IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA (BUSINESS COURT DIVISION)

VANDALIA CAPITAL II, LLC, UNITED INC., BANK, RALPH BALLARD, STEPHEN DAVID В. FARMER, FERRETTI, SHAWN P. GEORGE, MARK A. ROBERT HUGGINS, GRIMMETT. ANDREW B. JORDAN, R. SCOTT LONG, ANDREW A. PAYNE, III, ROOKE ASSET PARTNERS, LP, ANDREW K. ROOKE and TIMOTHY K. WILCOX,

Plaintiffs,

v.

DAVID P. PRAY, Individually and as Trustee of the DAVID P. PRAY REVOCABLE TRUST, DAVID P. PRAY REVOCABLE TRUST, and JOHN/JANE DOE,

Defendants.

v.

THE WOODS COMPANY, LLC,

DEVELOPMENT

Third-Party Defendant.

Case No. _____ Kanawha County Civil Action No. 13-C-570 (The Honorable Louis H. Bloom)

VANDALIA CAPITAL II LLC'S, UNITED BANK INC.'S, THE NON-BREACHING VANDALIA AFFILIATES', AND THE WOODS DEVELOPMENT COMPANY LLC'S MOTION TO REFER CIVIL ACTION TO THE BUSINESS COURT DIVISION

EXHIBIT D

United Bank, Inc.'s Motion to Dismiss David P. Pray's and the David P. Pray Revocable Trust's Counterclaim and Incorporated Memorandum of Law

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VIA HAND DELIVERY

Re: Vandalia Capital II, LLC, et al. v. David P. Pray, et al.

Civil Action No. 13-C-570

The Honorable Louis H. Bloom, Circuit Judge

Dear Ms. Gatson:

Please find enclosed for filing in regard to the above referenced civil action, <u>United Bank, Inc.'s Motion to Dismiss David P. Pray's and the David P. Pray Revocable Trust's Counterclaim and Incorporated Memorandum of Law</u>.

A courtesy copy of the same has been provided to Judge Bloom as well as a copy to counsel pursuant to the certificate of service.

Sincerely,

Floyd D. Boone, Jr.

Flord Boone

FEB/bv Enclosures

cc: The Honorable Louis H. Bloom, Judge (Via Hand Delivery)
Brian A. Glasser, Esq./Thanos Basdekis, Esq. (Via Hand Delivery)

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

VANDALIA CAPITAL II, LLC, UNITED BANK, INC., RALPH BALLARD, STEPHEN В. FARMER, DAVID FERRETTI, SHAWN P. GEORGE, MARK A. GRIMMETT, ROBERT HUGGINS, ANDREW B. JORDAN, R. SCOTT LONG, ANDREW A. PAYNE, III, ROOKE ASSET PARTNERS, LP, ANDREW K. ROOKE and TIMOTHY K. WILCOX,

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Civil Action No. 13-C-570 The Honorable Louis H. Bloom

United Bank, Inc.'s Motion to Dismiss David P. Pray's and the David P. Pray Revocable Trust's Counterclaim and Incorporated Memorandum of Law

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INTRODUCTION

Pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, United Bank, Inc. ("United") respectfully moves to dismiss Count One, Count Two, and Count Five from Pray's Counterclaim. Count One seeks a declaration that the Loan Agreement between United and Woods Development Company, LLC ("Woods") is in "default." Count Two alleges a "lender liability" claim—purportedly on behalf of Vandalia Capital II, LLC ("Vandalia")—premised on the allegation that United's "first appraisal was inaccurate and overvalued the Property." Lastly, Count Five alleges a "set-off or recoupment" claim, individually and derivatively.

All three claims should be dismissed because the pleadings (and documents incorporated into them) show that Pray can prove no set of facts that would allow him to prevail,

- Count One—Pray's declaratory judgment claim—fails because it seeks a construction of an agreement to which Pray is not a party, the record demonstrates that there is no entitlement to the declaration sought, and there is no "justiciable controversy."
- Count Two—Pray's "lender liability" claim—cannot succeed given that neither Pray nor Vandalia were parties to any appraisal contracts, United owed neither Pray nor Vandalia any duties with respect to the appraisal, and any claim based upon the appraisal is time-barred.
- Count Five—Pray's "set-off or recoupment" claim—cannot succeed because it is expressly premised on the validity of Pray's other claims. Because Pray's other claims against United fail as a matter of law, so must his set-off claim.

In sum, Count One, Count Two, and Count Five should be dismissed as a matter of law.

STATEMENT OF THE CASE

This case began with the filing of the original Complaint on March 26, 2013. Almost one year later, Vandalia and United filed their Amended Complaint on March 21, 2014, which added

¹ Herein, "Pray" refers collectively to David P. Pray in his individual capacity and to David P. Pray as trustee of the David P. Pray Revocable Trust (the "Trust"), which is consistent with the Amended Complaint, which generally alleges that the Trust is no more than an "alter ego" of David P. Pray. See Am. Compl. ¶ 19. Similarly, "Counterclaim" refers to the "Counterclaims and Third-Party Complaint" filed by Pray.

² Woods and IB Development, LLC are one and the same. See Counterclaim ¶ 4 at 12.

various individuals as party plaintiffs, provided additional factual allegations, and added one claim. The Complaint, Amended Complaint, and Counterclaim all radiate from a single Loan Agreement executed on October 30, 2006 by two parties: (1) United and (2) Woods. [See Loan Agreement, Am. Compl., Ex. 3.] Under the Loan Agreement, United agreed to loan Woods \$28,212,594 at an interest rate of 7.80 percent, while Woods agreed to pay United interest on a quarterly basis until May 1, 2008 when Woods agreed to repay "the entire outstanding principal balance . . . and all accrued and unpaid interest." The loan facilitated Woods's plan to develop a 275-acre plot of land, located in North Carolina, into a residential development comprising approximately 202 individual home lots. [Pray Consulting Agreement at 1-2, Am. Compl., Ex. 6.]

Although they are not parties to the Loan Agreement, the individual Plaintiffs and Pray (collectively, "Guarantors") induced United to execute the agreement. Each Guarantor also agreed to "irrevocably and unconditionally guarantee the Loan in such amounts as . . . set forth in the respective Guaranty Agreements . . . which amounts shall remain a fixed dollar amount during the term of the Loan." [Loan Agreement at 1, Am. Compl., Ex. 3.] The Guarantors provided partial security for the Loan through their "Guaranties" and their Letters of Credit. [Id. at 3.] Execution and delivery of the Guaranties and the Letters of Credit were express conditions precedent to United's duty to close the Loan.

Although the extension of the maturity date was not expressly addressed in Loan Agreement, nothing in the contract prohibited extensions and the contract expressly provided that it could be modified or amended at any time. [Loan Agreement at 19, Am. Compl., Ex. 3.] Through

³ See Loan Agreement at 12, Am. Compl., Ex. 3 ("The Bank shall have received the duly executed Letters of Credit in a form and substance, and from a bank or banks, satisfactory to the Bank and its counsel."); id. at 13 ("The Bank shall have received the Guaranties and of the Guarantors in a form and substance satisfactory to the Bank and its counsel. Further, Bank shall have received each Guarantor's financial information satisfactory to Bank and its counsel (a minimum of 2 years of recent tax returns (at least 2004))."). Similarly, a post-closing condition required the provision to United of "updated personal financial information of each Guarantor satisfactory to Bank and its counsel dated not less than one (1) year from October 19, 2006." See id. at 13.

various agreements, the Loan Agreement's maturity date has been extended various times.

Nevertheless, the Loan's maturity date can be accelerated upon the occurrence of certain contractually-prescribed "events of default." In particular, the Loan Agreement provides as follows:

5. Events of Default: Remedies.

- (a) Events of Default. If any of the following events . . . shall occur, then the Bank may . . . accelerate the Loan and thereupon the Loan shall become immediately due and payable (except that the Loan shall become automatically due and payable upon the occurrence of an event described in Sections 5(a)(viii) and (a)(ix) below):
- (i) [Woods] does not pay the Bank any interest or principal.. within 10 days after the date due... or
- (ii) There shall have occurred any other event of default... or breach of any covenant, agreement or condition contained herein or in any other Loan Document which has not been cured... or
- (iii) [Woods] does not pay when due or prior to the expiration of the applicable cure period, if any, any principal or interest on any other indebtedness...
- (iv) [Woods] does not perform its obligations under any agreement material to its business, the other party to such agreement declares such agreement in default, and such default creates a reasonable likelihood of material adverse effect...or
- (v) Any representation or warranty . . . shall be false in any material respect when made; or
- (vi) The Borrower is generally not paying its debts as they become due; or
- (vii) The Borrower makes an assignment of any material part of its assets for the benefit of creditors; or
- (viii) The Borrower applies for the appointment of a trustee or receiver . . . or commences any proceedings relating to the Borrower under any bankruptcy . . . or other liquidation law or
- (ix) Any order is entered in any proceedings against the Borrower decreeing the dissolution of the Borrower; or

* * *

[Loan Agreement at 13-15 (emphasis added), Am. Compl., Ex. 3.] Thus, except for the bankruptcy or the dissolution of Woods, United has no absolute duty to declare a default and accelerate the Loan. Moreover, the Loan Agreement expressly provides that whenever United "exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to [it], the decision of [United] . . . shall be in the sole but reasonable discretion of [United] and shall be final and conclusive, except as may be otherwise specifically provided." [Id. at 20.] Similarly, the Loan Agreement provides that it "shall not be deemed to be for the benefit of any third party[and that a]ll requirements, restrictions and conditions that are or may be imposed by [United] are solely for the benefit and protection of [United] and may be waived by [it] for any reason." [Id. at 19.]

Although Pray is not a party to the Loan Agreement and United has no express obligations to him under that agreement, he and United are parties to Pray's Guaranty. [See § 1, Guaranty of David P. Pray, Am. Compl., Ex. 5.] Pray's Guaranty provides that it was supported by "valuable consideration" and that it was made "to induce" United to make the Loan. [See id. § 2 at 1.] Pray represented and warranted that he executed his Guaranty at the request of Woods and that he was satisfied with respect to Woods's financial condition and its "use and intended use of all [Loan] proceeds." [Id. § 12 at 2.] Pray also represented and warranted that he had not relied on any information provided by United. [Id.]

Pray's Guaranty "absolutely and unconditionally" guaranteed Woods's obligations to United. [See id.] Under the Guaranty, United has the express right to apply the Guaranty to the Loan in any manner it "may select." [Id.] Similarly, United also has the right to hold Pray "unconditionally liable" under the terms of his Guaranty, even if it declines to pursue any of its remedies against Woods. [See § 4 at 1, Guaranty of David P. Pray, Am. Compl., Ex. 5.] With respect to the maturity date of the Woods Loan, United has the right to extend it "upon such terms and conditions as [it] may see fit" without notice to Pray and "without limitation as to the number of

renewals, extensions, [or] modifications." [Id. § 3 at 1.] Similarly, Pray expressly waived any defenses premised upon renewals or extensions of the Loan. [Id. § 9.A.1. at 2.] Likewise, Pray waived, until the Loan is repaid in full, "any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right [he] may have to enforce any remedy which [United Bank] now ha[s] or in the future may have against [Woods] or another guarantor or as to any Property." [See § 9.A.9. at 2, Guaranty of David P. Pray, Am. Compl., Ex. 5.]

Membership in Vandalia is the glue that binds Pray and the other Guarantors together. That is, all of the guarantors are either members of Vandalia or they are closely related to or affiliated with a member of Vandalia. Woods and Vandalia are linked by an agreement between them that is known as the "Fee Agreement." [Counterclaim ¶ 15 at 14.] Under the Fee Agreement, Woods agreed to pay Vandalia a "fee" in exchange for Vandalia's agreement to "facilitate" the making of the Loan and "in consideration for the members of Vandalia (the 'Guarantors') executing Guaranty Agreements in favor of United . . . to enable [Woods] to obtain such financing from United." [Fee Agreement at 1, Counterclaim, Ex. A.] According to Pray, the Fee Agreement required Woods to pay "a fee of not less than \$12 million" no later than May 1, 2008. [Counterclaim ¶¶ 14-15 at 14-15.] The Fee Agreement also indicates that Vandalia's total potential "fee" could reach \$24 million or more. [Fee Agreement at 2-3, Counterclaim, Ex. A.]

Vandalia and Woods—and Pray specifically—are further linked by a second agreement referred to in the Amended Complaint as the "Consulting Agreement." [See Consulting Agreement, Am. Compl., Ex. 6.] The Consulting Agreement was executed on July 14, 2008 and it was between Vandalia and PrayWorks, LLC ("PrayWorks"). PrayWorks is a West Virginia limited liability company managed by Pray that "is in the business, in part, of providing consulting and

⁴ For example, although Pray, individually, is a Guarantor of the Loan Agreement, he is not a member of Vandalia in an individual sense. Rather, Pray's affiliation with Vandalia arises from the fact that his revocable trust is a member of Vandalia.

project management services with regard to real estate developments." [Id. at 1.] According to the Consulting Agreement, Woods was "pursuing the comprehensive development... of approximately 275 acres of real property including the construction of approximately 202 home sites for sale and related facilities," but that "[t]he Project has experienced delays and difficulties with respect to site development and other operational issues." [Id. at 1-2.] Based on these delays and difficulties, Vandalia retained PrayWorks to provide consulting and project management services to it and Woods. [See id. at 2.] In particular, the Consulting Agreement provided that:

- a. PrayWorks shall assist in the preparation, reconstruction, monitoring and/or management of a developer's pro forms for the Project....
- b. PrayWorks shall occasionally monitor and inspect work at the Project, and maintain a reasonable understanding of the Project's design criteria;
- c. PrayWorks shall consult with [Woods] and Vandalia in the development and selection of a Project delivery system for the design and construction of the Project, and in the development and execution of an inspection/quality control programs [sic] in connection with the Project;
- d. PrayWorks shall assist [Woods] and Vandalia in retaining the services of such professionals as may be required for development of the Project...
- e. PrayWorks shall assist in facilitating communications between [Woods] (in its role as marketers and promoters of the Project) and Vandalia in an effort to avoid unreasonable delays with regard to the marketing and sale of the Project;
- f. PrayWorks shall periodically review and monitor the work of those providing services in connection with the development of the Project . . . to reasonably assure that all such service providers are satisfying their contractual obligations to [Woods] and Vandalia . . . PrayWorks shall to the extent it determines necessary in the exercise of its reasonable discretion regularly attend or otherwise participate in meetings relating to the development of the Project;

* * *

1. PrayWorks shall consult with Vandalia and [Woods] in connection with crisis and risk management assistance for the Project.

[Consulting Agreement at 2-4, Am. Compl., Ex. 6.] In addition to being the manager of PrayWorks, the Consulting Agreement contemplated that Pray would perform all of the professional services contemplated by the agreement. [See id. at 5.] Notably, Pray and PrayWorks assisted Woods "on various development issues including the installation of the sewer to service the Project." [Am. Compl. ¶ 39.]

As noted in the Amended Complaint, "adverse market conditions and other development issues" prevented Woods from repaying the Loan by its original maturity date of May 1, 2008. [Am. Compl. ¶ 30.] Consequently, United and Woods have entered several agreements to extend the Loan's maturity date. [See id.] Nevertheless, by the fall of 2009, Woods was unable to make the interest payments required by the extended Loan Agreement. [See id. ¶ 34.] To avoid a default under the Loan Agreement and "to keep the Project affoat until the economy and real estate markets recovered[,]" Vandalia's members agreed to make interest payments to United that, combined with the payment of property taxes, exceed \$1.3 million per year. [Id. ¶¶ 35, 37.] Pray agreed to this strategy and contributed his pro-rata share of such payments. [See id. ¶¶ 36, 40-41.] Pray, however, stopped contributing to these payments in April of 2011. [Am. Compl. ¶ 41.] As a result of Pray's actions, Vandalia's other members were forced to increase the amounts of their individual payments. [See id.] Pray also allowed his Letter of Credit to lapse. At the same general time, the services Pray provided to Vandalia and Woods, through PrayWorks, ended. [See id.] 39.]

On April 21, 2014, Pray moved to dismiss the Amended Complaint. [See Mot. to Dismiss Pls.' Am. Compl. (04/21/2014).] With respect to United's contract-based claims, Pray argued that they must be dismissed because the Loan Agreement "is not in default and all required interest payments relating to [it] have been paid in full." [Id. at 2.] Thereafter, on June 6, 2014, the

Court denied Pray's motion to dismiss. [See Or. Den. Defs.' Motions to Dismiss (06/06/2014).]
Then, on June 30, 2014, Pray filed his Answer, Counterclaims and Third-Party Complaint.

With respect to United, Pray's Counterclaim asserts three claims. Count One seeks a declaratory judgment that Woods is in default of the Loan Agreement. [Counterclaim ¶¶ 34-36 at 18-19.] Count Two asserts a "lender liability" claim—purportedly on behalf of Vandalia, derivatively—based on the allegation that United's "first appraisal was inaccurate and overvalued the Property." [Counterclaim ¶¶ 37-40 at 19-20.] Count Five asserts a set-off claim, "[t]o the extent any direct or directive [sic] claims are time barred." [Counterclaim ¶¶ 53-54 at 21-22.]

LEGAL STANDARDS

Under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, a "trial court may dismiss a pleading for failure to state a claim upon which relief can be granted." Fast v. Nonsco Well Serv., Ltd., 177 W. Va. 50, 51, 350 S.E.2d 562, 563 (1986). A Rule 12(b)(6) motion "test[s] the formal sufficiency of the complaint." Id.; see also Franklin D. Cleckley, Robin Jean Davis & Louis J. Palmer Jr., Litigation Handbook on West Virginia Rules of Civil Procedure § 12(b)(6)[2] at 384 (4th ed. 2012) ("Cleckley Handbook"). A Rule 12(b)(6) motion should be granted where "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Forsbey v. Jackson, 222 W. Va. 743, 749, 671 S.E.2d 748, 754 (2008). Although a court must "view[] all the facts in a light most favorable to the nonmoving party[,]" id., a motion to dismiss should be granted where a complaint merely "fumble[s] around searching for a meritorious claim . . .' or where the claim is not authorized by the laws of West Virginia[,]"State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc., 194 W. Va. 770, 776, 461 S.E.2d 516, 522 (1995). "[A] trial court is free to ignore legal conclusions, unsupported conclusions, unwarranted inferences and sweeping legal conclusions cast in the form of factual allegations." Cleckley Handbook § 12(b)(6)[2] at 386.

Similarly, "if a plaintiff does not plead all of the essential elements of his or her legal claim, a [trial] court is required to dismiss the complaint pursuant to Rule 12(b)(6)." Cleckley Handbook § 12(b)(6)[2] at 385 (brackets in original) (quoting Edgar v. Avaya, Inc., 503 F.3d 340 (3d Cir. 2007)); see also Fass, 177 W. Va. 50, 350 S.E.2d 562 ("The complaint must set forth enough information to outline the elements of a claim or permit inferences to be drawn that these elements exist."). Although the West Virginia Rules of Civil Procedure liberalized pleading, "[s]implicity and informality of pleading do not permit carelessness and sloth: the plaintiff's attorney must know every essential element of his cause of action and must state it in the complaint." Sticklen v. Kittle, 168 W. Va. 147, 157-58, 287 S.E.2d 148, 164 (1981) (quoting Lugar & Silverstein, West Virginia Rules of Civil Procedure 75 (1960)). Dismissal is appropriate where the party seeking dismissal proves "that the allegations contained in the complaint taken in the light most favorable to the plaintiff are patently meritless and beyond all hope of redemption." Cleckley Handbook § 12(b)(6)[2] at 385 (citing Martinez-Rivera v. Sanchez Ramos, 498 F.3d 3 (1st Cir. 2007)).

ARGUMENT

I. Pray's claim seeking a declaration that the Loan Agreement is in "default" must be dismissed because there is no justiciable controversy, he can prove no entitlement to a declaration under any set of facts, and he fails to allege necessary elements.

As explained below, Count One, which seeks a declaration that the Loan Agreement is in default, must be dismissed for two independent reasons. First, this Court should find that Pray cannot obtain the declaration he seeks as a matter of law based upon principles of law governing declaratory relief and contracts. Second, this Court should further find that Count One should be dismissed because Pray fails to allege facts in support of elements necessary to his claim.

A. Pray's declaratory judgment claim should be dismissed because there is no justiciable controversy and, even if there is, the Court should dismiss the claim in the exercise of its discretion.

Before a circuit court may grant a declaratory judgment, it must find that there is "an actual, existing controversy." Hustead v. Ashland Oil, Inc., 197 W. Va. 55, 61, 475 S.E.2d 55, 61 (1996). "[I]f there is no 'case' in the constitutional sense of the word, then a circuit court lacks the power to issue a declaratory judgment." Id. (quoting Cox v. Amick, 195 W. Va. 608, 618, 466 S.E.2d 459, 469 (1996)) The Supreme Court of Appeals of West Virginia has prescribed the following standard to determine whether a "justiciable controversy" exists:

In deciding whether a justiciable controversy exists sufficient to confer jurisdiction for purposes of the Uniform Declaratory Judgment Act, West Virginia Code §§ 55-13-1 to -16 (1994), a circuit court should consider the following four factors in ascertaining whether a declaratory judgment action should be heard: (1) whether the claim involves uncertain and contingent events that may not occur at all; (2) whether the claim is dependent upon the facts; (3) whether there is adverseness among the parties; and (4) whether the sought after declaration would be of practical assistance in setting the underlying controversy to rest.

Syl. Pt. 4, Hustead, 197 W. Va. 55, 475 S.E.2d 55 (1996). As applied to the specific facts of this case and the declaration Pray seeks, this Court should find that there is no justiciable controversy.

At the outset, this Court should find that there is no "an actual, existing controversy" with respect to whether the Loan Agreement is in default. The Amended Complaint does not allege that the Loan Agreement is in default and its allegations. Importantly, Pray admitted that the Loan Agreement is not in default and that all payments have been made in seeking the dismissal of United's contract-based claims. Indeed, Pray argued that these facts required dismissal of United's claims against him. Given the Amended Complaint's allegations and Pray's admissions, the Court should find that there is no actual controversy with respect to the status of the Loan Agreement.

In addition, the Court should find that there is no justiciable controversy given Pray's non-party status under the Loan Agreement, the nature of the declaration he seeks, and the

uselessness of the declaration in settling the controversy alleged in this case. To begin, Pray is not a party to the Loan Agreement, and the only two parties to the Loan Agreement are United and Woods. Although Pray is a party to his Guaranty, he is not a party to the Loan Agreement. It is well-established that a guarantor is "one who makes a contract, which is distinct from the principal obligation, to be collaterally liable to the creditor if the principal debtor fails to perform." Grand Valley Ridge, LLC v. Metropolitan Nat'l Bank, 388 S.W.3d 24, 31 (Ark. 2012) (quoting First Commercial Bank, N.A. v. Walker, 969 S.W.2d 146, 152 (1998)). As a result, Pray has no standing as a matter of law to assert any rights under the Loan Agreement. See id. ("The only document that Terminella signed in his individual capacity was a commercial guaranty, which is a separate contract between MNB and Terminella. As a guarantor, he had no standing to assert an individual breach-of-contract action against MNB on the loan documents."). In sum, Pray lacks standing to assert Count One because he is not a party to the Loan Agreement.

With respect to the specific declaration that Pray seeks and the impact it would have on the underlying controversy, the Court should find that Pray's declaration would settle nothing and, if granted, would immeasurably magnify the complexity of this case. See Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, 10B Fed. Prac. & Proc. Civ. § 2759 (3d ed. updated April 2014) ("One of the most important considerations that may induce a court to deny declaratory relief is that the judgment sought would not settle the controversy between the parties."). As to the claims alleged by United in the Amended Complaint, Pray's declaration would do nothing to settle those claims because United's claims are solely based upon Pray's obligations under his Guaranty. Unsurprisingly, Pray's Counterclaim fails to explain or allege how the declaration he seeks "would be of practical assistance in setting the underlying controversy."

In fact, Pray's declaration would have the opposite effect because it would potentially force United to accelerate the Loan, foreclose on the real property, execute on the Guarantors'

Letters of Credit, and potentially pursue claims against <u>all</u> of the Guarantors to recover any deficiencies. If this were to occur, the claims currently pending against Pray would likely continue <u>and</u> additional claims would likely be added. Moreover, there would be a real possibility of additional litigation among the Plaintiffs arising out of any foreclosure and potential efforts to collect on the individual Plaintiffs' guaranties to United. In sum, there is no reason to believe that the declaration Pray seeks "would be of practical assistance in setting the underlying controversy."

Finally, this Court should recognize that circuit courts have significant discretion with respect to the exercise of jurisdiction over declaratory judgment claims. See Hall v. Hartley, 146 W. Va. 328, 119 S.E.2d 759 (1961) (noting that "[i]r is generally within the discretion of the court as to whether it will take jurisdiction to enter or decline to enter a declaratory judgment "); Franklin D. Cleckley, Robin Jean Davis & Louis J. Palmer Jr., Litigation Handbook on West Virginia Rules of Civil Procedure § 57[6] at 1252 (4th ed. 2012) (noting that the "Uniform Declaratory Judgments Act does not mandate that trial courts entertain declaratory judgments. Trial courts retain substantial discretion in deciding whether to grant declaratory relief."). In determining whether a court should exercise its discretion, it should consider "any inequitable conduct on the part of the party seeking the declaration." Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, 10B Fed. Prac. & Proc. Civ. § 2759 (3d ed. updated April 2014).

As applied here, the Court should find that Pray's conduct is inequitable. As noted, Pray admitted in his prior Motion to Dismiss that no default under the Loan Agreement has occurred and that all required interest payments have been made. Moreover, Pray argued that these facts required dismissal of United's contractual claims. The declaration that Pray now seeks is irreconcilable with the record and his prior admissions. Further evidence of inequitable conduct can be found in the lack of benefit Pray would obtain from the declaration he seeks—and the hardship that would be imposed on United, Woods, Vandalia, and the individual party plaintiffs by the

declaration Pray seeks. In fact, on this record, Pray's request for a declaration appears to be nothing more than an extortionate tactic designed to pressure the Plaintiffs to drop their claims against him. As a result, the Court should exercise its discretion and find that it will not exercise jurisdiction over Count One.

In sum, this Court should find that there is no justiciable controversy sufficient to assert jurisdiction over Pray's declaratory judgment claim and that the claim should be dismissed.

B. Pray's declaratory judgment claim should be dismissed because he can prove no set of facts that would allow him to prevail.

This Court should dismiss Pray's declaratory judgment claim for at least three reasons. First, Pray lacks standing to seek a declaration as to the Loan Agreement because he is not a party to it. Second, Pray's declaratory judgment claim should be dismissed because the relief he seeks is barred by his Guaranty. Third, Pray's claim should be dismissed because the record demonstrates that Pray cannot prove an entitlement to the declaration he seeks because the Loan Agreement is not in default and all payments have been made.

1. Pray is not a party to the Loan Agreement and he lacks standing to seek a declaration with respect to its terms and conditions.

Under West Virginia law, a declaratory judgment is only available to those persons who possess a legal interest in, or rights stemming from, a contract or other document. See W. Va. Code § 55-13-2. The declaratory judgment device is not an exception to the rule that a plaintiff must have standing to bring his or her claims. See Hustead v. Ashland Oil, Inc., 197 W. Va. 55, 61, 475 S.E.2d 55, 61 (1996); see also Franklin D. Cleckley, Robin Jean Davis & Louis J. Palmer Jr., Litigation Handbook on West Virginia Rules of Civil Procedure § 57[6] at 1249-1250 (4th ed. 2012) (noting that normal legal principles governing standing apply in the declaratory judgment context). As noted above, although Pray is a party to his Guaranty, he is not a party to the Loan Agreement. As a result, Pray lacks standing to seek a construction of the Loan Agreement. See Grand Valley Ridge,

LLC v. Metropolitan Nat'l Bank, 388 S.W.3d 24, 31 (Ark. 2012) ("The only document that Terminella signed in his individual capacity was a commercial guaranty, which is a separate contract between MNB and Terminella. As a guarantor, he had no standing to assert an individual breach-of-contract action against MNB on the loan documents.").

In sum, the Court should dismiss Count One because Pray lacks standing to seek a judicial construction of an agreement to which he is not a party.

2. Even if Pray were a party to the Loan Agreement, he is nevertheless bound by the terms of his Guaranty, which prohibits him from seeking the declaratory relief he seeks through Count One.

This Court should find that the declaratory judgment relief that Pray seeks in Count One is barred by the express terms of his Guaranty. Pray agreed to waive various defenses when he executed his Guaranty. In fact, Pray's Guaranty expressly acknowledges, until the Loan is repaid in full, his waiver of any right Pray "may have to enforce any remedy which [United] now ha[s] or in the future may have against [Woods] or another guarantor." [See § 9.A.9. at 2, Guaranty of David P. Pray, Am. Compl., Ex. 5.] Pray's declaratory judgment claim is an attempt to enforce a "remedy" belonging to United vis-à-vis Woods and, as a result, it has been waived by Pray's Guaranty as a matter of law. In sum, Count One should be dismissed because it has been waived by Pray through his Guaranty.

3. The Court should find that even if Pray is entitled to seek his declaration, that his claim must be dismissed because he cannot prove that the Loan Agreement is in default.

The Court should further find that the Loan Agreement is not in default for at least two reasons. First, under the Loan Agreement, United possesses broad discretion with respect to any declaration of default. In fact, the Loan Agreement clearly provides that United "may" declare a default upon the occurrence of various events. [See Loan Agreement at 13, Am. Compl., Ex. 3.] Moreover, there are only two events with respect to which a default is automatically deemed to

occur—relating to bankruptcy and corporate dissolution—and neither event has been alleged. In addition, the Loan Agreement expressly provides United with broad discretion by providing that: "any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to [it], the decision of [United] ... shall be in the sole but reasonable discretion of [United] and shall be final and conclusive, except as may be otherwise specifically provided." [Id. at 20 (emphasis added).] As applied here, there are two events of default that are not within United's discretion to declare and neither are applicable.

Second, the record demonstrates that there is no basis to declare a default. There is nothing within the Loan Agreement that explicitly or implicitly requires Woods to pay interest payments from its own funds. Moreover, the broad duties imposed by the Guarantors' Guaranties belie any notion that Woods is entitled to no assistance in satisfying its obligations under the Loan Agreement. In addition, Pray has admitted that the Loan Agreement is not in default and that all payments have been made. Thus, the Court should find that the record demonstrates that there is basis to find the Loan Agreement in default.

II. Pray's "lender liability" claim must be dismissed because he can prove no entitlement to damages under any set of facts and because he fails to allege facts necessary to the elements of any claim.

Pray's Count Two is alleged derivatively, on behalf of Vandalia, and it asserts that Vandalia incurred damages based upon an allegedly erroneous appraisal of the real property. In particular, Pray alleges the following:

- 38. As described herein, United Bank knew or should have known that its first appraisal was inaccurate and over the Property....
- 39. The Property was later appraised at a value much lower than \$26 million after the full scope of the water and sewer problems and other issues were recognized.
- 40. Vandalia would not have agreed to the transaction is [sic] they knew that the Property was worth less than \$26 million.

[Counterclaim ¶¶ 38-40 (emphasis added).] Pray's "lender liability" claim must be dismissed because no set of facts can be proven in support of it and because the Counterclaim lacks factual allegations that would establish every element of a claim.

Neither Pray nor Vandalia can recover damages on the basis of the lender liability claim for at least three independent reasons. First, to the extent Pray's claim is based upon an alleged breach of contract, it fails because neither Pray nor Vandalia were ever parties to any contract with United regarding any appraisal of the real property. Second, to the extent Pray's claim is based upon the alleged violation of a duty imposed by the law of torts, his claim fails because United owed no duties to Vandalia or Pray with respect to appraisals in general or the particular appraisal alleged in the Counterclaim. Third, Pray's claim fails because it precluded by the statute of limitations.

A. Pray can obtain no contract damages because neither he nor Vandalia were ever parties to any contract for the appraisal of any real property.

To the extent Count Two sounds in contract, it must be dismissed because there was never any contract with respect to the appraisal of the real property between either Vandalia or Pray. The first element of a breach of contract claim is the existence of a valid contract between the parties. See Executive Risk Indem., Inc. v. Charleston Area Med. Ctr., Inc., 681 F. Supp. 2d 694, 714 (S.D. W. Va. 2009) (applying West Virginia law). Here, there was never any contract pertaining to the appraisal of the real property between United and Vandalia or Pray. In fact, any contract for the appraisal would have been between the appraiser, Fred H. Beck & Associates, LLC, and Wachovia Corporation. [See Ex. 1, Letter of October 27, 2006 from Douglas S. Butcher to Julie R. Gurtis at 1 ("It is noted that this appraisal report is address [sic] to Wachovia Corporation but I am reviewing it for use by United Bank."); see also Ex. 2, Appraisal Report (06/27/2006).] In sum, to the extent Count Two sounds in contract, it fails because there was no contract for the appraisal of the real property between United and Vandalia or Pray.

B. Pray can obtain no damages because he cannot prove that United owed Vandalia or him any duties as to any appraisal.

To the extent Count Two sounds in tort, the Court should find that Pray's lender liability claim fails because United owed neither Vandalia nor Pray any duty of care with respect to the appraisal of the real property. As noted above, any appraisal contract was between the appraisar and Wachovia Corporation, rather than United. To the extent United did not order the appraisal, United could not have had any duties to Vandalia or Pray arising out of it.

Moreover, even if United had ordered the appraisal, it would have had no duties to Vandalia or Pray in general or under the circumstances of this case. The Supreme Court of Appeals has held that its rulings:

should not be taken to mean that a traditional lender is in any way the insurer of the property that is the subject of the loan. Nor is the lender an insurer of the work performed or of an inspection or appraisal conducted on its behalf.

Glasscock v. City Nat'l Bank of West Virginia, 213 W. Va. 61, 67, 576 S.E.2d 540, 546 (2002). Thus, the imposition of a tort duty requires far more than a normal lender/borrower/guarantor relationship. In particular, there must be circumstances that give rise to a "special relationship" between the lender and its borrower (and by extension, any guarantors of the borrower's obligation). See id. In addition, there are no allegations that would establish that United or anyone else had any reason to know that Vandalia or Pray would be receiving and relying upon any appraisal report. Cf. Syl. Pt. 1, First Nat'l Bank of Bluefield v. Crawford, 182 W. Va. 107, 386 S.E.2d 310 (1989) ("In the absence of privity of contract, an accountant is liable for the negligent preparation of a financial report only to those he knows will be receiving and relying on the report.").

⁵ With respect to Glasseack, many of the functions exercised by the bank in that case that gave rise to a special relationship were exercised in this case by Pray, as an agent of Vandalia, in connection with the services he performed under his Consulting Agreement with Vandalia. See Glasseack, 213 W. Va. at 66, 576 S.E.2d at 545 ("The facts before us show that the bank was significantly involved in the construction of the Glasscock home. The Glasscocks did not receive a lump sum, but had to present receipts or bills to the bank before the bank would disburse the funds. The bank itself requested the first inspection report...").

Finally, any notion that United owed Vandalia or Pray any duties or that Vandalia or any of its members detrimentally relied upon United is inconsistent with—and barred by—the Guaranties executed by Pray and the other Guarantors. As noted previously, Pray represented and warranted that: (1) he executed his Guaranty at Woods's request; (2) he was satisfied with Woods's financial condition; and (3) he was satisfied with Woods's "use and intended use of all [Loan] proceeds." [See § 12 at 2, Guaranty of David P. Pray, Am. Compl., Ex. 5.] Most importantly, Pray represented and warranted that he had not relied on any statements or other information provided by United in executing his Guaranty. [Id.] Significantly, Pray's Guaranty is identical to the Guaranties executed by Vandalia's other members and copies of the other Guarantors' Guaranties can be provided to the Court upon request.

In sum, Pray cannot state a tort claim based upon lender liability as a matter of law.

C. Pray can obtain no damages under any set of facts because his lender liability claim is barred by the statute of limitations.

Count Two must also be dismissed because it is barred by the applicable two-year statute of limitations prescribed by West Virginia Code § 55-2-12. A claim should be dismissed pursuant to Rule 12(b)(6), where the pleading indicates that a claim is barred by the applicable statute of limitations and the pleading fails to raise a basis for tolling. See, e.g., Forshey v. Jackson, 222 W. Va. 743, 746 n. 7, 671 S.E.2d 748, 751 n. 7 (2008). Here, any tort-based cause of action would have accrued on October 30, 2006 when the Loan Agreement and Pray's Guaranty were executed. This case, however, was not filed until more than six years later on March 26, 2013. As a result, any tort claim predicated upon the Loan or the Guaranty lapsed well before this case was filed.

Moreover, there is no basis for tolling given that Pray either learned or should have learned of any alleged defects in the original appraisal through his intimate involvement—through PrayWorks—in the development of the Project as an agent of Vandalia. As noted above, between 2008 and 2011, Pray was extensively involved in the supervision and monitoring of the Project.

Indeed, as noted in the Amended Complaint, Pray's work performed on behalf of Vandalia and Woods included "the installation of the sewer to service the Project." [Am. Compl. ¶ 39.] Thus, Pray—and Vandalia through him—would have been well aware of any alleged defects in the original appraisal more than two years before this case was filed.

In sum, any lender liability claim that might be asserted by Pray or Vandalia is barred by the statute of limitations.

III. Pray's "set-off or recoupment" claim must be dismissed because it is predicated upon the validity of other claims that must be dismissed as a matter of law.

Pray's set-off or recoupment claim against should be dismissed because it is premised entirely on his other claims against United. Because Pray's other claims fail, so must his set-off claim. Count Five merely alleges that "[t]o the extent that any [of Pray's other] direct or directive [sic] claims [against United] are time barred, Pray and the Trust assert those claims as a set-off or recoupment against any amounts claimed by and actually awarded to United Bank or Vandalia." [Counterclaim ¶ 53.] Because Pray's other claims fail for reasons independent of the statutes of limitations, his set-off or recoupment claim must also fail. Accordingly, Count Five fails as a matter of law and should be dismissed.

CONCLUSION

Based on the grounds set forth above, this Court should find that Pray's claims against United fail as a matter of law and must be dismissed.

WHEREFORE, United Bank, Inc. respectfully moves to dismiss David P. Pray's and David P. Pray Revocable Trust's Counterclaim against it.

UNITED BANK, INC.,

By Counsel

Julia A. Chincheck (WVSB 718)

Floyd E. Boone Jr. (WVSB 8784)

BOWLES RICE LLP

600 Quarrier Street (25301)

Post Office Box 1386

Charleston, West Virginia 25325-1386

Telephone: (304) 347-1100 Facsimile: (304) 347-1756

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

VANDALIA CAPITAL II, LLC, UNITED BANK, INC., RALPH BALLARD, III, STEPHEN B. FARMER, DAVID P. FERRETTI, SHAWN P. GEORGE, MARK A. GRIMMETT, ROBERT HUGGINS, ANDREW B. JORDAN, R. SCOTT LONG, ANDREW A. PAYNE, III, ROOKE ASSET PARTNERS, LP, ANDREW K. ROOKE and TIMOTHY K. WILCOX,

Civil Action No. 13-C-570
The Honorable Louis H. Bloom, Circuit Judge

Plaintiffs,

 \mathbf{v}

DAVID P. PRAY, Individually and as Trustee of the DAVID P. PRAY REVOCABLE TRUST, DAVID P. PRAY REVOCABLE TRUST, and JOHN/JANE DOE,

Defendants,

ν.

THE WOODS DEVELOPMENT COMPANY, LLC,

Third-Party Defendant.

CERTIFICATE OF SERVICE

I, Floyd E. Boone Jr., hereby certify that on this 4th day of August 2014, the foregoing <u>United Bank, Inc.'s Motion to Dismiss David P. Pray's and the David P. Pray Revocable Trust's Counterclaim and Incorporated Memorandum of Law was served on the following via First Class United States Mail:</u>

Brian A. Glasser Thanos Basdekis BAILEY & GLASSER, LLP 209 Capitol Street Charleston, WV 25301

Floyd E. Boone Jr. (WVSB 8784)



Real Property Solutions

"Consulting, Valuation and Appraisal Management Services"

October 27, 2006

Julie R. Gurtis
United Bank
500 Virginia Street, East
Charleston, WV 25301

RE;

Appraisal Review

Dear Julie:

At the behest of Jeff Edman, I have reviewed the appraisal you sent me for the proposed Spyglass subdivision on Weddington Road in Weddington, Union County, North Carolina. This review only applies to the "as is" market value of the raw land not the Prospective Market Value of the subdivision. It is noted that this appraisal report is address to Wachovia Corporation but I am reviewing it for use by United Bank. What follows is a summary of the salient points I have uncovered in my review process.

The review is written in an outline format to highlight the pertinent points of the appraisal. If you have questions about specific issues or you wish more detail about an individual point, please let me know.

In compliance with Standard 3 of the Uniform Standards of Professional Appraisal Practice (USPAP), the appraisers have supported their "as Is" market value conclusion and that I can recommend that a loan be made on the basis of the Fred H. Beck & Associates June 27, 2006 appraisal. The accompanying discussion supports this opinion.

Please let me know should you have any questions or comments.

Sincerely,

Douglas S. Butcher, MAI WV Certified General

Real Estate Appraiser #126

Ms. Gurtis Page 2 October 27, 2006

Review Appraiser Information

Review Appraiser:

Douglas S. Butcher, MAI

Date of Review:

October 17, 2006

The property subject of the appraisal was not physically inspected as part of this review.

Scope of Appraisal Review as Requested by Client

The client requested a "desk review" for a potential loan. As part of this assignment, the reviewer is to confirm the following:

1. The appraisal resulted in a reasonable market value assigned to the real estate

2. The appraisal provided reasonable and recognizable approaches to the

market value

3. The appraisal supported current valuation of the real estate. (All assumptions and projections made were documented and conformed to the current market conditions)

4. The appraisal explains the selection of the discount and capitalization rates used in the valuation.

5. The appraisal made provisions for all appropriate deductions and discounts for its intended use.

6. The appraisal conforms to all USPAP standards.

7. Develop my own opinion of value if it is different from that of the work under review.

Basic Report and Property Identification

Property Address:

Weddington Road across from Cox Road,

Weddington, Union County, North Carolina

Property Name:

Proposed Spyglass Subdivision Various ownerships

Current Owner: Type of Property:

Unimproved vacant land

Land area:

284.9 acres

Buildings: Appraiser's Value: None \$22,286,000 - "as is" (raw land)

Effective Date of Value:

June 23, 2006 June 27, 2006

Date of Report: Purpose of Appraisal:

Opinion of market value

Intended Use of the Report:

Underwriting, loan classification, and/or disposition of

asset

Type of Appraisal:

Complete

Type of Report:

Self-contained

Ms. Gurtis Page 3 October 27, 2006

Information Obtained from Lender and/or Client

Lender/Client Name & Address:

Julie R. Gurtis United Bank 500 Virginia Street, East Charleston, WV 25301

Was there a formal engagement letter with the appraiser? Yes (Wachovia Corporation)

Were there any specific instructions to the appraiser?
Yes

Does the lender/client have any supplemental standards? Unknown

Appraiser Information

Appraisers' Name:

Fred H. Beck, Jr., MAI, CCIM

Appraiser's Company:

Fred H. Beck & Associates, LLC 8924 Blakeney Professional Drive, Charlotte, NC

Address: 892

28277

Appraiser's Phone #:

704-544-4884

Email Address:

astout@fredbeck.com

Was the appraiser contacted or interviewed as part of the review?

Other Background Information That May Be Important Top This Review

None

Form and Content of the Report

Is the report written:

Yes, the report is identified as a Self-contained Report

Approximate length:

150 pages including Addenda

Does the report appear to

be professionally

prepared:

Yes

Are there significant Editing, Misspelling, or Language problems in

the report:

No

Ms. Gurtis Page 4 October 27, 2006

USPAP Issues

USPAP identifies fourteen (14) items that must be included in every appraisal report and this appraisal overall complies with USPAP requirements.

Descriptive Sections of the Appraisal Report

The report provides sufficient information (area, market area, and property data) including the physical and economic property characteristics.

Analytical Sections of the Appraisal

In the highest and best use, the appraisers have concluded that Single-Family Residential Subdivision use meets the four tests of highest and best use. Thus, concluded to be the Highest and Best Use of the site.

The Sales Comparison Approach was developed to value the raw land and relied upon four (4) sales which were all smaller in land area than the subject. Largest sale was 152.710 acres. Sale Numbers 1 and 2 were adjusted 25 percent for size which looks like a subjective adjustment while Sale Numbers 3 and 4 did not receive a size adjustment. When there is no adjustment it means the comparables are similar to the subject that is what the appraiser states and is supported by the price per acre of Sales 3 and 4 at \$85,001 and \$85,000 per acre, respectively. Second adjustment made by the appraiser is for Topography and 2 percent applied to all four comps. This adjustment is for some of the subject's land being in the flood plan. My suggestion would have been to calculate the area in the flood plain and subtract it from the total land area and applied the unit rate to the adjusted land area. Third adjustment is for Utilities which were applied to Sale Numbers 1 and 2 at 5 percent. Again, this seems to be a subjective adjustment without any market evidence.

I was able to get some additional land sales in Union County that indicated unit rates from \$75,001 to \$93,308 per acre with the mean at \$83,620 per acre. However, all of these sales are smaller (land area) than the subject ranging in size from 19 to 43 acres. These sales bracket the unit rates shown by Sales Number 3 and 4 at \$85,000 per acre. Some additional anecdotal evidence was provided, newspaper article that indicated a farm that would be close to the subject property recently sold off 118 acres at \$103,000 per acre. However, it is unknown whether this property would be comparable to the subject but it does support unit rates shown by the comparable sales.

The appraiser did not rely upon any specific comparable but the average unit rate of the adjusted comparables in estimating the value for the subject. The property is under contract for \$22,286,000 or \$78,224 per acre which is \$15,776 per acre less than the estimated the value so what this tells me is that the prospective purchaser(s) are getting

Certification

I certify that, to the best of my knowledge and belief:

- the facts and data reported by the reviewer and used in the review process are true and correct.
- the analyses, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report, and are my personal, impartial, and unbiased professional analyses, opinions and conclusions.
- I have no present or prospective interest in the property that is the subject of this
 report and no personal Interest with respect to the parties involved.
- I have no blas with respect to the property that is the subject of this report or to the parties involved with this assignment.
- my engagement in this assignment was not contingent upon developing or reporting predetermined results.
- my compensation is not contingent on an action or event resulting from the analyses, opinions or conclusions in, or the use of, this review.
- my analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the Uniform Standards of Professional Appraisal Practice.
- I did not personally inspect the subject property of the report under review.
- no one provided significant professional assistance to the person signing this review report.

Douglas S. Bütcher, MAI WV Sertified General

Real Estate Appraiser #126



APPRAISAL REPORT Proposed Spyglass at Weddington Subdivision Weddington Road Weddington, Union County, North Carolina 28104

PREPARED FOR
Wachovia Corporation
Attn: Denny Johnson, MAI
301 S. Tryon Street, TL-8
Charlotte, North Carolina 28288-0665

Property ID# 10154689

DATE OF REPORT June 27, 2006

"As Is" - June 23, 2006
"Upon Completion" - April 1, 2007

APPRAISED BY
Fred H. Beck & Associates, LLC
Fred H. Beck, Jr., MAI, CCIM
Wilbur J. Wells



June 27, 2006

Wachovla Corporation Altn: Denny Johnson, MAI 301 S. Tryon Street, TL-8 Charlotte, NC 28288-0665

REFERENCE:

Proposed Spyglass at Weddington Subdivision

Weddington Road

Weddington, Union County, North Carolina 28104

Properly ID# 10154689

Dear Mr. Johnson:

As requested, we have inspected the above-mentioned property for the purpose of giving an opinion of value "as is" and "prospective future market value upon completion." Based on our inspection and analysis of the information obtained, it is our opinion that the "as is" and "prospective future market value upon completion" for the subject property is:

Market Value "As Is" - 284.9-acre tract of land in Weddington, NC - June 23, 2006

\$27,150,000

Prospective Future Value "At Completion of Spyglass at Woddington" 200 SF Lots - April 1, 2007

\$46,000,000

These value estimates are supported by the data and reasoning set forth in the attached narrative. Your attention is invited to the Assumptions and Limiting Conditions attached and made a part of this report. We certify that we have no present or contemplated future interest in the property appraised and that our fee for this assignment is in no way conlingent upon the value estimate supplied.

The following report compiles with the standards and regulations outlined in Title XI of the Federal Financial institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). In addition, the report conforms to the Office of the Comptroller of the Currency's (OCC) appraisal standards. This includes compilance with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Institute as promulgated by the Appraisal Standards Board of the Appraisal Foundation; compilance with USPAP Includes the ethics and competency provisions, but excludes the departure provision.

Property Location	Proposed Spyglass at Weddington, Weddington Road across from Cox road, Weddington, Union County, North Carolina 28104			
Property Owner	Numerous properly owners – see History Section of report			
Date of Report	June 27, 2006	<u>,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,</u>		
Effective Dates of Appraisal	As-Is	June 23, 2006		
	Upon Completion	April 1, 2007		
Purpose of Approisal	Market Value "As is" and "Prospective Future Market Value Upon Completion of Infrastructure"			
Property Rights Approised	Fee Simple			
Zoning	RCD, Residential Conservation District			
Tax Map Reference	06-150-071, 06-126-010A, 06-126-001, 06-126-010, 06-126- 004, 06-126-002, 06-126-003A, 06-126-006B, 06-126-008A, 06-126-008			
Land Area with Proposed Subdivision	284.9-Acres :			
Excess Land	None			
Improvements	None of value as of the inspection date; proposed improvements to include asphalt-paved roads, entrance, gate, landscaping, and common area.			
Present Use	Vacant land			
Highest and Best Use	Single-family Residential Subdi	ivision		
Appraisat Procedures	Cost Approach Discounted Sellout Analysis			
Prospective Value by Cost Approach	\$37,780,000			
Prospective Value by Discounted Sellout Analysis	\$53,500,000			
Market Value "As is" - 284.7-acre tract of land in t	Veddington, NC – June 23, 2006	\$27,150,000		
Prospective Future Value "At Completion of Spygi		007 \$46,000,000		

The undersigned hereby acknowledges considerable input, investigation, and analysis by Wilbur J. Wells, who contributed to the information set forth in the attached narrative. Thank you for the opportunity to be of service and please let me know if you have any questions.

Sincerely yours,

Fred H. Beck, Jr., MAI, CCIM

State-Certified General Real Estate Appraiser

N.C. Certificate No. A 1329

Wilbur J. Wells State-Certified General Real Estate Approiser

N.C. Registration No. A3991

CERTIFICATE OF THE APPRAISER

I certily that, to the best of my knowledge and belief;

- 1. The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and is my personal, impartial, and unblased professional analyses, opinions, and conclusions.
- 3. I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- 4. I have no blas with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- 6. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- 7. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation and the Code of Professional Elnics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
- 8. I have made a personal inspection of the property that is the subject of this report.
- No one provided significant real property appraisal assistance to the person signing this report other than Wilbur J. Wells.
- The use of this report is subject to the requirements of the Appraisal Institute retailing to review by its duly authorized representatives.
- 11. As of the date of this report, Appraisal institute continuing education for Fred H. Beck, Jr., MAI, CCIM is current.

FRED H. BECK, JR., MAI, CCIM

State-Certifled General Real Estate Approiser

N.C. Cerlificate No. A 1329

CERTIFICATE OF THE APPRAISER

I certify that, to the best of my knowledge and belief:

- 1. The statements of tact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and is my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- 3. I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- 4. I have no blas with respect to the property that is the subject of this report or to the parties involved with this assignment.
- 5. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- 6. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- 7. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation and the Code of Professional Ethics and the Standards of Professional Approisal Practice of the Appraisal Institute.
- 8. I have made a personal inspection of the property that is the subject of this report.
- 9. No one provided significant real property approisal assistance to the person signing this report.

WILBUR J. WELLS

State-Certified General Real Estate Approber

N.C. Cerlificate No. A3991

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IDENTIFICATION OF THE SUBJECT PROPERTY

The property being appraised in this report is a proposed 208-fot single-family residential subdivision to be known as Spyglass at Weddington and to be located on the southwesterly margin of NC Highway 84 (Weddington Road), across from Cox Road, in Weddington, Union County, North Carolina 28104. The subject tract is calculated at 284.9acres by the developers. A site plan prepared by The Isaacs Group, 8720 Red Pak Bouleyard Suite 420, Charlotte, NC, indicates the subject to be 283,92-acres in size. The site plan as drawn shows a fotal of 181-lots; however, the developer indicated that a new site plan is being drawn that would have a total of 200 single family-family lots. We make the assumption that the proposed subdivision is 284.9-acres in size and will have 200-lots; however, if the property size changes or a 200-lot site plan is not possible under the current zoning ordinance, we reserve the right to amend the appraisal. The subject tract is Identified as tax parcel numbers 06-150-071, 06-126-010A, 06-126-011, 06-126-010, 06-126-004, 06-126-002, 06-126-003A, 06-126-006B, 06-126-008A, and 06-126-008 in the office of the Tax Assessor, Union County, North Carolina. A legal description of the property and a site plan are included in the Addenda. More detailed information concerning the property is included within this report.

APPRAISER COMPETENCY

Fred H. Beck, Jr., MAI, CCIM, a North Carolina Certified General Appraiser, has been appraising subdivision properties for 15 years, in the past two years, Mr. Beck and Fred H. Beck & Associates, LLC, have appraised numerous vacant land properties in North Carolina and South Carolina. Therefore, we have met the requirements of the USPAP Competency Provision.

PURPOSE OF THE APPRAISAL

The purpose of this appraisal is to provide an opinion of market value of the subject property "as is" as of June 23, 2006 and "the prospective future market value upon completion of infrastructure" as of April 1, 2007.

TYPE OF APPRAISAL

This appraisal was performed as a Complete Appraisal, which is in compliance with Uniform Standards of Professional Appraisal Practice (USPAP), as promulgated by the Appraisal Standards Board of The Appraisal Foundation, without departure.

TYPE OF REPORT

According to the Uniform Standards of Professional Appraisal Practice, Standards Rule 2-2, an appraisal report must be prepared under one of the following three options: Self Contained Appraisal Reports, Summary Appraisal Reports, or Restricted Appraisal Reports. These three report types are described as follows:

SELF CONTAINED APPRAISAL REPORT

Should contain all information significant to the solution of the appraisal problem, "Describe" is the distinguishing term related to the Self-Contained Approisal Report.

SUMMARY APPRAISAL REPORT

Should contain a summary of all information significant to the solution of the appraisal problem. "Summarize" is the distinguishing term related to the Summary Appraisal Report.

RESTRICTED APPRAISAL REPORT

Should contain a brief statement of informalion significant to the solution if the appraisal problem. "State" is the distinguishing term related to the Restricted Appraisal Report.

This report is prepared as a Self-Contained Appraisal Report.

FUNCTION OF THE APPRAISAL

It is our understanding Wachovia Corporation will utilize this report for purposes including, but not necessarily limited to underwriting, loan classification, and/or disposition of the asset.

DEPARTURE PROVISION

Per the Uniform Standards of Professional Appraisal Practice (USPAP), "This provision permits limited departure from sections of the Uniform Standards that are classified as specific guidelines rather than binding requirements. The burden of proof is on the appraiser to decide before accepting an assignment and invoking that provision that the result will not confuse or mislead. The burden of disclosure is also on the appraiser to report any departure from specific guidelines."

Standard I of the USPAP provides for two appraisal development formats: 1) Complete Appraisal, and 2) Limited Appraisal, each of which is defined below. Also, Standard 2-2 of the USPAP provides for three appraisal options: 1) Self-Contained Appraisal Report, 2) Summary Appraisal report, and 3) Restricted Appraisal Report, each of which is defined below. As such, these standards allow for a combination of up to six development and reporting options. Furthermore, Standard 2-2 of the USPAP requires that each written appraisal report must prominently state which reporting option is used. A summary of applicable definitions is provided below:

Compete Appraisal -	The act of process of estimating value or an estimate of value performed without invoking the Departure Provision.
Limited Appraisat -	The act or process of estimating value or an estimate of value performed under and resulting from invoking the Departure Provision.
Self-Confained Appraisal Report -	A written report prepared under Standard Rule 2-2(a) of a Complete or Limited Appraisal performed under Standard I.
Summary Appraisal Report -	A written report prepared under Standard Rule 2-2(b) of a Complete or Limited Appraisal performed under Standard I.
Restricted Approisal Report -	A written report prepared under Standard Rule 2-2(c) of a Complete or Umited Appraisal performed under Standard I.

This appraisal consists of a "COMPLETE APPRAISAL" prepared in accordance with Standard I of the USPAP and is a "SELF-CONTAINED APPRAISAL REPORT" prepared in accordance with Standard 2-2 of the USPAP, without departure.

DEFINITION OF MARKET VALUE

The following definition of market value is approved by the Office of the Comptroller of the Currency of the United States of America, Chapter 12, Code of Federal Regulation, Part 34.42 (f). Market Value is defined as:

"The most probable price which a properly should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus, implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1. Buyer and seller are typically motivated;
- both parties are well informed or well advised and acting in what they consider their own best inforests;
- 3. a reasonable time is allowed for exposure in the open market;
- 4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- the price represents the normal consideration for the property sold unaffected by special or creative linancing or soles concessions granted by anyone associated with the sale."

PROPERTY RIGHTS APPRAISED

There are three primary types of property rights, which may be appraised. They are Fee Simple Estate, Leased Fee Estate, and Leasehold Estate. They are defined as follows:

FEE SIMPLE ESTATE

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the government powers of taxation, eminent domain, police power, and escheat.

LEASED FEE ESTATE

An ownership interest held by a landlord with the rights of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the leased fee are specified by contract terms contained within the lease.

LEASEHOLD ESTATE

The Interest held by the lessee (the tenant or renter) through a lease conveying the rights of use and occupancy for a states term under certain conditions.

In this report, we have been asked to provide an opinion of value of the Fee Simple Estate in the subject property.

VALUE ESTIMATED

Values are typically estimated on the basis of one or more of the following situation.

Market Value "As Is" on the Approlate Date: Market Value "As Is" on the appreisal date is an estimate of the market value of a property in the condition observed upon inspection and as It physically and legally exists without hypothetical conditions, assumptions or qualifications as of the approlatils prepared.

<u>Prospective Future Value Upon Completion of Construction:</u> Prospective future value "upon completion" of construction is the prospective future value of a properly on the date that construction, conversion or rehabilitation is completed, based upon market conditions forecast to exist as of that completion date. The value estimate at this stage of value should be stated in current dollars as of a current date.

Prospective Future Value Upon Reaching Stabilized Occupancy; Prospective future value "upon reaching stabilized occupancy" is the prospective future value of a property when all improvements have been physically constructed and the property has been leased to its optimum level of long-term occupancy at the market rent level. The value estimate at this stage of value should be stated in <u>current dollars</u> as of a current date.

In this report, the opinion of value for the subject property is appraised on the basis of "as is" and the "prospective future value upon completion of infrastructure."

LEGAL CONSTRAINTS

The subject property is located within the Town Limits of Weddington and is subject to the Weddington Zoning Ordinance. The site is currently zoned R-CD, Residential Conservation District. We are not aware of any encumbrances, encroachments, or easements, which would adversely affect the utility or marketability of the subject property.

INSPECTION OF THE PROPERTY

The subject property was inspected on June 23, 2006. The photographs were taken on that date.

DATE OF REPORT

The date of this report is June 27, 2006.

EFFECTIVE DATES OF THE APPRAISAL

The effective date of this appraisal "as is" is June 23, 2006. The effective date "upon completion of infrastructure" is April 1, 2007.

STATEMENT OF OWNERSHIP

According to the Union County fax records, the properly mentioned in this report is currently held in the ownership names on the following page.

Ownership	Deed Book/Page	Date	Parcel No.	Size/Acres	aeA	essed Value
Emily Pierce Whiti, Trustee	1048 / 603	1/15/1998	06-150-071	23.894	\$	1,082,190
Mary M. Mackey	0206 / 089	9/19/1966	06-126-010A	1.010	\$	66,240
	0184 / 618	6/26/1963	06-126-011	1.000	S j	69,600
Mary B. Mackey	0066 / 015	1/4/1928	06-126-010	29.310	\$	1,249,460
Rachel M, Matthews	08791 / 388	10/5/1978	06-126-004	10.840	\$	600,360
Gary D. Bolen & Linda M.	0193 / 339	9/25/1964	08-126-002	80,670	\$	2,608,130
Charles Allen Deal	169 / 343	7/13/1961	06-126-003A	105,420	\$	3,669,620
Charles Allen Deal, et al	0393 / 750	B/8/1985	06-126-006B	6.813	•	299 780
Charles Allen Deal, et al		9/20/1978	06-126-008A	1,340		93,260
Chartes A. Deal & Patricla	0314 / 254		06-126-008	1,372	-	76,390
Charles Allen Deal	0193 <u>/</u> 339	9/25/1964	00-120-000	261.669		9,805,030
Total				201.009	Ψ	0,000,000

HISTORY OF THE PROPERTY

According to Deed Book 1048, page 503 in the Office of the Register of Deeds for Union County, recorded January 1, 1998, the subject property was deeded as a gift from Charles Russell Whitt and wife, Emily Pierce Whitt to Emily Pierce Whitt, Trustee.

According to Deed Book 206, page 89 in the Office of the Register of Deeds for Union County, recorded September 19, 1966, the subject property was transferred from Richard Stiff Matthews and wife, Rachel M. Matthews to C. Ray Mackey and wife, Mary M. Mackey.

According to Deed Book 148, page 618 in the Office of the Register of Deeds for Union County, recorded June 26, 1963, the subject property was transferred from Richard Stitt Matthews and wife, Rachel M. Matthews to C. Ray Mackey and wife, Mary M. Mackey,

According to Deed Book 66, page 15 in the Office of the Register of Deeds for Union County, recorded January 4, 1928, the subject properly was transferred from John Walker Matthews to Margaret Aviona Matthews.

According to Deed Book 314, page 727 in the Office of the Register of Deeds for Union County, recorded October 5, 1978, the subject property was transferred from William Arnold Shaw and wife, Mary S. Shaw Gary Denzil Bolen and wife, Linda M. Bolen.

According to Deed Book 193, page 339 in the Office of the Register of Deeds for Union County, recorded September 25, 1964, the subject property was transferred from C. A. Deal and wife, Mable G. Deal to Charles A. Deal.

According to Deed Book 169, page 343 in the Office of the Register of Deeds for Union County, recorded July 13, 1961, the subject property was transferred from C. A. Deal and wife, Mable G. Deal to Charles Allen Deal and Andrew Deal.

According to Deed Book 393, page 750 in the Office of the Register of Deeds for Union County, recorded August 8, 1985, the subject property was transferred from Joyce Price, Executrix to Charles A. Deal and Edward Deal.

According to Deed Book 314, page 254 In the Office of the Register of Deeds for Union County, recorded September 20, 1978, the subject property was transferred from Edward A. Deal to Charles A Deal and wife, Patricla S. Deal.

According to Deed Book 193, page 340 in the Office of the Register of Deeds for Union County, recorded September 25, 1964, the subject property was transferred from C. M. Deal and wife, Annie W. Deal to C. A. Deal and wife, Mable Deal.

We are aware of the difference between the fax office total of 261.669-acres for the separate tracts of land and the 284.9-acres surveyed. We will use 284.9-acres of total land for the subject property in this report. There are several land purchase contracts between the developer and the above-mentioned parties. The total of the contracts is \$22,286,000 or and average of \$78,223.93 per acre. According to the land comparison analysis in the Cost Approach, it is our apinion that the contract price is below market value and according to our record search there have not been any sales transactions on the subject parcels in the past five years.

SCOPE OF THE APPRAISAL

As part of this appraisal, a number of independent investigations and analyses were conducted, in addition to data complied by Fred H. Beck & Associates, LLC, on a regular basis, the investigations undertaken and major data sources used are listed below:

AREA AND NEIGHBORHOOD SUMMARY

The neighborhood and portions of Union County were inspected. Several local real estate firms were contacted to discuss recent land sales.

SITE SUMMARY

The site was physically inspected at which time we walked a large portion of the tract. Photographs were taken during our inspection. We received a site plan prepared by The Isaacs Group, 8720 Red Pak Boulevard Suite 420, Charlotte, NC. The site plan, Union County tax information, and FEMA flood maps are utilized in the appraisal.

IMPROVEMENT SUMMARY

The developers provided us with an improvement summary and development specifications. A site development budget was also provided. These reports are included in the addenda of this appraisal report.

COST APPROACH

An investigation of land sales of similar type properties throughout the subject neighborhood was conducted. Land sales were obtained from several sources to include the Union County Tax Department, the Carolina Multiple Listing Services, Inc., and our own files. Budgeted subdivision development costs were provided by the developer of the subject property and compared to development costs abstracted from similar developments.

DEVELOPMENT VALUATION MODEL

We researched the Northwest Union County and Southeast Mecklenburg County market area for lot absorption from developers to homebullders, similar to that proposed for the subject. An average retail lot value was established by market comparison tot sales were estimated on a quarterly basis over the projected sellout period. Appropriate carrying costs such as marketing, closing costs, commissions, interim taxes, insurance, and developer's profit were deducted to determine the net cash flows. The quarterly cash flows were then discounted to a present value.

METROPOLITAN PROFILE THE GREATER CHARLOTTE AREA

INTRODUCTION

The value of real property is directly related to historic, economic, demographic, and political forces within its metropolitan area. Those forces are analyzed by the appraiser and used in determining appreciation (or depreciation), highest and best use, reconciliation to the three approaches, and the final value estimate. The following narrative is provided to illustrate the metropolitan components of the market, which influence property values.

LOCATION

The subject property is located 2.5-miles southeast of Mecklenburg County in Weddington, North Carolina. The City of Charlotte is located in the Pledmont Region of the Carolinas, in the southwestern portion of the state. By car, Charlotte is approximately 2 hours east of the Appalachian Mountains and 3 1/2 hours west of the Atlantic Ocean.



Charlotte is located 89 miles north of Columbia, South Carolina; 256 miles northeast of Atlanta; 397 miles southwest of Washington, DC; and 631 miles to the southwest of New York City. The area east of the Mississippi represents only 29% of the contiguous land of the U.S. Yet this area accounts for 60% of the population, 61% of all manufacturing establishments and 66% of all manufacturing employment. Of the nation's new business starts, 60% occurred in this area. Also, 51% of all exports come from the eastern United States. Specifically, 34 of the nation's 58 metropolitan markets with populations greater than 1 million are within these eastern states. 32 of these markets lie within a 650-mile radius of Charlotte, which can easily be reached by 24-hour truck delivery or within just over two hours jet time.

POPULATION

The following statistics at the city and county levels are available through Claritas, Inc. Projections are based upon the 2000 census and are applied to an urban growth simulation model. Historical & projected population statistics are summarized as follows:

		AREA P	OPULATION STAT	ISTICS			
	Census	Census	Annual Chg	Eslimate	. Annual Chg	Projection	Annual Chg
Aram	1990	2000	1990-2000	2005	2000-2005	2010	2005-2010
City of Charlotte	428,283	540,828	2,4%	578,620	1,4%	621,316	1.4%
	511,163	695,454	3.1%	777,685	2.3%	863,545	21%
Macklenburg County Chodotte-Gastonia et al CBSA	1,024,331	1,330,448	2.6%	1,484,570	2.2%	1,645,841	2.1%

The table exhibits the trend in population for the region from 1990 to 2005 and projections for the five-year period between 2005 and 2010. Between 1990 and 2000, the local population increased 2.4% within the City of Charlotte, 3.1% within Mecklenburg County, and 2.6% within the Charlotte-Gastonia et al CBSA. The United States experienced a 1.2% annual increase between 1990 and 2000, which was one-half of the Charlotte rate of increase. Between 2000 and 2005, each area experienced continued increases in population, although at slightly lower rates than during the previous decade. The area populations are projected to increase further over the next five years at rates similar to the previous four years.

HOUSEHOLDS

Again, the following housing statistics are available through Claritas, Inc. Projections are based upon the 2000 census and are applied to an urban growth simulation model, Historical household statistics for the area are summarized as follows:

		AREA I	OUSEHOLD STAT	STICS			
	Census	Census	Annual Chg	Eslimate	Annual Chg	Projection	Annual Chg
Loca	1990	2000	1990-2000	2005	2000-2005	2010	2005-2010
Cily of Chartolle	169,703	215,449	2,4%	231,217	1,4%	248,936	1.5%
Mecklenburg County	200,101	273,416	3.2%	306,463	2,3%	340,885	2.2%
Charlotte-Gastonia et al CBSA	387,788	510,516	2,8%	671.954	2.3%	635,581	2.1%
Source: Claritos, Inc.							

The previous discussion of area population trends is also applicable to the historical and projected household trends. Historically, household increases were reported within the City of Charlotte, Mecklenburg County, and the Charlotte CBSA at annual rates of 2.4%, 3.2%, and 2.8%, respectively. The highest rate of increase was within Mecklenburg County. The rate of annual household increased slowed between 2000 and 2005 to between 15% and 30% of the rate of increase during the 1990s. Claritas projects household increases over the next five years to be similar to the rate of increase between 2000 and 2005.

RETAIL SALES

Using the North Carolina Department of Revenue, we obtained gross retail sales data for the City of Charlotte and Mecklenburg County. This information is shown in the following table:

		RETAIL SALES	MECKLENBURG	COUNTY		
Area/Hscal Year	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	5-year change
City of Chadotte	13,992,245,557	13,471,025,519	12,227,084,221	12,242,002,373	12,819,642,741	-8.4%
Mecklenburg County	16,807,017,536	16,483,706,324	15,372,032,677	15,568,249,903	16,757,122,950	-0.3%

INCOME

Historical income statistics for the area are summarized in the following chart, including median household income, average household income, and per capita income:

-			INC	OME STATIST	IC\$					
-, -,	Average Household Income			ne Median Household Income				Per Capita Income		
Areo	Census 2000	Eslimate 2005	Annual Change	Census 2000	Estimole 2005	Annual Change	Census 2000	Esilmala 2005	Annual Change	
Cliy of Charlotte	\$66,521	\$75,459	3,2%	\$46,975	\$53,314	3,2%	\$26,823	\$30,454	3,2%	
Mecklenburg County	\$68,732	\$79,168	3.6%	\$50,579	\$58,230	3.6%	\$27,352	\$31,455	3.6%	

Incomes in the region have increased significantly over the past five years within each of the selected areas. Growth rates have been above the annual rates of inflation during this time. The highest rate of growth within all income categories was within Mecklenburg County, followed closely by the Charlotte CBSA, and then the City of Charlotte. Future income growth is not projected by the Claritas report; however, based on previous years, should continue to be significant.

EMPLOYMENT

Over the past 70 years, the US economy has undergone a major shift from a manufacturing-focused economy to a service-oriented one. As a result of this change, the Bureau of Labor Statistics (BLS) of the US Department of Labor has mandated the nationwide implementation of a new industry classification system, the North American industry Classification System (NAICS), to replace the old system, the Standard Industrial Classification (SIC) system. The following table details the 2005 (latest data available) employment by industry within Mecklenburg County, divided into each NAICS employment sector.

INDUSTRY STATISTICS: CHARLOTTE CBSA (2005)						
Industry	Total	% Tola				
Management, Business, and Financial Operation	124,323	14.8%				
Professional and Related Occupations	142,544	16.9%				
Service	90,489	10.7%				
Sales and Office	214,725	25.5%				
Farming, Fishing, and Forestry	2,100	0.2%				
Construction, Extraction and Maintainance	74,824	8.9%				
Production, Transportation and Material Moving	115,799	13.8%				
Total Private	764,804	90.8%				
Federal Government	9,413	1.1%				
State Government	30,903	3.7%				
Local Government	37,013	4.4%				
Total Employment	842,133	100.0%				
Source: Cloritas, Inc.						

LABOR FORCE

The US Bureau of Labor Statistics provided the following labor force statistics:

HERVELLER WAS	4,222	1.7	1919	TEMPLO	ilent stan	jics	$\mathcal{F}(\mathcal{A}_0)$	海原常	28.27	\$ 14 P	27.116.75
	Year Avp	Yeor Ave	Yeot Avg.	1998 -				Yee Avg	Year AVg	1 240MW4, "Th"	Yebr Avp. 2005
City of Charlotte											
Lohor Force	253,177	269,442	278,560	281,900	292316	304,609	314,325	318.746	373,824	331,211	329,085
Unemployment Rate	3.4%	3.3%	3.1%	2.5%	23%	2.6%	44%	6.4%	6.3%	5.7%	4.8%
Meckenburg County Labor Porce (c Unemptyment Role	334045 33181	349.456 ,3Dx	360.525 2.8%	(\$65.011 s	378.681 217	$T : \mathbb{R}^n \to \mathbb{R}^n$	406329 406329	#[1,335] -6.78	1077724 1087	427,677 5,3% o	Ayond)
North Coroling											
Lobor Force	3,749,853	3.875,125	3,942,777	3,985,573	4,053,749	4,713,790	4,182,974	4,201,385	4,230,241	4.256,340	4332710
Unumplayment Role	4.4% 5.40 %: 7	4.4% 35.15 \$2.50	3.9% (5) (5) (6)	3,5% 22-73-78-73	3.3% 215 ⁷¹⁵ 115 V	3.0%	5.6% - 3.44	ሌ7 % የአ <i>ፍ</i> ይጀታያ	6.5%	5.6% (*){{*}}	52% (1868)
Labor Force)32504,000 5.6%	133,943,000 15,4%	136.287,000 X,9%	137,673.000 ''(1.57	137.346.000 (14.24.1)	340,843,000 4.0%	42.001.000	144,863,000 1,8%	λέ:5[0.000 -5\600.1-	947.877.00 (6.1%	6149.000.00X 6494
Sources US Bureau of Labor Stalk	lió:										

The unemployment rate in Mecklenburg County was 4.9% for the year 2005, which is lower than the average rate experienced over the last three years. Over the last ten years, the highest unemployment rate within the Mecklenburg County was 5.9%, reported in the year 2002. The current unemployment rate is 20.4% less than the previous high and should decrease further as the national and local economies continue to strengthen.

MAJOR EMPLOYERS

The largest employers in Mecklenburg County are detailed in the following table:

Company	Product/Service	Employees
Wachovla Corporation	Financial	17,000
Charlotte-Mecklenburg Schools	Education	13,683
Bank of America	Financial	12,770
Carollnas Healthcare System	Healthcare	11,100
Duke Energy Corporation	Utilitles	7,042
US Alrways	Transportation	7,000
State of North Carolina	Government	6,418
City of Charlotte	Government	5,855
U.S. Government	Government	5,038
Mecklenburg County	Government	4,825
Presbyterian Healthcare/Novant Health	Healfhcare	3,866
Ruddick/Harris Teeter, Inc.	Retall	3,290
Winn-Dixle Charlotte	Retall	3,000
U,S, Postal Service	Government	2,961
Belk, Inc.	Retall	2,500
BellSouth Telecommunications	Communications	2,300
Compass Group	Food Service	2,100
UNC at Charlotte	Education	2,099
IBM Charlotte	Technology	2,000
Food Llon	Refall	1,980

TRANSPORTATION

Due to its remarkable access to air, rall, and highway, the Charlotte metropolitan area is the largest transportation hub in the Southeast. The accessibility of the area creates an attractive environment for business travel and for the distribution of products and services. The cornerstone of the transportation hub is the southeastern headquarters of US Airways, which is based in the Charlotte-Douglas international Airport. Owned and operated by the City of Charlotte, the airport averages 534 daily departures and over 25 million passengers annually. According to the latest reports by Airports Council International, in 2003 Charlotte-Douglas ranked 13th nationwide in operations, 17th in passengers and 30th in cargo. Charlotte-Douglas is consistently ranked among the nation's top airports and serves commercial, cargo, corporate, private, military and trucking operations.

Two major railroad lines, Norfolk Southern and CSX Transportation, service Charlotte by linking 44,880 miles of rail through 23 states. With more than 300 trains weekly, Charlotte's railroad lines can offer passenger service as well as piggyback services with the trucking

industry. Amtrak in Charlotte provides passenger lines traveling north and south which can connect to east/west lines to access most of the United States. The excellent rail access makes Charlotte a major international transfer center as Charlotte gains inland port status, where cargo can be shipped by train to ports such as Charleston, South Carolina or Norfolk, Virginia.

A convenient, but somewhat overused, highway system services the needs of the Charlotte-Mecklenburg area. According to the Charlotte Chamber of Commerce, "Interstates 1-77 and 1-85 join the urban centers and manufacturing belts in the Northeast, Southwest, and Midwest. 1-40 offers an important east/west link." Additionally, the belt loops of 1-277 and 1-485 serve as connectors between the City of Charlotte and interstates 77 and 85. This elaborate highway system allows Charlotte to access 56 percent of the nation within 24 hours. Charlotte's immediate access to two major highway systems has made it the 9th largest trucking center in the US. The area is home to 279 trucking companies and 31,252 transportation employees. As noted by the Charlotte Chamber of Commerce, "Over 46% of the nation's top 100 trucking companies are in Charlotte, including nine of the top ten firms."

SUMMARY

It appears that the Charlotte metropolitan area provides an atmosphere of both strength and growth. The economy has proven its ability to support its population and industry. The economic and demographic forces working to influence Charlotte's real estate values are favorable, and should continue to interact in a fashion consistent with the economic well being of the community. Charlotte has achieved a position of regional and national significance, primarily through its emergence as a major center of finance, transportation, and trade. The emphasis on higher-density growth should increase the tax base and resources necessary to maintain a healthy and growing economy. Thus, Charlotte should remain a focus for investment of capital and human resources into the next century.

NEIGHBORHOOD SUMMARY

Within a community, there is a marked tendency toward the grouping of land uses. The areas devoted to these various uses are termed "physical neighborhoods," Neighborhood use in this context is further defined as follows:

"A portion of a larger community, or an entire community, in which there is a homogenous grouping of inhabitants, buildings or business enterprises. Inhabitants of a neighborhood usually have a more than casual community of interests and a similarity of economic level or cultural background. Neighborhood boundaries may consist of well defined, natural or man-made barriers or they may be, more or less, well defined by distinct change in land use or in the character of the inhabitants."

LOCATION/BOUNDARIES

The subject neighborhood is located in the Jown of Weddington. In Union County, North Carolina with the main crossroads being Providence Road and NC Highway 84 (Weddington Road). The Town of Weddington is approximately 14-miles southeast of Uptown Charlotte and 7-miles northwest of Monroe, Union County, North Carolina. The neighborhood can generally be described as the area surrounding Providence Road and NC Highway 84 (Weddington Road). The neighborhood is roughly bounded by the Union-Mecklenburg County Line on the northwest, Waxhaw-Indian Trall Road on the east, New Town Road on the south, and the Community of Marvin on the west.

LAND USE PATTERNS

During the past 15 years, this area of Weddington and Union County has experienced a steady population growth. The population growth has resulted in primarily residential subdivision growth. Weddington is a bedroom community of Charlotte. The Town of Weddington has limited commercial expansion and has carefully considered residential subdivision growth with regard to lot size and preservation natural areas. There is a neighborhood shopping center and professional buildings at the northeast corner Providence Road and Weddington Road. The neighborhood center is anchored with a Harris Teeter grocery store. Newer residential development in the neighborhood includes HighGate, Waybridge at Weddington, Lake Forest Reserve, and Stratford Hall.

TRAFFIC ARTERIES/TRANSPORTATION

Access to the area is considered average. Providence Road, running north — south through the Town of Weddington, is a two-lane asphalt-paved roadway. This road is scheduled fro widening to four-lanes. NC Highway 84 (Weddington Road) is a two-lane road connecting Weddington with Wesley Chapel and Monroe to the southeast. Other two-lane roads within the neighborhood include Weddington-Matthews Road, Hemby Road, Beulah Church Road, Cox Road, Twelve Mile Creek Road, and Waxhaw-Indian Trail

Road. All of the roads are adequate for commuting to Charlotte, Monroe, Waxhaw, Indian Trail, and other towns.

UTILITIES

The subject neighborhood is adequately served for existing development by municipal water and sewer provided by the Union County, as well as electricity, natural gas, and telephone service. The Twelve Mile Sanitary Sewer Plant Jocaled in Union County is operating a capacity and no new sewer permits will be granted until an expansion planned for 2008. All new residential development must be approved for septic systems or must tie into sewer lines to Mecklenburg County or to Lancaster County, South Carolina.

in the case of the proposed Spyglass at Weddington, a pump station will be built and an offsite forced sewer main will tie into a sewer line going to Mecklenburg County.

ZONING

Zoning in the immediate neighborhood is primarily confined to residential, retail, and office. Zoning will be discussed more in depth later in the report. Land use patterns within the immediate neighborhood are homogenous.

ENVIRONMENTAL CHARACTERISTICS

The primary environmental characteristics to be considered are any nulsances or hazards as a result from the land uses within the subject nelghborhood. After inspecting the nelghborhood, we assume that there are no environmental concerns or any adverse nulsances or hazards that would impact properly values in a negative way. We are not trained in the science of environmental hazard detection and recommend that a licensed professional make an inspection of the subject site. We were not provided with any environmental data such as a Phase I Environmental Site Report.

PERCENT BUILT UP

We find that the subject neighborhood is 60% developed. As previously mentioned, this development is a mixture of mainly residential, retail, with some office use.

CONCLUSION

The neighborhood appears stable with a good mix of commercial and residential uses situated in a compatible land use pattern. The area is served by all municipal utilities (sanitary sewer hook-up in Union County is an hold until 2008) and a adequate transportation network. Land uses in the area are compatible with existing zoning regulations, and there appeared to be no environmental hazards that would negatively impact value. All indications suggest that development in the neighborhood should

continue at a steady pace. In considering the four life cycles that neighborhoods generally experience, such as growth, stability, decline and revitalization, the area is considered to be in the growth cycle.

SITE SUMMARY

LOCATION

'The subject site is located on the southwesterly margin of NC Highway 84 (Weddington Road), across from Cox Road, in Weddington, Union County, North Carolina 28104.

SIZE/SHAPE

The subject tract is calculated at 284,9-acres by the developers. A site plan prepared by The Isaacs Group, 8720 Red Pak Boulevard Sulte 420, Charlotte, NC, indicates the subject to be 283,92-acres in size. The site plan as drawn shows a total of 1814-bis; however, the developer indicated that a new site plan is being drawn that would have a total of 200 single family-family lots. We make the assumption that the proposed subdivision is 284,9-acres in size and will have 200-lots; however, if the property size changes or a 200-lot site plan is not possible under the current zoning ordinance, we reserve the right to amend the appraisal. The subject tract is identified as tax parcel numbers 06-150-071, 06-126-010A, 06-126-011, 06-126-010, 06-126-004, 06-126-002, 06-126-003A, 06-126-006B, 06-126-008A, and 06-126-008 in the office of the Tax Assessor, Union County, North Carolina. The total size of the tax records for the above-mentioned parcels is 261.669. As stated earlier, we are using a total of 284,9-acres for the subject property. The shape of the site, while irregular, is conductive to development. The site has adequate frontage on NC Highway 84 (Weddington Road). Tax maps and a site plan are in the Addenda.

TOPOGRAPHY

The topography of the site can be characterized as mostly rolling. Our review of FEMA Flood Map No. 37179C 0060 C effective July 5, 1994 and FEMA Flood Map No. 37179C 0070 C effective July 5, 1994 show most of the site is in Zone X, an area outside the 500-year flood plain. However, there is approximately 5% of the site located in Zone A, which is an area within the 100-year flood plain. Copies of the FEMA flood maps are included in the Addenda.

SOIL ANALYSIS

No soil or subsoil analyses were provided, therefore, no warranty is implied as to the suitability of the soil for development. The value conclusions presented herein are predicated on the assumption that no adverse soil conditions exist.

ENVIRONMENTAL AND SOIL ANALYSIS

The primary environmental characteristics to be considered are any nuisances or hazards as a result from the land uses within the subject site. After inspecting the site, we assume that there are no environmental concerns or any adverse nuisances or hazards that would

impact property values in a negative way. We are not trained in the science of environmental hazard detection and recommend that a licensed professional make an inspection of the subject site. We were not provided with any environmental data such as a Phase I Environmental Site Report.

EASEMENTS/ENCROACHMENTS AND RIGHTS OF WAY

No encroachments, easements, or rights of way were noted in our inspection process other than existing road rights of way and standard utility easements. The reader is referred to the site plan in the Addenda. We make the assumption that there are no adverse conditions, which arise from any unknown encroachments, easements or rights-of-way.

LEGAL CONSTRAINTS

The subject property is subject to the Town of Weddington Planning and Zoning Board. There are no apparent zoning constraints or encumbrances on the subject property that would adversely impact the utility or marketability of the site.

ACCESS / FRONTAGE

The subject will be accessed via NC Highway 49 (Weddington Road). According to the site plan, there is adequate road frontage along this roadway. Assess and frontage for the site is considered to be good for development.

UTILITIES

Basic utilities Include electricity, telephone, natural gas, and water. Sanitary sewer can be brought to the site by means of a regional pump station and a 10" forced main along NC Highway 84 to the into a sewer line on Providence Road, which runs to a sewer treatment plant in Mecklenburg County. The Twelve Mile Creek Wastewater Treatment Plant in Union County is running at full capacity and will not be expanded until 2008.

It is noted that a 28.79-acre portion of the site is being donated to Union County for an elementary school. In return the union County School System will pay for the sewer lines to the subject site.

SUMMARY

It is our opinion that the site does not have any characteristics that would impede its development potential. Based on our physical inspection, the sites appear functionally adequate in each of the categories discussed above.

PROPOSED SITE IMPROVEMENTS

The proposed site improvements will include asphalt-paved roads as shown on the site plan. Additionally, there will be underground utilities to include electricity lines, water and sewer lines, and telephone lines. There will be a gated entrance and common or open areas throughout the development. See site plan in the Addenda for a further indication of the proposed property layout.

ASSESSMENTS AND TAXES

The subject property is the plottage of the following parcels.

						·····
Ownership	Deed Book/Page	Date	Parcel No.	Size/Acres	A	ssessed Value
Emily Pierce Whiti, Trustee	1048 / 503	1/15/1998	06-150-071	23,894	Ş	1,082,190
Mary M. Mackey	0206 / 089	9/19/1966	06-126-010A	1.010	\$	56,240
Mary B. Mackey	0184 / 618	6/26/1963	06-126-011	1,000	\$	69,600
Rachel M. Matthews	0066 / 015	1/4/1928	06-126-010	29,310	\$	1,249,460
Gary D. Bolen & Linda M.	08791 / 388	10/5/1978	06-126-004	10.840	\$	600,360
	0193 / 339	9/25/1964	06-126-002	80,670	Ś	2,608,130
Charles Allen Deal	169 / 343	7/13/1961	06-126-003A	105,420	-	3,669,620
Charles Allen Deal, et al	0393 / 750	B/8/1985	06-126-006B	6.813		299,780
Charles Allen Deal, et al		9/20/1978	06-126-008A	1,340		93,260
Charles A. Deal & Patricla	0314 / 254		06-126-008	1.372	-	
Charles Allen Deal	0193/339	9/25/1964	00-120-000	261,669		9,805,030
Totel				201.008		0,000,000

The subject property has a combined appraised value of \$9,805,030. The subject property is located inside the Town of Weddington and as such is subject to county and town taxes. The tax rate for Union County per \$100 of assessed value for 2005-2006 is \$0.6300. The tax rate for the Town of Weddington is \$0.3000 per \$100 assessed value. The total tax rate for the subject property is 0.6600 per \$100 of assessed value. The real estate tax for the subject is computed as follows:

Assessment Ratio	100%
Assessed Value	\$9,805,030
Tax Rate	0.006600
Eslimated Tax	\$64,713

The subject property will be developed with single family lots and will be reassessed with individual lot assessments. It is common to utilize the lot prices for the assessed values; however, since the last revaluation was January 1, 2004, we will be estimating the lot prices at 90% of their sales price. As seen later, the developed lots are to be sold at an average price of \$363,875. Therefore, we have estimated the average per lot assessment at \$327,488 (\$363,875 \times 90%). Assuming an average assessed value of \$327,488 per lot and FRED H. BECK & ASSOCIATES, LLC

a 2005-2006 millage rate of 0.006600, the real estate tax burden amounts to \$2,161 per lot (\$327,488 X .006600). Thus, the average tax per lot is \$2,161 or \$540 per lot per quarter, rounded. The quarterly tax burden estimate of \$540 is used in the Development Valuation Analysis, later in this report.

ESTIMATED TAX BURDEN \$540 per lot per quarter

ZONING/LAND USE CONTROL

The subject property is located within the Town of Weddington. According to the zoning department, the property is currently zoned R-CD, Residential Conservation District. This zoning classification is basically a residential use ordinance allowing 1 dwelling unit per 40,000 square feet. The R-CD district according to the ordinance is "...to promote 'conservation subdivisions' and encourage the preservation of open space and unique environmental features in the Town including, but not limited to viewsheds, forestland, farmland, historic sites, steep slopes, rock formations, and land adjacent to parks. Incentives are included in the R-CD District to encourage conversation subdivisions in the future by allowing residential lots sizes smaller than those found in other zoning districts in Weddington."

Area, yard, and bulk regulations are as follows:

R-CD
40,000 s.f.
50 feet
15 feet
40 feet
10%

The subject property as proposed for a 200-lot single-family residential subdivision falls within the zoning regulations for R-CD, Residential Conservation District.

MARKETABILITY/EXPOSURE PERIOD

We consulted sales agents and developers active in the development and marketing of projects similar to the subject. Our research and past experience indicates that subdivisions such as the subject property are seldom constructed on a purely speculative basis that is to be offered for sale "in bulk" immediately upon completion of the improvements. Most projects are developed under one of two common scenarios, or some combination of the two; either they are developed by a land developer who more often than not, has pre-sold a large portion of the lots on a "take-down" schedule, to one or more home builders before construction begins; or they are developed by one or more home builders for the purpose of providing an inventory of lots on which to offer their product. Fully developed subdivision properties of which we are aware, and have been offered for sale in bulk on the open market, are typically falled projects offered by lending institutions or agencies such as the FDIC, due to foreclosure.

In the case of the subject property, The Peerless Group, the developer is developing the site and selling the 200-residential lots to custom bullders. The estimation of a reasonable marketing time of a property, which is not typically placed on the market, becomes very subjective. Further, once a residential subdivision is developed and lot sales begin to occur, a momentum is created and the project's desirability is enhanced by the presence of sales and building activity. If this momentum is interrupted, the salability of the individual lots, as well as the bulk sale of the project becomes increasingly more difficult as the period of any full continues.

The subject property is located in Weddington, which is in Northwest Union County. There appears to be demand for living in this area as evidenced by the growth of other upscale residential subdivisions with homes in the \$800,000 to \$1,500,000 range. The functional utility of the completed property, as designed, is considered to be adequate in relation to consumer preferences. There does not appear to be a large inventory of competing subdivision tots on the market or lots being currently developed at the subject's projected price point and the likelihood of finding a purchaser seem good.

CONCLUSION OF MARKETING TIME & EXPOSURE PERIOD

Our marketability analysis will focus on the estimated time the improved subject property would be on the market to secure a sales contract. We are also required to identify the exposure period associated with the value conclusions reached herein. Unlike the marketing time, the exposure period is considered to immediately precede the date of the appraisal.

Exposure time may be defined as follows:

"The estimated length of time the properly interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events assuming a competitive and open market."

It is our opinion based on current market conditions that, a purchaser who is capable of continuing the development and/or marketing of the subject project could be located within a period of six to twelve months, assuming professional and aggressive marketing by a qualified individual or company familiar with this property type and market. It is our opinion that the expessive period is also six to twelve months.

HIGHEST AND BEST USE

The highest and best use for real property can be defined as follows:

"the reasonable and probable use that supports the highest present value, as defined, as of the date of the appraisal."

Alternatively, highest and best use is . . .

"the use, from among reasonably probable and legal alternative uses, found to be physically possible, appropriately supported, financially feasible, and that results in the highest present land value."

The first type of highest and best use, highest and best use of land or a site as though vacant, assumes that a parcel of land is vacant or that it can be made vacant through the demolition of any improvements. The question to be answered in this type of analysis is "what use should be made of It?" that is, what type of building or other improvement (If any) should be constructed on the land?

The second type of highest and best use, highest and best use of a property as improved, pertains to the use that should be made of the property, as it exists. Should the existing improvements be maintained, renovated, expanded, partially demolished or should it be replaced with a different type use? The purpose of highest and best use analysis is different for each type of highest and best use examined. For each type of highest and best use, the criterion in a highest and best use study are that the highest and best use must be 1) legally permissible, 2) physically possible, 3) financially feasible, and 4) maximally productive. According to THE REAL ESTATE APPRAISAL TERMINOLOGY book, published by the American Institute of Real Estate Appraisers, "...the concept of highest and best use represents the premise upon which value is based."

AS VACANT

LEGALLY PERMISSIBLE

The first step in the highest and best use analysis considers what uses are legally permissible. The site is zoned R-CD, which allows for single-family residential development.

PHYSICALLY POSSIBLE

The second criterion considers which uses are physically possible. Some uses may be inappropriate due to certain physical characteristics of the site. These considerations are usually concerned with size, shape, utilities, soil conditions and topography. The subject site contains 284.9-acres. This is believed an adequate size to allow residential development. The topography is rolling, which is common in the area. Soil or subsoil conditions have not been tested, but are assumed to adequate for the proposed improvements. Public utilities of electricity, telephone, and water will be available to the site. The developer is providing offsite sewer to the site.

FINANCIALLY FEASIBLE

The next guideline for determining the highest and best use for the subject property as vacant is what use would bring a positive cash flow to the investor. In other words, which uses would be financially feasible? We have researched the surrounding area in order to determine demand for additional single-family residential development. It has been our experience that the demand for additional housing units can best be determined by a study of absorption of similar properties in the competing market area. The theory behind the study of population growth is that as long as population in an area is expanding, there will be demand for either additional housing space. The theory behind employment growth is that if jobs are being created in or near a community, people will move into the community to fill the Jobs and will need housing. Based on conversations with Town of Weddington and Union County officials, and area brokers and developers, there is a demand for upscale housing in the Weddington area. We were given plans by The Peerless Group, the property developer, for a 200-tot residential subdivision, with minimum 40,000 square foot lots, to be developed on NC Highway 84 in Weddington. Based on these development plans and existing single-family residential development, a singlefamily residential subdivision could be developed on the site.

MAXIMALLY PRODUCTIVE

Based on the location of proposed subject development, being located in Weddington and near the Southeast Mecklenburg area, it is our initial opinion that upscale single-family development on 40,000 square foot lots is the maximally productive use. An investigation of residential lot and tract sales in the surrounding area revealed that a single-family,

residential development would return the greatest profit on the subject site. In considering productive uses, a single-family residential development appears to be the maximally productive use. In conclusion, it is our opinion that the highest and best use of the subject site "as vacant" is for a single -family residential subdivision.

AS PROPOSED

As proposed, the same considerations for legally permissible, physically possible, financially feasible apply to the subject site. As for maximally productive, an investigation of residential lot and tract sales in the surrounding area revealed that a single-family, residential development (with end product pricing between \$1,000,000 and \$2,000,000) would return the greatest profit on the subject site. In considering the maximally productive use, a single-family residential development consisting of 200 residential lots, as proposed by the developer, appears to be the maximally productive use. In conclusion, it is our opinion that the highest and best use of the subject site "as proposed" is for a 200-lot single-family residential development. As shown later in the report, the proposed development is feasible, based on the fact that the Development Valuation Analysis is greater than the Cost Approach.

METHOD OF VALUATION

The appraisal process typically involves three approaches in determining value, which consists of the Cost Approach, income Approach and Sales Comparison Approach. A brief description of each technique, along with the Development Valuation Analysis, is as follows:

THE COST APPROACH

An appraisal procedure using depreciated replacement or reproduction costs of improvements plus land value as a basis for estimating market value. The underlying assumption is that an informed purchaser will pay no more than the cost of producing a substitute properly with the same utility as the subject property.

THE INCOME APPROACH

An appraisal procedure using capitalization of expected future income as a basis for estimating morket value. The underlying assumption is that an informed purchaser will pay no more far the subject property than would have to be paid for another property with an income stream of comparable amount, duration and quality.

THE SALES COMPARISON APPROACH

An oppraisal procedure using sale prices of properties similar to the subject property as a basis for estimating market value. The underlying assumption is that an informed purchaser will pay no more for a property than would have to be paid for a similar property of comparable utility.

DEVELOPMENT VALUATION ANALYSIS

The development valuation analysis or development method as defined in the appraisal process is a combination of the market and income approaches. In the initial step, the market approach is used in order to estimate the wholesale value of the individual units being considered. Absorption is then estimated and sales revenue is project. In addition, carrying costs and expenses are deducted and the net income is discounted.

APPRAISAL PROCEDURES

The cost approach and development valuation analysis will be used in determining the value of the proposed improvements. The income approach has been omitted because of a lack of adequate rental data. The development valuation analysis includes the sales comparison approach and deducts carrying costs over the selfout period. Most emphasis will be given to this method to determine the discounted market value.

THE COST APPROACH

The Cost Approach provides a value indication that is the sum of the estimated land value and the depreciated cost of the improvements. The Cost Approach is based upon the principle of substitution. This principle assumes that a rational, informed purchaser will pay no more for a property than the cost of acquiring an acceptable substitute with like utility assuming that no costly delay will be encountered in making the substitution. The steps in the Cost Approach are as follows:

- 1. Estimate land value as though vacant and available to be developed to its highest and best use.
- 2. Estimate reproduction or replacement cost of the Improvements, which includes direct cost, indirect cost, and entrepreneutal profit.
- 3. Estimate the amount of accrued depreciation.
- 4. Deduct accrued depreciation from total reproduction or replacement cost.
- 5. Add deprecialed cost of improvements to land value.

These steps will be discussed on the following pages.

LAND VALUATION

We have conducted regional research with respect to properties having similar potential for development and have found several of recent sales of comparable properties located within Northwest Union County and South Mecklenburg County, North Carolina. These sales are believed to provide the most reliable indication of value for the subject property, and data sheets on each of the sales utilized are provided on the following pages. An adjustment chart follows the data sheets and reflects our analysis of the similarities and dissimilarities relative to the subject property with an explanation of adjustments enclosed for the reader's reference. The chart illustrates an analysis of the differences between the sales and subject property, with percentage adjustments used to reflect buyer reactions to the different physical characteristics. Although each adjustment is not absolute, the primary objective of the chart is to share our thought process with the reader. The price paid per acre has been selected as the most applicable unit of comparison for the subject property in comparison to other acreage tracts.

COMPARABLE LAND SALES

SALE ONE	
LOCATION	Southerly margin of Ennis Road, east of Providence
	Road, Weddington, Union County, NC
GRANTOR	Nancy Corwin
GRANTEE	Pettus Properties
DEED REFERENCE	3746 / 222
TAX CODE	06-1,53-028A
DATE OF SALE	April 11, 2005
SIZE	1628 Acres
FRONTAGE	Adequate along Ennis Road
TOPOGRAPHY	Gently rolling
VTICITIES	Electricity, water, and telephone
ZONING	R-CD
IMPROVEMENTS	Single-family dwelling that was saved
PRESENT USE	Residential subdivision under construction
HIGHEST AND BEST USE	Residential development
SALES PRICE	\$2,050,000
ADJUSTED SALES PRICE	\$1,750,000 (\$300,000 is allocated to the dwelling)
YERMS OF SALE	Cash to seller
ADJUSTED PRICE PER ACRE	\$107,626
COMMENTS	The site included a residential dwelling tha
	contributed \$390,000 to the land.

\$ALE TWO	
LOCATION	Easterly margin of Providence Road, north of Cuthbertson Road, Weddington, Union County, NC
GRANTOR	Elizabeth and john Yaughn
GRANTEE	Cuthbertson Road I, LLC
DEED REFERENCE	4142 / 004
TAX CODE	06-162-021
DATE OF SALE	April 27, 2008
SIZE	22.88 Acres
FRONTAGE	Adequate on Providence Road
TOPOGRAPHY	Gently rolling
UTILITIES	Electricity, telephone, and water
ZONING	R-CD
IMPROVEMENTS	None at the time of sale
PRESENT USE	Vacant land
HIGHEST AND BEST USE	Residential development
SALES PRICE	\$2,631,500
TERMS OF SALE	Cash to seller
PRICE PER ACRE	3115.019
COMMENTS	The site is narrow and long; however, it is conductive to residential development,

SALE THREE	
LOCATION	Easterly margin of Tom Short Road, between interstate-485 and Ardrey Kell Road, Charlofte, Mecklenburg, County, NC
GRANTOR	WCF, L.P.
GRANIEE	Centex Homes, G.P.
DEED REFERENCE	17691 / 391
TAX CODE	229-112-01, part of 229-152-37, 229-161-04, 229-161-01
DATE OF SALE	August 31, 2004
SIZË	152.710-Acres
FRONTAGE	Adequate along Tom Short Road
TOPOGRAPHY	Gently rolling
UTILITIES	All Municipal
ZONING	MX-1, Mixed Use Residential
IMPROVEMENTS	None of value to the land
PRESENT USE	Mixed Use Residential Subdivision
HIGHEST AND BEST USE	Residential
SALES PRICE	\$12,980,500
TERMS OF SALE	Cash to seller
PRICE PER ACRE	\$85,001
Comments	This sile was part of an assemblage of property for a mixed-use residential subdivision by Centex Homes.

SALEFOUR			
LOCATION	Easterly margin of Torn Short Road, between		
	Interstate-485 and Ardrey Kell Road, Charlotte,		
	Mecklenburg, County, NC		
GRANTOR	Loughrea, L.P.		
GRANTEE	Ceniex Homes, G.P.		
DEED REFERENCE	17691 / 382		
TAX CODE	229-141-01, 229-141-02, 229-141-50 and 229-142-01		
DATE OF SALE	August 31; 2004		
SIZE	92.50 Acres		
FRONTAGE	Adequate along Tom Short Road		
TOPOGRAPHY	Gently rolling		
UTILITIES	All Municipal		
ZONING	MX-1, Mixed Use Residential		
IMPROVEMENTS	None of value to the land		
PRESENT USE	Mixed Use Residential Subdivision		
HIGHEST AND BEST USE	Residential		
SALES PRICE	\$7,862,500		
TERMS OF SALE	Cash to seller		
PRICE PER ACRE	\$85,000		
Comments	This site was part of an assemblage of property for a		
	mixed-use residential subdivision by Centex Homes. It		
	closed at the same time as Sale Three.		

COMPARABLE LAND SALES GRID

SALE NUMBER	Subject	1	2	3	4
DESCRIPTION	NC Highway B4	Ennis Road	Providence Road	Tom Short Road	Tom Short Road
	Weddington, NC	Weddinglon, NC	Weddington, NC	Charlotte, NC	Charloffe, NC
ZONING	R-CD	R-CD	R-CD	MX-1	MX-1
DATE OF SALE		_ Apr-05	Apr-06	Aug-04	Aug-04
SIZE (ACRES)	284,900	16.260	22,880	152.710	92.500
SALES PRICE		2,050,000	2,631,500	12,980,500	7,862,500
PRICE PER ACRE		126,076	115,013	85,001	85,000
PROPERTY RIGHTS					
FINANCING					
CONDITIONS OF SALE				· · · · · · · · · · · · · · · · · · ·	
TIME		4.0%		8.0%	
ADJUSTED PRICE		131,119	119,614	91,801	91,800
LOCATION					<u></u>
SIZE		-25%	-25%		
SHAPE					
IMPROVEMENTS				,	
TOPOGRAPHY		-2%	-2%	-2%	-2%
ZONING					
UTILMES		5%	5%		
ACCESS/FRONTAGE					·
UTILITY EASEMENTS					
TOTAL ADJUSTMENTS	<u> </u>	-22,0%	-22%	-2%	-2%
ADJUSTED VALUE		102,273	93,299	89,965	89,964

EXPLANATION OF ADJUSTMENTS

The following are generally accepted adjustment categories. The first four categories - real property rights appraised, financing, conditions of sale, and market conditions (time) are cumulative. Normally, a sale should be adjusted for the cumulative adjustment where the remaining adjustments such as location and other physical characteristics are applied. Location, physical characteristics and other adjustments are additive, and may be in any order. An explanation of each adjustment category is as follows:

PROPERTY RIGHTS APPRAISED

The real property rights conveyed is the first adjustment because the appraisal of the subject property rights can only be compared to similar property rights. All comparable sales are considered fee simple property rights, requiring no adjustments.

FINANCING

A financing adjustment is actually a specific motivation adjustment and often is not capable of being accurately derived from the mathematical discounting process. The most reliable financing adjustment is from paired sales, which are generally not available

through sales information. Cash equivalency is the adjustment of a sales price to an equivalent price if sold for cash absent the contract terms of the loan. The adjustment may be negative to reflect favorable terms to positive to reflect unfavorable terms. All the sales are considered cash or cash equivalent transactions, requiring no adjustments.

CONDITIONS OF SALE (MOTIVATION)

Typical adjustments under this category include adjustments for plottage, purchasing additional land for expansion, or other typically motivated sales. All sales are considered arms length transactions, requiring no adjustments.

MARKET CONDITIONS (TIME)

It is market conditions and not the passage of time that cause prices to change. This is an example of the principle of change. A market conditions adjustment is a cumulative adjustment within the sales comparison approach. The comparable sales occurred between August 2004 and April 2006. Based on our discussions with real estate brokers in the area and the examination of our land sale files, we believe that an appreciation of approximately 3% per year has occurred from the date of the sales to the present. Therefore, positive adjustments are made.

LOCATION

The locations of the comparable sales used in this report are compared to the subject. Factors directly related to location such as population, labor supply, transportation and existing land uses are considered. The subject site is located in the Town of Weddington on NC Highway 84. Comparable sales one and two are also located within the Town of Weddington and no adjustments are applied. Comparable sales three and four are located on Tom Short Road in Southeast Charlotte, 3.5-miles northwest of the subject site. The location of the comparable sales is similar to the subject site and no adjustments are deemed necessary.

SIZE/SHAPE

Adjustments are considered based on optimum size, shape, and overall utility of the comparable sales as compared to the subject. Economies of scale are often considered in this adjustment when market proof supports the premise that the larger the properly size, the lower the unit price and vice versa. The subject contains a total of 284.9-acres. Comparable sales one and two are much smaller than the subject site and negative adjustments are applied. Comparable sales three and four are similar enough to the subject site in regard to size that no adjustments are necessary. With regard to shape no adjustments were deemed necessary.

IMPROVEMENTS

All the sales and subject are unimproved or were purchased as unimproved sites and no adjustments are required.

TOPOGRAPHY

The effects of topography are considered in this adjustment and the relative differences between the comparable and the subject are considered. The topography of the subject site is rolling; however, there is some low area that lies within the flood plain. All of the comparable sales are rolling in topography, but do not have flood plain areas. Therefore, negative adjustments are applied to the sales.

ZONING

This adjustment is considered when different classifications of zoning are analyzed. Potential government restrictions are considered in this adjustment. The subject property has an R-CD, Residential Conversation District classification. Comparable sales one and two have the same R-CD zoning classification and no adjustments are required. Comparable sales three and four have a MX-1, Mixed Use District zoning classification in Mecklenburg County, which is similar enough to the subject's zoning classification that no adjustments are applied to these sales.

UTILITIES

This adjustment considers the approximate cost and availability of municipal and private utilities as these costs relate to valuing the subject land. The subject property will have access to electricity, telephone, water, and sewer service. The developers of the subject site will incur offsite sewer costs, but these costs will eventually be offset by the Union County School System in return for a 28.79-acre tract donated to the school system. Comparable sales three and four have similar municipal utilities and no adjustments are required. Comparable sales one and two are inferior to the subject property in regard to utilities and positive adjustments are applied.

ACCESS/FRONTAGE

Adjustments were made for differences in accessibility and road frontage as a whole. Typically, the more road frontage, the more favorable it is considered; however, with residential construction this is less important with privacy being a key factor. Access to the roadway is also considered. The access and frontage of the subject site and the comparable sales was similar enough that no adjustments were deemed necessary.

RECONCILIATION AND FINAL ESTIMATE OF LAND VALUE

Before adjustments, the comparable land sales ranged from \$85,000 to \$126,076 per acre. After making the indicated adjustments, the sales range from \$89,964 to \$102,273 per acre. As a measure of central tendency, the average of the indications was \$93,875 per acre. Adjustments were made for size, topography, and utilities. All of the comparable sales were considered to be good indicators of value and about weight was placed on the sales. As stated earlier in the report, the subject site is under contract for purchase and sale in the amount of \$22,286,000 or \$78,224 per acre.

Based upon the above analysis, we have summarized our opinion of value for the subject site "as vacant" in the table below.

	Size (ACRE)	Value Per Acre	Yalue
Subject Property "As Vacant"	284.9	\$94,000	\$26,780,600
Engineering/Professional Fees			\$370,000
Land Value "As is"			\$27,150,600
Land Value "As Is" (Rounded)			\$27,150,000

OPINION OF LAND VALUE - SALES COMPARISON APPROACH - AS IS - JUNE 23, 2006 \$27,150,000

IMPROVEMENT VALUATION

The replacement cost of the subject property has been examined in the following analysis. A description of the hard costs (roads and utilities) as well as the soft costs (legal, architectural, and financial) used are provided below. These estimates are taken from the developer's construction budget. We also had discussions with area experts, which were used in determining the reasonableness of the construction budget.

HARD COSTS

We consulted with developers concerning hard costs of different subdivisions throughout the area. For example, costs for curbing, guttering, storm drainage, grading and clearing, landscaping, erosion control, and entranceways are all included and are often analyzed based on the price per lot or price per acre. We have analyzed hard costs for 11 subdivisions or subdivision phases throughout Mecklenburg County and adjoining counties. Factors considered in this analysis include the number of lots, number of units per acre, and the location of the subdivision. A summary of these costs is shown below.

SUBDIVISION COST COMPARABLES

Subdivision	# Lois	Size-Acre	Units/Acre	Per Acre	Per Lot
Strawberry Lane	54	24.593	2.20	\$53,035	\$24,609
Village at Brieffield Tract D	87	26,98	3,22	42,357	13,136
Mirabelia Subdivision	134	106.0	1.26	53,104	42,007
Shanamarra l	149	72.8	2.05	28,255	13,029
Key Karbour	212	425.0	2.00	11,765	23,585
Carmel Crescent	69	24.18	2.85	86,936	30,465
Coventry Subdivision	223	68,373	3.26	31,459	9,645
MacAulay Farm Ph. 1	189	70.633	2.68	38,719	14,470
MacAulay Farm Ph. 2	173	64.354	2,68	40,406	15,101
MacAulay Farm Ph. 3	208	77.734	2.68	24,823	9,277
Pallsades Tract 3 – Phase 1	180	89.53	2.01	\$60,549	\$30,116

As can be seen from the cost comparables, the higher density subdivisions tend to have a higher cost per acre. These subdivisions also have a lower per lot cost in comparison to the lower density subdivisions. The comparables are included in this report as a gauge to show a general range for costs within the area. The 11 cost comparables reflected a density ranging from 1,26 to 3,26 units per acre. The hard costs per acre ranged from \$11,765 to \$86,936 per acre. The hard costs per lot ranged from \$9,277 to \$42,007. A detailed breakdown of the budgeted hard costs is included in the Addenda. A summary of the developer's budgeted hard costs for the subject property, which we have amended upward, is shown on the following page:

Hard Cost Summary				
		Total		
Streets/Infrastructure/General Costs	\$	3,500,000		
Bridges	\$	550,000		
Entrance	\$	250,000		
Tralls	\$	100,000		
Landscaping	\$	250,000		
Water/Sewer	\$	1,300,000		
Contingencies	\$	500,000		
Subtotal	\$	6,450,000		

The above hard costs of \$32,250 per lot and \$22,640 per acre fall within the range of the subdivision hard cost data. It is our opinion that the subject's hard costs, as amended, are reasonable for hard costs associated with this type of development.

SOFT COSTS

Soft costs include such items as architectural and engineering fees, legal fees, appraisal fees, developer's overhead, and construction loan interest. According to the estimate provided by the developer, soft costs are broken down below.

Soft Cost Summary	1.	
		Total
Engineering/Survey/Consultants	\$	320,000
Legal/Professional	\$	50,000
Developer's Overhead	\$	000,008
Construction Loan Inferest	\$	550,000
Subtotal	\$	1,580,000

A detalled copy of the developer's breakdown of the costs by Item is included in the Addenda. A per lot soft cost of \$7,900 (\$1,580,000 / 200 lots) is near the upper end of our soft cost data, but is reasonable. Subdivision soft costs on recent appraisals have typically ranged from \$5,000 to \$8,500 per lot. As a comparison, Robinwood Subdivision, a 200-lot residential development in Gastonia, NC had a per lot soft cost of \$7,089.

DEVELOPER'S PROFIT

Though not included in the developer's cost pro forma we believe it necessary to apply developer's profit. This is a common line item in subdivision development and is intended to reflect the inherent risk incurred in the development of a project similar to the subject. Developer's profit in the market typically ranges from 10.0% to 20.0%, but can be higher if there is perceived risk in the market. The developer's profit is projected at 15.0%.

COST SUMMARY

The value of the pre-sold lots in Quarter 0 is added in the Cost Summary. The difference in the entrepreneurial profit in Quarter 1 and Quarter 0 is 10% (15% - 5% = 10%). 10% of the total revenues for Quarter 0, is \$1,762,500 (\$17,625,000 total revenue X 10%). The cost summary of the proposed Spyglass at Weddington is shown below.

	Cost Summary	- 14	
			Total
Hard Costs		\$	6,450,000
Soft Costs		\$	1,580,000
Subtotal - Hard Cos	its & Soft Costs	\$	8,030,000
Profit	15%	\$	1,204,500
Total		\$	9,234,500
Land @ \$94,000 per Acre		\$	26,780,600
Value of Qtr. 0 Lot Sales		- \$	1,762,500
Total		\$	37,777,600
Rounded to	,	\$	37,780,000

PROSPECTIVE MARKET VALUE - SPYGLASS AT WEDDINGTON
BY COST APPROACH
AS OF APRIL 1, 2007 \$37,780,000 (R)

DEVELOPMENT VALUATION ANALYSIS - SPYGLASS AT WEDDINGTON

The development valuation analysis or development method as defined in the appraisal process is a combination of the market and income approaches. In the initial step, the market approach is used in order to estimate the retail value of the individual units being considered. Retail value is described as the lot price paid to subdivision developers by homebuliders. Market information is used to document the absorption of the lots in the marketplace. Subtracted from sales revenue based on the estimated absorption of the lots are appropriate carrying charges or expenses involved in the development of the project. The resulting net incomes are discounted into a present worth in order to estimate the value of the property by the development valuation analysis. We must distinguish between gross sellout, which is the aggregate of the individual retail lot prices, and the discounted or wholesale value, which is market value.

A value conclusion is rendered as of a specific point in time. When a significant period of time has elapsed since the original valuation, the opinion of value previously rendered may no longer be appropriate in light of existing market conditions. The development valuation analysis is an important, and sometimes, controversial part of modern appraisal practice. This method should be used where the supported highest and best use for the site is for subdivision use. This type of analysis is typically used since comparable market information is seldom available for single transactions involving subdivided property. The subdivision method is a useful tool when comparable market data is not available. The concept of a development model is typically thought of in reference to residential development; however, it may have application to industrial and office subdivisions or other staged development.

Computer models are often used to analyze the projected Income, absorption and expenses Involved in such a development and have facilitated the mathematical processes that utilize the market data necessary for the development valuation analysis. For purposes of this report, we have analyzed similar single-family residential subdivisions in the Weddington and Northwest Union County area. These subdivisions include HighGate, Waybridge at Weddington, Lake Forest Reserve, and Stratford Hall. We were able to obtain lot pricing and absorption data from these subdivisions. This information is used to determine value of single-family lots in the proposed Spyglass at Weddington Subdivision. Once the retail lot values have been determined, the current gross sellout value will be the sum of the value of each individual lot. The current gross sellout value is not to be construed to be the same as the discounted market value. The discounted market value, which is the same as market value, is derived by subtracting from the sales revenues, expenses that are predicted to occur during the projected absorption period. These

expenses are considered appropriate carrying costs for development of the project. The resulting net incomes are discounted into a present value estimate.

RETAIL LOT VALUE AND ABSORPTION

NEWLY DEVELOPED SUBDIVISIONS IN WEDDINGTON

We inspected a number of new subdivisions in Weddington. Waybridge at Weddington is a newly opened 45-lot subdivision being developed by John Wieland Company. The lots are a minimum of 40,000 square feet and the price range will be from \$750,000 to \$1,000,000 plus. The development is located on the northerly margin of Beulah Church Road, east of Weddington-Matthews Road in Weddington. Three homes have sold in the past 2-months.

Lake Forest Preserve opened in November 2005 with 207-lots. The development is located on the easterly margins of Cox Road and Weddington Road, in Weddington. This subdivision is located directly across Weddington Road from the proposed subject site. The lots average 0.50-acre and the end-point pricing for completed homes is from \$450,000 to \$700,000 plus. The development has sold 19-homes since opening, which indicates an absorption rate of 8-lots per quarter.

RECONCILIATION OF RETAIL LOT VALUE

In estimating the lots pricing for the proposed Spyglass at Weddington, we compared the subject's lots with lots in HighGate and Stratford Subdivisions.

HIGHGATE SUBDIVISION

HighGate is a 235-lot subdivision located on the westerly margin of Providence Road in the Town of Weddington. The northerly boundary of the development is on the Union – Mecklenburg County Line. The development is in the final phase with only six building lots left. Lot 56, Phase I is priced at \$324,000 and Lot 69, Phase I is priced at \$355,000. Both of these lots are 40,000 square feet in size. Lot 181, Phase 2 is priced at \$325,000, Lot 184, Phase 2 is priced at \$350,000, Lot 200, Phase 2 is priced at \$270,000, and Lot 211, Phase 2 is priced at \$325,000. These lots are less than 40,000 square feet. Since the development opened about 4.5-year ago, 229-lots have been sold. The lot sales indicate an absorption rate of 50.89-lots per year or 12.72 per quarter.

STRATFORD HALL SUBDIVISION

Stratford Hall is a newly opened subdivision located at the southwest corner of Weddington-Matthews Road and Tilley Morris Road, in Weddington. The development has

34-lots, which range in size from 0.34-acre to 0.71-acre. The current lot pricing ranges from \$172,000 to \$235,000 per lot.

LOT PRICING - SPYGLASS AT WEDDINGTON

The proposed 200-lot Spyglass at Weddington subdivision will have 163-lots with a minimum of 40,000 square feet and 37-estate lots, which are larger than 40,000 square feet. Many of the estate lots will have private entrance drives.

The final lot prices in HighGate range from about \$325,000 to \$350,000. These are probably the least desirable lots in the development because they will be the last to sell. The Stratford Hall development has 34-lots ranging in size from 0.34-acra to 0.71-acre with current lot prices ranging from \$172,000 to \$235,000 per lot. Based on these lots prices, it is our opinion that 40,000 square foot lots in the proposed Spyglass at Weddington begin at \$350,000 per lot. The estate lots, which are larger than 40,000 square feet, some with private entrances, will have a beginning price of \$425,000 per lot. These beginning lots prices were set by the developer and it is our opinion that they are reasonable and at the market.

ABSORPTION

In addressing absorption, we will look primarily at HighGate Subdivision. This development has been the standard for an upscale multi-builder subdivision. HighGate has averaged approximately 13-lots per quarter since it was opened. In projecting overall absorption for the proposed Spyglass at Weddington, we have projected 45 pre-sales between July 1, 2006 and January 1, 2007. This is Quarter 0 in Development Valuation Analysis. In Quarter 1 and Quarter 2 we have projected 19-lot sales. In Quarters 3 through 11 we have projected 13-lots each. We believe these projections to be reasonable based on past market data and the planned marketing of the development by the developer.

APPRECIATION

The lot prices in Spyglass at Weddington will have an escalation of 1% per quarter starting in Quarter 2 in the Development Valuation Analysis. We believe this is market escalation for this type of development. Expenses will be escalated by a rate of 3% annually. We believe that the expense escalation rate is representative of the market.

EXPENSES

In order to arrive at a wholesale or market value of the subdivision, appropriate carrying costs must be deducted from the anticipated cash flow realized from the sellout of the lots. The following information has been included in the cash flow model in order to arrive at achievable net incomes from the development of the subject property. The purpose of this cash flow model is to anticipate gross sell out, deduct appropriate charges during the development and discount the cash flows into a present value.

REAL ESTATE SALES COMMISSIONS/MARKETING

Real estate sales commissions are typically paid on a portion of all real estate transactions involved. However, in the subject's case the lots are being marketed to both homebullders and individuals, where there may or may not be commissions. There will be a marketing budget. Therefore, we will utilize a commission/marketing expense of 7.00 percent.

LEGAL/ADMINISTRATIVE

After discussions with local attorneys, we included an allocation of 0.325% of sales for closing costs. These costs could range significantly, based on the amount of background work, title searches, and legal documentation filed with the sale.

REAL ESTATE TAXES

As a new subdivision, it will be necessary for the Union County Tax Department to determine the per-lot assessed value. Earlier in this report, we estimated our per lot tax value. Our analysis projects a tax burden of \$540 per lot, per quarter, applied to the remaining unsold lots starting in Quarter 0.

INSURANCE

Liability insurance is estimated to be \$10 per lot per quarter.

COMMON AREA MAINTENANCE

An allowance is made for the costs to be incurred for common area maintenance. This includes the costs to clean the proposed subdivision during construction. An allowance of \$20 per lot per quarter is believed reasonable. This is applied to the number of lots in inventory for the quarter.

DEVELOPER'S PROFIT

We included an allocation for developer's profit. This is intended to reflect the inherent risk incurred in the development of a project similar to the subject. When determining a profit

allocation to deduct from anticipated cash flow, we analyzed the varying degrees of profit that may be necessary in order to attract a purchaser to a development project of this type. It is our opinion that some profit motive would be necessary if the project were sold as one transaction. Many developers have different criteria, and although projections are set forth, the actual profit realized is often difficult to measure. Developer's profit has ranged between 10 and 20 percent in the past. We have estimated developer's profit at 15.0 percent. This profit estimate is in no way offered, as a targeted profit motive to a typical developer, as profits of these types are often are greater. Developer's profit in Quarter 0 is estimated at 5%,

DISCOUNT RATE

The final step in the subdivision analysis is an allocation for discounting the anticipated cash flows. For example, when one considers the gross income potential; less expenses the resulting cash flows have a direct relationship to value. The rate at which these cash flows are discounted to a present worth affects the value of the subject property. In this analysis, we have used an 11.00% discount rate in order to discount the projected cash flows into a present worth.

We consulted the Korpacz Real Estate Investors Survey (4th Quarter 2005) regarding land development and the forecast assumptions (land development data are printed semi-annually). Discount rates for free and clear projects (including developer's profit) range from 12.0% to 25.00% with an average of 18.15%. According to Korpacz, "Some of the best development opportunities over the near term include infill housing and mixed-use projects, age-restricted communities, and resort/second-home building."

In consideration of the above information, it is our opinion that a discount rate 11,00 percent is reasonable. Based on this information, a computer analysis of the wholesale land and improvement value of the proposed 200-residential lot Spyglass at Weddington is on the following page. Therefore, the final value of the proposed subdivision by the Development Valuation Analysis is \$53,500,000 (R).

PROSPECTIVE VALUE - SPYGLASS AT WEDDINGTON
BY DEVELOPMENT VALUATION ANALYSIS - APRIL 1, 2007
\$53,500,000