

Book 0374 Page 794

Date Recorded 11-21-2013

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) C/A NO.

2012 CP 10 7 208

Road/Route **PORT ACCESS ROAD**
File **10.037345A**
Item
Project **GEN 8**
PIN **37345 RD01**
Tract **6/7**

FILED
2012 NOV -2 PM 2:42
JULIE J. ARMSTRONG
CLERK OF COURT

South Carolina Department of Transportation,)
)
Condemnor,)
)
VS.)
)
Albrecht, Albrecht, and Shuler, a Partnership,)
)
)
)
Landowner(s),)
)
)
)

CONDEMNATION NOTICE
AND
TENDER OF PAYMENT
(JURY TRIAL DEMANDED)

**Copy To: Rick Bybee, Attorney At Law, Smith, Bundy, Bybee, Barnett, P.C.,
Post Office Box 1542, Mount Pleasant, South Carolina 29465**

TO: THE LANDOWNER(S) ABOVE NAMED:

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

1. The South Carolina Department of Transportation (SCDOT) is the Condemnor herein and seeks to acquire the real property described herein for public purposes.

2. **Albrecht, Albrecht, and Shuler, a Partnership** is named as Landowner(s) in this action by virtue of its claim(s) of title (or other interests) as shown by that certain deed dated July 1, 1991 from Eloise Van Ness Albrecht recorded July 31, 1991 in the RMC Office for Charleston County in Deed Book Y204, Page 079.

Paid by Check # 140653031
Document # 3404070105

Settled out of Court for \$ 4,850,000.00
by Associate Counsel David Pagliarini.
See legal letter dated 10-24-13

Condemnation Notice and Tender of Payment (continued)

3. The following is a description of the real property subject to this action and a description of the interest sought to be acquired in and to the property by the Condemnor:

All that parcel or strip of land, to establish a right of way, containing 72,488 square feet (1.67 acres), more or less, damages, and all improvements thereon including 2,714 square feet of Building 2 and Chipper Hopper Cover (735 square feet), and all improvements thereon if any, including rights of access an may be needed for controlled access facilities, owned by Albrecht, Albrecht, and Shuler, a Partnership shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part of hereof, between approximate survey stations 5845+00 and 5852+00 left and right Line "C" Survey and 5814+00 and 5816+00 left and right Line "A" Survey.

Tax Map Numbers 466-16-00-099 and 466-16-00-117.

4. The SCDOT is vested with the power of eminent domain pursuant to Section 57-5-320 and Section 28-2-60, Code of Laws of South Carolina, 1976, as amended.

5. The property sought herein is to be acquired for public purposes, more particularly for the construction of **FROM: I-26 (EXIT 216) TO: PROPOSED PORT TERMINAL.**

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

7. The SCDOT has complied with the requirements set forth in Section 28-2-70(a), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and making the appraisal available to the Landowner(s) where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action, or pursuant to Section 12-28-2940, Code of Laws of South Carolina, 1976, as amended, an appraisal of this property was not required.

8. Project plans may be inspected at the office of **Charleston County Maintenance Office, 6355 Fain Street, North Charleston, South Carolina 29418, under PCN 37345 RD01, Tract 6/7, Port Access Road.**

9. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING ALL DAMAGES TO BE THE SUM OF **ONE MILLION TWENTY-SIX THOUSAND THREE HUNDRED AND NO/100 DOLLARS (\$1,026,300.00)(TRACT 6: \$980,300.00, TRACT 7: \$46,000.00)** AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER(S).

Condemnation Notice and Tender of Payment (continued)

10. Payment of this amount will be made to the Landowner(s) if within thirty (30) days of service of this Condemnation Notice, the Landowner(s) in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Kenneth C. Feaster, Director, Rights of Way, South Carolina Department of Transportation, 955 Park Street, Columbia, South Carolina 29202. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

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

12. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

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

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

Condemnation Notice and Tender of Payment (continued)

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

HINCHEY, MURRAY & PAGLIARINI, LLC

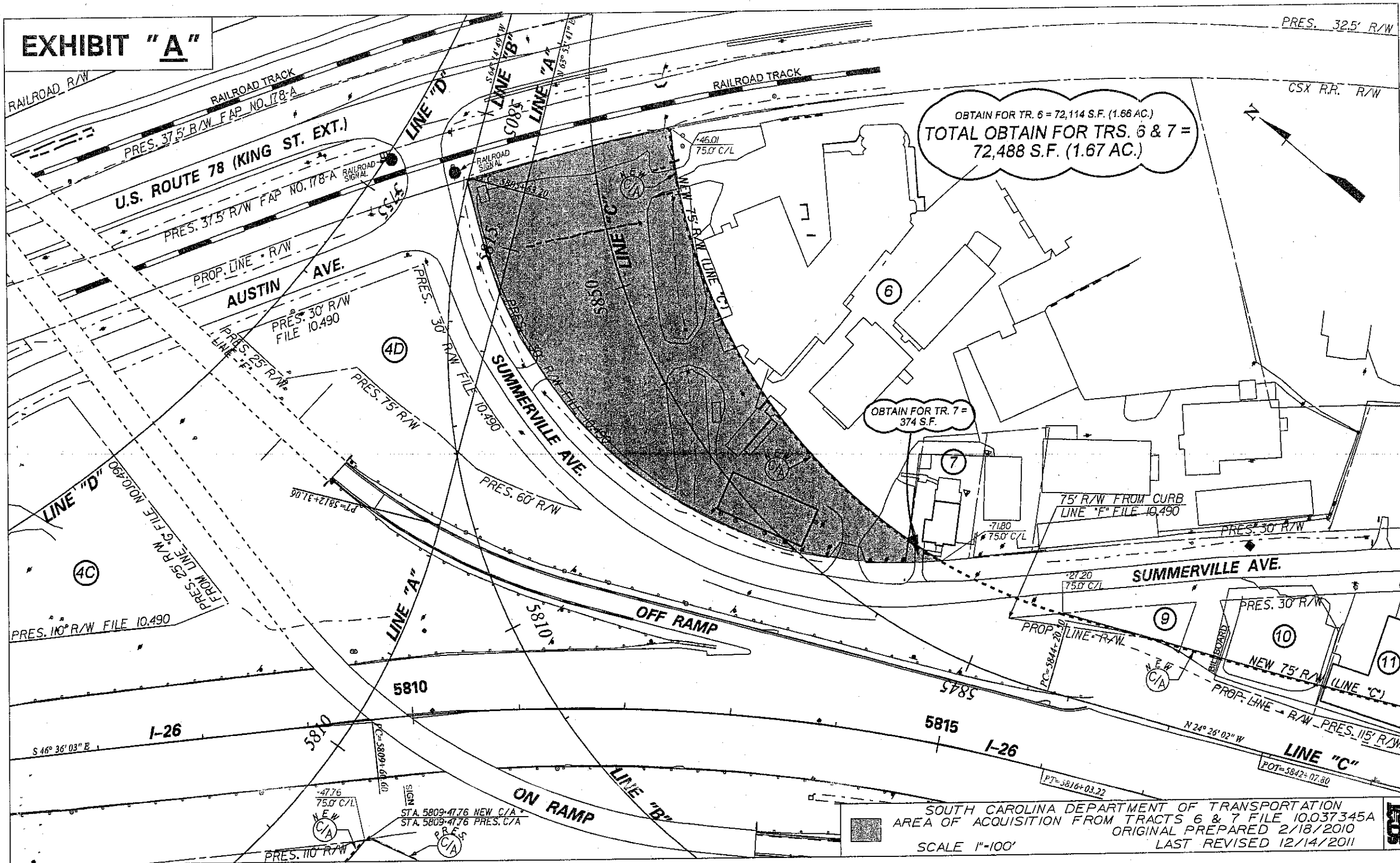
BY: 

David G. Pagliarini
234 Seven Farms Drive, Suite 300
Charleston, South Carolina 29492
Telephone: (843) 971-8646
Attorney for Condemnor (SCDOT)

Charleston, South Carolina

October 30, 2012

EXHIBIT "A"



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS

)

) C/A NO.: 2012-CP-10-7208

Road/Route PORT ACCESS ROAD

File 10.037345A

Item

Project GEN 8

PIN 37345 RD01

Tract 6/7

South Carolina Department of Transportation,

Condemnor,

VS.

Albrecht, Albrecht, and Shuler, a Partnership,

Landowner(s),

)

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RELEASE

WHEREAS, the South Carolina Department of Transportation ("SCDOT"), served a Condemnation Notice on the Landowner on or about November 19, 2012 to acquire certain property necessary for the construction of the above-referenced project; and

WHEREAS, the property being acquired is more specifically set forth in the Condemnation Notice and SCDOT plans for the above-referenced project, which Condemnation Notice and plans are incorporated herein by reference; and

WHEREAS, the Landowner rejected SCDOT's Tender of Payment of One Million Twenty Six Thousand Three Hundred and No/100 Dollars (\$1,026,300.00) as just compensation for the property taken; and

WHEREAS, prior to the trial of this case, the parties attended mediation agreed upon the sum of **Four Million Eight Hundred Fifty Thousand and No/100 Dollars (\$4,850,000.00)** as just

compensation for the property taken, **less Thirty Five Thousand and No/100 dollars (\$35,000.00)** received by the Landowner as a draw down pursuant to the terms of a Consent Order filed on January 9, 2013, as well as additional terms set forth in the Settlement Agreement executed by the parties on October 22, 2013, which Settlement Agreement is incorporated herein by reference; and

WHEREAS, the remaining funds on deposit with the Court, **Nine Hundred Ninety One Thousand Three Hundred and No/100 Dollars (\$991,300.00), plus any accrued interest**, shall be returned to the South Carolina Department of Transportation, c/o Brian Keys, Director of Rights of Way, P.O. Box 191, Columbia, South Carolina 29202; and

WHEREAS, SCDOT shall pay the sum of **Four Million Eight Hundred Fifty Thousand and No/100 Dollars (\$4,850,000.00)** in trust to the Smith, Bundy, Bybee & Barnett, P.C. Trust Account for the benefit of the Landowner; and

WHEREAS the Condemnor and Landowner further agreed that this case has been settled, and that this case should be ended and stricken from the calendar, that the above-entitled action should be and is dismissed; and

KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the sum of **Four Million Eight Hundred Fifty Thousand and No/100 Dollars (\$4,850,000.00)** paid to the Landowner by SCDOT as described above, receipt of which is hereby acknowledged, the Landowner, for itself, its executors, administrators, beneficiaries and assigns, does hereby acknowledge the aforesaid sum as payment of just compensation along with the terms and conditions of the Settlement Agreement of October 22, 2013, as a result of the aforesaid condemnation and acquisition by SCDOT, and does hereby release, acquit and forever discharge the State of South Carolina, its agencies, departments, institutions, boards and commissions, and officials, agents or employees thereof or successors thereto, and particularly SCDOT from any and all claims, demands, damages, actions, causes of action, and suits at

law or in equity, of whatsoever kind or nature, arisen, arising, or to arise from or because of any matter relating to the lawful condemnation of this tract of land for the above-referenced project excepting only relocation claims of its tenant/business displacee.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this

23RD day of OCTOBER, 2013.

IN THE PRESENCE OF:

Sharon R. McGowan (sign name)

Sharon R. McGowan (print name)

Jonette R. Hegwood (sign name)

Jonette R. Hegwood (print name)

Joyce A. Shuler
Albrecht, Albrecht & Shuler, a Partnership
Landowner

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) C/A NO.: 2012-CP-10-7208

Road/Route **PORT ACCESS ROAD**
File **10.037345A**
Item
Project **GEN 8**
PIN **37345 RD01**
Tract **6/7**

South Carolina Department of Transportation,

Condemnor,

VS.

Albrecht, Albrecht, and Shuler, a Partnership,

Landowner(s),

CONSENT ORDER
OF DISMISSAL

FILED
2013 NOV 18 PM 1:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

THIS MATTER comes before this Court upon the motion of the Condemnor, South Carolina Department of Transportation, and with the consent of the parties, pursuant to Rule 41(a)(2) of the South Carolina Rules of Civil Procedure, for an Order to end this case because the case has been settled pursuant to the South Carolina Code of Laws section 28-2-40 (1987).

WHEREAS the Condemnor properly filed and served a Notice of Condemnation on or about November 19, 2012. At the time of filing, Condemnor deposited with the Clerk of Court the sum of One Million Twenty Six Thousand Three Hundred and No/100 Dollars (\$1,026,300.00); and

WHEREAS the Condemnor and Landowner have agreed that Four Million Eight Hundred Fifty Thousand and No/100 Dollars (\$4,850,000.00) is just compensation for the Condemnor's acquisition of the property more particularly described in the Condemnation Notice and Tender of Payment, such sum to be paid, less Thirty Five Thousand and No/100 dollars (\$35,000.00), which was received by the Landowner as a draw down pursuant to the terms of a Consent Order filed on January 9, 2013, by SCDOT in trust to the

Smith, Bundy, Bybee & Barnett, P.C. Trust Account for the benefit of the Landowner and other consideration as outlined in the attached Settlement Agreement of October 22, 2013 and the Court of Common Pleas shall retain jurisdiction to enforce the terms of that agreement; and

WHEREAS the Condemnor and Landowner have agreed that this case has been settled and therefore should be ended and stricken from the calendar, that the remaining monies on deposit with the Clerk of Court, Nine Hundred Ninety One Thousand Three Hundred and No/100 Dollars (\$991,300.00), plus any accrued interest, should be returned to the SCDOT, that the SCDOT shall pay Four Million Eight Hundred Fifty Thousand and No/100 Dollars (\$4,850,000.00), less Thirty Five Thousand and No/100 Dollars (\$35,000.00), as described above, for the benefit of the Landowner, and that the above-titled action be and is dismissed, but the Court shall retain jurisdiction to enforce the terms of the above referenced settlement agreement.

IT IS THEREFORE ORDERED that this case be ended and stricken, from the calendar; that the Clerk of Court return the monies on deposit with the Court to the South Carolina Department of Transportation, c/o Brian Keys, Director of Rights of Way, P.O. Box 191, Columbia, South Carolina 29202; that the Clerk of Court annotate a copy of the Condemnation Notice with the date and amount of settlement as **Four Million Eight Hundred Fifty Thousand and No/100 Dollars (\$4,850,000.00)**, and file the annotated Condemnation Notice with the Register of Mesne Conveyance for Charleston County, duly indexed, as provided by law for the recording and indexing of deeds, showing the transfer of the property to the Condemnor, such filing being exempt from filing fees as provided under South Carolina Code of Laws, section 12-24-40 (Cum. Supp. 1997).

[signature page follows]

AND IT IS SO ORDERED.

This 11/14 day of October, 2013.

In Charleston, South Carolina

S. Roger Young
Presiding Judge
Ninth Judicial Circuit

WE CONSENT TO THE ABOVE ORDER:

[Signature]
David G. Pagliarini, Esq.
Jessica S. Jubick
Hinchey, Murray & Pagliarini, LLC
234 Seven Farms Drive, Suite 111A
Daniel Island, SC 29492
(843) 971-8646
Attorneys for Condemnor

[Signature]
Richard D. Bybee, Esq.
Smith, Bundy, Bybee & Barnett, P.C.
P.O. Box 1542
Mt. Pleasant, SC 29465
(843) 881-1623
Attorneys for Landowner

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. & C.S.
By [Signature]
DEPUTY CLERK



BP0374794

PGS:

6

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Road/Route **PORT ACCESS ROAD**
 File **10.037345A**
 Item
 Project **GEN 8**
 PIN **37345 RD01**
 Tract **6/7**

South Carolina Department of Transportation,

Condemnor,

VS.

Albrecht, Albrecht, and Shuler, a Partnership,

Landowner(s),

) IN THE COURT OF COMMON PLEAS
) C/A NO.
)

2012 CP 10 7 208

FILED
 2012 NOV -2 PM 2:40
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

CONDEMNATION NOTICE
 AND
 TENDER OF PAYMENT

(JURY TRIAL DEMANDED)

Copy To: **Rick Bybee, Attorney At Law, Smith, Bundy, Bybee, Barnett, P.C.,**
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Road/Route Port Access Road File 10.037345A County CHARLESTON Tract 6/7

Condemnation Notice and Tender of Payment (continued)

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Condemnation Notice and Tender of Payment (continued)

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Condemnation Notice and Tender of Payment (continued)

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HINCHEY, MURRAY & PAGLIARINI, LLC

BY: 

David C. Pagliarini

234 Seven Farms Drive, Suite 300

Charleston, South Carolina 29492

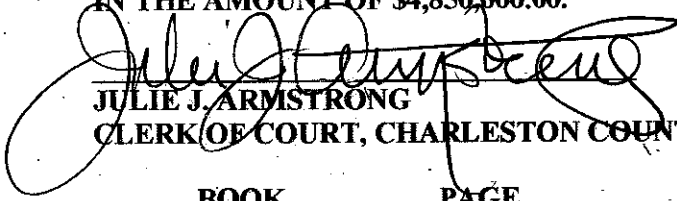
Telephone: (843) 971-8646

Attorney for Condemnor (SCDOT)

Charleston, South Carolina

October 30, 2012

THIS CASE IS ENDED PURSUANT TO THE
CONSENT ORDER OF DISMISSAL DATED 11/18/13
IN THE AMOUNT OF \$4,850,000.00.


JULIE J. ARMSTRONG
CLERK OF COURT, CHARLESTON COUNTY

BOOK

PAGE

Road/Route Port Access Road

File 10.037345A

County CHARLESTON

Tract 6/7

EXHIBIT "A"

RAILROAD R/W
RAILROAD TRACK
PRES. 37.5' B/W FAP NO. 078-A
U.S. ROUTE 78 (KING ST. EXT.)
PRES. 37.5' R/W FAP NO. 178-A
PROV. LINE - R/W
AUSTIN AVE.
PRES. 30' R/W FILE 10.490
LINE "D"
PRES. 25' R/W FILE 10.490
PRES. 10' R/W FILE 10.490
SUMMERVILLE AVE.
OFF RAMP
ON RAMP
LINE "B"
LINE "C"
LINE "A"
OBTAIN FOR TR. 6 = 72,114 S.F. (1.66 AC.)
TOTAL OBTAIN FOR TRS. 6 & 7 = 72,488 S.F. (1.67 AC.)
OBTAIN FOR TR. 7 = 374 S.F.
75' R/W FROM CURB LINE "A" FILE 10.490
PRES. 30' R/W
SUMMERVILLE AVE.
PRES. 30' R/W
NEW 75' R/W (LINE "C")
PROP. LINE - R/W
PRES. 115' R/W
PT. SB-16+03.22
I-26
STA. 5809+77.76 NEW C/L
STA. 5809+77.76 PRES. C/L
PRES. 110' R/W
N 34° 26' 02" W
PT. SB-16+03.22

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
AREA OF ACQUISITION FROM TRACTS 6 & 7 FILE 10.037345A
ORIGINAL PREPARED 2/18/2010
LAST REVISED 12/14/2011
SCALE 1"=100'

is Paradoxes (Cont'd)