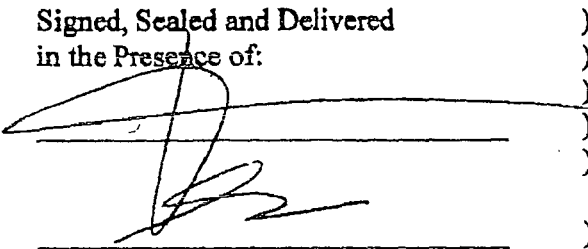


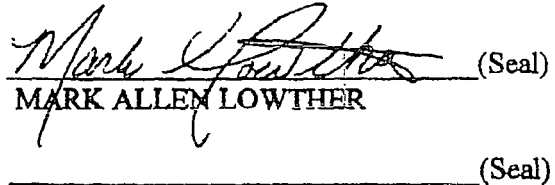
Notary Public for South Carolina
My Commission expires: 1-29-12

000634

WITNESS our Hand(s) and Seals(s) this 20 day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:



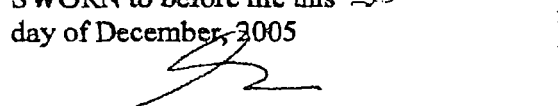
 (Seal)
MARK ALLEN LOWTHER

(Seal)

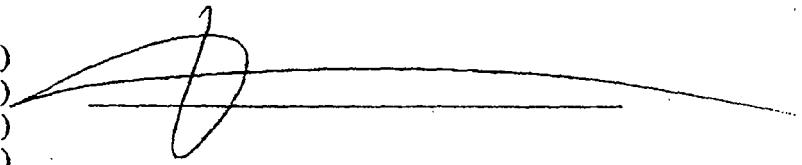
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 20
day of December, 2005



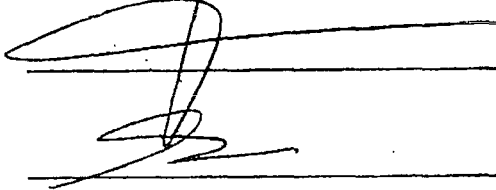
Notary Public for South Carolina
My Commission expires: 1-28-12



000635

WITNESS our Hand(s) and Seals(s) this 20 day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:



CLAYTON CLARK LOWTHER

(Seal)

(Seal)

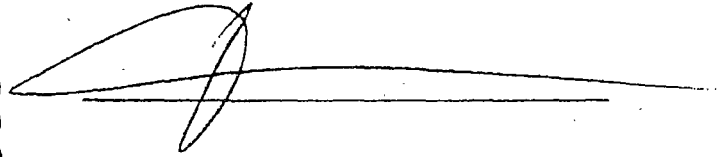
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 20)
day of December, 2005)

Notary Public for South Carolina)

My Commission expires: 1-27-12)



DEED BOOK 337 PAGE 0040

DATE 1-3-06

AUDITOR JASPER COUNTY SC

000636

STATE OF SOUTH CAROLINA NOTE

\$252,000.00
AMOUNT

Beaufort, South Carolina
Due Date: **December 31, 2006**
Note Date: December 20, 2005

FOR VALUE RECEIVED, the undersigned ("Borrower") promise(s) to pay in lawful money of the United States of America in the principal sum of Two Hundred Fifty Two Thousand and No/100 Dollars to **Clayton Clark Lowther** ("Note holder"):

This sum shall draw no interest. Principal shall be payable at the residence of the Note holder or such other place as the Note holder may designate. Borrower may prepay the principal in such amounts as in Borrower's discretion Borrower can afford, except that any remaining indebtedness, if not sooner paid, **shall be due and payable in full on December 31, 2006.**

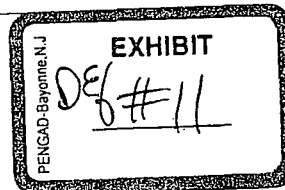
If this Note is not paid when due, the entire principal amount outstanding shall at once become due and payable at the option of the Note holder. If suit is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and expenses of suit, including but not limited to, reasonable attorney's fees.

Borrower may prepay the principal amount outstanding in full or in part without penalty. Prepayment in full may be made at any time. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date, unless the Note holder shall otherwise agree in writing. Borrower is giving Notes of even date to siblings of Note holder, and the amount owed to each Note holder shall be treated as a separate and distinct obligation and any one Note holder shall not be able to bind any other Note holder.

Presentment, notice of dishonor, and protest are hereby waived by Borrower. This Note shall be binding upon Borrower, his heirs, successors and assigns, as well as upon Note holder, his heirs, successors and assigns. This Note is not assignable without the written consent of all parties.

Any material failure by Borrower to perform any obligation under this Note to Note holder shall constitute a default. Additionally, Borrower shall be in default if Borrower should fail to pay the Note in full on or before the due date, should Borrower die or be declared incompetent, should Borrower declare bankruptcy or be declared insolvent.. Unless Borrower has paid this Note in full, Borrower will also be in default on this Note should Borrower default on any of the Notes of even date to the siblings of Note holder.

LL *CC*



Borrower shall execute a General Warranty Deed conveying an undivided one-seventh of a 25% interest to Note holder in the Wellington Plantation property, a copy of which is provided with this Note. The original of this Deed shall be held in escrow by the closing attorney and shall be voided if Borrower shall pay in full the amount due the Note holder. In the event that Borrower should be in default or should fail to pay the Note holder in full when due, then said Note holder agrees to accept as his sole remedy, in lieu of foreclosure, the property conveyed to him pursuant to said Deed and said Deed shall then be delivered and recorded. In that event, said Note holder agrees to manage, develop, market, encumber, or sell said property in accordance with the majority vote of the joint owners thereof, with votes weighted according to ownership interest (e.g., a 10% owner casts 10 votes). Furthermore, in the event that Borrower should fail to pay the Note holder in full when due, then the Note holder shall additionally be entitled to receive a "share" of the "net proceeds" from the sale of any lot in the Echo Tango subdivision being developed by Borrower. "Net proceeds" are those proceeds received by Borrower from the sale of a lot or lots after Borrower has been reimbursed for all development expenses for the subdivision, including but not limited to taxes, maintenance, the cost of the sewer, the cost of litigating the sewer issue, attorneys fees, and marketing expenses. The Note holder's "share" shall be a pro rata share equal to one-seventh of a fifty (50%) percent share, or 7.14%.

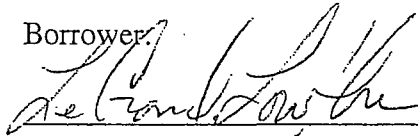
Any notice to Borrower provided for in this Note shall be given by mailing such notice by certified mail addressed to Borrower at his residence, or to such other address as Borrower may designate by notice to the Note holder. Any notice to the Note holder shall be given by mailing such notice by certified mail, return receipt requested, to the Note holder at his residence, or at such other address as may have been designated by notice to Borrower.

Borrower shall not increase the indebtedness or obligation owed under the first Mortgage on the property which secures the payment of this Note and that Mortgage shall be kept current. Borrower shall take no action which impairs the rights of the Note holders.

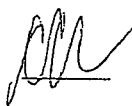
The indebtedness evidenced by this Note is secured by a Mortgage, dated December _____, 2005, and reference is made to the Mortgage for other obligations of the Borrower.

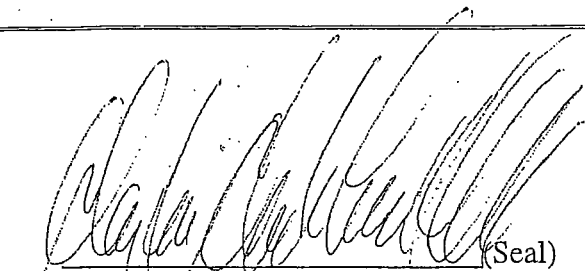
Signed, sealed and delivered this 20th day of December, 2005.

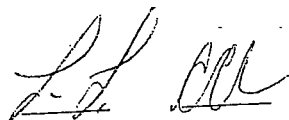
Borrower:

 (Seal)
Legrand Lowther

Note Holders:

  _____


Clayton Clark Lowther (Seal)



STATE OF SOUTH CAROLINA NOTE

\$252,000.00
AMOUNT

Beaufort, South Carolina
Due Date: **December 31, 2006**
Note Date: December 20, 2005

FOR VALUE RECEIVED, the undersigned ("Borrower") promise(s) to pay in lawful money of the United States of America in the principal sum of Two Hundred Fifty Two Thousand and No/100 Dollars to **Mark Allen Lowther** ("Note holder"):

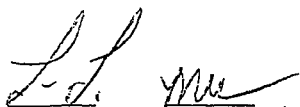
This sum shall draw no interest. Principal shall be payable at the residence of the Note holder or such other place as the Note holder may designate. Borrower may prepay the principal in such amounts as in Borrower's discretion Borrower can afford, except that any remaining indebtedness, if not sooner paid, **shall be due and payable in full on December 31, 2006.**

If this Note is not paid when due, the entire principal amount outstanding shall at once become due and payable at the option of the Note holder. If suit is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and expenses of suit, including but not limited to, reasonable attorney's fees.

Borrower may prepay the principal amount outstanding in full or in part without penalty. Prepayment in full may be made at any time. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date, unless the Note holder shall otherwise agree in writing. Borrower is giving Notes of even date to siblings of Note holder, and the amount owed to each Note holder shall be treated as a separate and distinct obligation and any one Note holder shall not be able to bind any other Note holder.

Presentment, notice of dishonor, and protest are hereby waived by Borrower. This Note shall be binding upon Borrower, his heirs, successors and assigns, as well as upon Note holder, his heirs, successors and assigns. This Note is not assignable without the written consent of all parties.

Any material failure by Borrower to perform any obligation under this Note to Note holder shall constitute a default. Additionally, Borrower shall be in default if Borrower should fail to pay the Note in full on or before the due date, should Borrower die or be declared incompetent, should Borrower declare bankruptcy or be declared insolvent.. Unless Borrower has paid this Note in full, Borrower will also be in default on this Note should Borrower default on any of the Notes of even date to the siblings of Note holder.



Borrower shall execute a General Warranty Deed conveying an undivided one-seventh of a 25% interest to Note holder in the Wellington Plantation property, a copy of which is provided with this Note. The original of this Deed shall be held in escrow by the closing attorney and shall be voided if Borrower shall pay in full the amount due the Note holder. In the event that Borrower should be in default or should fail to pay the Note holder in full when due, then said Note holder agrees to accept as his sole remedy, in lieu of foreclosure, the property conveyed to him pursuant to said Deed and said Deed shall then be delivered and recorded. In that event, said Note holder agrees to manage, develop, market, encumber, or sell said property in accordance with the majority vote of the joint owners thereof, with votes weighted according to ownership interest (e.g., a 10% owner casts 10 votes). Furthermore, in the event that Borrower should fail to pay the Note holder in full when due, then the Note holder shall additionally be entitled to receive a "share" of the "net proceeds" from the sale of any lot in the Echo Tango subdivision being developed by Borrower. "Net proceeds" are those proceeds received by Borrower from the sale of a lot or lots after Borrower has been reimbursed for all development expenses for the subdivision, including but not limited to taxes, maintenance, the cost of the sewer, the cost of litigating the sewer issue, attorneys fees, and marketing expenses. The Note holder's "share" shall be a pro rata share equal to one-seventh of a fifty (50%) percent share, or 7.14%.

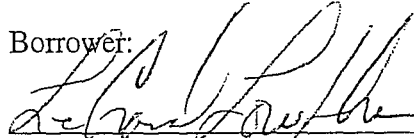
Any notice to Borrower provided for in this Note shall be given by mailing such notice by certified mail addressed to Borrower at his residence, or to such other address as Borrower may designate by notice to the Note holder. Any notice to the Note holder shall be given by mailing such notice by certified mail, return receipt requested, to the Note holder at his residence, or at such other address as may have been designated by notice to Borrower.

Borrower shall not increase the indebtedness or obligation owed under the first Mortgage on the property which secures the payment of this Note and that Mortgage shall be kept current. Borrower shall take no action which impairs the rights of the Note holders.

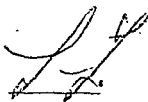
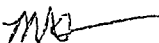
The indebtedness evidenced by this Note is secured by a Mortgage, dated December ____, 2005, and reference is made to the Mortgage for other obligations of the Borrower.

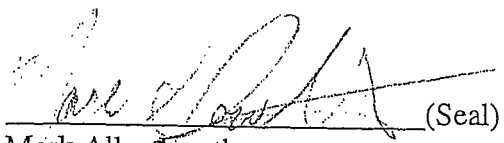
Signed, sealed and delivered this 20th day of December, 2005.

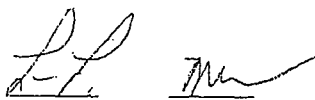
Borrower:

 (Seal)
Legrand Lowther

Note Holders:


Mark Allen Lowther (Seal)



STATE OF SOUTH CAROLINA NOTE

\$252,000.00
AMOUNT

Beaufort, South Carolina
Due Date: **December 31, 2006**
Note Date: December 20, 2005

FOR VALUE RECEIVED, the undersigned ("Borrower") promise(s) to pay in lawful money of the United States of America in the principal sum of Two Hundred Fifty Two Thousand and No/100 Dollars to **Vivian Gene L. Tillotson** ("Note holder"):

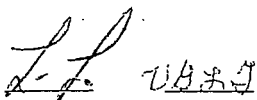
This sum shall draw no interest. Principal shall be payable at the residence of the Note holder or such other place as the Note holder may designate. Borrower may prepay the principal in such amounts as in Borrower's discretion Borrower can afford, except that any remaining indebtedness, if not sooner paid, **shall be due and payable in full on December 31, 2006.**

If this Note is not paid when due, the entire principal amount outstanding shall at once become due and payable at the option of the Note holder. If suit is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and expenses of suit, including but not limited to, reasonable attorney's fees.

Borrower may prepay the principal amount outstanding in full or in part without penalty. Prepayment in full may be made at any time. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date, unless the Note holder shall otherwise agree in writing. Borrower is giving Notes of even date to siblings of Note holder, and the amount owed to each Note holder shall be treated as a separate and distinct obligation and any one Note holder shall not be able to bind any other Note holder.

Presentment, notice of dishonor, and protest are hereby waived by Borrower. This Note shall be binding upon Borrower, his heirs, successors and assigns, as well as upon Note holder, her heirs, successors and assigns. This Note is not assignable without the written consent of all parties.

Any material failure by Borrower to perform any obligation under this Note to Note holder shall constitute a default. Additionally, Borrower shall be in default if Borrower should fail to pay the Note in full on or before the due date, should Borrower die or be declared incompetent, should Borrower declare bankruptcy or be declared insolvent. Unless Borrower has paid this Note in full, Borrower will also be in default on this Note should Borrower default on any of the Notes of even date to the siblings of Note holder.

 _____

Borrower shall execute a General Warranty Deed conveying an undivided one-seventh of a 25% interest to Note holder in the Wellington Plantation property, a copy of which is provided with this Note. The original of this Deed shall be held in escrow by the closing attorney and shall be voided if Borrower shall pay in full the amount due the Note holder. In the event that Borrower should be in default or should fail to pay the Note holder in full when due, then said Note holder agrees to accept as her sole remedy, in lieu of foreclosure, the property conveyed to her pursuant to said Deed and said Deed shall then be delivered and recorded. In that event, said Note holder agrees to manage, develop, market, encumber, or sell said property in accordance with the majority vote of the joint owners thereof, with votes weighted according to ownership interest (e.g., a 10% owner casts 10 votes). Furthermore, in the event that Borrower should fail to pay the Note holder in full when due, then the Note holder shall additionally be entitled to receive a "share" of the "net proceeds" from the sale of any lot in the Echo Tango subdivision being developed by Borrower. "Net proceeds" are those proceeds received by Borrower from the sale of a lot or lots after Borrower has been reimbursed for all development expenses for the subdivision, including but not limited to taxes, maintenance, the cost of the sewer, the cost of litigating the sewer issue, attorneys fees, and marketing expenses. The Note holder's "share" shall be a pro rata share equal to one-seventh of a fifty (50%) percent share, or 7.14%.

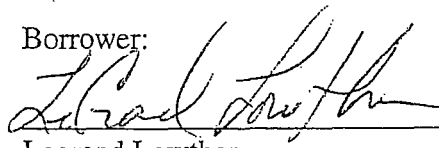
Any notice to Borrower provided for in this Note shall be given by mailing such notice by certified mail addressed to Borrower at his residence, or to such other address as Borrower may designate by notice to the Note holder. Any notice to the Note holder shall be given by mailing such notice by certified mail, return receipt requested, to the Note holder at her residence, or at such other address as may have been designated by notice to Borrower.

Borrower shall not increase the indebtedness or obligation owed under the first Mortgage on the property which secures the payment of this Note and that Mortgage shall be kept current. Borrower shall take no action which impairs the rights of the Note holders.

The indebtedness evidenced by this Note is secured by a Mortgage, dated December _____, 2005, and reference is made to the Mortgage for other obligations of the Borrower.

Signed, sealed and delivered this 20th day of December, 2005.

Borrower:

 (Seal)
Legrand Lowther

Note Holders:



Vivian Gene L. Tillotson (Seal)
Vivian Gene L. Tillotson

L. V. Tillotson

STATE OF SOUTH CAROLINA NOTE

\$252,000.00
AMOUNT

Beaufort, South Carolina
Due Date: **December 31, 2006**
Note Date: December 20, 2005

FOR VALUE RECEIVED, the undersigned ("Borrower") promise(s) to pay in lawful money of the United States of America in the principal sum of Two Hundred Fifty Two Thousand and No/100 Dollars to **Rita Elizabeth L. Rogers** ("Note holder"):

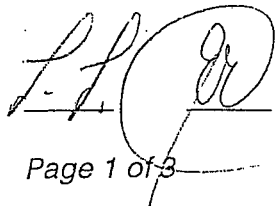
This sum shall draw no interest. Principal shall be payable at the residence of the Note holder or such other place as the Note holder may designate. Borrower may prepay the principal in such amounts as in Borrower's discretion Borrower can afford, except that any remaining indebtedness, if not sooner paid, **shall be due and payable in full on December 31, 2006.**

If this Note is not paid when due, the entire principal amount outstanding shall at once become due and payable at the option of the Note holder. If suit is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and expenses of suit, including but not limited to, reasonable attorney's fees.

Borrower may prepay the principal amount outstanding in full or in part without penalty. Prepayment in full may be made at any time. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date, unless the Note holder shall otherwise agree in writing. Borrower is giving Notes of even date to siblings of Note holder, and the amount owed to each Note holder shall be treated as a separate and distinct obligation and any one Note holder shall not be able to bind any other Note holder.

Presentment, notice of dishonor, and protest are hereby waived by Borrower. This Note shall be binding upon Borrower, his heirs, successors and assigns, as well as upon Note holder, her heirs, successors and assigns. This Note is not assignable without the written consent of all parties.

Any material failure by Borrower to perform any obligation under this Note to Note holder shall constitute a default. Additionally, Borrower shall be in default if Borrower should fail to pay the Note in full on or before the due date, should Borrower die or be declared incompetent, should Borrower declare bankruptcy or be declared insolvent.. Unless Borrower has paid this Note in full, Borrower will also be in default on this Note should Borrower default on any of the Notes of even date to the siblings of Note holder.



Page 1 of 3

000646

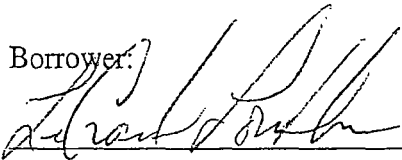
Borrower shall execute a General Warranty Deed conveying an undivided one-seventh of a 25% interest to Note holder in the Wellington Plantation property, a copy of which is provided with this Note. The original of this Deed shall be held in escrow by the closing attorney and shall be voided if Borrower shall pay in full the amount due the Note holder. In the event that Borrower should be in default or should fail to pay the Note holder in full when due, then said Note holder agrees to accept as her sole remedy, in lieu of foreclosure, the property conveyed to her pursuant to said Deed and said Deed shall then be delivered and recorded. In that event, said Note holder agrees to manage, develop, market, encumber, or sell said property in accordance with the majority vote of the joint owners thereof, with votes weighted according to ownership interest (e.g., a 10% owner casts 10 votes). Furthermore, in the event that Borrower should fail to pay the Note holder in full when due, then the Note holder shall additionally be entitled to receive a "share" of the "net proceeds" from the sale of any lot in the Echo Tango subdivision being developed by Borrower. "Net proceeds" are those proceeds received by Borrower from the sale of a lot or lots after Borrower has been reimbursed for all development expenses for the subdivision, including but not limited to taxes, maintenance, the cost of the sewer, the cost of litigating the sewer issue, attorneys fees, and marketing expenses. The Note holder's "share" shall be a pro rata share equal to one-seventh of a fifty (50%) percent share, or 7.14%.

Any notice to Borrower provided for in this Note shall be given by mailing such notice by certified mail addressed to Borrower at his residence, or to such other address as Borrower may designate by notice to the Note holder. Any notice to the Note holder shall be given by mailing such notice by certified mail, return receipt requested, to the Note holder at her residence, or at such other address as may have been designated by notice to Borrower.

Borrower shall not increase the indebtedness or obligation owed under the first Mortgage on the property which secures the payment of this Note and that Mortgage shall be kept current. Borrower shall take no action which impairs the rights of the Note holders.

The indebtedness evidenced by this Note is secured by a Mortgage, dated December _____, 2005, and reference is made to the Mortgage for other obligations of the Borrower.

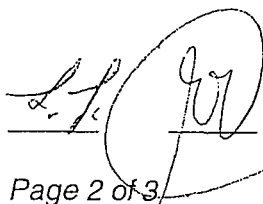
Signed, sealed and delivered this 20th day of December, 2005.

Borrower: 

Legrand Lowther

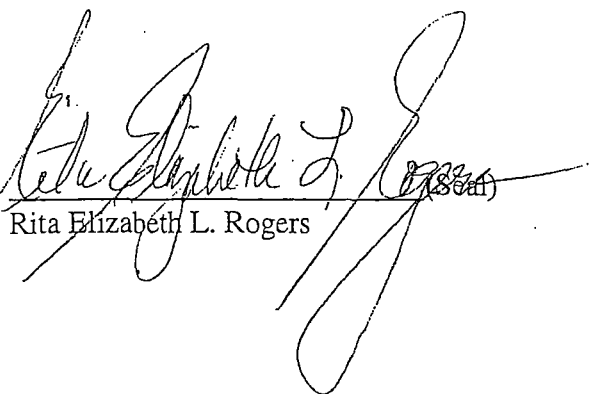
(Seal)

Note Holders:



Page 2 of 3

000647


Rita Elizabeth L. Rogers



STATE OF SOUTH CAROLINA NOTE

\$252,000.00
AMOUNT

Beaufort, South Carolina
Due Date: **December 31, 2006**
Note Date: December 20, 2005

FOR VALUE RECEIVED, the undersigned ("Borrower") promise(s) to pay in lawful money of the United States of America in the principal sum of Two Hundred Fifty Two Thousand and No/100 Dollars to **C. E. Lowther, Jr.** ("Note holder"):

This sum shall draw no interest. Principal shall be payable at the residence of the Note holder or such other place as the Note holder may designate. Borrower may prepay the principal in such amounts as in Borrower's discretion Borrower can afford, except that any remaining indebtedness, if not sooner paid, **shall be due and payable in full on December 31, 2006.**

If this Note is not paid when due, the entire principal amount outstanding shall at once become due and payable at the option of the Note holder. If suit is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and expenses of suit, including but not limited to, reasonable attorney's fees.

Borrower may prepay the principal amount outstanding in full or in part without penalty. Prepayment in full may be made at any time. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date, unless the Note holder shall otherwise agree in writing. Borrower is giving Notes of even date to siblings of Note holder, and the amount owed to each Note holder shall be treated as a separate and distinct obligation and any one Note holder shall not be able to bind any other Note holder.

Presentment, notice of dishonor, and protest are hereby waived by Borrower. This Note shall be binding upon Borrower, his heirs, successors and assigns, as well as upon Note holder, his heirs, successors and assigns. This Note is not assignable without the written consent of all parties.

Any material failure by Borrower to perform any obligation under this Note to Note holder shall constitute a default. Additionally, Borrower shall be in default if Borrower should fail to pay the Note in full on or before the due date, should Borrower die or be declared incompetent, should Borrower declare bankruptcy or be declared insolvent.. Unless Borrower has paid this Note in full, Borrower will also be in default on this Note should Borrower default on any of the Notes of even date to the siblings of Note holder.

Borrower shall execute a General Warranty Deed conveying an undivided one-seventh of a 25% interest to Note holder in the Wellington Plantation property, a copy of which is provided with this Note. The original of this Deed shall be held in escrow by the closing attorney and shall be voided if Borrower shall pay in full the amount due the Note holder. In the event that Borrower should be in default or should fail to pay the Note holder in full when due, then said Note holder agrees to accept as his sole remedy, in lieu of foreclosure, the property conveyed to him pursuant to said Deed and said Deed shall then be delivered and recorded. In that event, said Note holder agrees to manage, develop, market, encumber, or sell said property in accordance with the majority vote of the joint owners thereof, with votes weighted according to ownership interest (e.g., a 10% owner casts 10 votes). Furthermore, in the event that Borrower should fail to pay the Note holder in full when due, then the Note holder shall additionally be entitled to receive a "share" of the "net proceeds" from the sale of any lot in the Echo Tango subdivision being developed by Borrower. "Net proceeds" are those proceeds received by Borrower from the sale of a lot or lots after Borrower has been reimbursed for all development expenses for the subdivision, including but not limited to taxes, maintenance, the cost of the sewer, the cost of litigating the sewer issue, attorneys fees, and marketing expenses. The Note holder's "share" shall be a pro rata share equal to one-seventh of a fifty (50%) percent share, or 7.14%.

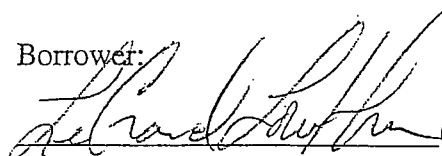
Any notice to Borrower provided for in this Note shall be given by mailing such notice by certified mail addressed to Borrower at his residence, or to such other address as Borrower may designate by notice to the Note holder. Any notice to the Note holder shall be given by mailing such notice by certified mail, return receipt requested, to the Note holder at his residence, or at such other address as may have been designated by notice to Borrower.

Borrower shall not increase the indebtedness or obligation owed under the first Mortgage on the property which secures the payment of this Note and that Mortgage shall be kept current. Borrower shall take no action which impairs the rights of the Note holders.

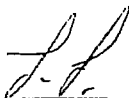
The indebtedness evidenced by this Note is secured by a Mortgage, dated December _____, 2005, and reference is made to the Mortgage for other obligations of the Borrower.

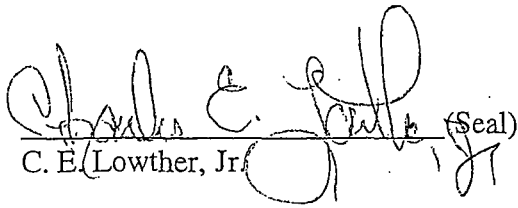
Signed, sealed and delivered this 20th day of December, 2005.

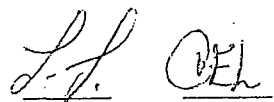
Borrower:

 (Seal)
Legrand Lowther

Note Holders:

 (Seal)
C. E. Lowther, Jr.



STATE OF SOUTH CAROLINA NOTE

\$252,000.00
AMOUNT

Beaufort, South Carolina
Due Date: **December 31, 2006**
Note Date: December 20, 2005

FOR VALUE RECEIVED, the undersigned ("Borrower") promise(s) to pay in lawful money of the United States of America in the principal sum of Two Hundred Fifty Two Thousand and No/100 Dollars to **Effie Sandra L. Turpin** ("Note holder"):

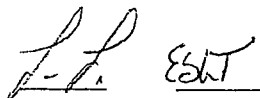
This sum shall draw no interest. Principal shall be payable at the residence of the Note holder or such other place as the Note holder may designate. Borrower may prepay the principal in such amounts as in Borrower's discretion Borrower can afford, except that any remaining indebtedness, if not sooner paid, **shall be due and payable in full on December 31, 2006.**

If this Note is not paid when due, the entire principal amount outstanding shall at once become due and payable at the option of the Note holder. If suit is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and expenses of suit, including but not limited to, reasonable attorney's fees.

Borrower may prepay the principal amount outstanding in full or in part without penalty. Prepayment in full may be made at any time. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date, unless the Note holder shall otherwise agree in writing. Borrower is giving Notes of even date to siblings of Note holder, and the amount owed to each Note holder shall be treated as a separate and distinct obligation and any one Note holder shall not be able to bind any other Note holder.

Presentment, notice of dishonor, and protest are hereby waived by Borrower. This Note shall be binding upon Borrower, his heirs, successors and assigns, as well as upon Note holder, her heirs, successors and assigns. This Note is not assignable without the written consent of all parties.

Any material failure by Borrower to perform any obligation under this Note to Note holder shall constitute a default. Additionally, Borrower shall be in default if Borrower should fail to pay the Note in full on or before the due date, should Borrower die or be declared incompetent, should Borrower declare bankruptcy or be declared insolvent.. Unless Borrower has paid this Note in full, Borrower will also be in default on this Note should Borrower default on any of the Notes of even date to the siblings of Note holder.



Borrower shall execute a General Warranty Deed conveying an undivided one-seventh of a 25% interest to Note holder in the Wellington Plantation property, a copy of which is provided with this Note. The original of this Deed shall be held in escrow by the closing attorney and shall be voided if Borrower shall pay in full the amount due the Note holder. In the event that Borrower should be in default or should fail to pay the Note holder in full when due, then said Note holder agrees to accept as her sole remedy, in lieu of foreclosure, the property conveyed to her pursuant to said Deed and said Deed shall then be delivered and recorded. In that event, said Note holder agrees to manage, develop, market, encumber, or sell said property in accordance with the majority vote of the joint owners thereof, with votes weighted according to ownership interest (e.g., a 10% owner casts 10 votes). Furthermore, in the event that Borrower should fail to pay the Note holder in full when due, then the Note holder shall additionally be entitled to receive a "share" of the "net proceeds" from the sale of any lot in the Echo Tango subdivision being developed by Borrower. "Net proceeds" are those proceeds received by Borrower from the sale of ^{any of the Echo lots} ~~a lot or lots~~ after Borrower has been reimbursed for all development expenses for the subdivision, including but not limited to taxes, maintenance, the cost of the sewer, the cost of litigating the sewer issue, attorneys fees, and marketing expenses. The Note holder's "share" shall be a pro rata share equal to one-seventh of a fifty (50%) percent share, or 7.14%.

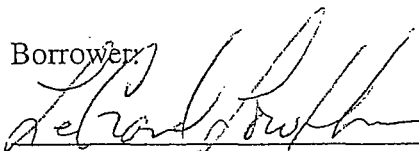
Any notice to Borrower provided for in this Note shall be given by mailing such notice by certified mail addressed to Borrower at his residence, or to such other address as Borrower may designate by notice to the Note holder. Any notice to the Note holder shall be given by mailing such notice by certified mail, return receipt requested, to the Note holder at her residence, or at such other address as may have been designated by notice to Borrower.

Borrower shall not increase the indebtedness or obligation owed under the first Mortgage on the property which secures the payment of this Note and that Mortgage shall be kept current. Borrower shall take no action which impairs the rights of the Note holders.

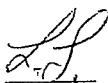
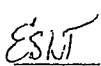
The indebtedness evidenced by this Note is secured by a Mortgage, dated December _____, 2005, and reference is made to the Mortgage for other obligations of the Borrower.

Signed, sealed and delivered this 20th day of December, 2005.

Borrower:

 (Seal)
Legrand Lowther

Note Holders:

Effie Sandra L. Turpin (Seal)
Effie Sandra L. Turpin

L.L. EST _____

STATE OF SOUTH CAROLINA NOTE

\$952,000.00
AMOUNT

Beaufort, South Carolina
Due Date: **December 31, 2006**
Note Date: December 20, 2005

FOR VALUE RECEIVED, the undersigned ("Borrower") promise(s) to pay in lawful money of the United States of America in the principal sum of Nine Hundred Fifty Two Thousand and No/100 Dollars to **Mitchell Saxon Lowther** ("Note holder"):

This sum shall draw no interest. Principal shall be payable at the residence of the Note holder or such other place as the Note holder may designate. Borrower may prepay the principal in such amounts as in Borrower's discretion Borrower can afford, except that any remaining indebtedness, if not sooner paid, **shall be due and payable in full on December 31, 2006.**

If this Note is not paid when due, the entire principal amount outstanding shall at once become due and payable at the option of the Note holder. If suit is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and expenses of suit, including but not limited to, reasonable attorney's fees.

Borrower may prepay the principal amount outstanding in full or in part without penalty. Prepayment in full may be made at any time. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date, unless the Note holder shall otherwise agree in writing. Borrower is giving Notes of even date to siblings of Note holder, and the amount owed to each Note holder shall be treated as a separate and distinct obligation and any one Note holder shall not be able to bind any other Note holder.

Presentment, notice of dishonor, and protest are hereby waived by Borrower. This Note shall be binding upon Borrower, his heirs, successors and assigns, as well as upon Note holder, his heirs, successors and assigns. This Note is not assignable without the written consent of all parties.

Any material failure by Borrower to perform any obligation under this Note to Note holder shall constitute a default. Additionally, Borrower shall be in default if Borrower should fail to pay the Note in full on or before the due date, should Borrower die or be declared incompetent, should Borrower declare bankruptcy or be declared insolvent.. Unless Borrower has paid this Note in full, Borrower will also be in default on this Note should Borrower default on any of the Notes of even date to the siblings of Note holder.

L.L. M/S

Borrower shall execute a General Warranty Deed conveying an undivided 25% interest plus an additional undivided one-seventh of a 25% interest to Note holder in the Wellington Plantation property, a copy of which is provided with this Note. The original of this Deed shall be held in escrow by the closing attorney and shall be voided if Borrower shall pay in full the amount due the Note holder. In the event that Borrower should be in default or should fail to pay the Note holder in full when due, then said Note holder agrees to accept as his sole remedy, in lieu of foreclosure, the property conveyed to him pursuant to said Deed and said Deed shall then be delivered and recorded. In that event, said Note holder agrees to manage, develop, market, encumber, or sell said property in accordance with the majority vote of the joint owners thereof, with votes weighted according to ownership interest (e.g., a 10% owner casts 10 votes). Furthermore, in the event that Borrower should fail to pay the Note holder in full when due, then the Note holder shall additionally be entitled to receive a "share" of the "net proceeds" from the sale of any lot in the Echo Tango subdivision being developed by Borrower. "Net proceeds" are those proceeds received by Borrower from the sale of a lot or lots after Borrower has been reimbursed for all development expenses for the subdivision, including but not limited to taxes, maintenance, the cost of the sewer, the cost of litigating the sewer issue, attorneys fees, and marketing expenses. The Note holder's "share" shall be a pro rata share equal to one-seventh of a fifty (50%) percent share, or 7.14%.

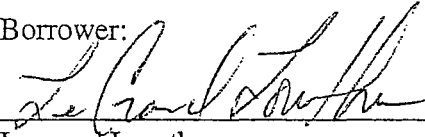
Any notice to Borrower provided for in this Note shall be given by mailing such notice by certified mail addressed to Borrower at his residence, or to such other address as Borrower may designate by notice to the Note holder. Any notice to the Note holder shall be given by mailing such notice by certified mail, return receipt requested, to the Note holder at his residence, or at such other address as may have been designated by notice to Borrower.

Borrower shall not increase the indebtedness or obligation owed under the first Mortgage on the property which secures the payment of this Note and that Mortgage shall be kept current. Borrower shall take no action which impairs the rights of the Note holders.

The indebtedness evidenced by this Note is secured by a Mortgage, dated December _____, 2005, and reference is made to the Mortgage for other obligations of the Borrower.

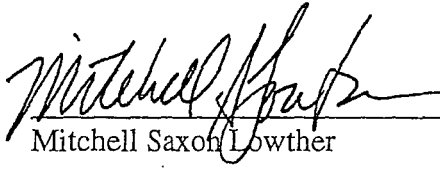
Signed, sealed and delivered this 20th day of December, 2005.

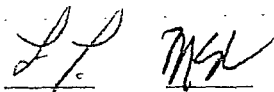
Borrower:

 (Seal)
Legrand Lowther

Note Holders:

 (Seal)
Mitchell Saxon Lowther



173
\$ 19.00
Mortgagee Address:
44 Old Cooler Road
Okatie, SC 29909

200600000637
Filed for Record in
JASPER COUNTY
PATSYE M GREENE
02-14-2006 At 03:17 pm.
MORTGAGE 19.00
Volume 402 Page 24 - 36

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)
MORTGAGE

THIS MORTGAGE (the "Mortgage") is made and entered into as of December 28, 2005, by E. LEGRANDE LOWTHER (the "Mortgagor"), in favor of VIVIAN GENE L. TILLOTSON, RITA ELIZABETH L. ROGERS, MARK ALLEN LOWTHER, EFFIE SANDRA L. TURPIN, CLAYTON CLARK LOWTHER, C. E. LOWTHER, JR. and MITCHELL SAXON LOWTHER (hereinafter jointly and collectively referred to as the "Mortgagee") to secure the debt hereinafter as herein after described in the combined principal sum of **TWO MILLION FOUR HUNDRED SIXTY FOUR THOUSAND and 00/100 (\$2,464,000.00) DOLLARS.**

WITNESSETH:

WHEREAS, Mortgagor is indebted to VIVIAN GENE L. TILLOTSON pursuant to that certain Promissory Note of even date herewith in the original principal amount of TWO HUNDRED FIFTY TWO THOUSAND and 00/100ths DOLLARS (\$252,000.00) (together with any and all extensions, renewals, or modifications thereof, the "Tillotson Debt"); and

WHEREAS, Mortgagor is indebted to RITA ELIZABETH L. ROGERS pursuant to that certain Promissory Note of even date herewith in the original principal amount of TWO HUNDRED FIFTY TWO THOUSAND and 00/100ths DOLLARS (\$252,000.00) (together with any and all extensions, renewals, or modifications thereof, the "Rogers Debt"); and

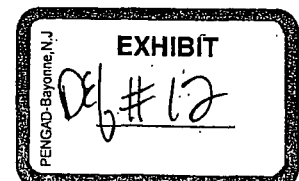
WHEREAS, Mortgagor is indebted to MARK ALLEN LOWTHER pursuant to that certain Promissory Note of even date herewith in the original principal amount of TWO HUNDRED FIFTY TWO THOUSAND and 00/100ths DOLLARS (\$252,000.00) (together with any and all extensions, renewals, or modifications thereof, the "MA Lowther Debt"); and

WHEREAS, Mortgagor is indebted to EFFIE SANDRA L. TURPIN pursuant to that certain Promissory Note of even date herewith in the original principal amount of TWO HUNDRED FIFTY TWO THOUSAND and 00/100ths DOLLARS (\$252,000.00) (together with any and all extensions, renewals, or modifications thereof, the "Turpin Debt"); and

WHEREAS, Mortgagor is indebted to CLAYTON CLARK LOWTHER pursuant to that certain Promissory Note of even date herewith in the original principal amount of TWO HUNDRED FIFTY TWO THOUSAND and 00/100ths DOLLARS (\$252,000.00) (together with any and all extensions, renewals, or modifications thereof, the "CC Lowther Debt"); and

200600000637
MOSS AND KUHN
PO BOX 507
BEAUFORT, SC 29901

000658



E. L. L.

WHEREAS, Mortgagor is indebted to C. E. LOWTHER, JR pursuant to that certain Promissory Note of even date herewith in the original principal amount of TWO HUNDRED FIFTY TWO THOUSAND and 00/100ths DOLLARS (\$252,000.00) (together with any and all extensions, renewals, or modifications thereof, the "CE Lowther Debt"); and

WHEREAS, Mortgagor is indebted to MITCHELL SAXON LOWTHER pursuant to that certain Promissory Note of even date herewith in the original principal amount of NINE HUNDRED FIFTY TWO THOUSAND and 00/100ths DOLLARS (\$952,000.00) (together with any and all extensions, renewals, or modifications thereof, the "MS Lowther Debt"); and

WHEREAS, the total combination of the Tillotson Debt, the Rogers Debt, the MA Lowther Debt, the Turpin Debt, the CC Lowther Debt, the CE Lowther Debt and the MA Lowther Debt in the combined principal sum of **TWO MILLION FOUR HUNDRED SIXTY FOUR THOUSAND and 00/100 (\$2,464,000.00) DOLLARS** shall hereinafter be referred to as the "Debt"; and,

WHEREAS, Mortgagor desires to secure its obligations under the Debt by granting the Mortgagee a mortgage lien having second priority on the real property, improvements, and fixtures described below;

NOW, THEREFORE, the Mortgagor in consideration of the aforesaid debt, and also in consideration of the further sum of Three and No/100 (\$3.00) Dollars, to it in hand paid by the Mortgagee, receipt whereof is hereby acknowledged, and for the purpose of securing the Obligations (as hereinafter defined), has granted, bargained, sold, and released, and by these presents, does grant, bargain, sell and release unto the Mortgagee, its successors and assigns, as security for the Obligations (as defined below), the land described on **Exhibit A** attached hereto and incorporated by reference (the "Land") including all improvements (the "Improvements") now existing or hereafter placed on the Land;

TOGETHER, with all rights, privileges, interests, easements, tenements, hereditaments and appurtenances thereto belonging, including without limitation all right, title and interest of Mortgagor in and to water, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located therein, and the rents, issues and profits thereof, and any and all improvements and fixtures now or subsequently attached to or used in connection therewith (collectively, together with the Land, the Improvements, and the Additional Property (as hereafter defined), the "Mortgaged Property").

TO HAVE AND TO HOLD, all and singular the Mortgaged Property, unto the Mortgagee, its successors and assigns forever.

PROVIDED, ALWAYS, that if the Mortgagor shall pay unto the Mortgagee the said Obligations (including any future advances); AND if the Mortgagor shall duly, promptly and fully perform, discharge, execute, effect, complete and comply with and abide by each and every of the stipulations, agreements, conditions and covenants therein and in this Mortgage, then this Mortgage and all assignments contained herein shall cease and be null and void; otherwise to remain in full force and effect.

000659

THIS MORTGAGE secures (a) the obligations of Mortgagor to Mortgagee under the Debt *EN PARI PASSU*; (b) any and all advances or expenditures made by Mortgagee pursuant to the terms of this Mortgage; (c) attorneys' fees, court costs, and other amounts which may be due under the Debt, or this Mortgage; (d) any and all future advances pursuant to S.C. Code Ann. § 29-3-50 (as set forth more fully below); and (e) any and all extensions, renewals, and modifications of any of the foregoing (all of (a) through (e) being hereinafter referred to as "Obligations").

THIS MORTGAGE shall secure not only existing indebtedness but all future advances (in accordance with S.C. Code Ann. § 29-3-50, as amended), readvances, and additional indebtedness hereafter arising or incurred of Mortgagor to Mortgagee, and any notes evidencing the same, whether such advances or indebtedness is obligatory or to be made at the option of the Mortgagee, or otherwise, to the same extent as if such future advance or indebtedness was made on the date of the execution of this Mortgage. All indebtedness incurred after the date hereof by Mortgagor in favor of Mortgagee shall be deemed to be a future advance and entitled to the protection of this provision.

AND the Mortgagor does hereby expressly covenant and agree as follows:

1. **Assignment of Rents and Profits.** As further security for the payment of the Obligations and for the faithful performance of all the covenants, agreements, terms and provisions of this Mortgage, Mortgagor hereby sells, mortgages, transfers and assigns unto Mortgagee and grants Mortgagee a security interest in all the right, title and interest of the Mortgagor in and to the rents, issues, profits, revenues, royalties, rights and benefits from the above described property, and to that end Mortgagor hereby assigns and sets over unto the said Mortgagee all leases and licenses of said premises now made, executed or delivered, whether written or verbal, or to be hereafter made, be the same written or verbal, and Mortgagor does hereby authorize and empower the Mortgagee to collect said rents, issues, profits, revenues, royalties, rights and benefits, as they shall become due, and does hereby direct each and all of the tenants of the aforesaid premises to pay such rents, as they may now be due or shall hereafter become due to the said Mortgagee, upon demand for payment thereof by said Mortgagee; it being understood and agreed, however, that no such demand shall be made unless and until there has occurred an Event of Default hereunder; and until such demand is made, Mortgagor is authorized to collect or continue collecting said rents, issues, profits, revenues, royalties, rights and benefits; but that such privilege to collect or continue collecting, as aforesaid, by the Mortgagor shall not operate to permit the collection of any rents more than thirty (30) days in advance of the date same are due under the terms and provisions of said lease or leases.
2. **After Acquired Property.** The Lien of this Mortgage shall automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with or with the operation of the Mortgaged Property or any part thereof, and shall likewise automatically attach to any and all subsequent or additional interests Mortgagor may hereafter acquire in the Mortgaged Property.
3. **Payment of Obligations.** Mortgagor covenants and agrees to pay the Obligations in accordance with their terms promptly as the principal and interest thereon shall become due.

000660

4. **Application of Payments.** All payments received shall be divided between each of the Mortgagees in proportion to their individual share of the Debt. Upon receipt by either of the individual Mortgagees, the proceeds shall first be applied to the payment of accrued and unpaid interest, then to the payment of outstanding principal, and then to any other indebtedness under the Debt.
5. **Maintenance of Property.** Mortgagor shall maintain the Mortgaged Property in good condition and repair and shall neither permit nor allow waste thereof. Mortgagor shall promptly repair or restore any portion of the Mortgaged Property which is damaged or destroyed by any cause whatsoever and shall promptly pay when due all costs and expenses of such repair or restoration. Mortgagor shall not remove, demolish, or materially alter any improvement or fixture which is now or hereafter part of the Mortgaged Property and shall cut no timber on the on the Mortgaged Property without the express written consent of Mortgagee. Mortgagee shall be entitled to specific performance of the provisions of this paragraph.
6. **Insurance.** Mortgagor shall maintain with respect to all buildings, improvements, fixtures, and tangible personal property which are now or hereafter part of the Mortgaged Property, fire and extended coverage insurance, including windstorm and hail, and earthquake insurance, and such other hazard insurance as Lender may require. If any portion of the Mortgaged Property is located in a federally designated flood plain, Mortgagor shall also obtain a flood insurance policy in the maximum amount available under the National Flood Insurance Act of 1968, but not to exceed the replacement value of all buildings and improvements located on the Mortgaged Property that are located in a federally designated flood plain. All such insurance shall be payable to Mortgagee as the interest of Mortgagee may appear pursuant to the New York standard form of mortgagee clause or such other form of mortgagee clause as may be required by the Mortgagee and shall not be cancelable by either the insurer or the insured without at least thirty (30) days prior written notice to the Mortgagee. Mortgagor shall keep the Mortgaged Property continuously insured as herein required and shall deliver to Mortgagee a copy of each policy of insurance required hereby together with a current certificate of insurance. Mortgagor shall pay each premium coming due on any such policy of insurance and will deliver to Mortgagee proof of such payment at least ten (10) days prior to the date such premium would become overdue or delinquent. Upon the expiration or termination of any such policy of insurance, Mortgagor shall furnish to Mortgagee at least ten (10) days prior to such expiration or termination a copy of a renewal or replacement policy of insurance meeting the requirements hereof together with a current certificate of insurance. If Mortgagor fails to insure the Mortgaged Property as herein required, Mortgagee may so insure the Mortgaged Property in the name of Mortgagor or in the name of Mortgagee or both, and the premiums for any such insurance obtained by Mortgagee shall be the obligation of Mortgagor and shall be secured by this Mortgage. Upon foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any policy of insurance upon the Mortgaged Property which is in the custody of Mortgagee, including the right to unearned premiums, shall vest in the purchaser of the Mortgaged Property at foreclosure, and Mortgagor hereby appoints Mortgagee as the attorney in fact of Mortgagor to assign all right, title and interest of Mortgagor in and to any such policy of insurance to such purchaser. This appointment is coupled with an interest and shall be irrevocable.

000661

7. **Proceeds of Insurance.** Mortgagor hereby assigns to Mortgagee the right to collect and receive any indemnity payment otherwise owed Mortgagor upon any policy of insurance insuring any portion of the Mortgaged Property, regardless of whether Mortgagee is named in such policy as a person entitled to collect upon the same. So long as there has occurred no Event of Default hereunder, or any event which but for the lapse of time or the giving of notice would constitute an Event of Default, any indemnity payment received by Mortgagee from any such policy of insurance shall be applied in a manner reasonably determined by Mortgagee to the replacement, repair or restoration of the portion of the Mortgaged Property damaged or destroyed. Notwithstanding the foregoing, if at the time of payment of the insurance proceeds there has occurred an Event of Default which has not been cured or remedied as permitted hereunder, or if in the reasonable determination of Mortgagee the insurance proceeds, together with funds made available by Mortgagor for such purpose, are insufficient to replace, repair, or restore the Mortgaged Property, then Mortgagor may apply such proceeds to payment of any sum secured by this Mortgage in such order as Mortgagee may determine. No portion of any indemnity payment which is applied to replacement, repair or restoration of any portion of the Mortgaged Property or which may be released to Mortgagor shall be deemed a payment against any sums secured by this Mortgage.
8. **Taxes.** Mortgagor shall pay all taxes, assessments and other charges which constitute or are secured by a lien upon the Mortgaged Property which is superior to the lien of this Mortgage and shall deliver to Mortgagee proof of payment of the same not less than ten (10) days prior to the date the same becomes delinquent; provided, however, that Mortgagor shall be entitled by appropriate proceedings to contest the amount or validity of such tax, assessment or charge so long as the collection of the same by foreclosure of the lien upon the Mortgaged Property is stayed during the pendency of such proceedings and Mortgagor deposits with the authority to which such tax, assessment or charge is payable or with the Mortgagee appropriate security for payment of the same, together with any applicable interest and penalties, should the same be determined due and owing. Mortgagor shall not claim, demand or be entitled to receive any credit or credits on the principal or interest payable under the terms of the Note or on any other Obligations secured hereby, for so much of the taxes, assessments or similar impositions assessed against the Mortgaged Property or any part thereof as are applicable to the indebtedness secured hereby or to Mortgagee's interest in the Mortgaged Property. No deduction shall be claimed from the taxable value of the Mortgaged Property or any part thereof by reason of the Note, this Mortgage or any other instrument securing the Note.
9. **Advances by Mortgagee; Reimbursement.** If Mortgagor fails to make payment for restoration or repair of the Mortgaged Property, for insurance premiums or for taxes, assessments or other charges as required in this Mortgage, Mortgagee may, but shall not be obligated to, pay for the same, and any such payment by Mortgagee will be secured by this Mortgage and have the same rank and priority as the principal debt secured hereby and bear interest from the date of payment at the rate provided in the Note. Payments made for taxes by Mortgagee shall be a first lien on the Mortgaged Property to the extent of the taxes so paid with interest from the date of payment, regardless of rank or priority of this Mortgage. Mortgagor shall pay to Mortgagee in cash on demand an amount equal to any payment made by Mortgagee pursuant to this paragraph plus interest thereon as herein provided.

10. **Extending Time for Payment.** Mortgagee, without notice, and as often as it wishes to, may agree with any party obligated on the Obligations (or any of them), or having an interest in the Mortgaged Property, to renew or extend the time for payment of any part or all of the indebtedness secured hereby, without in any way affecting either the lien hereof or the liability of any other party.
11. **Events of Default.** The term "Event of Default," wherever used in this Mortgage, shall mean any one or more of the following events:
 - 11.1. The sale, conveyance, transfer, mortgage, lease or encumbrance of all or any portion of the Mortgaged Property.
 - 11.2. Failure by the Mortgagor to duly observe any other covenant, condition or agreement of the Obligations, or of this Mortgage, and the continuation of such failure for a period of thirty (30) days after written notice thereof is provided by Mortgagee to Mortgagor.
 - 11.3. Default in the terms or conditions of any other mortgage which is a lien upon the Mortgaged Property, and the continuation of such default beyond any applicable grace period.
 - 11.4. The discovery of any material amount of Hazardous Substance (as hereinafter defined) on the Mortgaged Property, which Mortgagee reasonably determines has a material, adverse effect on the value of the Mortgaged Property; provided, however, that the foregoing shall not be deemed to include petroleum products and related substances properly stored and used in the ordinary course of business operations on the Mortgaged Property, and shall further not be deemed to include minor spills of petroleum and related products having no material, adverse impact on the value of the Mortgaged Property.
 - 11.5. The damage or destruction of a material portion of the Improvements, which damage or destruction is not promptly repaired or is not fully covered by insurance.
 - 11.6. Mortgagor suffers or permits any lien, encumbrance, or security interest to arise or attach to the Mortgaged Property that is not promptly removed or satisfied, or any judgment is entered against Mortgagor that is not satisfied or appealed and stayed within thirty days.
 - 11.7. Any lien for labor, material, taxes or otherwise shall be filed against the Mortgaged Property or any part thereof, which lien or liens shall not be discharged or released within thirty (30) days after the filing of such lien, whether by payment in satisfaction of such lien or securing such lien by surety bond.
12. **Consequences of Default.** If an Event of Default shall occur:
 - 12.1. All of the indebtedness secured hereby shall become and be immediately due and payable at the option of the Mortgagee, without notice or demand, which are hereby expressly waived, and the Mortgagee may proceed to foreclose this Mortgage and sell the Mortgaged Property or otherwise pursue any right or remedy herein or by law provided.

000663

At the foreclosure, Mortgagee shall be entitled to bid and purchase the Mortgaged Property and shall be entitled to apply the debt secured hereby, or any portion thereof, in payment for the Mortgaged Property.

- 12.2. Irrespective of whether Mortgagee accelerates the maturity of all indebtedness secured hereby, or institutes foreclosure proceedings, Mortgagee shall be entitled to the appointment of a receiver to enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management or maintenance of the Mortgaged Property, all on such terms as are deemed appropriate to protect the security of this Mortgage. The receiver shall be entitled to a reasonable fee for so managing the Mortgaged Property. All rents collected pursuant to this paragraph shall be applied first to the costs of taking control and managing the Mortgaged Property and collecting the rents, including but not limited to reasonable attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of repair to the Mortgaged Property, premiums on insurance policies, taxes, assessments and other charges on the Mortgaged Property, and the costs of discharging any liability or obligation of Mortgagor as lessor or Landlord of the Mortgaged Property and then to the sums secured by this Mortgage. Mortgagee and the receiver shall have access to the books and records used in the operation and maintenance of the Mortgaged Property and shall be liable to account only for those rents actually received. Mortgagee shall not be liable to Mortgagor, anyone claiming under or through Mortgagor, or anyone having an interest in the Mortgaged Property by reason of anything done or left undone by Mortgagee under this paragraph. If the rents of the Mortgaged Property are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the rents, Mortgagee may at its sole option advance funds to meet the costs. Any funds expended by Mortgagee for such purposes shall become indebtedness of Mortgagor to Mortgagee secured by this Mortgage. Such funds shall be payable on demand by Mortgagee and shall bear interest at the rate provided in the Note. The entering upon and taking and maintaining of control of the Mortgaged Property by the Mortgagee or the receiver and the application of the rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Mortgagee hereunder.
13. **Marshalling of Assets.** The Mortgagee shall not be required to marshal any present or future security for (including but not limited to this Mortgage and the Mortgaged Property), or guaranties of, the Obligations or any of them, or to resort to such security or guaranties in any particular order; and all of the rights hereunder and in respect of such security and guaranties shall be cumulative and in addition to all other rights, however existing or arising. To the extent that it lawfully may, the Mortgagor hereby agrees that it will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of the Mortgagee's rights under this Mortgage or under any other instrument evidencing any of the Obligations or under which any of the Obligations is secured or guaranteed, and to the extent that it lawfully may the Mortgagor hereby irrevocably waives the benefits of all such laws.

000664

14. **Costs and Expenses.** All reasonable costs and expenses (including attorneys' fees) incurred or paid by the Mortgagee in connection with enforcement of the Obligations or the exercise by the Mortgagee of any of its rights or remedies hereunder, or in retaking, holding, preparing for sale and selling or otherwise realizing upon any of the Mortgaged Property, including, without limitation, the reasonable attorneys' fees and expenses of any attorney to whom this matter is referred (whether or not litigation is commenced), or for representation in proceedings under any bankruptcy or insolvency law, or in case the Mortgagor has become a party either as plaintiff or as defendant in any suit or legal proceeding in relation to the Mortgaged Property or the lien created herein, shall be repaid by the Mortgagor to the Mortgagee upon demand, with interest at the rate provided in the Note. In the event said expenses are not paid by the Mortgagor to the Mortgagee, they shall become part of the Obligations and shall be secured hereby.
15. **Interest.** It is agreed that nothing herein contained nor any transaction related thereto shall be construed or so operate as to require the Mortgagor to pay interest at a rate greater than is now lawful in such case to contract for, or to make any payment or to do any act contrary to laws, that if any clauses or provisions herein contained operate or would prospectively operate to invalidate this Mortgage or the Note in whole or in part, then such clauses and provisions only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect.
16. **Eminent Domain.** The Mortgagee shall be entitled to receive and recover the entire award made in any eminent domain proceedings to the extent that the same does not exceed the amount necessary to pay in full all sums secured by the lien of this Mortgage.
17. **Transfer of Property.** Mortgagor shall not sell, convey, transfer, mortgage, lease or further encumber, nor suffer or permit the sale, conveyance, transfer, mortgage, lease or encumbrance, whether voluntarily or by operation of law, of any interest in or any part of the Mortgaged Property, the rents and profits therefrom, or the Additional Property, without the prior written consent of Mortgagee. If any person or entity should obtain any interest in all or any part of the Mortgaged Property pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event shall unless otherwise provided herein be deemed to be a transfer by Mortgagor. Mortgagor shall not, without the prior written consent of the Mortgagee, further assign the rents from the Mortgaged Property nor enter into any agreement or do any act to amend, modify, extend, terminate or cancel, accept the surrender, subordinate, accelerate the payment of rent, or change the terms of any renewal option of any lease now or hereafter covering such property or any part thereof which would in each instance or in the aggregate materially affect the collateral or the operation of the Mortgage or the Mortgaged Property or the ability of the Mortgagor to repay the Debt. Notwithstanding any provision contained in this Mortgage to the Contrary, it is anticipated by the parties that the Debt shall be paid by the refinancing of the existing first mortgage encumbering the Mortgaged Property.
18. **Further Assurances.** The Mortgagor shall, at its sole expense, do, make, execute and deliver all such additional and further acts, things, deeds, assurances and instruments, in each case in form and substance, satisfactory to the Mortgagee, relating to the creation, validity, or

perfection of the mortgage lien and security interests provided for in this Agreement under the Uniform Commercial Code or other laws of the State of South Carolina or of any other state or states in which Mortgagor is doing business or in which any of the Mortgaged Property is located as the Mortgagee may from time to time reasonably request, and shall take all such other action as the Mortgagee may reasonably require more completely to vest in any and assure to the Mortgagee its rights hereunder or in any of the Mortgaged Property, including without limitation execution and delivery of financing statements which the Mortgagee deems appropriate to perfect and continue the security interest hereby granted; and the Mortgagor hereby irrevocably authorizes the Mortgagee, or its designee, at the Mortgagor's sole expense, to execute and file such financing statements, with or without the Mortgagor's signature, as the Mortgagee may deem appropriate. In the event that any recording or refile (or the filing of any statement of continuation of any mortgage lien or financing statement) or any replodge, or any other action, is required at any time to protect and preserve such security interests, the Mortgagor shall, at its sole expense, cause the same to be done or taken at such time and in such manner as may be necessary and as may be reasonably requested by the Mortgagee.

19. **Inspections; Easement.** Mortgagor hereby agrees that Mortgagee shall have the right, at any time during the term of this Mortgage, to conduct an environmental investigation of the Mortgaged Property, either itself or by or through designated agents and may exercise such rights from time to time, and in furtherance of such rights, Mortgagor hereby grants to Mortgagee, its successors and assigns, a non-exclusive limited easement over and across the Mortgaged Property, and its subsurface, for access to the Mortgaged Property and for the purpose of conducting an environmental investigation of such Mortgaged Property, provided that any such investigation shall be conducted in such a manner as to not disrupt the Mortgagor's operations on the Mortgaged Property. The satisfaction of, or the release of a portion of the Mortgaged Property, shall evidence a termination of the easement granted herein in full, or as to the Mortgaged Property released, as the case may be. This easement is irrevocable so long as this Mortgage is outstanding.
20. **Additional Assessments.** The Mortgagor shall pay when due the cost of providing to Mortgagee, at Mortgagee's request from time to time, a then-current environmental site assessment, audit, or survey ("Assessment") of the Mortgaged Property which Assessment shall be prepared by an environmental auditor acceptable to Mortgagee, in Mortgagee's sole discretion; provided, however, that Mortgagee shall make such request no more frequently than once every third year unless the loan evidenced by the Note is being renewed, extended, modified, or accelerated, or unless Mortgagee is required by any law, regulation, order, or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such Assessment more frequently than once a year.
21. **Governing Law.** This instrument is to be governed by and construed in accordance with the laws of the State of South Carolina and each of the remedies provided for herein shall be cumulative so that the right of the Mortgagee to exercise one or more of such remedies shall not be construed to limit or preclude the right of the Mortgagee to exercise any other remedy or remedies set forth herein.

000666

22. **No Waiver.** No delay by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.
23. **Miscellaneous.** The covenants herein contained shall bind, and the benefits and advantages shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.
24. **Benefits to Mortgagor.** The undersigned Mortgagor represents to Mortgagee that the Mortgagor is benefitted by the loans evidenced by the Note, whether or not the Mortgagor is the obligor thereon, and that adequate and sufficient consideration has been given to Mortgagor for its execution and delivery of this Mortgage.
25. **No Derogation.** The grant of a security interest to Mortgagee in the granting clauses of this Mortgage shall not be construed to derogate from or impair the lien or provisions of or the rights of Mortgagee under this Mortgage with respect to any property described therein which is real property or which the parties have agreed to treat as real property. The hereby stated intention of the Mortgagor and Mortgagee is that everything used in connection with the production of income from such real property or adapted for use thereon is, and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property, irrespective of whether or not the same is physically attached to the land or the improvements thereon. If required by Mortgagee, at any time during the term of this Mortgage, Mortgagor will execute and deliver to Mortgagee, in form satisfactory to Mortgagee, additional security agreements, financing statements and/or other instruments covering all personal property or fixtures of Mortgagor which may at any time be furnished, placed on, or annexed or made appurtenant to the real property or used, useful or held for use, in the operation of the Improvements.
26. **Notices.** Whenever this Mortgage requires or permits any notice, request or demand by one party to the other, the notice, request or demand must be in writing and shall be deemed to have been given if it is enclosed in an envelope addressed to the party to be notified at the address stated below (or such other address as may have been designated by written notice) properly stamped, sealed, and deposited in the United States mail as certified or registered mail, return receipt requested. The address of each party for the purposes of this Section are as follows: If to the Mortgagor:

Attn: _____

If to the Mortgagee:

Attn: _____

000667

27. **Mortgagor Information.** The Mortgagor shall maintain full and correct books and records showing in detail the earnings and expenses of the Mortgaged Property and shall permit or cause the Mortgagor to permit the Mortgagee and its representatives of examine said books and records and all supporting vouchers and data at any time and from time to time upon reasonable request by the Mortgagee.
28. **Satisfaction and Release of Assignment of Rents.** The release of all or any part of the Mortgaged Property from the lien of this Mortgage shall be deemed a release of such property from the lien of the Assignment of Leases, Rents, and Profits and Security Agreement of even date herewith executed by the Mortgagor in favor of the Mortgagee.
29. **Severability.** If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then, Mortgagee may, at its option, declare the indebtedness and all other sums secured hereby immediately due and payable.
30. **Instrument Under Seal.** This Mortgage is intended to be and shall be construed as an instrument under seal.
31. **WAIVER OF STAY.** IN THE EVENT OF THE COMMENCEMENT OF BANKRUPTCY PROCEEDINGS BY OR AGAINST THE MORTGAGOR, TO THE EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY WAIVES THE BENEFIT OF THE AUTOMATIC STAY PROVIDED FOR BY 11 U.S.C. § 362 AND/OR ANY STAY, INJUNCTION, OR RESTRAINING ORDER ISSUED PURSUANT TO 11 U.S.C. § 105 OR OTHERWISE. TO THAT END, MORTGAGOR AGREES THAT IT WILL NOT SEEK OR ASSERT ANY SUCH STAY, INJUNCTION, OR RESTRAINING ORDER AND MORTGAGOR HEREBY IRREVOCABLY CONSENTS TO AND AGREES NOT TO OPPOSE THE MODIFICATION OF ANY SUCH STAY TO ALLOW FOR THE ENFORCEMENT BY MORTGAGEE OF THIS MORTGAGE AND THE FORECLOSURE OR OTHER REALIZATION UPON THE COLLATERAL PROVIDED FOR HEREIN.
32. **WAIVER OF JURY TRIAL.** MORTGAGOR, ANY OTHER OBLIGORS, AND THE MORTGAGEE EACH WAIVE TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING ON OR ARISING OUT OF THIS NOTE, THE OBLIGATIONS, THE CONDUCT OF THE RELATIONSHIP BETWEEN MORTGAGEE AND MORTGAGOR, AND/OR THE CONDUCT OF THE RELATIONSHIP BETWEEN MORTGAGEE AND ANY OBLIGORS. ANY LITIGATION ARISING HEREUNDER OR RELATED HERETO MAY BE TRIED BY THE SOUTH CAROLINA COURTS FOR BERKELEY COUNTY OR THE FEDERAL COURTS OF SOUTH CAROLINA, MORTGAGOR HEREBY CONSENTS TO THE JURISDICTION OF SUCH COURTS.

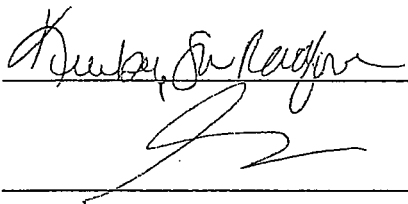
[The Remainder of This Page Left Blank Intentionally]

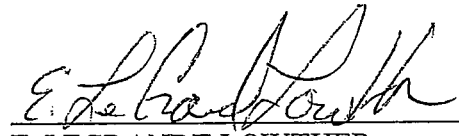
000668

33. **WAIVER OF APPRAISAL RIGHTS.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

IN WITNESS WHEREOF, the Mortgagor has hereunto set its Hand and Seal as of the date first written above.

WITNESSES:



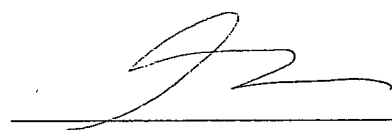


E. LEGRANDE LOWTHER

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

I, the undersigned Notary Public, do hereby certify that E. Legrande Lowther personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my official seal this the 28 day of December, 2005.


_____(SEAL)
Notary Public for South Carolina
My Commission Expires: 1-29-12

000669

Exhibit A

ALL that certain piece, parcel or tract of land, situate, lying and being in Jasper County, South Carolina, containing (226.35) acres, more or less, known as Wellington Plantation and being bounded and described as follows: On the North by Wellington road, a dedicated Jasper County road; on the East by lands now or formerly of Pittman; on the South by lands now or formerly of Westvaco; and on the West by lands now or formerly of Westvaco and lands now or formerly of South Carolina Electric and Gas Co.. For a more particular description of metes, bounds, courses and distances, reference is made to that certain boundary survey prepared by Richard Kesselring, RLS for E Legrand Lowther and C. E. Lowther dated February 20, 1997, and recorded in the Office of the Clerk of Court for Jasper County South Carolina Book 22 at Page 293. The metes, bounds and distances appearing on the aforementioned plat are incorporated herein by reference.

LESS AND EXCEPT (3.84) acres thereof conveyed by C. E. Lowther to Mitchell S Lowther and Carmon B Lowther by deed recorded in the Office of the Clerk of Court for Jasper County, South Carolina in Deed Book 156 at Page 157 and more particularly described as Lot No (34) on that certain preliminary subdivision plat prepared by Connor & Associates, Inc., a copy of which is attached to said Deed and made a part of Deed Book 156 at Page 157.

ALSO LESS AND EXCEPT, any out conveyances as recorded in the Office of the Clerk of Court for Jasper County, South Carolina prior to the date of this deed.

This being the same property conveyed as 50% undivided interest to E Legrand Lowther, 25% undivided interest to Mitchell S Lowther and 25% undivided interest to C E Lowther by Deed of Albert L Kleckley recorded on September 18, 2003 in Book 282 at Page 154 in the Office of the Clerk of Court for Jasper County, South Carolina.

TMP 069-00-07-003

000670

09/30/08

ESCROW

Customer Balance Detail

All Transactions

Type	Date	Num	Source Name	Amount
EchoTango				
Payment	7/1/2006	Kolberg	EchoTango	-92,135.06
Check	7/6/2006	3686	Beaufort County Register of Deeds	417.00
Check	7/6/2006	3677	RIVER TITLE	1,725.00
Check	7/6/2006	3687	Beaufort County Register of Deeds	13.00
Check	7/6/2006	3688	MOSS, KUHN & FLEMING	500.00
Check	7/6/2006	3689	LYNN DAVIDSON	200.00
Check	5/4/2007	3909	Mitchell Lowther	0.00
Check	5/7/2007	3910	Carmon Lowther	20,000.00
Check	5/10/2007	3911	C E Lowther & Son	20,000.00
Check	5/30/2007	3943	SC Bank & Trust	10,000.00
Check	5/30/2007	3944	Collins Construction	39,280.06
Check	1/17/2008	4119	Eversole Law Firm	1,000.00
Payment	1/17/2008	Malphrus	EchoTango	-1,000.00
Check	1/17/2008	4120	E Legrand Lowther	350,000.00
Payment	1/17/2008	Eversole	EchoTango	-698,046.65
Payment	1/17/2008	Eversole	EchoTango	-750.00
Check	1/17/2008	4121	MOSS, KUHN & FLEMING	550.00
Check	1/17/2008	4122	LYNN DAVIDSON	200.00
Check	1/18/2008	4123	Sandra Turpin	6,000.00
Check	3/14/2008	4186	Vivian Gene L Tillotson	15,000.00
Check	3/14/2008	4187	Rita Elizabeth L Rogers	15,000.00
Check	3/14/2008	4188	Mark Allen Lowther	15,000.00
Check	3/14/2008	4189	Effie Sandra L Turpin	15,000.00
Check	3/14/2008	4190	Clayton Clark Lowther	15,000.00
Check	3/14/2008	4191	C E Lowther, Jr.	15,000.00
Check	3/14/2008	4192	Mitchell Saxon Lowther	15,000.00
Check	5/22/2008	4214	E Legrand Lowther	76,120.00
Check	5/29/2008	4223	AGSOUTH FARM CREDIT	3,327.57
Check	8/8/2008	4229	Collins Construction	8,644.94
Check	9/25/2008	4236	Carolina Engineering Consultants	3,226.40
Check	9/25/2008	4237	E Legrand Lowther	3,500.00
Check	9/25/2008	4238	E Legrand Lowther	4,013.50
Check	9/25/2008	4239	E Legrand Lowther	0.00
Check	9/25/2008	4240	E Legrand Lowther	0.00
Check	9/25/2008	4241	E Legrand Lowther	2,946.50
Check	9/25/2008	4242	AGSOUTH FARM CREDIT	0.00
Check	9/25/2008	4243	AGSOUTH FARM CREDIT	3,327.57
Total EchoTango				-131,940.17
TOTAL				-131,940.17

000671

STATE OF SOUTH CAROLINA NOTE

\$252,000.00
AMOUNT

Beaufort, South Carolina
Due Date: **December 31, 2006**
Note Date: December 20, 2005

FOR VALUE RECEIVED, the undersigned ("Borrower") promise(s) to pay in lawful money of the United States of America in the principal sum of Two Hundred Fifty Two Thousand and No/100 Dollars to **Clayton Clark Lowther** ("Note holder"):

This sum shall draw no interest. Principal shall be payable at the residence of the Note holder or such other place as the Note holder may designate. Borrower may prepay the principal in such amounts as in Borrower's discretion Borrower can afford, except that any remaining indebtedness, if not sooner paid, **shall be due and payable in full on December 31, 2006.**

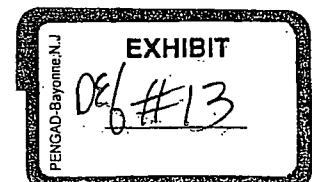
If this Note is not paid when due, the entire principal amount outstanding shall at once become due and payable at the option of the Note holder. If suit is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and expenses of suit, including but not limited to, reasonable attorney's fees.

Borrower may prepay the principal amount outstanding in full or in part without penalty. Prepayment in full may be made at any time. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date, unless the Note holder shall otherwise agree in writing. Borrower is giving Notes of even date to siblings of Note holder, and the amount owed to each Note holder shall be treated as a separate and distinct obligation and any one Note holder shall not be able to bind any other Note holder.

Presentment, notice of dishonor, and protest are hereby waived by Borrower. This Note shall be binding upon Borrower, his heirs, successors and assigns, as well as upon Note holder, his heirs, successors and assigns. This Note is not assignable without the written consent of all parties.

Any material failure by Borrower to perform any obligation under this Note to Note holder shall constitute a default. Additionally, Borrower shall be in default if Borrower should fail to pay the Note in full on or before the due date, should Borrower die or be declared incompetent, should Borrower declare bankruptcy or be declared insolvent.. Unless Borrower has paid this Note in full, Borrower will also be in default on this Note should Borrower default on any of the Notes of even date to the siblings of Note holder.

 _____



Borrower shall execute a General Warranty Deed conveying an undivided one-seventh of a 25% interest to Note holder in the Wellington Plantation property, a copy of which is provided with this Note. The original of this Deed shall be held in escrow by the closing attorney and shall be voided if Borrower shall pay in full the amount due the Note holder. In the event that Borrower should be in default or should fail to pay the Note holder in full when due, then said Note holder agrees to accept as his sole remedy, in lieu of foreclosure, the property conveyed to him pursuant to said Deed and said Deed shall then be delivered and recorded. In that event, said Note holder agrees to manage, develop, market, encumber, or sell said property in accordance with the majority vote of the joint owners thereof, with votes weighted according to ownership interest (e.g., a 10% owner casts 10 votes). Furthermore, in the event that Borrower should fail to pay the Note holder in full when due, then the Note holder shall additionally be entitled to receive a "share" of the "net proceeds" from the sale of any lot in the Echo Tango subdivision being developed by Borrower. "Net proceeds" are those proceeds received by Borrower from the sale of a lot or lots after Borrower has been reimbursed for all development expenses for the subdivision, including but not limited to taxes, maintenance, the cost of the sewer, the cost of litigating the sewer issue, attorneys fees, and marketing expenses. The Note holder's "share" shall be a pro rata share equal to one-seventh of a fifty (50%) percent share, or 7.14%.

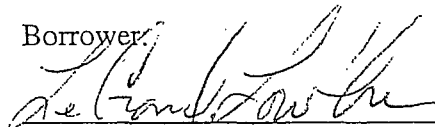
Any notice to Borrower provided for in this Note shall be given by mailing such notice by certified mail addressed to Borrower at his residence, or to such other address as Borrower may designate by notice to the Note holder. Any notice to the Note holder shall be given by mailing such notice by certified mail, return receipt requested, to the Note holder at his residence, or at such other address as may have been designated by notice to Borrower.

Borrower shall not increase the indebtedness or obligation owed under the first Mortgage on the property which secures the payment of this Note and that Mortgage shall be kept current. Borrower shall take no action which impairs the rights of the Note holders.

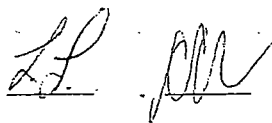
The indebtedness evidenced by this Note is secured by a Mortgage, dated December _____, 2005, and reference is made to the Mortgage for other obligations of the Borrower.

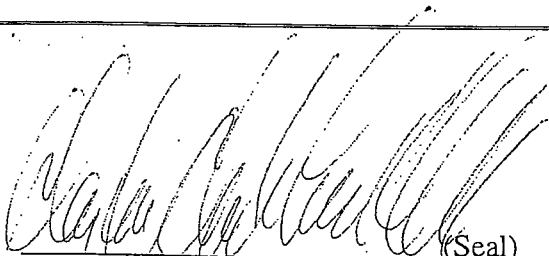
Signed, sealed and delivered this 20th day of December, 2005.

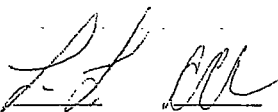
Borrower:

 (Seal)
Legrand Lowther

Note Holders:




(Seal)
Clayton Clark Lowther



STATE OF SOUTH CAROLINA) REAL ESTATE PURCHASE
) AND SALE CONTRACT
COUNTY OF JASPER)

This Purchase and Sale Agreement is entered into on the date hereinafter set forth between E. Legrand Lowther, (hereinafter "Purchaser") and Clayton Clark Lowther, (hereinafter "Seller").

PREMISES DESCRIPTION. Purchaser agrees to purchase, and Seller agrees to sell, the real property, with all improvements thereon if any, situated in Jasper County, County, State of South Carolina, and described as follows:

All of the Seller's right, title and interest in and to that 230, more or less, acre parcel of land which is the balance of land referenced in that Deed from Mary B. Wilcox in Deed Book 75 at page 2004 (sometimes called the Wellington Road property): and also

All of the Seller's right, title and interest in and to that 40.79, more or less, acre parcel of land on Bees Creek Road known as Tax ID# 063-39-04-010,

PURCHASE PRICE. The purchase price is \$325,000.00 payable as follows:

A) \$500.00 as an earnest money shall be paid upon the written acceptance of this Contract and applied toward the purchase price at closing.

B) \$74,500.00 shall be paid at closing or on December 5, 2005, whichever occurs first.

C) \$250,000.00, representing the Balance Due, shall be paid no later than December 31, 2006

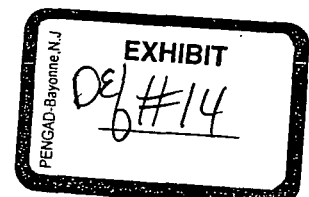
The aforesaid Balance Due shall be secured by Purchaser's personal guarantee and a first mortgage recorded security on the Wellington Road Property only.

EARNEST MONEY. The earnest money will be deposited the closing attorney within forty-eight (48) hours after the execution of this Agreement.

~~**CLOSING COSTS.** Purchaser and Seller shall each pay their own normal, customary and allowable settlement charges or closing costs.~~

~~**PRORATIONS.** Taxes, rents, homeowners association fees, and other assessments shall be prorated as of the date of the closing.~~

CONVEYANCE AND CONDITION OF TITLE. Seller agrees to convey a good fee simple marketable title to the premises by General Warranty Deed, with Deed Recording Fee paid, subject only to applicable zoning ordinances, covenants and restrictions of record, and utility easements. Title is good and marketable if insurable by an ALTA title insurance company licensed in South Carolina.



CLOSING. The transaction shall be closed on or before December 5, 2005, if title can be passed at that date from the Estate of C. E. Lowther to Seller, or within 14 days of title so passing if later, and possession of the premises will be given to Purchaser at that time. Time is of the essence; however, a party, for reasonable cause specifically set forth in a written notice delivered to the other prior to the scheduled closing date, may extend the closing for up to fourteen (14) days. Thereafter, the closing date can be extended only if both parties sign an Extension Agreement.

FIRE OR CASUALTY. If the premises is destroyed wholly or partially by fire or other casualty prior to closing, then Purchaser shall have the right to terminate this Contract and receive a refund of the earnest money deposit.

ASSIGNMENT. This Agreement may be assigned by Purchaser.

SELLER'S TITLE. It is acknowledged that Seller may not presently hold record title to the conveyed property, but will acquire record title as a beneficiary of the Estate of C. E. Lowther, either by Will or through intestacy as an heir-at-law, and Seller agrees to convey title upon receipt of the same as set forth above in the Closing paragraph.

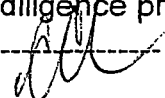
CONTINGENCY. Purchaser's obligation to perform is contingent upon all owners of the conveyed property entering into agreements to sell the subject property to Purchaser upon mutually agreeable terms so that Purchaser acquires a sole, undivided interest.

DEFAULT. Upon default by Purchaser, Seller shall have the option of suing for damages or specific performance, or of rescinding this Contract and retaining Seller's portion of the earnest money as liquidated damages. Upon default by Seller, Purchaser shall have the option of suing for damages or specific performance, or of rescinding this Contract and recovering from Seller all costs and obligations incurred in anticipation of closing, including, without limitation, the earnest money and the costs of the credit report, appraisal, survey, title examination and attorney's fees. The prevailing party in any litigation shall be entitled to recover from the other the costs of litigation, including a reasonable sum for attorney's fees.

QUIT CLAIM DEED. In consideration for the price paid herein, Seller, additionally agrees to release any right which Seller may have in that property and lots in the Echo Tango area of Beaufort County and will execute a Quit Claim deed to said property at closing.

~~**ASSUMPTION OF LIABILITIES.** Seller assumes all liabilities incurred for legal expenses and costs incurred in connection with past and threatened litigation over these properties and all development expenses.~~

ARM'S LENGTH TRANSACTION. Although Purchaser and Seller are related, and although Purchaser is a co-Personal Representative of the Estate of C.E. Lowther, the Seller acknowledges that this is an arm's length business transaction and Purchaser has made no promises, representations or statements, except those set forth herein in writing, upon which Seller is relying, and Seller has conducted Seller's own due diligence prior to entering into this Agreement.



MISCELLANEOUS. This contract shall be binding on both parties, their principals, heirs, personal representatives and assigns, and expresses the entire agreement between the parties, and there is no other agreement, oral or otherwise, modifying the terms hereunder. Negotiations may be conducted using a facsimile machine and will be considered binding on the parties. (A facsimiled offer shall be deemed delivered as of the moment it is transmitted.) If any portion of this Contract is not understood, the party should seek competent advice. Any altered terms must be initialed and dated.

SIGNATURES BELOW SIGNIFY ACCEPTANCE OF ALL TERMS AND CONDITIONS STATED HEREIN AS OF THE DATE STATED.

**SIGNED, SEALED AND DELIVERED THIS ____ DAY OF OCTOBER, 2005
IN THE PRESENCE OF:**

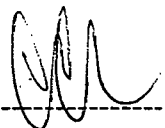
Witness to Purchaser

E. Legrand Lowther, Purchaser

Witness to Seller

Clayton Clark Lowther, Seller

Amendment: ALL closing costs &
Proportions to be paid by
Buyer.



STATE OF SOUTH CAROLINA) REAL ESTATE PURCHASE
COUNTY OF JASPER) AND SALE CONTRACT

This Purchase and Sale Agreement is entered into on the date hereinafter set forth between E. Legrand Lowther, (hereinafter "Purchaser") and Rita Elizabeth L. Rogers, (hereinafter "Seller").

PREMISES DESCRIPTION. Purchaser agrees to purchase, and Seller agrees to sell, the real property, with all improvements thereon if any, situated in Jasper County, State of South Carolina, and described as follows:

All of the Seller's right, title and interest in and to that 230, more or less, acre parcel of land which is the balance of land referenced in that Deed from Mary B. Wilcox in Deed Book 75 at page 2004 (sometimes called the Wellington Road property): and also

All of the Seller's right, title and interest in and to that 40.79, more or less, acre parcel of land on Bees Creek Road known as Tax ID# 063-39-04-010,

PURCHASE PRICE. The purchase price is \$325,000.00 payable as follows:

- A) \$500.00 as an earnest money shall be paid upon the written acceptance of this Contract and applied toward the purchase price at closing.
- B) \$74,500.00 shall be paid at closing or on December 5, 2005, whichever occurs first.
- C) \$250,000.00, representing the Balance Due, shall be paid no later than December 31, 2006.

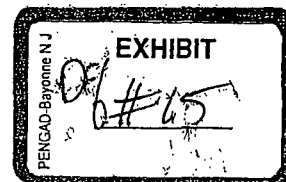
The aforesaid Balance Due shall be secured by Purchaser's personal guarantee and a first mortgage recorded security on Wellington Road Property only.

~~OK - Line ERROR~~
~~**EARNEST MONEY.** The earnest money will be deposited the closing attorney within forty-eight (48) hours after the execution of this Agreement.~~

~~**CLOSING COSTS.** Purchaser and Seller shall each pay their own normal, customary and allowable settlement charges or closing costs.~~

~~**PRORATIONS.** Taxes, rents, homeowners association fees, and other assessments shall be prorated as of the date of the closing.~~

CONVEYANCE AND CONDITION OF TITLE. Seller agrees to convey a good fee simple marketable title to the premises by General Warranty Deed, with Deed Recording Fee paid, subject only to applicable zoning ordinances, covenants and restrictions of record, and utility easements. Title is good and marketable if insurable by an ALTA title insurance company licensed in South Carolina.



CLOSING. The transaction shall be closed on or before December 5, 2005, if title can be passed at that date from the Estate of C. E. Lowther to Seller, or within 14 days of title so passing if later, and possession of the premises will be given to Purchaser at that time. Time is of the essence; however, a party, for reasonable cause specifically set forth in a written notice delivered to the other prior to the scheduled closing date, may extend the closing for up to fourteen (14) days. Thereafter, the closing date can be extended only if both parties sign an Extension Agreement.

FIRE OR CASUALTY. If the premises is destroyed wholly or partially by fire or other casualty prior to closing, then Purchaser shall have the right to terminate this Contract and receive a refund of the earnest money deposit.

ASSIGNMENT. This Agreement may be assigned by Purchaser.

SELLER'S TITLE. It is acknowledged that Seller may not presently hold record title to the conveyed property, but will acquire record title as a beneficiary of the Estate of C. E. Lowther, either by Will or through intestacy as an heir-at-law, and Seller agrees to convey title upon receipt of the same as set forth above in the Closing paragraph.

CONTINGENCY. Purchaser's obligation to perform is contingent upon all owners of the conveyed property entering into agreements to sell the subject property to Purchaser upon mutually agreeable terms so that Purchaser acquires a sole, undivided interest.

DEFAULT. Upon default by Purchaser, Seller shall have the option of suing for damages or specific performance, or of rescinding this Contract and retaining Seller's portion of the earnest money as liquidated damages. Upon default by Seller, Purchaser shall have the option of suing for damages or specific performance, or of rescinding this Contract and recovering from Seller all costs and obligations incurred in anticipation of closing, including, without limitation, the earnest money and the costs of the credit report, appraisal, survey, title examination and attorney's fees. The prevailing party in any litigation shall be entitled to recover from the other the costs of litigation, including a reasonable sum for attorney's fees.

QUIT CLAIM DEED. In consideration for the price paid herein, Seller, additionally agrees to release any right which Seller may have in that property and lots in the Echo Tango area of Beaufort County and will execute a Quit Claim deed to said property at closing.

ASSUMPTION OF LIABILITIES. Seller assumes all liabilities incurred for legal expenses and costs incurred in connection with past and threatened litigation over these properties and all development expenses.

ARM'S LENGTH TRANSACTION. Although Purchaser and Seller are related, and although Purchaser is a co-Personal Representative of the Estate of C.E. Lowther, the Seller acknowledges that this is an arm's length business transaction and Purchaser has made no promises, representations or statements, except those set forth herein in writing, upon which Seller is relying, and Seller has conducted Seller's own due diligence prior to entering into this Agreement.

MISCELLANEOUS. This contract shall be binding on both parties, their principals, heirs, personal representatives and assigns, and expresses the entire agreement between the parties, and there is no other agreement, oral or otherwise, modifying the terms hereunder. Negotiations may be conducted using a facsimile machine and will be considered binding on the parties. (A facsimiled offer shall be deemed delivered as of the moment it is transmitted.) If any portion of this Contract is not understood, the party should seek competent advice. Any altered terms must be initialed and dated.

SIGNATURES BELOW SIGNIFY ACCEPTANCE OF ALL TERMS AND CONDITIONS STATED HEREIN AS OF THE DATE STATED.

**SIGNED, SEALED AND DELIVERED THIS _____ DAY OF OCTOBER, 2005
IN THE PRESENCE OF:**

Witness to Purchaser

E. Legrand Lowther, Purchaser

Witness to Seller

Rita Elizabeth L. Rogers, Seller

*AMENDMENT: BUYER to pay ALL Closing
Costs + PROPORTIONS*

GR

000680

STATE OF SOUTH CAROLINA) REAL ESTATE PURCHASE
COUNTY OF JASPER) AND SALE CONTRACT
)

This Purchase and Sale Agreement is entered into on the date hereinafter set forth between E. Legrand Lowther, (hereinafter "Purchaser") and Vivian Gene L. Tillotson, (hereinafter "Seller").

PREMISES DESCRIPTION. Purchaser agrees to purchase, and Seller agrees to sell, the real property, with all improvements thereon if any, situated in Jasper County, State of South Carolina, and described as follows:

All of the Seller's right, title and interest in and to that 230, more or less, acre parcel of land which is the balance of land referenced in that Deed from Mary B. Wilcox in Deed Book 75 at page 2004 (sometimes called the Wellington Road property): and also

All of the Seller's right, title and interest in and to that 40.79, more or less, acre parcel of land on Bees Creek Road known as Tax ID# 063-39-04-010,

PURCHASE PRICE. The purchase price is \$325,000.00 payable as follows:

- A) \$500.00 as an earnest money shall be paid upon the written acceptance of this Contract and applied toward the purchase price at closing.
- B) \$74,500.00 shall be paid at closing or on December 5, 2005, whichever occurs first.
- C) \$250,000.00, representing the Balance Due, shall be paid no later than December 31, 2006

The aforesaid Balance Due shall be secured by Purchaser's personal guarantee and a first mortgage recorded security on the conveyed property.

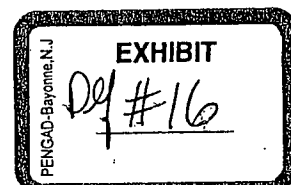
EARNEST MONEY. The earnest money will be deposited the closing attorney within forty-eight (48) hours after the execution of this Agreement.

~~**CLOSING COSTS.** Purchaser and Seller shall each pay their own normal, customary and allowable settlement charges or closing costs.~~ G.L.J.

~~**PRORATIONS.** Taxes, rents, homeowners association fees, and other assessments shall be prorated as of the date of the closing.~~ G.L.J.

CONVEYANCE AND CONDITION OF TITLE. Seller agrees to convey a good fee simple marketable title to the premises by General Warranty Deed, with Deed Recording Fee paid, subject only to applicable zoning ordinances, covenants and restrictions of record, and utility easements. Title is good and marketable if insurable by an ALTA title insurance company licensed in South Carolina.

G.L.J.



CLOSING. The transaction shall be closed on or before December 5, 2005, if title can be passed at that date from the Estate of C. E. Lowther to Seller, or within 14 days of title so passing if later, and possession of the premises will be given to Purchaser at that time. Time is of the essence; however, a party, for reasonable cause specifically set forth in a written notice delivered to the other prior to the scheduled closing date, may extend the closing for up to fourteen (14) days. Thereafter, the closing date can be extended only if both parties sign an Extension Agreement.

FIRE OR CASUALTY. If the premises is destroyed wholly or partially by fire or other casualty prior to closing, then Purchaser shall have the right to terminate this Contract and receive a refund of the earnest money deposit.

ASSIGNMENT. This Agreement may be assigned by Purchaser.

SELLER'S TITLE. It is acknowledged that Seller may not presently hold record title to the conveyed property, but will acquire record title as a beneficiary of the Estate of C. E. Lowther, either by Will or through intestacy as an heir-at-law, and Seller agrees to convey title upon receipt of the same as set forth above in the Closing paragraph.

CONTINGENCY. Purchaser's obligation to perform is contingent upon all owners of the conveyed property entering into agreements to sell the subject property to Purchaser upon mutually agreeable terms so that Purchaser acquires a sole, undivided interest.

DEFAULT. Upon default by Purchaser, Seller shall have the option of suing for damages or specific performance, or of rescinding this Contract and retaining Seller's portion of the earnest money as liquidated damages. Upon default by Seller, Purchaser shall have the option of suing for damages or specific performance, or of rescinding this Contract and recovering from Seller all costs and obligations incurred in anticipation of closing, including, without limitation, the earnest money and the costs of the credit report, appraisal, survey, title examination and attorney's fees. The prevailing party in any litigation shall be entitled to recover from the other the costs of litigation, including a reasonable sum for attorney's fees.

QUIT CLAIM DEED. In consideration for the price paid herein, Seller, additionally agrees to release any right which Seller may have in that property and lots in the Echo Tango area of Beaufort County and will execute a Quit Claim deed to said property at closing.

ASSUMPTION OF LIABILITIES. Seller assumes all liabilities incurred for legal expenses and costs incurred in connection with past and threatened litigation over these properties and all development expenses.

ARM'S LENGTH TRANSACTION. Although Purchaser and Seller are related, and although Purchaser is a co-Personal Representative of the Estate of C.E. Lowther, the Seller acknowledges that this is an arm's length business transaction and Purchaser has made no promises, representations or statements, except those set forth herein in writing, upon which Seller is relying, and Seller has conducted Seller's own due diligence prior to entering into this Agreement.

[Signature]

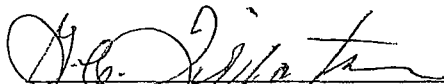
MISCELLANEOUS. This contract shall be binding on both parties, their principals, heirs, personal representatives and assigns, and expresses the entire agreement between the parties, and there is no other agreement, oral or otherwise, modifying the terms hereunder. Negotiations may be conducted using a facsimile machine and will be considered binding on the parties. (A facsimiled offer shall be deemed delivered as of the moment it is transmitted.) If any portion of this Contract is not understood, the party should seek competent advice. Any altered terms must be initialed and dated.

SIGNATURES BELOW SIGNIFY ACCEPTANCE OF ALL TERMS AND CONDITIONS STATED HEREIN AS OF THE DATE STATED.

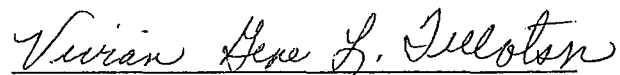
**SIGNED, SEALED AND DELIVERED THIS ____ DAY OF OCTOBER, 2005
IN THE PRESENCE OF:**

Witness to Purchaser

E. Legrand Lowther, Purchaser



Witness to Seller



Vivian Gene L. Tillotson, Seller

Amendment: Buyer to pay all closing cost
And prorations, G.L.L.

G.L.L.

000683

STATE OF SOUTH CAROLINA) REAL ESTATE PURCHASE
COUNTY OF JASPER) AND SALE CONTRACT

This Purchase and Sale Agreement is entered into on the date hereinafter set forth between E. Legrand Lowther, (hereinafter "Purchaser") and Mark Allen Lowther, (hereinafter "Seller").

PREMISES DESCRIPTION. Purchaser agrees to purchase, and Seller agrees to sell, the real property, with all improvements thereon if any, situated in Jasper County, County, State of South Carolina, and described as follows:

All of the Seller's right, title and interest in and to that 230, more or less, acre parcel of land which is the balance of land referenced in that Deed from Mary B. Wilcox in Deed Book 75 at page 2004 (sometimes called the Wellington Road property): and also

All of the Seller's right, title and interest in and to that 40.79, more or less, acre parcel of land on Bees Creek Road known as Tax ID# 063-39-04-010,

PURCHASE PRICE. The purchase price is \$325,000.00 payable as follows:

A) \$500.00 as an earnest money shall be paid upon the written acceptance of this Contract and applied toward the purchase price at closing.

B) \$74,500.00 shall be paid at closing or on December 5, 2005, whichever occurs first.

C) \$250,000.00, representing the Balance Due, shall be paid no later than December 31, 2006

The aforesaid Balance Due shall be secured by Purchaser's personal guarantee and a first mortgage recorded security on the Wellington Road Property only.

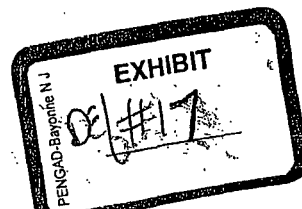
EARNEST MONEY. The earnest money will be deposited the closing attorney within forty-eight (48) hours after the execution of this Agreement.

CLOSING COSTS. Purchaser and Seller shall each pay their own normal, customary and allowable settlement charges or closing costs.

PRORATIONS. Taxes, rents, homeowners association fees, and other assessments shall be prorated as of the date of the closing.

CONVEYANCE AND CONDITION OF TITLE. Seller agrees to convey a good fee simple, marketable title to the premises by General Warranty Deed, with Deed Recording Fee paid, subject only to applicable zoning ordinances, covenants and restrictions of record, and utility easements. Title is good and marketable if insurable by an ALTA title insurance company licensed in South Carolina.

W



CLOSING. The transaction shall be closed on or before December 5, 2005, if title can be passed at that date from the Estate of C. E. Lowther to Seller, or within 14 days of title so passing if later, and possession of the premises will be given to Purchaser at that time. Time is of the essence; however, a party, for reasonable cause specifically set forth in a written notice delivered to the other prior to the scheduled closing date, may extend the closing for up to fourteen (14) days. Thereafter, the closing date can be extended only if both parties sign an Extension Agreement.

FIRE OR CASUALTY. If the premises is destroyed wholly or partially by fire or other casualty prior to closing, then Purchaser shall have the right to terminate this Contract and receive a refund of the earnest money deposit.

ASSIGNMENT. This Agreement may be assigned by Purchaser.

SELLER'S TITLE. It is acknowledged that Seller may not presently hold record title to the conveyed property, but will acquire record title as a beneficiary of the Estate of C. E. Lowther, either by Will or through intestacy as an heir-at-law, and Seller agrees to convey title upon receipt of the same as set forth above in the Closing paragraph.

CONTINGENCY. Purchaser's obligation to perform is contingent upon all owners of the conveyed property entering into agreements to sell the subject property to Purchaser upon mutually agreeable terms so that Purchaser acquires a sole, undivided interest.

DEFAULT. Upon default by Purchaser, Seller shall have the option of suing for damages or specific performance, or of rescinding this Contract and retaining Seller's portion of the earnest money as liquidated damages. Upon default by Seller, Purchaser shall have the option of suing for damages or specific performance, or of rescinding this Contract and recovering from Seller all costs and obligations incurred in anticipation of closing, including, without limitation, the earnest money and the costs of the credit report, appraisal, survey, title examination and attorney's fees. The prevailing party in any litigation shall be entitled to recover from the other the costs of litigation, including a reasonable sum for attorney's fees.

QUIT CLAIM DEED. In consideration for the price paid herein, Seller, additionally agrees to release any right which Seller may have in that property and lots in the Echo Tango area of Beaufort County and will execute a Quit Claim deed to said property at closing.

ASSUMPTION OF LIABILITIES. Seller assumes all liabilities incurred for legal expenses and costs incurred in connection with past and threatened litigation over these properties and all development expenses.

ARM'S LENGTH TRANSACTION. Although Purchaser and Seller are related, and although Purchaser is a co-Personal Representative of the Estate of C.E. Lowther, the Seller acknowledges that this is an arm's length business transaction and Purchaser has made no promises, representations or statements, except those set forth herein in writing, upon which Seller is relying, and Seller has conducted Seller's own due diligence prior to entering into this Agreement.



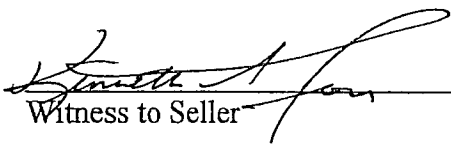
MISCELLANEOUS. This contract shall be binding on both parties, their principals, heirs, personal representatives and assigns, and expresses the entire agreement between the parties, and there is no other agreement, oral or otherwise, modifying the terms hereunder. Negotiations may be conducted using a facsimile machine and will be considered binding on the parties. (A facsimiled offer shall be deemed delivered as of the moment it is transmitted.) If any portion of this Contract is not understood, the party should seek competent advice. Any altered terms must be initialed and dated.

SIGNATURES BELOW SIGNIFY ACCEPTANCE OF ALL TERMS AND CONDITIONS STATED HEREIN AS OF THE DATE STATED.

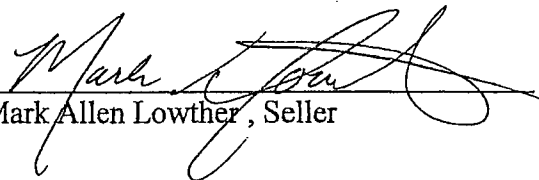
**SIGNED, SEALED AND DELIVERED THIS ____ DAY OF OCTOBER, 2005
IN THE PRESENCE OF:**

Witness to Purchaser

E. Legrand Lowther, Purchaser

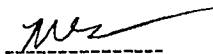


Witness to Seller



Mark Allen Lowther, Seller

000686



STATE OF SOUTH CAROLINA) REAL ESTATE PURCHASE
) AND SALE CONTRACT
COUNTY OF JASPER)

This Purchase and Sale Agreement is entered into on the date hereinafter set forth between E. Legrand Lowther, (hereinafter "Purchaser") and Effie Sandra L. Turpin, (hereinafter "Seller").

PREMISES DESCRIPTION. Purchaser agrees to purchase, and Seller agrees to sell, the real property, with all improvements thereon if any, situated in Jasper County, County, State of South Carolina, and described as follows:

All of the Seller's right, title and interest in and to that 230, more or less, acre parcel of land which is the balance of land referenced in that Deed from Mary B. Wilcox in Deed Book 75 at page 2004 (sometimes called the Wellington Road property): and also

All of the Seller's right, title and interest in and to that 40.79, more or less, acre parcel of land on Bees Creek Road known as Tax ID# 063-39-04-010,

PURCHASE PRICE. The purchase price is \$325,000.00 payable as follows:

- A) \$500.00 as an earnest money shall be paid upon the written acceptance of this Contract and applied toward the purchase price at closing.
- B) \$74,500.00 shall be paid at closing or on December 5, 2005, whichever occurs first.
- C) \$250,000.00, representing the Balance Due, shall be paid no later than December 31, 2006

The aforesaid Balance Due shall be secured by Purchaser's personal guarantee and a first mortgage recorded security on the Wellington Road Property only. *Buyer pays any mortgages, liens, encumbrances, etc., as to provide seller 1st mort on Wellington Property*
EARNEST MONEY. The earnest money will be deposited the closing attorney within forty-eight (48) hours after the execution of this Agreement.

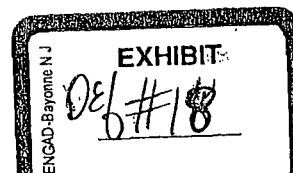
~~**CLOSING COSTS.** Purchaser and Seller shall each pay their own normal, customary and allowable settlement charges or closing costs.~~

~~**PRORATIONS.** Taxes, rents, homeowners association fees, and other assessments shall be prorated as of the date of the closing.~~

CONVEYANCE AND CONDITION OF TITLE. Seller agrees to convey a good fee simple marketable title to the premises by General Warranty Deed, with Deed Recording Fee paid, subject only to applicable zoning ordinances, covenants and restrictions of record, and utility easements. Title is good and marketable if insurable by an ALTA title insurance company licensed in South Carolina.

SK

000687



CLOSING. The transaction shall be closed on or before December 5, 2005, if title can be passed at that date from the Estate of C. E. Lowther to Seller, or within 14 days of title so passing if later, and possession of the premises will be given to Purchaser at that time. Time is of the essence; however, a party, for reasonable cause specifically set forth in a written notice delivered to the other prior to the scheduled closing date, may extend the closing for up to fourteen (14) days. Thereafter, the closing date can be extended only if both parties sign an Extension Agreement.

FIRE OR CASUALTY. If the premises is destroyed wholly or partially by fire or other casualty prior to closing, then Purchaser shall have the right to terminate this Contract and receive a refund of the earnest money deposit.

ASSIGNMENT. This Agreement may be assigned by Purchaser.

SELLER'S TITLE. It is acknowledged that Seller may not presently hold record title to the conveyed property, but will acquire record title as a beneficiary of the Estate of C. E. Lowther, either by Will or through intestacy as an heir-at-law, and Seller agrees to convey title upon receipt of the same as set forth above in the Closing paragraph.

CONTINGENCY. Purchaser's obligation to perform is contingent upon all owners of the conveyed property entering into agreements to sell the subject property to Purchaser upon mutually agreeable terms so that Purchaser acquires a sole, undivided interest.

DEFAULT. Upon default by Purchaser, Seller shall have the option of suing for damages or specific performance, or of rescinding this Contract and retaining Seller's portion of the earnest money as liquidated damages. Upon default by Seller, Purchaser shall have the option of suing for damages or specific performance, or of rescinding this Contract and recovering from Seller all costs and obligations incurred in anticipation of closing, including, without limitation, the earnest money and the costs of the credit report, appraisal, survey, title examination and attorney's fees. The prevailing party in any litigation shall be entitled to recover from the other the costs of litigation, including a reasonable sum for attorney's fees.

QUIT CLAIM DEED. In consideration for the price paid herein, Seller, additionally agrees to release any right which Seller may have in that property and lots in the Echo Tango area of Beaufort County and will execute a Quit Claim deed to said property at *5K1 ~~the~~ the payment of final balance on or before 31 DEC 2006.*

ASSUMPTION OF LIABILITIES. Seller assumes all liabilities incurred for legal expenses and costs incurred in connection with past and threatened litigation over these properties and all development expenses.

ARM'S LENGTH TRANSACTION. Although Purchaser and Seller are related, and although Purchaser is a co-Personal Representative of the Estate of C.E. Lowther, the Seller acknowledges that this is an arm's length business transaction and Purchaser has made no promises, representations or statements, except those set forth herein in writing, upon which Seller is relying, and Seller has conducted Seller's own due diligence prior to entering into this Agreement.

SKH
000688

MISCELLANEOUS. This contract shall be binding on both parties, their principals, heirs, personal representatives and assigns, and expresses the entire agreement between the parties, and there is no other agreement, oral or otherwise, modifying the terms hereunder. Negotiations may be conducted using a facsimile machine and will be considered binding on the parties. (A facsimiled offer shall be deemed delivered as of the moment it is transmitted.) If any portion of this Contract is not understood, the party should seek competent advice. Any altered terms must be initialed and dated.

SIGNATURES BELOW SIGNIFY ACCEPTANCE OF ALL TERMS AND CONDITIONS STATED HEREIN AS OF THE DATE STATED.

**SIGNED, SEALED AND DELIVERED THIS ____ DAY OF OCTOBER, 2005
IN THE PRESENCE OF:**

Witness to Purchaser

Mitchell Smith

Witness to Seller

E. Legrand Lowther, Purchaser

Effie Sandra L. Turpin

Effie Sandra L. Turpin, Seller

AMENDMENT: BUYER to pay ALL Closing
Costs AND PRORATIONS SLR

000689

CONTRACT FOR SALE AND PURCHASE

E.L. THIS CONTRACT FOR SALE AND PURCHASE made and entered into this 12th day of October, 2005, by and between **Lagrande Lowther, Mitchell Lowther, et al**, hereinafter referred to as ("Seller"), and **International Society of Investors, a North Carolina Limited Liability Company**, or its designee or assigns hereinafter referred to as ("Purchaser").

WITNESSETH:

Subject to the terms and conditions of this Agreement, and in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Seller and Purchaser agree as follows:

1. **PREMISES, IMPROVEMENTS AND CHATTELS.** Seller shall sell and convey to Purchaser, and Purchaser shall purchase from Seller, the land specifically described as Wellington Estates, approximately 241 acres, being in the County of Jasper, South Carolina (the "Property").

E.L. 2. **PURCHASE PRICE.** Purchaser hereby agrees to pay to Seller as the purchase price for the Premises the sum of Five Million Four Hundred Fifty Thousand Dollars (\$5,450,000) subject to adjustments, credits, and pro-rations as set forth herein below (the "Purchase Price"), to be paid as follows:

2.1. Within Forty Eight (48) hours after the execution of this Agreement (Effective Date), Purchaser shall deposit into the Russell Law Firm Trust Account, the Escrow Agent, the sum of Five Thousand Dollars (\$5,000) as a good faith deposit to be held pursuant to the terms of this Contract.

2.2. The balance of the Purchase Price (including a credit for the amount of the Deposits of \$ 5,000), shall be financed by the Seller as explained in attached Seller Financing Addendum.

E.L. 2.3 Seller Financing: A promissory note from Purchaser to Seller of \$5,445,000.00 bearing 0% interest per annum, secured by mortgage, and containing the terms and condition described in the attached Seller Financing Addendum.

3. **CONDITIONS PRECEDENT.** This Contract For Sale and Purchase is subject to and conditional upon:

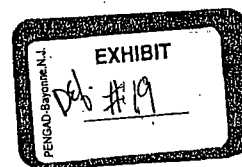
3.1. The Purchaser obtaining horizontal construction financing.

3.2. The land being permitted for no less than 300 units.

3.3. The Purchaser receiving confirmation that all utilities (including electrical, water, and telephone services) are available to the property and are adequate for Buyers intended use.

3.4. The Purchaser receiving all permits, licenses, approvals or consent from any

E.L. 000690



and all governmental authorities and agencies having jurisdiction over the property and which are necessary to allow development, construction of the Property, such permits, licenses, approvals and consents to include, without limitation, building permits, storm water management permits, concurrence approvals, etc.

- 3.5. The Purchaser being satisfied in its absolute discretion with the results of soil tests, subsurface water tests and a level 1 Environmental Site Assessment.
- 3.6. However, and notwithstanding anything herein to the contrary, the Buyer has the option to waive one or more of the said conditions.
- 3.7. The Seller agrees to cooperate with Purchaser as reasonably requested and without expense in obtaining the satisfaction, fulfillment, and/or compliance with any or all conditions or contingencies hereunder. Seller hereby authorizes Purchaser to make any applications, petitions or submissions as may be required to obtain any and all such land use changes or amendments, permits, licenses, consents or approvals which may be required to allow the development of Purchaser's Intended Use. To the extent required, Seller agrees to execute or join in any such applications, petitions or submissions, or similar documentation.
- 3.8. This offer shall be null and void if Purchaser does not acquire 40 acre parcel on Bee's Creek Road currently contracted with Seller.

4. **INSPECTION PERIOD.** Purchaser shall have a period of 30 days from and after the Effective Date (The Inspection Period) within which to satisfy itself as to the Conditions Precedent in paragraph 3 herein. If on or before the end of the Inspection Period the Conditions Precedent are not satisfied or waived; and/or Purchaser in Purchaser's sole and absolute discretion determines that the Premises are not suitable or acceptable in all respects, or that Purchaser's intended use thereof is not feasible, all in Purchaser's sole judgment, then Purchaser shall have the right to terminate this Contract, in which event the deposit will be returned to Purchaser, and thereafter the parties shall have no further obligations, duties or liability hereunder except under paragraph 14 below.

- 4.1 In order to allow Purchaser to expeditiously and timely complete such tests, studies, etc., as referred to herein above, Seller shall deliver to Purchaser within five (5) days after the Effective Date copies of any and all surveys, title policies or commitments, appraisals, environmental audits or studies, engineering reports, studies, plans or drawings, site plans or layouts, zoning or land use documentation or information, soil tests, studies or reports, studies, plans or drawings, site plans or layouts, zoning or land use documentation or information, soil tests, studies or reports, wetlands jurisdictional determinations or reports, feasibility studies, concurrence evaluations, documentation or information concerning the Premises or any correspondence concerning any of such topics, which Seller, or any agent or representative of Seller has in its possession.

000691

5-44

5. **EXTENSIONS.** In the event the Purchaser does not have the, site plan approval, building permits, and all other permits (as required) within the Inspection Period then Purchaser may elect to extend said Period until December 27, 2006, after which date the closing conditions apply, with all other terms conditions and dates to be adjusted accordingly.

6. **SURVEY.** Purchaser shall obtain a boundary survey (the "Survey") of the Premises within 30 days after expiration of Inspection Period (Paragraph. 4,) and compliance and/or waiver of conditions in Paragraph. 3. certified by the surveyor to the Purchaser, Purchaser's counsel, the Seller and the Title Insurance Company as having been made in compliance with the minimum technical standards adopted for surveys conducted in the State of South Carolina, which survey shall also be in form and content satisfactory to the Title Insurance Company for the purposes of issuing the owner's title insurance policy required by this Agreement, and deleting there from the standard general exceptions for matters which might be revealed by the accurate survey of the Premises and shall deliver a sealed copy of same to Seller. Said survey shall show and designate any and all of the Permitted Exceptions, and any and all other easements, rights of way, encroachments, overlaps or improvements pertaining to the boundaries of the Premises by metes and bounds or other appropriate legal description. In the event the legal description contained in the Survey describes the Premises as more than one parcel, the Survey shall contain the surveyor's certification to the effect that all such parcels which comprise the Premises are contiguous each to the other, and that there are no gaps, gores, overlaps or hiatuses. Moreover, in the event that the legal description of the Premises describes the Property as more than one parcel, the title insurance policy to be issued in accordance with Paragraph 3 above shall contain a contiguity endorsement and a survey endorsement insuring that all the parcels comprising the Premises are contiguous each to the other, with no gaps, gores, overlaps or hiatuses. The Survey shall certify the acreage for the entire Premises to the second decimal place. The Survey shall further certify that no portion of the Premises is located within the one hundred (100) year flood plain or within any Special Flood Hazard Area as established by the local, state or federal government; or, if any portion of the Premises does lie in the one hundred (100) year flood plain, the Survey shall delineate such areas, and certify the amount of acreage lying within each or either of such areas. The cost of the Survey shall be borne by Purchaser and paid by Purchaser on or before Closing.

8. **CURING OF UNPERMITTED EXCEPTIONS AND SURVEY DEFECTS.** Purchaser shall have fifteen (15) days after the delivery of the last to be delivered of the Survey and the Title Commitment to examine same. If the Title Commitment or Survey discloses either unpermitted exceptions, exceptions or encroachments which are unacceptable to Purchaser, or matters that render the title unmarketable (herein referred to as "title defects"), Purchaser shall so notify Seller on or before the end of the applicable fifteen (15) day period, and Seller shall thereafter use its best efforts to have the defects removed. In the event Seller is unable to have such title defects removed or corrected on or before 60 days after said notice, Purchaser shall have the right to either: (a) terminate this Agreement upon written notice to Seller, and all sums paid or deposited by Purchaser hereunder shall be returned to Purchaser with neither party having any further obligation hereunder; or (b) waive such objection and proceed to closing of this transaction in accordance with the terms hereof without any reduction in the Purchase Price.

9. **SELLER'S DOCUMENTS.** Seller shall execute and deliver to Purchaser at closing, the following:

000692

8. HP

- 9.1. A General Warranty Deed executed by Seller conveying fee simple title of the Premises to Purchaser, subject only to the Permitted Exceptions, in form satisfactory to the Purchaser and the title Insurance company;
- 9.2. A Seller's affidavit sufficient in form and content to satisfy the requirements of the applicable South Carolina Statutes, and to permit deletion of all of the standard ALTA general exceptions from the Title Commitment and the Title Policy;
- 9.3. Such other closing documents as reasonably may be required to consummate the transaction contemplated by this Agreement, or which may be required by the Title Company in order to issue the Title Policy as required by the Title Commitment.

EXX.

10. **EXPENSE PROVISIONS.** ~~State documentary stamps required on the deed. The cost and expenses of any corrective instruments or actions, the title insurance premium and title search charges shall be paid by Seller on or before Closing. The cost of recording the deed and the cost of the Survey shall be paid by the Purchaser on or before closing. Each party shall bear and pay its own attorneys' fees and expenses. Title insurance premium and title search charges shall be paid by Purchaser. Purchaser shall also pay the documentary stamps and real-estate taxes.~~

11. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER.** The Seller hereby represents, warrants and covenants to and with the Purchaser as follows:

- 11.1. Prior to Closing, the Seller shall hold fee simple title to the Premises subject to no liens, contracts, mortgages, Agreements, pledges, encumbrances, charges or defects of any kind other than those to be removed at closing except the Permitted Exceptions. From and after the Effective Date hereof, Seller shall not enter into any contracts, Agreements, encumbrances, liens, or other documents or instruments for or regarding the sale, transfer, disposition, assignment, conveyance, encumbrance, lien, pledge of the Premises, or any part thereof or any interest therein, or which may result in any lien or encumbrance with regard to the Premises, or any part thereof, or an interest therein, without the prior written consent of the Purchaser.
- 11.3. Seller has paid (or covenants that he will pay prior to Closing) any and all taxes (excluding taxes not yet due) which have or could become a lien or charge against the Premises, subject to the pro-ration herein provided.
- 11.4. Except for the liens, encumbrances or charges against the Premises shown on the public records, there are no other liens, encumbrances, unpaid bills to vendors, outstanding obligations or charges (contingent or absolute) in existence against such Seller or any business

conducted thereon, or any existing undisclosed or unrecorded liens, encumbrances or charges, which could adversely affect title to the Premises after the Effective Date hereof or the Closing Date, and Seller has no knowledge of any matters pending that could result in a lien against the Premises, or in any way substantially adversely affect title to the Premises.

- 11.5. From and after the Effective Date hereof, Seller will not cause, permit, suffer, or allow any change, modification, or alteration to be made to the Premises, or any part or portion thereof, or its physical condition without the prior written consent of Purchaser.
- 11.6. No notice from governmental body has been served upon Seller claiming any violation of any law, ordinance, code or regulations as to the Premises, and Sellers have no knowledge that any such violation exists with regard to the Premises.
- 11.7. That there are no leases of the Premises, or any portion thereof, other than are disclosed herein.
- 11.8. Seller has not received any notice, and has no knowledge, that the Premises, or any portion thereof, is or will be subject to or affected by: (i) any special assessments, whether or not presently a lien thereon; or (ii) any condemnation, eminent domain, change in grade of public streets, or similar proceeding.
- 11.9. That there are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, to which Seller is a party, affecting the Premises, or any portion thereof, or relating to or arising out of the ownership of the Premises, in any court or before or by any Federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality.
- 11.10. Seller has the full right, power and authority to enter into and deliver this Agreement and to consummate the purchase and sale of the Property in accordance herewith and to perform all covenants and Agreements of Seller hereunder.
- 11.11. Seller has no knowledge or notice that any present default or breach exists under any mortgage or other encumbrance encumbering the Premises, or any covenants, conditions, restrictions, rights-of-way or easements which may affect the Premises.
- 11.12. The Property has access to a publicly dedicated road right-of-way.
12. **REPRESENTATIONS.** Purchaser hereby represents and warrants to Seller as follows:

12.1. To the best of Purchaser's knowledge, no consent to the transaction contemplated by this Agreement by any person or entity other than Purchaser is required;

12.2. The person executing this Agreement on behalf of the Purchaser is fully and duly authorized to do so by Purchaser, and any and all actions required to make this Agreement and the performance thereof legally binding obligations of Purchaser, have been duly and Legally taken. No further consent, authorization or approval of any person or entity is required for Purchaser to enter into or perform this transaction.

13. **CONTINUING REPRESENTATIONS AND WARRANTIES.** The representations and warranties of the parties contained herein shall be deemed to be continuing representations and warranties up to and including the Closing Date and at all times between the Effective Date hereof and the Closing Date, with the same force and effect as though such representations and warranties had been made as of Closing.

14. **ACCESS TO THE PREMISES.** Seller covenants and agrees that from and after the date hereof, and until the Closing Date, it will afford Purchaser, and its authorized representatives and agents, entry upon and access to the Premises for the purpose of satisfying itself with respect to the representations, warranties and covenants of the Seller contained herein, and to take soil tests, borings, make surveys or layouts for the improvements, or such other tests, evaluations, or investigations as Purchaser may deem necessary or desirable. Purchaser hereby agrees to repair any damage to the premises occasioned by the Purchasers conducting test borings or otherwise being on the property during the inspection period and indemnify and hold Seller harmless from and against any and all loss, damage, injury, claim, cost or expense of any nature whatsoever including attorneys' fees (whether incurred before, during or after trials, or upon any appellate level) arising from or pertaining to Purchaser's exercise of its rights granted by this Paragraph 14 which obligation shall survive any termination of this Agreement.

15. **General Conditions to Obligations of the Purchaser.** The obligations of Purchaser hereunder are, at the option of Purchaser, subject to and contingent upon the conditions that:

15.1. The representation and warranties made by Seller herein shall be correct statements of fact as said facts exist as of the Closing Date, and at all times between the Effective Date hereof and the Closing Date, and with the same force and effect as though such representations and warranties had been made as of the Closing Date;

15.2. All terms, covenants, Agreements and provisions of this Agreement to be complied with and performed by the Seller on or before the Closing Date shall have been duly complied with and performed.

15.3. If these conditions are not met then, at

Purchaser's option, the Deposit shall be returned to Purchaser upon Purchaser's notice of termination of the Contract given prior to Closing.

16. REAL ESTATE COMMISSION.

9.1. Both Seller and Purchaser hereby represent and warrant that neither Seller nor Purchaser have engaged or dealt with any agent, broker or finder with regard to this Agreement or to the sale and purchase of the Property contemplated hereby.

17. **CLOSING.** Subject to the terms and conditions hereof, including Paragraph 5 herein the Closing of this transaction shall be held at such time as may be mutually agreed upon by Seller and Purchaser, at the office of a closing agent to be determined by the buyer, on or before December 27, 2006, so long as Purchaser is satisfied with all permits and approvals from the local presiding jurisdiction for the Purchaser's intended use. At Purchaser's option, the closing may be held sooner than the foregoing dates, provided Purchaser gives Seller not less than ten (10) days notice of the Closing date. Seller shall deliver possession of the Premises to Purchaser on the Closing Date.

18. PRORATIONS.

18.1. Real estate taxes for the year of Closing shall be Pro-rated on an accrual basis as of the Closing Date, based upon the most recent ascertainable taxes. The parties agree to a reprobation and adjustment of the real estate taxes when the actual tax bill for the year of closing is received.

18.2. If at any time before the date hereof, the Premises, or any part thereof, shall be the subject of any assessment or assessments which are payable in annual installments, other than ad valorem real estate taxes, then for the purposes of this Agreement all of the unpaid installments of any such assessment including those which are to become due and payable after closing, shall be deemed to be due and payable and shall be paid and discharged by Seller on or before closing.

18.3. With regard to Closing, each party shall pay the fees of its attorney and the costs of preparing all documents which this Agreement requires such party to furnish. If there is any dispute regarding this Agreement, the prevailing party shall be entitled to collect its costs and attorneys' fees, through trial and all appeals, from the losing party.

19. **CONDEMNATION.** If, prior to Closing, the Premises or any portion thereof is condemned or taken under power of eminent domain, or if Seller receives any notice or knowledge that any such taking is threatened or contemplated by any governmental agency or entity or any other entity having the power of eminent domain, then, in any such event, Seller shall promptly give notice thereof to Purchaser in writing. Purchaser shall then have the options of either (a) terminating this Contract and receiving a refund of any and all Deposits paid hereunder, with neither party thereafter

having any further obligations to the other hereunder, or (b) waiving such matters and proceeding to close this transaction without reduction in the Purchase Price, but with the right to receive any and all awards or monies payable as a result of any such taking. Purchaser shall make such election by giving written notice thereof to Seller at any time prior to Closing.

21. **ESCROW AGENT AND ESCROW PROCEDURE.** In the event of any dispute under this Agreement, the Escrow Agent shall have the right to interplead the Deposit into the registry of any court of competent jurisdiction. The interpleading of said Deposit into the registry of the court shall release the Escrow Agent from any further or continuing liability with respect to the disposition of such Deposit. In such event only, Escrow Agent will be entitled to reimbursement to the extent of all costs and expenses reasonably incurred to obtain an order of interpleader, including reasonable attorneys fees, to be reimbursed by the party at fault. Escrow Agent shall exercise ordinary care with respect to the custody and delivery of the Deposits and any other duties of Escrow Agent under this Contract. Escrow Agent will not be liable for any act or omission that is undertaken in good faith and with ordinary care. Without limitation, Escrow Agent may assume, without verification, the genuineness of any signatures on any writings that are regular on their face and may maintain the deposits in interest thereon in a federally insured, commingled trust account. Escrow Agent will not be liable for any act, omission, or failure of the depository institution unless specifically authorized or directed by Escrow Agent. No provision of this Contract by itself authorizes recovery of monetary damages, costs, expenses, or attorney's fees from or against Escrow Agent. Escrow Agent will have a reasonable period of time to comply with all further instructions received pursuant to this Contract, which in all events will be not less than five (5) working days. Escrow Agent's sole duty of collection with respect to any instrument payable to Escrow Agent is to present such instrument promptly for payment and to advise the parties promptly if it is not then collected in the ordinary course of banking business. Escrow Agent shall not be responsible for the performance of any financial institution into which the Deposit is deposited. Seller acknowledges and agrees that the Escrow Agent is Seller's attorney, and that the Escrow Agent's status as such shall not disqualify the Escrow Agent from acting as Seller's attorney with regard to this transaction, or any dispute or litigation arising from or concerning this transaction or this Agreement, including, without limitation, a dispute with regard to the Deposit.

22. **CONTRACT CONSTRUCTION.** Buyer and Seller acknowledge that this Contract was prepared after substantial negotiations between the parties. This Contract shall not be interpreted against either party solely because such party or its counsel drafted the Contract.

23. **MISCELLANEOUS.**

(a) **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing, and shall be deemed to have been given when delivered, if delivered by hand delivery, or when deposited in the United States Post Office, registered or certified mail, postage prepaid, return receipt requested, if mailed. Notices shall be addressed as follows:

If to Seller:

If to Purchaser:

International Society of Investors
1304 Paddock Drive Suite F103
Raleigh, NC 27616

With copy to: Kathie L. Russell, Esq.
327 West Morgan Street, Suite 200
Raleigh, NC 27601

or at such other address which either party may from time to time specify in writing to the other.

(b) Assignment. All or any portion of Purchaser's rights and duties under this Agreement shall be transferable and assignable.

(c) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(d) Amendments and Termination. Except as otherwise provided herein, this Agreement may be amended or modified by, and only by, a written instrument executed by Seller and Purchaser, acting by their respective duly authorized agents or representatives.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

(f) Section Headings. The section headings inserted in this Agreement are for convenience only and are intended to, and shall not be construed to, limit, enlarge or affect the scope or intent of this Agreement, nor the meaning of any provision hereof.

(g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

(h) Merger of Prior Agreements. This Agreement supersedes all prior Agreements and understandings between the parties hereto relating to the subject matter hereof.

(i) Attorneys' Fees and Costs. In any litigation arising out of or pertaining to this Agreement, the prevailing party shall be entitled to an award of its attorneys' fees, whether incurred before, after or during trial, or upon any appellate level.

(j) Time. Time is of the essence of this Agreement. When any time period specified herein falls or ends upon a Saturday, Sunday or legal holiday, the time period shall be automatically extend to 5:00 P.M. on the next ensuing business day.

E. J. P.

(k) Three Lots. Purchaser shall, enclosing or within thereafter as is practicable, convey back to Seller not the conveyed property three of the lot no-developed Lots free of encumbrances with all associated amenities, and utilities, said 9 Lots to be selected by Seller after consultation with Purchaser near the existing subdivision known as Wellington Estates Phase I.

000698

E. J. P.

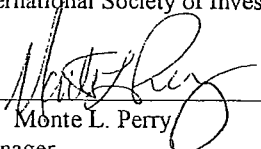
E.T.T.

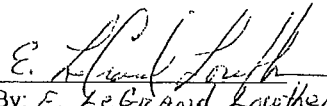
(k) ~~Acceptance~~ If this Agreement is not executed and delivered by both parties on or before October 18, 2005, it shall be null and void.

WITNESS, the due execution hereof as of the day and year below written.

International Society of Investors, LLC.

SELLER

By: 
Monte L. Perry
Manager

By: 
E. LeGrand Lottier

Date: 11/21/05

Date: 24 Oct 2005

Exhibit A

Legal description to be determined by closing agent

SELLER FINANCING ADDENDUM

A. PROMISSORY NOTE: The promissory note (Note) described in Paragraph 2 of this contract payable by Purchaser to the order of Seller will be payable at the place designated by Purchaser. Purchaser may prepay the Note in whole or in part at any time without penalty. Any prepayments are to be applied to the payment of the installments of principal last maturing and interest will immediately cease on the prepaid principal. The Note will be payable as follows: *(5,445.00)*

E. J. P. a) Note final payment is due in full ~~(\$5,500.00)~~ on December 31, 2006.

B. SECURING INSTRUMENT: A mortgage instrument:

E. J. P. (1) PROPERTY TRANSFERS: [check only one:]

only with
The Property may be sold or conveyed ~~without~~ the consent of Seller, provided any subsequent purchasing entities assume the Note.

(2) TAX AND INSURANCE ESCROW: [check only one:]

Purchaser shall furnish Seller annually, before the taxes become delinquent, evidence that all taxes on the Property have been paid. Purchaser shall furnish Seller annually evidence of paid-up casualty insurance naming Seller as an additional loss payee.

E. J. P. (3) PRIOR LIENS: Any default under any lien superior to the lien securing the Note constitutes default under the deed of trust securing the Note.

does not agree

C. SUBORDINATION: Seller ~~agrees~~ to subordinate this note and deed of trust to any new financing by the purchaser.

PURCHASER:

11/21/05

Date

Monte L Perry
[purchaser's signature above/printed name below]

Monte L Perry
[purchaser's signature above/printed name below]

SELLER:

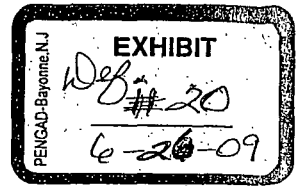
34 Oct 2005

Date

E. J. P.
[seller's signature above/printed name below]

[seller's signature above/printed name below]

STATE OF SOUTH CAROLINA) REAL ESTATE PURCHASE
) AND SALE CONTRACT
COUNTY OF JASPER)



This Purchase and Sale Agreement is entered into on the date hereinafter set forth between E. Legrand Lowther, (hereinafter "Purchaser") and Mitchell Saxon Lowther, (hereinafter "Seller").

PREMISES DESCRIPTION. Purchaser agrees to purchase, and Seller agrees to sell, the real property, with all improvements thereon if any, situated in Jasper County, County, State of South Carolina, and described as follows:

All of the Seller's right, title and interest in and to that 230, more or less, acre parcel of land which is the balance of land referenced in that Deed from Mary B. Wilcox in Deed Book 75 at page 2004 (sometimes called the Wellington Road property): and also

All of the Seller's right, title and interest in and to that 40.79, more or less, acre parcel of land on Bees Creek Road known as Tax ID# 063-39-04-010.

Seller will also cause to be conveyed to Purchaser that 3.86 acres titled in the name of Carmen B. Lowther in Wellington Plantation.

PURCHASE PRICE. The purchase price is \$_____ payable as follows:

- A) \$_____ as an earnest money shall be paid upon the written acceptance of this Contract and applied toward the purchase price at closing.
- B) \$_____ shall be paid at closing or on December 5, 2005, whichever occurs first.
- C) \$_____, representing the Balance Due, shall be paid no later than December 31, 2006

The aforesaid Balance Due shall be secured by Purchaser's personal guarantee and a first mortgage recorded security on the Wellington Road Property only.

EARNEST MONEY. The earnest money will be deposited the closing attorney within forty-eight (48) hours after the execution of this Agreement.

CLOSING COSTS. Purchaser and Seller shall each pay their own normal, customary and allowable settlement charges or closing costs.

PRORATIONS. Taxes, rents, homeowners association fees, and other assessments shall be prorated as of the date of the closing.

CONVEYANCE AND CONDITION OF TITLE. Seller agrees to convey a good fee simple marketable title to the premises by General Warranty Deed, with Deed

465.5

Recording Fee paid, subject only to applicable zoning ordinances, covenants and restrictions of record, and utility easements. Title is good and marketable if insurable by an ALTA title insurance company licensed in South Carolina.

CLOSING. The transaction shall be closed on or before December 5, 2005, if title can be passed at that date from the Estate of C. E. Lowther to Seller, or within 14 days of title so passing if later, and possession of the premises will be given to Purchaser at that time. Time is of the essence; however, a party, for reasonable cause specifically set forth in a written notice delivered to the other prior to the scheduled closing date, may extend the closing for up to fourteen (14) days. Thereafter, the closing date can be extended only if both parties sign an Extension Agreement.

FIRE OR CASUALTY. If the premises is destroyed wholly or partially by fire or other casualty prior to closing, then Purchaser shall have the right to terminate this Contract and receive a refund of the earnest money deposit.

ASSIGNMENT. This Agreement may be assigned by Purchaser.

SELLER'S TITLE. It is acknowledged that Seller may not presently hold record title to the conveyed property, but will acquire record title as a beneficiary of the Estate of C. E. Lowther, either by Will or through intestacy as an heir-at-law, and Seller agrees to convey title upon receipt of the same as set forth above in the Closing paragraph.

CONTINGENCY. Purchaser's obligation to perform is contingent upon all owners of the conveyed property entering into agreements to sell the subject property to Purchaser upon mutually agreeable terms so that Purchaser acquires a sole, undivided interest.

DEFAULT. Upon default by Purchaser, Seller shall have the option of suing for damages or specific performance, or of rescinding this Contract and retaining Seller's portion of the earnest money as liquidated damages. Upon default by Seller, Purchaser shall have the option of suing for damages or specific performance, or of rescinding this Contract and recovering from Seller all costs and obligations incurred in anticipation of closing, including, without limitation, the earnest money and the costs of the credit report, appraisal, survey, title examination and attorney's fees. The prevailing party in any litigation shall be entitled to recover from the other the costs of litigation, including a reasonable sum for attorney's fees.

QUIT CLAIM DEED. In consideration for the price paid herein, Seller, additionally agrees to release any right which Seller may have in that property and lots in the Echo Tango area of Beaufort County and will execute a Quit Claim deed to said property at closing.

ASSUMPTION OF LIABILITIES. Seller assumes all liabilities incurred for legal expenses and costs incurred in connection with past and threatened litigation over these properties and all development expenses.

ARM'S LENGTH TRANSACTION. Although Purchaser and Seller are related, and although Purchaser is a co-Personal Representative of the Estate of C.E. Lowther, the Seller acknowledges that this is an arm's length business transaction and Purchaser

000703

465.6

has made no promises, representations or statements, except those set forth herein in writing, upon which Seller is relying, and Seller has conducted Seller's own due diligence prior to entering into this Agreement.

MISCELLANEOUS. This contract shall be binding on both parties, their principals, heirs, personal representatives and assigns, and expresses the entire agreement between the parties, and there is no other agreement, oral or otherwise, modifying the terms hereunder. Negotiations may be conducted using a facsimile machine and will be considered binding on the parties. (A facsimiled offer shall be deemed delivered as of the moment it is transmitted.) If any portion of this Contract is not understood, the party should seek competent advice. Any altered terms must be initialed and dated.

SIGNATURES BELOW SIGNIFY ACCEPTANCE OF ALL TERMS AND CONDITIONS STATED HEREIN AS OF THE DATE STATED.

**SIGNED, SEALED AND DELIVERED THIS _____ DAY OF OCTOBER, 2005
IN THE PRESENCE OF:**

Witness to Purchaser

E. Legrand Lowther, Purchaser

Witness to Seller

Mitchell Saxon Lowther, Seller

000704

465.7

STATE OF SOUTH CAROLINA) REAL ESTATE PURCHASE
) AND SALE CONTRACT
COUNTY OF JASPER)

This Purchase and Sale Agreement is entered into on the date hereinafter set forth between E. Legrand Lowther, (hereinafter "Purchaser") and Mitchell Saxon Lowther, (hereinafter "Seller").

PREMISES DESCRIPTION. Purchaser agrees to purchase, and Seller agrees to sell, the real property, with all improvements thereon if any, situated in Jasper County, County, State of South Carolina, and described as follows:

All of the Seller's right, title and interest in and to that 230, more or less, acre parcel of land which is the balance of land referenced in that Deed from Mary B. Wilcox in Deed Book 75 at page 2004 (sometimes called the Wellington Road property): and also

All of the Seller's right, title and interest in and to that 40.79, more or less, acre parcel of land on Bees Creek Road known as Tax ID# 063-39-04-010.

Seller will also cause to be conveyed to Purchaser that 3.86 acres titled in the name of Carmen B. Lowther in Wellington Plantation.

PURCHASE PRICE. The purchase price is \$ 1,025,000⁰⁰ payable as follows:

- A) \$ 500⁰⁰ as an earnest money shall be paid upon the written acceptance of this Contract and applied toward the purchase price at closing.
- B) \$ 74,500⁰¹ shall be paid at closing or on December 5, 2005, whichever occurs first.
- C) \$ 950,006⁰⁰ representing the Balance Due, shall be paid no later than December 31, 2006

The aforesaid Balance Due shall be secured by Purchaser's personal guarantee and a first mortgage recorded security on the Wellington Road Property only.

EARNEST MONEY. The earnest money will be deposited the closing attorney within forty-eight (48) hours after the execution of this Agreement.

~~**CLOSING COSTS.** Purchaser and Seller shall each pay their own normal, customary and allowable settlement charges or closing costs.~~

~~**PRORATIONS.** Taxes, rents, homeowners association fees, and other assessments shall be prorated as of the date of the closing.~~

CONVEYANCE AND CONDITION OF TITLE. Seller agrees to convey a good fee simple marketable title to the premises by General Warranty Deed, with Deed

Recording Fee paid, subject only to applicable zoning ordinances, covenants and restrictions of record, and utility easements. Title is good and marketable if insurable by an ALTA title insurance company licensed in South Carolina.

CLOSING. The transaction shall be closed on or before December 5, 2005, if title can be passed at that date from the Estate of C. E. Lowther to Seller, or within 14 days of title so passing if later, and possession of the premises will be given to Purchaser at that time. Time is of the essence; however, a party, for reasonable cause specifically set forth in a written notice delivered to the other prior to the scheduled closing date, may extend the closing for up to fourteen (14) days. Thereafter, the closing date can be extended only if both parties sign an Extension Agreement.

FIRE OR CASUALTY. If the premises is destroyed wholly or partially by fire or other casualty prior to closing, then Purchaser shall have the right to terminate this Contract and receive a refund of the earnest money deposit.

ASSIGNMENT. This Agreement may be assigned by Purchaser.

SELLER'S TITLE. It is acknowledged that Seller may not presently hold record title to the conveyed property, but will acquire record title as a beneficiary of the Estate of C. E. Lowther, either by Will or through intestacy as an heir-at-law, and Seller agrees to convey title upon receipt of the same as set forth above in the Closing paragraph.

CONTINGENCY. Purchaser's obligation to perform is contingent upon all owners of the conveyed property entering into agreements to sell the subject property to Purchaser upon mutually agreeable terms so that Purchaser acquires a sole, undivided interest.

DEFAULT. Upon default by Purchaser, Seller shall have the option of suing for damages or specific performance, or of rescinding this Contract and retaining Seller's portion of the earnest money as liquidated damages. Upon default by Seller, Purchaser shall have the option of suing for damages or specific performance, or of rescinding this Contract and recovering from Seller all costs and obligations incurred in anticipation of closing, including, without limitation, the earnest money and the costs of the credit report, appraisal, survey, title examination and attorney's fees. The prevailing party in any litigation shall be entitled to recover from the other the costs of litigation, including a reasonable sum for attorney's fees.

QUIT CLAIM DEED. In consideration for the price paid herein, Seller, additionally agrees to release any right which Seller may have in that property and lots in the Echo Tango area of Beaufort County and will execute a Quit Claim deed to said property at closing.

ASSUMPTION OF LIABILITIES. Seller assumes all liabilities incurred for legal expenses and costs incurred in connection with past and threatened litigation over these properties and all development expenses.

ARM'S LENGTH TRANSACTION. Although Purchaser and Seller are related, and although Purchaser is a co-Personal Representative of the Estate of C.E. Lowther, the Seller acknowledges that this is an arm's length business transaction and Purchaser

M. B.
CBZ

has made no promises, representations or statements, except those set forth herein in writing, upon which Seller is relying, and Seller has conducted Seller's own due diligence prior to entering into this Agreement.

MISCELLANEOUS. This contract shall be binding on both parties, their principals, heirs, personal representatives and assigns, and expresses the entire agreement between the parties, and there is no other agreement, oral or otherwise, modifying the terms hereunder. Negotiations may be conducted using a facsimile machine and will be considered binding on the parties. (A facsimiled offer shall be deemed delivered as of the moment it is transmitted.) If any portion of this Contract is not understood, the party should seek competent advice. Any altered terms must be initialed and dated.

SIGNATURES BELOW SIGNIFY ACCEPTANCE OF ALL TERMS AND CONDITIONS STATED HEREIN AS OF THE DATE STATED.

**SIGNED, SEALED AND DELIVERED THIS _____ DAY OF OCTOBER, 2005
IN THE PRESENCE OF:**

Witness to Purchaser

Inella Butler

Witness to Seller

E. Legrand Lowther, Purchaser

Mitchell Saxon Lowther

Mitchell Saxon Lowther, Seller

Carmon B. Lowther

CARMON B. LOWTHER

Amendment #1 MSL

*Closing cost + provisions to be paid by buyer included
deed prep + doc stamps*

MSL
CBL

000707

200600002109
Filed for Record in
JASPER COUNTY
PATSYE M GREENE
05-08-2006 At 01:46 PM.
DEED 10.00
OR Volume 425 Page 32 - 34

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)
WARRANTY DEED



Know All Men by These Presents, that we, MITCHELL S LOWTHER and CARMON B LOWTHER, hereinafter referred to as Grantor(s) in the State aforesaid, for and in consideration of the sum of five dollars (\$5.00) with love and affections to us, paid by E LEGRAND LOWTHER, hereinafter referred to as Grantee(s) in the State aforesaid and (the receipt of which is hereby acknowledged) have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said E LEGRAND LOWTHER, his heirs and assigns, forever, the following described real property, to-wit:

ALL that certain piece, parcel or lot of land, situate, lying and being in Jasper County, South Carolina described as 3.84 acres, more or less, and shown on that certain preliminary subdivision plat prepared by Connor & Associates, Inc as Lot No 34 which is attached to a deed recorded in Book 156 at Page 157 in the Office of the Clerk of Court for Jasper County, South Carolina

This being the identical property conveyed to the Grantor(s) herein by Deed of C E Lowther dated April 4, 1996 and recorded in Deed Book 156 at Page 157, Office of the clerk of Court for Jasper County, South Carolina.

Grantee's Address: PO Box 995, Ridgeland, SC 29936

This Deed prepared by the law office of Moss, Kuhn & Fleming, PA
PO Drawer 507, Beaufort, SC 29901-0507

TMS No: portion of 063-00-07-003

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

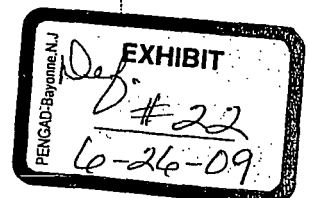
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said E LEGRAND LOWTHER, his Heirs and Assigns forever.

And we, MITCHELL S LOWTHER and CARMON B LOWTHER do hereby bind our Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said E LEGRAND LOWTHER, his Heirs and Assigns, against us and our Heirs and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

200600002109
MOSS, KUHN & FLEMING PA
PO DRAWER 507
BEAUFORT, SC 29901

465.11

000708



WITNESS our Hand(s) and Seals(s) this 21 day of October in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:

Carmen B. Lowther (Seal)
CARMON B LOWTHER

(Seal)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 21
day of October, 2005

Notary Public for South Carolina
My Commission expires: 2-26-12

The within instrument has been transferred

this 18 day of May, 2006 at
10:05 o'clock A.M., and recorded

in Transfer Book 3 Page 555

In Assessor's Office. Tax Map No. 063-00-07-003

Transfer No. 6-27-591

Nellie D. Pinckney
JASPER COUNTY, S.C.

DEED BOOK 425 PAGE 0072

DATE 5-12-06
AUDITOR Nellie D. Pinckney JASPER COUNTY SC

000709

465.12

WITNESS our Hand(s) and Seals(s) this 21 day of Decmbr in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:

Mitchell S Lowther (Seal)
MITCHELL S LOWTHER

(Seal)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 21 day of Dec, 2005

Notary Public for South Carolina
My Commission expires: 2-26-12

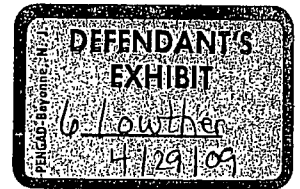
000710

465.13

STATE OF SOUTH CAROLINA)

WARRANTY DEED

COUNTY OF JASPER)



Know All Men by These Presents, that I, E LEGRAND LOWTHER, hereinafter referred to as Grantor(s) in the State aforesaid, for and in consideration of the sum of Ten Dollars and other valuable consideration to me paid by VIVIAN GENE L TILLOTSON, RITA ELIZABETH L ROGERS, MARK ALLEN LOWTHER, EFFIE SANDRA L TURPIN, CLAYTON CLARK LOWTHER, C. E. LOWTHER, Jr., and MITCHELL SAXON LOWTHER, hereinafter referred to as Grantee(s) in the State aforesaid and (the receipt of which is hereby acknowledged) have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said VIVIAN GENE L TILLOTSON, RITA ELIZABETH L ROGERS, MARK ALLEN LOWTHER, EFFIE SANDRA L TURPIN, CLAYTON CLARK LOWTHER, C. E. LOWTHER, Jr. and MITCHELL SAXON LOWTHER, their heirs and assigns, forever, the following described real property in the following shares, to-wit: an undivided 25% interest to Mitchell Saxon Lowther and an undivided 25% interest to be held jointly by Vivian Gene L Tillotson, Rita Elizabeth L Rogers, Mark Allen Lowther, Effie Sandra L Turpin, Clayton Clark Lowther, C. E. Lowther, Jr. and Mitchell Saxon Lowther(Grantor retaining an undivided 50% interest):

See attached Exhibit A for property description

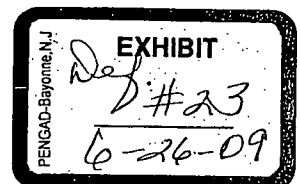
This being the identical property conveyed to the Grantor(s) herein by Deed of Vivian Gene L Tillotson, Rita Elizabeth L Rogers, Mark Allen Lowther, Effie Sandra L Turpin, Clayton Clark Lowther, C. E. Lowther, Jr., and Mitchell Saxon Lowther dated December 20, 2005 and recorded in Deed Book 337 at Page 10, Office of the Register of Deeds for Jasper County, South Carolina.

Grantee's Address: PO Box 995, Ridgeland, SC 29936

This Deed prepared by the law office of Moss, Kuhn & Fleming, P.A., Post Office Drawer 507, Beaufort, South Carolina 29901-0507

TMS No: 069-00-07-003

000711



TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said VIVIAN GENE L TILLOTSON, RITA ELIZABETH L ROGERS, MARK ALLEN LOWTHER, EFFIE SANDRA L TURPIN, CLAYTON CLARK LOWTHER, C. E. LOWTHER, Jr., and MITCHELL SAXON LOWTHER, , their Heirs and Assigns forever, in the shares set forth above.

And I, E LEGRAND LOWTHER do hereby bind my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said VIVIAN GENE L TILLOTSON, RITA ELIZABETH L ROGERS, MARK ALLEN LOWTHER, EFFIE SANDRA L TURPIN, CLAYTON CLARK LOWTHER, C. E. LOWTHER, Jr., and MITCHELL SAXON LOWTHER, their Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

000712

4/65.15

EXHIBIT A

ALL that certain piece, parcel or tract of land, situate, lying and being in Jasper County, South Carolina containing 266.35 acres, more or less, known as Wellington Plantation and being bounded and described as follows: On the North by Wellington Road, a dedicated Jasper County road; on the East by lands now or formerly of Pittman; on the South by lands now or formerly of Westvaco; and on the West by lands now or formerly of Westvaco and lands now or formerly of South Carolina Electric and Gas Co.. For a more particular description of metes, bounds, courses and distances, reference is made to that certain boundary survey prepared by Richard Kesselring, RLS for E Legrand Lowther and C. E. Lowther dated February 20, 1997, and recorded in the Office of the Clerk of Court for Jasper County, South Carolina in Book 22 at Page 293. The metes, bounds and distances appearing on the aforementioned plat are incorporated herein by reference.

This being the same property in which a 50% interest was conveyed from C. E. Lowther to E Legrand Lowther in Deed Book 168 at Page 154; and subsequently conveyed by C. E. Lowther and E Legrand Lowther to Mitchell S Lowther in Deed Book 176 at Page 97; and subsequently conveyed from Mitchell S Lowther to E Legrand Lowther (an undivided 50% interest) in Deed Book 243 at Page 206; and subsequently conveyed by Mitchell S Lowther and E Legrand Lowther to Albert L Kleckley (erroneously described due to a typographical error as 226.35 acres, vice 266.35 acres) in Deed Book 282 at Page 150; and subsequently conveyed as 50% undivided interest to E Legrand Lowther, 25% undivided interest to Mitchell S Lowther and 25% undivided interest to C. E. Lowther by Deed of Albert L Kleckley (with the same typographical error) recorded on September 18, 2003 in Book 282 at Page 154, all said deeds recorded in the Office of the Clerk of Court for Jasper County, South Carolina

LESS AND EXCEPT 3.84 acres thereof conveyed by C. E. Lowther to Mitchell S Lowther and Carmon B Lowther by deed recorded in the Office of the Clerk of Court for Jasper County, South Carolina in Deed Book 156 at Page 157 and more particularly described as Lot No 34 on that certain preliminary subdivision plat prepared by Connor & Associates, Inc., a copy of which is attached to said Deed and made a part of Deed Book 156 at Page 157.

ALSO LESS AND ACCEPT, any out conveyances as recorded in the Office of the Clerk of Court for Jasper County, South Carolina prior to the date of the recoding of this deed.

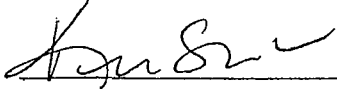
TMP 069-00-07-003

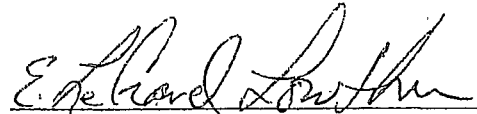
000713

465.16

WITNESS my Hand(s) and Seals(s) this 20th day of December in the year
of our Lord two thousand and Five

Signed, Sealed and Delivered
in the Presence of:



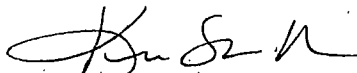
 (Seal)
E LEGRAND LOWTHER

(Seal)

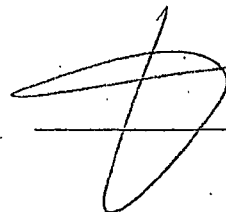
STATE OF SOUTH CAROLINA)
COUNTY OF)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 28th)
day of December, 2005)



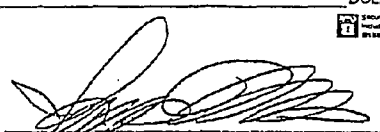
Notary Public for South Carolina)
My Commission expires: 8/28/12)



053000206
05/08/2007
6630607413

This is a LEGAL COPY of
your check. You can use it
the same way you would
use the original check.

0532009837 05/07/2007
000020208220482

Moss, Kuhn & Fleming, P.A. Escrow Account P.O. Drawer 507 Beaufort, SC 29901 Ph 843-524-3373		BRANCH BANKING AND TRUST COMPANY OF SOUTH CAROLINA BEAUFORT, SC 67-160/532		3910
PAY TO THE ORDER OF <u>Carmon Lowther</u>		\$ **20,000.00		5/7/2007
Twenty Thousand and 00/100*****		DOLLARS		
Carmon Lowther		 AUTHORIZED SIGNATURE		
MEMO <u>for deposit only</u>				
⑈003910⑈ ⑈053201607⑈ 5124253448⑈				

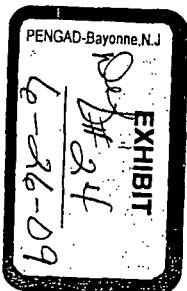
⑈003910⑈

⑈053201607⑈

5124253448⑈

⑈0002000000⑈

000715



Moss, Kuhn & Fleming, P.A.

Escrow Account

P.O. Drawer 507

Beaufort, SC 29901

Ph 843-524-3373

BRANCH BANKING AND TRUST COMPANY
OF SOUTH CAROLINA
BEAUFORT, SC

67-160/532

4191

3/14/2008

PAY TO THE
ORDER OF

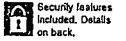
C E Lowther, Jr.

\$ **15,000.00

Fifteen Thousand and 00/100*****

DOLLARS

C E Lowther, Jr.



AUTHORIZED SIGNATURE

MEMO

⑈004191⑈ ⑆053201607⑆5124253448⑈

Moss, Kuhn & Fleming, P.A. / Escrow Account

C E Lowther, Jr.

3/14/2008

proceeds from e legrand Lowther

4191

15,000.00

BB&T - 3448

15,000.00

Moss, Kuhn & Fleming, P.A. / Escrow Account

C E Lowther, Jr.

3/14/2008

proceeds from e legrand Lowther

4191

15,000.00

BB&T - 3448

000716

15,000.00

Moss, Kuhn & Fleming, P.A.
Escrow Account
P.O. Drawer 507
Beaufort, SC 29901
Ph 843-524-3373

BRANCH BANKING AND TRUST COMPANY
OF SOUTH CAROLINA
BEAUFORT, SC

67-160/532

4192

3/14/2008

PAY TO THE
ORDER OF

Mitchell Saxon Lowther

\$ **15,000.00

Fifteen Thousand and 00/100*****

DOLLARS

Mitchell Saxon Lowther



MEMO

AUTHORIZED SIGNATURE

⑈004192⑈ ⑆053201607⑆5124253448⑈

Moss, Kuhn & Fleming, P.A. / Escrow Account

4192

Mitchell Saxon Lowther

3/14/2008

proceeds from E Legrand Lowther

15,000.00

BB&T - 3448

15,000.00

Moss, Kuhn & Fleming, P.A. / Escrow Account

4192

Mitchell Saxon Lowther

3/14/2008

proceeds from E Legrand Lowther

15,000.00

000717

465.20

BB&T - 3448

15,000.00

Moss, Kuhn & Fleming, P.A.
Escrow Account
P.O. Drawer 507
Beaufort, SC 29901
Ph 843-524-3373

BRANCH BANKING AND TRUST COMPANY
OF SOUTH CAROLINA
BEAUFORT, SC

67-160/532

4190

3/14/2008

PAY TO THE
ORDER OF

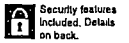
Clayton Clark Lowther

\$ **15,000.00

Fifteen Thousand and 00/100*****

DOLLARS

Clayton Clark Lowther



MEMO

AUTHORIZED SIGNATURE

⑈004190⑈ ⑆053201607⑆5124253448⑈

Moss, Kuhn & Fleming, P.A. / Escrow Account

4190

Clayton Clark Lowther

3/14/2008

proceeds from E legrand Lowther

15,000.00

BB&T - 3448

15,000.00

Moss, Kuhn & Fleming, P.A. / Escrow Account

4190

Clayton Clark Lowther

3/14/2008

proceeds from E legrand Lowther

15,000.00

BB&T - 3448

15,000.00

000718

465.21

Moss, Kuhn & Fleming, P.A.

Escrow Account

P.O. Drawer 507

Beaufort, SC 29901

Ph 843-524-3373

BRANCH BANKING AND TRUST COMPANY
OF SOUTH CAROLINA
BEAUFORT, SC

67-160/532

4189

3/14/2008

PAY TO THE
ORDER OF

Effie Sandra L Turpin

\$ **15,000.00

Fifteen Thousand and 00/100*****

DOLLARS

Effie Sandra L Turpin

 Security features
included. Details
on back.

MEMO

AUTHORIZED SIGNATURE

⑈004189⑈ ⑆053201607⑆5124253448⑈

Moss, Kuhn & Fleming, P.A. / Escrow Account

4189

Effie Sandra L Turpin

3/14/2008

proceeds from E Legrand Lowther

15,000.00

BB&T - 3448

15,000.00

Moss, Kuhn & Fleming, P.A. / Escrow Account

4189

Effie Sandra L Turpin

3/14/2008

proceeds from E Legrand Lowther

15,000.00

000719

465.22

BB&T - 3448

15,000.00

Moss, Kuhn & Fleming, P.A.

Escrow Account

P.O. Drawer 507
Beaufort, SC 29901
Ph 843-524-3373

BRANCH BANKING AND TRUST COMPANY
BEAUFORT, SC

67-160/532

4275

12-22-08

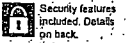
PAY TO THE
ORDER OF

Effie Sandra L. Turpin and R. Thayer Rivers, Jr.

\$ 1000.⁰⁰

One Thousand + no/100

DOLLARS



[Signature]
AUTHORIZED SIGNATURE

MEMO

⑈004275⑈ ⑆053201607⑆5124253448⑈

Moss, Kuhn & Fleming, P.A. / Escrow Account

4275

Effie Sandra Turpin + R. Thayer Rivers \$1000.⁰⁰

KLR

Moss, Kuhn & Fleming, P.A. / Escrow Account

4275

Effie Sandra Turpin + R. Thayer Rivers \$1000.⁰⁰

KLR

000720

465.23

Moss, Kuhn & Fleming, P.A.

Escrow Account

P.O. Drawer 507
Beaufort, SC 29901
Ph 843-524-3373

BRANCH BANKING AND TRUST COMPANY
BEAUFORT, SC

67-160/532

4276

12-22-08

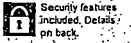
PAY TO THE
ORDER OF

Clayton Clark Lowther and R. Thayer Rivers, Jr

\$ 1,000.⁰⁰

One Thousand & no/100

DOLLARS



[Handwritten Signature]
AUTHORIZED SIGNATURE

MEMO

⑈004276⑈ ⑆053201607⑆5124253448⑈

Moss, Kuhn & Fleming, P.A. / Escrow Account

4276

Clayton Clark Lowther & R. Thayer Rivers \$1,000.⁰⁰

KLR

Moss, Kuhn & Fleming, P.A. / Escrow Account

4276

Clayton Clark Lowther & R. Thayer Rivers \$1,000.⁰⁰

KLR

000721

465.24

Moss, Kuhn & Fleming, P.A.

Escrow Account

P.O. Drawer 507

Beaufort, SC 29901

Ph 843-524-3373

BRANCH BANKING AND TRUST COMPANY
BEAUFORT, SC

67-160/532

4277

12-22-08

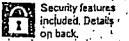
PAY TO THE
ORDER OF

CE Lowther, Jr and R. Thayer Rivers, Jr

\$ 1,000.⁰⁰

One Thousand + no/100

DOLLARS



[Signature]

AUTHORIZED SIGNATURE

MEMO

⑈004277⑈ ⑆053201607⑆5124253448⑈

Moss, Kuhn & Fleming, P.A. / Escrow Account

4277

CE Lowther Jr + R. Thayer Rivers \$1,000⁰⁰

KLR

Moss, Kuhn & Fleming, P.A. / Escrow Account

4277

CE Lowther Jr + R. Thayer Rivers \$1,000⁰⁰

KLR

000722

465.25

Moss, Kuhn & Fleming, P.A.

Escrow Account

P.O. Drawer 507

Beaufort, SC 29901

Ph 843-524-3373

BRANCH BANKING AND TRUST COMPANY
BEAUFORT, SC

67-160/532

4278

12-22-08

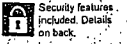
PAY TO THE
ORDER OF

Mitchell Saxon Lowther and R. Thayer Rivers, Jr.

\$ 1,000⁰⁰

One Thousand + no/100

DOLLARS



[Signature]
AUTHORIZED SIGNATURE

MEMO

⑈004278⑈ ⑆053201607⑆5124253448⑈

Moss, Kuhn & Fleming, P.A. / Escrow Account

4278

Mitchell Saxon Lowther + R. Thayer Rivers Jr \$1,000⁰⁰

Kbr

Moss, Kuhn & Fleming, P.A. / Escrow Account

4278

Mitchell Saxon Lowther + R. Thayer Rivers Jr \$1,000⁰⁰

Kbr

000723

4165.26

Echo-Tango Draft Interim Accounting

Total Amount Received From Echo Tango Lots

Lot Sales

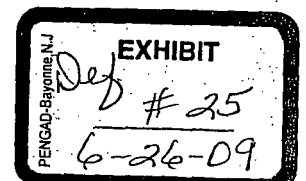
Kohlberg	92,135.06
Malphrus	1,000.00
Malphrus	698,046.65
Malphrus	750.00
Kohlberg Sewer	54,625.00
Qualey Sewer	43,050.00

Total Receipts	889,606.71

Total Expenses Incurred In Connection With Echo-Tango

Collins Construction	318,980.00
Boundary Survey	1,035.00
Legal	250.00
	231.60
	9,241.62
	282.00
	2,007.77
Palmetto Engineering	12,505.00
Tractor	1,950.00
Kesselring	5,270.00
BJSWA Cap. Fees	16,680.00
Bennett Trucking	76,382.50
Labor	3,075
Carolina Eng.	2946.50

000724



465.27

Carolina Eng.	3226.40
Beaufort ROD	417.00
River Title	1,725.00
Beaufort ROD	13.00
Moss Law Firm	500.00
Lynn Davidson	200.00
Eversole Law Firm	1,000.00
Moss Law Firm	550.00
Lynn Davidson	200.00
	4,013.00
	1,750.00
	4,020.00
Property Taxes ¹	32,244.16
Total	500,696.05

Reimbursements Already Made To LeGrand

Kohlberg Sewer	54,625.00
Qualey Sewer	43,050.00
From Escrow	20,000.00
From Escrow	350,000.00
Total Reimbursements To Legrand	474,675.00

¹ Excludes the year 2004, when the Estate paid half and Legrand paid half. All other years, LeGrand paid the entire bill.

000725

465.28

LeGrand Spent to Date 500,696.05

LeGrand Reimbursed To Date 474,675.00

Difference: 26,021.05

LeGrand is owed \$26,021.05 in reimbursements before any profits should be disbursed.

AgSouth Payments

Echo Tango has been making the AgSouth Payments. These payments are owed one-third each by LeGrand, the Estate and Mitchell. The following payments have been made:

5-29-08	3,327.57
9-25-08	3,327.57
12-18-08	3,327.57
3-30-09	3,327.57
Total	13,310.28
LeGrand's Share	4,436.76
Estate's Share	4,436.76
Mitchell's Share	4,436.76

Treat LeGrand's share as a profit disbursement to him. Treat the Estate's share as a profit disbursement to LeGrand also, which he then loaned to the Estate², so it is a debit on the Echo Tango accounting, but a credit to him on the Estate accounting. Treat Mitchell's share as a profit disbursement to him.

² This needs to be added to David Mims' accounting.

000726

465.29

The following additional disbursements have been made from Echo Tango:

Mitchell	36,000.00
Clark	16,000.00
Sandra	22,000.00
Rita	16,000.00
Gene	16,000.00
Mark	16,000.00
Bube	16,000.00
Total	138,000.00

At this time, accordingly, LeGrand is owed 26,021.05 (the difference between what he has spent and what he has been reimbursed) less his and the Estate's share of the AgSouth payments (4,436.76 plus 4,436.76), or 17,147.53.

To Mitchell's cash disbursements needs to be added his share of the AgSouth payments, or 4,437.57, bringing the total he has already received to 40,437.57.

The current status of everyone's "EchoTango Profit Account" is accordingly:

LeGrand	- 17,147.53
Mitchell	+40,437.57
Sandra	+22,000.00
Clark	+16,000.00
Rita	+16,000.00
Gene	+16,000.00
Mark	+16,000.00
Bube	+16,000.00

000727

465.80

Summary

At this time, LeGrand needs to be reimbursed 17,147.53, which will bring him to a zero balance (ie, he will have received back what he has spent) and then another 112,000.00 (7 times 16,000) to bring him even with everyone except Sandra and Mitchell. After that, LeGrand needs to be reimbursed 42,000 (7 times 6,000) and Clark, Rita, Gene, Mark and Bube need to be reimbursed \$6,000.00 each to bring them even with Sandra. After that, LeGrand needs to be reimbursed 129,062.99 and everyone except Mitchell needs to be reimbursed 18,437.57 (the difference between 40,437.57 and 22,000) to bring them even with Mitchell.

In sum, because of the disproportionate disbursements due to need already made to Mitchell, and to a lesser degree to Sandra, the following needs to be disbursed to the following people in order to bring everyone back on an even footing:

LeGrand	300,210.52
Sandra	18,437.57
Clark	24,437.57
Rita	24,437.57
Gene	24,437.57
Mark	24,437.57
Bube	24,437.57

Of course, there is not this much money in the escrow account. A balance in the escrow account also needs to be maintained in order to cover future expenses, such as taxes.

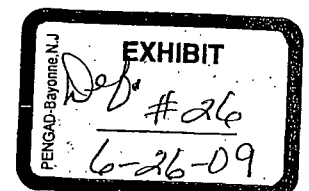
000728

465.31

Echo Tango Property Expenditures and Interest calculations

<u>To Whom</u>	<u>Details /description</u>	<u>Amount</u>	<u>Date Paid/Reimbursed/time</u>		
1) R. Kesselring	Road/runoff calculations/survey	\$5,270.00	1998	2008	9yrs
	\$ 5,270.00 @ 8.75% @ 9 yrs = \$	5,941.70			
2) BJWSA	Water/sewer capacity fees	\$ 16,680.00	1998	2008	9yrs
	\$ 16,680.00 @ 8.75% @ 9 yrs = \$	18,806.13			
3) FNB	Loan	\$ 35,433.27	2000	2008	7yrs
	\$ 35,433.27 @ 8.75% @ 9 yrs = \$	28,307.26			
4) TGS Survey	Boundary survey	\$ 1,035.00	2006	2008	1yr
	\$ 1,035.00 @ 8.75% @ 1 yr = \$	1,125.56			
5) Moss and Kuhn	Property tax protest	\$ 231.00	2005	2008	2yrs
	\$ 231.00 @ 8.75% @ 2 yrs = \$	90.56			
6) Moss and Kuhn	Lowther vs. Bft Co./BJWSA	\$ 9,241.62	2005	2008	4yrs
	\$ 9,241.62 @ 8.75% @ 4 yrs = \$	3,684.39			
7) Moss and Kuhn	Sewer Const. Cost Agrmnt.	\$ 282.00	2006	2008	1yr
	\$ 282.00 @ 8.75% @ 1 yr = \$	24.76			
8) SCBT	Letter/Line of credit for sewer	\$ 7,872.00	2006	2008	2yrs
	\$ 7,872.00 @ 8.75% @ 2 yrs = \$	1,437.87			
9) Carolina Engnr.	Engineering/consultant	\$ 2,946.20	2008	2008	1yr
	\$ 2,946.20 @ 8.75% @ 1 yr = \$	257.79			
10) Bft. County	Property tax	\$ 1,108.07	1998	2008	9yrs
	\$ 1,108.07 @ 8.75% @ 9 yrs = \$	1,249.23			
11) Bft. County	Property tax	\$ 1,421.48	1999	2008	8yrs
	\$ 1,421.48 @ 8.75% @ 8 yrs = \$	1,329.59			
12) Bft. County	Property tax	\$ 1,431.61	2000	2008	7yrs
	\$ 1,431.61 @ 8.75% @ 7 yrs = \$	1,143.65			
13) Bft. County	Property tax	\$ 1,200.79	2001	2008	6yrs
	\$ 1,200.79 @ 8.75% @ 6 yrs = \$	784.15			

000729



4165.32

14) Bft. County	Property tax	\$ 1,700.16	2002	2008	5yrs
	\$ 1,700.16 @ 8.75% @ 5 yrs =	\$ 1,670.02			
15) Bft. County	Property tax	\$ 1,531.20	2003	2008	4yrs
	\$ 1,531.20 @ 8.75% @ 4 yrs =	\$ 610.44			
16) Bft. County	Property tax	\$ 9,941.79	2004	2008	3yrs
	\$ 9,941.79 @ 8.75% @ 3 yrs =	\$ 2,844.71			
17) Bft. County	Property tax	\$ 8,553.89	2005	2008	2yrs
	\$ 8,553.89 @ 8.75% @ 2 yrs =	\$ 1,562.41			
18) Bft. County	Property tax	\$ 5,235.60	2006	2008	1yr
	\$ 5,235.60 @ 8.75% @ 1 yr =	\$ 458.11			
19) Bft. County	Property tax	\$10,691.03	2007	2008	1yr
	\$ 10,691.03 @ 8.75% @ 1 yr =	\$ 935.46			
20) Palmetto Engr.	Sewer plans/consultant	\$12,505.00	2005	2008	3yrs
	\$ 12,505.00 @ 8.75% @ 3 yrs =	\$ 3,578.14			
21) Custom tractor	Mowing	\$ 1,950.00	2006	2008	2yrs
	\$ 1,950.00 @ 8.75% @ 2 yrs =	\$ 356.17			
22) Collins Constr.	Sewer line construction	\$ 223,574.00	2007	2008	1yr
	\$223,574.00 @ 8.75% @ 1 yr =	\$ <u>19,562.00</u>			
23) Total Interest on Expenditures		\$ <u>95,760.10</u>			
(total of lines 1-22)					

000730

46533

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

EFFIE SANDRA L. TURPIN, C.E. LOWTHER, JR.,
MITCHELL SAXON LOWTHER, Individually and
Representing as a Class the beneficiaries of
the Estate of C.E. Lowther, Sr.,

Plaintiffs,

vs. CASE NUMBER
2010-CP-07-6274

E. LEGRAND LOWTHER, Individually and as a personal
representative of the Estate of C.E. Lowther, Sr.,
and MARK ALLEN LOWTHER, as a personal representative
of the Estate of C.E. Lowther, Sr.,

Defendants.

COPY

-----/

The hearing in the above-entitled cause,

taken pursuant to Notice and agreement, before

Shannon Casper, Certified Court Reporter and a

Notary Public, held before The Honorable Marvin

H. Dukes, III, at the Beaufort County

Courthouse, Master and Equity Office, Room 212,

Beaufort, South Carolina, on the 28th day of

June 2011, commencing at or about the hour of

10:46 a.m.

1

2

2

APPEARANCES OF COUNSEL:

3

FOR THE PLAINTIFF:

4

5

HARLEY D. RUFF, ESQUIRE
Ruff & Ruff, LLC
17 Professional Village Circle
Beaufort, South Carolina 29907

6

7

8

R. THAYER RIVERS, JR., ESQUIRE
252 Russell Street
Courthouse Square
Post Office Box 668
Ridgeland, South Carolina 29936

9

10

FOR THE DEFENDANT:

11

12

13

FRED KUHN, ESQUIRE
Moss, Kuhn & Fleming
1501 North Street
Beaufort, South Carolina 29901
843.524.3373

14

15

16

17

18

I N D E X

19

20

PAGE

21

OPENING REMARKS AND STIPULATIONS ----- 3

22

23

24

25

CERTIFICATE ----- 90

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000732

1

3

2

THE COURT: Good morning,

3

everyone. We're here in case

4

10-CP-07-6284. This is Turpin et al

5

versus Lowther et al. This is an

6

appeal in the Beaufort County Probate

7

Court. There are cross appeals filled.

8

Mr. Ruff, happy to hear from you,

9

sir.

10

MR. RUFF: Thank you, Your Honor.

11

First, my name for the record is

12

Harley Ruff, that's R-U-F-F.

13

First, as a procedural matter, Your

14

Honor just yesterday we filed a motion

15

to dismiss the other side's appeal,

16

granted that we only filed that

17

yesterday and we faxed it around this

18

morning. And there hasn't been ten days

19

for everyone to review that, but Your

20

Honor, it's a pretty straight forward

21

motion to dismiss. As Your Honor

22

probably knows appeals from the probate

23

court require strictly as a matter of

24

statute both the filing of the notice of

25

intent to appeal, which both sides did

1

4

2

in this matter, and a filing for what's

3

called a grounds of appeal with the

4

Beaufort County Probate Court, which was

5

not made by the other side.

6

Both the statute and the Mims v.

7

Austin Case which is attached to the

8

motion, Your Honor, which is a 1994

9

South Carolina Supreme Court Case hold

10

that compliance with the statute is

11

strictly required. As a matter of fact

12

in the Mims v. Austin Case the

13

appellant filed something in lieu of a

14

grounds for appeal. I think they

15

called it a memorandum of law in

16

support of her argument. But the

17

Supreme Court held quite properly that

18

wasn't strict compliance with the

19

probate codes requirements that a

20

grounds for appeal be filed with the

21

probate court as a matter of appeal.

22

And since the other side filed

23

nothing with the probate court, no

24

grounds for appeal, there's a

25

jurisdictional issue. Their appeal

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000734

1

2

absolutely fails and must be thrown out
as a matter of law.

3

4

5

6

7

8

So if Your Honor requires there'd
be a second hearing on this where
everyone has the requisite 10-day
notice, then that's fine with us, Your
Honor, but that's our argument there.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

On our appeal, Your Honor, this is
a breach of fiduciary duty case. So
where the appointed personal -- at least
the point co-personal representative in
this case of a decedent's estate, took
estate property -- took estate property,
sold it to a third-party by contract,
which is part of the record, Your Honor,
party that was called ISI, but later
changed its name -- really although it
was exactly the same party -- to
Amberwinds, LLC. Sold this property
while the estate was open for \$810,000.
Then subsequently came to our clients
being the heirs and debtees of the
estate and solicited a purchase himself
individually from them of that same

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000735

1
2 property for \$511,000. Granted our
3 clients entered into that deal with
4 Mr. Legrand Lowther, sold it to him, and
5 then within roughly two months after
6 that he turned around and flipped it for
7 \$810,000 to Amberwinds, LLC. That was a
8 clear breach of fiduciary duty, Your
9 Honor, the worse I've seen in my about
10 20 years of probate practice. And the
11 probate court held quite properly that
12 that was a breach of fiduciary duty that
13 Mr. Legrand Lowther should be answerable
14 for. So we agree completely with the
15 probate court as a matter of law on
16 that.

17 However, the probate court's math
18 was ill-advised to put it nicely.
19 Specifically even though Mr. Legrand
20 Lowther purchased the property from my
21 clients for \$511,00, the way he did it
22 was not as a cash purchase, but he did
23 it as a bank mortgage, a first mortgage
24 of \$585,000. In other words, like a
25 lot of folks who brought property in

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000736

1

2

the last decade, he borrowed --

3

THE COURT: The cash out refied.

4

5

6

MR. RUFF: He borrowed \$74,000
more than what he needed to pay the
heirs of the estate.

7

THE COURT: Okay.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. RUFF: And the probate court
gave me credit for that. The probate
court said the starting point is not
\$810,000 minus 511,000, which truly
represents his profit on the deal.
They said it was \$810,000 minus in
effect the mortgage amount which he had
personally pocketed \$74,000 from,
ignoring the fact that he pocketed that
\$74,000 in the bank loan.

Using that logic, Your Honor, as we
pointed out in our grounds for appeal, I
suppose using the probate court's logic
if Mr. Lowther paid all cash for the
property, not put any mortgage on it,
then he'd owe our clients \$810,000,
which would be an insane result that we
would concede as not fair. Similarly

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000737

1

8

2

had he put a, you know, million dollar

3

mortgage on the property, cashed out a

4

whole bunch more than he needed to pay

5

the heirs their \$511,000 the probate

6

court would feel that he owes the heirs

7

nothing. It made --

8

THE COURT: You're saying it was

9

the third-party sales price less the

10

sales price from the estate?

11

MR. RUFF: Exactly, his true

12

profit.

13

And the law makes clear, Your

14

Honor -- it's cited in our argument the

15

restatement third of trust Section 227,

16

as well as South Carolina Code Section

17

62-7-1028, the damages for breach of

18

fiduciary duty are the profit the

19

fiduciary made by reason of the breach,

20

or stated differently what the fiduciary

21

entity and/or beneficiaries would have

22

earned but for the breach. That amount

23

unquestionably for the estate's

24

beneficiaries is \$299,000.

25

Mr. Lowther -- it's just a very

COASTAL COURT REPORTING & VIDEO SERVICES

POST OFFICE BOX 7349 HILTON HEAD, SC 29938

HILTON HEAD - BEAUFORT - SAVANNAH

843-785-7739 - 843-525-9600 - 912-232-6161

000738

1

9

2

ill-advised for a court to give him

3

credit for mortgage money that he

4

personally pocketed that none of which

5

came to the heirs in the first -- from

6

the first closing.

7

So that basically -- that's the

8

first gross error that the probate

9

court made of \$74,000. The probate

10

court also made some other smaller

11

reductions, not for any stated reasons,

12

specifically Mr. Lowther's attorney fee

13

of \$1,250. We take issue with that.

14

We believe that that was Mr. Lowther's

15

personal expense and the attorneys

16

involved in that knew about the

17

concealed presale to Amberwinds and did

18

nothing to protect the interest of the

19

beneficiaries of the estate. We

20

believe therefore that based on the

21

conduct here, which the probate court

22

found as a breach of fiduciary duty,

23

that no credit should be given to Mr.

24

Lowther for that.

25

There's also an SC&G claim against

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000739

1
2 the estate for some \$1,256. Well,
3 there's no evidence introduced at trial
4 about what this SC&G claim was for and
5 no explanation at all given as to why
6 that should affect our client's
7 interest. You know, there's just no
8 evidence of it of all. Granted if it
9 was obviously our client's personal
10 SC&G bill, I can concede that, but
11 there's no information on that at all.
12 For all I know it's Mr. Legrand
13 Lowther's personal SC&G bill. There's
14 no evidence on that one way or another,
15 and therefore, it's not proper for the
16 damages amount to be reduced by that.

17 Still though, those are smaller
18 amounts. The big issue where the court
19 missed the ball here was the \$74,000
20 excess mortgage amount that Mr. Legrand
21 Lowther borrowed and pocketed, none of
22 which came to the heirs, Artificially
23 reducing the initial measurement of
24 damages that the probate court
25 wrongfully, reducing the measure of

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000740

1
2 damages that the probate court assessed
3 by \$74,000.

4 Second, the probate court also made
5 a mistake by reducing the damages on the
6 sale of other lots that we've all called
7 the Echo-Tango Property. Now, there've
8 been other transactions among the family
9 members here, Your Honor, and some of
10 them are being handled in parallel
11 foreclosure cases that have nothing to
12 do with this probate case right here.
13 None of these transactions are the least
14 bit relevant to our probate cause of
15 action and they're all just a bunch of
16 red herrings thrown out really by the
17 other side in an effort to confuse the
18 court and to try to take everyone's
19 attention from the \$299,000 illegal
20 profit that Mr. Lowther made.

21 The Echo-Tango property as Your
22 Honor can see in our grounds for appeal,
23 Echo-Tango is -- represents property
24 that was owned at different times by
25 Mr. Legrand Lowther and by the

1
2 beneficiaries' father. But it was
3 agreed upon by everyone -- and this came
4 out in the deposition testimony that's
5 attached to our grounds for appeal as
6 exhibit four -- that regardless of how
7 the title was held and regardless of the
8 transfers back and forth that were made
9 between Mr. Legrand Lowther and his
10 father over the years, that the heirs of
11 the estate, our clients, owned a
12 50 percent interest as of the time of
13 death. Mr. Legrand Lowther recognized
14 that. My clients recognized that. That
15 was one of the perhaps few points that
16 everyone agreed to.

17 So, when Mr. Lowther defaulted on
18 promissory notes due to my clients, the
19 end result was that my clients were
20 revested so to speak in the same 50
21 percent interest in the Echo-Tango
22 property that they owned truthfully as
23 of the time of the decedent's death in
24 this case.

25 The probate court without any

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000742

1
2 explanation gave a dollar-for-dollar
3 offset for the Echo-Tango distributions
4 that ultimately were made to our
5 clients. This has nothing to do with
6 the 40-acre track where Mr. Lowther
7 pocketed \$299,000. And, again, using
8 the probate court's logic, if -- you
9 know, the Echo-Tango property is -- the
10 reality of the situation is that the
11 first lot sold for \$700,000 there, I
12 believe four additional lots. If those
13 lots sell for anything close to the
14 value that the first one sold at, then
15 under the probate court's logic, Mr.
16 Legrand Lowther would get off completely
17 scot-free for the 299,000 profit that he
18 skimmed from the 40-acre transaction.
19 It makes no sense. And the fact that
20 our clients are getting the 50 percent
21 proceeds that they were entitled to as
22 of the date of death for the Echo-Tango
23 property is a red herring and has
24 nothing to do with the fact that they
25 were taken advantage of by the tune of

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000743

1

2

\$299,000 on the 40-acre track.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Also allegations have been made about other transactions, Wellington is something that the other side has brought up a few times in their grounds for appeal and other court filings.

That was a transaction where once again Mr. Legrand Lowther purchased that property from our clients too and also had a prearranged resale of that property also to Amberwinds for what would have been an additional two to \$300,000 profit.

Now, that subsequent deal with Amberwinds did not close, and the other side has used that as a defense again trying to confuse the issue with all the properties being involved here. And, again, you know, I don't mean for this to be perhaps so pejorative, but as I said in our grounds for appeal it's, you know, trying to defend themselves on the basis of that is a little bit like a house robber defending himself for a

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000744

1
2 theft of jewelry by saying that he
3 wasn't able to steal the silverware
4 also. The first transaction, the
5 \$299,000 illegal profit made at the
6 expense of the heirs of the estate whose
7 interest that Mr. Legrand Lowther was
8 bound by law to protect and defend is
9 all this probate court case is about,
10 and anything, else as we said in our
11 grounds for appeal, is irrelevant,
12 confusing, and misleading. So Your
13 Honor, those are our arguments on this
14 grounds for appeal. Thank you.

15 THE COURT: I noticed also on your
16 grounds for appeal had to do with the
17 failure to award punitive damages; is
18 that correct.

19 MR. RUFF: Yes.

20 THE COURT: Is that ground
21 abandoned or --

22 MR. RUFF: No. No, it's not
23 abandoned. Thank you. I flipped
24 passed that.

25 The probate court really without

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000745

1
2 any explanation or analysis just said
3 that there's no clear and convincing
4 evidence that his conducts warrants an
5 award of punitive damages. Well, Your
6 Honor, as you know punitive damages are
7 available if a plaintiff proves by clear
8 and convincing evidence that defendant's
9 conduct was willful, wanton, or in
10 reckless disregard to the plaintiff's
11 rights. It is a matter of evidence in
12 the case that Mr. Lowther presold before
13 approaching -- presold the property at
14 issue here to Amberwinds for \$810,000.
15 And it's undisputed in the evidence that
16 he then came to our clients to arrange
17 for a purchase from them for \$511,000.
18 And it's very clear from the testimony
19 at the probate court hearing he has no
20 remorse whatsoever about this, thinks
21 that he did absolutely nothing wrong,
22 and continues to hold that \$299,000
23 profit to this day. So it's not
24 really -- I'll say it's not even
25 reckless disregard, it's completely

1

2

willful. It's willful and continuing.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

And punitive damage award -- of course punitive damage awards are set up as a deterrent. And this is exactly the kind of thing that we see people -- these kinds of stunts people try to pull at the probate level all the time and I think a message should be sent by the courts that fiduciaries can't do this, shouldn't do this, and should be held accountable properly with an appropriate punitive damage award if they do these kinds of things. So thank you.

THE COURT: One quick question, you touched on the Echo-Tango transactions and I understand your position as they're a red herring and not associated with it, but can you tell me a little bit more about those? Those were -- it sounds like that Mr. Lowther owned half of it, the estate owned the other half; is that correct? That -- and well, Mr. Kuhn

1
2 may disagree that that was an
3 undisputed fact. And then you said
4 there was some mortgages or something
5 or a foreclosure. What happened?

6 MR. RUFF: Okay; well, it was
7 agreed upon in the deposition testimony
8 that the estate truthfully owned half
9 of it. I believe that half was
10 actually titled in Mr. Legrand
11 Lowther's name but he -- the
12 foreclosures are a separate case that
13 Mr. Rivers is involved with that I
14 don't know anything about. So at the
15 risk of making a misstatement -- and
16 perhaps Mr. River can chime in on
17 this -- it was agreed that the half
18 interest in that property belonged to
19 the heirs of the estate. And what
20 happened was that the heirs of the
21 estate did as part of the sale of
22 Echo-Tango and the 40-acre track for
23 \$511,000 agreed to a quitclaim before
24 we were involved. Their interest in
25 Echo-Tango over to Mr. Legrand Lowther

1
2 for zero additional consideration; no
3 additional consideration at all. An
4 ill-advised move, yes, but that was
5 part of what unfortunately the
6 agreements were.

7 What happened is that later when
8 the Wellington -- the third property --
9 when that transaction between
10 Mr. Legrand Lowther and Amberwinds
11 failed to close, he wasn't able to pay
12 off the notes, the promissory notes that
13 were owned to my clients. So as part of
14 those promissory notes, my clients were
15 restored --

16 THE COURT: You say the quitclaim
17 deeds were for zero, were there
18 promissory notes given in exchange?

19 MR. RUFF: There were promissory
20 notes given, but the quitclaim -- but
21 the Echo-Tango and the Wellington
22 properties were sold to -- were sold by
23 our clients to Mr. Legrand Lowther in a
24 single transaction. They purchased --
25 he was purchasing their interest in

1

2

Wellington from them, but as part of

3

that transaction they agreed as part

4

and particle that to quitclaim any

5

interest they had in Echo-Tango over to

6

him. This was at the point where their

7

name didn't appear on the title. It

8

was, you know, conceded that they owned

9

a half equitable interest in

10

Echo-Tango, but their names weren't on

11

the title.

12

THE COURT: But they financed

13

their equitable interest through the

14

use of the promissory notes?

15

MR. RUFF: That's right, Your

16

Honor. So when the Wellington sale did

17

not occur, Mr. Legrand Lowther

18

defaulted on his notes to our clients,

19

and by then I think Mr. Rivers and I

20

were involved. And then so our clients

21

were restored. I think through -- it

22

wasn't easy though. I think there was

23

a foreclosure action involved to get

24

their interest in Echo-Tango back.

25

THE COURT: Now, I noticed in one

COASTAL COURT REPORTING & VIDEO SERVICES

POST OFFICE BOX 7349 HILTON HEAD, SC 29938

HILTON HEAD - BEAUFORT - SAVANNAH

843-785-7739 - 843-525-9600 - 912-232-6161

000750

1

2

of the footnotes of Judge Fulps' order

3

it says there are parallel civil

4

actions going on.

5

Do you consider those -- are those

6

the parallel civil actions?

7

MR. RUFF: I believe so. But I'd

8

have to defer to Mr. Rivers and

9

Mr. Kuhn on that.

10

THE COURT: Okay.

11

All right; anything else?

12

MR. RUFF: Not right now, Your

13

Honor. Thank you very much.

14

THE COURT: Mr. Kuhn.

15

MR. KUHN: If it will please the

16

Court, Your Honor, Fred Kuhn of

17

Beaufort. I represent the defendants,

18

Legrand Lowther who is seated beside me

19

and Mark Lowther who is seated beside

20

Legrand Lowther.

21

The fundamental fallacy in the

22

Plaintiff's argument, Your Honor, is

23

that they want to view the 40-acre

24

transaction in isolation without looking

25

at everything else that was going on at

COASTAL COURT REPORTING & VIDEO SERVICES

POST OFFICE BOX 7349 HILTON HEAD, SC 29938

HILTON HEAD - BEAUFORT - SAVANNAH

843-785-7739 - 843-525-9600 - 912-232-6161

000751

1

2

the time. And as Judge Fulp did, I

3

believe this Court needs to look at

4

everything that was going on at the time

5

as part of one unified transaction.

6

The law is clear that agreements

7

that are entered into, even if on

8

different dates, between the same

9

parties regarding the same subject

10

matter should be looked at as one whole

11

transaction. And what the Plaintiff's

12

want to do is look at this 40-acres in

13

isolation and very simplicity say,

14

well, Mr. Lowther bought it for

15

\$511,000 and a few months later he sold

16

it for \$810,000, therefore there's a

17

breach of a fiduciary duty and he

18

should give them the difference of the

19

purchase price.

20

That is overly simplistic and

21

contrary to the facts. The facts are

22

rather convoluted. And, Your Honor,

23

I've prepared a brief, if I could pass

24

it up at the end of the hearing, that

25

goes through the testimony in the case.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000752

1

2

And I have written it adopting

3

basically Judge Fulp's findings of

4

facts because I believe we're stuck

5

with those at this point even though

6

there's some of his findings that we do

7

not agree with.

8

But looking at what Judge Fulp

9

found in the evidence of the case,

10

you've got Mr. Lowther, Senior, and on

11

the day of his death his daughter,

12

Sandra, prepares a will for him to sign

13

as he's dying that leaves his estate

14

basically to seven of his eight

15

children. The only child who is

16

excluded is Legrand who is excluded at

17

his own request. He did not want to be

18

a beneficiary of his father's estate.

19

He felt that he just didn't need it,

20

and his father had been good to him

21

during his father's life time. The

22

will basically leaves everything to the

23

seven other children equally. And he

24

owned at the time he died two pieces of

25

real estate. He owned this 40-acres,

COASTAL COURT REPORTING & VIDEO SERVICES

POST OFFICE BOX 7349 HILTON HEAD, SC 29938

HILTON HEAD - BEAUFORT - SAVANNAH

843-785-7739 - 843-525-9600 - 912-232-6161

000753

1
2 he owned 100 percent of that, and then
3 he owned a larger track, 200 and some
4 acres in which he held a one-fourth
5 undivided interest. This larger track
6 we've referred to as the Wellington
7 Plantation track of land. And that's
8 all he owned when he died.

9 The remaindered of Wellington was
10 owned one-half by Legrand out right,
11 and the other one-fourth interest was
12 owed by Mitchell Lowther who is seated
13 besides Mr. Rivers.

14 The brothers and sisters were
15 hurting for money and wanted to sell the
16 land. And the personal representatives
17 were willing to sell the land before the
18 estate closed. And at least two
19 proposed contracts were entered into for
20 the sale of the 40-acres. One negotiate
21 by Clark Lowther, seated at the end of
22 the table, for about 240, \$250,000 for
23 the 40-acres. And some of the brothers
24 and sisters wanted to accept that, but
25 others thought it was too low, and so

1

2

that offer was refused.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Another offer was made for 600,000 for the 40-acre parcel, but the buyer of Bear Creek Company, backed away from that. They looked at it and decided it was too much, they didn't want to buy it. And that contract -- they had a contract in place, they walked away from that contact.

During that period of time there's a company called ISI International Society of Investors, expressed an interest in the Wellington Plantation track. One of the individuals who worked for ISI, his father was on the planning committee of Jasper County and knew about it through that. And they came down and looked at it and they began having discussions with Mr. Lowther about purchasing the Wellington Plantation plat -- Wellington Plantation track from the heirs from the estate. And Legrand said, yeah, we'd be willing to sell it. And ISI started

1

2

doing its due diligence and found out

3

that there's no sewer and no water, and

4

so it was a tracked process. They

5

started negotiating with the Town of

6

Ridgeland and see if they can

7

incorporate it into the town, be annexed

8

and get water and sewer that way.

9

The second contract for the

10

40-acres fell through so when ISI came

11

back to Mr. Legrand Lowther and said,

12

yes, we're interested in purchasing

13

Wellington, we think we can get sewer

14

if we can get annexed, he said, well,

15

I've got this 40-acre track also, this

16

contract fell through, it was under

17

contract, it fell through, they

18

defaulted and walked away -- they

19

didn't technically defaulted, the

20

contract let them get out of it if they

21

didn't want -- if you want to buy

22

Wellington, you have to also buy the

23

40-acres. And they said well, we'll

24

look at the 40-acres and see if we're

25

interested. What would it cost? And

COASTAL COURT REPORTING & VIDEO SERVICES

POST OFFICE BOX 7349 HILTON HEAD, SC 29938

HILTON HEAD - BEAUFORT - SAVANNAH

843-785-7739 - 843-525-9600 - 912-232-6161

000756

1

2

he basically said well, about \$800,000

3

to buy the 40-acres. They said, well,

4

we'll look at it.

5

His brothers and sisters wanted --

6

some of them were hurting. Notably the

7

three Plaintiffs were. None of them

8

were employed, they were hurting for

9

money. They wanted a quick sale of

10

something to make money. And this is

11

again in the testimony. So they talked

12

to Legrand about Legrand buying the

13

property. He said, well, I'd be

14

interested in buying it also, but I

15

don't have the money, but I might be

16

able to borrow some money. And so they

17

began negotiating. And Legrand

18

presented a proposal to all his

19

brothers and sisters on October 16th of

20

this particular year, that proposed

21

buying each of the interest of all of

22

the brothers and sisters except for

23

Mitchell for, I believe \$250,000 --

24

excuse me -- thank you; \$325,000.

25

Buying their one-seventh interest each

COASTAL COURT REPORTING & VIDEO SERVICES

POST OFFICE BOX 7349 HILTON HEAD, SC 29938

HILTON HEAD - BEAUFORT - SAVANNAH

843-785-7739 - 843-525-9600 - 912-232-6161

000757

1
2 in the 40-acres, and their one-seventh
3 of 25 percent each in the Wellington
4 Plantation track acre. And the
5 contract said there'd be 75,000 paid
6 down, and the other \$250,000 would be
7 financed.

8 With respect to Mitchell he
9 delivered a proposed contract to
10 Mitchell that left the purchase price
11 blank, basically for Mitchell to make
12 an offer back to him what he thought
13 would be fair. And Mitchell's also
14 included a clause that said there's
15 this 3.84-acre parcel that your wife,
16 Carmen, owns that's next to Wellington
17 Plantation I would like to buy that
18 also.

19 THE COURT: So in Mitchell's case
20 we're talking about his percentage as
21 an heir in the 40-acres and his quarter
22 interest in Wellington plus his
23 interest as an heir in the other corner
24 of Wellington --

25 MR. KUHN: That's correct.

1

2

THE COURT: -- is that right?

3

MR. KUHN: That's correct.

4

5

THE COURT: Okay; I'm trying to
keep them --

6

7

8

9

10

11

MR. KUHN: So it was anticipated
by Legrand Mitchell's price is going to
be a lot higher than the three and a
quarter he'd offered his brothers and
sisters. So that's why he left that
blank.

12

THE COURT: All right.

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. KUHN: Delivered those
contacts on October 16th or
October 17th to the brothers and
sisters and did not tell them at that
time that ISI had expressed an interest
in buying one or the other or both of
the properties because he hadn't --
that's all that happened, they'd
expressed an interest. They made some
changes to the contract. Mitchell
filled in his proposed price, which I
believe was \$950,000 -- I keep calling
it \$75,00 short -- a \$1,25,000 and had

1
2 his wife -- Mitchell signed it and he
3 had his wife, Carmen, sign it also
4 since the 3.84-acres was owned out
5 right by Carmen.

6 So it got cut proposed offers back
7 from the brothers and sisters at this
8 point in time to purchase basically
9 everything they had, Mitchell what he
10 had, and the brothers and sisters what
11 they had for a lump sum price. Part
12 down, part to be financed.

13 Significantly the only part that the
14 mortgage would be against would be the
15 Wellington Plantation property. And the
16 reason for that, they had discussed this
17 because Legrand didn't have the money.

18 He was going to have to go out and
19 borrow the money. And to borrow the
20 money, he'd have to put a mortgage on
21 the 40-acre track. In order to put a
22 mortgage on the 40-acre track, they had
23 to convey that to him free and clear.

24 THE COURT: What was the status of
25 the ISI contract at this point?

1

2

3

4

MR. KUHN: There was no ISI
contact. Nothing in writing, oral
discussions.

5

6

7

8

9

THE COURT: Well, let me ask you
the -- I haven't read your appeal, but
is the finding of a breach of fiduciary
duty a part of the appeal, or is it
mathematics?

10

11

MR. KUHN: It's part of the
appeal.

12

THE COURT: Okay.

13

14

MR. KUHN: It's part of the
appeal, Your Honor.

15

16

17

18

19

20

21

22

At that point in time to deliver
the blank unsigned contracts to his
brothers and sisters October 16th,
received modified contracts from most of
them back a few days later as well as
the contract from Mitchell and Carmen
with the purchase price filled in. He
had not signed those contacts.

23

24

25

At that point in time they're oral
discussions with ISI only in which a
purchase price in the neighborhood of

1
2 \$800,000 had been discussed regarding
3 the 40-acre parcel. And no money at
4 all had been discussed regarding the
5 Wellington transaction. And the
6 discussion of the \$800,000 was Legrand
7 saying, I'd be willing to sell the 40
8 for 800, but you need to buy Wellington
9 also and we need to agree on a price on
10 that.

11 He receives the proposals back
12 from his brothers and sisters. He then
13 receives in the mail from ISI, proposed
14 contracts on Wellington and the
15 40-acres.

16 THE COURT: Now, it is
17 undisputed -- if it is, I don't know --
18 or does the record show it to be
19 undisputed that these records with ISI
20 were not shared with the members of the
21 estate?

22 MR. KUHN: That's correct. They
23 were not. The negotiations were not.

24 We disputed in the record, but the
25 judge found against us. So I -- I can't

1

2

remember, but I think we're stuck with
those findings of fact.

3

4

5

6

THE COURT: In other words, was
there evidence of the meeting and you
guys are dealing with --

7

MR. KUHN: No. No. No.

8

THE COURT: No such evidence?

9

MR. KUHN: No, sir.

10

THE COURT: All right.

11

12

13

14

15

MR. KUHN: For purposes of the
appeal, I'm assuming that there's no
discussions at all. That's not quite
frankly relevant to my appeal, or
theirs from my point of the view.

16

THE COURT: Okay.

17

18

19

20

21

22

23

24

25

MR. KUHN: These proposed
contracts that Mr. Lowther receives
back from ISI have an \$810,000 for the
40-acres, but no price on Wellington.
Like Mr. Legrand did with Mr. Mitchell,
the price was left blank; you make me
an offer back and I'll see if it's
agreeable. There were several things
in the contract, the proposed

1
2 contracts, that he did not like. At
3 this point in time he's got basically
4 offers back from his brothers and
5 sisters and he's got partially
6 completed contracts from ISI. He
7 changes some of the language regarding
8 the 40-acres, closing date, money down,
9 financing, you know, change it to a
10 cash sale, changes -- they want him to
11 pay the closing cost, changes it to you
12 pay the closing cost. And on the
13 proposal back on the Wellington he
14 fills in a purchase price. So the
15 money he files in on that. And he
16 mails it back to them. And the closing
17 date is set for some time next February
18 of the following year.

19 THE COURT: Now, on these
20 contracts, the seller was not the
21 estate, but your client?

22 MR. KUHN: Personally Legrand
23 Lowther; yes, sir.

24 THE COURT: Okay.

25 MR. KUHN: And because at this

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000764

1

2

time he's got these offers from his

3

brothers and sisters he modifies the

4

proposal from ISI to reflect that he

5

personally would be the seller, not all

6

his brothers and sisters.

7

He sends those off, mails those off

8

to ISI, sort of keeps his fingers

9

crossed. He's not happy with the

10

proposal made from his brothers and

11

sisters, so they continue their

12

discussions regarding their proposals

13

back to him. He does not sign those

14

contacts, they do not agree to that.

15

At that point in time, they bring

16

up this Echo-Tango property.

17

Echo-Tango is a subdivision right

18

across from the Lemon Island Marina on

19

your left-hand side as you're heading

20

towards Savannah, towards Hilton

21

Head -- that Mr. Legrand Lowther owned

22

out right, 100 percent simple legal

23

equitable title. It's not part of the

24

estate, it's not owned by his father,

25

he owned it out right.

COASTAL COURT REPORTING & VIDEO SERVICES

POST OFFICE BOX 7349 HILTON HEAD, SC 29938

HILTON HEAD - BEAUFORT - SAVANNAH

843-785-7739 - 843-525-9600 - 912-232-6161

000765

1
2 He had promised his father while
3 his father was living that if he made
4 money on Echo-Tango in exchange for the
5 love and affection he had for his
6 father, that he would share with his
7 father any profit that he made on the
8 Echo-Tango subdivision. A promise
9 between he and his father, personally
10 with his father.

11 The brothers and sisters knew about
12 that promise, of course and they felt
13 like, well, if you're willing to promise
14 that with dad, why don't you promise it
15 with us. And his response had always
16 been, you know, because it's a different
17 relationship basically without getting
18 too blunt. I was willing to do that
19 with dad, I'm not willing to do that
20 with y'all, sorry. They said, well,
21 I'll tell you what, you got this
22 Echo-Tango, we feel like we should have
23 a piece of that, so they started
24 negotiating that. And eventually what
25 it boiled down to was this; I've got

1
2 these offers out to ISI -- which he
3 hadn't told them about -- they had said
4 they'll pay 800 for the 40-acres. I
5 made them an offer on Wellington, I
6 don't know if they're going to take it
7 or not. I don't know if we have a deal
8 on the 800 because I've made some
9 changes -- significant changes to that
10 deal, but I think if you sell me the
11 40-acres, I think I can go borrow the
12 money to buy that from you and get you
13 at least some money down. And if you'll
14 finance the rest and we can agree to a
15 price on Wellington, how about this,
16 we'll go ahead and close on the
17 40-acres, I'll borrow the money if I can
18 borrow the money, and I'll pay you in
19 cash \$75,000 each. Which would have
20 been your down payment if we had done
21 this as a lump sum all at one time.
22 Finance the rest of it for me, give me
23 one year to pay you, and if I do not pay
24 you, then I will give you back the
25 Wellington property; just the Wellington

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000767

1
2 property, and I will share one-half of
3 the profits that I make on Echo-Tango
4 with you like you've been hounding me
5 for, we'll finalize that. And they
6 said, okay, we'll do that.

7 On December 8th -- so he goes to
8 the bank, applies for the loan, gets
9 approved for the loan. On December 8th
10 they hold a closing on the 40-acres,
11 except in preparing for that he said,
12 shoot, I need another \$14,000 to pay for
13 these closing cost and I don't have
14 \$14,000, so he goes back to them, no
15 contracts in place now with them, he
16 never signs their proposals, and they
17 don't modify the contract to reflect
18 this. So he goes back to them and he
19 says, how about we do this, instead of
20 me paying you \$75,000 on the 40-acres
21 and then financing 250 or 950 on
22 Wellington, let's take 2,000 off the
23 40-acres, add it to Wellington, that way
24 I'll have this extra 14,000 between the
25 seven of you that I need to close.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

That's how they came up with this \$2,000 difference. And they agree. And so a closing is held. There is no contract in place at the time of this closing on December 8th with anybody, with his brothers and sisters or ISI. He pays them \$73,000 each. A simultaneous closing is held on the loan with the bank that lends him the money, this 500 and some thousand dollars. He pays the closing cost. They give him the deed, and everything is good to go.

And I omitted an important fact; prior to that time, he and Mark sign a deed to distribution conveying all this property to his brothers and sisters. So this transaction takes place entirely outside the estate. They are conveyed by deed of distribution, they're interest in that they inherited from their father and then they sign almost simultaneously the deeds conveying the interest that they inherited to Legrand in both

1
2 properties. Mitchell signs the deed
3 for his 25 percent that he owned out
4 right before his father died, and
5 Carmen signs the deed for 3.84-acres.
6 So that closing is held on
7 December 8th.

8 After that Legrand receives in the
9 mail from ISI the executed contacts
10 that he had sent back to them. He
11 testified that he was still not happy
12 with those contacts because they have a
13 clause in there that basically says --
14 the contacts are in evidence -- we're
15 developers, we want to develop these
16 properties, if we can't develop these
17 properties, then we don't have to go
18 forward with this contract. So we're
19 going to do our due diligence so it's
20 suitable for our purposes we can walk
21 away. There's not earnest money,
22 there's no penalty, there's no nothing.
23 But he's willing to take that risk.

24 If at that time -- well, he did not
25 disclose to his brothers and sisters on

1
2 December 8th the negotiations that had
3 gone on with ISI and the fact that he
4 had made a written proposal to them and
5 mailed that off but had not heard
6 anything back and it had been almost a
7 month-and-a-half since he had sent that
8 off. His hope was that he would be able
9 to -- and they knew he was going to have
10 to flip these properties. They knew he
11 didn't have the money. So they knew he
12 was going to sell these properties to
13 somebody to pay off this mortgage, that
14 they were there when he was signing a
15 closing on at the same time and he was
16 going to have to sell Wellington to pay
17 them two-and-a-half million dollars that
18 was going to be due in another year. So
19 this is not a transaction where they
20 sold it to him thinking he's going to
21 keep it in the family. This was a
22 transaction where they sold it to him
23 knowing he was going to flip it. And
24 common sense would tell you knowing that
25 he's going to flip it for more than he

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000771

1

2

3

4

5

bought it from them, otherwise, why
would he be doing this? So this is a
transaction that they anticipated he
would make a profit on.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

After the December 8th closing he
receives the contracts that as Legrand
testified said they had no teeth, but
at least I had them in hand. He gets
those back. They go to December 20th
and hold the second closing on the
Wellington Plantation track, which is
basically they then sign the deeds for
the Wellington property, Mitchell --
all the Wellington properties is what
they had inherited, and he gives to
them his note and mortgage on the
Wellington property and executes and
gives to them a copy of the deed
conveying that to them. And Your
Honor, the language in these documents
I think is critical, so if you can bear
with me just a second, in the contracts
that were given to his brothers and
sisters, the proposed contracts that

1
2 they edited, and Mitchell filled the
3 purchase price in, it says this is --
4 in bold all capital letters -- arms
5 length transaction it says because he
6 knew. You know, although purchaser and
7 seller are related, although purchaser
8 is a co-personal representative of the
9 estate of C.E. Lowther, the seller, the
10 Plaintiffs in this case, acknowledge
11 that this is an arms length business
12 transaction, and the purchaser has made
13 no promises, representations, or
14 statements except those set forth
15 herein in writing upon which the seller
16 is relying, and seller's conducted
17 seller's own due diligence prior to
18 entering into this agreement.

19 I don't know how much stronger he
20 could have made that that this is an
21 arms length transaction. At that time
22 it was, they owned the property out
23 right, they inherited, it was deeded to
24 them, they were free to sell it to
25 Legrand or to nobody or to somebody

1
2 else. They were free to agree on a
3 \$511,000 purchase price or whatever
4 purchase price they thought. They were
5 not relying on him, anything he did
6 except I'll pay you \$511,000. Again,
7 knowing he was going to sell it to
8 somebody else or he would not be able
9 to pay off that mortgage that he just
10 took out so he could pay them the
11 \$511,000. It was a balloon mortgage,
12 it wasn't no 30-year monthly payment
13 type thing.

14 Also, in the note that he signed
15 when they closed it reflects their deal.
16 And that's the only contract that's in
17 existence in this case. And it
18 basically says that on the Wellington
19 Plantation I have executed a deed
20 conveying your interest in Wellington
21 Plantation back to me. That deed will
22 be held in escrow. If I do not pay you
23 the two-and-a-half million dollars I owe
24 you collectively a year from now, then
25 in lieu of foreclosure this is your

1
2 remedy; and it's spelled out in the
3 notes that they both signed -- all the
4 parties signed. Number one, I'll
5 deliver this deed back to you and it
6 will be recorded, so you get Wellington
7 Plantation back; no interest that I owe
8 you, no penalty other than that, but you
9 get Wellington Plantation back so we're
10 left in the same boat we would have been
11 if this transaction had not taken place,
12 and I will give you one-half of the
13 profits I make on Echo-Tango
14 subdivision. In lieu of foreclosure
15 this is your sole and exclusive remedy;
16 it's spelled out in the notes that they
17 all signed.

18 In this transaction I think it's
19 important to note, Your Honor, that they
20 had their own lawyer, they -- Dan Saxon
21 on Hilton Head who negotiated the notes,
22 in terms of the note. They also are not
23 neophytes. Mitchell Lowther, for
24 example, is a real estate contractor and
25 land developer. So they're use to

1

2

contracts and these negotiations.

3

Sandra is a registered estate -- they --

4

and Sandra is the one who hired Dan

5

Saxon.

6

At that point in time on

7

December 20th, Legrand had these two

8

contracts in place from ISI that he did

9

not have back on December 8th. The

10

closing date for the 40-acres, the

11

\$810,000 transaction approaches

12

February 26th and comes and goes. ISI

13

defaults. They do not buy the property.

14

Legrand is scrabbling at this time. He

15

owes the bank this \$585,000 total,

16

that's coming due, and he owes his

17

brothers and sisters two-and-a-half

18

million dollars, you know, at the end of

19

the year. And he manages to through ISI

20

and the other people, ISI defaults but

21

they say there's this other company

22

Amberwinds, they might be willing to do

23

it. And fortunately Amberwinds does do

24

it. So around March he sells the

25

40-acres to Amberwinds for \$810,000. I

COASTAL COURT REPORTING & VIDEO SERVICES

POST OFFICE BOX 7349 HILTON HEAD, SC 29938

HILTON HEAD - BEAUFORT - SAVANNAH

843-785-7739 - 843-525-9600 - 912-232-6161

000776

1
2 think it's important to note the ISI
3 deal never goes through. The year comes
4 and goes and ISI does not buy anything,
5 they default on the other contract also.
6 And I use the word default lightly
7 because it's technically not a default,
8 they had had the right to walk away
9 under both contracts if their due
10 diligence proves it was not -- so
11 there's no right to sue them or
12 anything. There's no remedy.

13 To close on the Amberwinds
14 transaction, he had to of course convey
15 clear title. And he had to incur
16 closing cost on the 40-acres, and
17 closing cost on the Wellington
18 transaction on December 20th, and the
19 closing cost on the 40-acre sale. And
20 some of those closing cost were
21 significant. As Judge Fulp found these
22 were costs that had to be paid or none
23 of these transactions would have gone
24 through. There's a judgment against
25 Clark that had to be paid off. There

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000777

1
2 was the lien against the estate. It's
3 clear it's Mr. Lowther, Senior. It's a
4 lien against the estate, bill is
5 something like 1,200 bucks for SCE&G.
6 There's several things that have to be
7 paid; 14,000 closing cost that incurred
8 on one transaction.

9 THE COURT: Now, are these
10 associated with the Amberwinds'
11 closing, or is this combined the
12 closing cost that had to do with the
13 first closing from the estate.

14 MR. KUHN: The 14,000 was the
15 first closing from the estate. The
16 14,000 was actually both the December
17 8th and December 20th closing on the
18 40-acres and on Wellington. And there
19 are other closing costs that were
20 incurred. I don't have off the top of
21 the head what they were, when
22 Amberwinds purchased the 40-acres. But
23 Judge Fulp found correctly that these
24 are closing cost that would have been
25 incurred whether the property sold

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

for -- that doesn't matter. The brothers and sisters had sold it to them. They should have paid closing cost.

THE COURT: I mean, I haven't looked at the mathematics of it, but had there been one closing from the estate to Amberwinds, I guess that would be one calculation. There's the fact there were two closings, and I don't know how Judge Fulp treated that. Did he take the closing costs from both closings and count that as a credit, or did he just use the closings from the \$811,000 closing cost?

MR. KUHN: He used both. He saw that when Legrand Lowther sold the property for \$810,000 to Amberwinds the bottom line on the closing statement was \$207,000. So he used both. That was -- he said the actual real profit so to speak that Mr. Lowther made when he purchased the property from his brothers and sisters and then when he

1

2

turned around and sold it to

3

Amberwinds, his profit was this

4

\$207,000.

5

6

THE COURT: So the dispute here at least in part is the difference in what

7

profit he truly made versus what profit

8

the estate would have made had the

9

estate been -- choose to let Mr.

10

Lowther -- had the first closing not

11

occurred, had there simply been a

12

closing started to Amberwinds. So is

13

that a part of the dispute here?

14

MR. KUHN: As I'm understanding

15

Mr. Ruff's argument, that is part of

16

the dispute.

17

MR. RUFF: I mean, the difference

18

in the money is the 74,000; that's I

19

referenced earlier. That's the

20

difference. Whether it was the estate

21

versus Mr. Legrand Lowther, I don't

22

think is Germain. I think it's the

23

74,000 of the mortgage borrowing.

24

THE COURT: Tell me about the

25

74,000. So that was cash. He walked

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000780

1

2

away from the first closing with cash.

3

He didn't? No? What --

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. KUHN: If you look at the

closing statements, that's what you

need to do, and that's what Judge Fulp

did. He looked at the closing

statement from the 40-acres from

Wellington and from Amberwinds and saw

that the net difference that didn't go

to lawyers, judgments, liens, that

didn't go to somebody else, the total

absolute gross amount of money -- I

guess tax considerations aside -- the

gross amount of money that Mr. Lowther

actually received was \$207,000. The

other money went to somebody else in

order to facilitate these transactions.

THE COURT: No, I mean the first

closing, where he borrowed 585, right?

MR. KUHN: 585.

THE COURT: It's on some other

page here.

MR. KUHN: Yes, sir.

THE COURT: He paid 511 or

COASTAL COURT REPORTING & VIDEO SERVICES

POST OFFICE BOX 7349 HILTON HEAD, SC 29938

HILTON HEAD - BEAUFORT - SAVANNAH

843-785-7739 - 843-525-9600 - 912-232-6161

000781

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

whatever the number was.

MR. KUHN: Yes.

THE COURT: What does that HUD statement show as far as cash to buyer?

MR. KUHN: I do not recall.

THE COURT: Do you have that?

MR. RUFF: The HUD statement showed 511; that's another allegation of ours. That was intentional and deceptive on the part of Mr. Lowther to show our people that he allegedly was only borrowing \$511,000 in their purchase, but that just wasn't true. In our exhibit for grounds to appeal, Your Honor, I think it's exhibit 2, shows -- no, I'm sorry exhibit three -- it shows the mortgage debt incurred was 585. So we know the \$74,000 went to Legrand Lowther.

MR. KUHN: We don't know that.

THE COURT: Well, I mean, how does the HUD statement balance then? Unless the money must -- then the numbers wouldn't match.

1

2

MR. RUFF: The HUD statement shows

3

a new mortgage loan of \$511,000 --

4

that's exhibit two -- where the

5

mortgage itself that's available in the

6

county records shows 585. Our position

7

has been that he borrowed 585. He

8

showed the heirs that he was only

9

borrowing 511, that that was

10

intentional and deceptive on the part

11

of closing counsel to not reveal to the

12

heirs that he was pocketing \$74,000

13

from that transaction. He absolutely

14

pocketed it.

15

MR. KUHN: That's pure

16

speculation.

17

THE COURT: So that's obviously

18

disputed --

19

MR. KUHN: Judge Fulp refused to

20

find that.

21

MR. RUFF: That was a real

22

mortgage made and we saw from the

23

second closing that that was -- yes,

24

that that mortgage was paid off two

25

months later when he turned around and

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000783

1

2

sold it to Amberwinds. So the 511 is

3

of record which went to our clients.

4

He's the one who borrowed the 585. If

5

it didn't go straight to his pocket, he

6

directed who it went to, but -- that

7

came out the hearing.

8

THE COURT: I guess I'm looking

9

for -- so here's the closing. This one

10

is -- where did you say it was?

11

MR. RUFF: It's exhibit two on our

12

grounds for appeal, Your Honor. It's

13

the HUD-1 statement from the closing

14

which shows paid per close on Line 207

15

shows a mortgage borrowing of 511 from

16

SCB&T. But the mortgage that was

17

actually put on that is the very next

18

page, exhibit three. And on page two

19

of exhibit three the secured debt

20

refers to the note that Legrand Lowther

21

of \$585,000. So that's the amount that

22

he truly borrowed. So the HUD-1

23

statement is false and misleading.

24

THE COURT: Maybe this is beyond

25

the scope of this appeal, but I guess

COASTAL COURT REPORTING & VIDEO SERVICES

POST OFFICE BOX 7349 HILTON HEAD, SC 29938

HILTON HEAD - BEAUFORT - SAVANNAH

843-785-7739 - 843-525-9600 - 912-232-6161

000784

1

2

I'm curious, Mr. Kuhn your client's position is he didn't borrow 585?

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. KUHN: The mortgage was 585,

but then he had to use those proceeds to facilitate these transactions.

There's no testimony, no evidence to the contrary. They wanted Judge Fulp to speculate that he pocketed that money, and Judge Fulp refused to do so, and I respectfully submitted with the error for the appellant court to engage in that speculation.

MR. RUFF: That's not -- Judge Fulp with no explanation counted the damages simply by what he cleared on the subsequent sale and just simply ignored that part -- that's really the main -- one of the main functions of why we're appealing -- he just ignored the \$74,000 excess that he pocketed and the mortgage that's shown clearly as exhibit 3.

MR. KUHN: I disagree. He

explains how he came up with that in

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000785

1

2

detail in his order.

3

4

5

THE COURT: Well, the payoff of
the first mortgage right here is
593,872.50.

6

MR. KUHN: Precisely.

7

8

THE COURT: On the HUD statement,
exhibit three here.

9

10

11

MR. RUFF: Which is the 585 plus
the interest that ran for the two
months obviously.

12

13

14

15

16

THE COURT: So the payoff of the
first mortgage -- so the question then
is, Mr. Kuhn your position is there was
money outside of the closing that
somehow --

17

18

19

20

21

22

23

24

25

MR. KUHN: Yes, Your Honor. He
testified he had to pay interest, he
had to make payments, he had to pay
taxes, he had to -- I'm trying to
remember what all he had to pay that's
not reflected on closing statements --
that he had to apply for the mortgage,
he had application fees, he had -- but
yes, yes, sir. I mean, bottom line,

1

2

again, an overly simplistic view of the testimony in this case when you look at documents in isolation without

4

5

considering the context. Judge Fulp I

6

think properly said the best evidence I

7

have is the profit he made is the line

8

on the HUD statement.

9

THE COURT: But I mean, did

10

SCB&T --

11

MR. KUHN: They've got the burden

12

of proof. They failed to meet it

13

basically.

14

THE COURT: So I mean, SCB&T -- I

15

mean, the HUD statement is 511 here

16

obviously on the HUD statement, but the

17

mortgage is 585, and of course the

18

payoff not too long after this is

19

five -- whatever it was -- 93. So I

20

guess I'm curious as to -- maybe

21

there's no evidence to this, did SCB&T

22

loan the money and keep checks, one for

23

511 and one --

24

MR. KUHN: No, sir. At the time

25

of the closing on December 8th it was

COASTAL COURT REPORTING & VIDEO SERVICES

POST OFFICE BOX 7349 HILTON HEAD, SC 29938

HILTON HEAD - BEAUFORT - SAVANNAH

843-785-7739 - 843-525-9600 - 912-232-6161

000787

1

2

anticipated that the loan would be 511.

3

He didn't actually close and get the

4

money until later. I think he actually

5

gave them their money at the

6

December 20th. I think some of them

7

came by and picked it up.

8

THE COURT: I mean, how does the

9

511 turn into 593?

10

MR. KUHN: There's no testimony to

11

show that. So I guess the answer is,

12

as far as the record is concerned, we

13

don't know.

14

MR. RUFF: I take issue with that

15

in the record.

16

MR. KUHN: I thought it was clear.

17

MR. RUFF: I think the testimony

18

from the hearing is going to show that

19

that money went straight to him. And

20

to the contrary, I don't think there's

21

any evidence on him spending it on

22

anything other than himself for all

23

these costs that are alleged, none of

24

which are in the record.

25

MR. KUHN: They are the ones with

COASTAL COURT REPORTING & VIDEO SERVICES

POST OFFICE BOX 7349 HILTON HEAD, SC 29938

HILTON HEAD - BEAUFORT - SAVANNAH

843-785-7739 - 843-525-9600 - 912-232-6161

000788

1

2

the burden of proof and they basically

3

want the Court to speculate that the

4

difference went into his pocket and not

5

to other expenses that he incurred in

6

connection with these transactions.

7

THE COURT: What was the

8

difference in time of the transaction?

9

MR. KUHN: The 40-acres --

10

MR. RUFF: Two months.

11

MR. KUHN: -- closed on December

12

8th. The Wellington closed December

13

20th, and subsequent sale to the

14

Amberwinds closed in March of the

15

following year.

16

MR. RUFF: It was February; two

17

months.

18

MR. RIVERS: February 17th.

19

THE COURT: So the interest rate

20

to get the 593 if it were interest

21

alone would have to have been -- they

22

wouldn't work, I don't think.

23

MR. RUFF: It would be just about

24

\$8,000 worth of interest. That makes

25

some sense to me; that would have been

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000789

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

about one-and-a-half percent during two months.

THE COURT: Is the note on the 511/585 in evidence --

MR. KUHN: I cannot remember.

THE COURT: -- to SCB&T?

MR. RUFF: I don't remember, but it's clearly referred to on page two of exhibit three, that's the mortgage.

And, again, this is a copy so the print may not be great, but right under on page two right here, Your Honor, under item four it references note dated 12 -- I think that's 08, 2006 in the amount of \$585,000 in the name of E. Legrand Lowther.

THE COURT: So that's part of the evidence?

MR. RUFF: Yes.

THE COURT: So 585 was -- you all take issue with that exhibit I guess, Mr. Kuhn, right.

MR. KUHN: No, because it's in evidence.

1

2

THE COURT: I guess what I'm
trying to figure out here is that --

3

4

5

6

7

8

9

10

11

12

13

14

15

MR. KUHN: I take issue with
anybody speculating that he received
more than \$207,000 in proceeds or in
quote profit. Although, I disagree
it's profit because again, you've got
to look at that figure arrived at by
Judge Fulp as incorrect for what it
represents to be. They want you to
speculate basically, which is what they
wanted Judge Fulp to do. They've got
the burden of proof.

16

17

18

19

20

21

22

23

24

25

THE COURT: All right; what else
do we have?

MR. KUHN: I didn't even get
started yet, Your Honor. I say that
seriously. I'm sorry.

That's just one point they've
raised.

THE COURT: Okay.

MR. KUHN: To even get to that
point you've got to find that there's
fiduciary duty owed. And they want you

1
2 to conclude that a fiduciary duty was
3 owed because Legrand Lowther was a
4 personal representative of his father's
5 estate, and the property that his
6 brothers and sisters sold to him was
7 inherited by them from their father.
8 That's basically the proof of fiduciary
9 duty -- his fiduciary duty of the first
10 which is the first prerequisite before
11 you can get to was it breached.

12 For a fiduciary duty to be owed,
13 the person who is alleged to owe the
14 duty must be acting as a fiduciary in
15 connection with the subject transaction.
16 And I believe Judge Fulp's fundamental
17 error in this case was he regard this as
18 a transaction in which Mr. Legrand
19 Lowther was acting as the personal
20 representative exercising powers
21 conferred upon him as a personal
22 representative, fiduciary powers, in
23 connection with an estate transaction.

24 And if you look at all the cases
25 that talk about that, what happens is

1
2 the personal representative takes
3 property that is in the estate and
4 sells it to himself individually and
5 then distributes the money to the
6 beneficiaries. In other words, a
7 personal representative then negotiates
8 the sale with himself, wearing the
9 personal representative hat and his
10 individual hat, which is not what
11 happened here.

12 If Legrand Lowther had taken --
13 take the 40-acres, which is what they're
14 fussing about -- and said I'm going to
15 buy this 40-acres for \$511,000 and sell
16 it to myself. As a personal
17 representative he had signed a deed of
18 distribution to himself and paid
19 \$511,000 to the estate and then written
20 checks to all the brothers and sisters
21 for their \$73,000. That would have been
22 a transaction in which he's exercising
23 his power as a personal representative,
24 as a fiduciary, and a transaction took
25 place inside the estate and a fiduciary

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000793

1

2

duty would be owed.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

What happened here is, he went out of his way to take it out of the estate. He did the deed of distribution to his brothers and sisters first. He said here is your land, which is yours, do with it as you want to. Sell it to me, or don't sell it to me. He negotiated with his brothers and sisters and they negotiated back. What the deal would be -- heavily negotiated I would add -- with all the stuff even where Echo-Tango came into play and they figured out how they're going to do that. It's pretty complicated. There's a formula for what happens if Echo-Tango -- if they get these profits and who's in charge of the development, and a formula with what happens with Wellington -- because he still owns half of Wellington -- what's going to happen with Wellington and how that's going to be developed and how we're going to have, you know, prorated votes on whether to sell, that type of

1
2 thing. So heavily negotiated
3 transaction with them. And the property
4 comes out of the estate and then he buys
5 it from them and they're free to sign or
6 not sign.
7 So we have a transaction where he is not
8 acting as a personal representative. He
9 signs the deed, the notes, the mortgage
10 as Legrand Lowther individually. They
11 sell to Legrand Lowther individually.
12 The profit that they sell is not owned
13 by the estate, granted they inherited
14 from the estate, but it's now theirs.
15 So this transaction takes place outside
16 of the estate. And I quote the statute,
17 Your Honor, that talks --- and some cases
18 that are in my brief and the big
19 distinction is, was the person who's
20 being challenged, was he exercising a
21 power conferred upon him as a personal
22 representative to accomplish this
23 transaction, was he conveying a deed of
24 distribution to himself, or to somebody
25 else to get it done? A straw person for

1
2 example. Or did it take place outside
3 of the estate? Were they given the
4 property and then were they free to
5 make -- to say yes or no, negotiate what
6 they wanted to negotiate. So no
7 fiduciary duties was owed and I think
8 that's the fundamental error that Judge
9 Fulp made. That's really what the
10 challenges are, our fundamental basis of
11 our appeal.

12 The second prong is assume there
13 was a fiduciary duty owed. For the
14 sake of argument say that Legrand
15 Lowther did sell it to himself in the
16 estate and then gave them their checks
17 that, you know, look what a great deal
18 I did for you. Assume there was a
19 fiduciary duty owed, was it breached?
20 And the presumption is that if he
21 profited from the transaction, then
22 yes, there was a breach of fiduciary
23 duty. He has to explain that it was a
24 fair deal if he profited. So then the
25 second prong is, did he profit from the

1
2 transaction. I think this is the
3 fundamental error in their appeal.
4 They want you to look at the 40-acres
5 alone, not the entire transaction. And
6 the bottom line is, they ended up with
7 a better deal than he did. They're the
8 ones who profited. He sold the
9 40-acres to them -- and let's take the
10 simplistic viewing right now -- and he
11 made \$300,000 on the 40-acres. He
12 defaulted on the balance and pursuant
13 to their deal they got that property
14 back, but they also get a half interest
15 in the Echo-Tango profits that they did
16 not have before. And he has already
17 given them \$138,000 in total
18 distributions on Echo-Tango. One lot
19 was sold many, many years ago for
20 \$110,000, before there was sewer there.
21 And after spending literally hundreds
22 of thousands of dollars he acquired the
23 right -- lawsuits, appeals to the
24 Supreme Court -- he acquired the right
25 to get sewer to the subdivision. There

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000797

1

2

were five lots left at that time --

3

there were six originally -- and sold

4

the second lot for \$700,000.

5

And so there are four lots

6

remaining that are computable to the

7

lot that sold for \$700,000. Out of

8

what's been sold already, they've

9

received \$138,000. Now they have --

10

and all those other costs he's been

11

reimbursed, so now we're just looking

12

at basically a relatively small amount

13

of expense remaining and time to

14

collect on the big profits. So you've

15

got four lots \$700,000, \$2.8 million,

16

again, simplistically but they're going

17

to expect reasonable about \$1.4 million

18

in profits on those other four lots as

19

they sell that they would not have been

20

entitled to receive if this transaction

21

had not gone through. So and the

22

jury's really still out on who has

23

profited from this transaction, but

24

looking at what's most likely, most

25

probable, greater weight of the

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000798

1
2 preponderance of the evidence, they're
3 the ones who are going to end up with
4 more money than what he has profited
5 from. He's got \$300,000 up front on
6 the 40-acres, but they are going to
7 get -- they are going to receive
8 138,000 and they have the opportunity
9 to receive another 1.4 million out
10 there that they're going to receive.

11 So there is -- again, they've got
12 the burden of proof. They have to
13 proof that he has profited from this
14 transaction and they've not satisfied
15 that burden of proof because you've got
16 to look at it as a whole, not one
17 40-acres being sold and ignore the rest
18 of the transaction. They're all
19 together. They've negotiated them
20 together. The contracts are all
21 together. It's only one contract
22 initially proposed, obviously this is
23 interrelated when they needed the
24 14,000 closing cost, they just took it
25 off the loan -- took it off the

1

2

40-acres and put it on to the

3

Wellington. This is all clearly one

4

transaction, or an interlocked

5

transaction.

6

So no fiduciary duty because it

7

took place outside the estate. No

8

profit because of the end they're going

9

to end up a lot richer than what they

10

would have been if this had not taken

11

place at all because they now have a

12

half interest in Echo-Tango that they

13

did not have before.

14

Then you got to look at the third

15

prong, was it a fair deal for them.

16

Assuming it was a breach of fiduciary

17

duty, assume he has profited, the third

18

prong is, was it is a fair deal. And

19

for the same reason that he did not

20

profit, it was a fair deal. He got

21

some more money up front, but they're

22

getting more money at the end. It

23

cannot be said that it was an unfair

24

deal.

25

If you look at it again in

COASTAL COURT REPORTING & VIDEO SERVICES

POST OFFICE BOX 7349 HILTON HEAD, SC 29938

HILTON HEAD - BEAUFORT - SAVANNAH

843-785-7739 - 843-525-9600 - 912-232-6161

000800

1
2 isolation, 40-acres bought for 500,
3 sold for 800, unfair. But 40-acres and
4 200-acres sold for \$500,000 and now you
5 have a half interest in property worth
6 \$2.8 million that's not a fundamentally
7 unfair deal. In fact, in the end
8 they're going to end up with more money
9 than he has if we have not done this at
10 all.

11 That gets to the fourth reason why
12 we believe the breach of fiduciary duty
13 cause of action should be reversed is,
14 they've ratified this. You've got to
15 get to proximate cause. They've
16 affirmed the deal.

17 It's important to note, Your Honor
18 that they there are eight children of
19 Mr. Lowther, Senior. Two of them are
20 Defendants, three of them are
21 Plaintiffs, and three of them are not
22 involved in the litigation at all. Why
23 is that? Because number one, they know
24 what happened, they know the truth, but
25 number two, I respectfully submit they

1
2 would like this deal to stand. They
3 don't want it set aside. Because when
4 the Plaintiffs testified that -- and
5 Mr. Rivers is correct -- the closing of
6 Amberwinds took place in February. The
7 deed was recorded, they found out about
8 it in March and did nothing. Obviously
9 March they knew that they had sold the
10 property, the 40-acres for one price,
11 that Mr. Lowther had sold it to
12 Amberwinds for another price, and they
13 did nothing. They waited to see what
14 would happen at the end of the year
15 with the remaining balance, and he
16 defaulted on that. And they did
17 nothing. And Mr. Lowther went and put
18 into effect the deal that they had
19 worked on. In other words, now you
20 have a half interest in Echo-Tango. He
21 started providing them with an
22 accounting of the Echo-Tango expenses
23 and so forth, he'll basically once he
24 gets reimbursed of all his investment,
25 the profits and stuff will be

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000802

1
2 divided -- and started making
3 distributions to them at their
4 insistence of the Echo-Tango profits;
5 to Mitchell, 36,000; to Sandra, 22,000;
6 to Clark, 16,000; to Bubby, the other
7 Plaintiff, the third Plaintiff, 16,000
8 and so forth. So they ratified the
9 transaction with full knowledge of what
10 had happened.

11 A lot of the distributions had
12 been made during the pendency of this
13 lawsuit. So there's no question they
14 knew about everything, and they're
15 excepting the benefit of the bargain,
16 so on one hand they want probate court
17 and this Court to say set this
18 transaction aside, give us a judgment
19 for this \$300,000 that was made, but
20 ratify the rest of the transaction
21 because we still want a half interest
22 in Echo-Tango. Well, they can't have
23 it both ways. They ratified the deal.
24 They knew about the sale, and they said
25 we're going to go forward with the

1

2

deal, we want our money on Echo-Tango.

3

If they did not like that, the proper

4

thing to have done would have been,

5

deals off, we don't have any interest

6

in Echo-Tango, we get Wellington back,

7

we want the \$300,000. But they want

8

the benefit of the bargain that they've

9

bargained for and they want to take

10

away the benefit of the bargain that

11

Mr. Legrand Lowther bargained for.

12

So for those four reasons, Your

13

Honor, it took place outside of the

14

estate, there was no profit made by my

15

client, the profit is going to be on

16

the other side of table, it was a fair

17

deal looking at the totality of the

18

circumstances, and lastly there's no

19

proximate cause because they ratified

20

the transaction. With full knowledge

21

of it they accepted the benefit of the

22

deal with full knowledge of what took

23

place under the tune of \$138,000.

24

Judge Fulp correctly concluded

25

that it was all one big transaction,

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000804

1
2 which how he came up with this damages
3 figure, he took the 207 for gross
4 profit that my client made on the
5 40-acre sale, and say, but yeah, he's
6 given them \$138,000, so that comes off
7 the 207, that's how he came up with the
8 \$69,000 judgment.

9 But that's from circular logic.
10 It's either an isolated transactions or
11 to one transaction, he basically found
12 it as one transaction, but in finding
13 there's a breach of fiduciary duty I'm
14 going to find that the 40-acres took
15 place in isolation. I believe you've
16 got to look at the whole thing. Again,
17 I was clear on it, these are clearly
18 interrelated causes of action.

19 Everybody testified, you know, that
20 they went together; buy both together
21 or not at all. And that was how the
22 contracts were written. That's how the
23 closings took place.

24 Your Honor, I've got several other
25 things in my grounds of appeal which

1
2 incidentally was filed. I -- which
3 basically comes down to math. And if
4 there's one I could just point out,
5 Judge Fulp in giving my client credit
6 for \$138,000 divided that equally
7 across all the other children, but that
8 \$138,000 was not paid to them
9 equally -- and I've got the math on
10 page 38 of my grounds of appeal -- as
11 to if you gave them credit for what
12 they actually received, what those
13 judgments should actually be, one of
14 them actually got overpaid and the
15 others just varies depending on what
16 they actually received.

17 And then my other final grounds,
18 Your Honor, there's only three
19 Plaintiffs so judgment can only be
20 rendered in favor of those three
21 Plaintiffs, not against people who are
22 not even parties to the lawsuit. And
23 if I read his order broadly it could be
24 interpreted to say that he's granted
25 judgment in favor of people who are not

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

parties.

And then lastly, if I address a motion to dismiss for not filing the grounds for appeal, I got it right here stamped by the court where it was filed well within the 45 days.

MR. RUFF: Which one?

Not in probate court. That's what the statute requires. And I also object to it since we haven't been given proper notice of the motion.

THE COURT: All right.

MR. KUHN: Filed and served I would note.

THE COURT: What was the -- in my book here the 511 closing, the 1,220 closing is exhibit 5; where is the mortgage that goes with this one?

MR. RUFF: It's in there, Your Honor. I didn't bring my complete file here, but the mortgage is of record.

THE COURT: I'm sure it's in here somewhere. It's just the numbers didn't --

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. RUFF: I will have to look that up with the probate court. We have a copy of it right here. It is in the record.

Not only is it in the record, it's a matter of open information anyway because here's the register of deeds.

THE COURT: When was it filed?

MR. RUFF: December the -- according to this, December 28th of '05. That -- it appears to have been when it was stamped.

THE COURT: When was it signed?

MR. RUFF: All I have here, Your Honor, unfortunately is the first two pages of the mortgage.

MR. RIVERS: This is the complete thing.

MR. RUFF: Oh, you have the complete thing?

December the 8th, 2005, which must have been the same date that Mr. Kuhn said the closing with our clients happened, which makes perfect sense.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000808

1

2

MR. KUHN: This was all one
transaction. One interrelated
transaction.

3

4

5

6

7

8

9

10

11

THE COURT: I'm hung up on the
numbers not matching, and maybe it has
to do with it was a -- it was just a
loan that was then followed up by the
mortgage maybe per agreement with the
bank; I don't know. I'll look at it.
It's hard to say. I don't know.

12

Anything else from anyone?

13

14

15

MR. RUFF: Just a couple of
things, Your Honor. I'll make this
brief.

16

17

18

19

THE COURT: Take your time.

MR. RUFF: Two issues that are
just -- representations that were made
that were just factually wrong.

20

21

22

23

24

25

First, I wrote some quotes down
here that ISI had just expressed an
interest, that at the time contracts
allegedly were delivered to the siblings
on October 16th, there were only oral
discussion with ISI. Well; Your Honor;

1
2 exhibit one of my grounds for appeal
3 shows an actual contract dated
4 October 12th, 2005 between Legrand
5 Lowther and International Society of
6 Investors and it came out of the hearing
7 of testimony that the attorneys for the
8 buyer prepared this contract.

9 Now, if the contract itself is
10 dated October 12th, 2005, then it's just
11 not, you know, they're caught right
12 there, they were more than just oral
13 discussions with ISI before October the
14 16th.

15 MR. KUHN: Can I respond --

16 MR. RUFF: There's a written
17 contract --

18 MR. KUHN: -- that before he goes
19 on, Your Honor?

20 MR. RUFF: -- four days ahead of
21 time. So that's just factually untrue.

22 MR. KUHN: Mr. Lowther was
23 expressly asked about that at the
24 hearing, and he testified there's no
25 testimony contrary that he received it

1

2

after that date. It was prepared by

3

the lawyers with ISI in Charlotte or

4

wherever, mailed to him, he said he

5

received it after he got the contract.

6

MR. RUFF: What was testified at

7

the hearing by the principal with the

8

ultimate buyer is that there was an

9

oral deal between the parties well

10

before October 12th, 2005 which

11

certainly precipitated the buyer

12

getting their attorneys in North

13

Carolina to draft this contract.

14

Again, the undisputed testimony is that

15

the contract was drafted based on oral

16

agreement entered into before

17

October 12th of 2005. So that's just

18

factually not true. There was -- the

19

deal was --

20

MR. KUHN: Your honor --

21

MR. RUFF: The deal was done with

22

the buyer before anything was delivered

23

to the siblings.

24

The other issue, Your Honor is they

25

now --

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000811

1

2

MR. KUHN: I disagree with that,

3

Your Honor.

4

THE COURT: I'll give you a second

5

as soon as he's finished.

6

MR. RUFF: They now act like

7

Echo-Tango was some windfall delivered

8

to our clients, and actually it's

9

not -- exhibit four of our grounds for

10

appeal, Your Honor. I'll just quote

11

Mr. Lowther himself, it will only take

12

a couple of minutes here. There never

13

was any questions of they -- my

14

clients -- were going to get 50 percent

15

of the proceeds out of Echo-Tango. I

16

made it clear to them. I made it clear

17

to the attorneys. It was entitled to

18

them before. I was going to give it to

19

them. I felt like I owed it to them.

20

I verified that with Mr. Rivers this

21

morning, didn't I Mr. Rivers? And the

22

will itself of the decedent here

23

references a gift of one-half of the

24

Echo-Tango property to my clients,

25

granted I think it's right that the

COASTAL COURT REPORTING & VIDEO SERVICES

POST OFFICE BOX 7349 HILTON HEAD, SC 29938

HILTON HEAD - BEAUFORT - SAVANNAH

843-785-7739 - 843-525-9600 - 912-232-6161

000812

1
2 technical deed had been transferred
3 back and forth between the decedent and
4 Mr. Legrand Lowther. It was in Legrand
5 Lowther's name, but his pretrial
6 testimony clearly establishes that my
7 clients owned a one-half equitable
8 interest in Echo-Tango.

9 Now, that the judgment has come
10 down the story changes. And they're
11 acting like it's a windfall to us that
12 could be -- that should affect the
13 amount of judgment that we got. And
14 unfortunately the probate court
15 evidently, you know, bought that, but
16 it's just not true. Our clients owed
17 Echo-Tango, they owned it before, they
18 own that half interest now, they're no
19 better off now by Mr. Lowther's own
20 admission then they were on the day the
21 decedent died and therefore, again, it's a
22 red herring, Your Honor.

23 Last couple of points; even though
24 the mortgage shows an excess borrowing
25 of \$74,000, again, that itself is kind

1
2 of a red herring that gets us off the
3 issue. The measure of damages for the
4 breach of fiduciary duty is the profit
5 that was made by the -- by Mr. Lowther,
6 and/or the profit that was kept away
7 from my clients. It's undisputed that
8 my clients received 511 for the
9 property. It's also undisputed that he
10 flipped the property for \$810,000 to
11 Amberwinds. The math is simple, that's
12 \$299,000.

13 And whether either of those
14 purchases was facilitated by the
15 mortgage versus a cash purchase is just
16 not relevant to the issue of his
17 ultimate profit. The only way it would
18 be relevant to his issue of ultimate
19 profit would be let's say that \$74,000
20 excess borrowing had been spent on the
21 property. Let's say to improve the
22 house, or to paint, or to put in a new
23 driveway or something like that, then
24 that would be relevant to the issue of
25 ultimate profit made. But there's

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000814

1
2 absolutely no evidence of any
3 expenditures that Mr. Legrand Lowther
4 had made for the 40-acres after he
5 purchased from my clients for \$511,000
6 because -- there's no evidence because
7 he didn't make any expenses for the
8 property. So the fact of mortgage
9 borrowing itself is a red herring. The
10 issue is not -- the issue is profit made
11 under the law of breach of fiduciary
12 duty.

13 And then the final point, Your
14 Honor, Mr. Kuhn has said that all these
15 transactions took place outside of the
16 estate; well, to get -- to try to get
17 around a breach of fiduciary duty by --
18 and the estate is still open as of this
19 day. As of this day Mr. Legrand Lowther
20 is co-personal representative of the
21 estate. The estate that wait a minute,
22 I can file a probate deed of
23 distribution, which is a normal part of
24 the probate estate process to the heirs
25 as mandated under the will anyway and

1
2 get out of a breach of fiduciary duty
3 since I'm technically filing that deed
4 minutes before I personally purchased
5 from you as opposed to me doing it in my
6 capacity as executor. There was just no
7 distinction there, Your Honor. It was
8 all done as the probate court correctly
9 concluded none of that matters. It was
10 all done during the period of estate
11 administration.

12 And finally, I don't want to leave
13 the impression that there's anything
14 wrong with flipping property. That's
15 not what we're saying here at all.
16 They've argued that it's an arms-length
17 transaction, that sometimes it's the
18 American way to flip property, we don't
19 have a problem with that. I mean,
20 that's what real estate investors do.
21 It becomes a problem, Your Honor, when
22 the flipper is a fiduciary who is bound
23 to uphold the best financial interest
24 of the people he's dealing with. This
25 isn't like Mr. Lowther dealing with,

1
2 you know, complete strangers. He was
3 bound by law, duty bound, to protect
4 their best financial interest, and when
5 this contract came along on or before
6 October 12th, 2005 instead of
7 approaching my heirs to buy them out
8 for 60 cents on the dollar a few days
9 later, what should have been done is
10 that contract should have been brought
11 to my clients who testified unanimously
12 at the hearing if they'd known about
13 this 110,000 they would have said make
14 that deal for our benefit. And he
15 didn't do that, and that's the breach
16 of fiduciary duty that -- that's the
17 issue here, Your Honor.

18 Thank you -- oh, and finally the
19 grounds for appeal, they were not filed
20 with the probate court. We called and
21 double checked on that yet again this
22 morning when we discovered that with a
23 different clerk. It was not filed with
24 the probate court known to the Mims v.
25 Austin, a case cited earlier, and then a

1

88

2

statute that's fatal to their complete

3

appeal. There's no jurisdiction

4

therefore to hear their appeal. And

5

I'll grant Mr. Kuhn that they may be

6

entitled to a 10-day right to be heard

7

on that. We're happy to have that

8

follow up hearing if necessary, but

9

their appeal does have to fail for lack

10

of jurisdiction.

11

THE COURT: If we were to have a

12

subsequent hearing, would anybody have

13

any further argument, or is this

14

something that could be submitted by

15

briefs within in kind of reasonable

16

period of time.

17

MR. RUFF: I think just briefs

18

would be fine, Your Honor.

19

MR. KUHN: Briefs would be good;

20

yes, sir.

21

THE COURT: All right; why don't

22

we do that then? How many days on that

23

issue along? 10-days? Two weeks?

24

More or less?

25

MR. RUFF: Ten days, two weeks

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000818

1

89

2

would be fine with us, Your Honor.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. KUHN: I would want at least ten days since I've been sort of ambushed with it. I don't really know what's involved.

THE COURT: Well, I'm asking, what would you like?

MR. KUHN: I'd like at least ten days notice, Your Honor.

THE COURT: Okay; why don't we do this, just e-mail whatever you put together to Mr. Ruff and Mr. Rivers and then you can feel free to respond within five days of receipt from Mr. Kuhn's -- please copy all other counsel.

Anything else for the record?

MR. KUHN: No, Your Honor, thank you.

THE COURT: Thank you all very much.

(Whereupon, the hearing was concluded at 12:05 p.m.).

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000819

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

BEAUFORT COUNTY:

I, Shannon Casper, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place hereinbefore set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that there upon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Shannon Casper, CR

Notary Public

Beaufort, South Carolina

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000820

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE MARVIN H. DUKES, III
MASTER IN EQUITY AND SPECIAL CIRCUIT COURT JUDGE

CASE NO.: 2010-CP-07-06274
2010-CP-07-06284

EFFIE SANDRA L. TURPIN, C.E. LOWTHER, JR.,
CLAYTON CLARK LOWTHER, and MITCHELL
SAXON LOWTHER, INDIVIDUALLY AND REPRESENTING
AS A CLASS OF BENEFICIARIES OF THE ESTATE OF C.E.
LOWTHER, SR.,

Respondents,

v.

E. LEGRAND LOWTHER, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF
C.E. LOWTHER, SR., and MARK ALLEN LOWTHER, AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF
C.E. LOWTHER, SR.

OF WHOM E. LEGRAND LOWTHER IS

Appellant.

CERTIFICATE OF COMPLIANCE
WITH ORDER DATED AUGUST 13, 2008

Counsel for Appellant hereby certifies that the Record on Appeal filed with this Court is
in compliance with the Order of the South Carolina Supreme Court dated August 13, 2008.

RECEIVED

NOV 06 2012

SC Court of Appeals

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)

Attorney for the Appellant

Beaufort, South Carolina
November 1, 2012

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE MARVIN H. DUKES, III
MASTER IN EQUITY AND SPECIAL CIRCUIT COURT JUDGE

CASE NO.: 2010-CP-07-06274
2010-CP-07-06284

EFFIE SANDRA L. TURPIN, C.E. LOWTHER, JR.,
CLAYTON CLARK LOWTHER, and MITCHELL
SAXON LOWTHER, INDIVIDUALLY AND REPRESENTING
AS A CLASS OF BENEFICIARIES OF THE ESTATE OF C.E.
LOWTHER, SR.,

Respondents,

v.

E. LEGRAND LOWTHER, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF
C.E. LOWTHER, SR., and MARK ALLEN LOWTHER, AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF
C.E. LOWTHER, SR.

OF WHOM E. LEGRAND LOWTHER IS

Appellant.

CERTIFICATE OF SERVICE

Undersigned certifies that the **Certificate of Compliance With Order dated August 13, 2008**, to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record: 

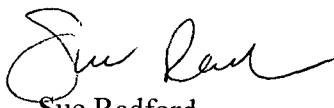
RECEIVED

NOV 06 2012

SC Court of Appeals

Harley D. Ruff, Esquire
Ruff & Ruff
17 Professional Village Circle
Beaufort, South Carolina 29907

in a post office or official depository under the exclusive care and custody of the United States
Postal Service, on November 2, 2012.

By: 
Sue Radford
Secretary for H. Fred Kuhn, Jr.

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE MARVIN H. DUKES, III
MASTER IN EQUITY AND SPECIAL CIRCUIT COURT JUDGE

CASE NO.: 2010-CP-07-06274
2010-CP-07-06284

EFFIE SANDRA L. TURPIN, C.E. LOWTHER, JR.,
CLAYTON CLARK LOWTHER, and MITCHELL
SAXON LOWTHER, INDIVIDUALLY AND REPRESENTING
AS A CLASS OF BENEFICIARIES OF THE ESTATE OF C.E.
LOWTHER, SR.,

Respondents,

v.

E. LEGRAND LOWTHER, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF
C.E. LOWTHER, SR., and MARK ALLEN LOWTHER, AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF
C.E. LOWTHER, SR.

OF WHOM E. LEGRAND LOWTHER IS

Appellant.

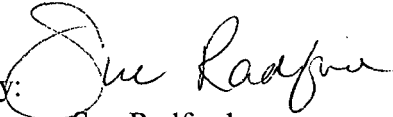
CERTIFICATE OF SERVICE

Undersigned certifies that three (3) copies of the **Record on Appeal**, to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

RECEIVED
NOV 06 2012
SC Court of Appeals

Harley D. Ruff, Esquire
Ruff & Ruff
17 Professional Village Circle
Beaufort, South Carolina 29907

in a post office or official depository under the exclusive care and custody of the United States
Postal Service, on November 2, 2012.

By: 
Sue Radford
Secretary for H. Fred Kuhn, Jr.