

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge
Case No. 2017-CP-10-5382
Appellate Case No. 2019-001125

South Carolina Department of Commerce,
Division of Public Railways,

Appellant,

v.

Gateway Properties of Greater Charleston, LLC,

Respondent,

and

NBSC a division of Synovus Bank, VFC Partners 15 LLC, Capella Carolinas, LLC,
Donivon Glassburn, and the Loft Pilates Center, LLC,

Other Condemnees.

RECORD ON APPEAL
Volume II

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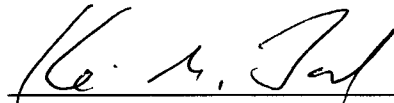
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 February 4, 2020

1 CROSS-EXAMINATION

2 BY MR. BABCOCK:

3 [Whereupon, Mr. Babcock proffers documents to the
4 witness]

5 Q. Good afternoon, Mr. Fabian. I've just handed you
6 some of the exhibits -- much like your counsel did for
7 the exhibits you had. So we'll use the notebook so
8 you've got them right at your fingertips.

9 A. Yes, sir.

10 Q. And we'll also be putting them up on the screen. I
11 wanted to make sure I understood one point, Mr. Fabian.
12 Your testimony towards the end of your direct
13 examination, did I understand you to say that the new
14 building you were going to construct is at 1831 Meeting?

15 A. Yes, sir.

16 Q. And that's property that was in your family; is that
17 right?

18 A. Yes, sir.

19 Q. And I think that's what you told us earlier in the
20 day, that the property at 1799 Meeting Street was also in
21 your family.

22 A. Yes, sir ---

23 Q. --- correct? Now, I'd like to look at and ask you
24 about a couple of the leases to begin with. Let's pull
25 up what's already been marked as Defense Exhibit 6. You

1 have it as Condemnor 7. And we'll not offer that, Your
2 Honor, since it's already in evidence.

3 THE COURT: Alright.

4 Q. [Mr. Babcock] So that will be pulling up on the
5 screen. It says C-6. It's actually an exhibit that's
6 been marked as Defendant's Exhibit 6.

7 THE COURT: 6. Alright.

8 [Whereupon, the exhibit is shown]

9 Q. [Mr. Babcock] Mr. Fabian, that's a lease between
10 Gateway and Life Spaces; is that right?

11 A. Yes, sir.

12 Q. And I think you told us earlier that Gateway, the
13 owner of the building, is owned by you and other family
14 members; is that correct?

15 A. Yes, sir.

16 Q. And I think you also told us that Life Spaces was
17 owned by you and some other family members and some
18 others, as well; is that right?

19 A. That is also correct.

20 Q. Okay. So for our purposes here, you're really on
21 both sides of this lease, both as landlord and tenant ---

22 A. --- yes, sir ---

23 Q. --- correct?

24 A. Yes, sir.

25 Q. And as such, you-all developed the terminal lease

1 and the rent as part of what you did in establishing the
2 lease itself; correct?

3 A. I'm not sure that I understand the question.

4 Q. Sure. Let me rephrase it. This is, as we look at
5 it, a multi-page lease. You're familiar with leases.
6 Would you consider this a pretty typical commercial
7 lease?

8 A. Yes, sir.

9 Q. Okay. And you, of course, both as landlord and
10 tenant, came up with the -- with the rent for the lease;
11 correct?

12 A. Yes, sir.

13 Q. So y'all established a base rent and that rent -- of
14 course, the lease itself was started in June of 2008.
15 And if we look at page 2 -- as that's coming up: what
16 you did in this lease, which is pretty typical of
17 commercial leases, you established a base lease and then
18 you had increased rents as you went forward, different
19 five-year periods of time; correct?

20 A. Yes. Yes, sir.

21 Q. And those rents are established on page 2 on option
22 to extend term; correct?

23 A. Yes, sir.

24 Q. And would you look at paragraph 5. That's the
25 option to extend -- to extend term. So your first base-

1 lease period I guess would have been 2008 to 2013?

2 A. Yes, sir.

3 Q. So your second five-year period of time would have
4 been the time it was at issue when the condemnation was
5 filed and the date of acquisition occurred in October of
6 2017; correct?

7 A. Yes, sir.

8 Q. So that means that the base rent for your -- that
9 five-year term was \$9,355.25 per month for that second
10 five-year term; correct?

11 A. I would agree with that.

12 Q. Now, you had two other written leases for the other
13 tenants in your property in 2017. And let's look first
14 at the Pilates lease. That is C-8. Would you turn to
15 C-8?

16 [Whereupon, the witness complies]

17 Q. Is that a copy of a lease between Gateway Properties
18 and Loft Pilates?

19 A. Yes.

20 MR. BABCOCK: Your Honor, we'd offer this as
21 Condemnor's Exhibit 8.

22 THE COURT: Alright. Any objection?

23 MR. BABCOCK: No objection.

24 THE COURT: Without objection, so admitted.

25 [Whereupon, Condemnor's Exhibit Number 8 is admitted]

1 into evidence by the Court]

2 Q. [Mr. Babcock] Now, the Pilates area that they
3 leased was on the first floor. I think that was your
4 testimony; correct?

5 A. That is correct.

6 Q. And I think you showed us earlier where, when you
7 had the graph on the first floor, where it was located;
8 correct?

9 A. Yes, sir.

10 Q. And in this lease -- and this started in December of
11 2015; correct?

12 A. Sure. Yes. 23rd.

13 Q. December 23rd, 2015?

14 A. Yes, sir.

15 Q. And it established a base rent there, did it not?

16 A. It did.

17 Q. And if we could pull up C-8(a), please. Now, the
18 base rent that's on page 1, paragraph 4, and that says
19 the tenant shall pay to the landlord, without reduction,
20 set-off, prior notice, or demand, base rent in the amount
21 of 2,000 dollars per month; correct?

22 A. Yes, sir.

23 Q. Now, the other lease that you have --- let's look at
24 your terms of C-9, please.

25 [Whereupon, the witness is shown exhibit]

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March 26, 2019

1 Q. That was a lease with Capella Carolinas; correct?

2 A. Yes, sir.

3 Q. And that was, I think you told us, the home office
4 for ---

5 A. --- the bingo ---

6 Q. --- the bingo operation around the state?

7 A. Uh-huh.

8 Q. So is C-9 a copy of the lease between the company,
9 Capella Carolinas, along with amendments on the top page?
10 Is that accurate?

11 A. Yes.

12 MR. BABCOCK: Your Honor, we'd offer C-9 as the next
13 exhibit for the Condemnor.

14 MR. WALKER: No objection.

15 THE COURT: No objection? Without objection, so
16 admitted.

17 [Whereupon, Condemnor's Exhibit Number 9 is admitted
18 into evidence by the Court]

19 Q. [Mr. Babcock] And for this lease, this is a lease
20 dated December 18, 2015; correct?

21 A. Yes, sir.

22 Q. I'm looking at the amendment for this.

23 A. Twenty ---

24 Q. The amendment.

25 A. Oh. Yes, sir.

1 Q. And the rent is specified on that first page;
2 correct?

3 A. Yes, sir.

4 MR. BABCOCK: If you would pull up C-9(a), please.

5 [Whereupon, the exhibit is shown]

6 Q. [Mr. Babcock] And that shows your rental amount for
7 different periods of time. And since we're looking at
8 October of 2017 for the value in this case, year two
9 would be July 1, 2017, to June 30, 2018; correct?

10 A. Yes, sir.

11 Q. And that rental amount is \$3,278.18; is that
12 correct?

13 A. Yes, sir.

14 Q. And that's the monthly rent; correct?

15 A. Yes, sir.

16 Q. Now, you would agree with me, I think as you told me
17 previously in your deposition that you considered this
18 lease from Capellas to be a fair market rent; is that
19 right?

20 A. Yes, sir.

21 Q. And there was really -- Capellas, with its home
22 office for bingo, didn't need any extra elements with
23 regard to your building, did it?

24 A. Define extra elements.

25 Q. Well, none of the theater room or anything of ---

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- 1 A. --- oh, no ---
- 2 Q. --- that nature and ---
- 3 A. --- correct ---
- 4 Q. --- it was just any office space; correct?
- 5 A. Yes, sir.
- 6 Q. And the same thing with the Loft Pilates lease.
7 That also was a fair market rent; right?
- 8 A. Yes, sir.
- 9 Q. And yet there was nothing special that the Pilates
10 group needed.
- 11 A. Uh-huh ---
- 12 Q. --- in your building. It could have been anywhere;
13 correct?
- 14 A. As far as I understand. I don't know enough about
15 their business to fully answer that question.
- 16 Q. You're familiar with Pilates, in general, aren't
17 you?
- 18 A. Yeah.
- 19 Q. Now, before the Pilates group was there, a software
20 company leased the space itself?
- 21 A. Yes, sir.
- 22 Q. And, again, they didn't need anything special for
23 the building, did they?
- 24 A. Bandwidth. They did. They needed ---
- 25 Q. --- okay, so they needed bandwidth.

1 A. Right.

2 Q. Anything else?

3 A. No, sir.

4 Q. And you had a written lease with them, a fair market
5 lease, in your -- in your thought process?

6 A. Yes, sir. And when you say fair market, I relied on
7 Daniel Atwell to tell me what those were.

8 Q. Alright. So what you're telling me is you wanted to
9 establish a fair rental rate and you looked to advice
10 from a real estate advisor?

11 A. I did.

12 Q. And Daniel Atwell was a real estate advisor who you
13 knew; correct?

14 A. He was. He is.

15 Q. Now, I'd like to talk a little bit about the theater
16 room itself so we can understand a little bit more. You
17 talked about a floating shell within shell?

18 A. Yes, sir.

19 Q. And this was a -- you told us a very special kind of
20 situation; right?

21 A. What kind of situation?

22 Q. I mean, this is -- let me rephrase.

23 A. Okay.

24 Q. This room was different than the ordinary rooms
25 where you might see movie-projection equipment shown;

1 correct?

2 A. From a commercial theater?

3 Q. No, not from a commercial theater, Your Honor --
4 excuse me; Mr. Fabian if you're going -- if you're going
5 somewhere to try to buy some home theater projector or a
6 screen or something like that, it normally wouldn't be
7 shown in this floating room within a room; correct?

8 A. Correct.

9 Q. And that, I think you indicated, really the --
10 that's not going to be in most residences; correct?

11 A. Correct.

12 Q. And that's not going to be in most commercial
13 buildings either; correct?

14 A. Not in most.

15 Q. Right. I think it was a pretty high-end ---

16 A. --- yes ---

17 Q. --- high-end situation?

18 A. Right.

19 Q. Now, that room itself, if you had rented out your
20 Life Spaces area to some other tenant who didn't need to
21 sell special equipment, that could have been used for a
22 number of things; correct?

23 A. For example?

24 Q. For any kind of office space. I think you indicated
25 to me that the Life Space area could have been used for

1 any other tenant using it for just office-type space;
2 correct?

3 A. I don't think I indicated that to you.

4 Q. You indicated it to Mr. Paavola?

5 A. Yeah?

6 Q. You did?

7 A. No. I'm trying to understand the context in which
8 you asked the question.

9 Q. Let me try to rephrase the question for you.

10 A. Okay.

11 Q. And I believe Mr. Paavola was the one who actually
12 took your deposition; correct?

13 A. Yes.

14 Q. And as you understood from the deposition, the
15 deposition was an opportunity for lawyers from Railways
16 to ask you questions, under oath, with your attorney
17 present; right?

18 A. Absolutely.

19 Q. And have you reviewed that deposition since it was
20 transcribed?

21 A. Yes.

22 Q. And the question I'm asking you is whether you
23 remember being asked whether Gateway Properties could
24 have leased the space to another office tenant, if
25 needed.

1 MR. WALKER: I apologize for interrupting. Could we
2 get a page and a line first, please?

3 MR. BABCOCK: Certainly. I was just asking the
4 question, though, before I got there.

5 MR. WALKER: Okay.

6 MR. BABCOCK: But I -- but I am reading from page
7 76, line 24.

8 Q. [Mr. Babcock] But my question is simply -- and I
9 will show you the deposition, if it will help you -- I'm
10 simply asking if you remember that you were asked the
11 question of whether you knew whether Gateway Properties
12 could lease this space to another office tenant if
13 needed.

14 A. Say it one more time.

15 Q. Why don't I show you the deposition?

16 A. Yeah. That'd be great. Okay.

17 [Whereupon, Mr. Babcock reviews documents]

18 MR. BABCOCK: Your Honor, may I approach the
19 witness?

20 THE COURT: Yes, sir.

21 Q. [Mr. Babcock] I'm going to hand you the original
22 deposition, Mr. Fabian.

23 A. Yes, sir.

24 [Whereupon, Mr. Babcock proffers documents to the
25 witness]

1 A. Thank you, sir.

2 Q. Certainly.

3 A. You said page 70?

4 Q. [Mr. Babcock] No, sir. I believe it was on page
5 76.

6 [Whereupon, the witness reviews documents]

7 A. It appears that counsel was asking me a bunch of
8 hypotheticals on ---

9 Q. [Mr. Babcock] Before we get to the question.

10 A. Okay.

11 Q. You've had a chance to read it?

12 A. I did.

13 Q. And you were asked a series of questions about your
14 building and about the Life Spaces space; correct?

15 A. Yes.

16 Q. And after those questions, there was a question on
17 page 76, line 24: do you know whether Gateway Properties
18 could have leased this space -- including the Life Space
19 to another office tenant, if needed. And what was your
20 answer?

21 A. Sure.

22 MR. WALKER: Your Honor, at this time, we invoke our
23 right under Rule 32(a)(4) to publish another part of a
24 deposition that in fairness ought to be published in
25 response to this publication.

1 MR. BABCOCK: I've no problem with that, Your Honor.

2 THE COURT: Alright.

3 EXAMINATION UNDER RULE 32(a)(4)

4 BY MR. WALKER:

5 Q. Mr. Fabian, would you go on page 76.

6 A. Uh-huh.

7 Q. Up to line 14 where the question was asked ---

8 A. --- right ---

9 Q. --- is it your testimony that this space would not
10 be suitable for any other tenants. And would you read
11 your answer?

12 A. I don't know how you define that. Not suitable.
13 Alright. So I don't know how -- or whether to say yes or
14 no. It was, for example -- I am not sure of many tenants
15 who would need a theater. I mean, who needs it.

16 And this -- and this is an acoustically isolated
17 theater or a sound room or a video teleconferencing --
18 video teleconferencing conference room. So not suitable?
19 Okay. How do I answer that?

20 MR. WALKER: That's all we have in response, Your
21 Honor.

22 THE COURT: Alright.

23 CONTINUED CROSS-EXAMINATION

24 BY MR. BABCOCK:

25 Q. And after that was the question and answer that I

1 had you read; correct?

2 A. Yes.

3 Q. The point is other tenants who didn't necessarily
4 need the movie theater could have used that space;
5 correct?

6 A. Yes.

7 Q. Well, let's go over to Exhibit 59 for the Defendant,
8 in evidence now. We have it marked as C-10. So you can
9 either look on the Defendant's book at Exhibit 59 or ---

10 A. --- I got it ---

11 Q. --- or Condemnor book, C-10. And this was your --
12 as I understand it, you had the same real estate agent
13 that you just talked about with the listing agreement?

14 A. Yes, sir.

15 Q. His name again, sir?

16 A. Daniel Atwell.

17 Q. So you went to him, as I understood your testimony,
18 and tried to provide information to Railways and its
19 appraiser about your building; correct?

20 A. Introductory information about the building, yes.

21 Yes.

22 Q. You wanted -- you knew that Railways was going to
23 condemn your property; correct?

24 A. Incorrect. If you could ---

25 Q. --- well, let me rephrase that. You knew that

1 Railways was intending to acquire your property; correct?

2 A. According to Oscar Rucker, it isn't a deal until he
3 gives me the condemnation papers because he saw instances
4 where they changed their mind.

5 Q. Sure. But you knew that it was likely going to
6 occur, that your land would be condemned in October of
7 2017? You knew that when you were dealing with Mr. Ford,
8 who was doing the appraisal of your property; correct?

9 A. Incorrect. I didn't know that it was going to be in
10 October of 2000 -- I mean, you're planting things with me
11 that aren't true.

12 Q. Fair enough. I'll rephrase the question.

13 A. Okay.

14 Q. You didn't know it was October, 2017. But when you
15 were dealing with Mr. Ford in that fall period of 2016
16 that ultimately resulted in an offer being made, that
17 we've already seen, in January of 2017?

18 A. Yes, sir.

19 Q. You knew that Railways was looking to acquire your
20 property in the near future. You knew that, didn't you?

21 A. I thought it was a high probability, yes.

22 Q. Sure. And to assist Railways in its analysis of
23 your building, you had Mr. Atwell?

24 A. Correct.

25 Q. Help you prepare some information about your

1 building; correct?

2 A. Correct.

3 Q. And that information -- let's look at the page where
4 we -- the front page. The right-hand corner says premier
5 office building. That's what it says; right?

6 A. It does.

7 Q. Now, I think you indicated that Mr. Atwell came up
8 with that price?

9 A. I said that he copy-pasted when he was leasing. He
10 had some marketing propaganda when they were leasing the
11 tenant spaces. So, I'm sure he probably copied and
12 pasted it for this.

13 Q. Alright. So if I understand your testimony, you're
14 saying when the leases were entered with -- in the
15 Capella Carolina's, Pilates Group, Mr. Atwell helped you
16 there?

17 A. Yeah.

18 Q. Is that right?

19 A. Yes.

20 Q. And he developed some material, and he talked about
21 premier office building there; is that right?

22 A. Yes, sir.

23 Q. So when he did this, did you ask him to change that?

24 A. No, sir. I didn't even notice it.

25 Q. I'm sorry?

1 A. I did not even notice it.

2 Q. You didn't notice it?

3 A. No, sir.

4 Q. So when you submitted it to Mr. Ford and Railways,
5 you didn't see what it said on the front page?

6 A. I looked over it.

7 Q. I'm sorry?

8 A. I looked over it.

9 Q. You overlooked it? Or looked over it?

10 A. Both.

11 Q. Let's go over to the next page, which there was some
12 reference to, and I'd like to call up C-10(8)(e), please.

13 THE COURT REPORTER: C-10? I didn't hear you.

14 MR. BABCOCK: I'm sorry. C-10(a) first.

15 Q. [Mr. Babcock] And let's just read that C. I'm
16 going to read it to you and see if I read it correctly;
17 okay?

18 A. Okay.

19 Q. It says -- the top of it says property description,
20 located in the neck, 1799 Meeting Street, it's just
21 minutes from downtown and offers easy access to North
22 Charleston, Mount Pleasant, West Ashley, and I-26.

23 This two-story office/showroom building provides
24 extensive security and technological capabilities, very
25 creative space with efficient design. Property includes

1 a large parking lot, a landscaped outdoor area. The
2 space will work great as office/showroom/flex; correct?

3 A. Yes, sir.

4 Q. And on the top of that page -- up on the right-hand
5 corner there it says premier office building again,
6 doesn't it?

7 A. Yes, sir.

8 Q. Now, let's go back to page -- that second page and
9 let's look at C-10(b). Let me read this. And make sure
10 I read it correctly, Mr. Fabian.

11 1799 Meeting Street can be leased as office suites
12 or the building in its entirety. The building is
13 approximately 7,816 square feet, which is divided into
14 approximately 959 square feet and 4,275 square feet on
15 the first floor and 2,251 square feet on the second
16 floor. The space is completely built-out with highest
17 quality craftsmanship and technology.

18 Did I read that right?

19 A. You read that correct.

20 Q. Let's go down to C-10(c), please. And we're still
21 on that second page. This paragraph -- I'm going to do
22 it again. I'll read it and you make sure I read it
23 right.

24 ELifespaces currently occupies Suite A,
25 approximately 4,275 square feet, on the first floor. The

1 Loft currently occupies Suite B, 959 square feet on the
2 first floor. And Capellas currently occupies Suite C,
3 approximately 2,251 square feet on the second floor.

4 Did I read that correctly?

5 A. Yes, sir.

6 Q. And there is nothing in this written property
7 description that refers to this as a property without
8 equivalent in the Charleston area, is it?

9 A. Ask it again.

10 Q. Sure. We just read the property-description page of
11 the brochure that you put together for Railways and the
12 initial appraiser, Mr. Ford; correct?

13 A. Yes. An introductory description of the building,
14 yes.

15 Q. Look at the property description ---

16 A. --- okay ---

17 Q. --- as it's written ---

18 A. --- okay ---

19 Q. --- on the first half -- they have to look at the
20 cover page; right?

21 A. Yes, sir.

22 Q. This is the first page of the brochure; right?

23 A. Yes, sir.

24 Q. And there's nothing talking about how special this
25 is and there's nothing like it in Charleston, is there?

- 1 A. No, sir.
- 2 Q. Let's look at C-100, please. And that's also from
3 the first real page that we were just reading from;
4 correct?
- 5 A. Yes, sir.
- 6 Q. And these are two pictures that you used to show
7 your building and to show Railways and Mr. Ford your
8 building; correct?
- 9 A. That Daniel used in the brochure, yes.
- 10 Q. Daniel may have picked it out, but you could have
11 asked him to change -- let me finish, sir.
- 12 A. Go for it.
- 13 Q. He may have picked them out, but you could have
14 asked him to put any other photographs in there, couldn't
15 you?
- 16 A. Yes.
- 17 Q. But you didn't, did you?
- 18 A. No.
- 19 Q. And you could have changed the property description
20 in any fashion you saw fit, couldn't you?
- 21 A. Yes.
- 22 Q. But you didn't, did you?
- 23 A. No.
- 24 Q. Let's go over to C-10(e). That's the next page.
25 And this is a page showing rents and expenses for the

1 property; correct?

2 A. Yes, sir.

3 Q. And the first section shows various income. That's
4 at the top of the page; correct?

5 A. Yes, sir.

6 Q. And then you've got expenses at the bottom of the
7 page?

8 A. Yes, sir.

9 Q. Correct?

10 A. Yes, sir.

11 Q. All this was the information you were providing
12 Mr. Ford and Railways in terms of their analysis and
13 their offer to make to you for your building; correct?

14 A. Incorrect.

15 Q. Why is that incorrect?

16 A. You are assuming that I provided this for their --
17 to make an offer. I provided this information because
18 they wanted background on the building. And so I don't
19 understand why this is now being interpreted into a
20 document that it's not.

21 Q. Okay. I think you testified that you knew that Mr.
22 Ford was going to do an appraisal of your property;
23 correct?

24 A. Yes, sir.

25 Q. And you knew that that was a part of the process by

1 which Railways was looking to acquire your property;
2 correct?

3 A. Rephrase what you just said.

4 Q. Sure. You knew that the appraisal process with
5 Mr. Ford was part of the process for Railways to look to
6 acquire your property?

7 A. Yes, sir.

8 Q. And in that regard, you could have changed anything
9 that you wanted on this brochure; right?

10 A. Yes, sir.

11 Q. But you didn't?

12 A. No, sir.

13 Q. Mr. Fabian, I'd like you to turn your attention to
14 C-11 in the notebook. You see that page?

15 A. Yes, sir.

16 Q. And is that a copy of the tax bill for your property
17 for 2017?

18 A. It appears to be yes, sir.

19 Q. And that is certified by the Charleston County
20 Auditor; correct?

21 A. Yes, sir.

22 MR. BABCOCK: We'd offer this as the next exhibit
23 for the Condemnor.

24 THE COURT: Alright. Any objection?

25 MR. WALKER: No objection.

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1 THE COURT: Alright. Number C-11 so admitted on
2 behalf of the Condemnor.

3 [Whereupon, Condemnor's Exhibit Number 11 is
4 admitted into evidence by the Court]

5 Q. [Mr. Babcock] Let's look down at C-11.

6 [Whereupon, the exhibit is shown]

7 Q. And that's a portion of Exhibit C-11 that shows the
8 appraised value for your property in 2017; correct?

9 A. Yes, sir.

10 Q. And what is shown there is \$795,300; correct?

11 A. Yes, sir.

12 Q. Now, we've seen a good number of photographs of the
13 property. I want to show you just a few more; okay?

14 A. Yes, sir.

15 Q. Let's look at C-12, please.

16 [Whereupon, the witness is shown photograph]

17 Q. Is that a fair and accurate representation of the
18 outside of your building?

19 A. Yes, sir.

20 MR. BABCOCK: Your Honor, we'd offer this as the
21 next exhibit for Condemnor.

22 THE COURT: Alright. Any objection?

23 MR. WALKER: No objection.

24 THE COURT: C-12 so admitted on behalf of the
25 Condemnor, without objection.

1 [Whereupon, Condemnor's Exhibit Number 12 is
2 admitted into evidence by the Court]

3 [Whereupon, the photograph is shown]

4 Q. [Mr. Babcock] And, again, this is a building -- a
5 picture that shows your building at its proximity with
6 the railroad tracks; correct?

7 A. Yes, sir.

8 Q. And to orient ourselves, the parking lot will be
9 over to the left; correct?

10 A. That is correct.

11 Q. And then people would come into your building with
12 the door we see up on the screen; correct?

13 A. Yes, sir.

14 Q. I'd like to turn your attention to C-13.

15 [Whereupon, the witness is shown photograph]

16 Q. Are you familiar with that picture?

17 A. Yes, sir.

18 Q. And is that a picture of the entrance to your
19 building?

20 A. Yes, sir.

21 Q. Is it a fair and accurate representation of the
22 entrance to your building?

23 A. Yes, sir.

24 MR. BABCOCK: We'd offer this as the next exhibit
25 for Condemnor.

1 MR. WALKER: No objection.

2 THE COURT: C-13 is so admitted on behalf of the
3 Condemnor, without objection.

4 [Whereupon, Condemnor's Exhibit Number 13 is
5 admitted into evidence by the Court]

6 [Whereupon, the photograph is shown]

7 Q. [Mr. Babcock] And as we just described, that's the
8 entrance as you come into your building; correct?

9 A. Yes, sir.

10 Q. I'd like to turn your attention to C-14.

11 [Whereupon, the witness is shown photograph]

12 Q. Are you familiar with that picture?

13 A. Yes, sir.

14 Q. And is that a fair and accurate representation of
15 the Pilates studio?

16 A. That is correct..

17 MR. BABCOCK: Your Honor, we'd offer this as the
18 next exhibit for Condemnor.

19 THE COURT: Any objection?

20 MR. WALKER: --

21 THE COURT REPORTER: I'm sorry, Mr. Walker, I didn't
22 hear you.

23 THE COURT: Any objection?

24 MR. WALKER: No objection.

25 THE COURT: I'm sorry. We're talking at the same

1 time about that.

2 THE COURT REPORTER: I'm sorry. I just didn't hear
3 Mr. Walker.

4 [Whereupon, Condemnor's Exhibit Number 14 is
5 admitted into evidence by the Court]

6 [Whereupon, the photograph is shown]

7 Q. [Mr. Babcock] Alright. We've now got that up on
8 the screen, Mr. Fabian. And that's the Pilates area;
9 right?

10 A. Yes, sir.

11 Q. And Pilates is a form of exercise, working out?

12 A. Yes, sir.

13 Q. And I'd like to direct your attention to C-16. I'm
14 sorry, C-15. Excuse me.

15 [Whereupon, the witness is shown photograph]

16 THE COURT: Just so we can make the record clear,
17 C-14 was admitted without objection. Is that right, Mr.
18 Walker?

19 MR. WALKER: That's right, Your Honor.

20 THE COURT: Alright. I just want to make the record
21 clear. Thank you.

22 Q. [Mr. Babcock] Alright. Now let's go over to C-15.
23 I'd like you to take a look at that, Mr. Fabian. That's
24 in the upstairs area, isn't it?

25 A. Yes, sir.

1 Q. And is that a fair and accurate representation of
2 your upstairs area?

3 A. Yes, sir.

4 MR. BABCOCK: Your Honor, we would offer Condemnor's
5 Exhibit Number 15.

6 THE COURT: Any objection?

7 MR. WALKER: None, Your Honor.

8 THE COURT: C-15 is so admitted on behalf of the
9 Condemnor.

10 [Whereupon, Condemnor's Exhibit Number 15 is
11 admitted into evidence by the Court]

12 [Whereupon, the photograph is shown]

13 Q. [Mr. Babcock] Now, this is in the upstairs;
14 correct?

15 A. Yes, sir.

16 Q. And was this is the area that the -- that the bingo
17 company was using as their home office?

18 A. Correct.

19 Q. Turn your attention to page -- to C-16, please.

20 [Whereupon, the witness is shown photograph]

21 Q. Are you familiar with that picture, sir?

22 A. Yes, sir.

23 Q. And that's again from your upstairs area; correct?

24 A. Yes, sir.

25 Q. And that -- is that a fair and accurate

1 representation of the break room area in your upstairs?

2 A. For the tenant up there, yes, sir. Yes.

3 MR. BABCOCK: Your Honor, we'd offer that as the
4 next exhibit for the Condemnor.

5 THE COURT: Any objection?

6 MR. WALKER: None, Your Honor.

7 THE COURT: Alright. C-16 is so admitted on behalf
8 of the Condemnor, without objection.

9 [Whereupon, Condemnor's Exhibit Number 16 is
10 admitted into evidence by the Court]

11 [Whereupon, the photograph is shown]

12 Q. [Mr. Babcock] Again, we're in the upstairs;
13 correct?

14 A. Yes, sir.

15 Q. And you're saying this is a portion of the upstairs
16 area. And the tenant there would have been Capella
17 Carolinas?

18 A. Yes, sir.

19 Q. Mr. Fabian, you told us about having used Mr. Atwell
20 to help you put together the brochure that you gave to
21 Mr. Ford. And Mr. Atwell has a real estate license;
22 correct?

23 A. Yes, sir.

24 Q. And you have a real estate license from the State of
25 South Carolina, too, don't you?

- 1 A. Yes, sir.
- 2 Q. I think you've had it since the 1980s?
- 3 A. Yes, sir.
- 4 Q. I think one of the reasons you got it was you wanted
5 to become familiar with real estate because of various
6 family holdings that you have?
- 7 A. That is correct.
- 8 Q. You also have a real estate company, don't you?
- 9 A. I do.
- 10 Q. And that has, at times, sold and helped sell and buy
11 properties; correct?
- 12 A. Not actively. Seldom does it do that.
- 13 Q. But it has?
- 14 A. It has.
- 15 Q. And as a real estate agent, you understand the
16 importance of a listing, don't you?
- 17 A. Yes.
- 18 Q. That you have to have a written listing for a real
19 estate agent to be able to sell a piece of property;
20 right?
- 21 A. Yes, sir.
- 22 Q. And you told counsel about a listing you had on your
23 property, but we didn't get to see a copy of that. I'm
24 going to hand you a document which we've marked as C-36.
25 Are you familiar with that document?

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- 1 A. No, sir.
- 2 Q. You are aware your property was listed?
- 3 A. Yes, sir. But you asked me if I'm aware of this
4 document.
- 5 Q. I did.
- 6 A. And I'm not.
- 7 Q. You never looked to see the listing?
- 8 A. Pardon?
- 9 Q. You never looked to see the listing?
- 10 A. No, sir. I don't have access to the MLS system.
- 11 Q. And the amount that you listed your property for
12 sale was \$1,600,000; correct?
- 13 A. Yes, sir.
- 14 Q. And ---
- 15 A. --- that's what this document says.
- 16 Q. I'm sorry?
- 17 A. That's what this document says, yes, sir.
- 18 Q. And that listing agreement was done in 2015, I
19 believe?
- 20 A. Okay. I'm looking for the date.
- 21 THE COURT REPORTER: I'm sorry, sir?
- 22 A. Okay.
- 23 Q. [Mr. Babcock] You found it?
- 24 A. Yes, sir.
- 25 Q. Certainly prior to the October, 2017, notice of

- 1 filing for condemnation; correct?
- 2 A. Yes, sir.
- 3 Q. And you could have used -- if I understand you
4 correctly, this listing was just really so that you would
5 help Mr. Atwell out?
- 6 A. Mr. Atwell out? Okay.
- 7 Q. Well, let me try ---
- 8 A. --- it was to help him, yes.
- 9 Q. I'm sorry?
- 10 A. It was to help him.
- 11 Q. Right.
- 12 A. And his new company.
- 13 Q. He started a new company; correct?
- 14 A. Yes, sir.
- 15 Q. He was a friend of yours; correct?
- 16 A. Yes, sir.
- 17 Q. You wanted to help him get some listings; correct?
- 18 A. Yes, sir.
- 19 Q. As part of that, you listed this property for
20 \$1,600,000; correct?
- 21 A. Yes, sir.
- 22 Q. Even though you had no intention of selling the
23 property?
- 24 A. That is correct.
- 25 Q. And even though you could have listed it for any

1 amount of money, you listed it for 1.6; correct?

2 A. Yes, sir.

3 MR. BABCOCK: Court's indulgence.

4 THE COURT: Yes, sir.

5 [Whereupon, Mr. Babcock and Mr. Paavola confer]

6 MR. BABCOCK: Thank you, sir.

7 THE COURT: Alright. Any redirect?

8 MR. WALKER: Yes, sir.

9 THE COURT: Alright.

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REDIRECT EXAMINATION

1
2 BY MR. WALKER:

3 Q. Did you allow Mr. Atwell to list other properties
4 owned by your family to help him out?

5 A. Yes, sir ---

6 Q. --- in his new business?

7 A. Yes, sir.

8 Q. Was there any intent to sell those, too?

9 A. No. No, sir.

10 Q. I want to go back to this brochure that we spent
11 some time on, which is our Exhibit 59, and I want to get
12 into the timing of that brochure. And I'd like you to
13 look at, first, Exhibit 58.

14 [Whereupon, the witness is shown exhibit]

15 Q. And I'm not asking you to publish it. I'm just
16 trying to refresh your recollection about the timing.

17 A. Correct.

18 Q. Alright. In looking at that email, is that an email
19 from you?

20 A. It is an email from me.

21 Q. Okay. And does it help you refresh you as to when
22 Mr. Ford was coming?

23 A. He was...

24 Q. If you read that email ---

25 A. --- he was to be there ---

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1 Q. --- don't, don't ---
2 A. --- in a few days. Correct.
3 Q. I want you to -- I want to be specific here.
4 A. Okay. Fifteen ---
5 Q. Look at the date of your ---
6 A. --- I've got it ---
7 Q. -- email and look at the substance of it.
8 [Whereupon, the witness reviews document]
9 A. 17th. He was to be at our property on September
10 17th.
11 Q. And on ---
12 A. --- 2016.
13 Q. And on September 15, when this email was written ---
14 A. --- correct ---
15 Q. --- did you have that brochure yet from Daniel?
16 A. I did. I had a draft of it.
17 Q. Alright. And that's what was provided on the 17th?
18 A. That is correct.
19 Q. You were asked about this particular brochure -- I'm
20 going to refer to it as the -- that Atwell put together
21 as a specialty property. And I'd like you to go to
22 Defendant's 55, which is in evidence.
23 MR. WALKER: And, Ty, if you could please put that
24 on the screen.
25 [Whereupon, the exhibit is shown]

1 Q. [Mr. Walker] Now, even though the brochure that was
2 put together by Mr. Atwell didn't specifically describe
3 the property as specialty, did you do that to Mr. Ford
4 and Mr. Rowe when they came on the -- excuse me -- to Mr.
5 Rowe and Mr. Rucker when they visited you on August 4th?

6 A. I did.

7 MR. WALKER: And if you could go from that email,
8 Ty, to the bottom three bullet points, and if you could
9 highlight those.

10 Q. [Mr. Walker] Alright. Now, in this did you -- when
11 you documented your meeting, did you refer to it as
12 specialty property or specialized requirements?

13 A. [No response]

14 Q. And I'm going down to the final three bullets of the
15 first page of that email.

16 A. Right.

17 Q. If you'd read the ---

18 A. --- uh-huh ---

19 Q. --- third one from the bottom.

20 A. Yes.

21 Q. Would you please read that third -- are you on the
22 second ---

23 A. --- yes, I am. They expressed that their ---

24 Q. --- alright. Read it out loud, please.

25 A. They expressed -- this is Mr. Rucker and Mr. Rowe --

1 expressed that their preconceived thoughts of our
2 facility were dislodged and they would be discussing with
3 Ford his comfort level in performing the appraisal
4 because of the specialized nature of the facility.

5 Q. Alright. And will you go up to the one that's two
6 above that that starts with expressing?

7 A. Expressing concern over the timeline. I explained
8 the specialized requirements we would have and the
9 preparation of another facility and the background that
10 led us to this location.

11 Q. One of the photographs offered by the Condemnor
12 showed -- and if you would go to Condemnor's Exhibit 12.

13 [Whereupon, the exhibit is shown]

14 Q. Alright. What are we looking at on the left side of
15 this building? What is that [indicates]?

16 A. This is move-in day. This is the -- before we had
17 even moved into the facility. You're seeing us unloading
18 things.

19 Q. And what is -- there's -- it looks like an open bay
20 on the left ---

21 A. --- yeah, that's the ---

22 A. --- side. What is that?

23 A. That's our warehouse.

24 Q. What did you have in the warehouse?

25 A. Nothing yet.

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1 Q. Okay. What did you use it for?
2 A. Product. Electronic devices, things like that.
3 Q. You were shown a number of pictures of the leased
4 space. In your opinion, as property owner, would the
5 specialized space that was retained by eLifespaces ---
6 A. --- uh-huh ---
7 Q. --- even though it's sublet space, be easily and
8 readily convertible to an office; standard office?
9 A. I don't believe so, because there's no windows. No.
10 Q. Alright. Thank you.
11 THE COURT: Any recross?
12 MR. BABCOCK: Yes, sir.
13 THE COURT: Alright.
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1 A. Yes, sir.

2 Q. And also cc'd to Mr. Rucker; correct?

3 A. Yes, sir.

4 Q. And what you say is: Robert. And then the first
5 sentence says: for the file and your information and
6 guidance. And then you say: you met with Oscar Rucker
7 and John with Michael International yesterday.

8 So that meeting would have been on August 24th of
9 2016; correct?

10 A. Yes, sir.

11 Q. And what you're doing is relaying to your lawyer,
12 and cc'ing to Mr. Rucker, your view of what happened at
13 that meeting; correct?

14 A. Yes, sir.

15 Q. And the highlighted areas we looked at a few minutes
16 ago were the specialized nature of the building. Those
17 -- that information could have been used in the property
18 description for the brochure, couldn't it?

19 A. Sure.

20 Q. But you didn't?

21 A. No, sir.

22 Q. I'd like you to look at -- this is not in evidence
23 yet, counsel referenced it -- Defendant's Exhibit 58.

24 [Whereupon, the witness is shown exhibit]

25 Q. You see it?

1 A. Yes, sir.

2 Q. And that's an email from you to Robert Dodds and
3 Thomas Hartnett; correct?

4 A. Yes, sir.

5 Q. And it's dated September 15, 2016; correct?

6 A. Yes, sir.

7 Q. And we just heard from Mr. Dodds. Mr. Hartnett is
8 the appraiser that you hired to do the appraisal for your
9 building; correct?

10 A. Yes, sir.

11 MR. BABCOCK: Your Honor, we would offer this as the
12 next exhibit for the Condemnor. Sorry; 37.

13 THE COURT: Alright.

14 MR. WALKER: No objection, Your Honor.

15 THE COURT: Without objection, so entered.

16 [Whereupon, Condemnor's Exhibit Number 37 is
17 admitted into evidence by the Court]

18 [Whereupon, the exhibit is shown]

19 Q. [Mr. Babcock] Alright. Now, let's look at the
20 paragraph that starts gentlemen. What that says is:
21 Gentlemen, as you know, their appraisers claim to be here
22 Saturday. To that end, I was glad to provide information
23 for the property.

24 With the help of Daniel Atwell, we've prepared this
25 document to present. This is a draft that can be easily

1 updated. Standing by for your feedback. Fred.
2 A. Uh-huh.
3 Q. Correct?
4 A. Yes, sir.
5 Q. So you recognized that the brochure you had at that
6 point could be changed in any fashion you or other people
7 advising you wanted to change?
8 A. Yes, sir.
9 Q. And it wasn't changed?
10 A. I never got feedback.
11 Q. I'm sorry?
12 A. I never got the feedback so it -- I just let it go.
13 Q. Okay. So what you're telling me is you sent it to
14 -- you sent it to two people?
15 A. Yes, sir.
16 Q. And -- sent it to two people and one of them was
17 your then lawyer, Mr. Dodds; correct?
18 A. Yes, sir.
19 Q. And he never gave you any feedback; correct?
20 A. No, sir.
21 Q. And you sent it to Mr. Hartnett; correct, Your
22 appraiser?
23 A. Yes, sir.
24 Q. Never got any feedback?
25 A. Correct.

1 Q. So they didn't have any changes and you didn't make
2 any changes; correct?

3 A. Never got feedback, so I didn't make any changes and
4 I just let it go.

5 Q. You had the opportunity to make the changes. You
6 chose not to, though; correct?

7 A. I had an opportunity to make changes and I did not.

8 Q. And counsel asked you about the listings that you
9 made with Mr. Atwell for other family properties ---

10 A. --- yes, sir ---

11 Q. --- correct?

12 A. Yes, sir.

13 Q. How many different listings were there?

14 A. I don't know. Probably a half dozen or more.

15 Q. Half dozen or more?

16 A. Yes, sir.

17 Q. And all of them were not real listings because you
18 didn't intend to sell; correct?

19 A. Yes, sir.

20 Q. Not one of them would you have sold for the listing
21 price you indicated; is that right?

22 A. Yes, sir.

23 MR. BABCOCK: Thank you, sir.

24 THE COURT: Alright. Thank you, sir.

25 [Whereupon, the witness is excused and exits the

1 witness stand]

2 THE COURT: I have a question. Can I see counsel
3 just a second?

4 [Whereupon, an off-the-record bench conference is
5 held]

6 THE COURT: Ladies and gentlemen of the jury, we're
7 going to -- we've got another witness, a very relatively
8 short witness, and I think we can get that witness in and
9 get you out at a decent time. So just bear with me.
10 Thank you, ma'am. Alright. Next witness, counsel.

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Steve Morey-Direct Examination by Mr. Linton
March 26, 2019

1 MR. LINTON: Your Honor, the Landowner calls Steve
2 Morey.

3 THE COURT: Mr. Morey, come on up.

4 [Whereupon, Mr. Morey comes forward]

5 THE COURT: Mr. Morey, come on up here and the Clerk
6 will swear you in.

7 THE CLERK OF COURT: If you will place your left
8 hand on the Bible and raise your right.

9 [Whereupon, Mr. Morey is duly sworn by the Clerk of
10 Court]

11 THE CLERK OF COURT: You may be seated.

12 [Whereupon, the witness takes the witness stand]

13 THE CLERK OF COURT: And for the record, please
14 state your full name, spelling your last.

15 THE WITNESS: Steven John Morey, M-O-R-E-Y.

16 THE COURT: Yes, sir.

17 - - - - -

18 STEVEN J. MOREY,

19 Having Been First Duly Sworn,

20 was Examined and Testified as Follows:

21 DIRECT EXAMINATION

22 BY MR. LINTON:

23 Q. Mr. Morey, where do you live?

24 A. I live in Summerville.

25 Q. Tell me, what is your educational background?

1 A. I have a two-year associate degree in business
2 management, a certificate for construction management,
3 and certificate for Computer Aided Design, which is the
4 CAD program.

5 THE COURT REPORTER: Which is the?

6 THE WITNESS: CAD program.

7 Q. [Mr. Linton] Where do you work, Mr. Morey?

8 A. I work for Design Build.

9 Q. What does Design Build do?

10 A. We are a general contracting firm.

11 THE COURT: You might want to push your chair up
12 just a little bit.

13 [Whereupon, the witness complies]

14 THE COURT: There you go.

15 A. We're a general contracting firm.

16 Q. [Mr. Linton] And where does Design Build do general
17 contracting? What's your service area?

18 A. Primarily here in the tri-county area.

19 Q. What's your position?

20 A. I'm a sales manager, project manager, designer,
21 estimator.

22 Q. What does that involve?

23 A. I meet with clients and see what their needs are,
24 and put together preliminary designs, construction
25 estimates, and then I sell projects and manage them.

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March 26, 2019

1 Q. Do you do residential and commercial?

2 A. No. I don't do residential.

3 Q. Just commercial?

4 A. I just do commercial.

5 Q. And how long have you been in the business of
6 general contracting for commercial properties in the
7 Charleston area?

8 A. Over twenty years now.

9 Q. And have you been doing estimates that whole time?

10 A. Yes.

11 Q. How many estimates for commercial projects have you
12 done in the Charleston area?

13 A. Well over 2,000 estimates over time.

14 MR. LINTON: Your Honor, at this time we'd ask that
15 Mr. Morey be qualified as an expert witness in estimating
16 construction costs.

17 THE COURT: Any objection to him being so qualified?

18 MR. PAAVOLA: No objection, Your Honor.

19 THE COURT: Alright. Without objection, so
20 qualified in that area of expertise.

21 Q. [Mr. Linton] Mr. Morey, of those over 2,000
22 estimates you prepared, how many of those have been
23 prepared for purposes of lawsuits and coming to court?

24 A. None.

25 Q. So this is the first one you've ever done where

1 you've -- where you've done it for a case?

2 A. That's -- well, I didn't do it for that purpose, but
3 that's what it is, yes.

4 Q. When did you first meet Fred Fabian?

5 A. Back in 2006 or 2007 when we were getting ready to
6 do the 1799 building.

7 Q. And you worked on the original project at 1799
8 Meeting Street Road?

9 A. Yes, I did.

10 MR. LINTON: Could we pull up Exhibit 19 that's
11 already been put into evidence?

12 [Whereupon, the photograph is shown]

13 Q. [Mr. Linton] Mr. Morey, are you the young fellow on
14 the left here ten years ago?

15 A. The skinnier one. Yes.

16 Q. And that is the original construction of 1799
17 Meeting Street Road?

18 A. Yes.

19 Q. Did you create any bid for that project for the
20 services your then company was going to perform?

21 A. Yes.

22 Q. Tell me how you went about preparing that bid.

23 A. Well, obviously met with the client, went about
24 getting preliminary drawings done. From that, did
25 estimates, met with subcontractors to get proposals from

1 and to assemble a proposal to then give to Mr. Fabian.

2 Q. And ultimately you got the contract for part of that
3 construction?

4 A. Yes, I did.

5 Q. When you sent out the plans to get that bid to your
6 various subcontractors, what was the reaction you got?

7 A. The one I had the hardest time getting a proposal on
8 was for the steel-building package, because it was -- it
9 was an incredibly complex metal building with -- and
10 especially the size and the detailed features within the
11 metal building and on the exterior of the metal building.

12 And so it was really tough to get proposals. I had
13 two other metal providers that could not give me a
14 proposal on it because it was just too complex for them.

15 Q. Were any of them surprised by the plans?

16 A. They were surprised by the complexity of it and they
17 questioned it.

18 Q. What do you mean they questioned it?

19 A. They were acting -- they asked me ---

20 MR. PAAVOLA: --- Objection ---

21 A. --- if I was serious ---

22 MR. PAAVOLA: --- Your Honor. I have an objection
23 to hearsay. He's testifying about what a third party may
24 have expressed.

25 THE COURT: Sustained. Rephrase your question.

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1 MR. LINTON: Sure. I'll just move on.

2 THE COURT: Alright.

3 Q. [Mr. Linton] Steve, the original construction at
4 1799, was this a normal office building?

5 A. No, it was not.

6 Q. Did the subcontractors you were sending out plans
7 for to get bids think it was a normal office building?

8 A. No, it was not.

9 MR. PAAVOLA: Again, objection, Your Honor, to
10 hearsay on what third parties thought about the bid.

11 THE COURT: Sustained.

12 Q. [Mr. Linton] How did you think it was different
13 than a normal office building, Mr. Morey?

14 A. Both the foundation and the steel construction of
15 the structure of the building.

16 Q. What about are you familiar with the theater room?

17 A. I am.

18 Q. Was that something you see in a normal office
19 building?

20 A. This is the only one I've ever done.

21 Q. Could you turn in the notebook, that's up there, to
22 Defendant's Exhibits 71 and 72?

23 A. There's multiple -- defendant's exhibits? To which
24 page?

25 Q. Tabs 71 and 72.

1 [Whereupon, the witness reviews documents]
2 A. Yes.
3 Q. [Mr. Linton] Could you identify Exhibit 71 for me.
4 A. Yes. It's a schedule that I used.
5 Q. And what about Exhibit 72?
6 A. It's a construction estimate.
7 Q. And that schedule of values and that construction
8 estimate, what project are they for?
9 A. For the re-creation of this building at 1799.
10 Q. So this is not for the original construction?
11 A. That is not the original construction.
12 Q. Who prepared these bids?
13 A. I did.
14 Q. And who's responsible for the accuracy of these
15 bids?
16 A. I am.
17 Q. And did you do it in the normal course of your work
18 in design, build, and estimating ---
19 A. --- yes ---
20 Q. --- construction?
21 A. Yes, I did.
22 MR. LINTON: At this time, Your Honor, we'd ask to
23 have Exhibits 71 and 72 moved into evidence.
24 MR. PAAVOLA: No objection, Your Honor.
25 THE COURT: Without objection, so admitted.

1 [Whereupon, Defendant's Exhibit Numbers 71 and 72
2 are admitted into evidence by the Court]

3 Q. [Mr. Linton] Let's look first at Exhibit 71. Could
4 you tell me, what's the difference between Exhibit 71 and
5 72, Steve?

6 A. The schedule values is a simplified version of the
7 construction estimate and it's used for billing purposes.

8 Q. When you say building purposes, what do you mean?

9 A. Billing. Billing.

10 Q. Billing.

11 A. Like if I -- if I were awarded the contract on this
12 project, I would -- this is -- I would use this type of a
13 layout in an AIA form to do my billing against, because
14 it's a simplified version rather than a construction
15 estimate where it has too many line items.

16 Q. So is it essentially a summary of the construction
17 estimate?

18 A. It is, yes.

19 Q. And if you look at the last page of the schedule of
20 values, down at the bottom of the second page, you've got
21 the total construction cost that you've estimated?

22 A. Yes.

23 Q. Can you see that? Looking at that, Mr. Morey, do
24 you have an opinion to a reasonable degree of certainty
25 as to how much it would cost to rebuild the structure

1 that was located at 1799 Meeting Street Road?

2 A. It would be this four three one nine.

3 THE COURT REPORTER: Repeat that, please.

4 A. It'd be \$4,319,040.

5 Q. [Mr. Linton] Mr. Morey, I'd like to back up. And
6 could you tell me how you went about preparing this
7 construction bid? What's the first thing you did?

8 A. The first thing I did is assemble all the drawings
9 and reviewed them. Then I sent them out to multiple
10 subcontractors per trade, met with subcontractors on it
11 to review the scope and what they would be doing, and
12 also reviewing with them all the different parts and
13 pieces of the building, so that they could understand on
14 how to give me a proposal to assemble what the actual
15 construction cost would be today.

16 Q. And so ---

17 A. --- or at the time of taking.

18 Q. So did you send them out the detailed plans?

19 A. Yes, I did.

20 Q. And was the way you prepared this construction bid
21 in any way different than the way you prepared over 2,000
22 other construction bids?

23 A. No.

24 Q. And do you hold the opinion that the cost to
25 reconstruct the building at 1799 Meeting Street Road

1 would be \$4,319,040 to a reasonable degree of certainty
2 as ---

3 A. --- yes ---

4 Q. --- as somebody in the field of estimating
5 construction costs?

6 A. Yes.

7 Q. What else -- did you just take the sub's numbers and
8 plug them into the bid? Is that the way it works?

9 A. No. I review what they send in, and I have to close
10 the gaps, and that's where one subcontractor ends and
11 another one picks up, and -- to complete the project.

12 Q. And what else? Are there any other numbers that go
13 into the bid?

14 A. Well, I estimate the items we sub-perform in-house,
15 and estimate the different -- that type of work of what
16 we're performing to complete the project.

17 Q. What about let's take a look at Exhibit 72, the full
18 construction bid. And this exhibit is four pages. If we
19 could go to the last page.

20 [Whereupon, the witness complies]

21 Q. And before we get there, Mr. Morey is this exhibit a
22 detailed version of Exhibit 71?

23 A. Yes.

24 Q. So this exhibit includes all the numbers from your
25 subs?

1 A. That is correct.

2 Q. Do you just put an exact number from your sub, or do
3 you adjust it?

4 A. No. We put -- we have an adjustment. We have the
5 margin, there's a margin in there, for, like I said,
6 closing the gaps between where one finishes and another
7 starts. There's always parts and pieces that have to be
8 done to complete the project.

9 Q. What about is there any contingency reflected in
10 this bid?

11 A. Yes, there is.

12 Q. And where is that found? Is it on this page?

13 A. It is the lower part. It's in -- it's below the
14 purple checkmark where it says check.

15 MR. LINTON: Will you zoom in on that, Thank you. ?

16 Q. [Mr. Linton] So what does that contingency mean?

17 A. It's for areas that we've missed.

18 Q. And do you do the same contingency on every project?

19 A. No.

20 Q. And is this contingency higher or lower than you
21 usually do?

22 A. This is lower, because we felt pretty certain we
23 knew exactly what we've got.

24 Q. And what percentage of the overall construction is
25 it, if you can remember?

1 A. It's -- well, this is just a half a percent for
2 contingency.

3 Q. Were there other contingencies embedded within the
4 bid?

5 A. Well, there's that contingency. And then the margin
6 is -- it's not a contingency; it's the connection of
7 between one sub to another.

8 Q. And what about -- I'm sure everyone is wondering --
9 would Design Build make any money off this project?

10 A. Yes.

11 Q. Is there something built in there for profit?

12 A. Yes.

13 Q. And where is that?

14 A. That is down lower where it says markup.

15 Q. So that 338,000?

16 A. Yes, sir.

17 Q. To build a 4.3-million-dollar building?

18 A. That's correct.

19 Q. And is that the same markup that Design Build would
20 have on a project?

21 A. No. Typically, we have a twelve- to fifteen-percent
22 markup.

23 Q. And how much markup did you use in this estimate?

24 A. Eight-and-a-half percent.

25 Q. Why is it lower?

1 A. Because Fred is a good client.

2 Q. You mentioned Fred is a good client. Other than the
3 original construction at 1799, what else have you done
4 for Fred?

5 A. I did a renovation for him on -- actually, across
6 the street from this project.

7 Q. Is that the temporary space that his business had to
8 move to?

9 A. That is correct.

10 Q. Is there anything in this estimate, from a
11 construction standpoint did you estimate anything that's
12 different from the original construction?

13 A. That's different from the original construction?
14 Yes. Well, this -- in this estimate here, I've included
15 an elevator and ten years worth of code changes.

16 Q. And why did you -- why did you put an elevator in
17 here?

18 A. Because the new code requirements would require an
19 elevator for -- to be able to build that building at this
20 time, it would require an elevator to do it, to be able
21 to -- to have ADA access to the second floor.

22 Q. And so if you went to the permit office and took the
23 permits with no elevator in it, would you be able to
24 build the building at 1799 Meeting Street Road today?

25 A. Not without the elevator.

1 Q. And what difference, if you can remember, did adding
2 the elevator have on the total estimate?

3 A. I think it was roughly \$100,000.

4 Q. And then other than the elevator, you mentioned ten
5 years of code changes. What difference did that have on
6 the overall amount of the estimate?

7 A. It's -- I would -- I would say it's probably a ten-
8 to fifteen-percent increase.

9 Q. And I just want to be sure that when you performed
10 this estimate, did you do it the same way that you always
11 do it?

12 A. Yes, we did.

13 Q. Okay. And if you could turn in the notebook to
14 Exhibit 73?

15 [Whereupon, the witness reviews documents]

16 Q. Do you recognize this email?

17 A. I do.

18 Q. And what is this?

19 A. This is an email that I sent out to my
20 subcontractors explaining their scope and the directives
21 for what they were to give me a proposal on.

22 Q. And this is your email?

23 A. It is.

24 Q. And it's an email that you did in the course of your
25 business at Design Build?

1 A. Yes.

2 MR. LINTON: Your Honor, at this time we would ask
3 that Defendant's Exhibit 73 be moved into evidence.

4 THE COURT: Any objection?

5 MR. PAAVOLA: No objection.

6 THE COURT: Without objection, so admitted.

7 [Whereupon, Defendant's Exhibit Number 73 is
8 admitted into evidence by the Court]

9 MR. LINTON: If we can zoom in on kind of the middle
10 section of the email.

11 Q. [Mr. Linton] Steve, is this where you're addressing
12 the various subs and outlining the work that's to be bid?

13 A. Yes.

14 Q. And does anything that you're bidding -- is there
15 anything that can just be unplugged and moved to a new
16 facility? Are you bidding any of the television monitors
17 or computers or anything like that?

18 A. No, I wasn't.

19 Q. This bid is for the building?

20 A. This is for the building, yes.

21 Q. And if you turn to the last page of the exhibit,
22 what are all these files that are attached to this email
23 out to your subs?

24 A. These are PDF files that are drawings of the
25 building project.

1 Q. And these are the drawings from the original
2 construction of 1799?

3 A. That is correct.

4 Q. And is that the same level of detail that you would
5 use for any of your over 2,000 estimates that you've
6 done?

7 A. Well, all projects are different. But, yes,
8 whatever drawings I have for that project, I send out to
9 the subcontractors to get bids on.

10 Q. Were these sufficient drawings to get an accurate
11 bid for the construction cost?

12 A. Yes, they were.

13 Q. Thank you.

14 MR. LINTON: Court's indulgence one moment.

15 THE COURT: Yes, sir.

16 [Whereupon, Mr. Linton and Mr. Walker confer]

17 MR. LINTON: No other questions right now, Mr.
18 Morey.

19 THE COURT: Alright. Cross-examination.
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1 CROSS-EXAMINATION

2 BY MR. PAAVOLA:

3 Q. Mr. Morey, you were asked by Mr. Fabian or Gateway
4 to prepare a cost estimate to reproduce the building at
5 1799 Meeting Street at today's cost; correct?

6 A. Yeah. The cost to redo it as it is, yes.

7 Q. The cost to reproduce 1799 Meeting Street as it was
8 on the date of condemnation; correct?

9 A. Yes.

10 Q. And you were not asked to redesign or improve the
11 building, were you?

12 A. No.

13 Q. But as you've already testified, your estimate did
14 include features of the building that did not exist at
15 1799 Meeting Street at the time of condemnation; correct?

16 A. That's correct.

17 Q. And you're aware that 1799 Meeting Street did not
18 have an elevator at the time of condemnation; is that
19 correct?

20 A. That's correct.

21 Q. And that's because you were involved in the original
22 construction; right?

23 A. That's correct.

24 Q. And you also were involved in renovations over the
25 years since before --

1 A. Correct.

2 Q. In fact, you and Mr. Fabian even discussed whether
3 an elevator should be included in your estimates; isn't
4 that correct?

5 A. No. I included it because if we were to build it, I
6 mean, at the time of condemnation, you'd have to have an
7 elevator in it because I couldn't get a permit without
8 having an elevator in there.

9 Q. You and Mr. Fabian discussed the inclusion of the
10 elevator in your what would be your estimate; is that
11 correct?

12 A. Oh. Sure.

13 [Whereupon, Mr. Paavola and Mr. Babcock confer]

14 MR. PAAVOLA: Your Honor, may I approach the
15 witness?

16 THE COURT: Yes.

17 [Whereupon, Mr. Paavola proffers documents to the
18 witness]

19 Q. [Mr. Paavola] Mr. Morey, I hand you what's been
20 marked as Condemnor's 17 for identification. Do you
21 recognize this as an email exchange between you and Mr.
22 Fabian between May 4th, 2017, and May 9th, 2017?

23 A. Uh-huh. I do, yes.

24 THE COURT: Please say yes.

25 Q. [Mr. Paavola] Alright. Does this email fairly and

1 accurately reflect the communications between you and Mr.
2 Fabian between those dates?

3 A. Yes.

4 MR. PAAVOLA: And, Your Honor, we would offer
5 Condemnor's Exhibit C-17 into evidence.

6 THE COURT: Any objection?

7 MR. LINTON: No objection.

8 THE COURT: Alright. Without objection, so
9 admitted.

10 [Whereupon, Condemnor's Exhibit Number 17 is
11 admitted into evidence by the Court]

12 Q. [Mr. Paavola] Mr. Morey, if you'd please turn to
13 the second page. In the middle of the page, there's an
14 email from Mr. Fabian to you on May 9th, 2017.

15 MR. PAAVOLA: And, Pat, would you bring up Exhibit
16 17-A.

17 [Whereupon, the exhibit is shown]

18 Q. [Mr. Paavola] And the third line down Mr. Fabian
19 writes to you: You may want to modify because in '14
20 elevator, since there is not one in existence. However,
21 new codes would require that there be one installed.

22 Did I read that correctly?

23 A. Yes.

24 Q. After this conversation with the building owner,
25 discussing the fact that there was not an elevator in

1 1799 Meeting Street, you didn't correct your estimate,
2 did you?

3 A. I did correct the estimate.

4 Q. You then -- did you correct your estimate and took
5 the elevator out?

6 A. I put -- no. There was an elevator in it.

7 Q. Did you make a change to take the elevator out of
8 your estimate?

9 A. I did not take the elevator out of the estimate. It
10 is included in the estimate.

11 Q. So you knew the building didn't have an elevator at
12 the time of condemnation but you included it anyway?

13 A. That's correct.

14 Q. And that added money to your cost estimate, didn't
15 it?

16 A. It does.

17 Q. Alright. If you would turn to either Landowners'
18 exhibit 72 or Condemnor's 18 -- and Condemnor's 18.

19 A. Which one?

20 Q. Turn to the third page and find division 14. Do you
21 see there where I'm pointing?

22 [Whereupon, the witness reviews documents]

23 A. Yes.

24 MR. PAAVOLA: And, Pat, if you can bring it up; 18-

25 A.

- 1 Q. [Mr. Paavola] It's still a little hard to read.
2 But this division 14 is -- says conveying systems;
3 correct?
4 A. Yes.
5 Q. And this is where the cost for an elevator is
6 included?
7 A. That's correct.
8 Q. And I know we don't have the column headings on this
9 page, in particular, but is it fair to say under the
10 column that -- the first page that's labeled total
11 include the total costs for the elevator, \$85,000?
12 A. Yes.
13 Q. And then if you move two columns over, there's a
14 cost for \$8500. And that's the margin; correct?
15 A. Correct.
16 Q. And so you added the margin to your base cost; is
17 that correct?
18 A. That's correct.
19 Q. And you add those two together, the total cost for
20 the elevator is \$93,500; correct?
21 A. That's correct.
22 Q. And at the far right column -- and that's hard to
23 read on this copy, but it says \$114,983; is that correct?
24 A. Yes.
25 Q. Alright. And you've added -- to your total costs

1 you've added profit and overhead to that number, haven't
2 you?

3 A. In the 114,983 yes, there is overhead and profit.

4 Q. Alright. So you took a nonexistent feature costing
5 \$85,000, added margin and overhead and profit and general
6 liability to it, didn't you?

7 A. That's correct.

8 Q. Are there any other costs associated with the
9 elevator in this estimate?

10 [Whereupon, the witness reviews documents]

11 A. Yes.

12 Q. And what are those additional costs?

13 A. There's an elevator pit.

14 MR. PAAVOLA: And, Pat, if you would bring up...

15 Q. [Mr. Paavola] And what division is that under, if
16 you remember?

17 A. It's under division 3. It's on the first page.

18 MR. PAAVOLA: Pat, pull that up.

19 THE COURT REPORTER: Was that the elevator pit?

20 THE WITNESS: Pit. Yes, ma'am.

21 Q. [Mr. Paavola] The elevator pit is the second row
22 from the bottom on page 1; correct?

23 A. That is correct.

24 Q. It had a total cost, in the total column, of
25 \$10,450; correct?

1 A. Yes. In the total column, yes.

2 Q. And in the far-right column ---

3 A. --- it's the far-right column with -- the overhead
4 profit on it is -- on the pit is 12,851.

5 Q. Okay. And so for the elevator pit, you also added
6 margin, overhead and profit and general liability;
7 correct?

8 A. Yes. That's on that far-right side.

9 Q. So now we're up to 127, \$128,000 for a feature that
10 was not a part of 1799 Meeting Street; is that correct?

11 A. Correct.

12 Q. And you're saying Mr. Fabian and Gateway is relying
13 on your cost estimate to request compensation for an
14 elevator it didn't have; correct?

15 A. To build this building at the time of condemnation,
16 it would require an elevator.

17 Q. Mr. Fabian and Gateway is relying on your estimate
18 that includes another feature, it didn't have, to request
19 compensation for this condemnation case; is that correct?

20 A. Yes. They asked -- I was asked what it would take
21 to replace that building at that day.

22 Q. Mr. Morey, Gateway, you testified, hired you -- also
23 hired you to renovate its current space at 1808 Meeting
24 Street; correct?

25 A. Yes.

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1 Q. And you completed renovations on that location?

2 A. Yes.

3 Q. Gateway also has plans to build a new building at
4 1831 Meeting Street; correct?

5 A. That's correct.

6 Q. And you've also prepared a cost estimate for Mr.
7 Fabian and Gateway for his new building at 1831 Meeting
8 Street; true?

9 A. Yes, sir.

10 Q. In fact, the cost estimate in this case --

11 MR. PAAVOLA: If you would bring up Condemnor's 18
12 or Landowners' 72.

13 Q. [Mr. Paavola] In fact, this cost estimate at the
14 top right is actually labeled, location, 1831 Meeting
15 Street Road, isn't it?

16 A. That's correct.

17 Q. But you testified this is actually for 1799 Meeting
18 Street Road?

19 A. That's correct.

20 THE COURT REPORTER: I'm sorry. Mr. Paavola, could
21 you slow down just a little bit? Thank you.

22 Q. [Mr. Paavola] And the reason for the mix-up is
23 because you were -- you were working on both estimates,
24 weren't you?

25 A. That's correct.

1 Q. And you used the same subcontractors to give you
2 estimates for both projects?

3 A. That's correct.

4 Q. And you have a contract -- you've been awarded a
5 contract to build Mr. Fabian's new building at 1831
6 Meeting Street; is that true?

7 A. No, sir. Not yet.

8 Q. And sitting here today, you certainly hope to get
9 that contract from Mr. Fabian; correct?

10 A. I do.

11 [Whereupon, Mr. Paavola and Mr. Babcock confer]

12 Q. [Mr. Paavola] Mr. Morey, your estimate for the new
13 building, 1831 Meeting Street, is for a smaller space; is
14 that correct?

15 A. That's correct.

16 MR. PAAVOLA: No more questions, Your Honor.

17 THE COURT: Alright. Anything on redirect?

18 MR. LINTON: Very, very briefly, Your Honor.

19 THE COURT: Alright.

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REDIRECT EXAMINATION

- 1
- 2 BY MR. LINTON:
- 3 Q. Mr. Morey, you testified that you have not completed
4 your estimates on 1831 Meeting Street. Have the design
5 drawings been completed?
- 6 A. They have not been completed as of yet.
- 7 Q. Is it possible to accurately estimate the cost of
8 construction before the design drawings are completed?
- 9 A. Not to a hundred percent.
- 10 Q. And so are you waiting on those design drawings
11 before endeavoring to send it out to the subs, as we've
12 been talking about, to complete your estimate?
- 13 A. Yes.
- 14 Q. And then you were asked if you were hoping to get
15 this contract on the new building; correct?
- 16 A. Yes.
- 17 Q. And I just want to ask you since you're here today
18 testifying as to the cost to reconstruct 1799 as a part
19 of this lawsuit, if you get that contract, if Design
20 Build is awarded that contract, are you going to
21 personally profit off of that?
- 22 A. I'll get paid a commission, yes.
- 23 Q. And when do you get paid a commission? Is it when
24 the contract is signed?
- 25 A. No, when the project is complete.

1 Q. And do you get paid in every project when it's
2 complete?

3 A. No. It depends on whether it makes money or not.

4 Q. So if the project doesn't go well, you might not get
5 paid?

6 A. That's correct.

7 Q. And so the fact that you're hoping your company gets
8 that contract, does it have any impact on your testimony
9 here today?

10 A. No.

11 MR. LINTON: Okay. Thank you. No further
12 questions.

13 THE COURT: Anything on recross?

14 MR. PAAVOLA: No, Your Honor.

15 THE COURT: Alright. No other questions. Thank
16 you, sir. You can step down.

17 [Whereupon, the witness is excused and exits the
18 witness stand]

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STATE OF SOUTH CAROLINA)	THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	DOCKET NO. 2017-CP-10-5382
)	
)	
S.C. DEPARTMENT OF COMMERCE,)	
DIVISION OF PUBLIC RAILWAYS)	
)	
Plaintiff)	
)	
vs.)	
)	
GATEWAY PROPERTIES OF GREATER)	
CHARLESTON, LLC)	
)	
Defendant)	
)	
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)	
)	TRANSCRIPT OF RECORD

March 27, 2019
Charleston, South Carolina

VOLUME 3 (of 4)

B E F O R E:

THE HONORABLE ALEX KINLAW, JR., JUDGE

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PROCEEDINGS

THE COURT: Alright. Gentlemen, anything that we need to cover before we get started? And I think at lunchtime you guys -- you're going to give me your proposed requests to charge and take a look at that.

MR. BABCOCK: We've actually ---

THE COURT: --- or do you want to do it this morning?

MR. BABCOCK: We've got them now, Your Honor.

THE COURT: Okay. Give it to me.

[Whereupon, Mr. Babcock and Mr. Linton proffer documents to the Court]

THE COURT: Y'all have exchanged it?

MR. BABCOCK: We have, Your Honor.

THE COURT: Okay. Is everybody in agreement?

MR. BABCOCK: They're sufficient. We can take care of it at lunchtime, if you'd like.

THE COURT: That'll be fine. That'll be fine. Okay. Anything, other than that, before we bring the jury out?

MR. WALKER: Yes, sir.

THE COURT: What? What's that?

MR. WALKER: This deals with exhibits. I neglected to move into evidence Defendant's Exhibit 11, which were the floor plans and other plans that we looked at in Mr.

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1 Fabian's examination. And I've talked with Mr. Babcock.

2 I understand that they have no objections.

3 MR. BABCOCK: That's correct.

4 THE COURT: Alright.

5 MR. WALKER: We'd offer 11 into evidence. We just
6 neglected to do it at the time.

7 THE COURT: Alright. And that's without objection?

8 [Whereupon, Defendant's Exhibit Number 11 is
9 admitted into evidence by the Court]

10 THE COURT: Let me ask you this, Madam Court
11 Reporter. Well, I'll ask you guys. You've got several
12 exhibits. Are we -- the jury is not going to have a
13 notebook like I've got, so are we just going to --
14 they're just going to have a ton ---

15 MR. BABCOCK: --- Your Honor, we have hard copies
16 of all of our exhibits to go in for the record and to go
17 to the jury.

18 THE COURT: Alright. The only reason I'm asking
19 that is because of the voluminous amount of exhibits.
20 You want to try to have them in as orderly fashion back
21 there as you can so it's not like they're shuffling cards
22 back there. Because your -- some of your exhibits
23 overlap your exhibits. I mean, you've got -- I mean,
24 some of them it's the same thing and you've just got a --
25 it's Condemnor's Exhibit and then you have one as

1 Landowner's, but it's the exact same thing.

2 MR. BABCOCK: And, Your Honor, what we will do, to
3 the extent that there are Landowner exhibits that
4 duplicate ours, we won't include ours in the exhibits.
5 So there won't be two sets. There's no reason to do
6 that. We'll have ours and those purely the ones that we
7 introduced that they didn't.

8 THE COURT: Right. Because I think it's extremely
9 important that when those exhibits go back, that you have
10 it -- that both sides have it in some orderly fashion,
11 because once they get back there you've just got exhibits
12 all over the place. It's like shuffling cards back there
13 and you lose your effect.

14 MR. BABCOCK: Yes, sir.

15 THE COURT: So I'm going to leave that up to you
16 guys, but I thought I'd bring that up.

17 MR. BABCOCK: Maybe at lunchtime we can get together
18 and make sure that's done.

19 MR. WALKER: What we had planned to do was to move
20 all the exhibits that were not admitted ---

21 THE COURT: --- okay ---

22 MR. WALKER: --- and remove our index of exhibits
23 since it refers to ones not admitted, and just give the
24 notebook with the tabs on the exhibit numbers so that
25 they'd be all there.

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1 THE COURT: Yeah. That's what I was wondering,
2 whether or not you were just going to send the notebook
3 back. But I guess that's what you're ---

4 MR. WALKER: --- and we'd get -- and we'd go
5 through it and take out all the ones that were not.

6 THE COURT: What about the ones we redacted on
7 yesterday? Has that been done?

8 MR. BABCOCK: That's been done.

9 THE COURT: Okay. You've seen them, Mr. Babcock?

10 MR. BABCOCK: Yes, sir.

11 THE COURT: Okay.

12 MR. WALKER: So why don't I go ahead and pass these
13 out?

14 THE COURT: Right.

15 MR. BABCOCK: And, Your Honor, we'll do the same
16 thing with our notebook, so there'll be one notebook for
17 the Landowner and one notebook for the Condemnor.

18 THE COURT: I think that's -- that's good. That
19 simplifies things for them back there.

20 And let me ask you, is that plat -- for lack of a
21 better word, that rolled document, that's a plat. Was
22 that -- was that entered? Is that document ---

23 MR. BABCOCK: --- yes ---

24 THE COURT: --- was that entered?

25 MR. WALKER: The big map was entered, Number 1.

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1 THE COURT: Okay.

2 MR. WALKER: If I may approach ---

3 THE COURT: --- yeah ---

4 MR. WALKER: --- to give you your copy?

5 THE COURT: Uh-huh.

6 [Whereupon, Mr. Walker proffers documents to the
7 Court]

8 MR. WALKER: And I've got one more.

9 THE COURT: All right.

10 MR. WALKER: The other thing, Your Honor, is that
11 they admitted the animation with the voice -- I don't
12 know that the jury is going to play it -- the fact that
13 the sound, the narrative, still is on the tape but it's
14 in evidence with the tape.

15 THE COURT: Yeah. Is that --- yeah.

16 MR. WALKER: If they wanted to play it, I guess we'd
17 just turn the sound off.

18 MR. BABCOCK: Yes. Your Honor, I don't think
19 they're not going to be able to play it back there.

20 THE COURT: Right.

21 MR. BABCOCK: So if they want to hear it or see it
22 again, they can come out here and we play it without the
23 sound.

24 THE COURT: Alright. I think ---

25 MR. WALKER: --- that's good with me.

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1 THE COURT: I think there was some objection by you,
2 Mr. Babcock, about playing the sound; right?

3 MR. BABCOCK: They objected. I like ---

4 THE COURT: --- so you ---

5 MR. BABCOCK: --- I like the sound.

6 THE COURT: Oh. You like the sound.

7 MR. BABCOCK: Exactly.

8 THE COURT: I know somebody didn't like the sound.

9 MR. WALKER: I don't think he really likes it, so we
10 stated his objection.

11 THE COURT: Alright. Okay.

12 MR. BABCOCK: Love the sound.

13 THE COURT: I was going to ask you, is I thought 69
14 and 70 were the redacted exhibits, but I've got both of
15 them right here so ---

16 MR. WALKER: Yeah. They're redacted now, and I've
17 got the redacted versions to substitute in the notebook.

18 THE COURT: Okay. You got that Madam Court
19 Reporter?

20 THE COURT REPORTER: Yes, sir.

21 MR. BABCOCK: Your Honor, there's one more matter.

22 THE COURT: Yes, sir ---

23 MR. BABCOCK: --- for the Court.

24 THE COURT: Uh-huh.

25 MR. BABCOCK: Your Honor, the next witness for the

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1 Landowner is Mr. Thomas Hartnett ---

2 THE COURT: Uh-huh.

3 MR. BABCOCK: He is the appraiser who was the
4 subject of our motion in limine to exclude his testimony.

5 THE COURT: Right.

6 MR. BABCOCK: As I understand the proper procedure,
7 I have to renew that motion at this point in time. And
8 rather than having it published and breaking up the court
9 proceedings, what I like to do is to renew my motion to
10 exclude Mr. Hartnett's testimony for the reasons stated
11 in our motion, in our memorandum, and in our arguments
12 before the Court prior to the trial of this case.

13 THE COURT: Alright. And I'll deny your motion on
14 the same basis as I did at the time of the motion in
15 limine. And I think we had some pretty good dialog back
16 and forth about that.

17 MR. BABCOCK: Yes, sir.

18 THE COURT: Matter of fact, real good dialog back
19 and forth. So I think we covered that.

20 MR. BABCOCK: Thank you, Your Honor.

21 THE COURT: Alright.

22 MR. BABCOCK: Of course, as we proceed forward is
23 preserving our rights and other objections made to his
24 testimony. We have a continuing objection on that.

25 THE COURT: Alright. And just for the purpose of

1 the record, in the event that I -- I don't know -- and
2 make sure, counsel, if there a continuing objection, I
3 don't mind you just getting up and telling me there's a
4 continuing objection, I'm going -- objection. I'm okay
5 with that.

6 MR. BABCOCK: Thank you, Your Honor.

7 THE COURT: Okay. So anything else before we -- I
8 would say this. I think all the jurors up until this
9 point have been very, very attentive. But, you know, I
10 did -- I did see a couple of dozes here and there. So if
11 you would just keep an eye on that. Because I think it's
12 important that both sides have attentive jurors. And I'm
13 a stickler about jurors being attentive ---

14 THE BAILIFF: Yes, sir.

15 THE COURT: And, you know, I don't let jurors sleep
16 in my court.

17 THE BAILIFF: Yes, sir.

18 THE COURT: So that's just -- that's just ---

19 THE BAILIFF: Yes, sir.

20 THE COURT: That's why I stress it so much at the
21 beginning, because I think it's important that both sides
22 have clearly-focused jurors throughout the proceeding.

23 THE BAILIFF: Yes, sir.

24 THE COURT: Okay. If nothing else bring them back,
25 bring them out.

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1 THE BAILIFF: Yes, sir.

2 [Off the record momentarily]

3 [Whereupon, the jury enters the courtroom at 9:47
4 a.m.]

5 THE BAILIFF: All jurors present, Your Honor.

6 THE COURT: Okay. Yes, sir?

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Thomas Hartnett-Direct Examination by Mr. Linton
March 27, 2019

1 MR. LINTON: Your Honor, the Landowner calls Mr.
2 Thomas Hartnett.

3 THE COURT: Alright.

4 [Whereupon, Mr. Hartnett comes forward]

5 [Whereupon, Mr. Hartnett is duly sworn by the Clerk
6 of Court]

7 THE CLERK OF COURT: You may be seated.

8 THE WITNESS: Thank you, ma'am.

9 THE CLERK OF COURT: And for the record, please
10 state your full name, spelling your last.

11 THE WITNESS: Thank you, ma'am. My name is Thomas
12 S. Hartnett, H-A-R-T-N-E-T-T.

13

- - - - -

14

THOMAS S. HARTNETT,

15

Having Been First Duly Sworn,

16

was Examined and Testified as Follows:

17

DIRECT EXAMINATION

18

BY MR. LINTON:

19

Q. Good morning, Mr. Hartnett.

20

A. Good morning, sir.

21

Q. Where do you live, Mr. Hartnett?

22

A. Mr. Linton, I live at 41 Soul Street in Mount

23

Pleasant.

24

Q. Where are you from originally?

25

A. I was born and reared in Charleston.

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Thomas Hartnett-Direct Examination by Mr. Linton
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- 1 Q. What business are you in? What ---
- 2 A. --- I'm in the real estate and real estate appraisal
3 business.
- 4 Q. Have you ever worked outside of the real estate and
5 real estate appraisal business?
- 6 A. For -- well, I've always kept my license. I spent
7 six years in Washington, but I kept my license while I
8 was in congress and came back in the family business when
9 I was done.
- 10 Q. So how long have you been in real estate?
- 11 A. I still have my original license from 1963, which
12 licensed me as a property manager, appraiser, broker. So
13 I guess since 1963. I was twenty-two years old.
- 14 Q. And have you been involved in real estate
15 transactions on behalf of buyers and sellers in the
16 Charleston area?
- 17 A. Yes sir, I have.
- 18 Q. In residential and commercial transactions?
- 19 A. Yes sir, I have.
- 20 Q. And I think you mentioned a real estate license.
21 Are there any other certifications or licenses that you
22 hold?
- 23 A. Well, I have a South Carolina general certificate
24 for appraising, and my certificate number is 558. In
25 1992, the State separated appraisal from real estate and

1 you were required to get a separate appraiser's license
2 or certification, which I did get. The certification
3 that I have entitles me to appraise any type of property,
4 commercial, industrial, agricultural, residential,
5 anywhere in the state of South Carolina.

6 Q. And that's a current certification?

7 A. I'm sorry?

8 Q. That's a current certification?

9 A. Yes, sir.

10 Q. Do you hold a designation related to your appraisal
11 work?

12 A. Yes, sir. I'm the National Association of Realtors
13 Appraisal Section, which designated me as a general
14 accredited appraiser. And the National Association of
15 Realtors has certified me as a certified residential
16 brokerage manager.

17 Q. And have you appraised commercial properties in the
18 Charleston area before?

19 A. Yes sir, I have.

20 Q. Have you appraised areas -- did you know the subject
21 area of Meeting Street Road? Are you familiar with it?

22 A. Did I know what, sir?

23 Q. Are you familiar with the area of Meeting Street
24 Road?

25 A. Yes sir, I'm very familiar.

1 Q. And have you appraised any other properties on
2 Meeting Street Road?

3 A. Yes, sir. I just appraised one last week, just
4 finished appraising one last week.

5 Q. And you're here today as an expert witness in an
6 eminent domain case. Has all of your appraisal work been
7 for purposes of being an expert witness?

8 A. Oh no, sir. No, sir. I do a lot of mortgage-loan
9 appraising, I do appraising for estates, I do appraising
10 for tax purposes, I've done appraisals for the
11 government, for the Department of Justice.

12 For any reason or any purpose if someone or some
13 organization might need an appraisal through the years,
14 I've done those types of appraisals.

15 Q. And have you ever been admitted in a court as an
16 expert witness as an appraiser of real estate valuation?

17 A. Yes sir, I have.

18 Q. What courts have you been admitted as an expert?

19 A. Well, all the courts of South Carolina and the tax
20 court of New York, and the federal courts in South
21 Carolina.

22 MR. LINTON: At this time, Your Honor, we would move
23 Mr. Hartnett be qualified as an expert in real estate
24 appraisal and real estate valuation.

25 THE COURT: Mr. Babcock?

1 MR. BABCOCK: Subject to our earlier motion, no
2 objection.

3 THE COURT: Alright. Subject to his earlier motion,
4 without objection.

5 Q. [Mr. Linton] Mr. Hartnett, in this case you were
6 retained as an appraiser by the Landowner. Have you ever
7 worked for a condemnatory?

8 A. Yes sir, I have.

9 Q. Could you give me an example of a condemnatory
10 you've worked for?

11 A. Sure. I've worked for South Carolina Electric and
12 Gas Company, the South Carolina Highway Department, Mount
13 Pleasant Water and Sewer Works. I've worked for the
14 commissioners of -- the Charleston City Commissioners of
15 Waterworks.

16 I've worked for almost every rural electric
17 cooperative in South Carolina. Most any -- most any
18 agency, other than a government agency, that has eminent
19 domain authority I have worked for, and most governmental
20 agencies.

21 Q. Mr. Hartnett, are you familiar with the specific
22 property that's at issue in this case, 1799 Meeting
23 Street Road?

24 A. Yes sir, I am.

25 Q. And do you have an opinion as to the value of the

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Thomas Hartnett-Direct Examination by Mr. Linton
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1 property at 1799 Meeting Street Road as of the date of
2 the taking, October 19th, 2017?

3 A. Yes sir, I do.

4 Q. And what is that opinion, Mr. Hartnett?

5 A. 4,580,000 dollars.

6 Q. And do you hold that opinion to a reasonable degree
7 of certainty as an expert appraiser?

8 A. Yes sir, I do.

9 Q. And did you prepare a written appraisal report as a
10 part of your analysis ---

11 A. --- yes, sir ---

12 Q. --- to come up with ---

13 A. --- yes, sir. I have a copy of it with me.

14 Q. And are you familiar with the uniform standards of
15 professional appraisal properties?

16 A. Yes sir, I am.

17 Q. And does your appraisal report conform to all those
18 standards?

19 A. Yes sir, it does.

20 Q. I'd like to back up, Mr. Hartnett. Let's talk about
21 how you came up with this opinion of 4,580,000 dollars
22 for this taking.

23 A. Yes, sir.

24 Q. Did you visit the site?

25 A. Yes sir, I did.

1 Q. And is that something you do normally in appraisals?

2 A. Yes, sir. I think an appraiser is wise to -- if
3 he's going to put a value on a piece of property, to at
4 least go and visit and inspect the property that he's
5 putting a value on. So I have, yes sir.

6 Q. And did you go inside the building?

7 A. Oh. Yes, sir.

8 Q. And was this a normal office building?

9 A. Mr. Linton, I noticed right away, upon entering the
10 building, that it was not constructed like any ordinary
11 or any typical office building.

12 I saw steel conduits running everywhere with wiring
13 in it. It had a special theater in it. It had a special
14 audio room in it.

15 It was not like any other office building that I
16 have appraised, or that I have been in, anywhere in South
17 Carolina.

18 Q. And did you go in that theater room that you just
19 mentioned?

20 A. I did.

21 Q. Can you tell us, what was it like in that theater
22 room?

23 A. It was almost eerie. It's like you're the only
24 person on earth. If you -- you know, you can't hear --
25 it's almost like being underground in a tomb. You can't

1 hear anything. It's not a big room. I guess it's
2 twenty-by-twenty, or something like that, but it is a
3 very, very quiet room.

4 It had some big chairs there, lounging-type chairs,
5 I guess for Mr. Fabian's clients to recline in while
6 they're watching whatever they're watching. But it is a
7 very unique room.

8 But I did -- I certainly went into it, yes sir. It
9 was very, very -- almost eerie. I mean, it was just as
10 quiet as a tomb, if you've heard that expression before.

11 Q. And now I'd like you to tell me, Mr. Hartnett, how
12 did you go about -- after you did this site visit and
13 inspected the property and determined it was not a normal
14 office building, what did you do to come up with your
15 valuation number?

16 A. Mr. Linton, I sat here, and I'm sure the jury sat
17 through, as I did, the discussions yesterday -- maybe not
18 -- of cost approach, income approach, sales comparison
19 approach. I won't bore you with this, but I feel like I
20 need to mention this to the jury.

21 In the appraisal business there are generally three
22 methods that appraisers use to appraise a piece of
23 property. And when they can, they use all three of those
24 methods for each piece of property that they appraise.
25 One is called the sales comparison approach. You'll

1 probably hear a lot of that from the other side. And if
2 you think about it, we all do that in business and we all
3 do that at home. If you were shopping for a washing
4 machine or an automobile, for something to wear, you'd
5 compare it with those items elsewhere to see what they
6 were asking for them.

7 Then if Belk had a certain dress or a suit that you
8 wanted, versus Dillard's versus Penny's versus -- you'd
9 compare and say, well, I can get the same thing over here
10 for 20 dollars less.

11 So we try to find property as similar to the
12 property that we have been requested to appraise and take
13 that -- that sold fairly recently, as close to the
14 property that we're appraising, as we can so it would be
15 as comparable as it can be.

16 There's no perfect comparable, especially in
17 commercial property. I couldn't find any office
18 buildings, that sold recently, that I thought were
19 comparable to this building. So I did not use the sales
20 comparison approach.

21 The other approach is the income approach. If you
22 have money and you wanted to do something with it, you
23 could put it in the bank and draw interest, you could buy
24 stocks and hope that the stocks go up and get dividends,
25 you could put it in real estate and hope that you could

1 get a return on your money from the real estate. People
2 do that. But you can take that income that you get from
3 that real estate and convert that into an indication of
4 value with a capitalization of the -- of the income
5 itself would let you know what that real estate would be
6 worth, what would you be willing to put into it knowing
7 what you would get out of it.

8 And because this, again, was a different type of
9 building, because the leases that I saw indicated to me
10 that it was interrelated, that the tenant and the
11 landlord were virtually the same people, it didn't in my
12 mind, it didn't appear to be what we call an arms-length
13 transaction.

14 If I found, well, you sold your daughter or your son
15 or your nephew or your mother a house, it could very well
16 be at the market price. It could be whatever the price
17 of the house. But oftentimes, it's done at a discount,
18 or it's done for some reason, or you're swapping
19 something.

20 So we call those not-arms-length transactions. It's
21 as if you were to buy my house, have it appraised, get a
22 loan that would be an arms-length transaction. So due to
23 any indication of income that I thought was -- that I
24 could support with market information, that what did
25 other buildings like that rent for that were currently

1 rented, we call it market rent. I couldn't find it. And
2 the uniqueness of this building, I didn't know of any
3 buildings constructed like this building that contained
4 the things that this building contained, that had been
5 rented recently. So I didn't use the income approach.

6 The third approach is called the cost approach.
7 It's generally used for newer buildings, for special-
8 purpose buildings, hospitals, gymnasiums, football
9 stadiums, armories, buildings that there are not a lot of
10 them that sell that you could say, oh, here's another
11 armory that sold, here's another football stadium that
12 sold, and here's a -- so I can use that.

13 When you can't find anything like what you're trying
14 to do, you rely on the cost approach. And what we do in
15 that approach, we go out and we find sales of land as
16 close to the subject land as possible that sold recently.
17 And we take the indicated value of those sales, and this,
18 again, is the sales comparison approach, but I'm doing it
19 normally for the land.

20 So I'm doing it as if there was no building on that
21 property at all, just the land. And I come up with a
22 value of what I think the value of the land would be if
23 it were vacant. Once I have that, I put it aside. And I
24 try to reconstruct that building. And certain numbers of
25 jurors know a lot more of this than I do. I'm not an

1 engineer, I'm not a contractor, I'm a real estate
2 appraiser. I have my disposal manuals that real estate
3 appraisers use. The one that's probably best known by
4 real estate appraisers is The Marshal and Swifts,
5 Marshals Valuation Service. We use that, at least I use
6 that, and it's for typical types of buildings but not for
7 a building like this.

8 But I could take that and say, okay, here's a --
9 here's a base price for an office building but it doesn't
10 have a theater so I have to add a theater. Here's a base
11 price for a building, but it doesn't have an audio room
12 so I'd have to add -- and it would be very subjective,
13 very subjective, because I really -- again, it's out of
14 my -- it's out of my -- well, it's above my pay grade,
15 let's put it that way.

16 Q. Mr. Hartnett, we're getting a little bit ahead of
17 ourselves. Let me just make sure. We were -- you were
18 explaining the three approaches to value and that the
19 sales comparison and the income approach didn't work in
20 this case because there were no similar sales of
21 properties that were similar to this ---

22 A. --- I thought I said that.

23 Q. Yeah. You did.

24 A. Okay.

25 Q. And then we had moved on to the cost approach and

1 you were explaining that.

2 A. No. We stopped at the income approach after the
3 sales comparison. We did that, too, as to why I didn't
4 use the income approach.

5 Q. And now on the cost approach, you were explaining it
6 generally and I just want to be sure in this case that
7 you went out and you looked for land sales that were
8 similar to the land ---

9 A. --- correct ---

10 Q. --- for this case.

11 A. Correct. And those sales ---

12 Q. --- were you able -- were you able to find land
13 sales in the market area, that were recent, that
14 supported ---

15 A. --- pretty ---

16 Q. --- a value ---

17 A. --- pretty numerous sales in that area. Yes sir, I
18 did. And they're all in this appraisal report. I used
19 three of them. They're in this appraisal report.

20 And those sales of land that I considered to be
21 similar to the subject land, as is vacant, I use to give
22 me an indication of the value of the land of the subject
23 property as if it were vacant.

24 And I think my number for that was in the range of
25 580,000, or something like that, if it were a vacant

1 site, 563,000. If that lot was vacant, that's what it
2 would be worth. And now I'll get back to where I was
3 trying to figure out how much the building would cost.

4 Q. So that's the next step in the ---

5 A. ---that's correct ---

6 Q. --- cost approach ---

7 A. --- that's correct. That's correct. So I knew that
8 the building was not that old. And I'd seen a set of
9 plans. So I called -- you heard a Mr. Morey testify
10 yesterday.

11 He was the engineer that designed and built the
12 building, if he had any cost estimates as to what it
13 would be to rebuild that building from when he did build
14 it. And he provided me with an estimate of what it would
15 cost to basically do that building again, a building like
16 it, with today's building codes and that type of thing.

17 So I thought what better way could there be to
18 figure out what it would cost to build that building than
19 to talk to a man who had built it, who knew how much it
20 cost to build it.

21 So he provided me with an estimate of what it would
22 cost to build that building as it was, and that number
23 that he provided to me was 4,319,040 dollars. I felt
24 pretty comfortable with that. Certainly he knew more
25 about the cost of a building like that than I did. And

1 as I mentioned to you, upon entering that building, I
2 knew right away this is not a typical office building.
3 It's an office building, but it's not a typical office
4 building. No building.

5 I saw pictures, as I'm sure the jury did, of the
6 massive steel that went into the construction, the steel
7 skeleton, the foundation, the sixty or seventy-foot
8 pilings that were driven into the ground, the electrical
9 systems. It was not an ordinary office building.

10 So I took the number that he gave me to replicate
11 this building, of 4,319,000 dollars, and added it to the
12 value that I thought the land was worth, and that gave me
13 the total value of the building and the land. Which you
14 asked me earlier I thought was -- and then I depreciated
15 that number, because the building was I think twelve
16 years old or somewhere in that range.

17 I depreciated that number that he gave me seven
18 percent because that's the new number. And the building
19 is not new. So I used an age-life method of depreciation
20 and depreciated that building -- or that number that he
21 gave me seven percent, which gave me the 4,319,000
22 dollars --

23 Q. And, Mr. Hartnett, relying on an estimate to rebuild
24 the building from a construction estimator, is that
25 something that an appraiser would normally do in their

1 practice of appraisals? Is that the type of source you
2 would look to for information?

3 A. Sure. Even if he or she were using one or two of
4 the other methods, it would be a prudent thing to do if
5 they could do it. In this case I had the luxury of
6 having the engineer, who's still alive and still around
7 and may build Mr. Fabian a new building.

8 If not, you have to rely on manuals. But if you,
9 could find an engineer that would be willing to give you
10 those numbers, to make yourself even more certain, it
11 would be a very prudent thing to do.

12 Q. And, Mr. Hartnett, I'm guessing you're charging for
13 your services as an expert witness; is that right?

14 A. Yes sir, I am.

15 Q. And how much have you charged in this case?

16 A. I charged Mr. Fabian 5,300 dollars.

17 Q. And is that all you've charged to date?

18 A. Well, I spent some time in deposition, where counsel
19 for the other side deposed me, and I charged him 600
20 dollars for that.

21 MR. LINTON: Your Honor, that's all the questions
22 for now. Please answer any questions on cross-
23 examination.

24 THE COURT: Alright.

25 MR. BABCOCK: May it please the Court?

1 CROSS-EXAMINATION

2 BY MR. BABCOCK:

3 Q. Good morning, Mr. Hartnett.

4 A. Good morning, Mr. Babcock.

5 Q. Now, Mr. Hartnett, I want to talk to you about the
6 different methodologies for appraisal and what you did
7 and didn't do in this case. But a little bit more on
8 your background. You've known Mr. Fabian for a long
9 time, haven't you?

10 A. I've known him since he was a little boy. Yes, sir.

11 Q. And, in fact, I think -- you made reference to your
12 deposition. I think you told me in your deposition that
13 your wife and his mother were friends in college?

14 A. They were. Yes, sir.

15 Q. So -- and with Mr. Fabian you've also done some
16 other appraisal work, haven't you?

17 A. Yes, I did, in conjunction with this appraisal.

18 Q. Yes, sir. Well, that was a separate issue involving
19 another piece of property; is that right?

20 A. Yes sir, it was.

21 Q. 2201 Meeting Street?

22 A. That's correct.

23 Q. And that matter was a -- I think also a case, of
24 some sort, involving Santee Cooper; is that right?

25 A. That's correct. All the same project, yes.

1 Q. And, of course, you charged him for that work as
2 well; correct?

3 A. I charged him what, Mr. Babcock?

4 Q. You charged him for the work you did on the other
5 property as well?

6 A. Certainly. Yes, sir.

7 Q. Because as an appraiser, like any other profession,
8 you charge for the work that you do when you are
9 preparing a study or an appraisal; right?

10 A. Correct.

11 Q. And you also have additional charges. As you said,
12 you get to spend time with the lawyers in a deposition;
13 right?

14 A. Correct.

15 Q. And, also, I would imagine when you come to actually
16 testify at trial there are additional charges there;
17 correct?

18 A. Correct.

19 Q. And that's all very standard for an appraiser to
20 charge whatever their rate is for the work they do;
21 correct?

22 A. Correct.

23 Q. And frequently it's on an hourly-fee basis; correct?

24 A. Correct.

25 Q. Sometimes you might quote for a particular job, as

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March 27, 2019

- 1 well; correct?
- 2 A. Might do what, Mr. Babcock?
- 3 Q. Quote for a particular job.
- 4 A. Yes, sir. Just give them a flat figure. Yes, sir.
- 5 Q. A flat figure.
- 6 A. Yes, sir.
- 7 Q. A flat figure. Yes, sir.
- 8 A. Yes, sir.
- 9 Q. All different ways, but ---
- 10 A. I think that's about it with Mr. Fabian.
- 11 Q. Sure. And that's typical for all professionals, in
12 particular real estate appraisers; correct?
- 13 A. Correct.
- 14 Q. Now, Mr. Hartnett, you told us a little bit about
15 your background and the designations you received.
16 You're familiar with the Appraisal Institute; correct?
- 17 A. With the?
- 18 Q. The Appraisal Institute.
- 19 A. Yes sir, I am.
- 20 Q. And that Appraisal Institute has a designation
21 called MAI ---
- 22 A. --- that's correct ---
- 23 Q. --- are you familiar with that?
- 24 A. That's correct.
- 25 Q. And that's the designation that is the highest

1 designation the Institute gives, isn't it?

2 A. Yes sir, it is.

3 Q. And but you don't have that designation?

4 A. No sir, I don't.

5 Q. Now, I want to make sure, generally, I understand
6 what you did in this case. First off, you looked at the
7 sales comparison approach and determined that you were
8 not going to use it because you couldn't find comparable
9 sales on this property ---

10 A. --- correct ---

11 Q. --- right ---

12 A. --- correct.

13 Q. And then -- we'll talk about that a little bit more
14 in a minute.

15 A. Good. Good.

16 Q. And then you looked at the income approach and you
17 decided that you really couldn't come up with an income
18 method for a capitalization to use that in this case; is
19 that right?

20 A. Correct.

21 Q. So the final method that appraisers typically use is
22 the cost approach; correct?

23 A. Yes, sir.

24 Q. And at that method -- and we'll talk about that a
25 little bit more in a minute, but what you did here was

1 basically take the number that Mr. Morey provided to you
2 for the cost to reconstruct or reproduce this building;
3 correct?
4 A. Not basically. That's the number that I took. Yes,
5 sir.
6 Q. Fair enough. And then you depreciated it by seven
7 percent; is that correct?
8 A. That's correct, sir.
9 Q. And you added in your land value?
10 A. Correct ---
11 Q. --- correct?
12 A. Yes, sir.
13 Q. And that's yielded your total value that you gave
14 us, of 4,580,000 dollars; is that right?
15 A. That's correct.
16 Q. Alright. Now, of the three methods, the sales
17 comparison and the income are the two most frequently
18 used and reliable; correct?
19 A. Correct.
20 Q. And that's because if we get sales, comparable
21 sales, of similar property in the general region of the
22 subject, you can then compare those comparable sales with
23 the subject to derive a value for the property; correct?
24 A. That's correct.
25 Q. And that's actually the method that you used for

1 your land sales; correct?

2 A. That's exactly right. That's exactly right, Mr.
3 Babcock.

4 Q. So and that's -- that's what you do. You look for
5 property that is comparable and then adjust it, based
6 upon the time of the sale, the size of the sale, that
7 sort of thing, to adjust it to the comparable property;
8 correct?

9 A. Yes, we do. We try to make it as like the subject
10 property as possible.

11 Q. And in doing that, is it your testimony that there
12 are no properties in the Charleston area that are
13 comparable to the property that we're here about today,
14 1799 Meeting Street? Is that your testimony?

15 A. I think what I testified at deposition, and what I
16 just testified to by question from Mr. Linton, that I did
17 not know of any building that was as unique in its
18 construction, now, as this building.

19 I've appraised a lot of office buildings, Mr.
20 Babcock, in Charleston and elsewhere. I've never seen
21 one, typical office building, that was constructed with
22 the extra material, with the extra strength, with the
23 steel and concrete and pilings, I did for this building.
24 I'm not to say that there are not any, but I did not know
25 of any.

1 Q. And so, Mr. Hartnett, in that regard, for many of
2 the other sales that you've looked at for other
3 properties in Charleston, you've not necessarily known
4 what was inside the building? You've not necessarily
5 known what the steel and pilings were; correct?

6 A. Well, if you tear the walls down, correct. And I'll
7 follow it up this; I'll explain my answer. Certainly I
8 wasn't there to see those buildings constructed. And
9 some I didn't go in.

10 But I would, whenever possible, either talk with the
11 buyer, or the seller, or the broker, or whatever
12 information they published in their listing, to see what
13 it was like inside, to see if it was what I thought it
14 would be like, typical type office building, acoustical
15 tile ceilings and carpeted floors and Sheetrock walls.
16 I've done what I could to find out what was inside that
17 building and how it was constructed.

18 But I certainly didn't have the benefit, back when I
19 was looking for sales and doing other appraisals, of
20 having a set of plans like this, having the engineer who
21 did the job. Typically, we don't do that.

22 We either rely on our manuals, like I told you, or
23 we can, if possible, talk to the person that built it or
24 the engineer. But we don't do that, typically.

25 Q. So let's talk about typically. You had a lot more

1 information here than you would normally have, as an
2 appraiser, to evaluate the property; correct?

3 A. That is correct.

4 Q. And as you said, you typically don't know the actual
5 construction methodology of the building; correct?

6 A. That's correct.

7 Q. You come to property, you view it, and then you
8 analyze it based upon what you see; correct?

9 A. That's correct.

10 Q. So what was making this property different, in your
11 mind, from these other properties in Charleston, was this
12 additional information you had; correct?

13 A. That's correct, sir. I had the benefit of what the
14 actual -- what actually went into the building as it was
15 being built.

16 Q. Correct. Now, in looking at this building, you told
17 us about the theater room; correct?

18 A. That's correct.

19 Q. And that was the one where you couldn't hear a
20 sound; correct?

21 A. That's correct.

22 Q. And I think you said that was about twenty feet by
23 twenty feet?

24 A. That would be my guess. It may be bigger, but that
25 would be my guess.

1 Q. But it was a small part of the building.

2 A. Correct ---

3 Q. --- correct? And that, of course, linked to Mr.
4 Fabian's business; correct?

5 A. That's right.

6 Q. So that area could have been used for other things;
7 correct?

8 A. Well, I'm sure you could use it as a dining room or
9 -- I don't know that he did. But it had four walls, a
10 floor, and a ceiling and lights, and I'm sure you could
11 use it for other purposes. It was not designed for other
12 purposes but, sure, you could use it for other purposes.

13 Q. Sure. And that's frequently the case. A new owner
14 for property may use it for different purposes than the
15 previous owner did; correct?

16 A. That's correct.

17 Q. Now, but again, as you said, I think from your
18 standpoint you were not aware of any other buildings in
19 the Charleston area that you considered comparable to
20 this one. Is that your testimony?

21 A. That had sold recently. No, sir, I didn't -- in
22 that area. No, sir, I didn't. I'm not -- still not.

23 Q. Are you aware of any other buildings, in your
24 opinion, that would be comparable, that sold at an
25 earlier time?

1 A. No, sir.

2 Q. Let's turn to the income method.

3 A. Yes, sir ---

4 Q. --- Mr. Hartnett.

5 A. Yes, sir.

6 Q. And I think what you testified to about the income
7 method is that you're trying to establish a value for a
8 commercial building that a purchaser would look to
9 purchase, for the money that you would invest and what
10 that business -- or what the income would generate to
11 make that investment worthwhile?

12 A. Basically. Yes, sir.

13 Q. And that's a standard method that's used with
14 commercial property?

15 A. Yes, sir, it is. That's probably the only method.
16 You know, people don't buy commercial property because
17 they like the color of the walls or the school district
18 that it's in. They buy it for what they're going to be
19 able to get out of it in the way of income.

20 Q. And that's typically what the purchaser is thinking
21 when he buys a piece -- a piece of property; correct?

22 A. That's what I said. Yeah.

23 Q. Yes, sir.

24 A. That's what I said.

25 Q. But for you as an appraiser -- I'm going to another

1 point. For you as an appraiser, you'll frequently look
2 at the sales comparison method for commercial property as
3 well; right?

4 A. Certainly. Yes, sir.

5 Q. So those are two things you look. You look at the
6 sales that are in the area and you look -- also look at
7 this income approach?

8 A. Correct.

9 Q. So let's talk about the income approach for a
10 minute.

11 A. Alright, sir.

12 Q. In this property, you saw some leases for parts of
13 the property other than Mr. Fabian's Life Space area;
14 correct?

15 A. Yes, sir. That's right.

16 Q. So you saw the Pilates lease that we saw and talked
17 about yesterday? You saw that?

18 A. I saw you talk -- I saw the lease and heard you talk
19 about it yesterday. Yes, sir.

20 Q. And did you look? Did you consider that to be a
21 market rent?

22 A. Well, you see, I would assume that the areas of that
23 building, that are more typical to an ordinary office
24 building, that that would be close to or at market rent
25 for the areas that were subleased or the other areas that

1 were used for purposes other than Mr. Fabian's building
2 -- business.

3 Q. And that's what we're talking about. So that's a
4 yes; that would, in your opinion, probably have been
5 market rent?

6 A. It should be, yes sir.

7 Q. And, also, for the Capella Carolina, the home office
8 for the bingo operation around the state, that also had a
9 lease; right?

10 A. I think he said he was advised by some realtor as to
11 rents, so I would assume that those rents were near or at
12 what market rent would be for that type of typical office
13 space.

14 Q. Okay. So -- and in the building, there was a good
15 bit of the building that you would consider to be typical
16 office space; correct?

17 A. That's correct. Well, I think he had, of the 7,000
18 feet, I think like 4900 or 4800 feet or something, is
19 what Mr. Fabian occupies himself, or his family, or his
20 company.

21 Q. Yes, sir. And how much of that was in the theater
22 or the acoustic room? He talks about the theater, which
23 is about 400 square feet. How about the acoustic room?

24 A. To be honest with you, I didn't do any interior
25 measurements, Mr. Babcock, just the exterior of the

1 building. I'm not sure how big. It may be thirty-by-
2 thirty. But it's not a big, huge room. It's not like a
3 movie theater.

4 Q. Alright. So those areas would be the ones that
5 would really be different than office space, typical
6 office space; correct?

7 A. Well, those and other -- we saw pictures of other
8 areas of Mr. Fabian's operations. We saw an area that
9 had shelves along the side and he said this is where we
10 do some kind of work. He showed us pictures of conduits.

11 And so I would think -- I would think more than just
12 that area. I would think the entire space that Mr.
13 Fabian occupies was specially constructed and specially
14 equipped, yes.

15 Q. The whole space would not be useful for another
16 tenant?

17 A. I wouldn't say it wouldn't be -- the whole -- the
18 whole space wouldn't be useful, Mr. Babcock. But he
19 built that building. He built it exactly what he wanted
20 and what he needed. If you could find someone else in
21 the same type of business, surely they could use it.

22 So I'm not trying to tell you, oh, no, he's the only
23 person in the whole wide world that could use that part
24 of the building. But I am telling you that I think that
25 part of the building, particular, was not ordinary

1 construction. It was extra-heavy-duty construction.

2 Q. I understand the construction issue, Mr. Hartnett.

3 My question is simple. Another tenant could have used

4 that area for another purpose couldn't they?

5 A. Could have used what?

6 Q. Could have used that area for another purpose

7 couldn't they?

8 A. Sure he -- sure he could.

9 Q. Now, Mr. Hartnett, you are familiar with the concept

10 of fair market value, aren't you?

11 A. I am.

12 Q. And that's important to an appraiser in terms of

13 doing an appraisal in a condemnation case, isn't it?

14 A. It is.

15 Q. And would you agree with me that the standard

16 definition for a fair market value is a willing buyer and

17 a willing seller with no compulsion on either side? Is

18 that a fair ---

19 A. --- well, there are other -- there are other things.

20 You have to know all the uses to which the -- which the

21 property can be put.

22 It has to be on the market at least for a reasonable

23 amount of time, on market for a reasonable -- so it's not

24 just that one, you know, that buyer and seller are both

25 willing buyer and seller. There are other components to

1 that definition of market value, and one is all the uses
2 to which the property could be put. That's one of the
3 big I guess you'd call it bullets under the definition of
4 market value. I am familiar with that.

5 But I also am familiar with it when you're trying to
6 find -- and I think I heard numerous times -- just
7 compensation, just compensation. Well, just and fair
8 mean the same thing. You have justness or you have
9 fairness. Mean the same thing.

10 I think the fairness and the just part of it are
11 very important because if using the methods that you say
12 I didn't use, and I say I didn't use, didn't produce what
13 I thought was a fair value for the property it's not
14 just.

15 So I -- the property owner is entitled to be
16 compensated where he or she is made no richer nor any
17 poorer before the agency that's taking his property came
18 along. And that was my job, to try to tell my client
19 what I thought that was.

20 And when I looked at the other approaches, (a),
21 there were no sales that I could find, (b), I didn't
22 think it was an adequate support for the income, so I
23 didn't use that. So I relied on a very reliable, very
24 practical, and very useable method called the cost
25 approach. Is it higher than the others? Yes, it is.

1 But please keep in mind that's not my number. My number
2 is the 563,000 dollars I think the land is worth, which I
3 used the sales comparison approach to determine. I
4 relied on a professional engineering construction company
5 to tell me what the cost was.

6 So it's not my fault that the number is higher than
7 what your client thinks it ought to be. That's what the
8 engineering company that built the building, or would
9 build the building, said that's what it would cost. So
10 that's what I thought would be fair compensation, and not
11 just just compensation to my client.

12 Q. Well, Mr. Hartnett, that's a very long answer to a
13 very short question, which was the definition of willing
14 buyer and willing seller. But I want to let you add your
15 say, in terms of what you wanted to say.

16 A. Thank you.

17 Q. When we go forward, what I'd like you to do is to
18 answer my question and give an explanation, if you need
19 to, but not go off on a speech again. Okay?

20 A. Thank you, sir.

21 Q. Is that fair? Alright. Now, in terms of fair
22 market value, it requires a willing buyer and a willing
23 seller; correct?

24 A. That is -- you keep alluding to that one definition
25 of fair market value, which we use. And I use ---

1 Q. --- Mr. Hartnett, you went -- you went beyond and
2 you told us the rest. Those two parts are key parts to
3 it, aren't they?

4 A. I'm sorry?

5 Q. Those two components, a willing buyer and a willing
6 seller, are critical parts to it. I know you've talked
7 about ---

8 A. --- I think that would be a fair statement. Yes,
9 sir.

10 Q. And I think you have indicated to me in your
11 deposition that a willing buyer would not have paid
12 4,580,000 dollars for this property in October of 2017;
13 correct?

14 A. I did. But I don't know -- if I could explain my
15 answer? I...

16 Q. You can explain it. Go ahead.

17 A. I did not know of any type of building like that
18 that was sold between a willing buyer and a willing
19 seller. I could find plenty of houses, plenty of
20 convenience stores, but I could not find the sale of a
21 building like that between a willing buyer and a willing
22 seller.

23 Q. Coming back to my question, sir. Your testimony
24 today as it was your testimony in your deposition, that a
25 willing buyer -- no buyer would pay 4,580,000 dollars for

1 that property in October of 2017; correct?

2 A. Not if he was looking for, or she was looking for, a
3 typical office building because they could go down the
4 street and get one for less.

5 Q. So in fairness, Mr. Hartnett, you didn't use fair
6 market value as part of your appraisal in this process.
7 You were looking to try to come up with what you thought
8 would be a fair number for Mr. Fabian, regardless of fair
9 market value; correct?

10 A. That is correct --

11 THE COURT REPORTER: I'm sorry. What was your
12 answer?

13 THE WITNESS: I'm sorry?

14 THE COURT REPORTER: Repeat your answer.

15 A. That is correct ---

16 Q. [Mr. Babcock] Now, you would agree with me that
17 there's a distinction between replacement and
18 reproduction of property?

19 A. Correct.

20 Q. And what you used in your analysis was reproduction
21 of the building; correct?

22 A. I was using ---

23 Q. --- correct?

24 A. Well, if you'll let me answer. I was ---

25 Q. --- give me a yes or no, first, before you start.

1 A. I was using the number provided to me by Mr. Morey.
2 He can call it replacement or he can call it
3 reproduction. It was the number that I said in my report
4 that I used and that I rely on.

5 Q. And what I'm asking you, Mr. Hartnett, is that
6 reproduction looks at taking the exact building you've
7 got and reproducing it; correct?

8 A. As close as possible.

9 Q. Right.

10 A. Yes, sir.

11 Q. And replacing it could be a -- you could replace a
12 building in a lot of different ways so that you had
13 similar space and whatnot. But replacing is different.
14 I think that's what you told me.

15 A. The replacing it is using the same building but
16 using modern materials and workmanship versus material
17 that might not be available anymore. So reproduction --
18 as you try to -- take an old house in downtown Charleston
19 with tile roofs and marble walls.

20 It would almost be impossible to reproduce that, but
21 you could replace it with a new marble and not quite as
22 good or a different type of roof. And that's the same
23 with this building, reproduction and replacement.

24 Q. So in this case you were taking the information that
25 Mr. Morey gave you and using that as your basis for the

1 cost of reproducing this building; correct?

2 A. That's correct.

3 Q. And within the information that he gave you, there
4 was an elevator; correct?

5 A. That's correct.

6 Q. There's not an elevator in the current building;
7 correct?

8 A. That's correct.

9 Q. Did you deduct for the elevator in the number that
10 you used for your analysis?

11 A. Yes, sir.

12 Q. You deducted the \$100,000?

13 A. No, sir. No. I could have done that with the
14 \$95,000 for the elevator, I think he said, or something
15 like that.

16 Q. You're saying -- Mr. Hartnett, you're saying you
17 could have but you didn't?

18 A. No, I did not. Uh-uh. I did not.

19 Q. And you also didn't deduct the various code upgrades
20 that occurred between the time the building was actually
21 built, I think you said eleven or twelve years ago, and
22 now?

23 A. Why would -- why would I? He's got to build a
24 building under those codes right now. He can't build
25 them under the codes that were back in nineteen -- 2007

1 or whatever it is. He's got to build them under the
2 codes that exist now. So that -- I'm trying to find fair
3 compensation.

4 If Mr. Morey had told me to reproduce that building
5 was 3,000,000 dollars, that's the number I would have
6 used. If he would have told me it was 7,000,000 dollars,
7 that's the number I would have used. But he didn't. He
8 told me it was four million and three-hundred-something
9 thousand.

10 Q. And I know you're here trying to get what you think
11 is fair compensation for Mr. Fabian. What I'm asking you
12 is if Mr. Fabian did not have an elevator, and a building
13 was ten or twelve years old, isn't that the figure that
14 should have been used for the -- for the reproduction of
15 Mr. Fabian's building?

16 A. That's the figure that Mr. Morey provided to me.
17 Yes, sir, it did have an elevator.

18 Q. I'm sorry. I didn't make myself clear.

19 A. I'm sorry.

20 Q. Mr. Fabian did not have an elevator in his building;
21 correct?

22 A. The property that's under discussion now does not
23 have an elevator, or did not have an elevator.

24 Q. The number you used had an elevator, doesn't it?

25 A. The new one would have, yes sir.

1 Q. And the building that he had at the time of
2 condemnation was not up to the current code issues,
3 correct, if you were to build a new building?

4 A. It was up to the code that was enforced at the time
5 that the building was built. But he can't build this
6 building then; he's got to build it now. So he's got to
7 use the codes that are applicable now.

8 Q. I understand that. But if you take the elevator and
9 the codes, he's getting a better building, isn't he?

10 A. Well, take it out. I mean, I'm using his numbers.
11 If you want to take a 100,000-dollar elevator out, take a
12 100,000-dollar elevator out. Then what I'm doing is what
13 I told you I couldn't do: take this building piece by
14 piece and rebuild it.

15 I depended on Mr. Morey to do that for me. If I'd a
16 gone through these plans and specs, which are voluminous,
17 and picked, oh, well, this -- you know, it didn't have
18 this over here and it doesn't have this over here, I'd
19 just as soon done the cost approach myself but I wouldn't
20 have been very accurate. So I relied on his indication
21 of what the cost would be.

22 Q. So you didn't look to see what else might be in that
23 building, in the reproduction, that's not in the current
24 building ---

25 A. --- that's not fair ---

1 Q. --- is that what you're saying ---

2 A. --- that's not fair ---

3 Q. --- Mr. Hartnett, let me finish. Let me finish.

4 Are you relying on what Mr. Morey did, and did you look
5 to see if there were any other issues, besides the
6 elevator, that were in his -- was in his work but wasn't
7 in the building as originally constructed?

8 A. Mr. Babcock, I did not ---

9 Q. --- did you do that?

10 A. I did not, because I did not have a set of plans for
11 the new building. I don't know whether it's a
12 theoretical building, I don't know whether he's drawn
13 those plans yet. I did have the plans for the old
14 building, but I did not have the plans and specifications
15 for the new building.

16 Q. Now, when you did your analysis, did you have
17 available to you the actual cost to construct the
18 building when it was constructed ten or eleven years ago?

19 A. The old building? No, sir.

20 Q. Yes, sir.

21 A. I don't remember having that, no, sir.

22 Q. That certainly wasn't used in your analysis, was it?

23 A. No sir, it was not.

24 Q. And I think you said that the cost approach, that
25 would be something that really could be used, in your

1 opinion, in two situations: one, with a pretty new
2 building; right?

3 A. Correct.

4 Q. And one with a special-use building?

5 A. Correct.

6 Q. Right?

7 A. Yes, sir.

8 Q. And in this case we've got buildings ten or eleven
9 years old so it's not the new-type building for the cost,
10 it's the specialty building that you're talking about
11 here; correct?

12 A. I think in our manuals they say that the cost
13 approach is particularly applicable to buildings that are
14 around ten years old. So we're really kind of splitting
15 apples and oranges here.

16 The building is eleven or twelve years old. That's
17 pretty close to ten. So I think -- I think it would be
18 an approach that would be very acceptable.

19 Q. And isn't it true, Mr. Hartnett, that it's up to
20 about ten years old and you shouldn't use it beyond that?

21 A. Oh, it doesn't say it shouldn't be used. I don't
22 know whether I told you in deposition, I had to appraise
23 the Chateau adult movie theater. How do you appraise a
24 Chateau adult movie theater? You use the cost approach.
25 And it's a pretty old building. You know, it's been

1 there I think most of my life. Sometimes you have to --
2 appraisers are entitled to their opinion and what they
3 think is the correct method to use. And that's all I
4 did.

5 Q. The problem with older buildings is that you've got
6 to get into depreciation; correct?

7 A. That is correct.

8 Q. And that's one of the areas where the cost method is
9 particularly problematic, is that that is a subjective
10 figure for depreciation; correct?

11 A. The older the building, the more subjective the
12 estimate of depreciation. Yes, sir, that is correct.

13 Q. So let's look at your depreciation in this case.
14 You've got a building that's ten or eleven years old;
15 correct?

16 A. Yes, sir.

17 Q. And I think you told me the life expectancy of that
18 building would be fifty-five or sixty years; correct?

19 A. I did. Yes, sir.

20 Q. And based upon that, you used a seven-percent
21 depreciation?

22 A. That's correct.

23 Q. Alright. Now, Mr. Hartnett, I'm not a math whiz,
24 but if you're using a sixty-year building and it's
25 already had a life expectancy, and it's already had ten

1 years or eleven years used up, that's about one-sixth;
2 correct?

3 A. That's correct. Well, let ---

4 Q --- how do you ---

5 A. --- me answer that. Let me -- let me explain my
6 answer correct. The first ---

7 Q. --- wait a minute, Mr. Hartnett; that's a math
8 question.

9 A. Okay.

10 Q. I don't need to get an explanation on that.

11 A. Alright.

12 Q. And if you take that one-sixth, that's about
13 seventeen percent; correct?

14 A. You're going to let me explain my answer at some
15 point in time ---

16 Q. --- well, I'll let you ---

17 A. --- your math is correct ---

18 THE COURT: --- hold on ---

19 THE WITNESS: --- his math is correct, Your Honor ---

20 THE COURT: Hold on. I've got the best court
21 reporter in the universe. There's one thing she can't
22 do, is take down with y'all both talking at the same
23 time. So ---

24 A. --- to answer your question, your math is probably
25 correct, without the benefit of a calculator, which you

1 probably had. Your math is probably correct.

2 Q. [Mr. Babcock] So if you used seventeen -- now, you
3 used seven percent. And that was about 302,000 dollars
4 for depreciation; correct?

5 A. Whatever that number is, yes sir.

6 Q. And the seventeen percent -- and I'll give you the
7 numbers that I ran -- does it sound about right, 734,236
8 dollars?

9 A. Is that the number you're saying it should be?

10 Q. That's what I came out with seventeen percent on my
11 math.

12 A. Now, are you going to let me explain my answer
13 somewhere along the line?

14 Q. Mr. Hartnett, first we do the math, and then we'll
15 get you to explain.

16 A. I -- you have me at a disadvantage because you've
17 done the math. I haven't. So I'll just take your answer
18 as -- I know you wouldn't give me a wrong number, so I'll
19 say, sure, that's probably the number.

20 Q. Fair enough. Do you want to tell me something?

21 A. Yes, sir.

22 Q. Go ahead.

23 A. Okay. The newer the building, the first couple of
24 years, is not hardly any depreciation. The first perhaps
25 five years, there's not hardly any depreciation. The

1 older the building gets, the more it depreciates. So in
2 the early years, you have less depreciation than you do
3 in the late years.

4 That's why that number is smaller than just applying
5 seventeen percent across the board, because it didn't
6 depreciate seventeen percent the first year, seventeen
7 percent the second year.

8 It depreciates less in the early years and more in
9 the latter years, and that's why the number I've given
10 you is a very accurate number based on an age-life
11 method.

12 Q. First question. That's a subjective number, isn't
13 it? That's your opinion. There's no chart you can look
14 at. That's simply your opinion; correct?

15 A. Any estimate ---

16 Q. --- is that right?

17 A. That is correct. And any estimate of depreciation
18 has got to be subjective because I don't know how much
19 length of time is left in these metal studs, I don't know
20 how much length of time is left in the concrete slab. So
21 sure it's subjective.

22 Q. And in additionally to being subjective, as you
23 heard yesterday, as you've talked about, a lot of the
24 building has high-tech construction; correct?

25 A. It looked to me like it, yes sir.

1 Q. And as -- would you agree with me that a lot of the
2 technological stuff has outdated a lot faster than some
3 non-technological stuff?

4 A. Over night sometimes.

5 Q. But here you only did seven percent; correct?

6 A. Correct.

7 Q. Now, let's look at your -- so we understand. You
8 took Mr. Morey's figure for the reproduction of the
9 building.

10 A. Yes, sir ---

11 Q. --- right?

12 A. Yes, sir.

13 Q. And I think you said you could have done it on your
14 own using Marshal and Swift; correct?

15 A. I could have.

16 Q. And that's more typically how you would do a cost
17 analysis; correct?

18 A. Correct.

19 Q. Marshal and Swift is a national service that
20 provides numbers for construction; correct?

21 A. Correct.

22 Q. And that is something you could have done to check
23 Mr. Morey's figures, couldn't you?

24 A. That's correct.

25 Q. But you didn't do that?

1 A. Well, may I ---

2 Q. --- did you do that?

3 A. I'm going to answer your question and I'm going to
4 explain it.

5 Q. Okay.

6 A. No, I didn't do that. And I thought I adequately
7 explained it for you. First of all, we would have to
8 have made -- I would have to have made so many
9 adjustments to the numbers that I see in Marshal and
10 Swift.

11 You talk about subjectives. It really would have
12 been subjectives. And why would I not rely on a number
13 given to me by a fellow who planned to build the building
14 or who has built the building? I mean, that takes most
15 of the subjectivity out of the equation and makes it as
16 accurate as possible.

17 But it would be subjective to try to take the
18 Marshal Swift, which deals with a typical office
19 building, and say, okay, it says 300 dollars for this but
20 you adjust it twelve percent if it's this and you adjust
21 it thirty percent if it's that. It wouldn't have worked.
22 It just wouldn't have worked for this building.

23 Q. Well, let me ask you that, Mr. Hartnett. You've
24 worked with Mr. Morey before?

25 A. No, sir. I've never met Mr. Morey before this.

1 Q. So you took numbers from somebody you've never met
2 before and you didn't test them out with your normal
3 method of Marshal and Swift. Is that your testimony?

4 A. My question -- my testimony ---

5 Q. --- is that a yes ---

6 A. --- my testimony would be like a question: why
7 would I? He's a reputable engineering firm and building
8 contractor. Why would I try to second-guess somebody
9 who's a professional in that area? So to answer your
10 question, no, I did not.

11 Q. And that Marshal and Swift analysis, you've used
12 that before on other buildings; correct?

13 A. Yes sir, I have.

14 Q. And you've come up with an opinion that you were
15 able to be comfortable with in terms of evaluation;
16 correct?

17 A. Yes sir, I have.

18 Q. Now, let's go -- we've got your reproduction figure
19 and now we've got your depreciation. Now we come to your
20 land value.

21 A. The land value?

22 Q. I'm sorry?

23 A. You said land value?

24 Q. Yes, sir.

25 A. Yes, sir.

1 Q. And you had three comparable sales; is that correct?

2 A. That is correct.

3 Q. And if I understand correctly, your comparable land
4 sale number one was on Meeting Street; correct?

5 A. Let me take a look.

6 Q. Sure.

7 [Whereupon, the witness reviews document]

8 A. Yes. It was 1540 Meeting Street.

9 Q. And when you analyzed the price for that property,
10 you determined that it was 12 dollars and 59 cents per
11 square foot; correct?

12 A. That's correct.

13 Q. And that property was vacant; correct?

14 A. Was what?

15 Q. Vacant. There was no building on the property?

16 A. That's correct.

17 Q. And your next sale, that you refer to as comparable
18 number two ---

19 A. --- yes, sir ---

20 Q. --- is at 1836 Meeting Street; correct?

21 A. That's what it is. Yes, sir.

22 Q. And your price per square foot for that building was
23 19 dollars and 26 cents a square foot; correct?

24 A. Yes, sir.

25 Q. And that property had a building on it; correct?

1 A. Correct. But the building was very old, in which
2 the buyer and seller gave no value. They bought it as if
3 it were vacant land. They planned to tear the building
4 down.

5 Q. Sure. You're saying to us that the purchaser was
6 going to tear the building down and build something that
7 they wanted?

8 A. Correct.

9 Q. But there was a building on the property.

10 A. Correct.

11 Q. That could have been used by the purchaser; correct?

12 A. The person that bought it did not intend to use it,
13 so sure it could be used. I mean, you can use an old
14 building for anything. But the person who's -- this
15 knowledgeable willing buyer and seller that you have
16 talked so much about, this willing buyer wasn't going to
17 use that building. He was going to tear it down.

18 Q. My only question to you was the purchaser could have
19 used it; correct?

20 A. I'm not sure of the purpose that he wanted -- the
21 purpose he was buying this building for. He might have
22 been buying the property for something other than any use
23 that would have been practical for that building.

24 Q. I asked you a simple question, Mr. Hartnett. He
25 could have used it; correct?

1 A. I don't know whether he could have used it. The
2 building could have been used but perhaps he couldn't
3 have used it.

4 Q. Alright. Fair enough. The building could have been
5 used. Now, let's go to land sale number three.

6 A. Yes, sir.

7 Q. That property is -- where is that property located?

8 A. Discher Ave.

9 Q. And ---

10 THE COURT REPORTER: I'm sorry. Discher?

11 THE WITNESS: Discher, D-I-S-C-H-E-R.

12 Q. [Mr. Babcock] And that property had a sales price
13 of 22 dollars 95 cents per square foot; correct?

14 A. 22 dollars and 95 cents.

15 Q. I'm sorry. It's 22 dollars 95 cents.

16 A. Yes, sir.

17 Q. And that also had a building on it; correct?

18 A. Yes, sir. Yes, sir.

19 Q. And the purchaser was going to use that building for
20 a while and then ultimately take it down; correct?

21 A. That's what the broker told me, yes sir.

22 Q. So there was a building there that the purchaser
23 could use.

24 A. Yes, sir ---

25 Q. --- for a while?

1 A. Yes, sir.

2 Q. And then ultimately he wanted to tear it down and
3 build something else?

4 A. Yes, sir.

5 Q. So you've taken these three sales, two of which had
6 buildings, and compared them to the land value for
7 Gateway Properties; correct?

8 A. Yes, sir.

9 Q. And your sales you then adjusted in terms of
10 comparing them to the Gateway property; correct?

11 A. Yes.

12 Q. And that's a standard appraiser technique, to try to
13 look at time and size and those sorts of things; correct?

14 A. That's correct. Yes, sir.

15 Q. And in this case you adjusted all of the sales
16 prices upward; correct?

17 A. The final -- the final adjustment, after negatives
18 and positives were applied, was a plus adjustment. Yes,
19 sir.

20 Q. Alright. Well, let's look at your chart, Mr.
21 Hartnett.

22 A. Yes, sir. I'm looking at it.

23 Q. You've got a utility adjustment, which was zero for
24 all of them; correct?

25 A. Yes, sir.

1 Q. You've got a location adjustment, which was zero for
2 all of them; correct?

3 A. Correct.

4 Q. And you've got size adjustments for each of them.
5 The first is a plus-twenty-seven percent; correct?

6 A. Yes. Yes, sir.

7 Q. The second is a plus-twenty-five percent; correct?

8 A. Yes, sir.

9 Q. And the third is a plus-twenty-nine percent;
10 correct?

11 A. Yes, sir.

12 Q. So that took all those figures and made them higher;
13 correct?

14 A. Yes, sir.

15 Q. And then with that higher number, you came out with
16 23 dollars and 50 cents a square foot for the land here?

17 A. Yes, sir.

18 Q. There were no negative adjustments here, were there?

19 A. Well, in this case there weren't. They didn't --
20 they didn't warrant any negative adjustments.

21 Q. Mr. Hartnett, that's my point. All of your
22 adjustments were positive, they weren't negative?

23 A. And my answer is that's correct, because no ---

24 Q. --- and that ---

25 A. --- no negative adjustments were warranted.

1 Q. And that made for a higher figure; correct?

2 A. Yes, it did.

3 MR. BABCOCK: Court's indulgence.

4 THE COURT: Yes, sir.

5 [Whereupon, Mr. Babcock and Mr. Paavola confer]

6 MR. BABCOCK: Thank you, Mr. Hartnett.

7 THE WITNESS: Thank you, Mr. Babcock.

8 THE COURT: Alright. Redirect?

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1 REDIRECT EXAMINATION

2 BY MR. LINTON:

3 Q. Mr. Hartnett, you were just asked some questions
4 about the size adjustments that you made to the sales of
5 land that you used in this case?

6 A. Yes, sir.

7 Q. How does an appraiser go about making size
8 adjustments?

9 A. Well, the theory behind a size adjustment is that a
10 bigger piece of property, if it were relatively
11 comparable to what you're appraising, would sell less per
12 unit of value, whether it be square foot or acre.

13 A hundred-acre tract of land, if it's comparable to
14 a ten-acre tract of land next to it, is going to sell for
15 less per acre than the ten-acre tract is going to sell
16 for. You wouldn't pay the same thing that you would pay
17 for ten if everything else was pretty much equal. And
18 because there are not any other adjustments, obviously
19 they were pretty much equal.

20 So that's why there were no negative adjustments and
21 that's why all of these properties were larger than the
22 subject property and they -- so they would sell for less
23 than, if they -- if they all sold -- they were larger
24 than the subject property, so they would sell for less
25 per square foot than the subject would be. So in

1 fairness, I had to add for the difference in size, which
2 in this case was a plus adjustment.

3 Q. And in this case when you're doing a size
4 adjustment, is there some kind of table or chart or
5 something like that that's not totally ---

6 A. --- you know ---

7 Q. --- subjective that you use?

8 A. I use -- and Mr. Babcock gave me a bad time about
9 this in deposition -- but what we call the Dilmore size
10 adjustment calculations. And Mr. Dilmore was one of
11 those MAIs that Mr. Babcock alluded to, who years ago
12 went through all the trouble of using an algorithms and
13 logarithms and whatever, and he came up with a -- what he
14 thought was a very, very good method and very fair method
15 to use in adjusting comparable sales for their size.

16 I think it's been used for years by appraisers all
17 across the country. And as far as I know, it's still
18 pretty reliable. So it was not something I just reached
19 up and pulled up out of the air. It's something that
20 appraisers have been using for years that was devised by
21 an MAI somewhere. He's probably dead now. But it's
22 something that was used for years and still is used by
23 appraisers.

24 Q. And you were asked about the MAI designation. When
25 did MAI come up? When was that first designation?

1 A. Oh. That's been around I think since the '50s, and
2 that means that you're a member of the Appraisers
3 Institute. But only if you pay dues. If you don't pay
4 dues, you're not an MAI anymore. So it's one of those
5 organizations that wants to collect the dues and give you
6 a -- give you a title.

7 It is a well-respected organization. It started
8 with the National Association of Realtors and when the
9 realtors -- when the realtors had -- when appraisers had
10 to get a separate license, the institute pulled away from
11 the National Association of Realtors and came up with
12 their own -- the Appraisal Institute was always a part of
13 the National Association of Realtors until about 1992,
14 then they pulled away from that.

15 I stayed with the National Association of Realtors
16 that I've been with since 1963. And they have an
17 appraisal section that they give designations to you.
18 And that's a general accredited appraiser. That's the
19 designation that I have, versus others that have the MAI
20 designation.

21 Q. So that split in 1992. You've been doing appraisals
22 a long time as a GAA?

23 A. Oh, yes sir. Yes, sir.

24 Q. You were asked about the fact that you've known Mr.
25 Fabian's family and know Mr. Fabian?

1 A. I hadn't seen Mr. Fabian probably in thirty-five
2 years or more between the last time I saw him and when I
3 saw him this time. So to say that he and I were buddy-
4 buddy, first of all, he's about a hundred years younger
5 than I am, although he doesn't look it, I can tell you
6 that.

7 I really -- I knew his mom and dad far better than I
8 knew Mr. Fabian. So I have a lot of respect for the
9 Fabian family and certainly for Mr. Fabian. But we were
10 not people that went out to dinner together or went to
11 each other's home and visited each other. I hadn't seen
12 him in thirty-five or forty years. I don't know who
13 suggested he call me, but he did.

14 Q. And you testified earlier you've been around
15 Charleston a long time?

16 A. Yes, sir.

17 Q. And you've done a lot of appraisals?

18 A. Yes, sir.

19 Q. You've probably done some other appraisals for
20 people who you've known?

21 A. For people?

22 Q. Who you know?

23 A. Oh, yes sir. Absolutely.

24 Q. And do you let that affect your opinion of value?

25 A. I hope not. I never have and I hope I never will.

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1 Q. You didn't in this case?

2 A. No, sir.

3 Q. Mr. Hartnett, do you remember what year the building
4 was built?

5 A. When this building was -- I think it was -- I heard
6 it was 2009.

7 Q. I think it may have been in 2007. But do you
8 remember the date of the taking?

9 A. Yes, I do.

10 Q. When was that?

11 A. The date of take is October the 19th, 2017, was my
12 understanding. That's what I was told.

13 Q. And your job as an appraiser is to value it as of
14 the date of the taking?

15 A. Yes, sir.

16 Q. So if it was built in either 2009, or maybe even
17 2007, and it was taken in 2017, earlier when on cross-
18 examination you were being asked about eleven or twelve
19 years, it really is at ten years or less; correct?

20 A. Yes, sir.

21 Q. Mr. Hartnett, you were asked a series of questions
22 about whether the theater or the acoustical room could
23 maybe be used as an office. Do you remember all of that?

24 A. No, I wasn't asked if it could be used as an office.
25 I was asked if it could be used by somebody else, whether

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1 some -- I said, sure, you know, if you wanted to set it
2 up for a dining room, you could do that. If you wanted
3 to set it up for a conference room, you could do that.
4 But why you would use that expensive space for something
5 like that I don't know. But I did answer yes, it could
6 be used for something else.

7 Q. And this courthouse could be used as a dining room,
8 couldn't it?

9 A. Yes, sir.

10 Q. Any building could be used as a dining room if you
11 put a table, chairs, and a dinner on the table?

12 A. Yes, sir.

13 Q. And is that the way you determine whether there are
14 comparable sales, whether if you put a dining-room table
15 in it it's a dining room?

16 A. No, sir. No, sir.

17 Q. Do you look at what the property actually is used
18 for and the actual construction price?

19 A. Yes sir; its current use or its highest and best
20 use. Yes, sir.

21 MR. LINGON: Thank you, Mr. Hartnett.

22 THE WITNESS: Yes, sir.

23 THE COURT: Any recross?

24 MR. BABCOCK: Nothing further, Your Honor.

25 THE COURT: Alright. Thank you, Mr. Hartnett. You

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2 can step down.

3 THE WITNESS: Thank you again for your patience,
4 Your Honor.

5 THE COURT: All right.

6 [Whereupon, the witness is excused and exits the
7 witness stand]

8 THE COURT: Alright. Any other witnesses by the
9 Landowner?

10 MR. LINTON: No, Your Honor.

11 THE COURT: Alright. Take the jury out. Please,
12 ma'am, please, sir, do not discuss the case with each
13 other, and we'll be back with you shortly.

14 [Whereupon, the jury exits at 10:55 a.m.]

15 THE COURT: Landowner rest?

16 MR. WALKER: Yes, Judge.

17 THE COURT: Alright. Any motions by the Condemnor?

18 MR. BABCOCK: Yes, sir. And I have two.

19 THE COURT: Alright.

20 MR. BABCOCK: But they are related.

21 THE COURT: Okay.

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1 RENEWED MOTION TO EXCLUDE TESTIMONY

2 MR. BABCOCK: The first question -- the first motion
3 we would make is now that we've heard Mr. Hartnett's
4 testimony, the same grounds that we had to exclude him as
5 a witness, namely that he did not use fair market value,
6 which we argued to the Court earlier would need to be the
7 law is it regardless of whether you used the sales
8 comparison method or the income method or the cost
9 method. In a condemnation case in South Carolina, they
10 all must link to fair market value.

11 The witness testified that he did not do that, that
12 it was his intent to try to come up with a compensation
13 figure for the Landowner, but that he did not do that.
14 And because he did not do that, he failed to follow a
15 prerequisite for testimony as an appraiser for just
16 compensation has to be linked to the fair market value no
17 matter which approach you use. And because he didn't do
18 that, we would move to exclude and...

19 [Whereupon, Mr. Babcock reviews documents]

20 MR. BABCOCK: I'm sorry. Senior moment. We would
21 move to strike his testimony, Your Honor.

22 THE COURT: Okay. And I think -- you've got two
23 motions, and I'm going to let counsel respond to both.
24 Do you want to ---

25 MR. BABCOCK: --- sure.

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1 THE COURT: Go ahead and state your second one and
2 I'm sure Mr. Walker will chime in on a responding voice,
3 partner in crime will jump in and just fire away.

4 MR. BABCOCK: That's fair enough.
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MOTION FOR A DIRECTED VERDICT

MR. BABCOCK: Your Honor, the second motion links to the first motion. We move for a directed verdict at this point in the proceeding. Because Mr. Hartnett's testimony was invalid as a matter of law, there is only one -- for the reasons we have stated.

There's only one number for the jury in this case for testimony, and that is the 1,800,000 dollar number that was Mr. Ford's appraisal, which was alluded to in testimony by Mr. Fabian yesterday, and that was the offer that was made to him.

So since the only proper number before the Court is the 1,800,000 dollar number, we would move for a directed verdict for just compensation in this case in the amount of 1,800,000 dollars.

THE COURT: All right. Thank you, Mr. Babcock. Mr. Walker?

MR. WALKER: Thank you, Your Honor. We've already been through this whole back-and-forth about Mr. Hartnett's testimony. We would submit, as we did earlier, that there's plenty of case law that a qualified expert can render an opinion. He's a qualified expert. He rendered an opinion.

Also, the case law in South Carolina, as well as the constitution, doesn't say that just compensation equals

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1 fair market value. In fact, we cited to the Court the
2 case of Carolina Power where the Court said if it's a
3 church or specialty-use building, then fair price, fair
4 market value, may not apply and fair compensation should
5 be awarded in some other way. That is this case.

6 We've also cited to the Court cases from other
7 jurisdictions; Rhode Island, New York, other
8 jurisdictions that have specifically addressed special
9 use and the cost approach. The reason we didn't do it in
10 South Carolina, quite frankly, Your Honor, is that the
11 precedent we found in South Carolina, the only precedent
12 mentioning special-purpose buildings was the Carolina
13 Power case.

14 But we did find cases, and we cited them in our
15 brief, the Texaco case, where it talks about recovering
16 costs of improvement. That may be a lease. I can't
17 remember. But, regardless, that's the only other law
18 that we could find. There was a later case, too. I say
19 it was the only one. There's another case that I'm
20 blanking on, that we'll get for you, about recovering the
21 cost approach.

22 So we think that no, his testimony is valid, the law
23 is not as stated, the jury gets to decide, and his
24 testimony should not be stricken.

25 On the motion for a directed verdict, I don't

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1 understand how they get a directed verdict of a million-
2 eight. All that we have is a statement that the offer
3 was a million-eight. I don't know how that gentleman,
4 Mr. Ford, arrived at his estimate.

5 I mean, they say -- we haven't had any witnesses say
6 he derived it under the sales comparison approach or this
7 approach. So they're saying you have to accept it as
8 true. I -- there's no proof to that effect. But more
9 important, we've got other proof in the record that would
10 substantiate an award of damages.

11 First, we've got Mr. Hartnett's testimony, which is
12 fully admissible. We've got the actual cost, as
13 suggested for inflation of the building that came in
14 yesterday. So -- and the rest of it is up to the jury.
15 So the jury can decide what's just compensation. They
16 can, as you said -- it may be they take these experts and
17 just throw them all out and come up with their own
18 number. And our Constitution says that's fine, they
19 aren't entitled to anything as a matter of law. Thank
20 you, Your Honor.

21 MR. BABCOCK: May I very briefly, Your Honor?

22 THE COURT: Yes, sir.

23 MR. BABCOCK: A couple of points, Your Honor. First
24 off, the testimony by Mr. Hartnett that Mr. Walker just
25 alluded to is the very testimony that we have said is not

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1 proper under South Carolina standards. The only other
2 testimony he could point to was the cost information from
3 Mr. Morey. That's not just compensation. Nobody used
4 that figure to come up with the just compensation, other
5 than Mr. Hartnett.

6 In fact, the Landowner in this case, although he was
7 entitled to give his own opinion, did not do so. So
8 there's been no opinion testimony, other than Mr.
9 Hartnett, concerning just compensation for that four-
10 million-plus figure.

11 Now, Mr. Ford's, and this is testimony that Mr.
12 Fabian gave yesterday, he testified that he was given an
13 offer and that the exhibit that was used was an offer, as
14 I believe, from Mr. Rucker in the amount of 1,800,000
15 dollars that was accompanied by an appraisal by Mr. Ford.
16 That's what he testified to. And that is required under
17 South Carolina law. The condemning authority has to make
18 an offer based upon an appraisal and give the landowner
19 the appraisal. So that was what Mr. Fabian testified to.

20 Now, so that's the testimony that is in the record
21 and we say the only one that's appropriate under South
22 Carolina law. Now, the Carolina Power and Light case
23 that Mr. Walker keeps talking about, that case, if you
24 look at that case, number one -- that one sentence that
25 they threw out was clearly dicta. Because what that case

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1 says is -- the case was about was a vacant property,
2 farmland, I think, that the landowner wanted to use a
3 subdivision figure. So instead of 500 dollars an acre,
4 it was going to be 2500 dollars an acre or something like
5 that. And they said you can't do that.

6 And to that point, Your Honor, the case itself is
7 from 1972. And as we argued to the Court previously, the
8 South Carolina Eminent Domain Code was passed in 1988,
9 and that is what controls the proceedings today.

10 So we would suggest that, as we cited cases in our
11 memorandum in support of our motion in limine, we cited
12 to -- I think rather than looking at a bunch of different
13 states, I think probably that the very accurate thing to
14 look at is the Uniform Appraisal Standards for federal
15 land acquisitions also under the federal constitution.

16 And what we -- the part that we quoted to the Court
17 in our memo was, while not inherently flawed, the cost
18 approach has often been misused leading a number of
19 courts to identify the cost approach as, quote, one of
20 the least reliable indicia of market value for purposes
21 of measuring just compensation.

22 And, now, further, the cost approach, as a means of
23 measuring value, may have relevance but only, of course,
24 as bearing on what a perspective purchaser would have
25 paid. You're coming back to the willing buyer, willing

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1 seller standard. And we say that is the appropriate
2 standard here. That's not the standard that Mr. Hartnett
3 used, and as a result, there should be a directed verdict
4 in this case in the amount of 1,800,000 dollars.

5 THE COURT: Alright. Yes, sir?

6 MR. LINTON: Your Honor, just a few things.

7 One, Mr. Babcock keeps alluding to the fact that the
8 case in South Carolina talking about a fair market value
9 isn't a fair formula, other formulas are available,
10 predates the Eminent Domain Procedures Act. And I think
11 it's important that we clarify because it's been twisted
12 a little bit. The Eminent Domain Procedures Act does not
13 say fair market value. It says value. And so the fact
14 that that case came before the Act is immaterial.

15 Number two, Your Honor, we cited other cases from
16 South Carolina where the cost approach was discussed in
17 tax valuation cases, which I understand that this is a
18 condemnation case; however, the Condemnor is asking you
19 to strike testimony and enter a directed verdict with
20 absolutely no case law that says that the cost approach
21 is not a valid approach.

22 We've cited those two cases, the Duke Power and
23 Craven cases which say if an expert is qualified as an
24 appraiser in a condemnation case, they should be allowed
25 to give their testimony and if they have no basis, if

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1 they rely on the wrong things, like if they rely on the
2 wrong approach or the wrong cost estimate, the jury is
3 going to sniff that out and they're going to make their
4 decision and reject that expert's testimony and the Court
5 should let them do that.

6 Finally, Your Honor, Mr. Babcock brought up that
7 this is under the U.S. Constitution, as well. And like
8 the South Carolina Constitution, it only says just
9 compensation. And I just wanted to point out we cited
10 several U.S. Court of Claims cases interpreting the U.S.
11 Constitution's requirement of just compensation where the
12 cost approach was enforced. So it is not like there's no
13 case law supporting this. Thank you.

14 MR. WALKER: And I just to ---

15 MR. BABCOCK: --- wait a minute. What is -- they
16 don't get both to argue at this point, I don't think,
17 Your Honor.

18 THE COURT: You were?

19 MR. WALKER: I'm just going to say one thing, that
20 the cost approach is not some out there technique. It's
21 one of three accepted approaches. So he didn't create
22 the approach. It's an accepted approach. It's up to the
23 appraiser to decide which to use.

24 THE COURT: Mr. Babcock?

25 MR. BABCOCK: Your Honor, just briefly. Again, from

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1 our brief, Your Honor, we've quoted from the Housing
2 Authority City of Charleston case, which is a 1984
3 decision, a little bit before the code. But it is a
4 Court of Appeals case and what it says is in condemnation
5 cases, landowners are entitled to fair market value of
6 the property at the time of taking, not a speculative
7 use.

8 And then it went on to quote: fair market value is
9 that price which a willing buyer will pay a willing
10 seller, neither being under a compulsion to buy or sell,
11 both being fully informed of all uses to which the
12 property is adopted and which its capable of being used.
13 That's the standard in South Carolina. Their appraiser
14 didn't follow it.

15 THE COURT: Okay. You know, I think -- my comments,
16 gentlemen, will probably mirror the comments I made when
17 I heard the motion in limine at the outset. And I think
18 I covered three areas. And I think we were talking about
19 Rule 702, I think it was, and I made a comment at that
20 time, and I'll sort of reiterate that comment.

21 I thought that first of all, the motion was to
22 exclude the testimony of Mr. Hartnett and I made a
23 comment at that time I thought that the -- that under
24 that rule, an expert is entitled to his or her opinion.
25 And I thought -- and I indicated at that time I thought

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1 it was a question that the jury needed to decide. And,
2 of course, I'm going to charge later on that an expert --
3 a jury could consider an expert opinion, some of it, or
4 none of it. So I think in that regard, I sort of mirror
5 what I said earlier.

6 The second thing that I said, and we were talking
7 about this whole approach, whether the approach that Mr.
8 Hartnett used or the approach that your -- that your
9 appraiser used, I also think that that's a question.
10 When the jury hears it, the jury could adopt what Mr.
11 Hartnett's approach or could adopt what the other
12 appraiser said. I think that's certainly within the
13 prevue.

14 And you see where I'm traveling. The road I'm
15 traveling here is these are jury issues. These are --
16 these are questions that need to be left to those twelve
17 people sitting in that box over there.

18 And thirdly, the -- I think I made a comment about
19 determining specialty. And I can tell you this; those
20 jurors over there all are listening very carefully to
21 both sides. And they looked at every one of those
22 photographs, they looked at every exhibit, and I think
23 that they -- as a matter of fact I don't think, I know,
24 that they are the proper people to determine whether this
25 building has some special features and whether or not Mr.

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1 Hartnett, in his appraisal, whether or not any weight
2 should be given to how -- how much weight he gave it in
3 terms of coming up with a number. And we haven't heard
4 from the other appraiser. But she's sitting back there.
5 She'll be up here in a minute. She'll tell her side of
6 the story.

7 You know, because both lawyers know considering the
8 standards the Courts have always outlined for me, the
9 trial judge, making a determination of whether to grant,
10 you know, a directed verdict and that kind of thing, is
11 I'm very careful not to take cases out of the hands of
12 the jury.

13 And I think in this instance, I'm going to deny both
14 motions and note -- and note your exceptions to -- for
15 the record, Mr. Babcock, anything that you -- that you
16 accepted. So I'm going to deny both motions for --
17 motion for a directed verdict, as well as the other one.
18 Okay?

19 MR. BABCOCK: Yes, Your Honor. And I understand
20 Your Honor's ruling. And just to make sure I preserve
21 myself on the record ---

22 THE COURT: --- yes ---

23 MR. BABCOCK: -- the motion that we made in limine
24 and at this later point was pursuant to Rule 702 and 703,
25 as well as the gatekeeper function that a court -- that

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1 the judge, has for expert testimony, again, based upon
2 our position ---

3 THE COURT: --- yes ---

4 MR. BABCOCK: --- that the witness did not comply
5 with the legal standard for giving expert testimony in a
6 condemnation case in South Carolina. Thank you, Your
7 Honor.

8 THE COURT: And the record is so noted. We're going
9 -- we're going to take about -- let's see. We're going
10 to take about a ten-minute break, this is the Judge's
11 ten-minute break, and then we'll get back together.

12 [Whereupon, a recess is taken from 12:15 p.m. to
13 12:25 p.m.]

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1 MR. BABCOCK: Railways calls Deborah Haskell.

2 THE COURT: Ms. Haskell, come around.

3 [Whereupon, Ms. Haskell comes forward]

4 THE CLERK OF COURT: If you'll place your left hand
5 on the Bible, and raise your right.

6 [Whereupon, Ms. Haskell is duly sworn by the Clerk
7 of Court]

8 THE CLERK OF COURT: You may be seated.

9 [Whereupon, the witness takes the witness stand]

10 THE CLERK OF COURT: And for the record, please
11 state your full name, spelling your last.

12 THE WITNESS: It's Deborah B. Haskell, H-A-S-
13 K-E-L-L.

14 - - - - -

15 DEBORAH HASKELL,

16 Having Been First Duly Sworn,

17 was Examined and Testified as Follows:

18 DIRECT EXAMINATION

19 BY MR. BABCOCK:

20 Q. Good morning, Ms. Haskell.

21 A. Good morning.

22 Q. What's your occupation?

23 A. I am a real estate appraiser and consultant.

24 Q. And are you associated with any business?

25 A. I am. I am with Winthrop Real Estate Advisors.

1 Q. And how long have you been involved in real estate
2 appraising?

3 A. I've been involved in real estate appraising for
4 over twenty-five years.

5 Q. Can you tell us whether you have any state licenses
6 as an appraiser?

7 A. Yes. I have licenses in five states. I'm a
8 certified general appraiser in South Carolina, North
9 Carolina, Georgia, Virginia, and Massachusetts.

10 Q. Now, are you a member of any professional
11 organizations?

12 A. Yes, I am.

13 Q. Could you tell me about them, please?

14 A. Yes. I am a member of the Appraisal Institute with
15 my MAI designation. I have a CRE designation from the
16 Counsel of Real Estate. And I'm a fellow of the Royal
17 Institute of Charter Surveyors --

18 THE COURT REPORTER: Royal Institute of?

19 THE WITNESS: Charter Surveyors.

20 Q. [Mr. Babcock] So let's take those one at a time, if
21 you could, Ms. Haskell. You have the MAI designation
22 from the Institute?

23 A. Yes, I do.

24 Q. What did you have to do to get that?

25 A. The MAI designation is awarded by the Appraisal

1 Institute, and that -- to be able to obtain that
2 designation, there are a series of about ten courses that
3 you take and they cover, they range from property
4 identification, market studies, highest and best use
5 analysis, again, the three approaches to value, the sales
6 comparison approach, income approach, cost approach.

7 You also are required to work in the field generally
8 about five years in order to gain experience. Once you
9 have done that, we prepare what we call a demonstration
10 appraisal report, which people can equate it to almost a
11 master's thesis.

12 It's a very detailed, lengthy report where a
13 candidate is able to demonstrate their knowledge, their
14 ability, and their -- well, their ability to appraise
15 properties.

16 Q. How -- I'm sorry. Go ahead.

17 A. And then there's the -- the final thing is -- well,
18 there's two things. And then after you submit that, you
19 also go in front of a panel of your peers, who review the
20 files, review your reports, and again certify on your
21 competence.

22 And the final step is we take what we call a
23 comprehensive exam, which is a two-day exam that covers
24 all aspects of real estate appraisal.

25 Q. Is that designation just something you get by paying

1 money to the Institute?

2 A. No, not in my opinion.

3 Q. But there are dues to be a member of this?

4 A. Of course.

5 Q. And the other two organizations and designations,
6 the CRE designation?

7 A. Yes ---

8 Q. --- briefly?

9 A. Yes. The CRE designation is from the Counsels of
10 Real Estate. And the Counsels of Real Estate is more
11 oriented to consulting, real estate consulting.

12 That is an invitational organization who issues
13 invitations for membership to people who have had,
14 generally ten to fifteen years in the field and are
15 recognized by their peers as being fairly well
16 established.

17 Q. And the final designation I believe was an FRICS?

18 A. Yes. That is the Fellow of -- Fellow of the Royal
19 Institute of Charter Surveyors. That organization is
20 actually based out of London, England, but has an office
21 in New York.

22 It's an international organization geared more
23 toward valuation, similar to the Appraisal Institute.
24 And a Fellow is -- there are two designations. There's
25 the member of the Institute, and a Fellow. And the

1 Fellow is the more prestigious. So I think there's
2 probably 1200 Fellows internationally. So I also have
3 that designation.

4 Q. And you are one of those Fellows?

5 A. I am.

6 Q. Ms. Haskell, where did you go to college?

7 A. I went to the University of California at Berkeley,
8 with a concentration in economics.

9 Q. You got your --

10 THE COURT REPORTER: Concentration in?

11 THE WITNESS: Economics. Yes. Okay.

12 THE COURT REPORTER: I'm just having trouble hearing
13 you.

14 THE WITNESS: Oh. I'm sorry. Okay.

15 A. Bachelor of Arts degree.

16 Q. [Mr. Babcock] And have you taken courses in real
17 estate over the years?

18 A. I have. I've taken numerous courses and seminars
19 over the years to not only stay current with sort of
20 thought in the field but also by being designated, as
21 well as licensed, there are continuing education
22 requirements.

23 So as an example, the Institute, I think in a five-
24 year period you have to take 100 hours of continuing
25 education. And states are a little different, but

1 similar.

2 Q. Alright. So let's shift to your appraising
3 experience. When did you start appraising property?

4 A. I -- well, over twenty-five years ago. I...

5 Q. And tell us, generally, what real estate appraising
6 is.

7 A. Real estate appraising is a systematic procedure to
8 determine property value. It -- there's all kinds of
9 values that clients want. They can -- market value,
10 investment value, insurable value. There's all kinds of
11 value use. Fair market value is typically the one that
12 is used the most and requested the most.

13 Q. Ms. Haskell, what sorts of things do you do as a
14 real estate appraiser with Winthrop Real Estate Advisors?

15 A. I advise public and private clients on all types of
16 real estate valuation assignments, consulting assignments
17 like public entities, state, federal, local governments,
18 governmental agencies, private individuals, entities.

19 I work for corporations, for -- real estate
20 investment trusts. I work for utility companies. I've
21 over the years; I've worked with a variety of clients.

22 Q. Tell us what sorts of things you do as a real estate
23 appraiser.

24 A. Well, I've been involved in the valuation of all
25 types of real estate, from undeveloped land that's

1 suitable for residential, commercial, and industrial
2 development. Also, special-purpose properties. I've
3 been involved in the valuation of office complexes,
4 industrial complexes; I've worked number of the Fortune
5 500 companies.

6 I've been involved in the valuation of retail
7 properties, whether it's single-tenant office buildings,
8 neighborhood centers, or regional malls. I have done
9 valuations on hotels, medical-related, hospitals, as well
10 as special-purpose properties.

11 I've been involved in the appraisal of nuclear power
12 plants, transmission and distribution assets for utility
13 companies, a water company. They had a distribution
14 system and purification plant. A number of different --
15 a wide variety of properties.

16 Q. Now, Ms. Haskell, have you ever spoken about real
17 estate appraising to any groups?

18 A. Yes, I have.

19 Q. Tell me about that, please.

20 A. Well, I've spoken to a number of groups, again, on a
21 variety of subjects. Probably the most relevant to this
22 is I gave a presentation on valuing special-purpose
23 properties for the American Law Institute at their
24 national convention in Miami. I gave a presentation to
25 the Georgia Bar Association on sort of the risks and

1 strategies of real estate portfolios. This was after the
2 recession. I gave a seminar on the capital markets, both
3 international and national capital markets, for a
4 property tax seminar in Austin, Texas.

5 I gave a seminar actually to lawyers and appraisers
6 in Puerto Rico when they were doing the Tren Urbano
7 project. Just, you know, I could go on but that's
8 enough.

9 Q. And has your work that you've done in the
10 condemnation area, you've done work for Landowners and
11 Condemnors?

12 A. Yes.

13 Q. If you were to divide up how much you've done in
14 condemnation cases for Landowners versus Condemnors, what
15 would be the approximate percentages?

16 A. Probably about fifty-fifty. I've done a variety.

17 Q. Now, Ms. Haskell, let's shift to the actual
18 appraising process. Would you tell us, generally, how
19 you go about doing an appraisal in a condemnation case?

20 A. Yes. The -- first of all, I identify the property.
21 I look at the surrounding land uses. I look at the
22 market, in general, depending upon the type of property,
23 what the market is.

24 I look at public records. I talk to buyers,
25 sellers, brokers, the property managers, property owners,

1 in order to become familiar with not only the market area
2 but the property type itself and to determine who would
3 be -- assuming it is to be bought or sold, who would be a
4 potential buyer of the particular property.

5 Q. And how many are -- how many methods are there for
6 analyzing a piece of property in a condemnation case?

7 A. There are three generally accepted appraisal
8 methodologies.

9 Q. Could you tell us what they are and then explain
10 each one, please.

11 A. Yeah. The sales comparison approach, which you've
12 heard, is -- that approach is based on the principle of
13 substitution. Basically, a willing buyer will not pay
14 more for a property than the price required what we call
15 an equally-desired substitute.

16 In other words, a property that would suit his or
17 her needs. This is the most generally used appraisal
18 methodology because it's suitable for residential,
19 commercial, and industrial property, as well as vacant
20 land.

21 The income capitalization approach is -- generally
22 applies to income-producing properties or properties
23 which have the potential to generate income. Again,
24 based on the principle of anticipation, an investor will
25 look at a property and decide how much revenue it can

1 generate from the property and, once deducting the
2 expenses, capitalizing that what we call net income, into
3 total property value. And that's, like I said, generally
4 used for income-producing properties or properties that
5 have the capacity, the ability, to generate income.

6 The last approach is the cost approach. And this
7 approach is generally the most relevant for fairly new
8 properties. If a property has just been constructed, we
9 know what it's going to cost.

10 As well as special-purpose properties where there is
11 no market and no really new -- special-purpose projects
12 is a property in which the design and construction is so
13 unique that it is highly unlikely that another person
14 would -- or another entity would be able to use it, and
15 also that the market for this type of property is so
16 limited that there are not -- that there are not buyers
17 in the market.

18 Q. And you have some examples of those specialty
19 properties?

20 A. Yes. I've been involved in a number of them. I
21 think -- I think the -- a good one is a nuclear power
22 plant. I mean, that's not something that you -- that
23 there's a lot of market for. I've been involved in two,
24 and, no, I haven't actually worked with SCANA in South
25 Carolina, not for the nuclear power plant that they

1 mothballed. Another special-purpose property would be a
2 sugar refinery. There's just -- there's just not a lot
3 of use for that, you know. Things like that.

4 Q. Have you performed appraisals with properties that
5 had unique features that were business related?

6 A. Oh, absolutely. Yes.

7 Q. Can you give us some examples of those?

8 A. Well, for instance, a bank would be a special
9 property. It's not a special-purpose property, but it
10 has special features; as an example, a vault. A bank has
11 a vault, a lot of security.

12 And so while the building can be used for a number
13 of different things and the vault is unique and I've seen
14 them used for different purposes, it -- the contributory
15 value of that vault, the cost to build that vault, is not
16 the same as what another buyer or a second-generation
17 user would pay.

18 I've been involved in biotech facilities, in which
19 they had special mechanical equipment or different kinds
20 of equipment that, in fact, is installed but it's
21 specific to that use. That equipment does not have use
22 to -- generally, to another user.

23 Q. Ms. Haskell, have you been qualified as an expert in
24 the courts in South Carolina in the field of real estate
25 appraising?

1 A. Yes.

2 Q. Where?

3 A. In both Charleston and Beaufort counties.

4 Q. And have you performed appraisals in Charleston
5 County before this one?

6 A. Yes, sir.

7 MR. BABCOCK: Your Honor, at this point, we would
8 offer Ms. Haskell as an expert in the field of real
9 estate appraising.

10 THE COURT: Any objection?

11 MR. WALKER: No objection.

12 THE COURT: Alright. She's so qualified.

13 Q. [Mr. Babcock] Alright. Ms. Haskell, now, what's
14 the purpose of doing an appraisal in a condemnation case?

15 A. The purpose is to establish the fair market value of
16 the real estate that is being taken.

17 Q. As of the date of take?

18 A. As of the date of taking, yes.

19 Q. And when you say fair market value, how do you
20 define fair market value?

21 A. Fair market value is the price the willing buyer
22 would pay without any necessity to buy, the price that a
23 willing seller would sell without any compulsion to sell.
24 In -- there's a --- there's a number of different things
25 that are required. It has to be offered in the open

1 market, it has to be mortgage money is generally
2 available. There's a -- there's a number of different
3 things. But the primary thing is it's a willing buyer,
4 willing seller.

5 Q. Does that apply to the sales comparison approach?

6 A. Yes.

7 Q. Does that apply to the income approach?

8 A. It does.

9 Q. Does that apply to the cost approach?

10 A. Absolutely. Yes.

11 Q. Now, Ms. Haskell, let's turn to the Gateway property
12 and the appraisal you did on the Gateway property. Who
13 contacted you?

14 A. You did. Lewis and Babcock.

15 Q. And what were you asked to do?

16 A. I was asked to perform an appraisal of the market
17 value of the property at 1799 Meeting Street Road.

18 Q. Tell us how you went about doing that appraisal.

19 A. Well, I first went down and looked at the property,
20 inspected the property with Alec Thompson, who was with
21 Palmetto Railways.

22 We went through the building, and around the
23 property, and we talked about it. I did receive an
24 appraisal that had been done earlier by Bill Ford --

25 THE COURT REPORTER: Done earlier by who?

1 THE WITNESS: Bill Ford.

2 A. I gathered public information from the -- from the
3 Planning department, from the Assessor's department, from
4 the Zoning department. I -- like I said, I went out and
5 I identified the use the property is being used for,
6 prior to the taking, and the potential use of the
7 property.

8 And I looked at the land uses in the immediate area,
9 and then surrounding. I identified the market area that
10 would be appropriate to look for properties. I
11 identified then sales of land and improved buildings, as
12 well as building leases.

13 And I reviewed those in order to determine the
14 highest and best use of the property itself at the time
15 of the taking.

16 Q. [Mr. Babcock] Let me stop you with for the highest
17 and best use. Anything general -- anything else
18 generally, that you did?

19 A. Well, I -- like I said, I talked to a number of
20 people. I talked to brokers and property managers and
21 owners and public officials.

22 Q. Did you talk to Mr. Fabian?

23 A. I did not.

24 Q. Why not?

25 A. Well, the property had been taken by that point.

1 Q. It was in condemnation?

2 A. It was in condemnation, yes. It was in litigation.

3 Q. Now, Ms. Haskell, I'd like to call your attention to
4 a few photos. We're not going to put a bunch of photos
5 up today. Do you -- do you see there's a notebook in
6 front of you that says Condemnor's notebook?

7 MR. BABCOCK: May I approach, Your Honor?

8 THE COURT: Go ahead.

9 Q. [Mr. Babcock] Ms. Haskell, let me direct your
10 attention to C-20.

11 [Whereupon, the witness is shown photograph]

12 A. Yes.

13 Q. And what is that a photograph of?

14 A. That is a picture of the exterior of the Gateway
15 property.

16 Q. And is that photo a fair representation of the
17 Gateway property?

18 A. Yes.

19 MR. BABCOCK: We'd offer C-20 as the next exhibit
20 for the Condemnor.

21 MR. WALKER: No objection.

22 THE COURT: Alright. So admitted, without
23 objection.

24 [Whereupon, Condemnor's Exhibit Number 20 is
25 admitted into evidence by the Court].

1 [Whereupon, the photograph is shown]

2 Q. [Mr. Babcock] Alright. It's now on the screen.

3 Ms. Haskell, could you describe what's on the screen?

4 A. Yes. This is the building. The street in front is
5 Meeting Street Road. You're looking at the -- on the
6 right-hand side of the building you're looking at the
7 overhead door that goes into the warehouse.

8 And then farther to the -- farther to the right, you
9 can't really see it, is the door into the property. This
10 is the side of the building that one would see from
11 Meeting Street Road.

12 Q. And let's turn our attention to C-21.

13 [Whereupon, the witness is shown photograph]

14 Q. Would you look at that, please?

15 A. Yes.

16 Q. What is that a photograph of?

17 A. This is the photograph of the front of the building.

18 Q. And does it fairly and reliably show the front of
19 the building?

20 A. Yes.

21 MR. BABCOCK: Your Honor, we would offer C-21 as the
22 next exhibit.

23 THE COURT: Any objection?

24 MR. WALKER: Your Honor, we would object, since this
25 picture looks like it was taken well after the date of

1 the taking.

2 THE COURT: And you're basing that on what?

3 MR. WALKER: The timing of the picture, that it
4 doesn't accurately reflect the building on the day of
5 taking.

6 MR. BABCOCK: If Your Honor please, we've had a lot
7 of exhibits from the Landowner that were taken at the
8 time of the opening of the building ten years before the
9 date of taking.

10 THE COURT: I'm going to -- I'm going to allow it,
11 subject to your objection. The Condemnor's Number 21 is
12 so admitted, subject to Landowner's objection.

13 [Whereupon, Condemnor's Exhibit Number 21 is
14 admitted into evidence by the Court]

15 Q. [Mr. Babcock] Alright. Ms. Haskell, can you
16 describe what you see on C-21?

17 [Whereupon, the photograph is shown]

18 A. Yes. Again, if you -- if you look at the left part
19 of the building, that's the overhead door that opens up
20 into the warehouse.

21 It looks like an overhead door in the middle, but
22 that's stationary. And then the door to the right is the
23 entrance to the building, to the first floor of the
24 building.

25 Q. Let me direct your attention to the next tab, C-22.

1 [Whereupon, the witness is shown photograph]

2 Q. What is shown on C-22?

3 A. Again, the exterior of the building with showing
4 some of the surrounding development.

5 Q. And is that a fair representation of the building?

6 A. Yes.

7 MR. BABCOCK: Your Honor, we'd offer C-22.

8 MR. WALKER: The same objection as the previous
9 picture. It was taken well after the taking.

10 THE COURT: Alright. So noted. C-22 will be
11 admitted, subject to Landowner's objection.

12 [Whereupon, Condemnor's Exhibit Number 22 is
13 admitted into evidence by the Court]

14 [Whereupon, the photograph is shown]

15 Q. [Mr. Babcock] Tell me what's shown on that
16 photograph, Ms. Haskell.

17 A. Yes. Well, it's sort of in the center left. It's
18 the exterior of the building. This would be the south
19 side of the building. And, like I said, it's the
20 surrounding development.

21 You can see on the right-hand side there's a --
22 there's a -- it's vacant. That lot is vacant. And then
23 there's a -- farther on in the picture, there's some
24 industrial development, some commercial development. And
25 on the left-hand side of the picture, you'll see the

1 railroad track that is adjacent to the property.

2 Q. And let's turn to C-23. Would you look at that,
3 please?

4 [Whereupon, the witness is shown photograph]

5 Q. And what does that -- what photograph does that
6 show?

7 A. This is the railroad track that I was just saying is
8 adjacent to the property.

9 Q. Is it a fair representation of that area?

10 A. It is, yes.

11 MR. BABCOCK: Your Honor, we'd offer C-23.

12 THE COURT: Any objection?

13 MR. WALKER: No objection.

14 THE COURT: Alright. Without objection, C-23 is so
15 admitted.

16 [Whereupon, Condemnor's Exhibit Number 23 is
17 admitted into evidence by the Court]

18 [Whereupon, the photograph is shown]

19 Q. [Mr. Babcock] And just briefly, Ms. Haskell, tell
20 us what we see on that photograph.

21 A. Yes. Again you see the -- well, it's the side of
22 the building, but it is adjacent to the railroad track
23 you'll see on the right. And that's pretty much it.

24 Q. Let's turn our attention to C-24.

25 [Whereupon, the witness is shown photograph]

1 Q. And what is shown in that photograph?

2 A. This is a picture of the -- what had been the
3 Pilates studio. It's part of the building. It's just an
4 open space.

5 Q. And that's a fair representation?

6 A. Yes.

7 MR. BABCOCK: Your Honor, we'd offer C-24.

8 THE COURT: Any objection?

9 MR. WALKER: Same objection as earlier, Your Honor,
10 that this is substantially altered from the date of the
11 taking.

12 THE COURT: Alright. Objection so noted. C-24 will
13 be admitted as Condemnor's Exhibit, subject to
14 Landowner's objection previously noted.

15 [Whereupon, Condemnor's Exhibit Number 24 is
16 admitted into evidence by the Court]

17 [Whereupon, the photograph is shown]

18 Q. [Mr. Babcock] Tell me what we see there, Ms.
19 Haskell.

20 A. Yes. That is what had been used as a Pilates
21 studio. It's -- this space is open. It could really be
22 used for anything, but that's what it was used for at the
23 time of the taking.

24 Q. And let's shift to C-25. Would you look at that,
25 please?

1 [Whereupon, the witness is shown photograph]

2 Q. What's shown on C-25?

3 A. C-25 shows the area that was called the warehouse,
4 with the overhead door that faces the parking lot.

5 Q. Is that a fair and accurate representation?

6 A. Yes.

7 MR. BABCOCK: Your Honor, we'd offer C-25.

8 MR. WALKER: No objection.

9 THE COURT: Alright. Without objection, C-25 is so
10 admitted.

11 [Whereupon, Condemnor's Exhibit Number 25 is
12 admitted into evidence by the Court]

13 [Whereupon, the photograph is shown]

14 Q. [Mr. Babcock] Explain to us briefly what we see
15 there.

16 A. Again, it's the -- it's the warehouse space. Again,
17 the overhead -- you'll see the overhead door that faces
18 the parking lot. And then the -- that's looks like on
19 the left, a doorway to the hall, but it was pretty open.

20 Q. And let's turn our attention to C-26. Would you
21 look at that, please?

22 [Whereupon, the witness is shown photograph]

23 Q. And what's shown there?

24 A. This is on the second floor, and it shows the office
25 space.

1 Q. Is it a fair and accurate representation?

2 A. Yes.

3 MR. BABCOCK: Your Honor, we'd offer C-26.

4 THE COURT: Any objection?

5 MR. WALKER: The same objection as earlier, that
6 it's after the date of the taking.

7 THE COURT: Alright. C-26 is so admitted, subject
8 to Landowner's objection as previously noted.

9 [Whereupon, Condemnor's Exhibit Number 26 is
10 admitted into evidence by the Court]

11 [Whereupon, the photograph is shown]

12 Q. [Mr. Babcock] Tell us what we see there, Ms.
13 Haskell.

14 A. Yes. You'll see basically the second-floor office
15 space, part of it. There was a sink and dishwasher on
16 the right. And as you went -- if you go through that
17 hall, you'll see it -- there were smaller offices that
18 were divided, pretty much the same construction.

19 Q. And, finally, let me direct your attention to C-27.

20 [Whereupon, the witness is shown photograph]

21 Q. What is shown on C-27?

22 A. One of the office spaces that I was talking about.

23 Q. Fair and accurate representation?

24 A. Yes.

25 MR. BABCOCK: Your Honor, we'd offer C-27.

1 THE COURT: Any objection?

2 MR. WALKER: Same objection as earlier.

3 THE COURT: Alright. C-27 will be so admitted,
4 subject to Landowner's objection as previously noted.

5 [Whereupon, Condemnor's Exhibit Number 27 is
6 admitted into evidence by the Court]

7 Q. [Mr. Babcock] Alright. Now, Ms. Haskell, before we
8 get into the full appraisal itself, when you did your
9 appraisal work on this track were you aware that Bill
10 Ford had made an appraisal of the property?

11 A. Yes.

12 Q. Who is Bill Ford?

13 A. Mr. Ford is an appraiser in -- well, he's actually
14 in Summerville, but he does work in Charleston.

15 Q. Is he an MAI appraiser?

16 A. No.

17 Q. And did you appraise other properties for Railways
18 after Mr. Ford had appraised it?

19 A. Yes.

20 Q. Explain, generally, how that worked.

21 A. Well, typically in an eminent domain situation, the
22 taking authority hires someone to do all the appraisals
23 because they need a basis for the offer. And then
24 depending upon -- and that's what Mr. Ford did for
25 Railways. And then, depending upon what happens, they --

1 whether they sell or they go to court or whatever, then
2 the client will make a determination as to whether to use
3 the same appraiser or to use a different appraiser. It
4 varies. But it's the -- it's very -- they do pretty much
5 the same thing in any condemnation.

6 Q. And in this particular case, was Mr. Ford one of the
7 original appraisers for the properties for Railway?

8 A. Yes.

9 Q. And did you do second appraisals for some of the
10 properties?

11 A. Yes.

12 Q. Was that after it went to condemnation?

13 A. Yes.

14 Q. Now, we're going to get your opinion in the middle
15 -- in a minute. But I think your opinion of value is a
16 little bit less than Mr. Ford's; is that right?

17 A. Yes.

18 Q. Was that generally the case in the other appraisals
19 you did?

20 A. No.

21 Q. Well, what normally happened there?

22 A. I have no idea. I mean, it's just my opinion
23 independent of his, so...

24 Q. Was it a higher or lower opinion?

25 A. For this case ---

1 Q. --- no, for other cases.

2 A. Oh. Other cases, it was higher.

3 Q. Now, what I'd like to do very briefly is in terms of
4 your work for Railways on this project, let's pull up the
5 exhibit which was the first exhibit for the Condemnor,
6 C-1.

7 [Whereupon, the photograph is shown]

8 Q. And I'd like generally -- and are you familiar with
9 this exhibit, Ms. Haskell?

10 A. Yes.

11 Q. And the area where the intermodal facility itself is
12 to be constructed, it's sort of in the middle of that
13 photograph; correct?

14 A. It is. It's colored. Yes.

15 Q. And did you do any appraisals in that area?

16 A. Yes. That was the initial phase, phase one. And I
17 did -- I think there were initially maybe fifteen parcels
18 or so. I did appraisals on five.

19 Q. And did any of those go to a jury trial like this
20 one?

21 A. No.

22 Q. Let's direct your attention to the buffer area. And
23 are you familiar with the buffer area?

24 A. Yes.

25 Q. And that's adjacent to the facility?

1 A. Correct.

2 Q. And did you perform any appraisals in that area?

3 A. I appraised two properties. I think there were a
4 total of around forty, but I appraised two of them.

5 Q. And are all of those resolved?

6 A. Yes.

7 Q. So did you testify in any of those?

8 A. No.

9 Q. Finally, we're talking about this property and the
10 southern route. And how many appraisals have you been
11 involved in for the southern route?

12 A. The southern route I have completed appraisals on
13 five properties, and there are two parcels that I'm
14 currently working on.

15 Q. Have any of those gone to trial, other than this
16 one?

17 MR. WALKER: Objection, Your Honor. It's not
18 relevant in any way whether these cases have gone to
19 trial.

20 MR. BABCOCK: Your Honor, I think that it is
21 relevant in terms of how often she's testified for
22 Railways and how many cases she's been involved in that
23 have actually gone to trial.

24 THE COURT: I'll allow it. Overruled.

25 A. This is the first one.

- 1 Q. [Mr. Babcock] So this is the first time you've
2 testified in regard to this project?
- 3 A. Correct.
- 4 Q. In trial?
- 5 A. Yes.
- 6 Q. Now, let's come back to your opinion -- your
7 opinions that you developed with regard to the Gateway
8 property. Did you develop an opinion as to the highest
9 and best use of the property?
- 10 A. Yes.
- 11 Q. And what was that?
- 12 A. It's my opinion that the highest and best use of the
13 property is for an office use.
- 14 Q. And did you depict -- sorry. Did you develop an
15 opinion of fair market value of the property as of
16 October 19, 2017?
- 17 A. Yes.
- 18 Q. And what is that opinion?
- 19 A. It is my opinion that the property was worth
20 1,750,000 dollars.
- 21 Q. And did you use fair market value in determining
22 that figure?
- 23 A. Yes.
- 24 Q. Again, fair market value is what?
- 25 A. Willing buyer, willing seller, under no -- either

1 party under no compulsion to either buy or sell.

2 Q. Now, let's talk about your opinion itself. Did you
3 use the sales comparison method?

4 A. Yes.

5 Q. Tell me -- and you developed comparable sales?

6 A. Correct.

7 Q. Alright. We're going to talk about each one
8 briefly, but tell me how you went about designating
9 comparable sales for the sales comparison approach.

10 A. Well -- the -- I -- again, the starting point, of
11 course, is to really understanding the property itself,
12 the structural components, how it's laid out, where it
13 is.

14 And then I -- obviously, it's a fairly small lot.
15 It's not a large office building. It was designed for
16 single-tenant occupancy. I realize at the time of the
17 taking there were two other tenants in there, but the
18 design is suitable for single-tenant occupancy.

19 So I then looked at data sources and talked to
20 people and found identified properties that were
21 locationally and physically similar, properties that had
22 both sold and properties that had leased.

23 Then I did research on private data sources. One we
24 all use is CoStar, which is a national data service that
25 uses information from the registry of brokers and records

1 information on sales, as well as leases. I looked at
2 public information, assessor's records, whatever and I
3 went around and physically actually drove and looked at
4 each one of these properties. Once I did that, I was
5 able to narrow those comparables down to what I thought
6 was the most similar.

7 Then I called either the buyer or the seller or a
8 broker and verified the sale. And I don't know, I said
9 public records. Of course, I looked at deeds and
10 mortgages and that kind of thing.

11 But then I was able to actually determine -- by
12 talking to these individuals involved in the sale, I was
13 able to determine not only the purchase motivation but
14 the condition of the space, if any improvements needed to
15 be made, if they had adequate parking, all sorts of the
16 factors that impact value.

17 Once I did that, I used the sales for the sales
18 comparison approach, and I used the lease comparables to
19 do an income capitalization approach.

20 Q. Alright. Let's get to the leases and the income
21 capitalization in a minute.

22 A. Okay.

23 Q. How many sales did -- comparable sales did you use
24 for the sales comparison approach?

25 A. I use -- I determined five of the most relevant.

S.C. Department of Commerce v Gateway Properties of Greater Charleston, LLC
Debra Haskell-Direct Examination by Mr. Babcock
March 27, 2019

1 Q. Alright. Let's look at them briefly. Turn your
2 attention, please, to C-28.

3 THE COURT REPORTER: C? I'm sorry.

4 MR. BABCOCK: C-28.

5 [Whereupon, the witness is shown photograph]

6 Q. [Mr. Babcock] First ---

7 A. --- yes ---

8 Q. --- before we talk about the photograph, would you
9 please identify your first comparable sale?

10 A. Yes. The first comparable sale I used is an office
11 building at 578 East Bay Street in ---

12 Q. --- and look ---

13 A. --- in Charleston.

14 Q. And look at C-28. Is that a photograph of that
15 building?

16 A. Yes, it is.

17 Q. Does it fairly and accurately depict it?

18 A. It does, yes.

19 MR. BABCOCK: Your Honor, we'd offer C-28 as the
20 next exhibit.

21 THE COURT: Any objection?

22 MR. WALKER: No objection.

23 THE COURT: Without objection, C-28 is so admitted.

24 [Whereupon, Condemnor's Exhibit Number 28 is
25 admitted into evidence by the Court]

1 [Whereupon, the photograph is shown]

2 Q. [Mr. Babcock] Tell us what we're seeing in the
3 photograph, Ms. Haskell.

4 A. Yes. Obviously, in the middle of the picture is the
5 building itself. What you don't see is there's a
6 railroad track directly behind this property. So it's
7 kind of unique.

8 What is on the right is actually the U.S. Post
9 Office in downtown Charleston. So the location itself is
10 much closer to downtown. It's a better location. But
11 this building was actually built to the -- to resemble
12 the train station that was formerly there.

13 So it's kind of a unique building, two story. It
14 has very good parking at the back, good visibility, and
15 access for vehicular traffic.

16 Q. Tell us about the sales price for that.

17 A. Yes, the sale price is -- was 2,340,000 dollars or
18 273 dollars and 68 cents a foot of building.

19 Q. What I'd like to do is go through your other sales
20 and then you can tell us what you did with those sales.
21 Okay? What was your second sale?

22 A. My second sale was at 1049 Morrison Drive in
23 Charleston.

24 Q. Let me direct your attention to C-29, please.

25 A. Yes.

1 Q. Number C-29 in the notebook.

2 [Whereupon, the witness is shown photograph]

3 A. Yes. This is a picture of that property.

4 Q. And it's a fair and accurate representation?

5 A. Correct.

6 MR. BABCOCK: Your Honor, we'd offer C-29.

7 THE COURT: Any objection?

8 MR. WALKER: No objection, Your Honor.

9 THE COURT: So admitted.

10 [Whereupon, Condemnor's Exhibit Number 29 is
11 admitted into evidence by the Court]

12 [Whereupon, the photograph is shown]

13 Q. [Mr. Babcock] Tell us about that property.

14 A. Yes. This property is actually -- it was -- there
15 were two tenants on the first floor -- one on the first
16 floor and one on the second floor.

17 The grantee or the buyer of this property planned to
18 use the second floor for their own offices, and then they
19 leased the first floor out. And, again, this had
20 adequate parking in the back. It was a small site, a
21 relatively small office building, with parking in a
22 prominent location.

23 Q. And what was the sales price for that building?

24 A. 1,950,000 dollars.

25 Q. I'd like to shift now to your third sale. What was

1 your third comparable sale?

2 A. The third sale was at 1314 Rutledge Avenue. Again,
3 here in Charleston.

4 Q. I'd like to direct your attention to C-30.

5 [Whereupon, the witness is shown photograph]

6 Q. What is that a photograph of?

7 A. That is a picture of the building.

8 Q. Is that a fair -- I'm sorry. Is that a fair and
9 accurate representation?

10 A. Correct. Yes.

11 MR. BABCOCK: Your Honor, we'd offer that as Exhibit
12 C-30.

13 THE COURT: Any objection?

14 MR. WALKER: No objection.

15 THE COURT: C-30 is so admitted.

16 [Whereupon, Condemnor's Exhibit Number 30 is
17 admitted into evidence by the Court]

18 [Whereupon, the photograph is shown]

19 Q. [Mr. Babcock] If you would, tell us what we see in
20 that photograph, Ms. Haskell.

21 A. Yes. That's the building itself. And it's
22 interesting. This, if I may, this was constructed as a
23 church and it had been -- the former owner had converted
24 the building to office space. And as they said, the only
25 thing -- it was in good condition. The only thing the

1 buyer needed to do was I guess they took out the
2 baptismal font that was in the front. They didn't think
3 they needed that. But it's a nice building, a good
4 location, close to downtown Charleston.

5 Q. And what was the sales price for that transaction?

6 A. 1,395,000 dollars.

7 Q. Now, let's go to your next comparable sale, sale
8 four. And where is that located?

9 A. This is located at 1930 Charlie Hall Boulevard in
10 Charleston.

11 Q. And I would direct your attention, please, to C-31.

12 [Whereupon, the witness is shown photograph]

13 Q. Is that a photograph of that property?

14 A. Yes.

15 Q. And it's a fair and accurate representation?

16 A. Correct.

17 MR. BABCOCK: Your Honor, we'd offer that as the
18 next exhibit, C-31.

19 THE COURT: Any objection?

20 MR. WALKER: No objection, Your Honor.

21 THE COURT: C-31 is so admitted.

22 [Whereupon, Condemnor's Exhibit Number 31 is
23 admitted into evidence by the Court]

24 [Whereupon, the photograph is shown]

25 Q. [Mr. Babcock] Ms. Haskell, tell us what we see on

1 that photograph.

2 A. Well, you see the building itself, and the parking
3 lot.

4 Q. And would you describe for us, or tell us, what the
5 sales price was for that transaction?

6 A. Yes. It was a million nine-hundred and sixty-seven
7 thousand 1,967,000 -- 967,500 dollars.

8 Q. And your final comparable sale was located where?

9 A. 2860 Tricon Street in North Charleston.

10 THE COURT REPORTER: Tricon?

11 THE WITNESS: Tricom.

12 Q. [Mr. Babcock] And I'd like to direct your attention
13 to C-32.

14 [Whereupon, the witness is shown photograph]

15 Q. Is that a photograph of that comparable?

16 A. Yes.

17 Q. A fair and accurate representation?

18 A. Yes.

19 MR. BABCOCK: We'd offer that as Condemnor's Exhibit
20 C-32.

21 THE COURT: Any objection?

22 MR. WALKER: No objection.

23 THE COURT: C-32 is so admitted, without objection.

24 [Whereupon, Condemnor's Exhibit Number 32 is

25 admitted into evidence by the Court]

1 [Whereupon, the photograph is shown]

2 Q. [Mr. Babcock] Alright. Tell us what we see in that
3 photograph.

4 A. This is a picture of the building, and you're
5 looking at the parking lot in front. This was a medical
6 office building, so it was -- the interior finish was
7 very nice.

8 Q. And what was the sales price for this transaction?

9 A. It was 1,560,000 dollars.

10 Q. Now, tell us, Ms. Haskell, generally, once you had
11 those comparables, what did you do to develop an opinion
12 of value for the subject property?

13 A. Well, I -- once I had -- once I had the comparables
14 and had verified it, and had the information that I
15 needed, understanding that each -- these are properties
16 unique with different physical locational characteristics
17 they can be similar, if they are a little different.

18 So I did what we call an adjustment process, which
19 I've used for qualitative and quantitative adjustments.
20 Which basically you just try to -- I do it in a number of
21 different ways. I do sensitivity analysis and try
22 different adjustments to see which component affects
23 value.

24 Again, a buyer looks at property, they look at the
25 location, they look at the physical characteristics, the

1 building size, the land area, land-to-building ratio,
2 which is -- allows parking, the quality of construction,
3 the interior condition, and the functionality of the
4 interior design. So in looking at those factors, I
5 compare each individual sale to the property that I am
6 appraising.

7 Q. So is that for -- using that analysis, did you
8 develop an opinion as to the subject property from a
9 sales comparison approach on the date of take on October
10 19, 2017?

11 A. Yes.

12 Q. And what was that?

13 A. It was 1,850,000 dollars.

14 Q. Now, let's turn our attention to the income
15 analysis. Did you use that approach?

16 A. I did, yes.

17 Q. Tell me what you did in using the income analysis.

18 A. Well, similar to the sales comparison approach, I
19 identified buildings that were leased for office
20 purposes. Again, I looked at small, or smaller,
21 buildings that were either single-tenant buildings or
22 buildings that, you know, were divided.

23 I, again, drove around, looked at the properties to
24 determine what the location was like; if I felt that they
25 are comparable sales. I think the key to it, similar to

1 a buyer, is would the same tenant lease the space that
2 would lease the property that you're appraising. So I
3 determined that four properties that I looked at gave me
4 a very good indication of market rent for the Gateway
5 property.

6 Q. And using those -- that information, did you develop
7 an opinion of value for the Gateway property as of
8 October 19, 2017?

9 A. Yes.

10 Q. And what was that?

11 A. 1,700,000 dollars. I'm sorry. 1,600,000 dollars.

12 Q. And, finally, Ms. Haskell, did you utilize the cost
13 approach?

14 A. No, I did not.

15 Q. Did you consider the cost approach?

16 A. I considered it, yes, of course.

17 Q. Why didn't you use it?

18 A. Well, because in a building that's not new, the sort
19 of estimates of both physical deterioration and
20 functional obsolescence are very speculative. You could
21 use cost manuals and sort of have it.

22 This particular building, there was some special
23 unusual characteristics which really would, in my
24 opinion, depreciate faster. But I felt confident that I
25 had good data from both the sales comparison approach, as

1 well as the income capitalization approach. And, more
2 importantly, that any buyer looking to acquire this
3 property, those are the methods they would use.

4 I did not feel that they would use the cost
5 approach, number one, because of the age of the building
6 and the depreciation that it had experienced over the
7 ten-year period.

8 Q. So, again, your figure for using the sales
9 comparison was what?

10 A. 1,850,000.

11 Q. And your figure using the income analysis was what?

12 A. 1,600,000 dollars.

13 Q. And you took those two figures, and how did you
14 reconcile them?

15 A. Well, I looked, again, at what I thought would be a
16 buyer's motivation and I felt like that the most likely
17 buyer of this property would probably be an owner-user,
18 to use it as a single-tenant building --

19 THE COURT REPORTER: To use it as a single?

20 THE WITNESS: Tenant building.

21 A. And I just felt that the cost approach was -- I
22 weighed that a little more heavily. I think to use the
23 two approaches was very ---

24 Q. [Mr. Babcock] --- I'm sorry; the cost approach?

25 A. No. I'm sorry; the income capitalization approach.

1 I think to use the two approaches is good because they
2 supported one another. They came in within a fairly
3 narrow range.

4 But I felt like the income capitalization approach
5 -- I'm sorry, the sales comparison approach gave me a
6 little bit better indication, so I decided that -- so I
7 reconciled both approaches to 1,750,000 dollars.

8 Q. And that was your figure for just compensation in
9 this case; is that right?

10 A. Correct.

11 MR. BABCOCK: Answer any questions that Mr. Walker
12 may have.

13 THE COURT: Alright. Before you get up, Mr. Walker,
14 let -- tell you what we're going to do. Ladies and
15 gentlemen of the jury, I'm going to let you break for
16 lunch at this time.

17 Please ma'am, please, sir, do not discuss the case
18 with each other. Leave your notepads in the jury
19 assembly room. And you know what's coming; its coming.
20 Do not to ride by the site at lunchtime because I may be
21 riding over that way. So, please, ma'am, please, sir,
22 don't do that.

23 Enjoy your lunch. We're going to -- we're going to
24 convene back at two o'clock. It may be about a couple of
25 minutes after, but not too much after that, so if you-all

1 could just try to be back at two o'clock. Okay?

2 [Whereupon, the jury exits at 12:20 p.m.]

3 THE COURT: Alright. Ma'am, you can -- you can step
4 down right now. Do not talk to that group over there
5 [indicates] about the case.

6 [Whereupon, the witness exits the witness stand]

7 THE COURT: Alright. Let's go over a few things,
8 gentlemen, while we've got a little time.

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1 CHARGE CONFERENCE

2 THE COURT: On the charges, I did briefly look at --
3 look at some of them I know we've got some dispute. I
4 need to kind of discuss two things with you, the charges
5 and also I am without a law clerk today or tomorrow, so
6 as far as preparation of some verdict form, I will need
7 the assistance of somebody to do that. But we'll cover
8 that base.

9 Alright I have -- of course, you know, I've got --
10 I've got my standard charges that I use in civil cases.
11 You know, the preponderance of the evidence, you know,
12 and that kind of thing. And I've even got an expert
13 witness charge that's probably not as detailed as the one
14 that you gave me. But I may use the one that you gave
15 me, if there's no dispute. But who do I start with? Who
16 wants to tell me -- y'all have exchanged these, so
17 where's the dispute? Tell me where the dispute is.

18 MR. BABCOCK: We have a dispute with some of them.
19 I didn't know whether they've had ---

20 THE COURT: --- okay. Well, let me ask it this way.
21 As far as the Condemnor's request to charge, any dispute
22 on that side?

23 MR. LINTON: Yes, sir. Your Honor, we have a --
24 it's basically -- I think our dispute with their charges
25 and their dispute with our charges are going to be the

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1 same discussion as we've had over the course of the last
2 several days on fair market value, cost approach ---

3 THE COURT: --- let's go through them. Let's go
4 through them.

5 MR. LINTON: Yes, sir.

6 THE COURT: I've got Condemnor's request to charge
7 all in front of me, so we can -- so we can be concrete
8 and sequential, let's just go through each one. Let me
9 get my glasses. Let me see. Condemnor's request to
10 charge number one, is everybody okay with that?

11 MR. LINTON: Yes, Your Honor. It's similar to ---

12 THE COURT: --- it's similar to Landowner's request
13 to charge -- you know if you got a designated number
14 we've got similar request to charge.

15 MR. LINTON: To one.

16 THE COURT: To one?

17 MR. LINTON: Yes, sir.

18 THE COURT: Alright. So that's -- one and one is
19 pretty similar, so I don't have to read all of them.
20 This says -- I'm looking at Condemnor's request to charge
21 number two. Is that -- let's see. Everybody is okay
22 there?

23 MR. LINTON: And, Your Honor, our objection to this
24 charge is just that it is -- it's a portion of the law.
25 It says the compensation; the property owner is entitled

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1 to a fair market value property. We have a charge on the
2 case that we've been discussing, the Carolina ---

3 THE COURT: --- which one? Which one is it?

4 MR. LINTON: --- Power case, which will be our
5 charge ---

6 THE COURT: --- which one?

7 MR. LINTON: Number five, Your Honor, Landowner's
8 request five.

9 THE COURT: Five.

10 MR. LINTON: That cites essentially the first part
11 of Condemnor's two, the approved formula for determining
12 damages and then includes: if that formula is unfair to
13 either party, some other formula may be used. For
14 example, if a church property is involved, another
15 formula would be required because there's no fair market
16 value of a church property.

17 And, Your Honor, a lot of these disputes are of this
18 nature. And one way of doing this is that both of them
19 are essentially a charge on the facts. They say that
20 we've got to use the sales comparison, fair market value
21 approach.

22 THE COURT: Why can't we -- why can't we just charge
23 both?

24 MR. LINTON: We can -- we can just charge both.

25 THE COURT: Leave them -- let the jury figure it out

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1 or decide which one. What do you -- what do you think
2 about it, Mr. Babcock?

3 MR. BABCOCK: Your Honor, in comparing request to
4 charge number two ---

5 THE COURT: --- and then five.

6 MR. BABCOCK: --- Condemnor, and the Landowner's
7 request to charge number five. First of all, Condemnor's
8 request to charge number two is a standard charge that is
9 in the charge books for a condemnation case.

10 THE COURT: That's the one -- that's the one I've
11 got, and I've got that one ---

12 MR. BABCOCK: --- yes, sir ---

13 THE COURT: --- as a standard charge.

14 MR. BABCOCK: The problem with number five is it is
15 not I didn't believe it is a correct application of the
16 law in terms of the dicta that is included. We've talked
17 about it before. That is not the holding in the case.
18 It is dicta. And all the cases since talk in the same
19 talk -- Cardella [phonetic] is one of the most
20 significant cases in the condemnation area, and this is
21 the standard charge in this area.

22 THE COURT: Yeah. And I've got -- I've got
23 Condemnor's charge number two as a standard charge. And
24 I don't -- respond.

25 MR. LINTON: Your Honor, I mean, their charge is

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1 citing a case and our charge is citing a case, and it's a
2 direct quote from that case. And in this particular
3 circumstance where the dispute between the parties on the
4 facts is whether just compensation should be calculated
5 by fair market value sales comparison approach, or by
6 some other approach. It's essentially charging the jury
7 that they should listen to their appraiser, and it's a
8 charge on the facts. And so in this circumstance we just
9 didn't want it to be charged ---

10 THE COURT: --- I don't like the language in here
11 about, for example, if a church property is involved,
12 another form would be required because there is no fair
13 market value for the church property. I really don't
14 like that.

15 MR. LINTON: Can we cut that last sentence ---

16 THE COURT: --- I really don't like that ---

17 MR. LINTON: --- and include the rest?

18 THE COURT: Well, if I charge this -- this is what
19 it'll say, if I charge it: the approved formula for
20 determining damages in a condemnation case in this state
21 provides for payment to the Landowner of fair market
22 price of the property taken. If that formula -- if that
23 formula is unfair to either party, some other formula may
24 be used. That's -- that's that ---

25 MR. LINTON: --- that would be fine -- that would be

1 fine with the Landowner, Your Honor.

2 THE COURT: I knew it would be. I knew it would be.
3 I mean, you know, that's -- you know, yeah, I knew it
4 would be. What do you say, Mr. Babcock?

5 MR. BABCOCK: Your Honor ---

6 THE COURT: --- you know -- go ahead.

7 MR. BABCOCK: I think there's a problem with that
8 and it's the same problem we were talking about. If you
9 look at our request to charge number four, which is also
10 a standard charge, it uses the Carolina Power and Light
11 case, that very case, and it talks about market value of
12 the property.

13 That is a standard charge in South Carolina. It's
14 used in almost every condemnation case. This is not --
15 this is dicta and it would be inappropriate for it to be
16 charged.

17 THE COURT: Well, you know, considering what the
18 jury has heard, you know, I -- you know, I hear what
19 you're saying, Mr. Babcock, but I think -- I think that
20 they -- I've got to give them some of the Kool-Aid.

21 And, you know, and what I was thinking about was if
22 I could phrase -- or we could phrase that second
23 sentence, if that formula -- the only thing I'm really
24 grappling with is this whole thing about being unfair.
25 You know, I think if we could sort of couch something

1 that puts it in the jury's lap to give them -- if, in
2 fact, they thought another formula should be used, then
3 let them make that factual determination. And, you know,
4 I don't know if this sentence does that. But, you know,
5 I think I need -- I want to couch a -- for example, I'm
6 going to scratch out, for example, church properties and
7 blah, blah.

8 I'm taking that out. Another formula would be
9 required. But I'm leaving in the first sentence. But
10 the second sentence, if that formula is unfair to either
11 party, some other formula may be used. Let me think a
12 second.

13 MR. LINTON: We have a suggestion, Your Honor.

14 THE COURT: Yeah. You guys tell me.

15 MR. LINTON: How about, Your Honor, if we took it
16 back to the Constitution and said if that formula -- if
17 you determine that that formula would not result in just
18 compensation, some other formula may be used.

19 MR. BABCOCK: Same problem, Your Honor. It's open-
20 ended. That's not the law in the state of South
21 Carolina. The law is what Carolina -- trying to declare
22 statutes and cases unconstitutional.

23 THE COURT: But that language there comes right out
24 of -- I haven't read that case in its entirety, but that
25 language right there comes directly out of that Carolina

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1 Power case; right?

2 MR. LINTON: Yes, Your Honor.

3 MR. BABCOCK: And, Your Honor, look at request
4 number four. That's the holding in the case. The
5 paragraph ---

6 THE COURT: --- your request number four?

7 MR. BABCOCK: Our request number four. Yes, sir.

8 THE COURT: Okay.

9 MR. BABCOCK: That's the holding in the case.
10 Remember, this is a case where they were talking as I
11 recall, it was vacant land, farm land, and the landowner
12 wanted to do some kind of dividing it up and was using
13 that concept of dividing the property up and then having
14 some other highest and best use.

15 And the Court said it was speculative and didn't
16 allow it. It talked about what fair market value was,
17 and that's what we quoted on number four. This is a
18 standard charge. That's the law in South Carolina.

19 THE COURT: Well, I hear you, Mr. Babcock. But
20 going back to my original statement, I'm just trying to
21 come up with something. Now, I can -- that gives this
22 jury, based on what they've heard, some -- if they find
23 the factual basis for using some other formula, it would
24 sort of -- I think they really need to taste that a
25 little bit. Whether they agree -- whether you agree with

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1 it or not, they need to see it.

2 MR. BABCOCK: Well, Your Honor, as I understand, the
3 jury charge is supposed to be giving what the law is in
4 the state of South Carolina so that the jury just doesn't
5 do whatever it wants. And that's my problem with this is
6 it effectively gives them the opportunity to do whatever
7 they want.

8 THE COURT: Tell me -- let me -- let me -- we'll
9 come back to that. What other issues? Okay. Let's come
10 back. That's Landowner's request to charge five.

11 Okay. I've gotten one -- I've got Condemnor's
12 request to charge two, which I think the only issue with
13 that, you wanted me to add that language in five?

14 MR. LINTON: That's correct, Your Honor.

15 THE COURT: Okay. So let's go back. Condemnor's
16 request to charge three, that's pretty standard.

17 MR. LINTON: We're fine with that one, Your Honor.
18 We have a similar charge.

19 THE COURT: Yeah. What's yours?

20 MR. LINTON: Ours was seven.

21 THE COURT: Was seven -- alright. Yeah, you're
22 saying essentially the same thing. Condemnor's request
23 to charge four, that's pretty much on the issue of market
24 value. You shouldn't have an issue with that, should
25 you?

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1 MR. LINTON: It's just the same issue as two, and
2 they're going to charge part of that case we'd like to
3 charge the whole case. But it's the same thing. We're
4 fine with the charge, their charge, as long as it is what
5 we've been talking about.

6 THE COURT: Wait a second. And number five is --
7 you shouldn't have any problems. I'm still on
8 Condemnor's request to charge five. You should be okay
9 with that. Is that -- you're not okay with that?

10 MR. LINTON: It's repetitive of the last couple of
11 charges, but so with the same -- we have the same
12 qualification, Your Honor. And it cites ---

13 THE COURT: --- you just want me to charge that one
14 sentence and then you won't say anything? That's what
15 you -- you just want me to charge that one sentence and
16 you wouldn't get up anymore.

17 MR. LINTON: I've got -- I've got -- I've got one
18 other charge I need to stand up for.

19 THE COURT: Okay. Let's go to Condemnor's request
20 to charge six. Let's see. Well, this is that --- on
21 that with experts; right?

22 MR. LINTON: Yes, sir.

23 THE COURT: I'm probably going -- I think you've got
24 a better one. Wait. Let me go back.

25 MR. LINTON: Eight.

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1 THE COURT: Eight? I think eight. Let me go ahead

2 -- I was looking at...

3 [Whereupon, the Court reviews documents]

4 MR. LINTON: That's out of the charge book, Your
5 Honor.

6 THE COURT: Yeah, it...

7 [Whereupon, the Court reviews documents]

8 THE COURT: Anyway, eight is on expert witnesses;
9 right?

10 MR. LINTON: Landowner's eight? Yes, Your Honor.

11 THE COURT: Wait a minute. I'll figure it out.

12 [Whereupon, the Court reviews documents]

13 THE COURT: Condemnor's request number seven.

14 MR. BABCOCK: Your Honor?

15 THE COURT: What?

16 MR. BABCOCK: On request number eight for the
17 Landowner, which was the expert witness.

18 THE COURT: Yeah.

19 MR. BABCOCK: Your Honor, I don't have a problem
20 with the first three paragraphs. My problem is payment
21 of expert witnesses. And that's not coming from any
22 case. That's included in Judge Anderson's charge, but
23 that's not case-based. They've heard testimony. We can
24 argue what we want to argue. But that's not really a law
25 issue.

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1 THE COURT: Let me tell you what I was going to say.
2 I've got a standard...

3 [Whereupon, the Court reviews documents]

4 THE COURT: I was trying to look for number eight.
5 What do you say about what he just said about number
6 eight?

7 MR. LINGON: Your Honor, it's in the charge book but
8 we've got plenty of other things we need to sort out with
9 the charge.

10 THE COURT: So you're good with number seven?

11 MR. LINTON: We can -- we can live with that, Your
12 Honor.

13 THE COURT: You're good with number seven. You only
14 had seven; right?

15 MR. BABCOCK: Yes, sir.

16 MR. LINTON: And just for the record, Your Honor,
17 on seven, the same qualification it mentions the
18 definition.

19 THE COURT: Yeah. Oh. Here it is.

20 [Whereupon, the Court reviews documents]

21 THE COURT: Okay. Since I was sent here -- sent
22 here to Charleston to make decisions, I'm going to make
23 decisions. And the decision, I'm going to charge that
24 one sentence. I'm going to take out -- let's go back to
25 that. And let's go back to -- so let me -- let's go over

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1 this. I'm going to charge Condemnor's one, two, three,
2 four, five, six and seven. And I am going to --
3 Landowner's request to charge number five, I'm going to
4 read: the approved formula for determining damages in
5 condemnation cases in this state provides for payment to
6 the Landowner of fair market price of property taken. If
7 that formula is unfair to either party, some other
8 formula may be used. That's going to be the -- and I --
9 your exception to that charge, Mr. Babcock, is noted for
10 the record.

11 MR. BABCOCK: Thank you, Your Honor.

12 THE COURT: Alright. That would be the charges that
13 will be submitted. And, again -- go ahead, counsel.

14 MR. LINTON: Your Honor, we don't have to go through
15 all of our charges if the Court isn't inclined. But
16 number three is...

17 THE COURT: Yours?

18 MR. LINTON: Our charge on just compensation, which
19 is from the charge book, that I think is particularly
20 important. It's the charge on the Constitution ---

21 THE COURT: --- you think yours is better than his?
22 He said it somewhere.

23 MR. LINTON: I think he said -- I saw a mention of
24 just compensation, but I did not see the language the
25 amount Condemnor should pay Landowner to adequately

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1 compensate the Landowner.

2 THE COURT: I'll charge it.

3 MR. LINTON: Okay.

4 THE COURT: I'll charge it.

5 MR. BABCOCK: And I don't object to that.

6 THE COURT: Alright. I'll make that a part of --
7 I'll charge -- that's Landowner's request to charge
8 number three; right? Number three?

9 MR. LINTON: Yes, Your Honor.

10 THE COURT: Yeah. I'll charge that. Okay, between
11 the two of you, you've got to come up with a verdict form
12 and get it to me. Can y'all do that for me? Be kind
13 enough to do that for me?

14 MR. BABCOCK: Certainly, Your Honor.

15 THE COURT: Okay. We -- anything further before we
16 adjourn for lunch?

17 MR. WALKER: Nothing from the Landowner.

18 MR. BABCOCK: Nothing from the Condemnor, Your
19 Honor.

20 THE COURT: Okay. So we'll adjourn, Madam Court
21 Reporter, until about two o'clock and we'll -- we might
22 start about three or four minutes after, but we'll be
23 close to two o'clock. Okay?

24 MR. WALKER: Thank you, Your Honor.

25 THE COURT: Thank you. Have a good one.

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1 MR. BABCOCK: Thank you, Your Honor.

2 [Whereupon, court is in recess from 12:40 p.m. until
3 2:02 p.m.]

4 THE COURT: Alright. Anything before we bring the
5 jury out?

6 MR. BABCOCK: Not from Railways, Your Honor.

7 THE COURT: Alright.

8 MR. WALKER: Nothing from the Landowner.

9 THE COURT: Okay. I'm assuming y'all have got
10 somebody working on the verdict forms. We'll get to
11 that.

12 MR. BABCOCK: We've got the verdict form here.

13 THE COURT: Alright. I'll see it at the appropriate
14 time. Alright. Nothing from either side, then bring the
15 jury back. And -- yes, ma'am. And you're still under
16 oath.

17 [Whereupon, the witness returns to the stand]

18 THE COURT: Alright. And if you would, you're a
19 little soft-spoken so kind of elevate the pitch a little
20 bit.

21 THE WITNESS: Oh. I thought it was too loud.

22 THE COURT: No. Maybe you can pull a little closer
23 to the microphone. It might -- that might be helpful.

24 THE WITNESS: Oh. Okay. Thank you.

25 [Whereupon, the jury enters the courtroom at 2:11

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1 p.m.]

2 THE BAILIFF: All present, Your Honor.

3 THE COURT: Alright. Thank you, sir. Alright.

4 Counsel?

5 MR. WALKER: May it please the Court.

6 THE COURT: Cross-examination.

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1 CROSS-EXAMINATION

2 BY MR. WALKER:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. Ms. Haskell, in your direct examination, you
6 mentioned that you work for Winthrop Real Estate
7 Advisors; correct?

8 A. Correct.

9 Q. And that is your company?

10 A. It is.

11 Q. And at the current time, you're the owner and
12 representative or employee of Winthrop Real Estate
13 Advisors; correct?

14 A. Yes.

15 Q. Okay. So there aren't other advisors running
16 around. You are the advisor?

17 A. I'm it.

18 Q. Okay. Did you -- you did not view the building or
19 the property until months after the date of the taking,
20 which was October, 2017; correct?

21 A. Correct.

22 Q. At that time, Life Spaces had moved out; correct?

23 A. Correct.

24 Q. So you never saw the building when it was fully
25 functional and the occupants were in the building using

1 it?

2 A. No.

3 Q. Alright. And looking at your appraisal report that
4 was dated August 27th, 2018? Does that sound correct?

5 You can check.

6 A. Yes. Let me -- that sounds correct.

7 [Whereupon, the witness reviews document]

8 Q. So your appraisal, when you finally finished it, was
9 roughly ten months after the date of taking?

10 A. Correct.

11 Q. And unlike Mr. Ford, you did not seek any
12 information related to the original cost of construction
13 of the building?

14 A. No. The case was in litigation.

15 Q. And you were not -- and I think you hit on this.
16 Your appraisal was obviously not the basis for the offer
17 of 1.8 million dollars to the Fabian family before the
18 condemnation was filed?

19 A. No, it was not.

20 Q. In your direct examination, you mentioned that there
21 are other properties, that you're involved with, with
22 Palmetto Railways; is that correct?

23 A. Correct.

24 Q. In all of those cases, you were brought in after the
25 appraisal was done that set the value for the offer to

1 the owner; correct?

2 A. Correct.

3 Q. And those would principally be cases where the
4 Landowner, like the Landowner here, didn't agree with the
5 value that was offered; right?

6 A. Yes.

7 Q. So you have been, in a way, the chosen appraiser of
8 Palmetto Railways when a property owner doesn't accept
9 the first valuation by Bill Ford?

10 A. I don't know that I could say the chosen appraiser,
11 but I have been asked to do several appraisers --
12 appraisals.

13 Q. You're the go-to appraiser for litigation; right?

14 A. For Palmetto?

15 Q. You're the go-to, Palmetto Railways' go-to,
16 appraiser for litigation involving property owners on the
17 southern connection who do not accept the valuation that
18 was tendered to them?

19 A. I have done those appraisals. They may use other
20 people, I don't know.

21 Q. But all the -- all the appraisals that you have
22 done, formal appraisals, have been appraisals involving
23 litigation?

24 A. Correct. For Palmetto Railways, correct.

25 Q. Yes. You started -- or came to South Carolina when?

1 In?

2 A. 2006.

3 Q. And now, if I understand it, you have a -- you're
4 six months here and six months where?

5 A. Actually, seven, almost eight, months here.

6 Q. Okay.

7 A. And the balance of the time I'm in Massachusetts.

8 Q. And when we took your deposition, you were still a
9 resident of Massachusetts?

10 A. Yes.

11 Q. Is it safe to say that you do not have tremendous
12 familiarity with the Charleston market?

13 A. No, that's not correct.

14 Q. Okay. Have you ever rendered an appraisal for a
15 bank in South Carolina, in the Charleston area, for
16 purposes of their writing a loan?

17 You know, when the bank says we may issue a loan but
18 we need an appraisal? Have you ever done an appraisal
19 like that and provided it to the bank so that the bank
20 can make a decision on whether to loan money?

21 A. No.

22 Q. Okay. In fact, all the appraisals that you've done
23 in the Charleston area have been appraisals for
24 litigation?

25 A. I've done a couple that were not but, mainly, yes.

1 Q. Well, I thought in your deposition, when we went
2 over it, we went over the cigar factory and another one
3 but that the ones that went all the way to appraisal were
4 in litigation.

5 A. There may be others. But that -- it comes to mind
6 now, yes.

7 Q. Alright. Where are you based in South Carolina?

8 A. In Columbia.

9 Q. In this case, you're charging by the hour?

10 A. Yes.

11 Q. And what's your hourly rate?

12 A. Hourly rate is 450 dollars an hour.

13 Q. Has that been increased recently?

14 A. It was increased from 400 dollars an hour.

15 Q. In your deposition, I thought you mentioned that you
16 had increased it to 475 an hour.

17 A. I may have.

18 Q. Okay.

19 A. It's increased, and I'm not sure -- exactly sure
20 what period.

21 Q. Since you're based in Columbia, when you come down
22 to Charleston to do an appraisal, you charge for that
23 travel time; correct?

24 A. Not necessarily, no.

25 Q. You have in this case, though, to some extent?

1 A. Not always. It depends.

2 Q. Well, here I've got the bill that you rendered in
3 this case. Up through the time of your appraisal, your
4 bill was what in this case?

5 A. I don't recall.

6 Q. Almost 17,000 dollars, does that sound familiar?

7 A. Would that include the deposition, as well?

8 Q. No, ma'am.

9 A. I just don't recall.

10 Q. Okay. I'm going to hand you Defendant's Exhibit 79,
11 which is a stapled-together collection of invoices and
12 cover letters, along with an itemization of charges, and
13 ask you if you can identify that as a ledger of your
14 bills along with the bills.

15 MR. WALKER: May I approach, Your Honor?

16 THE COURT: Yes.

17 [Whereupon, Mr. Walker proffers documents to the
18 witness]

19 Q. [Mr. Walker] Does this appear to be your billings
20 to Palmetto Railways up into September of 2018?

21 [Whereupon, the witness reviews documents]

22 A. These are -- these are my bills. Whether they add
23 up -- I'm sure they do.

24 Q. And the cover -- you have no reason to doubt the
25 ledger that the total for the period through September of

1 2018 was 131,957 dollars and 34 cents, do you?

2 A. That's probably correct, yes.

3 MR. WALKER: Your Honor, Landowner offers
4 Defendant's 79 into evidence.

5 THE COURT: Any objection?

6 MR. BABCOCK: Without objection.

7 THE COURT: Without objection, so entered.

8 [Whereupon, Defendant's Exhibit Number 79 is
9 admitted into evidence by the Court]

10 Q. [Mr. Walker] Early in the case we admitted Exhibit
11 78, which were billings that you did between September of
12 last year and February of this year. And do you remember
13 that those were about 50,000 dollars that you billed to
14 Palmetto Railways?

15 A. It's possible. I don't recall exactly.

16 MR. WALKER: May I approach the witness?

17 THE COURT: Yes.

18 MR. WALKER: Handing the witness Exhibit 78,
19 Landowner's 78.

20 [Whereupon, Mr. Walker proffers documents to the
21 witness]

22 Q. [Mr. Walker] If you would, if you could take a quick
23 look at that and see if that refreshes your recollection.

24 [Whereupon, the witness reviews documents]

25 A. Yes. These are -- these are my invoices.

1 Q. [Mr. Walker] As I read it, you have one invoice for
2 13,900.

3 A. Correct.

4 Q. And another for 37,238; so those add up roughly to
5 50,000 dollars?

6 A. Yes.

7 Q. Alright. If I understand your testimony correctly,
8 your opinion is that the highest and best use of the
9 property, 1799 Meeting Street, is as an office building?

10 A. Correct.

11 Q. As I understand your testimony, too, you did not
12 observe anything unusual about the building, that it was
13 both designed and constructed as an office building?

14 A. There's ---

15 Q. --- your estimation was this -- I'll rephrase that.
16 In your estimation, was this building designed and
17 constructed to be an office building?

18 A. Yes.

19 Q. Alright. When you went to visit it after the date
20 of taking, you didn't see anything that in your
21 estimation indicated that it was unusual or anything
22 other than an office building; correct?

23 A. It was an office building. As I said, I went into
24 the building after the improvements were -- the business
25 improvements were gone, because I was looking at the real

1 estate, what a -- what a buyer would look at in acquiring
2 the property.

3 Q. Is it also your opinion that for someone to do an
4 office in this space that was retained by eLifespaces
5 -- that would be most of the first floor -- that there
6 would be a considerable amount of work that would need to
7 be done to make it a suitable office since there are no
8 windows in some rooms? And I think in your words, you
9 said the floor plan is chopped up.

10 A. It was. You could certainly use it as office, I
11 mean, and put -- the improvements that you would need to
12 make would be depending upon the use.

13 There's always tenant improvements that are made, or
14 improvements that are made for a specific user. But it
15 could have been converted easily, yes.

16 Q. The bottom line of your opinion is that this was,
17 plain and simple, an office building and it should be
18 compared with the sale of other office buildings in the
19 immediate area or Charleston market?

20 A. Yes.

21 MR. WALKER: That's all I have at this time, Your
22 Honor.

23 THE COURT: All right.

24 MR. BABCOCK: Very briefly, Your Honor.

25

1 MR. BABCOCK: Thank you.

2 THE COURT: Alright. Anything else?

3 MR. WALKER: Nothing further, Your Honor.

4 THE COURT: Alright. Thank you, ma'am. You can
5 step down.

6 [Whereupon, the witness is excused and exits the
7 witness stand]

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1 THE COURT: Alright. Any other witnesses?

2 MR. BABCOCK: Not for the Railway, Your Honor.

3 THE COURT: Alright. The Condemnor rests? The
4 Condemnor rest?

5 MR. BABCOCK: Yes, sir.

6 THE COURT: Alright. We're going ---

7 MR. WALKER: We have no reply or rebuttal, Your
8 Honor.

9 THE COURT: Alright. Take the jury out for a
10 minute.

11 [Whereupon, the jury exits at 2:26 p.m.]

12 THE COURT: Any motions from the Landowner?

13 MR. WALKER: No motions from the Landowner, Your
14 Honor.

15 THE COURT: Alright. If y'all are ready we'll go
16 directly -- yes?

17 MR. BABCOCK: I do have one.

18 THE COURT: Okay. Yes, sir.

19 MR. BABCOCK: Under the cross-examinations, I can do
20 a motion, Your Honor.

21 THE COURT: Yes, sir.

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Renewed Motion for Directed Verdict
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RENEWED MOTION FOR A DIRECTED VERDICT

MR. BABCOCK: Your Honor, we do renew our directed verdict motion for the same grounds as we submitted to the Court at the conclusion of the Landowner's testimony.

THE COURT: Right.

MR. BABCOCK: At this point, the only additional issue I'll raise is the Court now has the testimony of Ms. Haskell and so she's testified to 1,750,000 dollars. And we would request a directed verdict in the amount of 1,800,000 dollars because we said from the very start we didn't want any less than the original offer to the Landowner. So I renew the directed verdict motion on the grounds that I gave to the Court previously.

THE COURT: Alright. The same rationale, counsel?

MR. WALKER: Everything's the same. The same rationale, the same response, argument. Compressed, that's all we have to say.

THE COURT: Alright. And I'm going to echo the same sentiment I gave earlier, and I'll go ahead and deny the motion.

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1 THE COURT: Are y'all ready to go into closing?
2 You need a little time?

3 MR. WALKER: Just a minute or two while the jury is
4 out.

5 THE COURT: Yeah.

6 MR. WALKER: And then we'll be ready to ---

7 THE COURT: --- can I peek at that verdict form you
8 have? Could I look at that?

9 MR. BABCOCK: Your Honor, may Ms. Haskell be
10 excused?

11 THE COURT: Yes, ma'am. You can be excused, if you
12 would like.

13 [Whereupon, counsel and the Court review the verdict
14 form]

15 [Off the record momentarily]

16 [Whereupon, the jury enters at 2:34 p.m.]

17 THE BAILIFF: All jurors are present, Your Honor.

18 THE COURT: Alright. Ladies and gentlemen of the
19 jury, this is the portion of the trial that the lawyers
20 are given an opportunity to give their closing arguments.
21 All parts of the trial are important, but I want you to
22 pay particular attention, you know, to the arguments of
23 both sides because at the beginning both sides gave an
24 opening statement and now it's time for both sides to
25 give a closing statement. So pay attention. You still

1 can utilize your notepads, if you would like, during
2 their closing statements.

3 MR. WALKER: Thank you.

4 THE COURT: Yes, sir.

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1 CLOSING ARGUMENT

2 BY MR. WALKER:

3 Mr. Foreman, members of the jury, the first thing I
4 want to do is to thank you for all the time and attention
5 you've given this case over the last couple of days.
6 Anytime a lawyer gets ready to try a case, particularly
7 if they have a bunch of paper, the lawyers worry, boy,
8 we're going to put that jury to sleep.

9 And the judge will tell us look out, you're putting
10 the jury to sleep. And I have to say you were an
11 exceptional jury and you stayed focus the whole time
12 because it wasn't easy and there were tons of pictures
13 and a lot of back-and-forth. But I want to thank you for
14 your attention.

15 So now we've gotten to the time of the case where
16 really it's going to be in your hands. The Judge is
17 going to read to you what's known as the jury charge, the
18 law that you're to apply. And it's not that complicated.
19 You're to decide the question of what is just
20 compensation to Mr. Fabian's family company. And I'm
21 going to speak about that a little more in a few minutes.

22 But first, I just want to go back and start where we
23 started, and that is let's talk a second about this
24 property that's the focus of this case. This property is
25 1799 Meeting Street, obviously. This was a family

1 property that was acquired by Mr. Fabian's great-
2 grandmother. This isn't some speculative person. This
3 is a piece of property by the railroad tracks. People
4 probably thought it wasn't that valuable back in the day.
5 And it had basically been neglected over time and just
6 left fallow.

7 Then about ten or twelve years ago, at the behest of
8 the City, and also because Mr. Fabian wanted to do
9 something on his own, the family got together and the
10 family decided, we will go with Fred and his company, our
11 family company, and build this state-of-the-art center.

12 And you heard Fred say that it was future proof.
13 This was not meant to be something that was just going to
14 be a flash in the pan and outdated. And, boy, did he go
15 at it. Because you saw everything, all the special
16 features of the building, and that's going to be a
17 critical, critical fact because the other side is saying,
18 we take your property and we just took an office
19 building; come on; we can go out to North Trident
20 Hospital and grab a building, or we can go to Rutledge
21 Avenue and grab a building; it's similar.

22 I suggest to you it's not similar. There was no
23 proof that this family set about to build an office
24 building. This is anything but an office building. And
25 I think you realize that. So he built it, the family

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Closing Argument-Remarks by Mr. Walker
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1 invested in it. He took a big gamble, in a way, because
2 he was putting a technology center in a part of town that
3 hadn't yet developed. What was up there? Gibson tire
4 across the street. If you look at the aerials, there's
5 really nothing.

6 He was a trailblazer, his family was a trailblazer,
7 and they invested in the community, and they went up
8 there, and the City encouraged him to do it because the
9 City needed to convert that -- or their vision was, this
10 is the digital corridor. And that's what it's known as
11 today. Who went up there first? Who was the first
12 family to go up there and put their money in the future?
13 That man right there [indicates].

14 And it was all good until the railroad came along.
15 And the railroad said we're going to take your property.
16 They have every right to do it. You may disagree. Some
17 people may not say it's the best plan. But they absolute
18 have the power to do it. And when they come and they do
19 it, they have one obligation; that's to fairly compensate
20 him and put it in the same position he was in beforehand.

21 You've heard a lot of back-and-forth about what's
22 just compensation, is it fair market value. Well, it can
23 be fair market value, and in most cases it is fair market
24 value. But every now and then, there's an unusual
25 property that has unique features. That's called a

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1 special-use property or a special-purpose property. And
2 even Ms. Haskell admitted that she's come across some
3 properties like this. And why is that so important? Why
4 is there a determination of whether it was a special-
5 purpose property important? Because that affects your
6 value. Because if you find it was just an ordinary
7 office building, then you would find basically along the
8 lines of what they're saying. If you find that it was
9 more than just an office building, then you would look at
10 the cost approach and come to some resolution, some
11 determination, as to what that value is.

12 When she gave examples, Ms. Haskell gave examples,
13 before lunch of special-purpose buildings, I made a note
14 because she said, one of the buildings that I've done is
15 a biotech center in Massachusetts. Hello. We're talking
16 about a tech center. There were other features. Yes,
17 there was an office, but the mere fact that there was an
18 office upstairs that was later sublet does not change
19 that the most of the down floor was specifically custom
20 made for his use.

21 This may not be a use that we would ever do, but he
22 did it, and he did it because it had value to the owner
23 and it had value to his business. And it's the value to
24 the owner that you're concerned about. So he made that
25 investment, he did it, and the features of that property

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1 you don't see in other places. That's why we went
2 through all those photos with you, to show you that
3 here's this theater room and it's not just a room in a
4 building, it's a -- it's a floating room inside another
5 room and it's got Sheetrock that is called QuietRock, two
6 pieces that weigh 180 pounds a sheet.

7 Everything about that room is different. The walls
8 don't touch, the floor is on springs, the ceiling is on
9 springs. The whole thing is done in order to showcase
10 not just theater technology, but other technology. Next
11 to that is his audio room. Same sort of suspension, but
12 not quite as elaborate. No windows in either one. If
13 this was going to be an office, wouldn't you find a
14 window in it? Is it easily adaptable to a theater that
15 looks like this? I think there are two steps. That's
16 not an office. Who's going to put their office in there?

17 Now, Mr. Hartnett said, when he was asked, well,
18 could you use it as an office? Yeah, we could use it for
19 -- you could use it for a dining -- you could use it for
20 anything, dining room, whatever. It's all possible. But
21 use your common sense. Is that really what this building
22 was designed for?

23 What are they going to say? Well, they point to a
24 couple of things to say, huh, you're aren't getting this
25 one over on us; you're really just did an office

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1 building. We've got this brochure that you provided to
2 our first appraiser back in September of nineteen -- of
3 twenty -- I almost feel its back twenty years, anyway --
4 in 2016 when the appraiser came out. And that was done
5 at the last minute.

6 And if you look at the emails, and you'll have the
7 emails in the jury room, you'll see that that was
8 provided by Mr. Atwell a day or two before the visit of
9 Mr. Ford. And as Mr. Fabian said, I just went to the guy
10 who had helped me lease my space. When I had to cut back
11 my business because of the recession, I had to sublease
12 the upstairs, which was an office.

13 Well, the fact that there's an office up there does
14 not make the rest of the building no more a special-
15 purpose building. You could have a flight simulator. Is
16 that a special-purpose building? I think so. Are there
17 offices? Yes. Does those offices make it not a special-
18 purpose building? No.

19 Look at this. Look at the courthouse, the
20 courtroom. Are there offices here? Yes. Does those --
21 do those offices make this an office building? No;
22 unless you use the methodology of the railroad. And here
23 Mr. Fabian, from the beginning, said it was a special-
24 purpose building. And you're going to have -- and can we
25 have, please, 55? And if you go to the bottom of that,

1 please, Ty. Its Exhibit 55. Both sides went over this
2 exhibit yesterday.

3 [Whereupon, the exhibit is shown]

4 MR. WALKER: Go to the very three bullets down at
5 the bottom. And this was right after the first visit.
6 He was memorializing the visit when Oscar Rucker the
7 right-of-way agent came. What does he say?

8 Expressing concern over the time line; I explained
9 the specialized requirements we would have and the
10 preparation of another facility and the background that
11 led us to this location. And I don't need to explain to
12 you what he means there.

13 And then the bottom, he says: they expressed that
14 would be, Mr. Rowe and Mr. Rucker, the agents of the
15 railway, their preconceived thoughts on our facility were
16 dislodged. That means they came in with some
17 preconceived notions that were pushed aside, discussing
18 with Ford, he's the appraiser, his comfort level in
19 performing the appraisal because of the specialized
20 nature of the building.

21 Mr. Fabian has always considered it a specialized
22 building. The fact that his leasing agent described it
23 as an office building does not make it an office
24 building. So you're going to hear about that. And in a
25 way, it's a little bit of a bait-and-switch. The only

1 reason Mr. Fabian went to his real estate agent was he
2 was told get some information on the building. And he
3 went to the guy who had done something before, and the
4 guy produced it.

5 The next thing I think you're going to hear about is
6 that there are a bunch of photos that show space that
7 could be office space. I kept waiting for photos of the
8 space that was retained by e-life Spaces, the 4800 feet
9 on the first floor, the theater, all the other things
10 that they had.

11 I didn't see any pictures of those. I saw, again
12 and again, the picture of the second-floor office with
13 the kitchenette. That's what we saw. That was the
14 original office of the building that was subleased.
15 Okay. But that's still not the bottom.

16 And then we saw there was a Pilates studio that went
17 into where the Apple store had been, a Pilates studio.
18 Alright. But that's still not the space that was ultra-
19 specialized. The Pilates studio, as you recall, was the
20 Apple room.

21 This company was so advanced in what it did that
22 Apple, the most discriminating of all in terms of who
23 they did business with, selected this building to be its
24 first showroom, retail showroom, in Charleston. And then
25 they got the store over on King Street and there was no

1 need for it. But you aren't going to see any pictures, I
2 didn't see any pictures, of the theater being converted
3 to office space, the acoustical room, or the other
4 facilities that were in there that we saw, or the -- or
5 the back conference room that had all the audio-visual.
6 I didn't -- and we saw the workroom. That looked like
7 inside of some -- of the Million Dollar Man or something,
8 all these tubes going up and different things going
9 through the building.

10 And we looked at the electrical system. There's
11 something that tames the electricity. It brings it in.
12 He said electricity is dirty. The whole building is on
13 this special circuit, completely equalizer, completely
14 designed, because of all the electronics and technical
15 stuff in the building.

16 Then we get back to the foundation itself, which was
17 how many eighty-five-foot pilings, all with rebar welded
18 together so it could be grounded. Because of what? The
19 electronics. A four-foot slab. What do most -- what do
20 most buildings have? I don't think they have a four-foot
21 slab.

22 So you've heard about that and I suggest to you
23 those photos do not show the whole building. You also
24 heard about there was a listing. Mr. Fabian allowed his
25 friend, Daniel Atwell, at Roadstead, when he started his

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1 business and he needed some properties, he volunteered
2 his family properties. But he said I'm not going to sell
3 these but if you need something to get on the website to
4 show a portfolio, you can do it. Was it listed? It was
5 listed, yes. Did he have any intent to sell? No. He
6 had nowhere to go. This was a family property, a
7 generational property. It had been in his family for
8 multiple generations. And I'd ask that you take that
9 into account.

10 I'd also ask for you to take into account, when you
11 consider did he really want to sell it, that his business
12 used that space in a way that nobody else could and it
13 was critical to his business, which gets to his intent of
14 was he really listing it to sell it, or was he listing it
15 as a favor? The overwhelming weight of the evidence is
16 he was listing it as a favor.

17 Then we get to the experts. You heard from Mr.
18 Hartnett, who's spent his whole life here, he knows the
19 market here, he's just -- he does banks, he does all
20 kinds of appraisals. Then we have Ms. Haskell. Ms.
21 Haskell is a very trained professional. I'm not going to
22 say anything against her qualifications, because she's
23 certainly qualified. I would just suggest to you, in
24 this case, that she has taken an extreme position that is
25 not consistent with the facts. She said this is just an

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1 office building. If you were waiting for any fireworks
2 from me on cross-examination, I sorely disappointed
3 because all I wanted was for her to say again and again,
4 it's just an office building and I didn't see anything
5 that led me to think otherwise.

6 We know that's not true. So much about this
7 building was not an office building. She comes in when
8 landowners like Mr. Fabian say I'm not going to accept
9 your offer. They don't bring in Bill Ford, who's the
10 basis for the offer to the property owner. They go get
11 their valuation assassin, they get their pro, to come in
12 and say, no, it's not like that.

13 They get their trained court person. All she's done
14 is litigation appraisals. Think about that. She just
15 gets involved in litigation. Tommy Hartnett, who's been
16 doing this for forty years, forty-five years, fifty
17 years, said he did this whole appraisal for 5,600
18 dollars. What did she charge for the same work? Three
19 times that, 16,900 dollars. What's her hourly rate? 450
20 dollars. How much has she billed just through February
21 on these cases? 180,000 dollars.

22 You're entitled, and the Judge will tell you, when
23 you look at the credibility of the witness, you -- their
24 believability you can consider their bias. And I suggest
25 to you that when somebody's only brought in to go after

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1 other people in litigation, for the property owners that
2 refused to capitulate, that that person may not be
3 completely objective. If she came in once, okay. Twice,
4 maybe okay. Three times, getting a little suspicious.
5 Four times, I don't know how objective she is. Five
6 times, 180,000 dollars worth of work? You have reason to
7 question her credibility.

8 Mr. Hartnett laid it on the line. And, really, I'm
9 going to suggest to you that putting aside what her final
10 opinion is you can reconcile the two experts. Because
11 Mr. Hartnett said he valued this by going out and seeing
12 if there were any comparables. And there were no
13 comparable buildings. He couldn't find a building that
14 was similar to this building.

15 So there was no market to compare it to. What did
16 Ms. Haskell say? She said, I've done specialized
17 buildings and you do that when the building is so unusual
18 there's no market, where they have unique features. So
19 they agree on that. They agree.

20 And what you need to do is to determine whether
21 there were unusual features in this building that made it
22 a specialized building. We submit the pictures, the
23 testimony, and everything, overwhelmingly supports that.

24 Now I'm going to come back to the law, because the
25 Judge is going to tell you the law. And he's going to

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Closing Argument-Remarks by Mr. Walker
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1 give you what's known as the jury charge and he's going
2 to say that here in South Carolina, most often we look to
3 market value. And you only have market value if you have
4 a market.

5 He'll also say if there's not market value, if
6 market value or market price is not fair, then you can
7 look at some other method of valuation. And that's what
8 Mr. Hartnett said. He said you can't use market value on
9 a property that's this is -- that is so individual.
10 Nobody's going to buy this for an office space.

11 If you buy it, you're going to have to spend
12 hundreds and hundreds of thousands of dollars to try to
13 convert it. No. There is no market for it. So you're
14 entitled to do what you think is just compensation. And
15 he said, I think the land value is worth 500-and-
16 something, and then I added to that the value of the
17 building, less depreciation because it wasn't new. And
18 we heard all this about you shouldn't do a cost approach
19 if the building is more than ten years old.

20 Well, this building was ten years old, exactly, at
21 the time they condemned it. Plus, as he said, it was
22 basically a new building. It was built to be future
23 proof. So you can use the cost approach. And he
24 depreciated it. They want to say depreciation is
25 seventeen percent. He says it's seven percent because in

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1 the first years you don't depreciate that much. That's
2 up to you. You decide. If you were to go with Mr.
3 Hartnett, I think his value was 4,580,000 dollars. That
4 is the number that he used because he got that straight
5 from Mr. Morey.

6 And you saw Mr. Morey. I didn't see anything about
7 him that looked like he was fudging numbers. He
8 certainly is not a person who just shows up in litigation
9 like Ms. Haskell. He's never done an estimate for
10 litigation before. He built the first building. He went
11 out to subs and he contacted the subs, he sent them the
12 drawings, and he got the price. He did it just like
13 anybody would do on a job.

14 That number -- they didn't attack that number,
15 except a lot of yah-yah about the elevator. Well, the
16 elevator was in there because it has to be built to
17 current codes. If you don't think that that's fair and
18 just, then you can remove it. But we suggest, and will
19 submit, that what Mr. Hartnett did was fair.

20 You'll also hear, when the Judge charges you, that
21 you're to put the Landowner in the same position he was
22 in before they came and took his property, before they
23 came and they took the Fabian's property. And the irony
24 of this is that he set it up as e-Life Station by the
25 tracks. And what governmental authority comes and takes

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1 it? The railroad. But he's entitled, and his family is
2 entitled to be compensated in a way that puts him in the
3 same position. They're going to rebuild this. You heard
4 that. They've got to rebuild it, and they're committed
5 to rebuild it, and they're going to have the same
6 infrastructure in that building, all the expensive stuff.

7 It may not look exactly the same, it's going to have
8 to be slightly down the road, but it's going to be the
9 same functional equivalent, done the same way, even if
10 the façade is different. They're committed to that. It
11 is not a windfall. This is going to go right back into a
12 building that will be leased to his company.

13 So the only way he could be placed in the same
14 position monetarily is to receive what was taken. You'll
15 hear a statute that says you're to consider the value of
16 what was taken. The statute doesn't say you're only to
17 consider the market value. You're to consider the value
18 of what was taken.

19 We know the value of what was taken was a unique
20 property, it was a one-of-a-kind property, it was a
21 property that this man [indicates] was tremendously proud
22 of that he didn't want to give up. He had built history
23 of a state-of-the-art technology center, to do what he
24 loved to do. He's a technology wonk and he finally got
25 to build that crazy theater that is just unbelievably

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1 techno proficient where you can't even hear a train. And
2 they say, sorry, Charlie, you don't get paid for that.
3 But you can decide whether that's just.

4 And I ask you to consider all these factors when you
5 deliberate and you render a verdict in this case. Thank
6 you.

7 THE COURT: Mr. Babcock?

8 MR. BABCOCK: May it please the Court?

9 THE COURT: Yes, sir.

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1 CLOSING ARGUMENT

2 BY MR. BABCOCK:

3 Counsel and I haven't agreed on very much in this
4 case, but we do agree on one thing: I want to thank you
5 for the attentiveness that you brought to these
6 proceedings. And Mr. Walker is right. One of the things
7 we, as lawyers, worry about is sometimes having juries
8 that aren't focused and concentrating on all the
9 evidence. And you've done that for three days, and we
10 couldn't ask for anything more than what you have brought
11 to this case and how you listened to all of the evidence
12 and listened to everything that has happened.

13 As I think I told you, when we got together at the
14 beginning of the trial, I believe in the beauty of the
15 jury system. I believe in it because it brings twelve
16 people together, from all different walks of life, who
17 know nothing about the case and they come together with
18 their different life experiences to do a couple of
19 things. They're going to listen to what happens in the
20 courtroom and then they're going to do -- think about
21 what happened, logically, and use their common sense.

22 And that's what makes the jury system work, because
23 when you listen and evaluate everything from a common
24 sense and logical standpoint, you see clearly what the
25 verdict should be and what just compensation should be.

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1 And so thank you. Now, Railways, like any other
2 condemning authority, doesn't choose specific properties.
3 They have projects and it impacts specific properties.
4 They didn't choose to hit Mr. Fabian's property, but that
5 was necessary as part of the project, the Intermodal
6 Facility on the southern tracks.

7 So Railways knew that it was taking something from a
8 landowner that the landowner didn't want to part with.
9 That's the same in every condemnation case. Regularly,
10 the landowner thinks of his property in a little
11 different way than the market respects the property. And
12 please bear in mind, what we're looking for is market
13 valuation, real value, monetarily, of this property. And
14 that's what -- that's what we have to look for.

15 Now, ladies and gentlemen, if you think I'm going to
16 apologize for bringing one of the best appraisers around
17 into this case, you have another think coming. I'm not
18 going to apologize, for what Railways has done to be fair
19 to this landowner and all the landowners. You heard the
20 testimony.

21 You've had an appraiser who did a number of
22 different appraisals. And with his view of the
23 properties, he would come up with his market value
24 approach, his figure of just compensation. And if the
25 landowner didn't accept it we brought in another new

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1 person. In this case it was Ms. Haskell. And she told
2 you that she had done this on a number of other tracts.
3 And she also told you that normally she was higher than
4 the other appraiser. It happens to be in this case the
5 two were very close. She was at way at 1,800,000 -- he
6 was at 1,800,000, she was at 1,750,000 dollars.

7 So bring up Exhibit D-66, please.

8 [Whereupon, the exhibit is shown]

9 MR. BABCOCK: This is the offer that was made by
10 Railways to Mr. Fabian. As you can see, they sent him a
11 copy of the appraisal which had been done, which served
12 as the basis of the offer, and the offer was 1,800,000
13 dollars. Now, that was done by Bill Ford.

14 Mr. Ford is not an MAI. And you heard the testimony
15 by Ms. Haskell about the MAI designation and how you had
16 to go through a rigorous process of courses and giving a
17 sample appraisal for them to evaluate. She went through
18 that, and she's had several other designations. That's
19 who we brought in to this case to evaluate what the
20 proper figure for just compensation should be.

21 And she did her analysis and, as you know, she came
22 up with a valuation of 1,750,000 dollars. Now, when you
23 look at the people who testified, you've got to evaluate
24 her qualifications and the different appraisals she's
25 done, all over, and at the designation she's had, even

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1 from that international organization, and look at what
2 she did in terms of coming to her opinion of just
3 compensation. Now, you saw her testify. She was on the
4 stand this morning. I think the comment that counsel
5 used was valuation assassin.

6 That's that kind of language that just kind of riles
7 people up. She's awful good. She's no assassin. We
8 brought her here to find out what her opinion was of just
9 compensation, and that's why we brought her in to court
10 to go through her analysis. And you heard her analysis.

11 You heard her say three methods, sales comparison,
12 income approach, and cost, and the first two gave you the
13 best analysis of a building or of property because it
14 looked to sales to compare to other sales. And she had
15 five sales she used. And let's be clear for highest and
16 best use as an office building is not denigrating the
17 fact that Mr. Fabian could do some other things in the
18 building. It's what the market would reflect. That's
19 what she was trying to do, look at what the market
20 reflects.

21 And you're going to have to have your recollection
22 of the testimony. But my recollection of her testimony
23 concerning biotech building was she was comparing that,
24 as well as a bank, in terms of buildings that had special
25 uses that you could convert to other things. And she

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1 gave you the example with the -- a vault in a bank, that
2 while you put a lot of money in for the vault, it could
3 be used for other things. And we've seen that as
4 property gets reused at different places throughout South
5 Carolina.

6 She also gave you her income method and she
7 explained how you do that. And as a result of that, she
8 then turned to the cost method. Said, no, I don't think
9 the cost method is the right method to use here; I think
10 the other two give you a better indication of value.
11 This building's ten years old and it's subjected to
12 depreciation. She didn't feel comfortable using that
13 approach. So she relied on two approaches. And she
14 testified quite clearly about what she did and how she
15 did it.

16 Now, that testimony needs to be contrasted with Mr.
17 Hartnett's testimony. And you heard Mr. Hartnett
18 testify. Mr. Hartnett has been an appraiser for a long
19 time, been testifying for a long time, but he's not an
20 MAI. He hasn't gone through that process to get that
21 level of accreditation.

22 What Mr. Hartnett did was he saw the building as it
23 was being used by Life Space. And I think he got very
24 intrigued as -- and Mr. Fabian is very intriguing in
25 terms of his description of the business he had. It's an

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1 interesting business. And I think Mr. Hartnett got
2 intrigued by it, as well. But he didn't look hard enough
3 to see what other sales were around to be able to compare
4 it to this property. He simply decided that there
5 weren't any other buildings that he knew of, that had
6 been built this way. And, similarly, he really didn't
7 try. It seems like he developed an income approach
8 because you look at the market. And he didn't do that.
9 He went with the cost approach.

10 Now, how do you do the cost approach? Well, he says
11 that frequently or normally when he does the cost
12 approach, he uses this Marshal and Swift, this national
13 system where you can figure out what the comparables are
14 and come up with your own number. Instead, he took Mr.
15 Morey's numbers, somebody he never worked with before,
16 never dealt with before.

17 And instead of trying to figure out if all those
18 numbers were right or wrong -- I'm not suggesting whether
19 they're right or wrong. But just did he go to that step
20 of testing what he was given? He didn't. Then he took
21 that number, took a depreciation of seven percent.
22 That's where your common sense has got to come in. With
23 all the high-tech stuff that we're exposed to every day
24 the technological stuff goes out of whack early. And so
25 to depreciate it only seven percent for a building that

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1 would only go sixty years, and you're ten years in, does
2 that make sense?

3 So you've got to really evaluate what you heard from
4 Mr. Hartnett and what you heard from Ms. Haskell. And
5 when you look at Ms. Haskell, it's not just her, it's
6 also Bill Ford. Because they brought -- they brought his
7 information to you. They put up that offer letter and
8 they told you he got an appraisal. So they brought Mr.
9 Ford to you in that sense.

10 Alright. Let's look at what Mr. Fabian testified
11 about. As I said, he's got every right to be proud of
12 his business. He should be proud of his business. But
13 what we're looking at here is the value of the property
14 that Railways was forced to acquire. And so let's look
15 at a couple of documents.

16 Pull up D-59, please.

17 [Whereupon, the exhibit is shown]

18 MR. BABCOCK: That brochure is an interesting
19 document. Because think about it, Mr. Fabian knew they
20 he had an appraiser coming to evaluate his building and
21 he was getting information together to convince this
22 appraiser of how important and special this building was.
23 This was his opportunity to convince the appraiser. Does
24 it make sense that you wouldn't take the time to get
25 every good piece of information you had about your

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1 building and give to the appraiser? And especially when
2 you're looking at property that what we say is worth 1.8-
3 million dollars, that's a valuable piece of property.

4 But wouldn't you take every moment to get it right?

5 So what do we have? We have this brochure and the
6 right-hand column, premier office building. Now, bear in
7 mind, Mr. Fabian could have changed anything on this that
8 he wanted to change. He could have even taken this and
9 crossed it out and said specialized building. Didn't do
10 it.

11 Let's go to the next page, please.

12 [Whereupon, the exhibit is shown]

13 Now, what I'm going to go through is to take that
14 first paragraph. And, again, premier office building on
15 every page. When you get back in that jury room, I think
16 it's on every page of that document. So let's look at
17 the first paragraph.

18 It goes to the location, creative space; property
19 includes parking lot, upgrades, office, showroom, flex.

20 Go to the next paragraph, please.

21 Describe -- lease -- 1779 -- 1799 Meeting Street can
22 be leased as office suites or the building in its
23 entirety, the building is approximately 7,816 square feet
24 which is divided into approximately 959 square feet, and
25 4,275 square feet on the first floor, and 2,251 square

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1 feet on the second floor, the space is completely met-out
2 with the highest quality craftsmanship and technology. E-
3 life Spaces and business currently occupies Suite A,
4 approximately 4,275 square feet on the first floor. And
5 then it talks about the loft occupancy and Capella's
6 occupancy. And then --

7 Show us the two pictures on this first page.

8 [Whereupon, the photographs are shown]

9 Those are the pictures that they've relied on. Now,
10 does it make sense, when you've got this great
11 opportunity to convince the appraiser who's coming to you
12 from Railways, of all the special nature of your building
13 that you wouldn't have thrown it in there? Does that
14 make sense?

15 Let's look at a very interesting email that was
16 associated with this.

17 Pull up C-37, please. Blow that up, please. Blow
18 up the to and from.

19 [Whereupon, the exhibit is shown]

20 Alright. Now, this is September, 2016. We've got
21 the appraiser about to come. Mr. Fabian writes two
22 people, two people on the email, Robert Dobbs, his then
23 lawyer, and Thomas Hartnett, the appraiser. Gentlemen,
24 as you know, the appraiser is planning to be here
25 Saturday. To that end, I was planning to provide

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1 information, as promised; with the help of Daniel Atwell,
2 we prepared this document to present it. Now, listen to
3 that phrase: with the help of Daniel Atwell, we prepared
4 this document to present it. He didn't say there, Daniel
5 Atwell has done all this and I'm just going to give it to
6 them.

7 That's what he said to his lawyer and his appraiser.
8 This is a draft, in capitals, and can be easily updated;
9 standing by for feedback; Fred. That's what he said.
10 Didn't get feedback from his lawyer, didn't get feedback
11 from Mr. Hartnett. Mr. Hartnett knew what was being done
12 here. So even without feedback, Mr. Fabian had the
13 opportunity to change that document in any fashion he
14 wanted, and he didn't do it. Didn't do that.

15 The next thing I want to talk about is this listing
16 agreement. And Mr. Fabian has a real estate license.
17 Mr. Atwell, his friend, I think he called him his buddy,
18 was going out on his own. He's also got a real estate
19 license. There's testimony about the importance of a
20 listing agreement, because you've got to have it, to be
21 able to market these properties.

22 Apparently, this was some kind of fake listing just
23 put out there to help Mr. Atwell. And it may well have
24 been. I'm not saying you should have fake listings. But
25 it may well have been. But what was the number he used?

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1 1,600,000 dollars. If you're going to put out something
2 about your building that you think is worth 4,000,000
3 dollars you're going to put down 4,000,000 dollars.
4 There is no reason not -- if you're not selling, in
5 particular. Why wouldn't you say 4,000,000 or 4.5
6 million, whatever? Why would you say 1.6-million
7 dollars? But that was the number he went with in this
8 fake listing.

9 We also brought you another document.

10 Bring up C-11, please.

11 And this is the tax-appraised valuation.

12 If you can highlight the actual appraisal value.

13 Okay.

14 What it says is appraised 795,300 dollars. So
15 that's the appraised value. And we all know frequently
16 that tax appraisals are a little bit lower than actual
17 value. So I think that's certainly consistent with
18 something that would be in the one -- in the 600 to
19 1,800,000-dollar range, not consistent with something in
20 the 4,000,000-dollar range. It just isn't.

21 You know that. You-all have dealt with tax
22 appraisals and tax assessments. Alright. What's always
23 interesting in a case to me is what you don't hear about,
24 because sometimes what you don't hear about is as telling
25 as what you do hear about. So we heard all of the cost

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1 figures from Mr. Morey, all these documents and how he
2 had done these cost figures, estimated the building,
3 included things that weren't in the building, like the
4 elevator and whatnot.

5 Mr. Morey was involved with the original
6 construction of the building. Mr. Fabian was involved in
7 the original construction of the building. They didn't
8 bring you the original construction cost for that
9 building.

10 And wouldn't that be something that you would want
11 to know if you were trying to look at what the value of
12 the building was, what they actually put into the
13 building ten years ago and having had the use of the
14 building for ten years because the condemnation occurred,
15 the valuation, in October of 2017? Isn't that
16 information that would make sense? They didn't bring it
17 to you. And I wonder why.

18 You know who else we didn't hear from? And we kept
19 hearing about them. They had a hand in two of the most
20 important things, and he's involved in real estate, is
21 the buddy, Mr. Atwell. Did Mr. Atwell come into court
22 and tell you that this brochure they put together -- did
23 he come in and say that it was wrong? Apparently, and if
24 I understood Mr. Fabian's testimony correctly, because
25 Mr. Atwell had helped him lease the portion of the

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1 building I guess for Capella Carolina or Pilates, he was
2 familiar and he reused, or copied and pasted I think was
3 the phrase. So this was somebody who knows the building
4 and who was using some material with Mr. Fabian, as the
5 email said, to talk about the building.

6 Did he come to court? No. He also didn't come into
7 court to talk about the listing agreement; the listing
8 agreement that was used for him apparently to fool people
9 that he had not just one property but six other
10 properties listed for sale. It sounds like you're trying
11 to fool somebody to me. Did he come in court to talk to
12 you about that? No.

13 Alright. So where are we now? It's up to you to
14 determine just compensation.

15 [Whereupon, the exhibit is shown]

16 And you come back to evaluating the testimony and
17 the methodology of the two appraisers. And you've got
18 Ms. Haskell, using the sales comparison approach, which
19 yielded a value of 1,850,000 dollars. You've got the
20 income capitalization approach, which yielded a value of
21 1.6-million -- 1,600,000 dollars. She took the two and
22 tried to get them pulled together, and she came up with
23 1,750,000 dollars. And why did she say that she was
24 higher? She thought the sales comparison had a little
25 more strength than the income. So that's the figure she

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1 came -- and, again, very close to Mr. Ford's 1,800,000
2 dollar figure.

3 Mr. Hartnett didn't use the sales comparison, didn't
4 use the income, came up with a cost of 4,580,000 dollars.
5 You've going to have to figure out why there's that
6 discrepancy. And I think it comes down to Mr. Hartnett
7 was trying to get that number as high as he could and he
8 used a methodology which was flawed in this case. There
9 are other properties he could have used, again, from a
10 market standpoint.

11 And you're going to hear from the charge will be
12 market-value property with a willing buyer, willing
13 seller. And we all understand that's how a property is
14 bought and sold I was going to say in South Carolina but
15 probably everywhere. But that's what it comes down to
16 and that's what gives you a comfort level on sales for
17 property.

18 So, ladies and gentlemen, this is my only chance to
19 talk to you. Counsel is going to get up. He has a
20 chance to say a few more words to you. But what I'm
21 going to ask you is what I asked at the beginning of the
22 case, that you evaluate all the evidence, you look at a
23 figure of what's a fair figure for just compensation,
24 neither too high nor too low, needs to be fair to both
25 Gateway and Mr. Fabian, and Railway, and needs to be a

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1 figure that is a verdict, speaks the truth. And I would
2 submit to you if you look at all of the evidence in this
3 case, that figure is 1,800,000 dollars. Because as I
4 said at the beginning of this case, although Ms. Haskell
5 is at 1,750,000 dollars, it is not fair to a landowner in
6 any condemnation case to not give him or her the highest
7 number that the appraisal has for the -- for the Railway.
8 So I'm requesting you not to give Ms. Haskell's verdict
9 of 1,750,000 dollars, but the offer that was made to him
10 of 1,800,000 dollars. Thank you.

11 THE COURT: Thank you, Mr. Babcock.

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CLOSING ARGUMENT REPLY

BY MR. WALKER:

As we expected, the railroad came back with the three things I said they would go to. The first one is the brochure.

And could we please have that email that is Defendant's 58. And if you would please go to the time.

[Whereupon, the exhibit is shown]

And I would like to point out that Mr. Atwell -- go all the way down to the bottom -- so his email is Thursday at 1:39. Let me know what you think. I've got ten hours and a broken neck. Then an hour later, Mr. Fabian sends it to Robert Dodds and Mr. Hartnett, knowing that this gentleman is coming on Saturday and says: here it is; let me know what you think.

Well, shame on Fred for not jumping in there and depending on others to say, well, it's got this language or this wording. Fred just passed it on. Could he have looked at it? Could he have changed it? I guess he could have. Was he depending on others? He was.

But the point is today your decision is to the nature of this building, not the fact that he relayed it on to a lawyer and an appraiser who did not respond. They never got back to him, so he didn't change it. He was waiting on them. Thank you. We also have heard

1 about this listing. He didn't do it to fool people. He
2 did it to help a friend. And, again shame on him. No
3 good deed goes unpunished. And now he hears about it.
4 It's going to be rammed down his throat. They said that
5 we didn't put anything up on cost, and I think we did.

6 Could we have Defendant's Exhibit 63, please. And
7 go to the second page, please. Go up a little bit
8 please.

9 [Whereupon, the exhibit is shown]

10 This is from the accountant. He didn't go to the
11 company that built it, he went to the accountant to get
12 the actual costs as adjusted for inflation and he gave
13 those costs. Now, the land value was guesstimated by the
14 accountant. But that is what the accountant said. But
15 the accountant is not a contractor and he doesn't have a
16 license. So in the end, it was Mr. Morey that Mr.
17 Hartnett went to because it's the cost of what was taken,
18 what is the value of what was taken.

19 On the experts, it's not about qualification. She
20 may have an MAI. It's not about degrees. The secret in
21 this case, do you know who the real expert is? Common
22 sense. This is an office building or not an office
23 building all the way through.

24 Could we have a few of the pictures that I pointed
25 out earlier? Let's start with number 20. Alright.

1 [Whereupon, the photograph is shown]

2 There you've got the steel that you heard from both
3 Mr. Morey and Mr. Hartnett. Well beyond a simple office
4 building.

5 26 please?

6 [Whereupon, the photograph is shown]

7 Is that an office building, just an office building?
8 That is the sound wall on the back of this remarkable
9 theater. It doesn't look like an office building to me.

10 Could we have 30, please?

11 [Whereupon, the photograph is shown]

12 Is that an office building? Doesn't look like -- I
13 don't think it's an office building.

14 Could we have 43, please?

15 [Whereupon, the photograph is shown]

16 There we are with even a better view of what they
17 say is an office.

18 34, please?

19 [Whereupon, the photograph is shown]

20 There's the power equalizer that one wouldn't have
21 in any type of standard office building, for every
22 circuit in the building.

23 36, please?

24 [Whereupon, the photograph is shown]

25 There's the work room. Again, another room with no

1 windows other than to look at different features and
2 electronics, including the hidden speaker on the wall in
3 the adjacent room. That doesn't look like the standard
4 office building.

5 Could we have 47, please?

6 [Whereupon, the photograph is shown]

7 There's the acoustical room. Again, specially
8 constructed, no windows. Even Ms. Haskell had to say
9 that this building would require a whole lot of work in
10 order to convert it to office space, which I think is
11 very telling.

12 And the last picture that I'll just draw to your
13 attention is the one that they put in, C-12, which shows
14 the warehouse.

15 [Whereupon, the photograph is shown]

16 How many office buildings have a warehouse where you
17 drive up and you store your goods, you pick up goods?
18 This was a specialty-purpose building that had many
19 functions, that was custom-made and is not a typical
20 building.

21 You are to compensate based on the value of what was
22 taken. The value of what was taken we've told you,
23 through our witnesses, was a building that is a specialty
24 building that's going to cost, if you built it today,
25 four-million-three with the land, with the building

1 depreciated, the value of his loss in just compensation
2 since there is no market, under the cost approach, is
3 4,500,000 dollars.

4 I want to thank you for your time again, all the
5 attention that you've given us in this case, for your
6 time in the jury room, the discussion you're going to
7 have and we remain, and always will, no matter what your
8 verdict is we have so much faith in the system and faith
9 in you. We thank you for your service.

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STATE OF SOUTH CAROLINA)	THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	DOCKET NO. 2017-CP-10-5382
)	
)	
S.C. DEPARTMENT OF COMMERCE,)	
DIVISION OF PUBLIC RAILWAYS)	
)	
Plaintiff)	
)	
vs.)	
)	
GATEWAY PROPERTIES OF GREATER)	
CHARLESTON, LLC)	
)	
Defendant)	
)	
)	
)	
)	TRANSCRIPT OF RECORD

March 28, 2019
Charleston, South Carolina

VOLUME 4 (of 4)

B E F O R E:

THE HONORABLE ALEX KINLAW, JR., JUDGE.

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

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Circuit Court Reporter

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PROCEEDINGS

THE COURT: Anything that we need to discuss before
I bring the jury in? Counsel, yes?

MR. LINTON: Your Honor, we have one thing, and it's
not a controversy, so that's good.

THE COURT: Okay.

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CHARGE CONFERENCE

MR. LINTON: We had -- when we were going over the jury charges yesterday, one of our charges that we didn't get to is a quote from the statute on the definition of the property and the definition of improvements.

THE COURT: Which charge is that? Number what?

MR. LINTON: Landowner's request to charge number two.

THE COURT: Number two?

MR. LINTON: And I talked to Mr. Babcock this morning and he has no objection.

THE COURT: Everybody is good with that?

MR. BABCOCK: That's correct. No objection, Your Honor.

THE COURT: Okay. Let me get to that.

[Whereupon, the Court reviews documents]

THE COURT: You know, I'm going to -- I'm going to give that standard charge on -- you know, this case is a little unusual, but I'm still going to give the standard charge on direct evidence and circumstantial.

MR. BABCOCK: Yeah.

THE COURT: I'm still going to give that. And, also, I'm going to -- I'm going to -- the burden is -- is on the Landowner, so I'm going to still give that preponderance, you know, that -- but I'm not going to --

1 and I'll just ask you. I wasn't going to get too much
2 into that scale demonstration that the judges do. I was
3 just going to say what preponderance of the evidence is
4 and what weight, unless you guys want me to.

5 MR. BABCOCK: Your Honor, we'd like you to. I think
6 that's helpful for the jury to understand what
7 preponderance is.

8 THE COURT: Okay.

9 MR. WALKER: That's fine with us.

10 THE COURT: Alright. And in this -- in this -- in
11 this case, since the Landowner has the burden -- let me
12 get to that -- let me get to that charge.

13 [Whereupon, the Court reviews documents]

14 THE COURT: This is typically what that charge says,
15 once I tell them what it is. This can be illustrated by
16 imagining a set of scales. When the case began, the
17 scales are even. After all the evidence has been
18 presented, if the scales remain even or if they tip ever
19 so slightly in favor of the defendant -- that's how it's
20 read -- then the plaintiff has failed to meet his burden.
21 And I'm going to interchange Landowner and Condemnor.
22 The defendant would obviously be the Landowner and the
23 plaintiff would be the Condemnor. So I'm going to use
24 those terms ---

25 MR. WALKER: That's -- I think ---

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1 THE COURT: --- let's talk about that ---

2 MR. WALKER: --- I think it's the reverse.

3 THE COURT: Okay. That's what I wanted to talk
4 about. So when the case begins, all the evidence is
5 presented, if the scales remain even or if they tip ever
6 so slightly in favor of the defendant -- the defendant in
7 this instance would be -- let's hear you about that
8 problem.

9 MR. WALKER: You came back to plaintiff, and we're
10 kind of basically the plaintiff here since we have the
11 burden.

12 MR. BABCOCK: That's right. Wherever it says
13 plaintiff, it should be Landowner ---

14 MR. WALKER: --- Landowner ---

15 MR. BABCOCK: --- and where it says ---

16 MR. WALKER: --- and defendants would be ---

17 MR. BABCOCK: --- defendant, it should be --

18 MR. WALKER: --- Condemnor ---

19 MR. BABCOCK: --- yes.

20 THE COURT: Alright. Sorry. That's why it's good
21 to have these discussions ahead of time, because I --
22 while I'm looking at this, let me just read it.

23 MR. WALKER: Okay.

24 THE COURT: Just to be sure everybody is on the same
25 page. This can be implicated by imagining a set of

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1 scales. When the case began, the scales are even, and
2 after all the evidence is presented if the scales remain
3 even or if they tip ever so slightly in favor of the
4 Condemnor, then the Landowner has failed to meet the
5 burden of proof and would not be entitled to recover.

6 MR. WALKER: Well, I ---

7 THE COURT: --- what do you want to say?

8 MR. WALKER: I don't think where it's not entitled
9 to recover.

10 THE COURT: Let's change that language ---

11 MR. WALKER: --- I mean, it's -- I think -- and
12 Keith can correct me, has failed to demonstrate value
13 other than a million-eight or -- I don't know. How would
14 you do that, Keith?

15 MR. BABCOCK: Yeah, I was going to say, I'm trying
16 to remember what the -- normally in a condemnation case,
17 the preponderance is charged. But obviously, at the end
18 of the day, they've got to come up with a verdict at 1.8
19 million or up to four million one five hundred thousand.
20 So that's their range. And I know that there is a
21 standard charge for the preponderance in a condemnation
22 case but I don't ---

23 THE COURT: --- I looked for one and I didn't -- and
24 I was going to -- that's why I was going to ask you about
25 this one. I've got -- let me just see what I had before.

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1 MR. WALKER: It would seem like the burden is on the
2 Landowner to prove that the value is different from the
3 value that was offered by the Condemnor. If the scales
4 are the same or tipped ever so slightly in favor of the
5 Condemnor, the Landowner has not...

6 THE COURT: Wait a minute ---

7 MR. WALKER: --- carried its burden of proof.

8 THE COURT: Alright. This is -- this is a standard
9 charge on burden of proof in a -- let me read this to
10 you. The burden of proof is upon the Landowner to show
11 that the taking of a part of his property will cause
12 damage to the remainder unless he shows such damage by
13 affirmative evidence, furnishing a basis from which a
14 reasonable and proper estimate of the amount therefore
15 can be made, his compensation will be limited to the
16 value of the land taken.

17 MR. BABCOCK: Now, that doesn't apply ---

18 THE COURT: --- that doesn't apply ---

19 MR. BABCOCK: --- that's the damage to the residence
20 situation ---

21 THE COURT: --- that's the ---

22 MR. BABCOCK: --- which is what we normally have.

23 THE COURT: And I scratched it. I wasn't going to
24 do that. But go ahead.

25 MR. BABCOCK: Well, all -- I'm just kind of

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1 thinking. I think they need to be charged that the
2 burden is on the Landowner.

3 MR. WALKER: Yeah. I think that's the initial
4 charge.

5 MR. BABCOCK: And maybe the answer is not to go much
6 beyond that, because they've got the right to come up
7 with any number they want to come up with.

8 MR. WALKER: Yeah. I think it would be sufficient
9 just to say the burden of proof is on the Landowner to
10 establish a value different from what was offered by the
11 Condemnor.

12 THE COURT: And skip the preponderance portion?

13 MR. BABCOCK: Yeah, just skip to that part.

14 MR. WALKER: Yeah by the preponderance of the
15 evidence.

16 MR. BABCOCK: By the preponderance of the evidence.

17 THE COURT: Alright. Let me write that down. And
18 then skip that whole preponderance of the evidence.

19 MR. BABCOCK: Use the phrase if you can, but the
20 whole explanation you can skip.

21 MR. LINTON: Usually, and a lot of times, that
22 charge has been an explanation of, now, you've heard of
23 beyond a reasonable doubt in a criminal case. This is
24 different preponderance of the evidence; it's something
25 less than that.

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1 THE COURT: Alright. Let's do this. Tell me what
2 you guys want me to say.

3 MR. WALKER: May I write something out ---

4 THE COURT: --- yeah, write something ---

5 MR. WALKER: --- and present it to Mr. Babcock?

6 THE COURT: Right. Write something out and give it
7 to him. And that's going to be in lieu of -- I'm going
8 to say initially the burden of proof in this case is by a
9 preponderance of the evidence. A preponderance of the
10 evidence simply means the greater weight of the evidence.
11 It is the evidence which, as a whole, shows that the fact
12 sought to be proved is more likely true than not. And
13 then I go into what you guys say?

14 MR. BABCOCK: Probably.

15 [Whereupon, Mr. Walker and Mr. Babcock confer]

16 MR. WALKER: May I approach, Your Honor?

17 THE COURT: Uh-huh.

18 [Whereupon, Mr. Walker proffers documents to the
19 Court]

20 [Whereupon, the Court reviews documents]

21 THE COURT: Alright. So what you're asking me is to
22 say this first and then get into that first statement?

23 MR. BABCOCK: I think so, Your Honor.

24 THE COURT: Okay.

25 MR. WALKER: And then just demonstrate by the

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1 preponderance of the evidence we meet whatever. I mean
2 the earlier charge it talked about -- if we could have
3 that earlier charge on preponderance of the evidence? It
4 was fairly generic, but...

5 THE COURT: The one I just said?

6 MR. WALKER: The first one you started with, Your
7 Honor.

8 THE COURT: I said: the burden of proof in this
9 case is by the preponderance of the evidence.
10 Preponderance of the evidence simply means that the
11 greater weight of the evidence is evidence that, as a
12 whole, shows that the fact sought to be proven is more
13 likely true than not true.

14 MR. WALKER: That's fine. Thank you.

15 MR. BABCOCK: That's good.

16 MR. WALKER: That's good.

17 MR. BABCOCK: That's good, Your Honor.

18 THE COURT: And then read this? Or read this
19 before?

20 MR. WALKER: Read that first and then go into ---

21 THE COURT: --- first. Then go into that ---

22 MR. WALKER: --- the preponderance of the evidence.

23 THE COURT: Got you. Alright. Okay. And then I'm
24 going to -- to give Landowner's request to charge number
25 two right after I -- I'm probably going to do it before I

1 really get into -- I'm just going to define -- this
2 doesn't really define this property. What is it? I'll
3 stick it in somewhere between definition of condemnation
4 and property. I'll stick it somewhere in there. We'll
5 get it -- get it to flow.

6 Okay. Of course, as you well know, once I do this
7 and -- I'll bring you -- I'll let you come in and correct
8 me if I say something that you don't like. You know how
9 that goes. Or argue about it, anyway. Okay. If there's
10 nothing further -- let me see and make sure.

11 [Whereupon, the Court reviews documents]

12 THE COURT: If there's nothing further to be
13 discussed, you can bring them in.

14 THE BAILIFF: Yes, sir.

15 [Whereupon, the jury enters at 9:48 a.m.]

16 THE BAILIFF: Judge, the jury is all present and
17 seated.

18 THE COURT: Alright. Thank you, Mr. Bailiff.
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JURY CHARGE

THE COURT: Alright. Ladies and gentlemen of the jury, this -- you have heard all of the testimony that's going to be presented and you have had an opportunity to see all the evidence that has been presented. Now it's my time to charge you on what the law is that's applicable to the facts that you've -- that you've seen the last three days.

I am going to talk probably particularly slow because I want you to listen very carefully to everything that I've told you. As I said earlier, at the outset of the case, I said that you were the judge of the facts and I'm the judge of the law.

And I join in the lawyers in telling you that you've been very attentive this week in listening to the facts that were presented on both sides. And both sides appreciate that, as well as the Court does, as well. But I am going to say some things to you and, like I said, it's going to take a few minutes but I want you to listen very carefully.

You still have the right to take notes but I don't want you to take notes to the extent that you're not listening to what the law is. So I want you to do that. So make sure that you focus on what I'm getting ready to tell you. Alright. As I told you, you are the judges of

1 the facts and I am the judge of the law. If there was
2 anything that occurred during the course of this trial
3 that would give you any indication that I have an opinion
4 as to what the facts are, then disregard it because I do
5 not have an opinion of the facts. I'm not allowed to
6 have an opinion of the facts because that's within your
7 purview and your purview alone.

8 Now, I also have the additional responsibility to
9 charge on the law, is what I told you just a few minutes
10 ago. Now, I'm going to talk a little bit about the
11 burden of proof. And the burden of proof in this case is
12 on the Landowner to prove by the preponderance of the
13 evidence the value of the property taken, that the value
14 of the property taken is greater than the value offered
15 by the Condemnor.

16 Let me say that again so I can be clear. The burden
17 of proof is on the Landowner to prove by the
18 preponderance of the evidence the value of the property
19 taken is greater than the value offered by the Condemnor.
20 The burden of proof in this case is by the preponderance
21 of the evidence, as I -- as I just said to you.

22 A preponderance of the evidence simply means the
23 greater weight of the evidence. It is the evidence
24 which, as a whole, shows that the facts sought to be
25 proved is more likely true than not true.

1 Now, I am going to talk a little bit about -- as you
2 recall at the outset of the case, I told you that the
3 evidence that you would receive in this case would come
4 in two forms. It would come in forms of the testimony
5 that was from the witness stand, and also of the exhibits
6 that you had the opportunity to review from both sides.

7 Those are the two forms of evidence. But I'm going
8 to talk about direct and circumstantial evidence. There
9 are two types of evidence generally presented during
10 trial; direct and circumstantial evidence. Direct
11 evidence is the testimony of a person who claims to have
12 actual knowledge of a fact, such as an eyewitness. It is
13 evidence which immediately establishes the main fact to
14 be proven.

15 Circumstantial evidence is evidence -- is proof of a
16 -- of a chain of facts and circumstances indicating the
17 existence of a fact. It is evidence which immediately
18 establishes collateral facts from which the main fact can
19 be inferred.

20 Circumstantial evidence is based on inference and
21 not on personal knowledge or observation. It is proof
22 that does not actually establish the fact in question,
23 but that asserts or describes something else from which
24 you may either reasonably infer the truth of the fact or
25 at least reasonably infer an increase in the probability

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1 that the fact is true. For circumstantial evidence to be
2 sufficient to warrant the finding of a fact, the
3 circumstances must lead to that fact with a reasonable
4 degree of certainty. The facts and circumstances should
5 be considered in light of ordinary experience and common
6 sense.

7 The existence of a fact cannot be based upon
8 speculation, surprise, or conjecture. Now, the law makes
9 absolutely no distinction whatsoever between the weight
10 or value to be given to either direct evidence or
11 circumstantial evidence, nor is there a greater degree of
12 certainty required of circumstantial evidence than of
13 direct evidence.

14 Let's talk about credibility of the witnesses.
15 You've had several witnesses that have taken the witness
16 stand and has taken an oath to tell the truth and you've
17 heard the testimony of those witnesses. You must
18 determine -- since you're the fact finders, you must
19 determine the credibility of the witnesses who have
20 testified in this case.

21 Credibility simply means believability. It becomes
22 your duty as jurors to evaluate the evidence and
23 determine which evidence convinces you it is true. In
24 determining the believability of a witness who have
25 testified in the case, you may believe one witness over

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1 several or several witnesses over one witness. You may
2 believe a part of the testimony of a witness and reject
3 the remaining testimony of that same witness. You may
4 believe the testimony of a witness in its entirety or
5 reject the testimony of a witness in its entirety.

6 You may consider whether the witness has an interest
7 in the result of the trial, whether the witness is
8 prejudice toward either the Landowner or the Condemnor in
9 this case, the opportunity for the witness to have seen
10 the matters and things about which the witness may
11 testify, and the way the witness acts on the witness
12 stand.

13 All these things you can consider as it relates to
14 credibility. And the credibility standard not only
15 applies to the live testimony, but the credibility
16 standard also applies to the evidence that's presented by
17 way of exhibits, charts, anything. The same standard of
18 credibility applies to that, because remember at the
19 outset of the trial I told you there were two types of
20 evidence; there was going to be testimony from the
21 witness stand, and the exhibits that you've seen. So you
22 apply that same standard to both.

23 Now, I'm going to give you a definition of property
24 under South Carolina law. I want to read this to you, as
25 I'm really getting into the meat here and I want you to

1 listen. Under South Carolina law, the terms property or
2 real property or land means all lands, including
3 improvements and fixtures thereon. The term improvements
4 means any building or structure, and any facility,
5 machinery, or equipment, that cannot be removed from the
6 real property on which it is situated without substantial
7 damage to the real property or other substantial economic
8 loss.

9 Now, I'm going to go through these principles with
10 you. And I may read them again. And the reason I might
11 do that is because I want you to have a clear
12 understanding. So I'm going to read this again to you.
13 Under South Carolina law the terms property, real
14 property, or land means all lands, including improvements
15 and fixtures thereon. The term improvements include any
16 building or structure and any facility, machinery, or
17 equipment, that cannot remove -- be removed from the real
18 property on which it is situated without substantial
19 damage to the real property or other substantial economic
20 loss.

21 Under the law of this state, all private property is
22 held subject to the necessary right of the principle of
23 eminent domain, which is the right of the State or its
24 authorized agents to take private property for public use
25 whenever the public interest so requires. The right of

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1 eminent domain is exercised through a proceeding commonly
2 called a condemnation action. This action, in which you
3 sat here this week, is a condemnation action. The
4 Condemnor, in this case it's being Palmetto Railways, is
5 authorized to exercise the right of eminent domain to
6 acquire the property under consideration, provided that
7 just compensation is provided to the landowners.

8 The Constitution of this state and of our United
9 States require that a property owner be paid just
10 compensation for the taking or damaging of his or her
11 property for public use. You are called upon as jurors
12 in this case to determine the just compensation to be
13 paid.

14 The compensation to which property owner is -- a
15 property owner is entitled is the fair market value of
16 the property at the time of taking, which in this case at
17 bar, the time of taking is October 19th, 2017. The
18 Landowner's property was 0.55 acres, or 23,958 square
19 feet, and will be acquired in its entirety due to the
20 condemnation action that I just told you about.

21 As I said before, the amount a Condemnor should pay
22 a Landowner in order to adequately compensate the
23 Landowner for the taking of his property is called just
24 compensation. It is that amount of money which would put
25 the Landowner in as good a position monetarily as he was

1 in prior to the taking of the property. In order to be
2 compensated fully, the Landowner must be put in as good a
3 position pecuniary as the use of his property had not
4 been taken.

5 He is entitled to have the full equivalent of the
6 value of such use at the time of taking. The owner is to
7 be given, as compensation for his land, a fair price for
8 any use for which it was -- has commercial value of its
9 own in the immediate present or in the reasonable
10 anticipation in the near future.

11 The Landowner in a condemnation case has the burden
12 of proving his damages as to the actual value of the land
13 taken. The case law in South Carolina supports that
14 position.

15 Let's look at the damages formula. The approved
16 formula for determining damages in a condemnation case
17 provides for payment to the Landowner a fair market price
18 of the property taken. If that formula is unfair to
19 either party, some other formula may be used.

20 Market value of property taken or injured for public
21 use means the fair market value of the property as
22 between one who wants to purchase and one who wants to
23 sell, its present value at the sale which a prudent owner
24 would make if at liberty to fix the time and conditions
25 of sale, not what could be obtained for it at a forced

1 sale or under peculiar circumstances, nor a value
2 obtained from the necessities of another. And I'll read
3 that paragraph again.

4 Market value of property taken or injured for public
5 use means the fair market value of the property as
6 between one who wants to purchase and one who wants to
7 sell, its present value at sale which a prudent owner
8 would make if at liberty to fix the time and conditions
9 of sale, not what could be obtained for it at a forced
10 sale or under peculiar circumstances, nor a value
11 obtained from the necessities of another.

12 Stated another way, the fair market value of
13 property injured or taken for the public use means that
14 price which a purchaser would give and a seller would
15 take in the ordinary course of trade where neither of
16 them is acting under any compulsion. The criteria is
17 market value, not sentimental value.

18 Stated this way, market value is defined as follows.
19 Market value of the property taken or acquired for public
20 use means the fair value or price which a willing seller
21 would sell property and a willing purchaser would pay for
22 the property with neither acting under any degree of
23 compulsion whatsoever.

24 In this case we had expert testimony. The standard
25 -- and I'm going to talk a little bit about the expert

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1 witnesses in this case. But the standard in terms of the
2 evaluation of expert testimony, you can use the same
3 standard that you would use in the examination of the
4 testimony of any lay witness.

5 In other words, you could believe all of the expert
6 testimony of the expert, you could believe some of it, or
7 you could believe none of it. It's up to you because you
8 are the judge of the facts, but in terms of the
9 evaluation process is still the same.

10 Now, an expert appraiser, which was used in -- you
11 remember in this case we had an expert appraiser on both
12 sides. An expert appraiser may give his or her opinion
13 of market value and the reasons for such opinion.
14 Evidence which has been received from witnesses as to the
15 reasons for their respective opinions of value, and all
16 other evidence concerning the subject property, including
17 your view of it, is to be considered by you for the
18 limited purpose of enabling you to understand the
19 testimony of the witnesses as to their opinion of such
20 market value.

21 You should consider each opinion and should weigh
22 the qualifications of witnesses and the reasons given for
23 their opinion. Give each opinion the weight to which you
24 deem it's entitled. You may resolve any conflict in the
25 testimony of the witnesses by weighing each of the

1 opinions expressed against the others, taking into
2 consideration the reasons given for the opinion, the
3 facts relied upon by the witnesses, their relative
4 credibility, and their knowledge, skill, experience, and
5 education.

6 One or more witnesses who have expressed an opinion
7 of the fair market value of the landowner's property, and
8 the damage to the remainder of the property, have been
9 permitted to testify as to the price and other terms and
10 circumstances of sales of other properties which they
11 consider to be comparable to the Landowner's property.

12 Generally, the more similar one property is to
13 another, the closer the value of the one may be expected
14 to approach the value of the other. Thus, in weighing
15 the opinion of a witness as to the value of the subject
16 property based on his reliance -- his or her reliance on
17 the sales of other properties, you should consider the
18 following matters:

19 Was the sale made freely and in good faith; how near
20 the date of the taking of the Landowner's property is to
21 the date of the other sale; how near the size of the
22 other property is to the Landowner's property; how
23 similar are the physical features, including both the
24 improvements and natural features; how similar is the use
25 to which the other property is, or may be put, or to the

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1 use which is, or may be made -- or was to be made of the
2 Landowner's property; and how similar the neighborhood of
3 the other property is to the neighborhood of the
4 Landowner's property. This particular charge on the law
5 has some moving parts and because of that, I'm going to
6 read it again to you.

7 One or more witnesses who have expressed an opinion
8 of the fair market value of the Landowner's property, and
9 the damage to the remainder of the property, have been
10 permitted to testify as to the price and other terms and
11 circumstances of sales of other properties which they
12 consider to be comparable to the Landowner's property.

13 Generally, the more similar one property is to
14 another, the closer the value of the one may be expected
15 to approach the value of the other. Thus, in weighing
16 the opinion of a witness as to the value of the subject
17 property based on his or her reliance on the sales of
18 other properties, you should consider the following
19 matters:

20 Was the sale made freely and in good faith; how near
21 the date of the taking of the Landowner's property is to
22 the date of the other sale; how near the size of the
23 other property is to the Landowner's property; how
24 similar are the physical features, including both the
25 improvements and natural features; how similar is the use

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1 to which the other property is, or may be put, to the use
2 which is, or may be made of the Landowner's property; how
3 similar in the neighborhood of the other property is to
4 the neighborhood of the Landowner's property.

5 Now, that is the law that's applicable to this case.
6 After I have charged you on what the law is obviously it
7 is your job as the judges of the facts to render a
8 decision. And you must render that decision in the form
9 of a verdict. I will instruct you when to start your
10 deliberations. But after deliberating, all twelve of you
11 would -- is inclined -- is obligated -- let's me change
12 that. All twelve of you should reach a verdict.

13 And, Mr. Foreman, it is your job to be in charge of
14 jury deliberations in the -- in the jury room. I have
15 prepared a verdict form in this case and the verdict
16 form, which both sides have seen, indicates the
17 following: we, the jury, unanimously find just
18 compensation in the amount of blank dollars. Mr.
19 Foreman, you would put in the amount on that line and you
20 would sign it as being the foreperson on the jury.

21 Your decision must be unanimous. And the exhibits
22 that were presented to you will be sent back to the jury
23 room with you. And please, ma'am, and please, sir, do
24 not begin any deliberations until you get some
25 instructions from me that I will relay to the bailiff and

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1 the bailiff when instruct you when you should deliberate.
2 So I'm going to excuse you for right now. I'll be back
3 in touch with you in just a second.

4 [Whereupon, the jury exits at 10:10 a.m.]

5 THE COURT: Alright. Any exception to the charge by
6 either side?

7 MR. BABCOCK: Your Honor, from the Condemnor, the
8 one ---

9 THE COURT: --- yes, sir ---

10 MR. BABCOCK: --- the one exception that we would
11 take is the one we discussed previously in terms of
12 Landowner's request to charge number five and objected to
13 the sentence that read if that formula is unfair to
14 either party; some other formula can be used. And we
15 object to that on the basis we argued previously.

16 THE COURT: Alright. And that objection is so
17 noted. Yes, sir?

18 MR. LINTON: And, Your Honor, we would renew our
19 objection to the charges on fair market value repeated
20 several times, on the same basis we argued before.

21 THE COURT: Alright. And that objection is also so
22 noted. Okay.

23 MR. LINTON: Thank you.

24 THE COURT: Anything other than that?

25 MR. WALKER: Nothing from the Landowner.

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1 MR. BABCOCK: Nothing from Railways, Your Honor.

2 THE COURT: Okay. I'm assuming both sides have gone
3 through all the exhibits and reduced it to a notebook
4 form? Everything?

5 MR. BABCOCK: Yes, sir.

6 MR. WALKER: Yes, sir.

7 [Off the record momentarily]

8 THE CLERK OF COURT: The ones that we got, that they
9 didn't hear the sound on --

10 THE COURT: Okay.

11 THE CLERK OF COURT: Do you still want them to see
12 the video if they...

13 THE COURT: Well, I think if they want to see that
14 one so -- I think we'll have to just bring them back in
15 here -- bring them back in here. I think it would be
16 fair to bring them back in here because there was much
17 dialog on both sides about the sound. So if they want to
18 see that one. That's the only one that we probably need
19 to bring them back in here. And do you have a screen
20 back there or something?

21 THE CLERK OF COURT: I could grab a laptop and put
22 it back there with it.

23 THE COURT: Do y'all have screens on the walls back
24 in the jury room?

25 THE CLERK OF COURT: Not back there.

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1 THE COURT: Okay.

2 MR. WALKER: I think -- Your Honor, we think that
3 it's a relevant video, that they should just come back in
4 the courtroom and look at it rather than leaving it to
5 their devices back there.

6 MR. BABCOCK: That would probably be the easiest
7 thing.

8 THE COURT: Yeah. Just come back in, since we've
9 got the -- yeah, that'll be -- did you hear that, Madam
10 Clerk?

11 THE CLERK OF COURT: Yes, sir.

12 THE COURT: They'll just come back in here.
13 Alright. Once they get the -- oh. Here you go. You
14 need that.

15 [Whereupon, the Court proffers verdict form to the
16 bailiff]

17 THE COURT: Once they get the exhibits and that
18 verdict form, they can start to deliberate.

19 [Whereupon, evidence out to the jury at 10:13 a.m.]

20 THE COURT: Are we off the record, Madam Court
21 Reporter? Alright. We'll be at ease.

22 [Whereupon, a recess is taken from 10:14 a.m. to
23 12:30 p.m.]

24

25

1 [Whereupon, a note from the jury is received at
2 12:30 p.m.]

3 THE COURT: I'll have the court reporter mark it.
4 We can go back on the record. But I've read it and I'll
5 let you guys read it.

6 [Whereupon, counsel review note from the jury]

7 [Whereupon, Court's exhibit number 2 is marked by
8 the court reporter]

9 THE COURT: I would just use your -- you know,
10 that's one of the reasons I read a lot of that stuff
11 twice. The ones that got real involved, I read it to
12 them twice and I slowed down. They just -- if everybody
13 consents, I was just going to say just do -- you've got
14 to use your recollection of what you heard because I
15 can't...

16 So, can I write on here, or how do you want -- do
17 you want me to bring them back in? Or what's -- which
18 way do you two guys prefer? I've done it both ways.
19 Sometimes I just write on here and then sometimes I bring
20 them back.

21 MR. WALKER: I'm fine with writing on it.

22 MR. BABCOCK: Yeah. I think writing on it will be
23 fine.

24 THE COURT: Just tell them -- I'm going to say you
25 must use your best -- I just put you must use your best

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1 recollection of the law.

2 MR. WALKER: Yes, sir.

3 THE COURT: And that's all I'm going to put.

4 Alright gentlemen, go back to where y'all were eating
5 lunch at.

6 [Whereupon, a recess is taken from 12:53 p.m. to
7 2:05 p.m.]

8 [Whereupon, a verdict is reached at 2:05 p.m.]

9 THE COURT: Everybody is here. Alright.

10 THE BAILIFF: Bring them in, sir?

11 THE COURT: You can bring them in.

12 [Whereupon, the jury enters at 2:10 p.m.]

13 THE BAILIFF: Judge, all the jurors are here and
14 seated.

15 THE COURT: Alright.

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VERDICT

THE COURT: Mr. Foreman, has the jury reached a verdict?

THE FOREMAN: Yes, sir.

THE COURT: Alright. Could you pass that verdict to the bailiff and the bailiff will bring it to me.

THE FOREMAN: Yes, sir.

[Whereupon, the Foreman proffers documents to the bailiff]

[Whereupon, the bailiff proffers documents to the Court]

[Whereupon, the Court reviews documents]

THE COURT: Alright. Madam Clerk, would you publish the verdict, please.

THE CLERK OF COURT: Yes, sir. Case number 2017-CP-10-5382, South Carolina Department of Commerce, Division of Public Railways, Condemnor, versus Gateway Properties of Greater Charleston LLC, Landowner, we, the jury, unanimously find just compensation in the amount of 3,750,000 dollars. Signed by the Jury Foreman.

THE COURT: Alright. Is that your verdict, says all of you?

[Whereupon, all jurors respond affirmatively]

THE COURT: Alright. Anything?

MR. BABCOCK: Yes, Your Honor. Request that the

S.C. Department of Commerce v Gateway Properties of Greater Charleston, LLC
Verdict
March 28, 2019

1 jury be polled, Your Honor.

2 THE COURT: Alright. Madam Clerk?

3 THE CLERK OF COURT: Yes, sir.

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S.C. Department of Commerce v Gateway Properties of Greater Charleston, LLC
Polling of the Jury
March 28, 2019

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POLLING OF THE JURY

THE CLERK OF COURT: Ladies and gentlemen, I'm going to ask you each two question: is this your verdict, and is it still your verdict. Please answer each question appropriately. Also, please stand when I call your juror number.

Juror Number 226, is this your verdict?

JUROR NUMBER 226: Yes, ma'am.

THE CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 226: Yes, ma'am.

THE CLERK OF COURT: Thank you. Juror Number 32, is this your verdict?

JUROR NUMBER 32: Yes, ma'am.

THE CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 32: Yes, ma'am.

THE CLERK OF COURT: Juror Number 151, is this your verdict?

JUROR NUMBER 151: Yes, ma'am.

THE CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 151: Yes, ma'am.

THE CLERK OF COURT: Juror Number 159; is this your verdict?

JUROR NUMBER 159: Yes.

THE CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 159: Yes.

S.C. Department of Commerce v Gateway Properties of Greater Charleston, LLC
Polling of the Jury
March 28, 2019

1 THE CLERK OF COURT: Juror Number 160, is this your
2 verdict?

3 JUROR NUMBER 160: Yes.

4 THE CLERK OF COURT: Is this still your verdict?

5 JUROR NUMBER 160: Yes, ma'am.

6 THE CLERK OF COURT: Juror Number 205, is this your
7 verdict?

8 JUROR NUMBER 205: Yes, ma'am.

9 THE CLERK OF COURT: Is this still your verdict?

10 JUROR NUMBER 205: Yes.

11 THE CLERK OF COURT: Juror Number 206, is this your
12 verdict?

13 JUROR NUMBER 206: Yes.

14 THE CLERK OF COURT: Is this still your verdict?

15 JUROR NUMBER 206: Yes.

16 THE CLERK OF COURT: Juror Number 238, is this your
17 verdict?

18 JUROR NUMBER 238: Yes.

19 THE CLERK OF COURT: Is this still your verdict?

20 JUROR NUMBER 238: Yes.

21 THE CLERK OF COURT: Juror Number 248, is this your
22 verdict?

23 JUROR NUMBER 248: Yes.

24 THE CLERK OF COURT: Is this still your verdict?

25 JUROR NUMBER 248: Yes, ma'am.

S.C. Department of Commerce v Gateway Properties of Greater Charleston, LLC
Polling of the Jury
March 28, 2019

1 THE CLERK OF COURT: Juror Number 295, is this your
2 verdict?

3 JUROR NUMBER 295: Yes.

4 THE CLERK OF COURT: Is this still your verdict?

5 JUROR NUMBER 295: Yes.

6 THE CLERK OF COURT: Juror Number 305, is this your
7 verdict?

8 JUROR NUMBER 305: Yes, ma'am.

9 THE CLERK OF COURT: Is this still your verdict?

10 JUROR NUMBER 305: Yes, ma'am.

11 THE CLERK OF COURT: Juror Number 328, is this your
12 verdict?

13 JUROR NUMBER 328: Yes, ma'am.

14 THE CLERK OF COURT: Is this still your verdict?

15 JUROR NUMBER 328: Yes, ma'am.

16 THE CLERK OF COURT: Your Honor, the jury has been
17 polled and the verdict stands.

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S.C. Department of Commerce v Gateway Properties of Greater Charleston, LLC
Proceedings
March 28, 2019

1 THE COURT: Alright. Anything from either side
2 before I let the jury go?

3 MR. BABCOCK: Not from Railways, Your Honor.

4 MR. WALKER: Not from the Landowner, Your Honor.

5 THE COURT: Alright. Ladies and gentlemen of the
6 jury, I certainly appreciate your service to the citizens
7 of Charleston County this week. Even though I'm from
8 Greenville County, I enjoyed my stay here this week.

9 I will probably be here again sometime the end of
10 next month. Don't know if I'll get an opportunity to see
11 all of you again. But certainly both sides appreciate
12 your service and I certainly, on behalf of the entire
13 judiciary, appreciate your service.

14 And I am going to let you go. Fortunately, this
15 will be the only trial that will be commenced this week,
16 so you will not be called for service of any other
17 matters that will take place this week.

18 But I -- here again, I always say everywhere I go
19 that jury service is a great service and it's up there
20 with all the other good things that you do in life. So I
21 appreciate you. And you're free to go. Thank you.

22 [Whereupon, the jury is excused and exits the
23 courtroom at 2:15 p.m.]

24 THE COURT: Alright. Any motions from either side?

25 MR. BABCOCK: Yes, Your Honor. We would request ten

1 days for our post-trial motions, Your Honor.

2 THE COURT: Yes, sir. Anything? Be glad to grant
3 that.

4 MR. WALKER: The same with the Landowner.

5 MR. LINTON: The same ten days.

6 THE COURT: Pardon?

7 MR. WALKER: Yes, the same ten days.

8 THE COURT: The same ten days? Okay.

9 MR. WALKER: Thank you.

10 THE COURT: Alright. Thank you y'all.

11 MR. BABCOCK: Thank you, Your Honor.

12 THE COURT: Have a good one. I enjoyed working
13 with all of you and I hope our paths will cross again.

14 [Whereupon, the jury trial concludes at 2:16 p.m.]

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AT LANDLORD'S ELECTION, THIS LEASE
AGREEMENT WILL BE SUBJECT TO
ARBITRATION UNDER THE SOUTH CAROLINA
UNIFORM ARBITRATION ACT, SECTION
15-48-10, et seq.

STATE OF SOUTH CAROLINA) LEASE AGREEMENT
)
COUNTY OF CHARLESTON)

THIS LEASE AGREEMENT is made and entered into on this 1st day of June, 2008, by and between GATEWAY PROPERTIES OF GREATER CHARLESTON, LLC (hereinafter referred to as the "Landlord") and LIFESPACES, INC. (hereinafter referred to as the "Tenant").

W I T N E S S E T H:

1. Premises: The Landlord hereby leases to the Tenant, and the Tenant hereby leases from the Landlord, the building ("Building") and premises identified as 1799 Meeting Street Rd, Charleston, South Carolina [TMS# 464-02-00-017] Charleston County, as more particularly shown on Exhibit "A" attached hereto and incorporated herein by reference (collectively the "Premises").

TO HAVE AND TO HOLD THE PREMISES upon the terms and conditions hereinafter set forth.

2. Term. The term ("Term") of this Lease shall begin October 1, 2007 or as soon thereafter as Landlord delivers possession of the Premises to Tenant (the "Commencement Date") and end at midnight on September 30, 2012, unless sooner terminated in accordance with the terms hereof or properly extended in accordance with the provisions of paragraph five (5) hereof.

3. Possession. If this Lease is executed before the Premises becomes vacant, or if any present tenant or occupant of the Premises holds over and Landlord cannot acquire possession of the Premises prior to the Commencement Date, or if for any other reason Landlord fails to deliver possession of the Premises on or before the specified Commencement Date, this Lease shall remain in full force and effect and the Landlord shall have no liability for delay, but Base Rent and Additional Rent ("Rent") shall not commence until the Landlord delivers possession of the Premises to the Tenant.

4. Base Rent. The Tenant shall pay to the Landlord without deduction, set off, prior notice or demand, Base Rent ("Base Rent") in the amount of Eight Thousand One Hundred Thirty-Five and

61/100ths (\$8,135.61) Dollars per month beginning January 1, 2008. On the anniversary of the lease, the Base Rent shall be increased in proportion to the Consumer Price Index as posted by the federal government.

All Base Rent is payable in advance in equal monthly installments, on the first day of each and every calendar month during the Term hereof. All Base Rent payments shall be made to Gateway Properties of Greater Charleston, LLC at P. O. Box 1045 Mt Pleasant, South Carolina, 29465-1045, or at such other place as the Landlord may designate in writing to Tenant. If the Commencement Date of this Lease is a day other than the first day of the month, Base Rent for the first month shall be prorated and paid with the first regular monthly installment upon execution of this Lease. Any Base Rent hereunder which is not received by the fifth (5th) day of each month shall be subject to a delinquency charge of one and one-half (1 1/2%) percent per month on the unpaid balance, accruing from the first day of every month for which Base Rent is due. Said delinquency charge shall be in addition to the default provisions herein.

As additional consideration for the rental of the Premises, Tenant agrees that it will make additional improvements to the building including, but not limited to, flooring, a home theater room, and acoustic isolation and treatment. Such improvements will be made in a good and workmanlike manner and in compliance with all building codes.

5. Option to Extend Term. Provided Tenant is not in default hereunder, Tenant shall have the option to extend the Term of this Lease for three (3) additional period of five (5) year upon the same terms and conditions as are provided for in the original Term hereof except Base Rent shall be as follows:

\$8,135.61 per month for the first five (5) years of Base Rent
\$9,355.25 per month for the second five (5) years of Base Rent
\$10,753.54 per month for the third five (5) years of Base Rent
\$12,372.32 per month for the fourth five (5) years of Base Rent

In the event Tenant elects to exercise its option to extend the Term hereof for an additional five (5) years, Tenant must give the Landlord no less than one hundred and twenty (120) days written notice prior to expiration of the original Term hereof.

6. Security Deposit. Tenant shall deposit the sum of Eight Thousand One Hundred Thirty-Five and 61/100ths (\$8,135.61) Dollars with Landlord upon execution of this Lease as security for the full performance of all of the provisions of this Lease on its part (the "Security Deposit"). If at any time during the Term of this Lease, Tenant shall be in default, Landlord, without waiver

or limitation of any other right or remedy which may apply because of such default, may (i) apply all or part of the Security Deposit for the payment of Rent in default; and/or (ii) appropriate all or part of the Security Deposit to cure the default, including but not limited to, the repairing of damage to the Premises caused by the Tenant or the defraying of any and all reasonable and necessary expenses incurred by the Landlord in recovering possession of the Premises upon termination of this Lease. To the extent that all or any portion of the Security Deposit is thus applied or appropriated by the Landlord, and if this Lease is not terminated as a result of the default, Tenant, at Landlord's request and as a condition to the continuance of this Lease, shall pay to the Landlord, within ten (10) days of request by the Landlord, an amount sufficient to place in the Landlord's hands the amount of the original Security Deposit, taking into account the portion, if any, of the adjusted original Security deposit as may not have been applied or expended by Landlord in accordance herewith.

Landlord may retain the Security Deposit in a general account with other funds. Tenant shall not be entitled to interest on the Security Deposit. If Tenant is not in default at the termination of this Lease, Landlord shall return the Security deposit (or the portion which has not been applied or appropriated in accordance herewith) to the Tenant within a reasonable time after the termination date of this Lease.

7. Use. The Tenant shall use and occupy the Premises solely in connection with its technology contracting business and for no other purpose without the prior written consent of Landlord. Tenant shall comply with all laws, ordinances, orders, or regulations of any lawful authority having jurisdiction over the Premises and the use thereof. Tenant shall not at any time leave the Premises vacant, but shall in good faith continuously throughout the Term of this Lease conduct and carry on in the entire Premises the type of business for which the Premises are leased.

Tenant shall not permit any objectionable or unpleasant odors to emanate from the Premises; nor place or permit any radio, television, loudspeaker or amplifier on the roof or outside the Premises or where the same can be seen or heard from outside the Premises; nor place any antenna, awning or other projection on the exterior of the Premises; or take any action which would constitute a nuisance or would disturb or endanger other tenants of the Building or unreasonably interfere with their use of their respective premises; or do anything which would tend to injure the reputation of the Building.

Tenant shall comply with all laws, ordinances, orders, or

regulations of any lawful authority having jurisdiction over the Premises and the use thereof. Tenant expressly acknowledges that it is its responsibility to obtain a business license from the County of Charleston. Tenant shall not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store (in any manner which violates applicable law), handle, dispose of, transfer, produce, or process Hazardous Materials (as such term is hereinafter defined), nor shall Tenant cause or permit, as a result of the intentional or unintentional acts or omissions on the part of Tenant or any employee, officer, director, agent, contractor, licensee or invitee of Tenant, however characterized, a release of Hazardous Materials onto the Premises or any other property.

For purposes hereof, the term "Hazardous Materials" includes, without limitation any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Hazardous Materials Transportation Act, as amended, the Resource Conservation and Recovery Act of 1976, as amended and in any regulations adopted and publications promulgated pursuant thereto or any other federal, state or local environmental laws, ordinances, rules or regulations.

8. Assignment and Subletting. The Tenant shall not, without the prior written consent of the Landlord, assign or transfer this Lease or any interest therein, or sublet the Premises or any part thereof, or grant any license or other right of occupancy or permit the use of the Premises or any portion thereof by any party other than the Tenant. Upon transfer of this Lease from Tenant by merger, sale of all the stock of Tenant, consolidation or liquidation, Landlord may, in its sole discretion, terminate this Lease. Consent to one assignment or sublease shall not constitute a waiver of this provision with respect to subsequent transactions. Each subtenant or assignee shall be liable to Landlord for all obligations of the Tenant hereunder, but the Tenant or any Guarantor of Tenant's obligations shall not be thereby relieved of such obligations.

9. Condition of Premises. EXCEPT AS OTHERWISE STATED HEREIN, TENANT ACCEPTS THE PREMISES IN "AS IS" CONDITION. LANDLORD HEREBY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY AS TO THE PREMISES INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. Improvements. All improvements, alterations and additions to the Premises desired by Tenant shall be made at Tenant's expense, in good and workmanlike manner and in accordance with plans and specifications which have been previously approved

in writing by the Landlord. If the improvements, alterations, or additions are to be made by a contractor other than Landlord's, Landlord reserves the right to approve such contractor, which approval shall not be unreasonably withheld, and to require adequate lien waivers, bonds, permits, licenses and insurance. Tenant shall indemnify and hold Landlord harmless against any loss, liability or damage resulting from such work by the Tenant.

All improvements and additions made by the Tenant and permanently attached to the Premises, including without limitation all partitions, carpets, lighting fixtures, doors, hardware, shelves, cabinets and ceilings, shall remain in the Premises and shall be surrendered to Landlord at the expiration or earlier termination of this Lease unless Landlord requests their removal in which event, Tenant shall remove the same and restore the Premises to its original condition at Tenant's expense. Tenant shall specifically have the right to remove modular systems that may be attached to walls or floors so long as Tenant repairs any damage to the walls or floors caused by the installation or removal of any such item. If by reason of any alteration, repair, labor performed or materials furnished to the Premises for or on behalf of Tenant, any mechanic's or other lien shall be filed, claimed, perfected or otherwise established against the Premises, Tenant shall discharge or remove the lien by bonding or otherwise within fifteen (15) days after the same is filed.

11. Utilities and Services. Tenant shall promptly pay all charges for electricity, water, gas, telephone service, and sewerage service, and other utilities furnished to the Premises.

Landlord shall not be liable for any interruption whatsoever in utility services which are due to fire, accident, strike, acts of God, or other causes beyond the control of Landlord or in order to make alterations, repairs or improvements to the same.

12. Maintenance and Repair of Premises. Tenant shall, at its expense, keep the Premises in good, clean, and habitable condition and repair and shall at its sole cost and expense keep the Premises free of insects, rodents, vermin and other pests and make all needed repairs and replacements including replacement of cracked or broken glass, except for repairs and replacements required to be made by Landlord under the provisions of this Lease. Without limiting the coverage of the previous sentence, it is understood that Tenant's responsibilities therein include the repair and replacement of the foundation, the exterior walls, window and door frames, molding, locks and hardware; special store fronts; lighting, heating, air-conditioning, plumbing and other electrical, mechanical and electromotive installation, equipment and fixtures, signs, placards, decorations or advertising media of any type; interior painting or other treatment of interior walls; roof of the Building; and also includes all utility repairs in

ducts, conduits, pipes and wiring, and any sewer stoppage located in under and about the Premises. If any repairs required to be made by Tenant hereunder are not made within ten (10) days after written notice delivered to Tenant by Landlord, Landlord may at its option make such repairs without liability to Tenant for any loss or damage which may result to its stock or business by reason of such repairs and Tenant shall pay to Landlord upon demand as Additional Rent hereunder, the cost of such repairs plus interest at the maximum contractual rate which could legally be charged in the event of a loan of such payment to Tenant in the state where the Premises are located (but in no event to exceed 1.5% per month), such interest to accrue continuously from the date of payment by Landlord until repayment by Tenant. At the expiration of the Lease, Tenant shall surrender the Premises in good condition, excepting reasonable wear and tear.

Tenant expressly acknowledges and agrees that the Landlord shall not be required to make any repairs or maintenance on the Premises.

13. Rubbish. Tenant shall take good care of the Premises and keep the same free from waste at all times. Tenant shall keep the Premises and sidewalks, service ways and loading areas adjacent to the Premises neat, clean and free from dirt or rubbish at all times, and shall store all trash and garbage within the Premises, arranging for the regular pick up of such trash and garbage at Tenant's expense. Receiving and delivery of goods and merchandise and removal of garbage and trash shall be made only in the manner and areas prescribed by Landlord. Tenant shall not operate an incinerator or burn trash or garbage within the Premises or any Common Area.

14. Signs; Displays. Tenant shall not, without Landlord's prior written consent (a) install any exterior lighting decorations, paintings, awnings, canopies or the like or (b) erect or install any signs, window or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of the Premises. All signs, lettering, placards, decorations and advertising media shall conform in all respects to the sign criteria established by Landlord for the Building from time to time in the exercise of its sole discretion, and shall be subject to the prior written approval of Landlord as to construction, method of attachment, size, shape, height, lighting, color and general appearance. All signs shall be kept in good condition and in proper operating order at all times.

Tenant shall remove any such signs, lettering, placards or decorations at the expiration or earlier termination of this Lease and repair any damage to the Premises and/or the building caused by the installation or removal of same.

15. Property of Tenant. Tenant may, and at the expiration or earlier termination hereof shall, remove all furniture, equipment, and other personal property which Tenant shall have placed in the Premises or on the exterior thereof; provided, that Tenant shall repair any damage to the Premises caused by the installation or removal of the same. All such property shall, during the Term hereof, be at the risk of Tenant only, and Landlord shall not be liable for any loss thereof or damage thereto resulting from any cause whatsoever; and each policy of insurance covering such property shall contain a standard waiver of subrogation endorsement. Any such property not removed at the expiration or earlier termination of this Lease shall be deemed abandoned and may be disposed of by the Landlord in any manner whatsoever.

16. Additional Rent, Taxes and Insurance. In addition to the Base Rent provided for in Paragraph Four (4) herein, Tenant shall pay to the Landlord, as Additional Rent, all premiums in insurance (liability, fire and extended coverage insurance carried by Landlord insuring the Premises), and all real estate taxes and other assessments, including but not limited to user fees, assessed on the Building and the Premises and/or the land of which the building and Premises are a part. Landlord and Tenant acknowledge that the Buildings are located on the parcel of land designated as TMS # 464-02-00-017 (the "Land"). Therefore, Tenant shall be responsible for of all taxes and other assessments including, but not limited to, user fees, assessed with respect to Land and one hundred percent (100%) of any taxes and/or other assessments for only the Premises. Such payment shall be due and payable thirty (30) days after a statement thereof is rendered to Tenant by Landlord. If said Additional Rent is not received by Landlord within the thirty (30) day period, Tenant shall pay Landlord a delinquency charge of one and one-half (1 1/2%) percent on the unpaid amount from the due date until paid. The term "real estate taxes" shall include any taxes, assessments, levies or charges assessed or imposed on the land and/or the Building of which the Premises forms a part. Tenant shall pay prior to delinquency, all personal property taxes and assessments of every kind or nature imposed or assessed upon or with respect to furnishings, fixtures, equipment, and other property of Tenant placed in the Premises. Landlord shall, during the entire Term hereof, maintain in force, casualty insurance on its interest in the Premises in such amounts and against such hazards and contingencies as Landlord shall deem desirable for its own protection; provided, however, Landlord shall not be obligated to insure any furniture, equipment, or other property placed in the Premises by or at the expense of Tenant. Tenant shall not permit any use of the Premises that would invalidate or conflict with the known terms of any insurance policy covering risks insured by

Landlord, and Tenant shall pay the cost of any premium amounts above standard rates for such insurance occasioned by the nature of Tenant's use of the Premises.

17. Public Liability Insurance. Tenant shall obtain and maintain a comprehensive policy of liability insurance with respect to the Premises naming Landlord and any designee of Landlord as additional insureds and protecting Landlord, Tenant and any designee of Landlord against any liability which arises from any occurrence on or about the Premises or any appurtenances thereof, or any of the claims against which Tenant is required to indemnify Landlord pursuant to this Lease. Such policy shall be written by a company satisfactory to Landlord. The coverage limits shall be at least One Million Dollars (\$1,000,000.00) with respect to combined single limits of bodily injury or death per occurrence, Two Million and No/100ths (\$2,000,000.00) Dollars with respect to bodily injury or death of more than one person in any one occurrence and at least Five Hundred Thousand and No/100ths (\$500,000.00) Dollars for property damage per occurrence. Tenant shall also carry business interruption coverage in amounts sufficient to pay Base Rent hereunder. Said policy(ies) must contain a provision that they will not be cancelled or changed without first giving Landlord thirty (30) days prior written notice. Tenant shall provide Certification of Insurance to Landlord prior to taking possession of the Premises. Each policy of insurance Tenant is required to carry under this Lease shall contain a waiver of subrogation against Landlord and Tenant hereby waives all rights of recovery or causes of action against Landlord for any damage or injury covered by Tenant's insurance or by the type of insurance required of Tenant by this Lease.

18. Damage or Destruction by Casualty. If the Premises are wholly or partially destroyed by fire or other casualty, Rent shall abate in proportion to the loss of use thereof, and Landlord shall, at its own expense, promptly restore the Premises to substantially the same condition as existed when Tenant took possession of the Premises, whereupon full Rent shall resume, unless said damage was caused by the Tenant, its agents, licensees, employees, invitees or visitors, in which case any repair shall be at Tenant's expense; provided, however, Landlord may by notice to Tenant within ninety (90) days after the date of such damage or destruction elect, at its option, not to restore or repair the Premises and Landlord or Tenant may thereafter, at its option, cancel this Lease. If the Premises cannot be restored within one hundred twenty (120) days of the date of such damage or destruction, either Landlord or Tenant shall have the option to cancel this Lease with written notice thereof to the other party within said period.

19. Eminent Domain. If the whole of the Premises, or such

portion thereof as will make the Premises unsuitable for the use contemplated hereby, be taken or condemned by any public or quasi-public authority (including any conveyance in lieu thereof), then the Term hereof shall cease as of the date possession thereof is taken by the condemnor, and Base Rent and Additional Rent shall be accounted for as between Landlord and Tenant as of that date. If any lesser portion of the Premises is thus taken or condemned, Rent shall abate in proportion to the loss of use occasioned thereby. Tenant shall not have any right or claim to any part of any award made to or received by Landlord for such taking or any right or claim against Landlord for the value of the unexpired Term of this Lease; provided, however, nothing contained herein shall preclude Tenant from making a claim directly against the condemning authority for loss of business, cost of moving, etc. so long as said claim does not diminish or otherwise adversely affect Landlord's award from the condemning authority.

20. Indemnity. Tenant shall defend, indemnify and hold the Landlord harmless from and against any claims, damages, or expenses, whether due to damage to the Premises, claims for injuries to persons or property, or administrative or criminal action by a governmental authority, where such claims arise out of or from use or occupancy of the Premises by Tenant, its agents, employees or invitees, except where such damage, claims or penalties are caused by the negligence of Landlord, its employees or agents.

21. Landlord's Entry. Landlord may enter the Premises at reasonable times and in a reasonable manner to inspect or exhibit same, to comply with Landlord's obligations hereunder, to exercise Landlord's right under this Lease Agreement, or to make repairs or renovations required in connection with adjoining spaces. Additionally, Tenant expressly authorizes Landlord to enter the Premises in the case of an emergency to take action necessary to preserve the Premises. Tenant will permit Landlord to place and maintain "For Rent" or "For Lease" signs on the Premises during the last ninety (90) days of the Lease Term without compensation to Tenant.

22. Rules and Regulations. Tenant, for itself, its agents and employees, agrees to comply with the Rules and Regulations for the Building attached hereto and made a part hereof, and all such rules and regulations which Landlord may hereinafter from time to time promulgate for the care and protection of the Building and the safety, comfort and welfare of its occupants. If any such Rules and Regulations conflict with any of the provisions of this Lease Agreement, the Lease Agreement shall control. Landlord shall not be liable for the failure of any other person to comply with such Rules and Regulations.

23. Default and Remedies. If Tenant shall fail to pay either Base Rent or Additional Rent when due, or any other sums of money becoming due hereunder within ten (10) days of written notice, or if Tenant shall default in the performance of any of the other terms, conditions, or covenants contained in this Lease to be observed or performed by it and does not remedy such default within thirty (30) days after written notice thereof or does not, within such thirty (30) days, commence such act or acts as shall be necessary to remedy a default, which is not curable within said thirty (30) days for reasons beyond the control of Tenant, and shall not complete such act or acts within sixty (60) days after written notice, or if Tenant shall become bankrupt or insolvent, or file any debtor proceedings, or file in any court pursuant to any statute, either of the United States or any state a petition in bankruptcy or insolvency or for reorganization, or file or have filed against it a petition for the appointment of a receiver or trustee for all substantially all of the assets of Tenant, or if Tenant makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement with its creditors, or if Tenant shall abandon the Premises or suffer the Lease to be taken under any writ of execution and such writ is not vacated or set aside within fifteen (15) days, then in any such event the Landlord shall have the immediate right of reentry with or without resort to legal process and the right to terminate and cancel this Lease. If Landlord should elect to reenter as herein provided, or should it take possession pursuant to legal proceedings, it may either terminate this Lease or it may from time to time without terminating this Lease, relet the Premises for such term and at such rentals and upon such other terms and conditions as the Landlord may deem advisable. If such reletting shall yield rentals insufficient for any month to pay the Rent due by Tenant hereunder for that month, Tenant shall be liable to Landlord for the deficiency and same shall be paid monthly. No such reentry or taking possession of the Premises by Landlord shall be construed as an election to terminate this Lease unless written notice of such intention be given by the Landlord to the Tenant; but, notwithstanding any such reentry and reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach. If as a result of Tenant's default hereunder, Landlord shall institute legal proceedings or an arbitration proceeding for the enforcement of Tenant's obligations, Tenant shall pay all costs incurred by Landlord, including reasonable attorney's fees.

24. Arbitration. At Landlord's request, any disagreement between the parties hereto with respect to the interpretation or application of this Lease, or the obligations of the parties hereunder, or to any matter of dispute arising between the parties hereto, shall be determined by arbitration. Such arbitration shall be conducted before three (3) arbitrators (unless the

parties hereto agree to one arbitrator). Landlord shall have the right to name one (1) arbitrator and the Tenant shall name one (1) arbitrator. The two (2) arbitrators shall then choose a third arbitrator. The arbitrators shall conduct their proceedings and make their decisions in strict conformity with the South Carolina Uniform Arbitration Act; provided, however, such arbitrators shall apply applicable South Carolina law to any such controversy. All such arbitration proceedings hereunder shall be conducted in Charleston County, South Carolina. The decision of the arbitrator or arbitrators, as the case may be, shall be final, conclusive and binding upon the parties hereto.

25. Remedies Cumulative Non-Waiver. No remedy herein or otherwise conferred upon or reserved to Landlord or Tenant shall be considered exclusive of any other remedy, but the same shall be distinct, separate and cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity; and every power and remedy given by this Lease Agreement may be exercised from time to time as often as occasion may arise or as may be deemed expedient. No delay or omission of Landlord to exercise any right or power arising from any default on the part of Tenant shall impair any such right or power, or shall be construed to be a waiver of any such default, or acquiescence therein. The acceptance of Rent by Landlord with knowledge of a default by Tenant hereunder shall not constitute a waiver of such default.

26. Landlord's Lien. Landlord shall have at all times a valid security interest to secure payment of all Rent and other sums of money becoming due hereunder from Tenant, and to secure payment of any damages or loss which Landlord may suffer by reason of the breach by Tenant of any covenant, agreement or conditions contained herein, upon all goods, wares, equipment, fixtures, furniture, improvements and other personal property of Tenant presently, or which may hereafter be, situated on the Premises, and all proceeds therefrom, and such property shall not be removed without the consent of Landlord until all arrearages in Rent as well as any and all other sums of money then due Landlord or to become due to Landlord hereunder shall first have been paid and discharged and all the covenants, agreements and conditions hereof have been fully complied with and performed by Tenant. Upon the occurrence of an event of default by Tenant, Landlord may, in addition to any other remedies provided herein, enter upon the Premises and take possession of any and all goods, wares, equipment, fixtures, furniture, improvements and other personal property of Tenant situated on the Premises, without liability for trespass or conversion, and sell the same at public or private sale, with or without having such property at the sale, after giving Tenant reasonable notice of the time and place of any public sale or of the time after which any private sale is to be

made, at which sale the Landlord or its assigns may purchase the same unless otherwise prohibited by law. Unless otherwise provided by law, and without intending to exclude any other manner of giving Tenant reasonable notice, the requirement of reasonable notice shall be met if such notice is given in the manner prescribed in this Lease at lease seven (7) days before the time of sale. Any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in commercially reasonable manner if held in the above-described Premises or where the property is located after the time, place, and method of sale and a general description of the types of property to be sold have been advertised in a daily newspaper published in the county in which the property is located, for five (5) consecutive days no more than ten (10) days before the date of sale. The proceeds from any such disposition, less any and all expenses connected with the taking of possession, holding and selling of the property (reasonable attorney's fees and legal expenses), shall be applied as a credit against the indebtedness secured by the security interest granted in this paragraph. Any surplus shall be paid to Tenant or as otherwise required by law; the Tenant shall pay any deficiencies forthwith. Upon request by Landlord, Tenant agrees to execute and deliver to Landlord a financing statement in form sufficient to perfect the security interest of Landlord in the aforementioned property and proceeds thereof under the provisions of the Uniform Commercial Code in force in the State of South Carolina.

27. No Recourse. The liability of Landlord to Tenant for any default by Landlord under the terms of this Lease shall be limited to the proceeds of sale on execution of the interest of Landlord in the Premises and Landlord shall not be personally liable for any deficiency, except that Landlord shall, remain personally liable to account to Tenant for any Security Deposit hereunder. The clause shall not be deemed to limit or deny any remedies which Tenant may have in the event of default by Landlord hereunder, which do not involve the personal liability of Landlord.

28. Quiet Enjoyment. If Tenant shall pay the Base Rent and Additional Rent when due and perform and observe all of the other covenants and conditions to be performed and observed by it hereunder, Tenant shall at all time during the Term hereof have the peaceable and quiet enjoyment of the Premises without interference from Landlord or any person lawfully claiming through Landlord, subject, however, to the terms of this Lease Agreement and any mortgages or deeds of trust provided for in Paragraph 31 hereof.

29. Estoppel Agreement. Within ten (10) days after written request thereof by the Landlord or any mortgagee or

trustee under a mortgage or deed of trust covering the Premises, Tenant shall deliver in recordable form a statement to any mortgagee, trustee or other transferee, or to Landlord, certifying any facts that are then true with respect to this Lease Agreement, including without limitation (if such be the case) that this Lease Agreement is in full force and effect, that Tenant is in possession, that Tenant has commenced the payment of Rent, and that Tenant claims no defense or set-off to the due and full performance of its obligations under this Lease Agreement. Landlord shall furnish within ten (10) days of written request an Estoppel Certificate as to Tenant.

30. Subordination and Attornment; Transfer. Tenant agrees that this Lease shall be subject and subordinate to any mortgages, deeds of trust or any ground lease now or hereafter placed upon the Premises, the Building or land upon which the Premises is located and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust. Tenant agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser at a sale pursuant to the foreclosure thereof, and to the lessor in the event of a termination of any such ground lease.

In the event of the transfer and assignment by Landlord of its interest in this Lease and in the Building containing the Premises to a person expressly assuming Landlord's obligations under this Lease, Landlord shall thereby be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of the Landlord for performance of such obligations. Any Security Deposit given by Tenant to secure performance of Tenant's obligations hereunder may be assigned and transferred by Landlord to such successor in interest, and Landlord shall thereby be discharged of any further obligation relating thereto.

31. Jurisdiction and Venue. Tenant expressly consents that the Courts of the State of South Carolina shall have jurisdiction over any dispute arising out of this Lease or the Premises between Landlord and Tenant (unless Landlord exercises its rights to arbitration), that the County of Charleston shall be the proper place of venue for any such proceeding and Tenant expressly waives any right to object to the same.

32. Notices. All notices provided for in this Lease Agreement shall be in writing and shall be deemed to be given when sent by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

if to Landlord: Gateway Properties of
Greater Charleston, LLC

Attn: F. Fabian
P. O. Box 1045
Mt Pleasant, SC 29465-1045

With copy to: Robert S. Dodds
Cisa & Dodds, LLC
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, SC 29464

If to Tenant: Lifespaces, Inc.
P.O. Box 21759
Charleston, SC 29413-1750

Notices shall also be sent to the holder or holders of any mortgage or deed of trust covering the Premises at such address as such holder or holders may have given by notice as herein provided. Either party hereto, or any such holder, may from time to time, by notice as herein provided, designate a different address to which notices to it shall be sent.

33. Governing Law. This Lease Agreement shall be governed by, construed and enforced in accordance with the laws of the State of South Carolina.

34. Nature and Extent of Agreement. This Lease Agreement, including the exhibits attached hereto, contains the complete agreement between the parties regarding the terms and conditions of the lease of the Premises, and there are no oral or written conditions, terms, warranties, understandings or other agreements pertaining thereto which have not been incorporated herein. This Lease Agreement may be modified only by written instrument duly executed by both parties and their respective successors in interest.

35. Holding Over. This Lease expires at the end of the Term defined herein, but it is expressly understood that if Tenant holds over for another month at the end of said Term for any purpose other than the removal of its property, and Landlord accepts Rent for said month, such acceptance shall operate as a renewal of the tenancy for another month and for each additional month for which Landlord accepts Rent. Should Landlord require possession of the Premises, it shall give Tenant thirty (30) days to vacate the said Premises during such holdover period. The monthly Base Rent during the holdover period shall be at fifty (50%) percent increase above the monthly Base Rent paid for the last month of the term as set forth herein.

36. Attorney's Fees. If Tenant defaults in the performance of any of the covenants of this Lease and by reason thereof Landlord employs the service of an attorney to enforce

performance by Tenant, to evict Tenant, to collect monies due by Tenant, or to perform any service based upon said default, then the Tenant shall pay a reasonable attorney's fee and all reasonable expenses and cost incurred by Landlord pertaining thereto.

37. Non-Waiver. The failure of Landlord or Tenant to insist upon strict performance of any of the terms, conditions and covenants herein shall not be deemed to be a waiver of any rights or remedies that Landlord and Tenant may have, and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained except as may be expressly waived in writing.

38. Non-Easement. It is understood and agreed that this Lease does not grant any rights to light and air over property adjoining the land on which the Premises are situated.

39. No Representations by Landlord. Tenant acknowledges that neither Landlord nor any broker, agent or employee of Landlord has made any representations or promises with respect to the Premises or the Building except as herein expressly set forth, and no rights, privileges, easements or licenses are acquired by Tenant except as herein expressly set forth.

40. Time of the Essence. It is understood and agreed between the parties hereto that time is of the essence in all of the terms and provisions of this Lease.

41. Caption and Titles. The captions and titles appearing within this Lease are for reference only and shall not be considered a part of this Lease or in any way to modify, amend or affect the provisions thereof.

42. Grammatical Changes. The proper grammatical changes shall be understood and apply where necessary to designate the plural rather than the singular and the masculine or feminine gender.

43. Recordation and Documentary Stamp Taxes. This Lease shall not be recorded, but a short form referring to this Lease, describing the Premises setting forth the term thereof may be recorded by either party. The cost of recording shall be paid by the recording party.

44. No Partnership or Joint Venture. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or a joint venturer or a member of a joint enterprise with Tenant.

45. Binding Agreement. The conditions, covenants and agreements contained in this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, executors, administrators and assigns except as otherwise provided in this Agreement. No rights, however, shall inure to the benefit of any assignee of Tenant unless the assignment to such assignee has been approved in accordance with the provisions set out in this Lease.

46. Commissions. Landlord and Tenant represent to the other that no agent is involved in the leasing of the within Premises. Landlord shall be responsible for the commission due said agent. Both parties agree to hold each other harmless from any other claims for commissions arising out of this Lease.

47. Authority. If Tenant is a corporation, general partnership or limited partnership, each person executing this Lease on behalf of Tenant hereby covenants and warrants that Tenant is a duly organized corporation, general partnership or limited partnership (as the case may be) qualified to do business in the State of South Carolina, that it has full authority to enter into this Lease and that each person executing this Lease on behalf of Tenant is authorized to do so.

48. Interpretation Presumption. The Landlord and Tenant expressly agree that in the event of a dispute concerning the interpretation of this Agreement, each party hereby waives the doctrine that an ambiguity should be interpreted against the party who drafted the document.

[SIGNATURES CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have hereunto set their respective hand and seals on the day and year first above written.

WITNESSES:

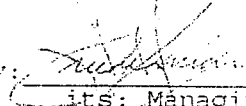

As to Landlord

As to Landlord


As to Tenant

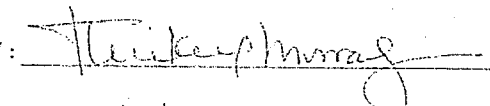
As to Tenant

Landlord:
Gateway Properties of
Greater Charleston, LLC

By: 
its: Managing Member

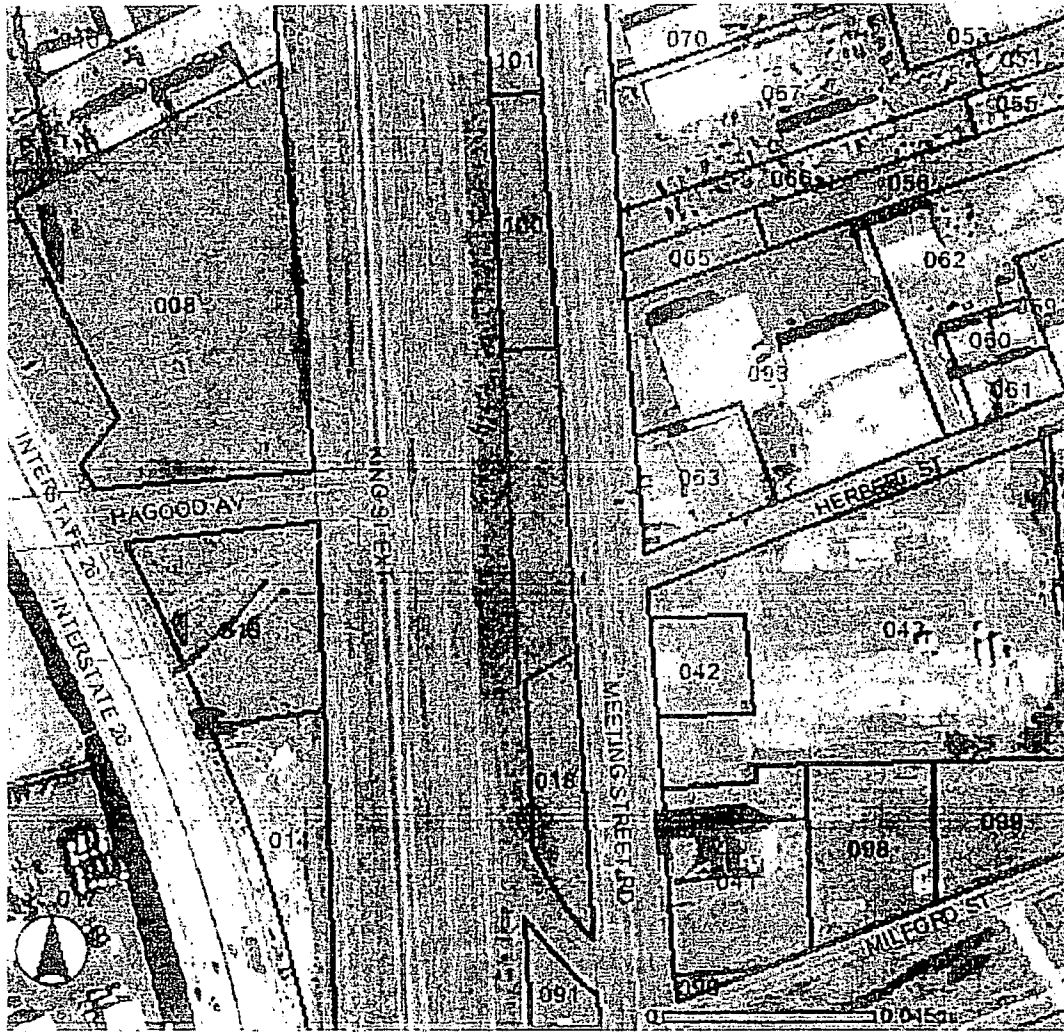
DATED: 8/15/07

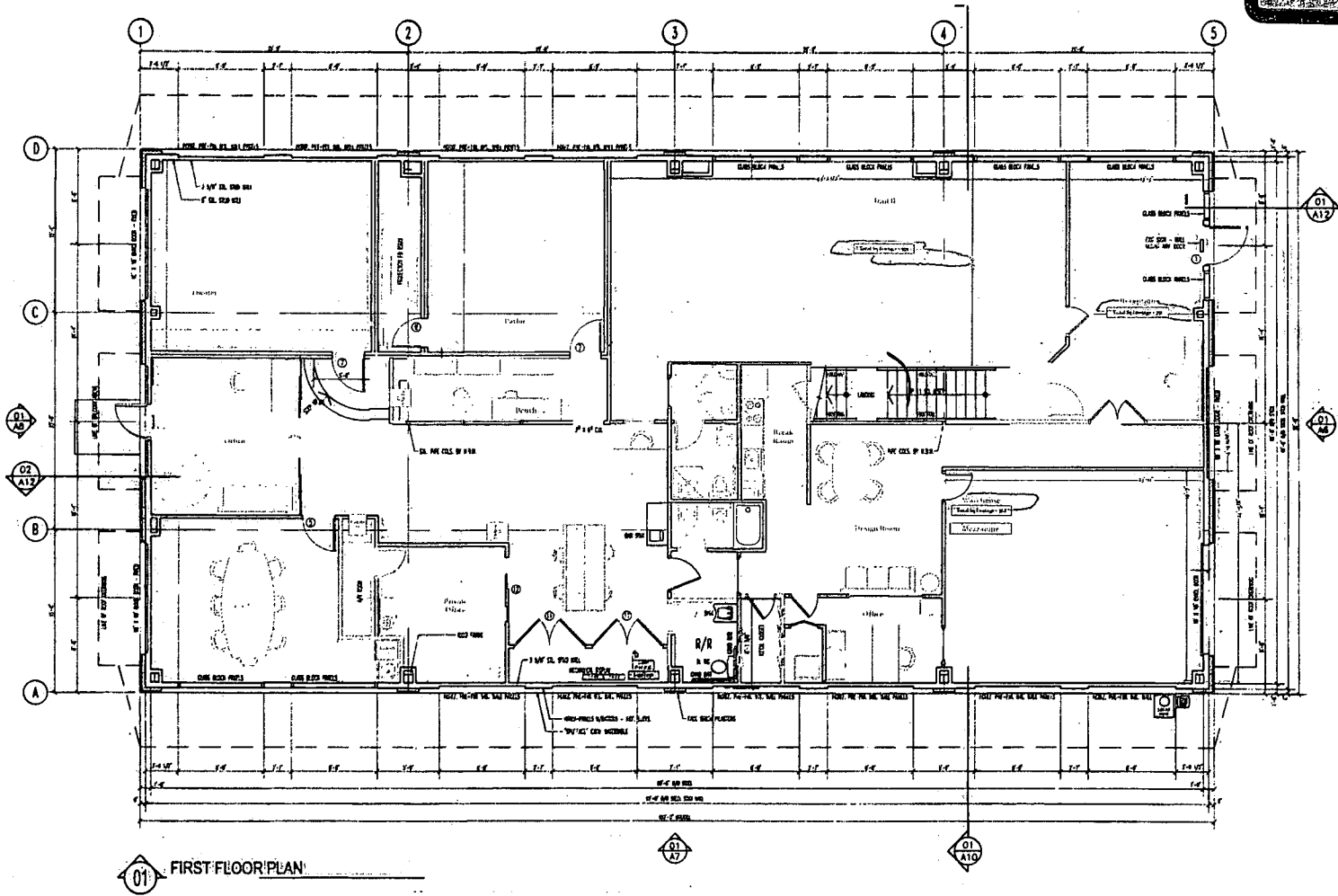
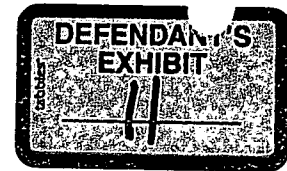
Tenant:
Lifespaces, Inc.

BY: 

DATED: 8/15/07

EXHIBIT A





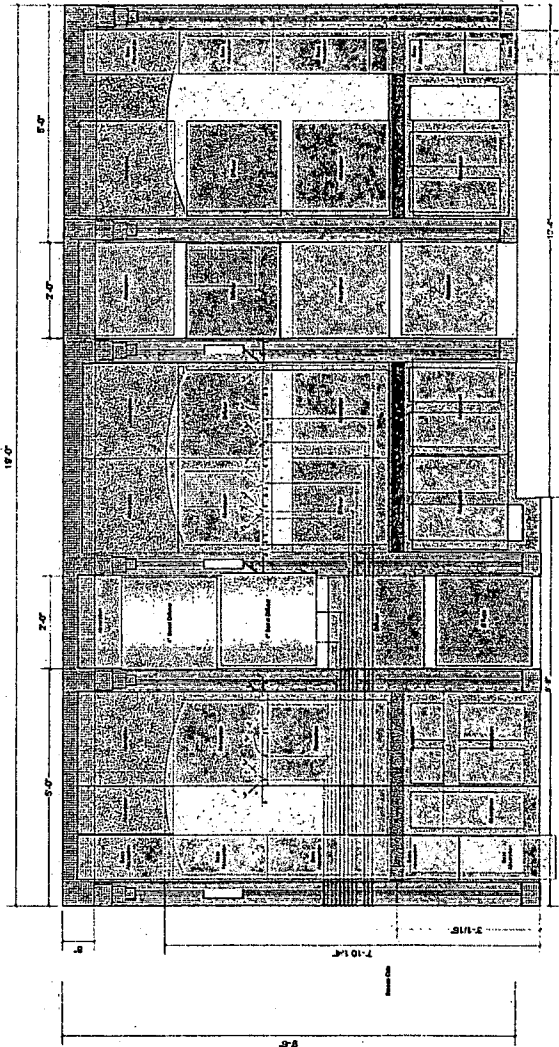
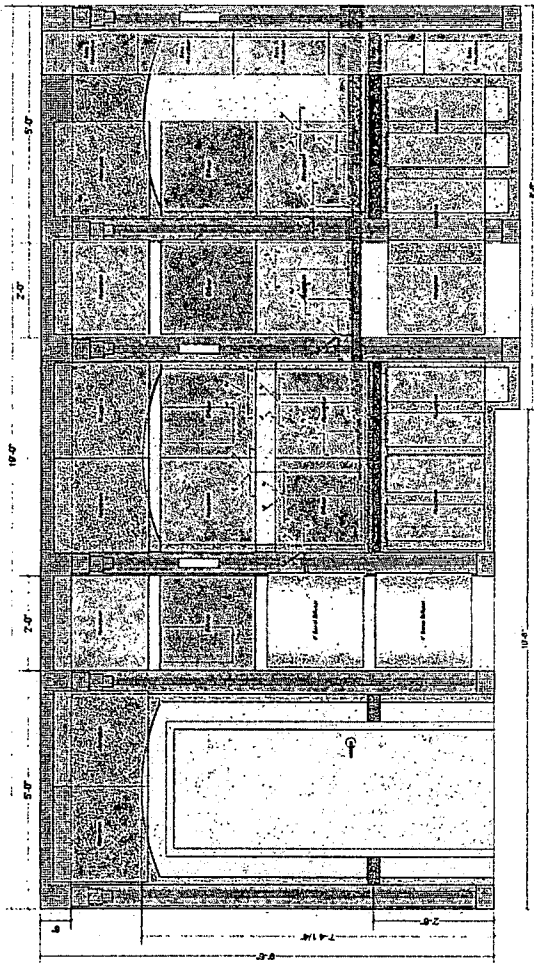
The undersigned hereby certifies that this is a true and correct copy of the original as shown to the undersigned on the date hereon. Witness my hand and the seal of the State of North Carolina at Raleigh, this 1st day of June, 2001.

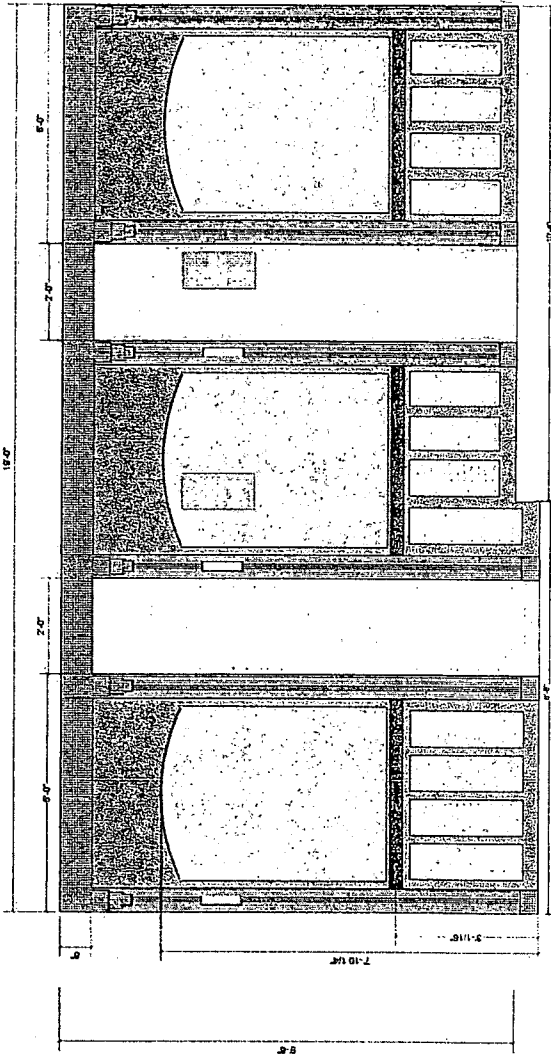
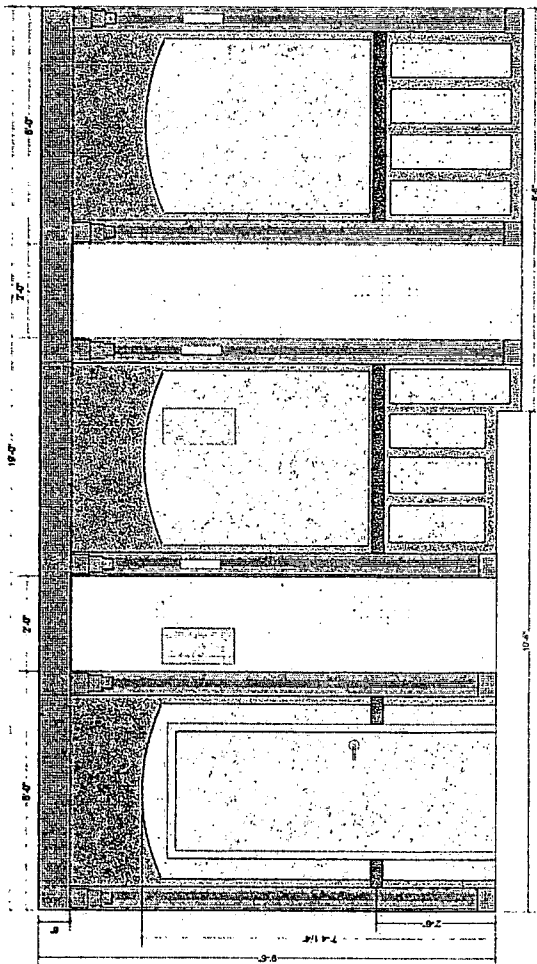
ARCHITECTURAL FLOOR PLAN

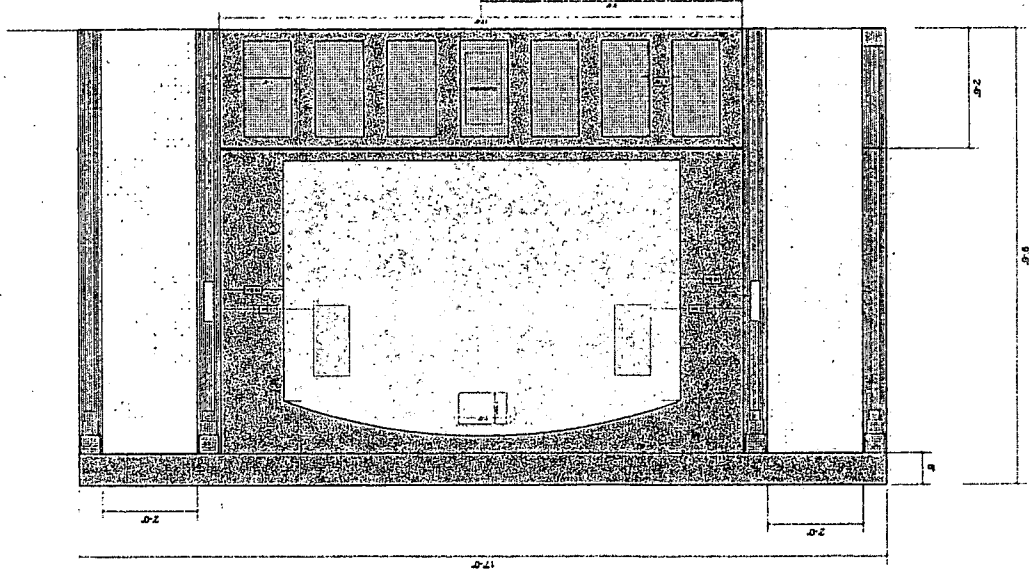
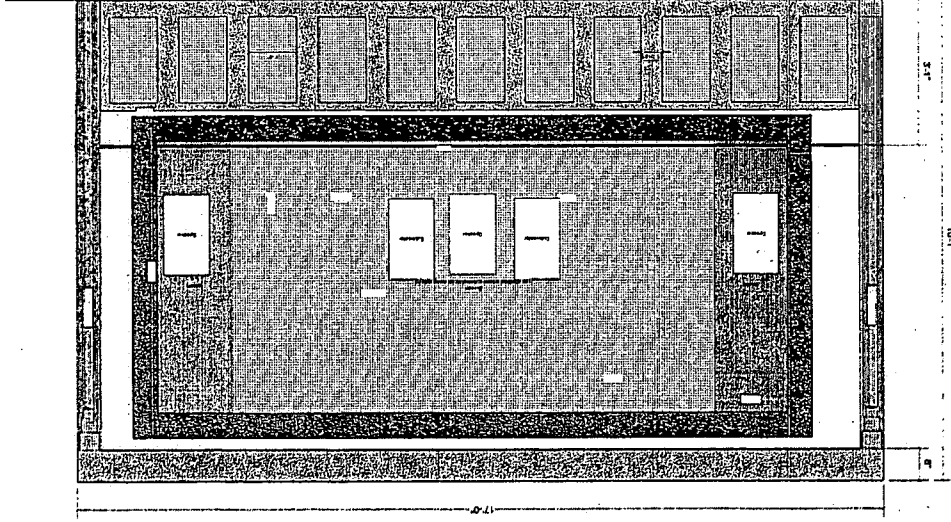


Project Name	Client Name	Architect Name
1000 Mountain Street Road, Charlotte, NC 28204	John	James

R-0793







Room Dimensions

	(in inches)
Height	108
Screen Wall Width	204
Room Depth	228
Cash Seat	182.4

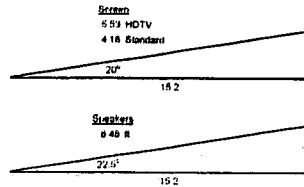
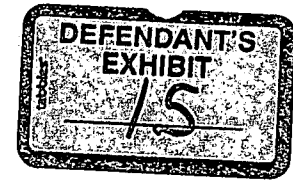
(subject to verification)

	(if feet)
Height	9.0
Screen Wall Width	17.0
Room Depth	19.0
Cash Seat	15.2

# of Compounded Frequencies	
Harmonic	Amount
1st - 4th	0
5th	0

Perfect Rooms Sizes 1.3 : 1

	9	8	0.5	0.5	0.5
1st - 4th	16	9	18	17	17
5th	17	10	22	20	27
1st - 4th	0	0	0	0	0
5th	0	1	1	0	1



Maximum Sizes	
Screen Size:	11.06 width 8.22 height
Screen Size:	11.00 width rounded 8.16 height
Speaker Spread:	16.96 ft

inches
132.0
74.2

	Depth	Width	Height
1st Harmonic	29.74	33.24	62.78
2nd Harmonic	59.47	66.47	125.56
3rd Harmonic	89.21	99.71	188.33
4th Harmonic	118.95	132.94	251.11
5th Harmonic	148.68	166.18	313.89

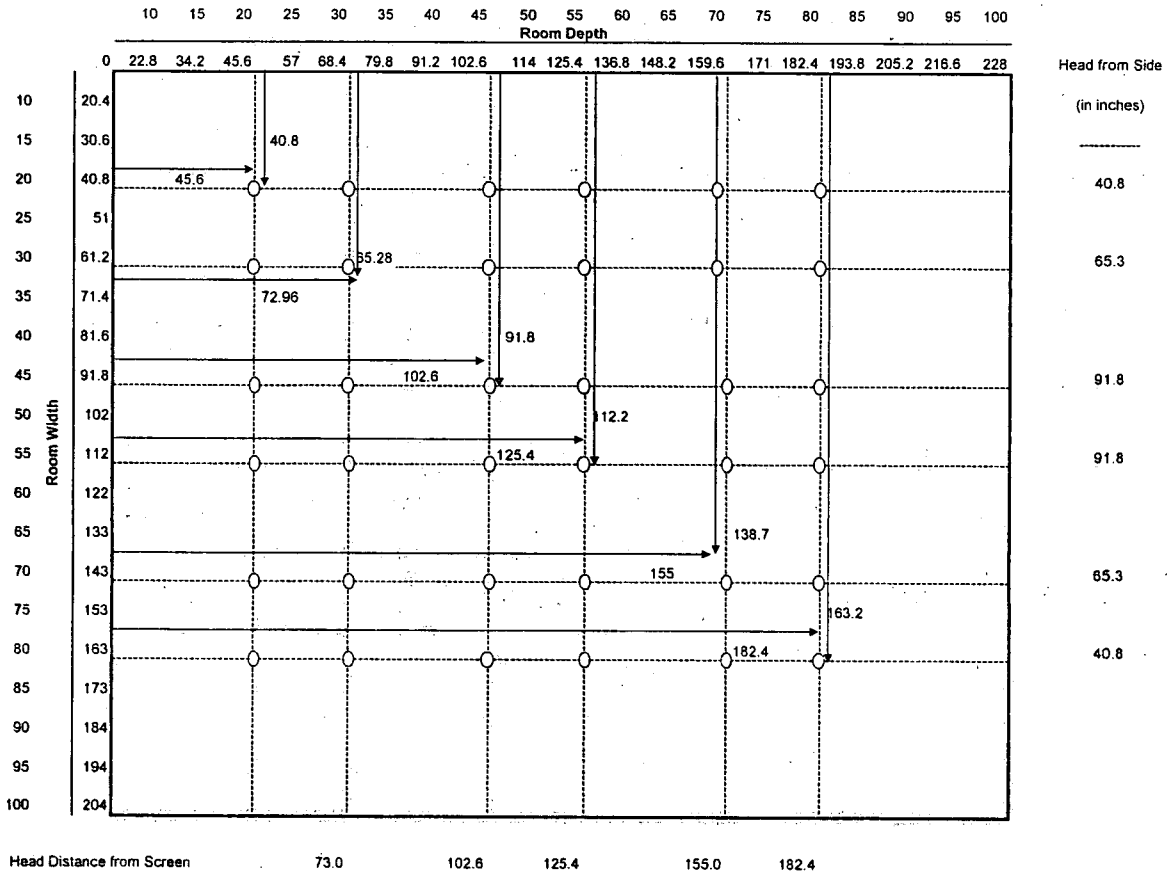
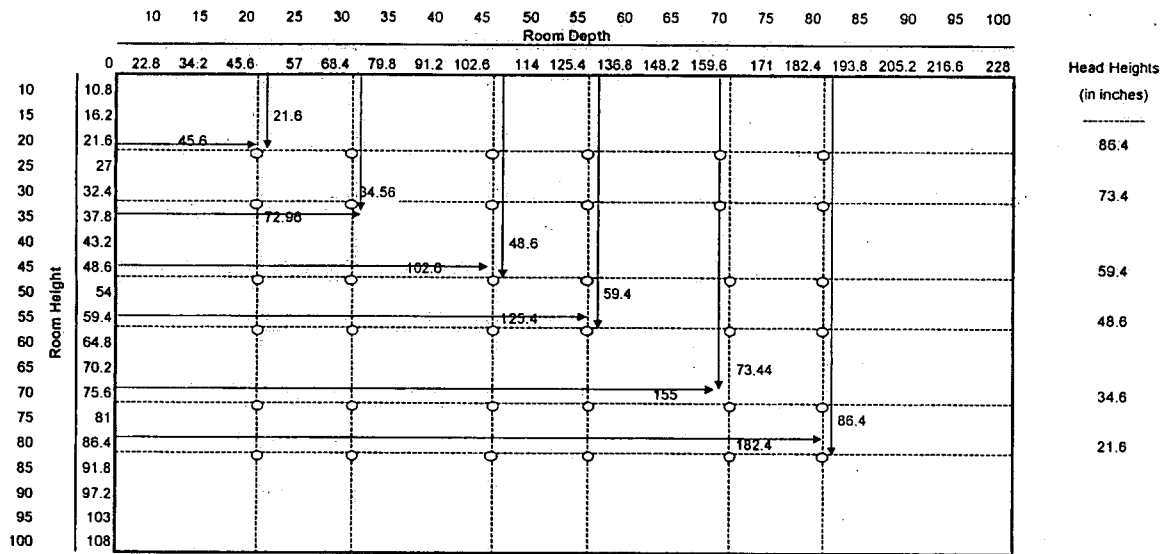
Comparisons

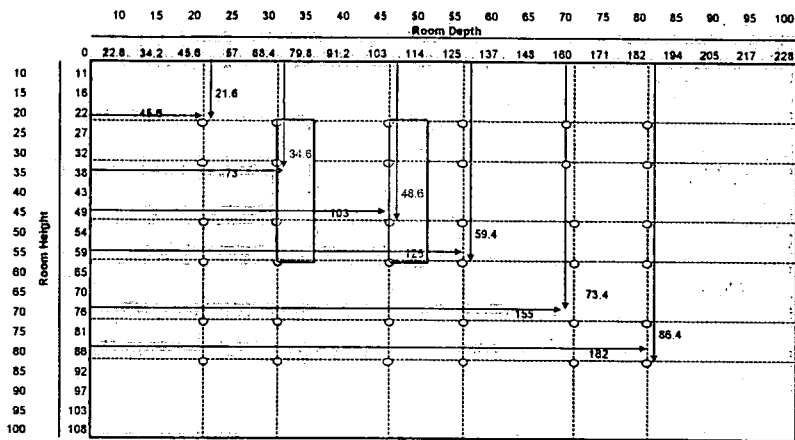
29.74	33.24	-12%	148.68	33.24	78%
29.74	66.47	-124%	148.68	66.47	55%
29.74	99.71	-235%	148.68	99.71	33%
29.74	132.94	-347%	148.68	132.94	11%
29.74	166.18	-459%	148.68	166.18	-12%
29.74	62.78	-111%	148.68	62.78	58%
29.74	125.56	-322%	148.68	125.56	16%
29.74	188.33	-533%	148.68	188.33	-27%
29.74	251.11	-744%	148.68	251.11	-69%
29.74	313.89	-956%	148.68	313.89	-111%
66.47	33.24	44%	33.24	62.78	-89%
66.47	66.47	-12%	33.24	125.56	-278%
66.47	99.71	-68%	33.24	188.33	-467%
66.47	132.94	-124%	33.24	251.11	-656%
66.47	166.18	-179%	33.24	313.89	-844%
66.47	62.78	-8%	66.47	62.78	0%
66.47	125.56	-111%	66.47	125.56	0%
66.47	188.33	-217%	66.47	188.33	-89%
66.47	251.11	-322%	66.47	251.11	-183%
66.47	313.89	-428%	66.47	251.11	-278%
66.47	313.89	-428%	66.47	313.89	-372%
89.21	33.24	63%	99.71	62.78	37%
89.21	66.47	25%	99.71	125.56	-26%
89.21	99.71	-12%	99.71	188.33	-69%
89.21	132.94	-49%	99.71	251.11	-152%
89.21	166.18	-86%	99.71	313.89	-215%
89.21	62.78	30%	132.94	62.78	53%
89.21	125.56	-41%	132.94	125.56	6%
89.21	188.33	-111%	132.94	188.33	-42%
89.21	251.11	-181%	132.94	251.11	-89%
89.21	313.89	-252%	132.94	313.89	-136%
118.95	33.24	72%	166.18	62.78	62%
118.95	66.47	44%	166.18	125.56	24%
118.95	99.71	16%	166.18	188.33	-13%
118.95	132.94	-12%	166.18	251.11	-51%
118.95	166.18	-40%	166.18	313.89	-89%
118.95	62.78	47%			
118.95	125.56	-6%			
118.95	188.33	-58%			
118.95	251.11	-111%			
118.95	313.89	-164%			

100.20

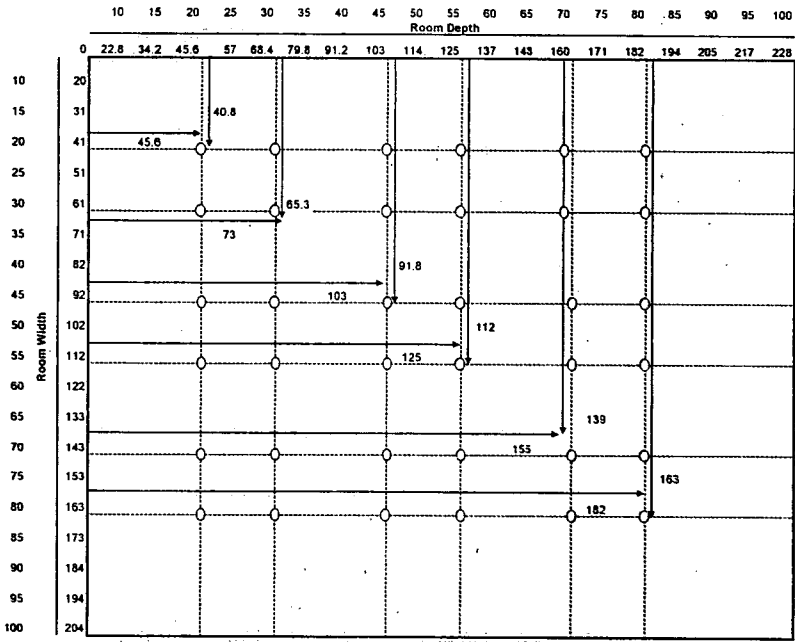
R-0799

Miller at Bullis Bay
Media Room - Second Floor





Head Heights (in inches)	Wall Mass
108	Height 108
228	Length 228
86.4	sq in 24,624
73.4	Height 9.0
	Length 19.0
59.4	sq ft 171.0
48.6	Cylindrical Diffuser 42.75
	CinePanel Diffuser
	CinePanel Absorber
34.6	Bass Absorber
21.6	



Head from Side
(in inches)

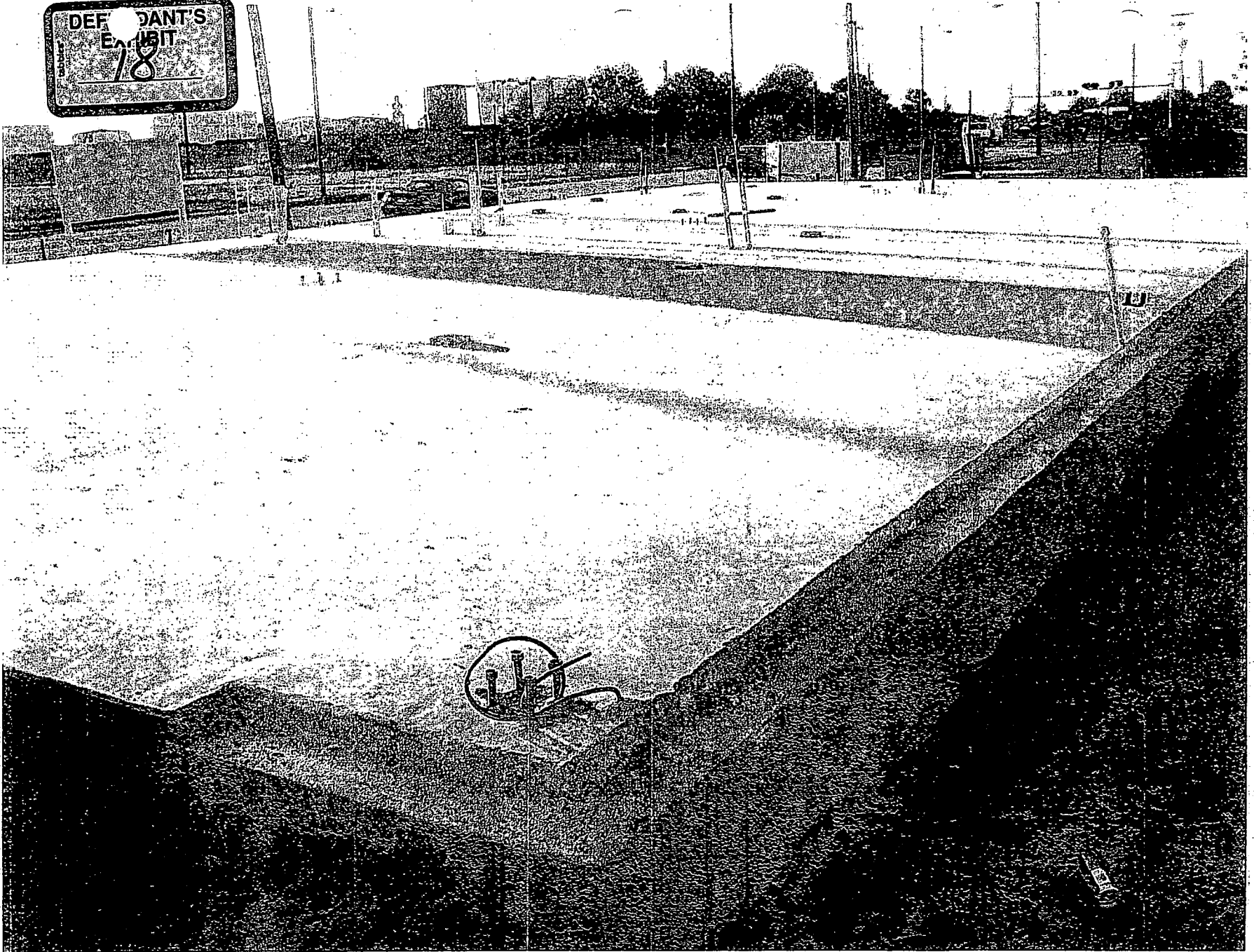
- 40.8
- 65.3
- 91.8
- 91.8
- 65.3
- 40.8

Head Distance from Screen 73.0 102.6 125.4 155.0 182.4



R-0802

DEFENDANT'S
EXHIBIT
18

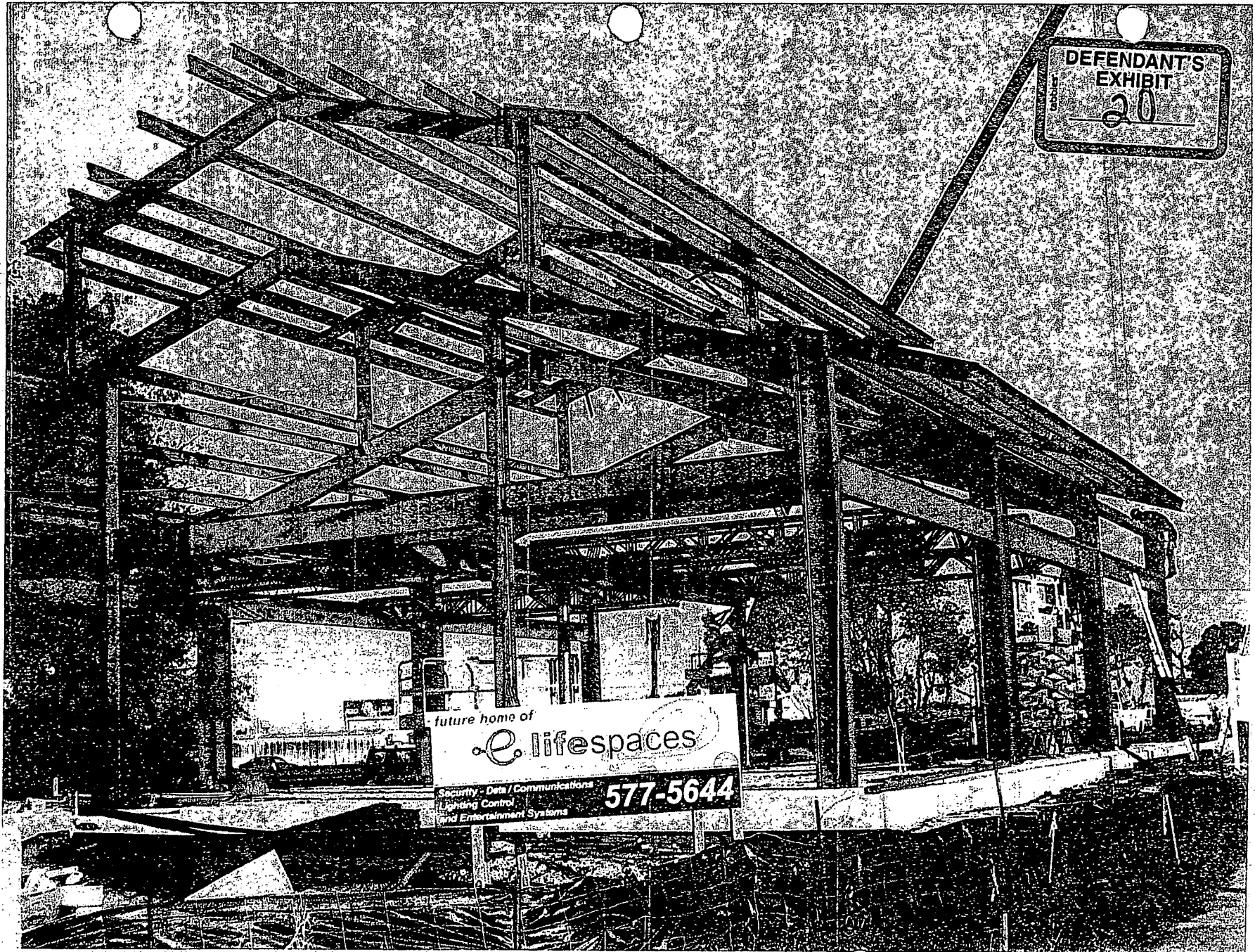


R-0803



R-0804

DEFENDANT'S
EXHIBIT
20



R-0805

DEFENDANT'S
EXHIBIT
21

ADVANTAGE
RECORDING

R-0806

DEFENDANT'S
EXHIBIT
22

R-0807

DEFENDANT'S
EXHIBIT
23

R-0808

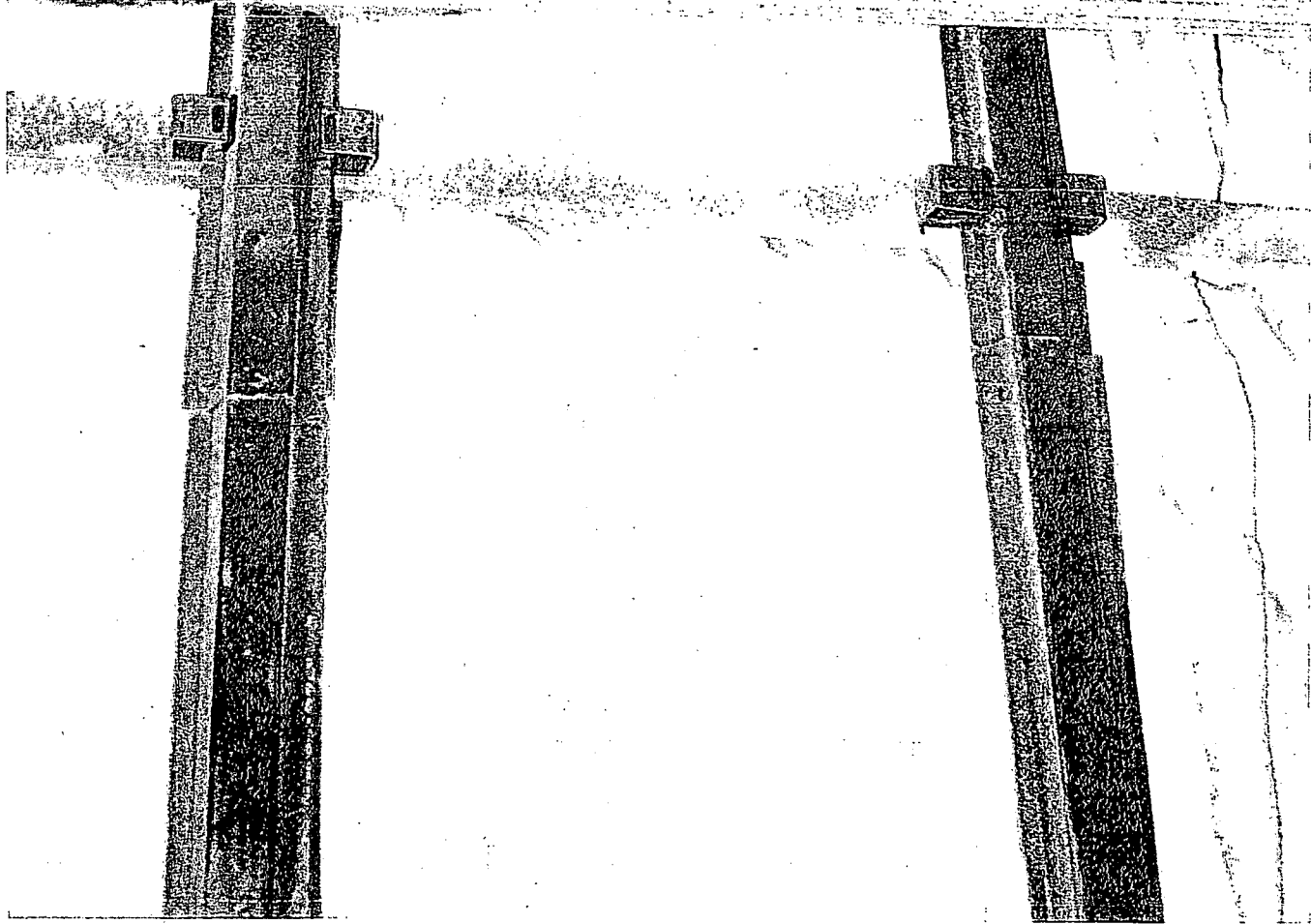
DEFENDANT'S
EXHIBIT
24

Quiet Rock

Acoustic Ceiling

100% Fiberglass
Non-Fibrous

Quiet Rock IEX Quiet Rock IEX Quiet Rock IEX Quiet Rock IEX

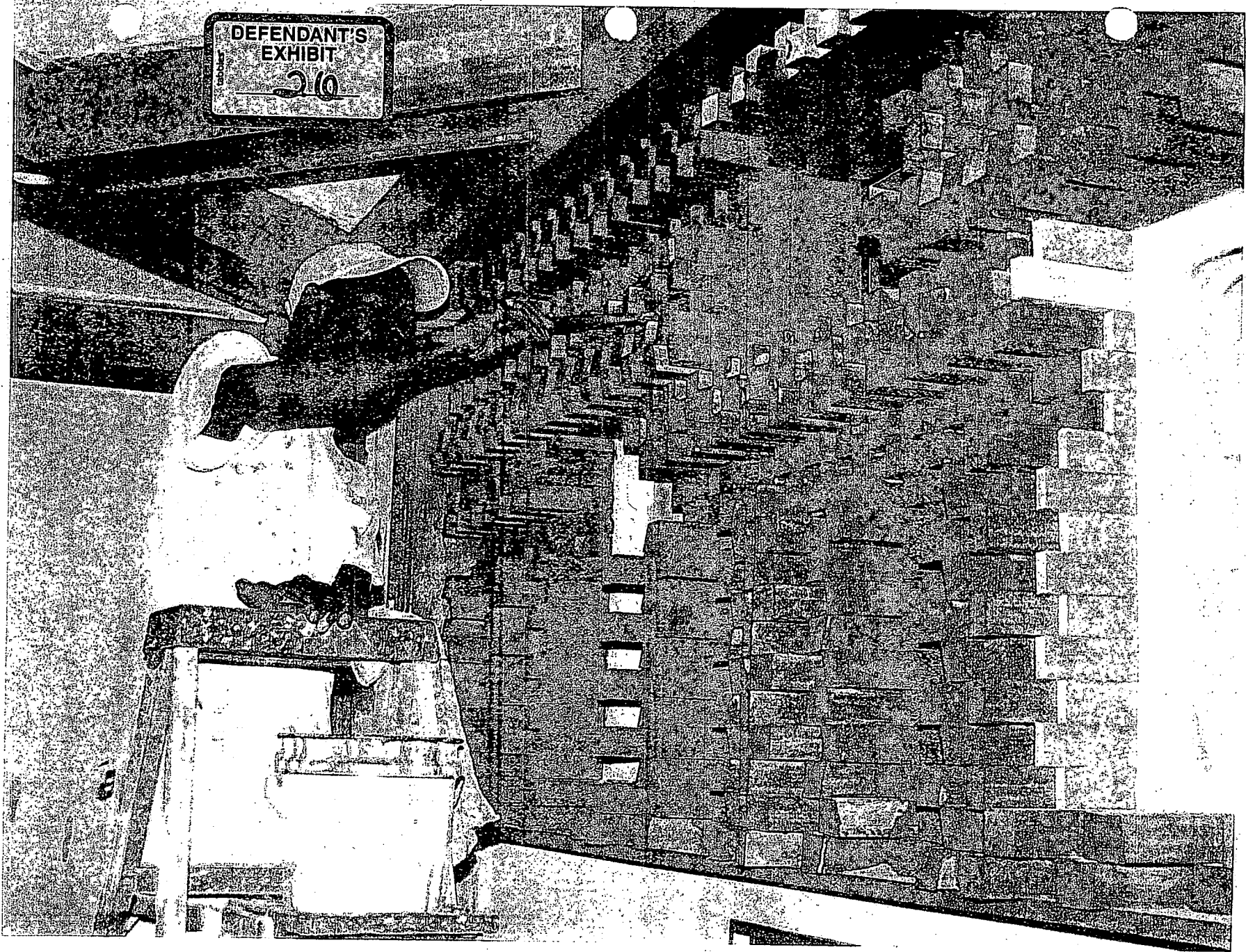


DEFENDANT'S
EXHIBIT
25



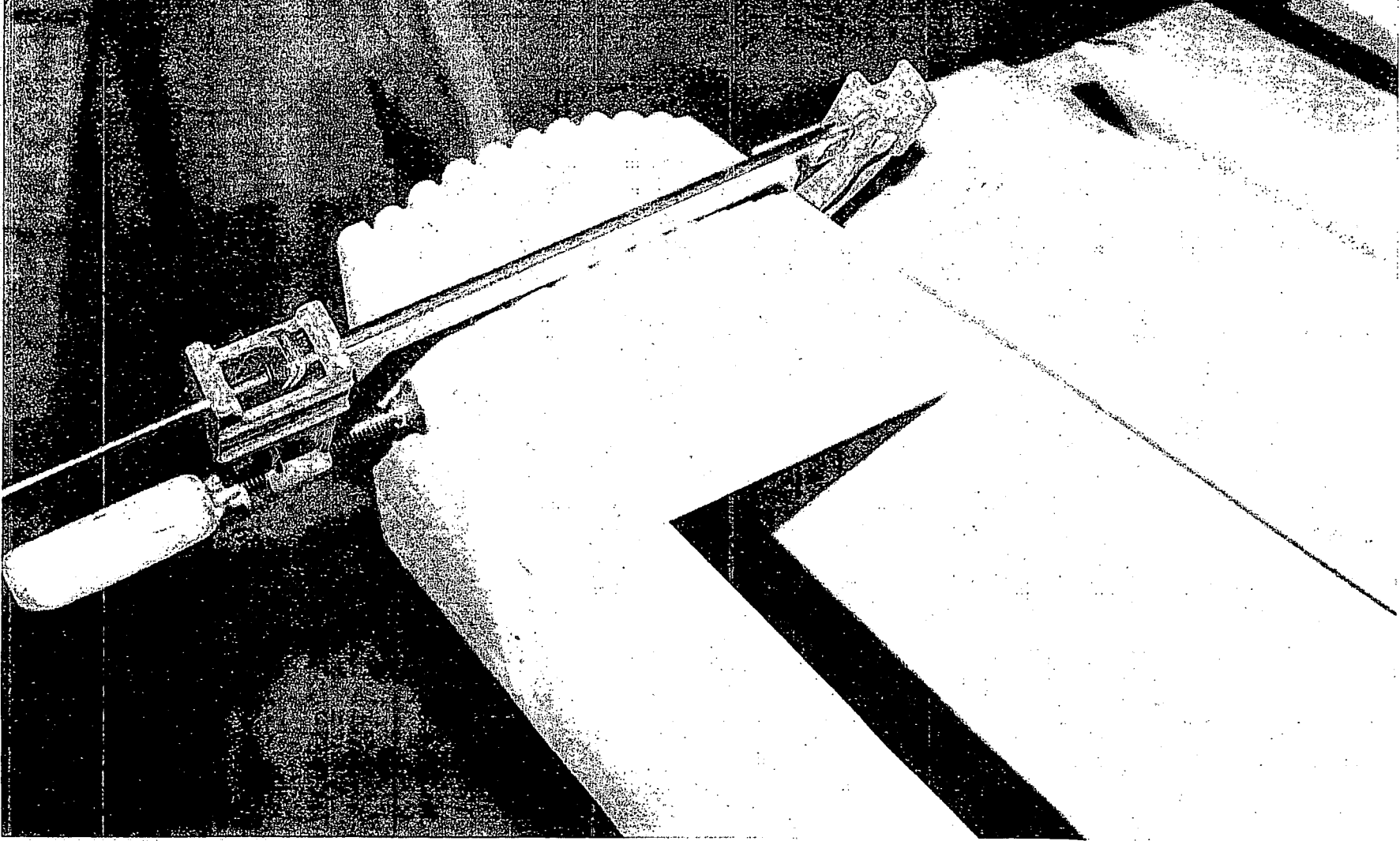
R-0810

DEFENDANT'S
EXHIBIT
210



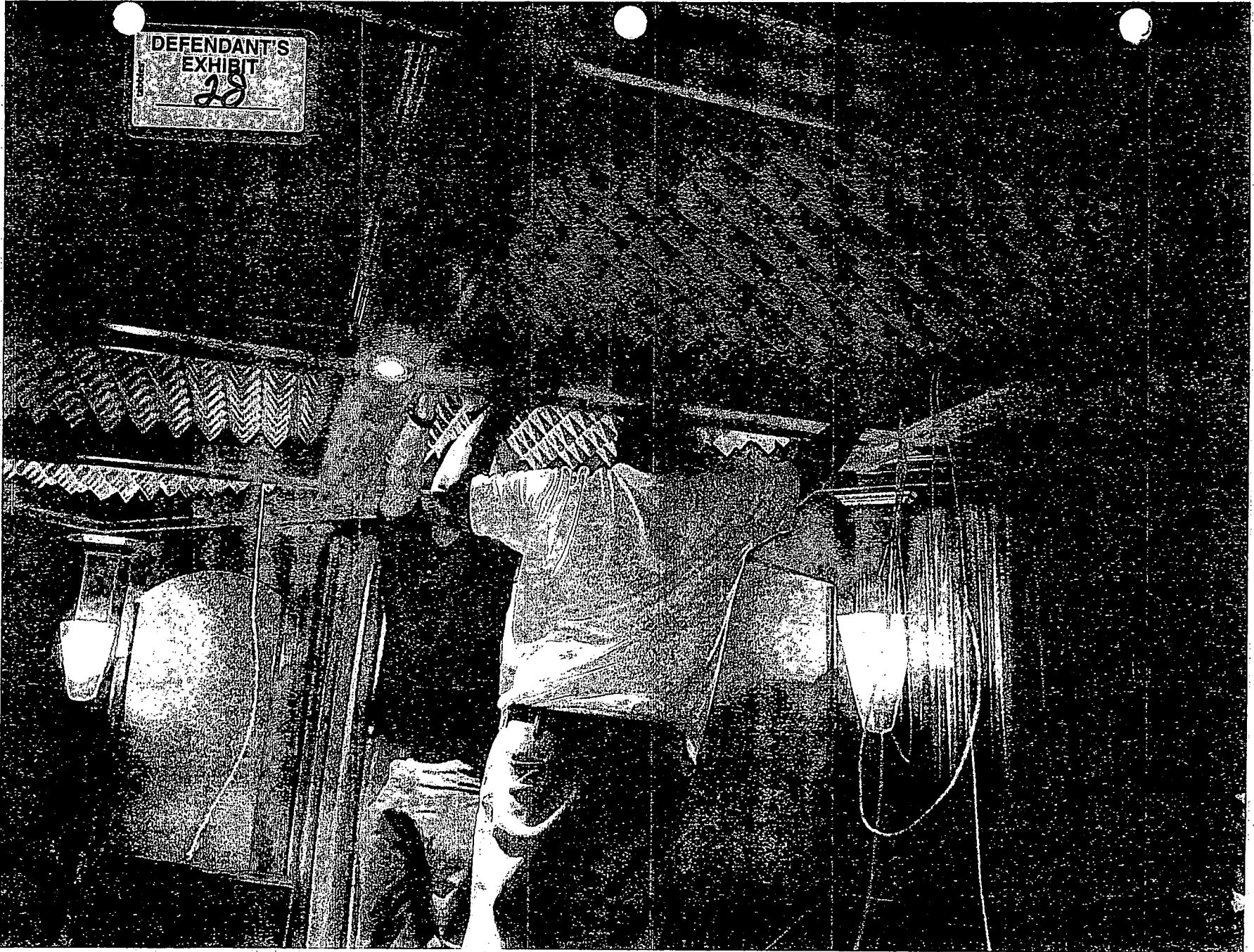
R-0811

DEFENDANT'S
EXHIBIT
27



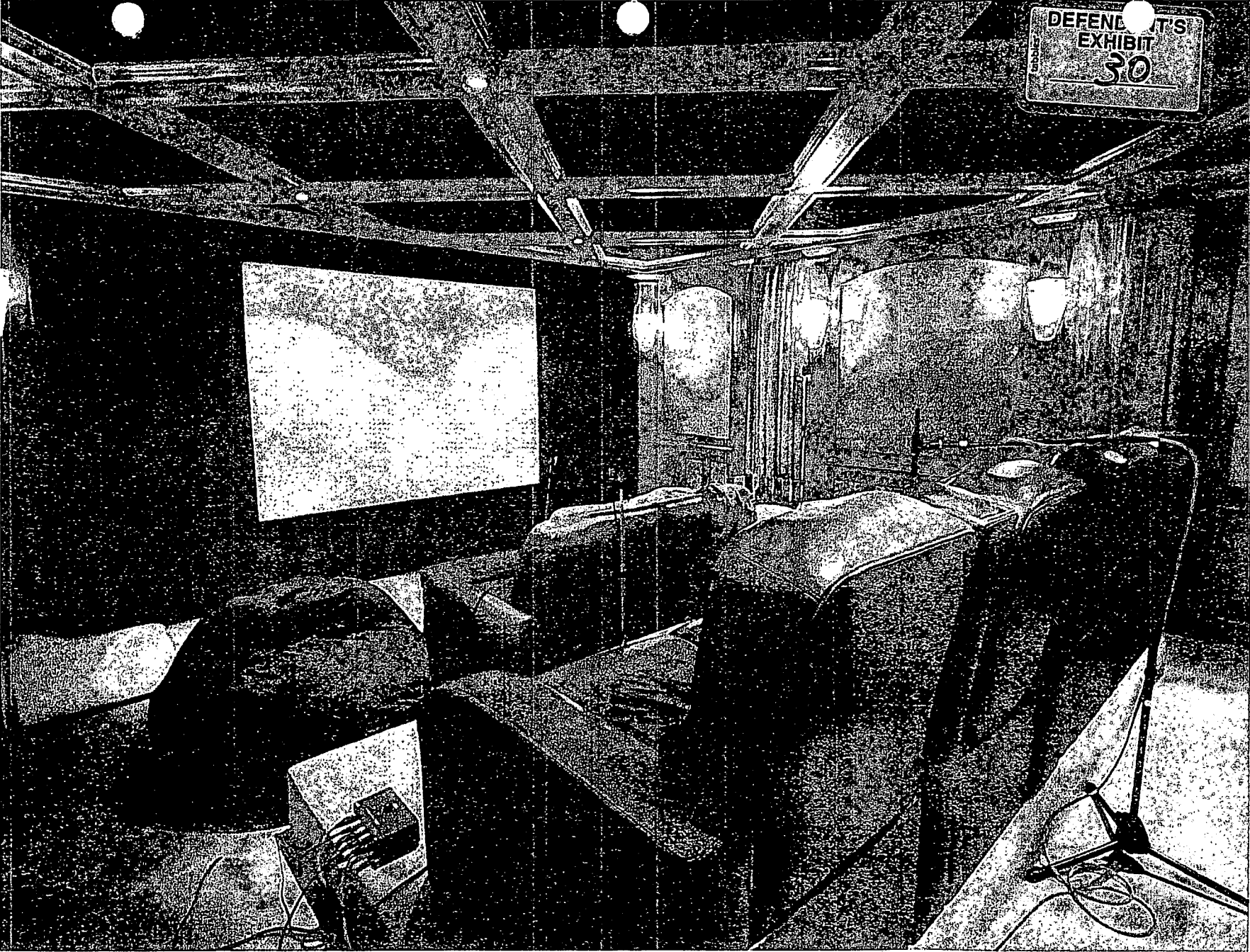
R-0812

DEFENDANT'S
EXHIBIT
28



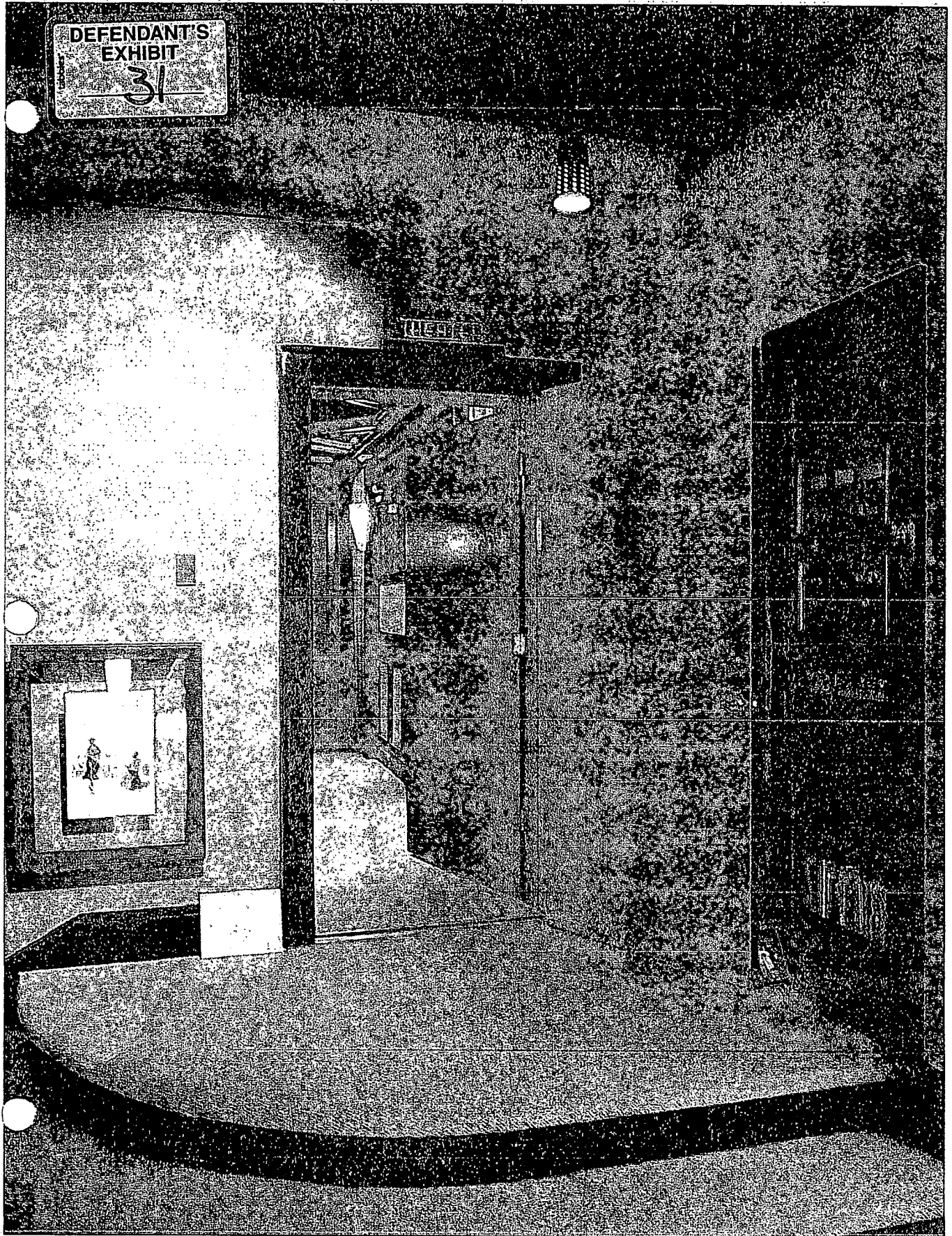
R-0813

DEFENDANT'S
EXHIBIT
30



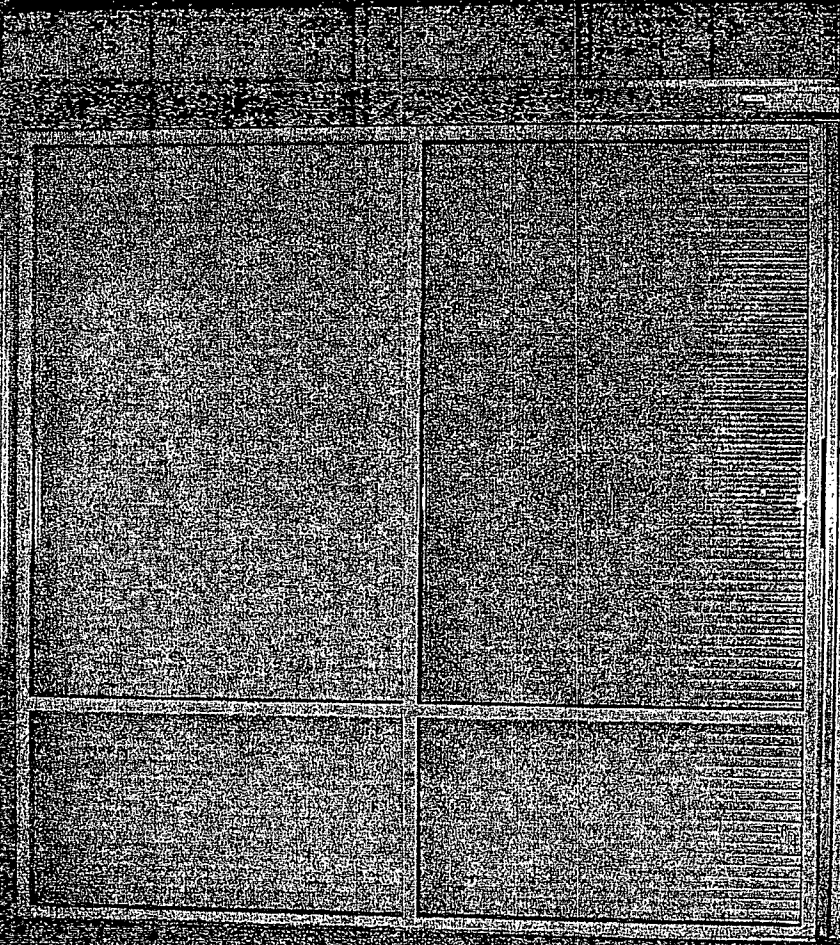
R-0814

DEFENDANT'S
EXHIBIT
31



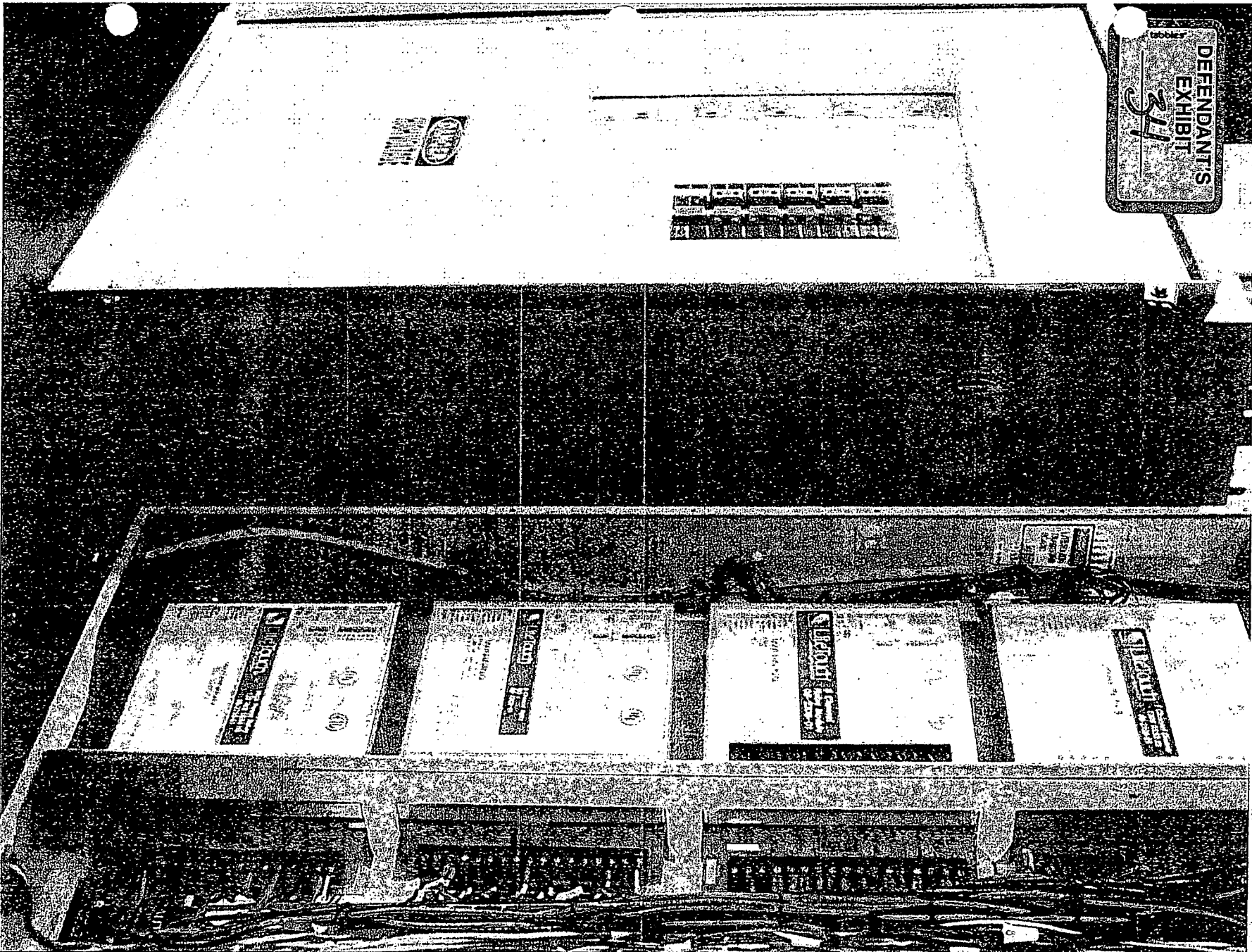
R-0815

DEFENDANT'S
EXHIBIT
33



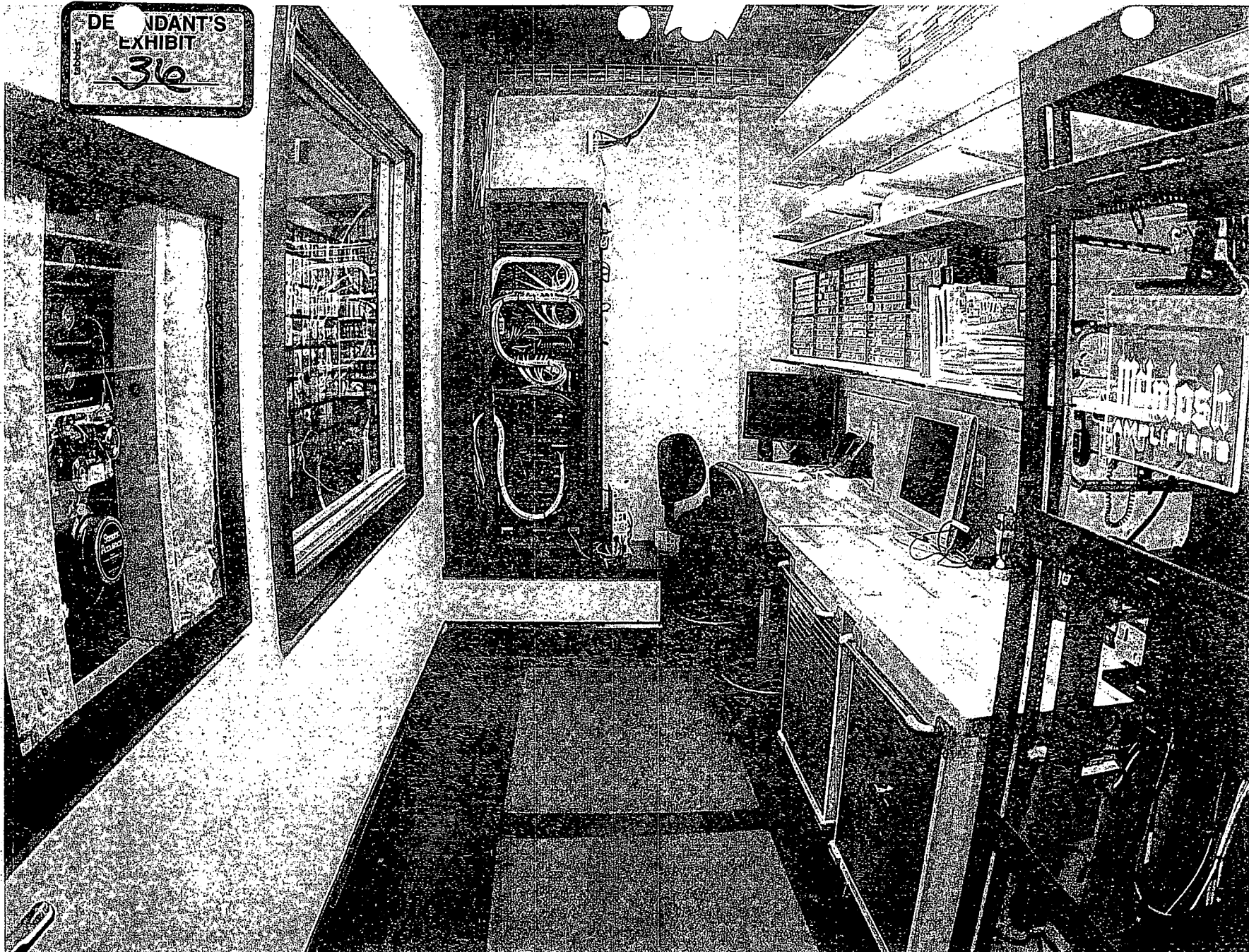
R-0816

ROBEY
DEFENDANT'S
EXHIBIT
211



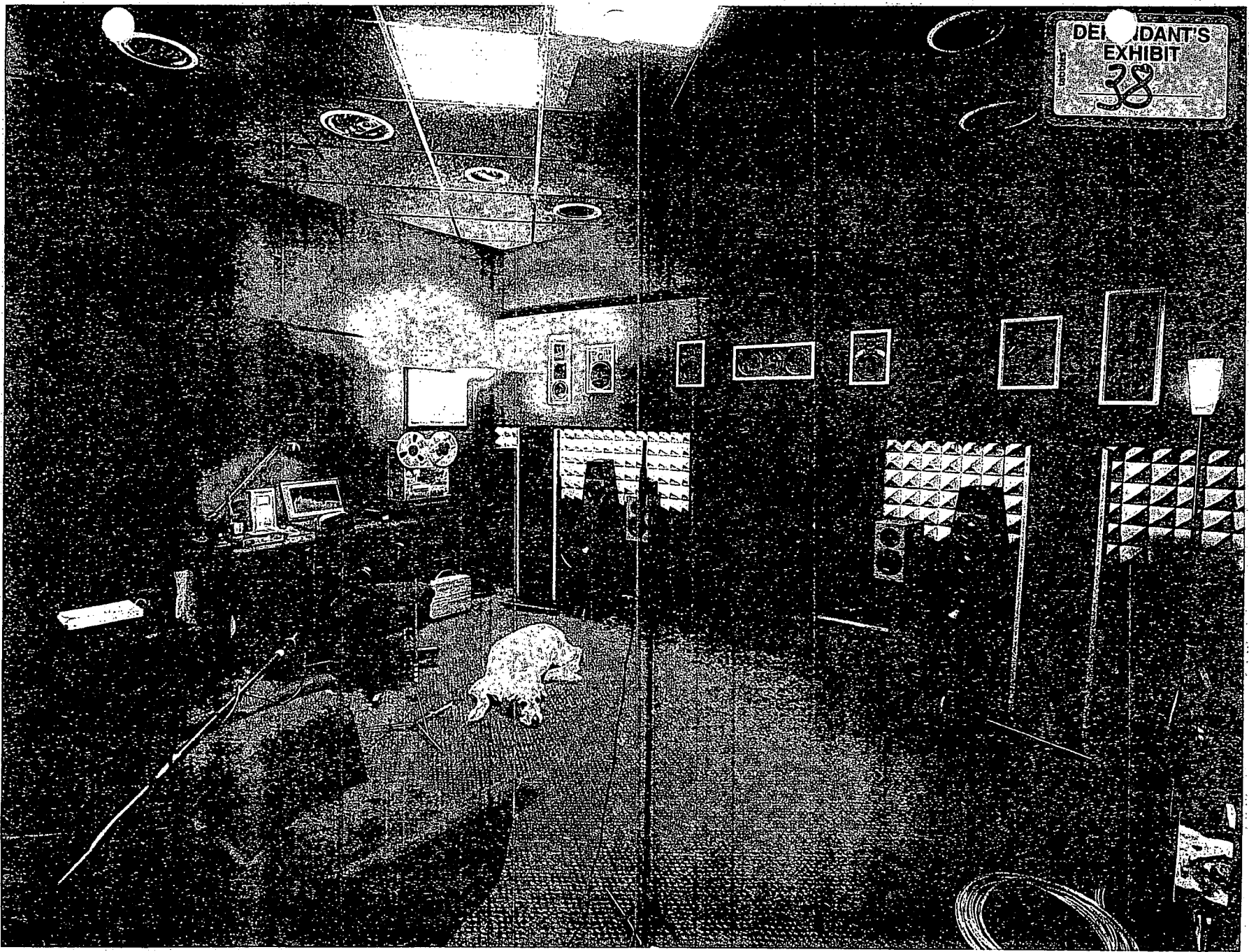
R-0817

DEFENDANT'S
EXHIBIT
36



R-0818

DEFENDANT'S
EXHIBIT
38



R-0819



DEFENDANT'S
EXHIBIT
43



R-0821

DEFENDANT'S
EXHIBIT
48



R-0822

Michael Baker
INTERNATIONAL



We Make a Difference

July 21, 2016

Gateway Properties of Greater Charleston, LLC
768 Milldenhall Road
Mt. Pleasant, SC 29464-5148

Re: TMS#464-02-00-017

Dear Sir:

As stated in our earlier letter, our firm has been retained by Palmetto Railways to assist them in acquiring the necessary property for improvements to be made in connection with the development of the Navy Base Intermodal Facility. The project is still in the environmental phase, and the preferred alignment for the Southern Connection identified as a part of this process indicates that your property will be affected by the project.

We have been requested to proceed with meeting with the landowners affected by this preferred alignment and to begin the appraisal process. We would therefore like to arrange a convenient time to meet with you onsite so we can discuss the current plan and the appraisal process. I look forward to meeting with you in the near future with my staff to provide you as much information as possible about the process moving forward.

Sincerely,

A handwritten signature in cursive script that reads "Oscar K. Rucker".

Oscar K. Rucker
Director of Right of Way Services
(803) 354-4563
(803) 528-5193
okrucker@mbakerintl.com

MTBAKERINTL.COM

700 Huger Street | Columbia, SC 29201
Office: 803-254-2211 | Fax: 803-779-8749

R-0823

Fred Fabian

Friday, December 8, 2017 at 1:46:50 PM Eastern Standard Time

Subject: Re: Palmetto Railways Aug 4, 2016 Meeting
Date: Tuesday, August 16, 2016 at 5:28:53 PM Eastern Daylight Time
From: Fred Fabian
To: okrucker@mbakerintl.com
CC: Robert S. Dodds
Priority: High



Oscar,
I had on my calendar that you would be contacting me this week upon your return. Apologies for the bother but if I am going to attempt to adhere to your timeline, engagement of architectural and engineering services need to be consummated immediately with respect to a new location. Would you update me as soon as possible? ~ fred fabian

ffabian
: (843) 577-5644 ext. 115 (843) 514-3040

From: Fred Fabian <ffabian@gmail.com>
Date: Friday, August 5, 2016 at 11:54 AM
To: "Robert S. Dodds" <robert@cisadodds.com>
Cc: <okrucker@mbakerintl.com>
Subject: Palmetto Railways Aug 4, 2016 Meeting

Robert,
For the file and your information and guidance:

Met with Oscar Rucker and John (?) with Michael Baker International yesterday at 3PM subsequent to a phone call from Rucker that he would be acting under the "threat of eminent domain."
Rucker introduced himself and John, stating that John would be the coordinating point for elements of our (eLife and other tenants') relocation.

*Note
x
New*

Highlights from the meeting:

- Initially, they were polite but assertive, stating that the numbers were driven by parameters set forth by legislation and handed me the SCDOT "Highways and You" pamphlet indicating their process follows closely to what is addressed therein.
- He provided the attached acquisition map on which he was basing his actions.
- We discussed the background of the project, and my objections based on alternatives with lesser environmental and community impacts (not cited Tuxbury Ln alternative).
- Moving on, they would be seeking an appraisal which should be in hand within 90 days at which time they would make an offer. Rucker stated that they use an appraiser (last name Ford) from Summerville, SC for these efforts. At that time, they would request tenant information to allow John to contact directly and provide insights on the financial assistance process.
- They set forth a timeline of 18 months at which time the rail would want to start their construction process and we would need to be out.
- We discussed tenant notification and doing so could cause detrimental financial impacts to me as the landlord.
- I asked if they could provide assistance with governmental entities (Cities of Charleston and North Charleston) to expedite building permits, etc. to facilitate our relocation - responding they were limited in these regards.
- Expressing concern over the timeline, I explained the specialized requirements we would have in the preparation of another facility and the background that led us to this location.
- I gave them a brief tour of the facility, including the "floating" theater, acoustical rooms, conditioned power and network areas, integrated electrical and electronic control elements, specialized earth grounding provisions, structural foundation aspects, and more. Time prohibited our addressing other elements of the facility.
- They expressed that their preconceived thoughts on our facility were dislodged and they would be discussing with Ford his comfort level in performing the appraisal because of the specialized nature of

Page 1 of 2

R-0824

~~the facility. He also stated that he would be discussing this further with the Palmetto Railway group in regards to his preliminary findings.~~

- Enlightening them to my *possible* plans to relocate to 1831 Meeting Street Rd (after viewing the attached map and Palmetto Railway plans), I stated that Monday I would be engaging architectural and engineering services to complete the plans for permitting at that site. They asked that I delay that action until Rucker returned at the end of the month. They wanted to review what they had learned today and did not want me exerting expenses at this point based on this initial meeting. Again, citing that time is of the essence, I expressed concern that delays in the process for our relocation would make their 18 month timeline harder to uphold.
- Rucker further explained of an initial rail option of this project on which he was instructed to contact property owners on that path was subsequently called off. It took one year for Palmetto Rails to decide that it was NOT an option and to notify those individuals accordingly.
- Expressing that I feel obligated to notify tenants (but concerned over Palmetto Rails commitment to follow through in a timely manner), they suggested that I delay any such action until Rucker returned at month's end.

I have copied Mr. Rucker on this email in hopes that I do NOT misinterpret or leave out any information that was being conveyed. I will drop you a line should I recall something left out of the above.

The next step is to await further communique from Mr. Rucker. ~ fred

eLifespaces

www.elifespaces.com 843.577.5644 ext. 115



Appraisal Services
Of South Carolina, Inc.



August 16, 2016

Gateway Properties of Greater Charleston, LLC
c/o Mr. Fred Fabian
768 Milldenhall Rd
Mt. Pleasant, SC 29464

Re: Palmetto Railways - Southern Route

Dear Sir or Madam:

Palmetto Railways has employed the firm of Appraisal Services of SC, Inc. to prepare an appraisal report of a property that is owned by you in Charleston County, South Carolina. Based on the information provided to us, a property affected by this project is owned by you either individually or jointly. The property is identified below:

**Property Identification: Commercial Bldg/Land – 1799 Meeting Street Ext.
Tax Map Number: 464-02-00-017**

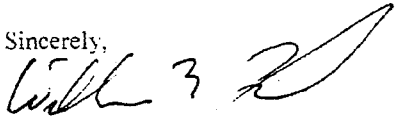
We are reaching out to you to see if you have interest in being present for our inspection of your property. Please accept this letter as an invitation to accompany us during our inspection of the above-referenced property.

Please contact us by August 29th (this is not the date of inspection) if you would like to be present at the inspection. This is not to schedule the inspection, only to let us know that you would like to be present at the inspection. You may reach us in any of the following ways:

Email: bford@asosc.com
Phone: 843-875-1487 office
843-819-6990 cell

Thank you for your assistance and we welcome the opportunity to work with you on the appraisal assignment.

Sincerely,


William (Bill) M. Ford, MSA, MRA, MFLA
South Carolina Certified General Appraiser

Residential • Commercial • Farm & Land

(843) 875-1487 • Fax (843) 851-0323
85 Paradise Point Road • Summerville, SC • 29485

R-0826

1799 MEETING STREET
CHARLESTON, SC 29405

PREMIER
OFFICE
BUILDING



R-0827



ROADSTEAD
REAL ESTATE ADVISORS, LLC

PROPERTY DESCRIPTION

PREMIER
OFFICE
BUILDING

Located in the Neck, 1799 Meeting St. is just minutes from Downtown and offers easy access to North Charleston, Mt. Pleasant, West Ashley, and I-26. This two story office/showroom building provides extensive security and technological capabilities. Very creative space with efficient design. The property includes a large parking lot and landscaped outdoor area. Space would work great as office/showroom/flex.

1799 Meeting Street can be leased as office suites or the building in its entirety. The building is approximately 7,816 square feet which is divided in to approximately 959 square feet and 4,275 square feet on the first floor and 2,251 square feet on the second floor. The space is completely built out with the highest quality craftsmanship and technology.

eLifespaces currently occupies suite A, approximately 4,275 square feet on the first floor. The Loft currently occupies Suite B, 959 square feet on the first floor and Capellas currently occupies Suite C, approximately 2,251 square feet on the second floor.



R-0828



ROADSTEAD
REAL ESTATE ADVISORS, LLC

RENT/EXPENSES

PREMIER
OFFICE
BUILDING

Income	Annual Income/Expense	Square Feet	Price Per Square Foot /Full Service
Suite A - eLifespaces Occupied	\$123,000	3,242 office/ 565 Mez/ 468 Warehouse	\$28.77
Suite B - 1st Floor	\$24,000	959	\$25.03
Suite C - 2nd Floor	\$38,192	2,251	\$16.97
Common Area		331	
Total	\$185,192	7,816	
Expenses			
SCE&G (Electricity)	\$16,100		
CWS (Water)	\$1,656		
Taxes	\$11,140		
Insurance	\$7,500		
CAM	\$1,200		
Total	\$37,596		
NET OPERATING INCOME	\$147,596		

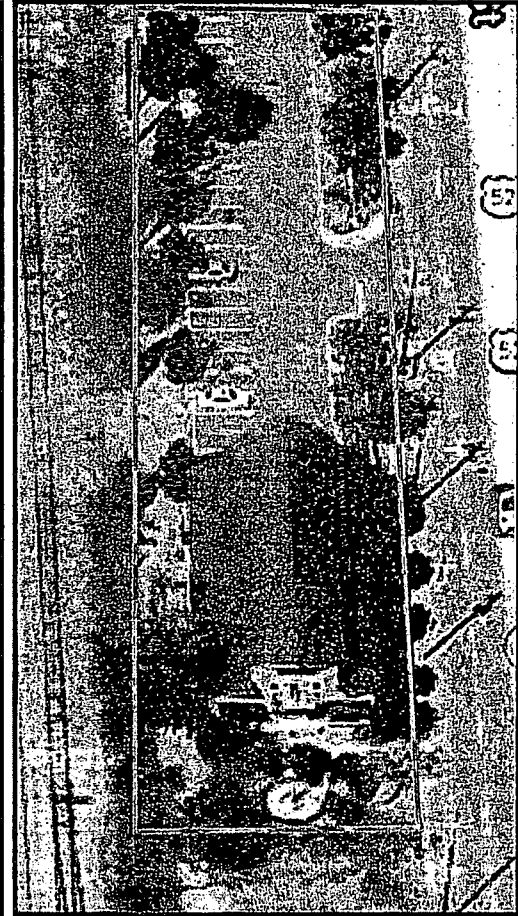
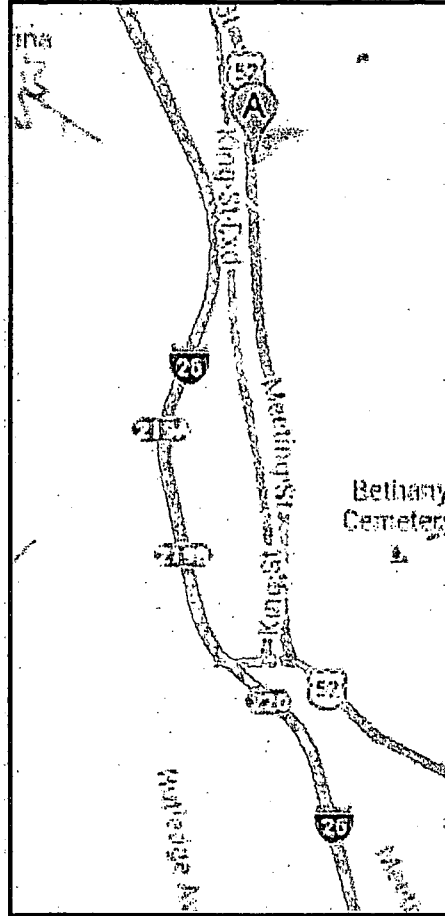
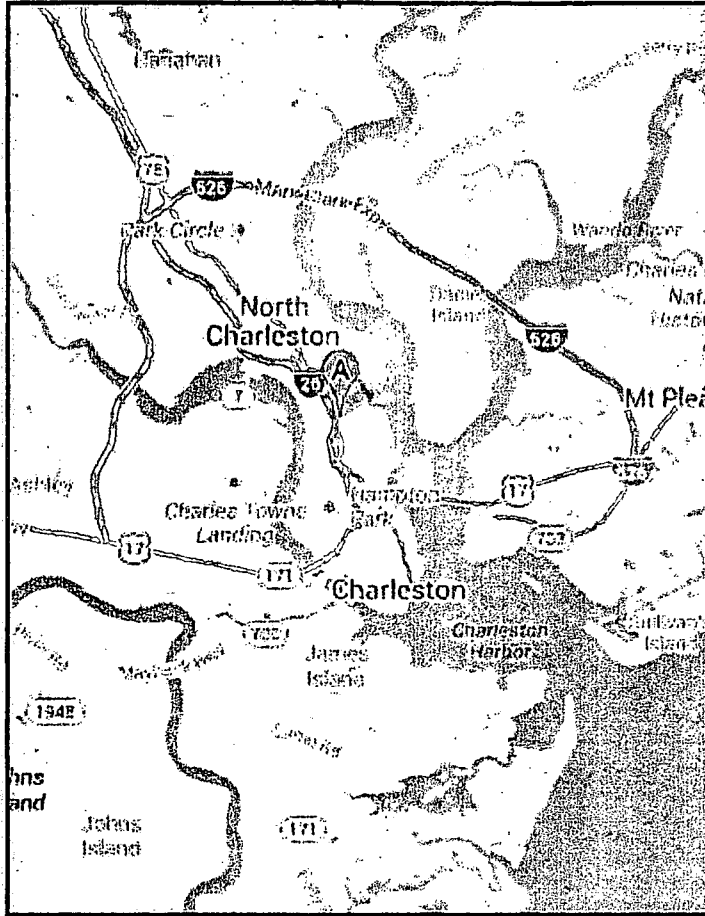
R-0829



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REAL ESTATE ADVISORS, LLC

LOCATION

PREMIER
OFFICE
BUILDING



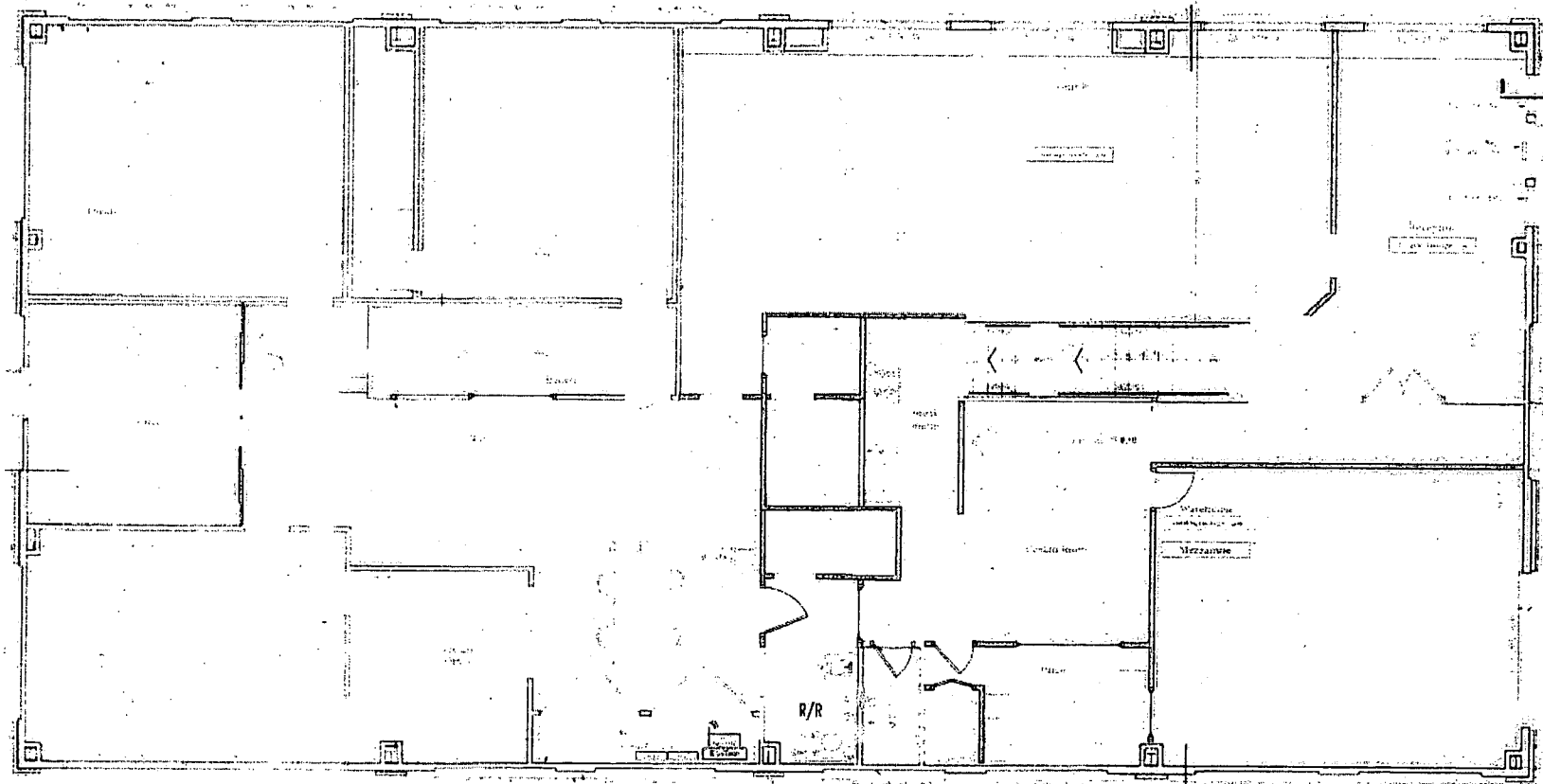
R-0830



ROADSTEAD
REAL ESTATE ADVISORS, LLC

1ST FLOOR PLAN SUITES A & B

PREMIER
OFFICE
BUILDING



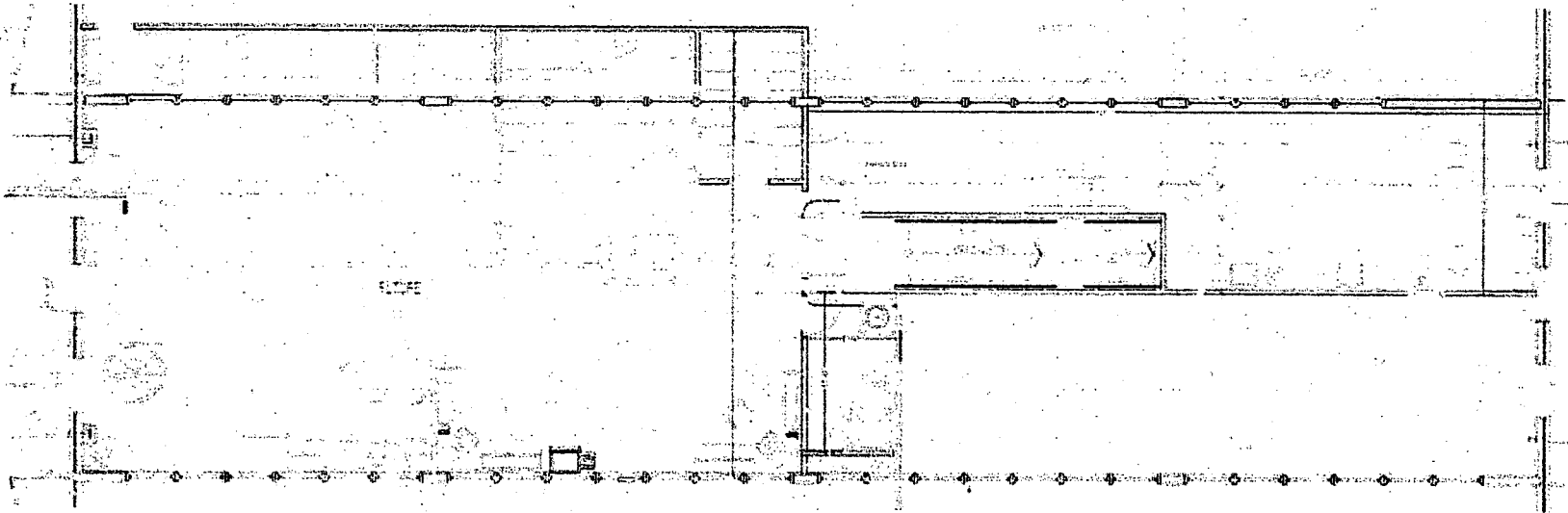
R-0831



ROADSTEAD
REAL ESTATE ADVISORS, LLC

2ND FLOOR PLAN SUITE C

PREMIER
OFFICE
BUILDING



R-0832



ROADSTEAD
REAL ESTATE ADVISORS, LLC

BUILDING / ENGINEERING HIGHLIGHTS

PREMIER
OFFICE
BUILDING

1799 Meeting Street is built upon a foundation of twenty-seven (27) 85' concrete pilings with the objective of addressing any type of earth liquefaction in the event of an earthquake or other anomaly.

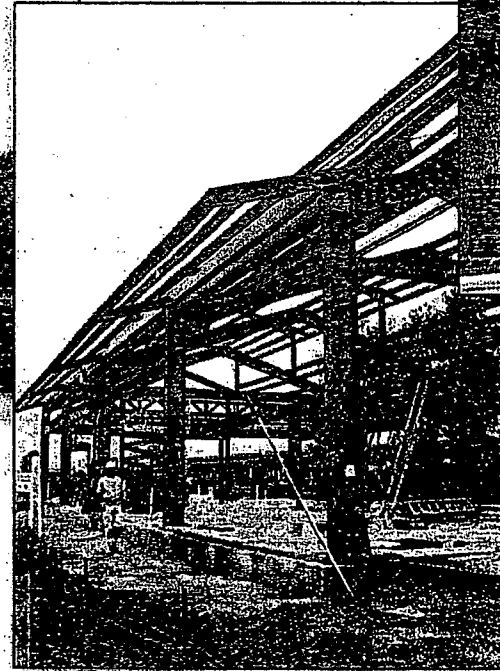
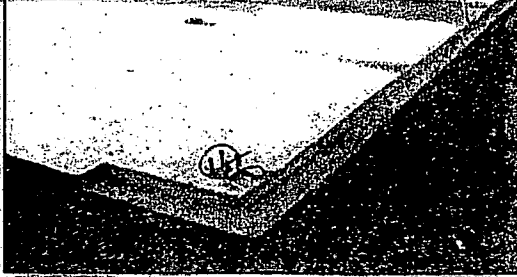
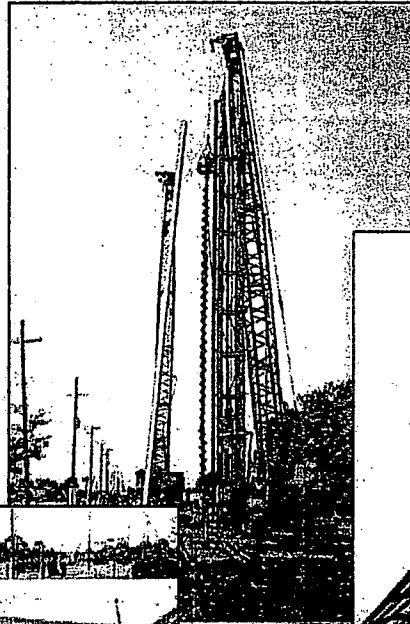
- Six (6) 10' grounding rods bonded with #5 copper to the pilings and buildings structural steel were positioned at the corners and mid-points of the building. The building is supplied with 3-phase power. Among other elements discussed later, power conditioning for electronic circuits was incorporated into the buildings construction and electrical design.
- The building is constructed with steel, utilizing 24" I-beams for the main structural rigid frame, and a series of open-web steel joists supporting the concrete second floor. The facade and rear is brick atop a 36" block-skirting. The sides utilize hardiplank over the block.
- The second floor has wood flooring, the first floor a combination of cosmetically acid-stained concrete and carpeting.
- The building comes with over 30 parking spaces.



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REAL ESTATE ADVISORS, LLC

BUILDING / ENGINEERING

PREMIER
OFFICE
BUILDING



R-0834



ROADSTEAD
REAL ESTATE ADVISORS, LLC

ENERGY AND MANAGEMENT CONTROL

PREMIER
OFFICE
BUILDING

1799 Meeting Street utilizes the TED (The Energy Detective), the building is equipped with specialized software that communicates with colored LED lamps throughout the building to provide "real time" feedback as to the building power consumption. Based on this information, the lighting control system and the integrated control system can modulate lighting and HVAC levels to maximize energy savings.



Featured Technology:

www.vantagecontrols.com

Vantage offers one of the industry's broadest arrays of products and solutions for automated lighting control. Seamlessly blending aesthetics and technology, we provide the user with ultimate control over every facet of living in luxury homes and office spaces. Our products span hardware and software for on-wall and behind-the-wall applications.

Solar Shading Systems

www.solarshadingsystems.com

Solar Shading Systems collaborates with Audio Video Integrators, Architects, Interior Designers, and Custom Home Builders to design, engineer, manufacture, program and install sophisticated window treatments. Each year we produce, install and cover over 50,000 windows for thousands of satisfied customers who can testify to the quality of our work and the level of customer service we deliver daily. We offer a turnkey solution with 75 years of quality workmanship, competitive pricing, and competent execution.

R-0835



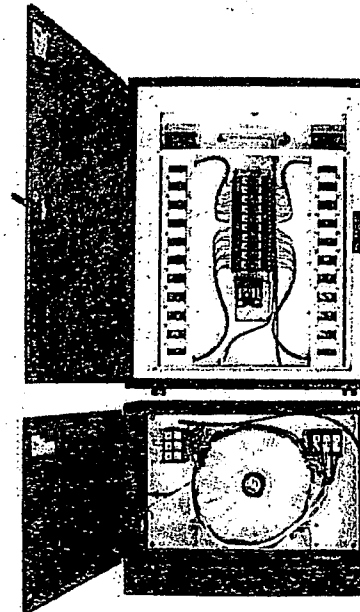
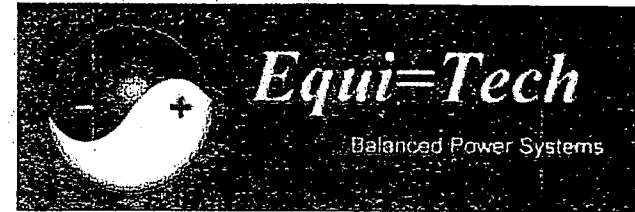
ROADSTEAD
REAL ESTATE ADVISORS, LLC

CLEAN ENERGY

PREMIER
OFFICE
BUILDING

Award winning Equi=Tech Wall Cabinet Systems are factory preassembled power distribution centers for hard wiring balanced AC power into a facility - a complete balanced power distribution system built into a wall cabinet. Only minimal installation is required eliminating many expensive hours of labor and hard to find electrical parts. All the necessary components such as transformer, breakers, GFCIs, surge protectors and line filters are factory assembled using the highest quality materials and components.

Wall systems are designed to blanket an entire facility with clean and phase coherent balanced AC power that remains stable regardless of how they are loaded down. 5, 7.5, 10, 15 and 20 kVA sizes provide 50, 75, 100, 150 or 200 amps respectively - ideal capacities for most studios and modestly sized theaters or auditoriums. These systems utilize the same precision toroid isolation transformers as Equi=Tech rack systems but they are much larger with a greater capacity. Wall systems are the easiest way to provide clean power for a larger facility, doing so with the assurance that the system will remain quiet regardless of what equipment is used or added to it at any time.



R-0836



ROADSTEAD
REAL ESTATE ADVISORS, LLC

ACOUSTIC TECHNOLOGY

PREMIER
OFFICE
BUILDING

The southwest quadrant of 1799 Meeting Street's first floor is constructed utilizing various acoustic isolation materials, methods ranging from floating room to staggered-stud, and industry standards (example THX for theater). Additionally, acoustical treatment materials (absorption and diffusion) were utilized in the construction of these areas.

Featured Technology:



www.auralex.com

Auralex Acoustics is the industry leader in acoustical treatment products, including acoustical absorbers, diffusers, sound barriers, construction materials, isolation platforms and complete room treatment systems. Let the experts at **Auralex** help you achieve world-class acoustics in any room.

QuietRock

www.quietrock.com/products/quietrock-545

Multi-layer gypsum panel engineered to provide maximum sound attenuation across a broad frequency range. QuietRock 545 can be used in virtually any application and ideal for projects requiring high STC performance at low frequencies. QuietRock 545 is recommended for commercial theaters, studios, and sound rooms.

R-0837



ROADSTEAD
REAL ESTATE ADVISORS, LLC

ACOUSTIC TECHNOLOGY

PREMIER
OFFICE
BUILDING



www.msr-inc.com

MSR Acoustics supplies acoustical treatments to professional recording studios, home theaters, project studios, media rooms and commercial applications.

MSR Acoustics also provides a range of products for sound isolation, noise control, and sound absorption for all structures, including residential, commercial, high-rise living spaces, houses of worship, hotels,

noisecontrol^{all}

allnoisecontrol.com

All Noise Control supplies & custom manufacturers a wide variety of cost effective, high performance acoustical products for noise control in commercial, industrial, institutional markets as well as other specific markets like Houses of Worship.

We have been front runners in delivering specialized noise control materials solving virtually any noise control issue. Be it improved acoustics for theater, broadcasting & audio or churches or blocking noise in industrial plants, heavy construction sites, outdoor large scale applications.



www.mason-industries.com/masonind/

Mason Industries has been a leader in the field of noise, vibration and seismic control for over 50 years. Our products are specified by consultants and architects here and throughout the world. In addition to a complete range of mountings, hangers, and flexible connectors for mechanical equipment, we provide computer studies for snubbing systems in earthquake and bomb blast zones. Floating floors, walls and suspended ceilings provide total acoustical room isolation. Rubber bearing pads and spring mountings are used to support entire buildings and railroads. Our professional engineering staff is here to serve you in every way.

R-0838



ROADSTEAD
REAL ESTATE ADVISORS, LLC

BUILDING SECURITY

PREMIER
OFFICE
BUILDING

1799 Meeting Street is fully equipped with the most technologically advanced security systems. The property utilizes multiple techniques in providing the highest level of security. These systems include Fire, access control, CCTV camera and DVR. All of these systems are incorporated and integrated into the buildings design and construction.

Featured Technology:



www.interlogix.com

Continuing the legacy of some of the most recognized names in security, Interlogix affirms a long-standing commitment to market-leading brands. As a convenient one-source provider for channel partners, our ongoing goal is to provide reliable and intuitive products that meet existing and future security needs.

Interlogix is a part of UTC Climate, Controls & Security, a unit of United Technologies Corp., a leading provider to the aerospace and building systems industries worldwide. UTC Climate, Controls & Security is a unit of United Technologies Corp. (NYSE: UTX), a leading provider to the aerospace and building systems industries worldwide. More information about UTC Climate, Controls & Security can be found on their Web site.

Honeywell

honeywellcommercialsecurity.com/commercial/fire/

Honeywell Authorized Commercial Dealers are independent security companies that own and operate security businesses across North America. They have partnered with Honeywell to bring you comprehensive security solutions from the industry's premier brand. Along with exclusive training and support, these specially-trained dealers will assess the precise security needs and insurance requirements of your business, provide an evaluation of your facility and recommend the right combination of Honeywell products for a custom solution that will enhance operational efficiency and protect your employees, assets and customers 24/7.

This select group of dealers has extensive industry affiliations and can meet strict standards for specific industry certifications. Their dedication to keeping you and your business safe has made it possible to help thousands of businesses significantly reduce the threat of intrusion, fire and shrinkage; and enable clients to limit access areas that are hazardous or contain sensitive company information. They remain at the forefront of commercial security applications and on the cutting edge of the latest technology.

R-0839



ROADSTEAD
REAL ESTATE ADVISORS, LLC

BUILDING SECURITY

PREMIER
OFFICE
BUILDING



www.openeve.net

OpenEye is an innovator in the design and development of cloud-centric software solutions for video management, business intelligence, and loss prevention. All OpenEye Web Services platform software is developed in Liberty Lake, Washington and many of OpenEye's products are made in America.



www.doorking.com

The DKS 1838 multi-door access controller is ideal for small businesses, office buildings, factories, industrial sites, apartment complexes, or for any application that requires access control and reporting capabilities. The 1838 is a 2-door controller that easily expands to control up to 24 doors with tracker expansion boards. Each 1830 Series unit allows Voice and Data connection over either Cellular, VoIP, Wireless, or POTS. DKS offers easy ways to connect fast using the DKS IM Server and DKS Cellular services. This flexible system allows access control by means of encoded cards, five-digit PINs, wireless RF control, or with almost any 26-bit wiegand device. DKS remote call stations can also be added to the 1838 to provide communication from an entry point to a designated phone.



www.windwardshutters.com

Headquartered in Charleston & Mt Pleasant, SC we have been providing homes and businesses throughout the Southeast with decorative shutters and hurricane protection shutters since 1996. We've worked with top custom home builders and architectural firms and multiple municipalities, as well as private home and business owners, to complete thousands of hurricane shutter installations of all scopes and sizes. We're your one stop shop for knowledgeable shutter consultants, custom manufactured shutters & expert installers. All of our hurricane shutter and privacy shutter products are backed by the strongest warranties in the industry. Simply put, Windward Hurricane Shutters is the best, most experienced shutter installer on the East Coast.

R-0840



ROADSTEAD
REAL ESTATE ADVISORS, LLC

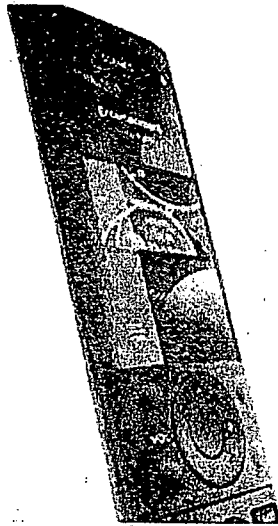
ENERGY AND MANAGEMENT CONTROL

PREMIER
OFFICE
BUILDING

SAVANT

www.savant.com

Savant's premium home automation systems offer personalization features that make the difference between a smart home and a Savant Home.



 **MechoSystems**
Design with light®

www.mechoshade.com

MechoSystems provides Solar Protection with a View, with the following products:

- Manually operated roller shades.
- Motorized roller shades.
- Compact, sleek roller shades for small spaces.
- Oversized, super wide shades for long windows.
- Blackout-shading and room-darkening systems.
- Over 300 proprietary shade-clothes.
- Automated roller-shade systems.
- Shades for sloped and skylight windows.
- Fully recyclable shading systems.

R-0841

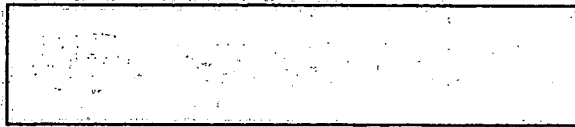


ROADSTEAD
REAL ESTATE ADVISORS, LLC

BUILDING AUTOMATION

PREMIER
OFFICE
BUILDING

1799 Meeting Street is equipped with a central hub to which all subsidiary electronic systems communicate. The device holds hundred's of hours of customized programming specific to the buildings and systems contained within for control (local and remote) through various keypads and touchscreen controllers located throughout the building.



At Crestron, we build the technology that integrates technology. Our automation and control solutions for buildings and homes let people control entire environments with the push of a button, integrating systems such as A/V, lighting, shading, IT, security, BMS, and HVAC to provide greater comfort, convenience, and security. All of our products are designed and built to work together as a complete system, enabling you to monitor, manage, and control everything from one platform.

R-0842



ROADSTEAD
REAL ESTATE ADVISORS, LLC

DISTRIBUTION: DATA, PHONE, AUDIO-VISUAL SYSTEMS

PREMIER
OFFICE
BUILDING

1799 Meeting Street is equipped with the most advanced services to meet the demands for the highest quality distribution of your data, phone, and audio-visual systems.

The building provides the following along with other types of cabling and distribution products that were incorporated into the design and construction?

- Multi-mode Fiber
- Cat6, Cat6A
- HDBaseT
- RG6QS
- YPbPr



ROADSTEAD
REAL ESTATE ADVISORS, LLC

SPECIALIZED SPACES

PREMIER
OFFICE
BUILDING

1799 Meeting Street incorporates many specialized technologies and spaces to demonstrate those features while fully utilizing them in the day to day. One space to give special attention to is the floating theater constructed with specialized products designed and manufactured for this particular room.

Featured Products:



Screen Research is a leading manufacturer of state of the art video projection screens, mainly used for home theatre applications, but also in commercial installations. Screen Research's hand-crafted and European-built screen solutions are engineered to meet even the most challenging design and installation requirements, offering a large choice of customized products, creating the perfect individual home cinema experience, every time.

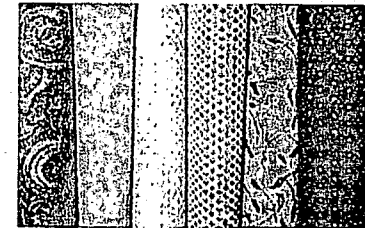


A digital imaging pioneer and industry leader, Digital Projection manufactures and distributes an extensive and expanding line of ultra high-performance 3-chip and single-chip DLP® projection systems. These projectors are the reference standard for demanding applications such as large-venue, live-event staging, education, medical and scientific research, command and control, digital cinema, commercial entertainment, houses of worship and elite home cinema. Multiple company accolades include two Emmy® Awards for Outstanding Achievement in Engineering Development by the Academy of Television Arts and Sciences. Digital Projection remains the first and only projector manufacturer to win the coveted award.



Guilford of Maine®

Guilford of Maine, the open line brand of True Textiles, Inc., provides woven textile products to midmarket manufacturers, office furniture refurbishers, and specifiers focusing on the acoustic, healthcare, hospitality, education, and office markets, or any other application where high performance textiles are demanded.



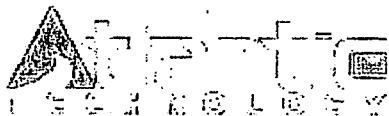
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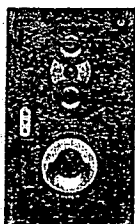
ROADSTEAD
REAL ESTATE ADVISORS, LLC

SPECIALIZED SPACES

PREMIER
OFFICE
BUILDING

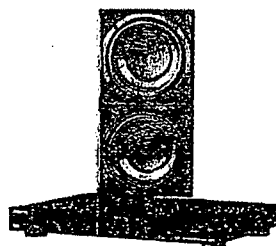


The goal of home theater is not to put you in the movie theater, it is to put you in the movie! And now, as home entertainment systems transition to multi-channel sound, which encompasses home theater, music surround and more, the concept of "virtually" putting you in the action is even more important. Since we started our corporate journey in 1989 this focus has been our guiding principal. Since then we are proud to say that we have become one of the most highly regarded companies specializing in designing complete high performance multi-channel speaker systems. In fact, we are considered by many to rank right up there with the very top surround sound speaker experts.



THX Ultra 2 Performance (It just happens to be an in-wall.)

The IW-30 LCR is our top-of-the-line in-wall speaker. It's an exceptionally sophisticated speaker whose lineage traces directly to our highly regarded System 8200e. The 30 LCR is a 3-way design using an 8" woofer, dual 3 1/2" midranges and Atlantic's exclusive LRT™ tweeter.



THX Ultra-certified bone crushing bass-- totally invisible

Great movie and music experiences build on a foundation of powerful, accurate bass. Achieving this kind of bass performance at home typically requires large, bulky, and obtrusive enclosures. In addition, the acoustic interaction between rooms and subwoofers degrades bass performance at the listening position. Now, with our in-wall subwoofer systems, you can get



Lifelike three-dimensional surround performance!

The IW-155 SR is a premium-performance in-wall surround speaker that delivers spacious, enveloping surround effects for top-grade home theater systems. Its ultra-thin bezel and magnetically attached grille makes it particularly inconspicuous when installed.

R-0845



ROADSTEAD
REAL ESTATE ADVISORS, LLC

SPECIALIZED SPACES

PREMIER
OFFICE
BUILDING



Solving seating challenges since the 40's...

Primarily a design-oriented manufacturer, Fortress has been providing seating for executives and board rooms for over 75 years. In the late 1990's Fortress first manufactured theater seating for personal home theaters. With theater seating, design is important. But equally important is the comfort.

Theater seating... the beginning...

Fortress entered the home theater arena because there was a void when it came to custom seating. Designers were creating beautiful home theaters and integrators were designing custom audio and video, and the need for custom seating was apparent. Even with over 30 standard models from which to choose, the need for custom seating is more demanding than ever.

What a good theater chair needs....

Drawing upon the experience gained in building commercial seating has allowed us to build the strongest theater chair available. Seating is personal – that is why we build each chair according to the order. Comfort... Design... Quality is what you get when you buy a chair from Fortress.

Satisfied customers state...

"We chose Fortress because we wanted input into what our theater chairs would look like. At 6'8" a standard chair just didn't work. Thank you Fortress." And another, "We really wanted to maximize our room and thanks to Fortress' willingness to make chairs of different sizes, we were able to get 15 chairs instead of the 13 quoted elsewhere."

Our Pledge...

and our commitment to service doesn't stop once your chairs are delivered. Customers are important before and after the sale. That's our commitment to you and we've honored it for over 75 years.

R-0846



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REAL ESTATE ADVISORS, LLC

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Middle Atlantic Products is part of the Commercial AV division of Legrand, North America, and has manufactured exceptional support and protection products to mount integrated AV systems in Residential, Commercial, Broadcast, and Security applications since 1979. All of our products are designed and engineered in the US to maximize system reliability and to meet the needs of installers; from thermal considerations and built-in cable management, to pre-installed washers on our rack screws, we build in ways to save time and simplify the job. At the heart of every installation, you'll find Middle Atlantic Products -



Auton Motorized Systems was the very first US company to specialize in motorized TV concealment systems. Today, Auton remains the largest and most trusted manufacturer of high-quality motorized concealment systems in existence. From TVs, projectors, speakers, and kitchen appliances, if it needs to be concealed, Auton Motorized Systems has the solution.



Based in Newmarket, New Hampshire, Russound continues to design and manufacture innovative products that sound great, are easy to install and simple to use, and that offer great value. Russound delivers a complete range of multiroom audio systems, source equipment, volume controls, amplifiers, loudspeakers and intercom systems. They believe their products are the finest of their kind on the market and remain dedicated as ever to providing their customers with the right products for the job.

R-0847



ROADSTEAD
REAL ESTATE ADVISORS, LLC

SPECIALIZED SPACES

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BUILDING

Blue Ocean® Projection Screens

www.usnippura.com

Nippura Blue Ocean® Rear Projection Screens enhance any rear projector system's capability, but its bold value is its complete utilization of the advancements in high definition video resolution and rear projector technology. It fully maximizes any projector's capability delivering through the projected light efficiently and beautifully to the viewer even in ambient conditions that would make most conventional screens inoperable. What viewers encounter is an amazingly brilliant & color-faithful image so deep and bodied that it appears to be flowing out of the Blue Ocean® Projection Screen. Blue Ocean® Projection Screens are the first ever to cast the screen into a hi-tolerance viewing plane centered between two ultra-clear panels of cell-cast acrylic, the same type of material used in hi-optic fighter jet canopies and the world's largest aquariums. Blue Ocean® Projection Screens also offer something never before found in screens: self-rigidity. The thickness of each screen can be fabricated so that it maintains its form without external frames or tension systems. Frameless high definition projected images without borders amplify the infinite depth viewing experience. Because of its durability, outdoor applications of entertainment around the garden and pool are also possible. Normal wear and tear scratching has no long-term effect on the screens' performance, and a ten year old screen, simply re-polished, will literally look and perform exactly as it did the day it left the factory. Users are no longer forced to deal with the risk of conventional surface-mounted screens that can be easily rendered useless by the slightest damage or scratch; remember this is the same material that is in Shamu's bay window. Blue Ocean® Projection Screens will not end in expensive obsolescence; made from an innovative proprietary diffusion material which does not restrict resolution, the screen never needs to be upgraded and does not degrade like many of today's hi-tech displays. Blue Ocean® Projection Screens can fully utilize and enhance all upcoming advancements in high resolution feed & high definition projectors without the hassle and expense of upgrades typical of other media technologies.

R-0848



ROADSTEAD
REAL ESTATE ADVISORS, LLC

**1799 MEETING STREET
CHARLESTON, SC 29405**

**PREMIER
OFFICE
BUILDING**

Confidential

This Confidential Memorandum has been prepared by Roadstead Real Estate Advisors, LLC (RREA) and is being furnished to you solely for the purpose of your review of the commercial property located at 1799 Meeting Street, Charleston, SC 29405 (the "Property"). The material contained in this Offering Memorandum shall be used for the purposes of evaluating the Property for acquisition and shall not be used for any purpose or made available to any other person without the express written consent of Roadstead Real Estate Advisors, LLC ("Broker").

By accepting the Confidential Memorandum, you acknowledge and agree that: (1) all of the information contained herein and any other information you will be receiving in connection with this transaction, whether oral, written or in any other form (collectively, the "Materials"), is confidential; (2) you will not reproduce the Confidential Memorandum in whole or in part; (3) if you do not wish to pursue this matter, you will return this Confidential Memorandum to RREA as soon as practicable together with all other materials relating to the Property which you may have received from RREA; and (4) any proposed actions by you which are inconsistent in any manner with the foregoing agreements will require the prior written consent of RREA.

This Confidential Memorandum has been prepared by RREA, based upon certain information pertaining to the Property and any information obtained from RREA to assist interested parties in making their own evaluation of the Property is offered on a no representation or warranty provision other than customary warranties of title and is sold on an "as-is, where-is" basis and with all faults. The material and transaction does not purport to be all inclusive. This Confidential Memorandum contains descriptive materials, financial information and other data compiled for the convenience of parties interested in the Property. The Materials are being delivered by RREA to prospective investors with the understanding that it is not all inclusive and that it is qualified in its entirety by independent investigation by prospective investors of those matters which they deem appropriate in evaluating this offering without reliance upon RREA, the Broker or any of their respective affiliates or any of the information set out in the Materials. Neither RREA, the Broker, nor any of their respective affiliates have independently verified any of the information contained herein or in any of the Materials, and no representations or warranties as to the accuracy or completeness thereof or of any other kind whatsoever are made or intended and none should be inferred.

RREA, for itself and its affiliates of the Property, expressly disclaim any and all liability for statements or representations, express or implied, contained herein or for omissions from the Materials or for any other written, oral or other format of communication transmitted to a prospective investor in the course of its evaluation of the proposed transaction. All summaries and discussions of documentation and/or financial information contained herein are qualified in their entirety by reference to the actual documents and/or financial statements, which upon request may be made available. The terms and conditions described herein are subject to change without notice.

This Confidential Memorandum does not constitute an offer to accept any investment proposal but is merely a solicitation of interest with respect to the investment described herein. The Confidential Memorandum does not constitute an offer of security. The investment described herein may be financed or withdrawn from the market, without prior notice. By accepting this Confidential Memorandum you agree to release RREA and hold it harmless from any kind of claim, expense, or liability arising out of your discovery or purchase of the Property. RREA reserves the right to request the return of the Materials at any time. Ownership of the Property reserves the right to negotiate with one or more prospective investors at any time.

R-0849



ROADSTEAD
REAL ESTATE ADVISORS, LLC

Fred Fablan

Friday, December 8, 2017 at 1:21:21 PM Eastern Standard Time

Subject: RE: 1799 Meeting St
Date: Monday, October 10, 2016 at 1:23:59 PM Eastern Daylight Time
From: Bill Ford
To: 'Fred Fablan'; 'Rowe Jr, Albert J'
CC: 'Rucker, Oscar K'; 'Robert S. Dodds'; 'Thomas Hartnett'; 'Brandon Hoffman'



Thank you for your help, the total cost numbers are much appreciated. Any detail showing different systems, HVAC, Security, Structure, electrical, plumbing, etc., would help even further. It is not a problem if this is not available, it would simply speed the process on my end.

I am currently working on the land value, and will contact you once I've moved into the improvement phase of the assignment. I anticipate this contact in approximately two weeks based on current work flow.

Bill

843 875-1487 o
843 819-6990 c

From: Fred Fablan [mailto:ffablan@ellfespaces.com]
Sent: Monday, October 10, 2016 11:52 AM
To: Bill Ford; Rowe Jr, Albert J
Cc: Rucker, Oscar K; Robert S. Dodds; Thomas Hartnett; Brandon Hoffman
Subject: FW: 1799 Meeting St
Importance: High

Bill,
You had asked that I put together some cost information regarding 1799 Meeting Street Rd. Taking that one step further, I contacted my accountant, Brandon Hoffman, to extract precisely those costs; then asked that he bring those values forward into "today's dollars". His findings are below.

John,
Having not heard back from you regarding your "taking an inventory" request, I thought to touch base. Also, have you followed through with my tenants in that similar request?

I am presently in a holding pattern awaiting your next steps. ~ fred

ffablan
: (843) 577-5644 ext. 115 (843) 514-3040

From: Brandon Hoffman <bhoffman@hoffmancpa.com>
Date: Monday, October 10, 2016 at 11:35 AM
To: Fred Fablan <ffablan@ellfespaces.com>
Subject: RE: 1799 Meeting St

Yes. That is fine.

Brandon Hoffman, CPA
Hoffman & Hoffman, CPA, PA
Office: 843-766-3465
Fax: 843-766-0098

From: Fred Fablan [mailto:ffablan@ellfespaces.com]

Sent: Monday, October 10, 2016 11:33 AM
To: Brandon Hoffman
Subject: Re: 1799 Meeting St

Brandon, can I share this with others involved in the valuation of 1799? ~ fred

From: Brandon Hoffman <bhoffman@hoffmancpa.com>
Date: Monday, October 10, 2016 at 11:17 AM
To: Fred Fabian <ffabian@elivespaces.com>, "Fred Fabian (ffabian@me.com)" <ffabian@me.com>
Subject: 1799 Meeting St

Fred,

Hope y'all weathered the storms this weekend ok and have gotten power back.

At your request, we extracted the actual cost associated with 1799 Meeting Street Road from various schedules. From these schedules, you requested that we develop an estimated cost to rebuild your facility by applying current labor rates, land values, and other related financial factors. The results of our analysis listed below are estimates and do not represent audited numbers nor do they reflect actual contractor bid estimates.

Building	\$ 3,134,000
Land	740,000
Land Improvements	<u>150,500</u>
Total	\$ 4,024,500

Given the unique nature of the building and the extensive amount of personal property/equipment used for the building systems to function, we included both an estimate of the cost of the structure as well as the related systems equipment in arriving at the building cost estimate. These values do not reflect vehicles, furniture and fixtures, information technology and computer systems, inventory, or other similar assets not integral to the function of the building and its systems.

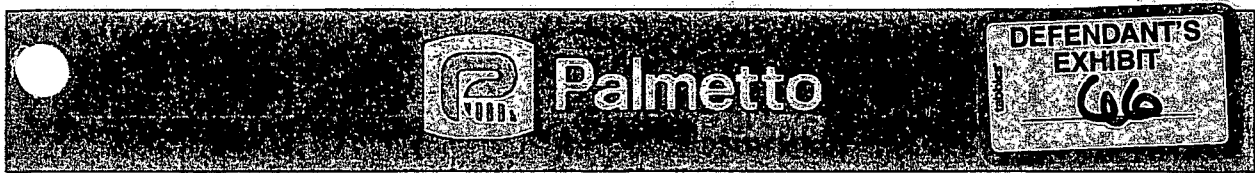
Two factors worth notation utilized in the development of these values were (a) replacement land costs, and (b) the annual inflation rate applied to the original scheduled cost values.

We recommend you contact your real estate appraiser for a more accurate representation of land values. For our purposes, we used a land value provided by Daniel Atwill with Roadstead Real Estate Advisors, LLC of \$740,000. In his valuation, he cited several real estate transactions and listings around your area with comparable frontage on Meeting Street Road.

Lastly, we applied a factor of inflation to the actual costs incurred in construction of the existing facility. The inflation factor applied to the construction costs was 1.73%, per year.

Let me know if you need anything further.

Brandon Hoffman, CPA
Hoffman & Hoffman, CPA, PA
Office: 843-766-3465
Fax: 843-766-0098



January 19, 2017

Gateway Properties of Greater Charleston, LLC
Attn: Mr. Fred Fabian
768 Milldenhall Road
Mt. Pleasant, SC 29464-5148

Dear Mr. Fabian:

Reference is made to our recent discussions regarding the Palmetto Railways' project, under which they propose to acquire your property for this improvement. Palmetto Railways must pay just compensation for the property which is based on an appraisal made by a qualified real estate appraiser using comparable sales in the area.

The appraisal, a copy of which is included with this offer, has been made, reviewed and approved, and I am now authorized to make you the following offer subject to the approval of the State's Joint Bond Review Committee:

\$1,800,000.00 for the entire property identified as TMS# 464-02-00-017
located at 1799 Meeting Street, Charleston, SC

Please give this offer your prompt attention and let me know your decision as soon as possible. Retain this information to report your payment according to IRS rules in Publication 544. If you find this offer acceptable, we will prepare the necessary option agreement for submission to Palmetto Railways for their closing attorney to arrange for the property transfer and disbursement of the funds.

If I can be of any further assistance, do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Oscar K. Rucker', written in a cursive style.

Oscar K. Rucker

Director of Right of Way Services
Michael Baker International

Morey Subpoena 0031



E-Life Station



Schedule of Values

May 8, 2017

Exhibit B

Scopes of Work	Proposed Cost
General Conditions (subtotal)	\$221,261
GENERAL CONDITIONS	\$221,261
Existing Conditions - Site Work (subtotal)	\$684,200
SITEWORK	\$412,500
PILES	\$84,700
WATER AND SEWER	\$27,500
LANDSCAPING	\$38,500
SCREEN WALL AND FOUNDATION	\$121,000
Concrete (subtotal)	\$155,375
CONCRETE	\$153,450.00
TERMITE TREATMENT	\$1,925
Masonry (subtotal)	\$126,500
MASONRY	\$126,500
Metals (subtotal)	\$74,800
STAIRS	\$24,750
PORCH	\$8,250
BRACKETS	\$19,800
STRUCTURAL STEEL AND MISCELLANEOUS STEEL ITEMS	\$22,000
Wood & Platics (subtotal)	\$25,300
ROUGH CARPENTRY	\$7,700
CABINETY	\$17,600
Thermal & Moisture (subtotal)	\$18,150
INSULATION	\$8,800
CAULKING	\$9,350
Openings (subtotal)	\$208,846
DOORS / FRAMES / HARDWARE	\$46,046
GLASS & GLAZING	\$129,800
OVERHEAD DOORS AND SHUTTER	\$33,000



JDD: E-4 In Station			Gross Bldg Area - SF		Perimeter	ESTIMATE					
NUMBER: E-18-878			7,300 SF			Duration					
E-4 In Station						48 Weeks					
0						240 Days					
LOCATION: 1831 Meeting Street Front						12.00 Months					
Charleston						START DATE: Wednesday, May 03, 2017					
SC						PRINT DATE: Monday, May 08, 2017					
			Total Gross Area		7,300						
QTY	UNIT	SCOPE	U/L	LABOR	U/L	MATERIAL	U/L	SUB	MARGIN	TOTAL	Subname/Comments
		Div 1 Design									
1.0	LS	Draw	0.00	0	0.00	0	60,000.00	60,000	6,000	66,000	81,165
1.0	LS	Survey	0.00	0	0.00	0	6,000.00	6,000	600	6,600	8,116
1.0	LS	Geotechnical investigation	0.00	0	0.00	0	6,000.00	6,000	600	6,600	8,116
1.0	LS	Architectural	0.00	0	0.00	0	45,000.00	45,000	4,500	49,500	60,074
1.0	LS	Structural	0.00	0	0.00	0	10,000.00	10,000	1,000	11,000	13,527
1.0	LS	MEP	0.00	0	0.00	0	18,000.00	18,000	1,800	19,800	24,349
1.0	ALL	Third party testing	0.00	0	0.00	0	10,000.00	10,000	1,000	11,000	13,527
1.0	ALL	SWPPP	0.00	0	0.00	0	5,000.00	5,000	500	5,500	6,704
		Div 1 Tap & Impact Fees & Other Fees									
7,300.0	LS	Transportation	0.00	0	0.00	0	0.33	2,409	241	2,650	3,269
0.0	SF	Building	0.00	0	0.00	0	0.04	0	0	0	0
2.0	EA	Water - 3/4"	0.00	0	0.00	0	3,833.00	7,666	767	8,433	10,370
0.0	EA	Water - 1"	0.00	0	0.00	0	5,789.00	0	0	0	0
1.0	EA	Sewer	0.00	0	0.00	0	3,960.00	3,960	396	4,356	5,357
		Div 1 Other Fees									
1.0	LS	Builders Risk Insurance	0.00	0	0.00	0	5,000.00	5,000	500	5,500	6,764
0.0	LS	PPP Bond	0.00	0	0.00	0	6,250.00	0	0	0	0
		Div 2 Demolition									
0.0	LS	No work figured or anticipated	0.00	0	0.00	0	0.00	0	0	0	0
		Div 2 Site Work (Allowance)									
1.0	LS	Site Work (Allowance)	0.00	0	0.00	0	225,000.00	225,000	22,500	247,500	304,369
1.0	LS	Underground utilities (Allowance)	0.00	0	0.00	0	150,000.00	150,000	15,000	165,000	202,917
15.0	EA	Pile (Allowance)	0.00	0	0.00	0	2,200.00	77,000	7,700	84,700	104,161

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1.0	LS	Water & Sewer (Allowance)	0.00	0	0.00	0	25,000.00	25,000	2,500	27,500	33,019
1.0	LS	Landscape (Allowance)	0.00	0	0.00	0	35,000.00	35,000	3,500	38,500	47,346
1.0	LS	Screenwall	0.00	0	0.00	0	110,000.00	110,000	11,000	121,000	148,002
Div 3 Concrete											
1.0	LS	Foundation	0.00	0	35,000.00	35,000	0.00	0	3,500	38,500	47,346
5.000.0	SF	SOG	0.00	0	15.00	75,000	0.00	0	7,500	82,500	101,456
2.500.0	SF	Elevated SOD	0.00	0	8.00	20,000	0.00	0	2,000	22,000	27,055
3.0	SF	Elevated SOD - Roof	0.00	0	7.50	0	0.00	0	0	0	
1.0	LS	Elevator Pit	6,000.00	6,000	35,000.00	3,500	0.00	0	950	10,450	12,851
0.0	LS	Stair Treads	15,000.00	0	500.00	0	0.00	0	0	0	
5.000.0	SF	Terazzo Treatment	0.00	0	0.00	0	0.35	1,750	175	1,925	2,367
Div 4 Masonry											
1.0	LS	Block Veneer	0.00	0	0.00	0	20,000.00	20,000	2,000	22,000	27,055
1.0	LS	Block Veneer	0.00	0	0.00	0	35,000.00	35,000	3,500	38,500	47,346
1.0	LS	Glass Block Panels	0.00	0	0.00	0	35,000.00	35,000	3,500	38,500	47,346
1.0	SF	Masonry Shaft Veneil	0.00	0	0.00	0	25,000.00	25,000	2,500	27,500	33,819
Div 5 Metals											
1.0	LS	Stairs	0.00	0	0.00	0	15,000.00	15,000	1,500	16,500	20,291
1.0	LS	Porch	0.00	0	0.00	0	7,500.00	7,500	750	8,250	10,146
1.0	LS	Spiral Stairs	0.00	0	0.00	0	7,500.00	7,500	750	8,250	10,146
1.0	LS	Brackets	0.00	0	0.00	0	18,000.00	18,000	1,800	19,800	24,349
1.0	LC	Miscellaneous Steel	0.00	0	0.00	0	20,000.00	20,000	2,000	22,000	27,055
Div 6 Wood, Plastics & Composites											
1.0	LS	Miscellaneous blocking	7500.00	2,500	2500.00	2,500	0.00	0	500	5,500	6,784
1.0	LS	Blocking for interior items (RR accessories, sinks, water fountain)	1000.00	1,000	1000.00	1,000	0.00	0	200	2,200	2,705
1.0	LS	Cabinetry	0.00	0	0.00	0	16,000.00	16,000	1,600	17,600	21,644
Div 7 Thermal & Moisture Protection											
1.0	LS	PEMB Insulation	0.00	0	0.00	0	8,000.00	8,000	800	8,800	10,822
1.0	LS	Coating	0.00	0	0.00	0	8,500.00	8,500	850	9,350	11,498
Div 8 Openings											
18.0	EA	Doors & Hardware - Interior - KD, Solid Core Birch, Lever Lockset	750.00	4,500	1250.00	22,500	600.00	10,800	3,780	41,580	51,134
2.0	EA	Doors & Hardware - Exterior - KD, Solid core metal, Lever Lockset	-150.00	300	1850.00	3,700	30.00	60	408	4,468	5,432

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1.0	LS	Storefront Interior and Exterior	0.00	0	0.00	0	110,000.00	110,000	11,000	121,000	148,802
1.0	LS	Solar Film on Windows	0.00	0	0.00	0	8,000.00	8,000	800	8,800	10,822
1.0	LS	CHD - 10x10 ceiling insulated	0.00	0	0.00	0	15,000.00	15,000	1,500	16,500	20,291
1.0	LS	Shutter for CHD	0.00	0	0.00	0	15,000.00	15,000	1,800	16,800	20,291
		Div 9 Finishes									
1.0	LS	Framing, Ceiling, Painting	0.00	0	0.00	0	200,000.00	200,000	30,000	230,000	282,847
1.0	LS	Flooring	0.00	0	0.00	0	31,000.00	31,000	3,100	34,100	41,935
1.0	LS	Flooring - Addition	0.00	0	0.00	0	75,000.00	75,000	7,500	82,500	101,458
		Div 10 Specialties									
9.0	EA	Restroom Accessories	125.00	625	350.00	1,750	0.00	0	235	2,613	3,213
4.0	EA	10lb Fire Extinguishers - wall mounted	25.00	100	375.00	1,500	0.00	0	160	1,760	2,164
1.0	LS	Signage	0.00	0	0.00	0	22,000.00	22,000	2,200	24,200	29,760
1.0	LS	Awnings	0.00	0	0.00	0	20,000.00	20,000	2,000	22,000	27,055
1.0	LS	Shades	0.00	0	0.00	0	1,600.00	1,600	160	1,760	2,164
		Div 11 Equipment									
1.0	LS	Other Div 11 items	0.00	0	0.00	0	111,000.00	111,000	11,100	122,100	150,155
1.0	LS	Thermal	0.00	0	0.00	0	250,000.00	250,000	25,000	275,000	338,186
1.0	LS	Sound Control	0.00	0	0.00	0	100,000.00	100,000	10,000	110,000	135,275
1.0	LS	Trolley lockdown system	0.00	0	0.00	0	3,500.00	3,500	359	3,859	4,735
		Div 12 Furnishings									
9.0	EA	No work figured or anticipated	125.00	0	0.00	0	750.00	0	0	0	
		Div 13 PE&B									
1.0	SF	PE&B	0.00	0	0.00	0	170,000.00	170,000	17,000	187,000	229,967
7,330.0	SF	Erection	0.00	0	0.00	0	25.00	182,500	18,250	200,750	248,876
		Div 14 Conveying Systems									
1.0	EA	Elevator - MRL-2-Stop	0.00	0	0.00	0	85,000.00	85,000	8,500	93,500	114,903
		Div 15 Mechanical									
0.0	SF	Fire Sprinkler No work figured or anticipated	0.00	0	0.00	0	2.00	0	0	0	
1.0	LS	HVAC - Base Split System Split heat pumps with ductwork	0.00	0	0.00	0	85,650.00	85,550	8,555	94,105	115,727

18.0	EA	Plumbing Fixtures	0.00	0	0.00	0	3,600.00	64,800	6,480	71,280	67,850
1.0	EA	Electrical	0.00	0	0.00	0	257,635.00	257,635	25,764	283,399	348,515
1.0	LS	Dubs	0.00	0	0.00	0	12,500.00	12,500	1,250	13,750	16,800
1.0	LS	Security and access control	0.00	0	0.00	0	50,000.00	50,000	6,000	55,000	67,637
1.0	LS	TED Device	0.00	0	0.00	0	3,000.00	3,000	300	3,300	4,058
1.0	LS	Antenna	0.00	0	0.00	0	10,000.00	10,000	1,000	11,000	13,527
1.0	LS	Electrical Grounding and bonding	0.00	0	0.00	0	10,000.00	10,000	1,000	11,000	13,527
1.0	LS	Lighting Control	0.00	0	0.00	0	35,000.00	35,000	3,600	38,600	47,348
1.0	LS	Equip. balanced rack/row panel	0.00	0	0.00	0	25,000.00	25,000	2,500	27,500	33,819
1.0	LS	Building Integrated control system	0.00	0	0.00	0	20,000.00	20,000	2,000	22,000	27,055
SUB-TOTAL			15,025		168,450		3,002,230	328,371		3,312,078	
0.00	0.000	TAXES, LABOR BURDEN		0	0					0	\$750
TOTAL			15,025		168,450		3,002,230	328,371		3,312,078	461.11
			15,025		168,450		3,002,230	328,371		3,312,078	73.18
								CHECK		3,312,078	

0	0.050	Contingency	175,603.78
\$246,002	\$139,793 0.0800	G/Cs	221,260.78
	0.008	Gen Lab	18,000.00
	0.01	Permitting	30,000.00
		Design	
		Subtotal	3,958,940.03
	0.006	Overhead	23,741.64
	1.23 0.085	Markup	338,357.94
Cost per SF	591.65	Total	4,319,039.61

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge
Case No. 2017-CP-10-5382
Appellate Case No. 2019-001125

South Carolina Department of Commerce,
Division of Public Railways,

Appellant,

v.

Gateway Properties of Greater Charleston, LLC,

Respondent,

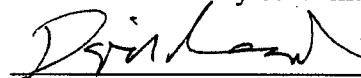
and

NBSC a division of Synovus Bank, VFC Partners 15 LLC, Capella Carolinas, LLC,
Donivon Glassburn, and the Loft Pilates Center, LLC,

Other Condemnees.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Record on Appeal contains all materials proposed by the parties to be included in the Record on Appeal and does not contain any other materials.



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Columbia, South Carolina
February 4, 2020

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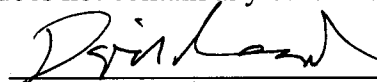
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