

# Faherty Affirmation

## Exhibit # 23

Trump Park Avenue LLC  
Units  
As of June 30, 2011

Unit Count	Unit Number	Total	Sales Price Unsold	Sales Price Sold	Unsold Unit Count	Sold Unit Count	Sq Ft	Sq Ft Unsold	Sq Ft Sold
1	2A	13,250,000		13,250,000	0	1	3,794		3,794
2	3A	8,500,000		8,500,000	0	1	5,473		5,473
3	3B	19,358,750	19,358,750		1	0	4,555	4,555	
4	4B	6,100,000		6,100,000	0	1	3,531		3,531
5	4C	6,910,000		6,910,000	0	1	4,597		4,597
6	5A	3,300,000		3,300,000	0	2	717		717
7	5B	combined w/ 5A			0	0	1,641		1,641
8	5C	1,310,000		1,310,000	0	1	770		770
9	5D	3,600,000		3,600,000	0	2	1,554		1,554
10	5E	combined w/ 5D			0	0	817		817
11	5F	800,000		800,000	0	1	730		730
12	5G	1,658,000		1,658,000	0	1	1,549		1,549
13	5H	840,000		840,000	0	1	733		733
14	5J	1,165,000		1,165,000	0	1	1,322		1,322
15	6A	765,000		765,000	0	1	707		707
16	6D	2,600,000		2,600,000	0	1	1,543		1,543
17	6E	1,160,000		1,160,000	0	1	817		817
18	6F	800,000		800,000	0	1	730		730
19	6G	1,500,000		1,500,000	0	1	1,549		1,549
20	6H	2,410,000		2,410,000	0	2	733		733
21	6J	Combined w/ 6H			0	0	1,322		1,322
22	7C	1,050,000		1,050,000	0	1	778		778
23	7F	800,000		800,000	0	1	730		730
24	7H	734,000		734,000	0	1	714		714
25	7J	1,595,000		1,595,000	0	1	1,319		1,319
26	8A	4,540,000		4,540,000	0	3	717		717
27	8B	combined w/8A,B,C			0	0	1,641		1,641
28	8C	combined w/8A,B,C			0	0	770		770
29	8D	2,000,000		2,000,000	0	1	1,336		1,336
30	8F	950,000		950,000	0	1	733		733
31	8G	1,600,000		1,600,000	0	1	1,572		1,572
32	8J	1,380,000		1,380,000	0	1	1,352		1,352
33	9A	795,000		795,000	0	1	717		717
34	9B	2,424,000		2,424,000	0	1	1,641		1,641
35	9C	1,100,000		1,100,000	0	1	770		770
36	9D	3,310,000		3,310,000	0	1	1,554		1,554
37	9E	1,230,000		1,230,000	0	1	817		817
38	9F	922,000		922,000	0	1	730		730
39	9G	1,975,000		1,975,000	0	1	1,549		1,549
40	9H	766,000		766,000	0	1	733		733
41	9J	1,322,000		1,322,000	0	1	1,322		1,322
42	10A	4,900,000		4,900,000	0	3	717		717
43	10B	combined w/ 10A,B,C			0	0	1,641		1,641
44	10C	combined w/ 10A,B,C			0	0	770		770
45	10D	3,000,000		3,000,000	0	1	1,554		1,554
46	10E	2,430,000	2,430,000		1	0	810	810	
47	10F	908,000		908,000	0	1	730		730
48	10G	2,170,000		2,170,000	0	1	1,547		1,547
49	10H	830,000		830,000	0	1	733		733
50	10J	1,392,000		1,392,000	0	1	1,322		1,322
51	11A	805,000		805,000	0	1	717		717
52	11B	2,588,000		2,588,000	0	1	1,641		1,641
53	11C	1,248,000		1,248,000	0	1	770		770

Trump Park Avenue LLC  
Units  
As of June 30, 2011

Unit Count	Unit Number	Total	Sales Price Unsold	Sales Price Sold	Unsold Unit Count	Sold Unit Count	Sq Ft	Sq Ft Unsold	Sq Ft Sold
54	11D	2,956,000		2,956,000	0	1	1,554		1,554
55	11E	1,160,000		1,160,000	0	1	817		817
56	11F	935,000		935,000	0	1	730		730
57	11G	2,250,000		2,250,000	0	1	1,549		1,549
58	11H	854,000		854,000	0	1	733		733
59	11J	724,000		724,000	0	1	672		672
60	11K	700,000		700,000	0	1	647		647
61	12A	895,000		895,000	0	1	717		717
62	12B	2,500,000		2,500,000	0	1	1,641		1,641
63	12C	1,200,000		1,200,000	0	1	770		770
64	12D	3,500,000		3,500,000	0	1	1,554		1,554
65	12E	2,451,000	2,451,000		1	0	817	817	
66	12F	925,000		925,000	0	1	730		730
67	12G	2,000,000		2,000,000	0	1	1,550		1,550
68	12H	780,000		780,000	0	1	695		695
69	12K	736,000		736,000	0	1	664		664
70	14A	910,000		910,000	0	1	717		717
71	14B	3,650,000		3,650,000	0	1	1,641		1,641
72	14C	1,625,000		1,625,000	0	1	770		770
73	14D	3,000,000		3,000,000	0	1	1,554		1,554
74	14E	1,180,000		1,180,000	0	1	817		817
75	14F	990,000		990,000	0	1	730		730
76	14G	2,425,000		2,425,000	0	1	1,549		1,549
77	14H	900,000		900,000	0	1	733		733
78	14J	799,000		799,000	0	1	672		672
79	14K	730,000		730,000	0	1	647		647
80	15C	1,267,000		1,267,000	0	1	761		761
81	15E	1,210,000		1,210,000	0	1	1,027		1,027
82	15F	1,075,000		1,075,000	0	1	730		730
83	15G	2,180,000		2,180,000	0	1	1,549		1,549
84	15H	876,000		876,000	0	1	733		733
85	15J	1,602,000		1,602,000	0	2	672		672
86	15K	combined w/15J			0	0	645		645
87	16B	Mr. Trump	Mr. Trump	Mr. Trump	1	0	1,148	1,148	
88	16C	1,500,000		1,500,000	0	1	765		765
89	16D	2,100,000		2,100,000	0	1	1,153		1,153
90	16E	2,000,000		2,000,000	0	1	1,226		1,226
91	16F	1,150,000		1,150,000	0	1	774		774
92	16G	4,560,000		4,560,000	0	1	2,025		2,025
93	16H	1,797,500		1,797,500	0	1	1,333		1,333
94	17A	4,000,000		4,000,000	0	1	1,865		1,865
95	17B	1,400,000		1,400,000	0	1	774		774
96	17C	3,650,000		3,650,000	0	1	1,539		1,539
97	17D	1,300,000		1,300,000	0	1	834		834
98	17E	1,050,000		1,050,000	0	1	754		754
99	17F	3,160,000		3,160,000	0	1	2,025		2,025
100	17G	2,275,000		2,275,000	0	2	1,340		1,340
101	18B	combined w/ 18A			0	0	1,558		1,558
102	18C	4,460,549		4,460,549	0	1	1,813		1,813
103	18D	5,250,000		5,250,000	0	1	2,244		2,244
104	18E	1,275,000		1,275,000	0	1	1,291		1,291
105	19A	14,449,500	14,449,500		1	0	3,211	3,211	
106	19C	4,000,000		4,000,000	0	1	1,774		1,774
107	19D	5,100,000		5,100,000	0	1	2,178		2,178

Trump Park Avenue LLC  
Units  
As of June 30, 2011

Unit Count	Unit Number	Total	Sales Price Unsold	Sales Price Sold	Unsold Unit Count	Sold Unit Count	Sq Ft	Sq Ft Unsold	Sq Ft Sold
108	PH 20	35,000,000	35,000,000		1	0	7,132	7,132	
109	PH 21	35,000,000	35,000,000		1	0	7,132	7,132	
110	PH 22	17,500,000		17,500,000	0	1	7,132		7,132
111	PH 23	33,000,000	33,000,000		1	0	6,224	6,224	
112	PH 24	32,000,000	32,000,000		1	0	6,192	6,192	
113	PH 25	22,500,000		22,500,000	0	2	4,064		4,064
114	PH 26	combined w/ PH 25			0	0	4,164		4,164
115	PH 27	20,820,000	20,820,000		1	0	4,164	4,164	
116	PH 28	20,820,000	20,820,000		1	0	4,164	4,164	
117	PH 29	12,000,000		12,000,000	0	1	4,164		4,164
118	PH 30	12,750,000		12,750,000	0	1	4,164		4,164
119	PH 31	31,000,000	31,000,000		1	0	5,284	5,284	
120	4A	4,021,500	4,021,500		1	0	1,149	1,149	
121	6B	5,733,000	5,733,000		1	0	1,638	1,638	
122	6C	2,200,000		2,200,000	0	1	743		743
123	7A/B	8,239,000	8,239,000		1	0	2,354	2,354	
124	7D	5,411,000	5,411,000		1	0	1,546	1,546	
125	7E	2,782,500	2,782,500		1	0	795	795	
126	7G	5,011,500	5,011,500		1	0	1,542	1,542	
127	8E	3,051,000	3,051,000		1	0	1,017	1,017	
128	8H	2,037,000	2,037,000		1	0	679	679	
129	12J	2,079,000	2,079,000		1	0	693	693	
130	15A/B	8,428,000	8,428,000		1	0	2,408	2,408	
131	15D	3,825,000		3,825,000	0	1	1,329		1,329
132	16A	Mr. Trump	Mr. Trump	Mr. Trump	1	0	739	739	
133	18A	7,000,000		7,000,000	0	1	1,391		1,391
134	19F	1,825,000		1,825,000	0	1	992		992
		<b>572,286,799</b>	<b>293,122,750</b>	<b>279,164,049</b>	<b>23</b>	<b>111</b>	<b>220,037</b>	<b>65,393</b>	<b>150,850</b>

Sales Price 279,164,049  
 Sq footage sold 150,850  
 Price/Sq FT 1,851

NOTE:

Unit 2A selling price is for commercial space and apt so selling price and sq footage omitted from totals.

**Billing CheckList**

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**TRUMP PARK AVENUE LLC**  
 Building No: 502LLC

502 PARK AVENUE

UnitNo	Tenant	Lease Exp	Billing Period	Chrg Cd	Charge Description	Amt Billed	Arrears	Total	
400	NATIONAL RECOVERY SYS	03/01/02	06/01/11	0	RENT	966.97	-6,773.59	-5,806.62	
6B	ALLYBOR INC.	08/31/11	06/01/11	0	RENT	3,129.25		3,129.25	
7A	JACOB, P. GANGEL	10/31/13	06/01/11	0	RENT	1,384.24		1,384.24	
7B	JACOB, P. GANGEL	10/31/13	06/01/11	0	RENT	2,733.55		2,733.55	
7D	BLANK, BENJAMIN & SON	03/31/11	06/01/11	0	RENT	3,768.31		3,768.31	
7G	KOENIG, JULIAN	08/31/12	06/01/11	0	RENT	3,341.06		3,341.06	
8H	KARETSOS, MARIA	10/31/10	06/01/11	0	RENT	1,772.65	5,215.20	6,987.85	
15AB	PEGASUS ENTERPRISES	06/30/11	06/01/11	0	RENT	3,725.41	15,291.00	19,016.41	
COM 1	CAPITAL ONE N.A.	01/31/12	06/01/11	1	RENT 2500.01	66,666.67	-66,666.67	0.00	
			06/01/11	3	BRONZE MAINT.	547.60	-547.60	0.00	
					<b>Totals</b>	<b>67,214.27</b>	<b>-67,214.27</b>	<b>0.00</b>	
COM 2	TOWN SPORTS INTERNAT	03/31/12	06/01/11	37	RETAIL 2500.01	65,349.79	30,396.87	95,746.66	
			06/01/11	6	WATER & SEWER		14,105.22	14,105.22	
					<b>Totals</b>	<b>65,349.79</b>	<b>44,502.09</b>	<b>109,851.88</b>	
7E	INDIAN SILK MANUFACTU	06/30/14	06/01/11	0	RENT	1,567.43	1,567.43	3,134.86	
10E	WINSTON, CAROL	04/30/12	06/01/11	0	RENT	2,413.95		2,413.95	
12E	FLYNN, LUISA	12/31/10	06/01/11	0	RENT	1,897.00		1,897.00	
PH20	WITKOFF, STEVEN	07/31/12	06/01/11	62	RENTAL CHG	60,000.00		60,000.00	
PH21	TISCH, JONATHAN	11/30/11	06/01/11	62	RENTAL CHG	92,500.00	-92,500.00	0.00	
3B	ROSEN, MARK	07/31/12	06/01/11	62	RENTAL CHG	33,000.00		33,000.00	
PH27	RABIN, STUART	06/30/11	06/01/11	62	RENTAL CHG	33,000.00		33,000.00	
PH28	TRUMP, IVANKA	05/31/16	06/01/11	62	RENTAL CHG	10,000.00		10,000.00	
19A	ROBBINS, AMY	08/31/11	06/01/11	7	ELECTRIC	550.00		550.00	
			06/01/11	62	RENTAL CHG	48,825.00		48,825.00	
						<b>otals</b>	<b>49,375.00</b>	<b>0.00</b>	<b>49,375.00</b>
16 B									
SR13	RUBIN, SHELLEY				TORAGE ROOM	1,000.00		1,000.00	
PH31/32	CRM INC.								

Comm'c SPACE  
 0.00 \*

66,667.00 +  
 65,350.00 +  
 132,017.00 \*

**Billing CheckList**

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**TRUMP PARK AVENUE LLC**  
**Building: 502LLC**  
**22 Units**

<b>Building Totals</b>				
<b>Charge Code</b>	<b>Charge Description</b>	<b>Total Billed</b>	<b>Total Arrears</b>	<b>Total Billing and Arrears</b>
0	RENT	26,699.82	15,300.04	41,999.86
1	RENT	66,666.67	-66,666.67	0.00
3	BRONZE MAINT.	547.60	-547.60	0.00
6	WATER & SEWER	0.00	14,105.22	14,105.22
7	ELECTRIC	550.00	0.00	550.00
15	STORAGE ROOM	1,000.00	0.00	1,000.00
37	RETAIL	65,349.79	30,396.87	95,746.66
62	RENTAL CHG	277,325.00	-92,500.00	184,825.00
	<b>Building Totals</b>	<b>438,138.88</b>	<b>-99,912.14</b>	<b>338,226.74</b>

NYSCEF DOC. NO. 62  
Company: 502LLC

TRUMP PARK AVENUE LLC

RECEIVED NYSCEF: 10/13/2022  
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Detail General Ledger (Cash)  
01/01/11 thru 06/30/11

Item Count	Description	Src	Trans Date	Check / Voucher No.	Sub Code	Cash Account	Prior Period YTD	Debits	Credits	Monthly Totals	Running Balance	
<b>Account: 16084 MTGE RECEIVABLE - SUPER APT</b>												
1	GENERAL( 502LLC/GEN 1) (CR-82698) pri 1627.24 int 10076.76 1/11	CR	01/07/11			10115	0.00		-1,627.24		-1,627.24	
2	GENERAL( 502LLC/GEN 1) (CR-83832) PRI-1638.09 INT-10065.91	CR	02/02/11			10115			-1,638.09		-3,265.33	
3	GENERAL( 502LLC/GEN 1) (CR-85667) interest and prin	CR	03/01/11			10115			-1,638.09		-4,903.42	
4	GENERAL( 502LLC/GEN 1) (CR-87541) 4/11 Pri and Interest	CR	04/01/11			10115			-1,660.01		-6,563.43	
5	GENERAL( 502LLC/GEN 1) (CR-90155) interest and principal 5/11	CR	05/16/11			10115			-1,660.01		-8,223.44	
6	GENERAL( 502LLC/GEN 1) (CR-90832) PRI AND INTEREST	CR	06/01/11			10115			-1,682.21		-9,905.65	
								<b>Grand Total Debits</b>	<b>Grand Total Credits</b>	<b>Total Debits Plus Credits</b>		
								0.00	-9,905.65	-9,905.65		

0 00 \*

24/31/10  
2011  
PAYS  
Bal 6/30/11  
1,511,544.92 +  
9,905.65 -  
1,501,639.27 \*

MAZARS-NYAG-00003295

FOIA/FOIL CONFIDENTIAL TREATMENT REQUESTED

NYSCEF DOC. NO. 62  
Company: 502LLC

**TRUMP PARK AVENUE LLC**

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**Detail General Ledger (Cash)**  
01/01/10 thru 12/31/10

Item Count	Description	Src	Trans Date	Check / Voucher No.	Sub Code	Cash Account	Prior Period YTD	Debits	Credits	Monthly Totals	Running Balance
<b>Account: 16084 MTGE RECEIVABLE - SUPER APT</b>											
1	GENERAL( 502LLC/GEN 1) (CR-62842) 1/10	CR	01/04/10			10115	1,530,230.42		-1,502.53		1,528,727.89
2	GENERAL( 502LLC/GEN 1) (CR-64123) 2/10	CR	02/01/10			10115			-1,512.55		1,527,215.34
3	GENERAL( 502LLC/GEN 1) (CR-65457) 3/10	CR	03/03/10			10115			-1,522.63		1,525,692.71
4	GENERAL( 502LLC/GEN 1) (CR-67188) 4/10	CR	04/05/10			10115			-1,532.79		1,524,159.92
5	GENERAL( 502LLC/GEN 1) (CR-68948) 5/10	CR	05/03/10			10115			-1,543.00		1,522,616.92
6	GENERAL( 502LLC/GEN 1) (CR-70170) int and pri	CR	06/01/10			10115			-1,553.29		1,521,063.63
7	GENERAL( 502LLC/GEN 1) (CR-72238) 7/10	CR	07/06/10			10115			-1,553.29		1,519,510.34
8	GENERAL( 502LLC/GEN 1) (CR-73502) int 10129.93 pri 1574.07	CR	08/03/10			10115			-1,574.07		1,517,936.27
9	GENERAL( 502LLC/GEN 1) (CR-75582) INT AND PRI	CR	09/02/10			10115			-1,584.56		1,516,351.71
10	GENERAL( 502LLC/GEN 1) (CR-76482) pri and interest	CR	10/01/10			10115			-1,584.56		1,514,767.15
11	GENERAL( 502LLC/GEN 1) (CR-80156) int and pri	CR	11/04/10			10115			-1,605.76		1,513,161.39
12	GENERAL( 502LLC/GEN 1) (CR-80976) int and prin	CR	12/13/10			10115			-1,616.47		1,511,544.92
								<b>Grand Total Debits</b>	<b>Grand Total Credits</b>	<b>Total Debits Plus Credits</b>	
								0.00	-18,685.50	-18,685.50	

MAZARS-NYAG-00003296

FOIA/FOIL CONFIDENTIAL TREATMENT REQUESTED



**SIXTEENTH AMENDMENT TO CONDOMINIUM OFFERING PLAN  
FOR TRUMP PARK AVENUE CONDOMINIUM  
502 PARK AVENUE  
NEW YORK, NEW YORK**

The Condominium Offering Plan for Trump Park Avenue Condominium, dated March 26, 2003 (the "Plan"), is hereby amended as follows:

1. Purpose of Amendment

The purpose of this amendment is to effect a price change with respect to a certain Storage Units owned by Trump Park Avenue LLC ("Sponsor").

2. Increases in Certain Purchase Prices

Schedule A of the Plan is hereby amended to reflect an increase in the purchase prices of the following Storage Units as follows:

UNIT DESIGNATION	APPROX UNIT AREA (Sq. ft.)	NEW PURCHASE PRICE
ST6	61	\$ 183,000
ST10	33	\$ 99,000
ST12	34	\$ 102,000
ST13	37	\$ 111,000
ST15	63	\$ 189,000
ST20	45	\$ 135,000
ST25	94	\$ 282,000

1,101,000

Sponsor reserves the right to revise further the purchase prices and other terms of sale of Units in accordance with the Plan, except that no such change with respect to any Unit for which an Agreement is then in effect may be made without the consent of the Purchaser thereof.

3. Definitions

Except as herein defined, all capitalized terms used in this Amendment which are defined in the Plan shall have the respective meaning ascribed to such terms in the Plan.

4. Incorporation of the Plan

The Plan, as modified and supplemented by this Amendment, is incorporated herein by reference with the same force and effect as if set forth at length.

5. No Material Changes in the Plan

There have been no material changes in the Plan, except as set forth in this Amendment. The Plan, as hereby amended, does not knowingly omit any material fact.

Dated: January 29, 2009

TRUMP PARK AVENUE LLC

**EXHIBIT A**  
**CONSOLIDATED NOTE**

\$ 23,000,000

July 23, 2010  
New York City, NY

**FOR VALUE RECEIVED, TRUMP PARK AVENUE, LLC**, a Delaware Limited Liability Company, having an address at 725 Fifth Avenue, New York, NY 10022, (the "Borrower"), promise to pay to the order of **INVESTORS SAVINGS BANK**, having an office at 101 John F. Kennedy Parkway, Short Hills, NJ 07078, ("Bank" and or "Lender"), at such office of Bank or at such other place as Bank may designate from time to time in writing, the principal sum of **TWENTY-THREE MILLION AND 00/100 (\$23,000,000.00) DOLLARS** ("Loan") lawful money of the United States of America, or so much thereof as has been advanced and remains outstanding, together with interest thereon from the date hereof at the rates hereinafter provided, and payable as hereinafter provided.

1. Interest and Payments.

Commencing the date of this Note and continuing through August 1, 2015, interest shall be calculated at the rate of 5.50% percent per annum. Monthly payments of principal and interest shall be made to the Bank in accordance with a thirty (30) year amortization schedule on the first (1<sup>st</sup>) day of each month commencing September 1, 2010. Monthly payments (including escrow charges, if applicable) will be automatically charged to an operating account of Borrower provided to Bank.

The unpaid balance of principal and interest, if not sooner paid, shall be due and payable on August 1, 2015.

2. Interest Calculations. Interest shall be calculated using a time factor of 365/360 day year (366 in a leap year).

3. Application of Payments. Monthly payments (including escrow charges, if required) will be automatically charged to an operating account provided by Borrower to Bank. Monthly payments prior to maturity shall be applied first, to advances and other charges due in connection with the Loan; second to late charges due; third, to interest due; and the balance, if any, to principal unless otherwise provided herein. The making of any partial prepayment shall not change the due dates or amounts of monthly installment payments next becoming due, but shall only change the allocations of future payments of interest and principal based on such prepayment and produce possibly an earlier payoff date on this Note.

4. Late Fee. If any payment (including tax or insurance escrow payments) is not received by Bank within fifteen (15) days following its due date, without limiting any right or remedy under this Note, the Mortgage and Security Agreement or any other Loan Document, Bank may charge a late fee equal to Five Percent (5%) of the total amount overdue.

5. Prepayment. This Note may be prepaid in full or in part at any time provided however, that contemporaneously with such prepayment of the Loan (whether prior to or after

# Faherty Affirmation

## Exhibit # 24

**PBC****Trump Sponsor Unit Inventory Valuation**

September 21st, 2012

**502 Park Avenue**

<u>Unit</u>	<u>Offering Plan Price:</u>
3B	\$19,358,750
4A	\$4,021,500
6B	\$5,733,000
7A/B	\$8,239,000
7D	\$5,411,000
7E	\$2,782,500
7G	\$5,011,500
8E	\$3,051,000
8H	\$2,037,000
10E	\$2,430,000
12E	\$2,451,000
12J	\$2,079,000
15AB	\$8,428,000
19A	\$14,449,500
PH20	\$35,000,000
PH21	\$35,000,000
PH23	\$33,000,000
PH24	\$32,000,000
PH27	\$20,820,000
PH28	\$20,820,000
PH31/32	\$31,000,000
<b>Total:</b>	<b>\$293,122,750 2500.01</b>

Note: PH 31/32 reduced from \$51mil to \$31mil

**Rent Roll**

Printed 08/29/12

For the Period June 2012

**TRUMP PARK AVENUE LLC**

502 PARK AVENUE

Building No: 502LLC

Unit No	Floor No	Square Feet	Tenant	Lease Terms	Effect. Date	Rent Steps		Annual Base Rent	Monthly Rent	Annualized Rent 01/12-12/12	Other Charges	Amt Billed	R/E Tax		Operating Esc.		Security Deposit	Notes	
						Charge Description	Amt Billed						Base Year	%	Base Year	%			
COM 1	st/bsmnt	3,800	CAPITAL ONE N.A.	02/01/07 01/31/22	02/01/12	RENT	73,333.33	879,969.96	73,333.33	873,333.30	BRONZE MAINT	647.60	06/07	00.0000%			145,000.00	RE Tax Base year is an average of 06/07 and 07/08/ bronze maint. 62.38%  lesser of 4% above quoted rate of citibank or maximin rate permitted 18%	
					02/01/17	RENT	80,665.87	968,000.04											
PH31/3 2			CRM INC.	12/01/10 12/31/12	01/01/12	RENTAL CHG	72,500.00	870,000.00	72,500.00	870,000.00							145,000.00	Tenant shall have an option to renew the lease for an additional one year for the period beginning January 1,2012 - December 31,2012 upon 90 days advance written notice prior expiration of the term  If tenant exercises the option to renew, the rent for the period beginning January 1,2012 - December 31,2012 shall be \$870,000 and tenant shall have the right to pay in monthly installments of \$72,500(which must be made on the 1st day of each calendar month monthly payments  call Brian in office at x204	
							67,310.28 + 73,333.33 + ----- 140,643.61 *												
							<b>2500.01</b>												
12E	0		FLYNN, LUISA	01/01/04 12/31/10	01/01/10	RENT**	1,897.00	22,764.00	1,897.00	22,764.00							1,278.73	As per settlement agreement- rental amount yrly common charges & re taxes for unit. Rent Stabilized	

**Rent Roll**

Printed 08/29/12

For the Period June 2012

TRUMP PARK AVENUE LLC

502 PARK AVENUE

Building No: 502LLC

Unit No	Floor No	Square Feet	Tenant	Lease Terms	Effect. Date	Rent Steps		Annual Base Rent	Monthly Rent	Annualized Rent 01/12-12/12	Other Charges	Amt Billed	R/E Tax		Operating Esc.		Security Deposit	Notes
						Charge Description	Amt Billed						Base Year	%	Base Year	%		
COM 2	Subs/2nd	15,435	TOWN SPORTS INTERNATIONAL LLC	03/07/02 03/31/14	04/01/12	RETAIL	89,329.89	807,723.36	67,310.28	801,841.88	ELECTRIC	2,016.15	04/05	4.25000				Rent based on 103% of prior years rent  No late fees
					04/01/13	RETAIL	89,329.89	831,955.08										
PH25	0		TRUMP, IVANKA	01/01/11 05/31/15	06/01/11	RENTAL CHG	10,000.00	120,000.00	10,000.00	120,000.00								<p>THE TERM OF THE LEASE SHALL COMMENCE JAN 1,2011 AND SHALL TERMINATE MAY 31,2016. NO RENT SHALL BE PAYABLE FOR THE PERIOD JANUARY 1,2011 THROUGH MAY 31,2011.</p> <p>THE RENT FOR THE PERIOD BEGINNING JUNE 1,2011 THROUGH MAY 31,2016 SHALL BE 600,000.00 AND TENANT SHALL HAVE THE RIGHT TO PAY IN MONTHLY INSTALLMENT OF 10,000.00 WHICH MUST BE PAID COMMENCING JUNE 1,2011 AND THEREAFTER ON THE 1ST DAY OF EACH SUCCESSIVE CALENDAR MONTH.</p> <p>THE INCREASE IN COMMON CHARGE, COMMON EXPENSES, ASSOCIATION DUES AND REAL ESTATE TAXES, IS HEREBY DELETED.</p>

# Faherty Affirmation

## Exhibit # 25

MAC 1: FL-97-24626-1 06/02/1997 12:26am

**Please record and return to:**  
Paul Rampell, Esq.  
Suite 202  
125 Worth Avenue  
Palm Beach, FL 33480-4466

**Property Control No.**  
50-43-43-35-00-002-0390

**Grantee Tax I.D. No.**  
53-0210807

APR-06-1995 5:06pm 95-106767  
ORB 8691 PS 764  
10.00 Doc .75  
Con

**DEED OF CONSERVATION AND PRESERVATION EASEMENT**

**FROM**

**DONALD J. TRUMP**

**TO**

**NATIONAL TRUST FOR HISTORIC PRESERVATION  
IN THE UNITED STATES**



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DEED OF CONSERVATION AND PRESERVATION EASEMENT  
FROM  
DONALD J. TRUMP  
TO  
NATIONAL TRUST FOR HISTORIC PRESERVATION  
IN THE UNITED STATES

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(not part of the Deed)

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SJS 3/21/95

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088 8691 Ps 7&amp;8

**DEED OF CONSERVATION AND PRESERVATION EASEMENT**

THIS GRANT DEED OF CONSERVATION AND PRESERVATION EASEMENT is made by **DONALD J. TRUMP**, a resident of New York, who with his successors in title to all or any portion of the Property as hereinafter defined is herein referred to as "Grantor," in favor of the **NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE UNITED STATES**, a non-profit charitable corporation chartered under an Act of Congress, 16 U.S.C. Section 468-468(d), with a business address at 1785 Massachusetts Avenue, N.W., Washington, D.C. 20036, herein referred to as "Grantee," and Union Labor Life Insurance Company, with a business address at 111 Massachusetts Avenue, N.W., Washington, DC 20001 herein referred to as "Lender."

WHEREAS, Grantor is the owner in fee simple of certain real property known as Mar-a-Lago (the "Property") in the Town of Palm Beach, Palm Beach County, Florida, totalling 17 acres more or less, more particularly described in Exhibit A, attached hereto and incorporated herein by this reference; and

SJS 3/21/95

IMAGE01: FL-97-24626-1 06/02/1997 11:26am

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WHEREAS, Mar-a-Lago is listed in the United States Department of the Interior's National Register of Historic Places and has been declared by the Secretary of the Interior to be of national significance and designated by Act of Congress as a National Historic Landmark; and

WHEREAS, Mar-a-Lago is regularly viewed by thousands of residents of Palm Beach and countless tourists to the Palm Beach area, from Ocean Boulevard, from Lake Worth, and from the Southern Boulevard Bridge; and

WHEREAS, many features of Mar-a-Lago, hereinafter collectively the "Critical Features," more particularly described in Exhibit B, attached hereto and incorporated herein by this reference, including the main house (the "Mansion") and a number of rooms therein, certain of the surrounding structures and improvements, and vistas from the Mansion, possess significant architectural, historic, scenic, and open space values of great importance to Grantor, to Grantee, and to the people of the Town of Palm Beach, the State of Florida, and the United States of America; and

WHEREAS, additional structures on those portions of the Property not included within the Critical Features may adversely impact the architectural, historic, scenic, and open space values of the Critical Features; and

WHEREAS, the specific architectural, historic, scenic, and open space values of the Critical Features are documented in a report, a counterpart to be kept on file at the offices of each of Grantor and Grantee and incorporated herein by this reference, which documentation ("Baseline Documentation") the parties agree provides an accurate representation of the Critical Features and the Property as of the effective date of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. In the

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event of any discrepancy between the counterparts produced, the counterpart retained by Grantee shall control; and

WHEREAS, the Baseline Documentation shall consist of the following: Historic American Buildings Survey No. FLA-195, by the National Park Service's Office of Archeology and Historic Preservation; Review and Comment by Clarion Associates, Inc., Decker and Kemp and Glenn Herbert (1991); The Mar-a-Lago Club: A Special Exception Use and Preservation Plan by Eugene Lawrence, Joseph B. Pollock, Jr. and Paul Rampell, Esq. (1993), as the same may be amended from time to time (the "Plan"), including all references in the Bibliography included therein; the value ratio referenced in paragraph 12.1; and a comprehensive photographic survey of Mar-a-Lago by Grantee; and

WHEREAS, Grantor intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Critical Features in perpetuity; and

WHEREAS, Grantee is a publicly supported, tax-exempt, non-profit organization whose primary purposes are to facilitate public participation in the preservation of sites, buildings, and objects of national significance and to receive donations of sites, buildings and objects significant in the history and culture of the United States; and

WHEREAS, Grantee represents that Grantee is a "qualified conservation organization," as that term is defined in Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code"); and

WHEREAS, Grantee has received a letter from the Internal Revenue Service, dated October 20, 1970, on file at the offices of Grantee, to the effect that Grantee is not a private foundation within the meaning of Section 509(a) of the Code; and

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WHEREAS, Grantor and Grantee recognize the architectural, historic, scenic, and open character of the Critical Features, and have the common purpose of the conservation, preservation, and protection in perpetuity of the Critical Features through the use of restrictive covenants and with the transfer from Grantor to Grantee of affirmative rights for the protection of the Critical Features, intending the grant of such restrictive covenants and rights to qualify as a "qualified conservation contribution" as that term is defined under Section 170(h)(2)(C) of the Code;

WHEREAS, Grantor and Grantee shall use all reasonable efforts to make any determinations that are necessary or are contemplated to be made by them (either separately or jointly) under this Easement (as hereinafter defined) and shall cooperate with one another and shall take all other reasonable action suitable to that end; and

WHEREAS, Grantee shall evaluate Grantor's requests under this Easement based on its good faith exercise of professional judgment;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to Section 170(h) of the Code and the laws of the State of Florida, in particular Section 704.06, Florida Statutes, Grantor hereby voluntarily grants and conveys to Grantee and its successors and permitted assigns a conservation and preservation easement (the "Easement") in perpetuity with respect to the Critical Features and the Property of the nature and character and to the extent hereinafter set forth. Grantor herein declares that the Property shall be held, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, restrictions, and easements hereinafter set forth, which covenants, conditions, restrictions, and easements

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shall constitute restrictive covenants and shall be deemed to run with the land in perpetuity and to burden the Critical Features and the Property in perpetuity.

**PURPOSE**

1. **Purpose.** It is the purpose of this Easement to assure that the Critical Features will be retained forever predominantly in their historic, scenic, and open space condition for conservation and preservation purposes.

**GRANTOR'S COVENANTS**

2. **Covenant to Maintain.**

2.1 **In General.** Subject to the provisions of paragraphs 5, 6, and 7:

(a) Grantor agrees at all times to maintain the Critical Features in substantially the form and condition existing on the effective date of this Easement as documented in the Baseline Documentation. Grantor's obligation to maintain shall require replacement, rebuilding, repair, and reconstruction by Grantor whenever reasonably necessary to preserve the Critical Features in substantially the form and condition, and with substantially similar materials, and, as appropriate, with substantially similar plantings, vegetation, and natural screening, to that existing on the effective date of this Easement. Grantor's obligation to maintain shall also include the obligation to keep the landscape and flower and vegetable beds regularly tended, lawns mowed, and vegetation pruned and cut back as necessary, and the Property protected against erosion from Lake Worth.



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(b) All maintenance, repair, rehabilitation, or other work performed on the Critical Features shall be performed strictly according to the Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (36 CFR 67) of the United States Department of the Interior, as the same may be amended from time to time (the "Standards for Rehabilitation").

2.2 Prohibited Activities. The following acts or uses are expressly forbidden on, over, or under the Property:

(a) demolition, removal, or razing the Critical Features except as otherwise regulated or permitted in this Easement;

(b) constructing or erecting new buildings and structures within and upon such areas defined and described as Critical Features, including by example but not limited to satellite receiving dishes, camping accommodations, mobile homes, and permanent structures, except for temporary purposes pursuant to paragraph 5.1(f) hereof;

(c) displaying or placing signs, billboards, or advertisements on the Property and its Critical Features except as specifically provided at paragraph 3(e) hereof and to identify the Property or its owner; and

(d) dumping ashes, trash, rubbish or any other unsightly or offensive materials on the Property, except the temporary storage of waste generated by permitted activities and uses at the Property is permitted.

**RIGHTS OF GRANTEE: ACCESS**

3. Affirmative Rights of Grantee. Grantor hereby grants the following rights to Grantee:

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(a) to prevent Grantor or third persons (whether or not claiming by, through, or under Grantor) from conducting any activity or use with respect to the Critical Features that is inconsistent with the purpose of this Easement, and to require of Grantor or third persons the replacement, or the restoration to the extent practicable, of such Critical Features that may be damaged by any inconsistent activity or use;

(b) upon fourteen (14) days' prior notice to Grantor, and without unreasonably interfering with Grantor's use and quiet enjoyment of the Property as restricted by this Easement, to enter upon the Property at reasonable times and in a reasonable manner in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement, and further provided that in the absence of evidence which gives Grantee a reasonable basis to believe there has been deterioration of the Mansion Rooms, as the Mansion Rooms are identified in Exhibit B, or a violation of the provisions of this Easement with respect to the Mansion Rooms (which evidence shall be made available to Grantor), inspection of the interior of the Mansion shall occur not more often than annually at times mutually agreed upon by Grantor and Grantee. The rights granted in this paragraph 3(b) shall generally be exercised by Grantee's employees, members of Grantee's Board of Trustees, and members of Grantee's Board of Advisors but may be delegated to Grantee's contractors and to employees of any organization qualified under Section 170(h) of the Code as a "qualified conservation organization" and qualified under the laws of the State of Florida as an organization eligible to receive this Easement directly. Notwithstanding the provisions of the preceding sentence, delegation under this paragraph 3(b) to agents, trustees, and employees of the Preservation Foundation of Palm Beach, Inc., or the Palm Beach Civic Association, Inc., or their successors, during such time as Donald J. Trump is living

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and not under legal disability and is the owner of the Property or all of, or a majority interest in, any entity which then is the owner of the Property, shall be subject to the prior written approval of Donald J. Trump, which approval may be withheld at the sole discretion of Donald J. Trump;

(c) to enforce this Easement in the case of breaches by Grantor or by third persons (whether or not claiming by, through, or under Grantor) by appropriate legal proceedings, after providing Grantor with at least sixty (60) days' notice and opportunity to cure;

(d) to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring removal of offending structures and vegetation and other restoration of the Critical Features to the condition that existed prior to any such violation (it being agreed that Grantee will have no adequate remedy at law). In the event Grantee seeks legal, injunctive, or other equitable relief, Grantee shall not be required to post bond and Grantee shall not be required to demonstrate irreparable harm or injury to secure such legal, injunctive, or other equitable relief;

(e) to secure, perfect, confirm, and foreclose any lien authorized under this Easement in the same manner as a construction lien; and

(f) to provide and maintain two plaques on the Property, which may be placed on the exterior and interior of the Mansion or elsewhere on the Property, each of which shall not exceed 24 inches by 24 inches in size, with notice of the historic and architectural significance of the Property and its structures and the existence of this Conservation and Preservation Easement.

3.1 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or changes in

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the Critical Features or the Property resulting from causes beyond Grantor's control, including, without limitation, acts of trespassers, fire, flood, windstorm, hurricane, earth movement, and tree disease, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Critical Features or the Property resulting from such causes. Notwithstanding the foregoing, nothing herein shall preclude Grantor's and Grantee's rights to pursue any third party for damages to the Critical Features or the Property from vandalism, trespass, or any violation of the terms of this Easement.

3.2 Compliance Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor at Grantor's request a written document, including an estoppel certificate or compliance certificate, substantially in the form of Exhibit C, attached hereto and incorporated herein by this reference, to certify to the best of Grantee's knowledge Grantor's compliance with any obligation of Grantor contained in this Easement, or otherwise to evidence the status of this Easement to the extent of Grantee's knowledge thereof.

4. Access. No right of access to any portion of the Property is conveyed by this Easement, except as expressly provided in paragraph 3 and this paragraph 4.

4.1 Access for Viewing and Study. Grantor hereby agrees to hold open the Property under the following terms and conditions:

(a) Grantor hereby agrees to hold open the Property (not including the interior of the Mansion) to viewing by not more than 100 visitors from the public (who otherwise have no legal ownership or use rights with respect to the Property) one day each year.

DRB 8693 Ps 777

(b) Grantor hereby further agrees to hold open the Property, including the interior of the Mansion, not less than one additional day each year to viewing by not more than twenty (20) visitors (who otherwise have no legal ownership or use rights with respect to the Property) on each visit, for the purpose of viewing and studying the historic and architectural characteristics of the Property.

(c) Grantor agrees not to obstruct the view of the Mansion from Ocean Boulevard, Lake Worth, and the Southern Boulevard Bridge.

#### GRANTOR'S RIGHTS

##### 5. Grantor's Rights.

5.1 Rights Not Requiring Further Approval by Grantee. The following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Easement and by Grantee without further approval by Grantee:

(a) the right to engage in those acts or uses permitted by governmental statute or regulation that are not expressly prohibited or regulated by this Easement;

(b) the right to perform work, exercise the rights and privileges contemplated by, and engage in those uses of the Property permitted by the Plan and by the Declaration of Use Agreement (the "Declaration") dated August 10, 1993, between the Town of Palm Beach, The Mar-a-Lago Club, Inc., and Grantor, recorded in the Public Records of Palm Beach County, Florida, in Official Record Book 7933, Page 22, as the Plan and/or the Declaration may be amended from time to time, provided that (i) such uses are not specifically prohibited or

ORB 8691 Ps 778

regulated by this Easement, and (ii) such amendment(s) to the Plan and/or Declaration are not inconsistent with the purpose of this Easement;

(c) pursuant to the provisions of paragraph 2.1, the right to maintain and repair the Critical Features strictly according to the Standards for Rehabilitation. As used in this paragraph 5.1(c), the right to maintain and repair shall mean the use by Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Property. The right to maintain and repair as used in this paragraph 5.1(c) shall not include the right to make changes in appearance, materials, colors, and workmanship from that existing prior to the maintenance and repair;

(d) after consultation with Grantee before construction of the modifications has commenced, the right to modify the Critical Features as necessary to conform to the Code of Ordinances of the Town of Palm Beach, provided that such modification is not in response to a request or application by Grantor to the Town of Palm Beach (i) to replace, alter, remodel, rehabilitate, enlarge, or remove, or change the appearance, materials, or colors of, any of the Critical Features (collectively, an "alteration of the Critical Features"), or (ii) for a change in the use of the Property that would require an alteration of the Critical Features;

(e) subject to the preservation of the Open Vistas, as the Open Vistas are identified in Exhibit B, the right to restore, enhance, upgrade, or alter from time to time the golf course and putting green, identified in Exhibit B; and

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(f) the right to erect reasonably necessary temporary structures in connection with any permitted activities at or on the Property.

5.2 Conditional Rights Requiring Approval by Grantee. The following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Easement only with the prior written approval of Grantee, which approval may be withheld or conditioned in Grantee's sole discretion:

(a) subject to the provisions of paragraph 6, the right to replace, alter, remodel, rehabilitate, enlarge, or remove, and change the appearance, materials, topography, and colors of, any of the Critical Features;

(b) subject to the provisions of paragraph 6, the right to construct new permanent structures on those portions of the Property that are not attached to, a part of, or contained within the Critical Features, including but not limited to appurtenant docks or wharves, and additions thereto; and

(c) subject to the provisions of paragraph 6, the right to divide or subdivide the Property.

6. Review of Grantor's Proposals. In connection with the conditional rights reserved under paragraphs 5.2 and 7, Grantor shall submit to Grantee for Grantee's approval two copies of information (including plans, specifications, and designs when appropriate) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to Grantee a timetable for the proposed activity sufficient to permit Grantee to monitor such activity, and shall notify Grantee in writing of any change to the timetable. Within 30 (thirty) days of Grantee's receipt of any plan or request for approval hereunder, Grantee shall

088 8691 Ps 780

certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case Grantee shall provide Grantor with written suggestions for modification or a written explanation for Grantee's disapproval. Grantor may resubmit to Grantee revised information (including plans, specifications, and designs when appropriate) that incorporates Grantee's proposed modifications or may submit entirely new information with a new timetable, if appropriate. Any failure by Grantee to act within 30 (thirty) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by Grantee of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted. In exercising review authority, Grantee shall apply the Standards for Rehabilitation. With respect to new proposed permanent structures on those portions of the Property that are not attached to, a part of, or contained within the Critical Features, Grantee's review authority shall be limited to considerations of size, scale, color, and architectural features as these may physically or visually impact the Critical Features.

7. Casualty Damage or Destruction. Notwithstanding any other provision herein to the contrary, in the event of damage or destruction to the Critical Features, in whole or in part, caused by fire, flood, windstorm, hurricane, earth movement, or other casualty:

(a) (i) Grantor and Grantee may agree on plans and specifications for rehabilitation, restoration, removal, or replacement of the Critical Features in accordance with the provisions of paragraph 6, and Grantor shall pay the cost of such rehabilitation or other work, but in no event shall Grantor be liable for an amount exceeding the amount of the casualty insurance proceeds recoverable by Grantor as a result of such damage or destruction; or (ii) Grantor and Grantee may agree that the purpose of this Easement has been rendered impossible to accomplish



088 8691 Ps 783

and may join in an action to extinguish this Easement in whole or in part, subject to the provisions of paragraph 12.

(b) Notwithstanding any other provision herein, in the event that the Mansion is destroyed or substantially destroyed by casualty damage or destruction as determined and agreed to by Grantor and Grantee, Grantor shall have no obligation to rebuild the Mansion. In such event Grantor and Grantee herein agree to join in an action to extinguish this Easement, subject to the provisions of paragraph 12.

#### COSTS; INDEMNIFICATION; INSURANCE

8. Costs, Liabilities, and Taxes. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of general liability insurance coverage as set forth in paragraph 9 below, except as provided in paragraph 8.1 with respect to the payment of enforcement costs.

8.1 Enforcement Costs. In connection with any action to enforce the terms of this Easement, the prevailing party shall be entitled to costs of suit, including reasonable attorneys', architectural, engineering, and expert witness fees and disbursements. In the event Grantee is entitled to such costs of suit, such costs, until discharged, shall constitute a lien on the Property with the same effect and priority as a construction lien.

8.2 Indemnification. Grantor hereby agrees to indemnify, hold harmless, and defend at its own cost and expense, Grantee, its agents, trustees, employees, and independent contractors, from and against any and all claims, liabilities, expenses, costs, damages, losses, and

ONE 8691 Ps 782

expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or the death of any person, or physical damage to the Property, or other injury or other damage occurring on or about the Property, unless such injury or damage is caused by Grantee or any agent, trustee, employee, or contractor of Grantee. If any action or proceeding shall be brought against Grantee or any agent, trustee, employee, or contractor of Grantee, based upon any such claim, and if Grantor, upon notice thereof from Grantee, shall cause such action or proceeding to be defended at Grantor's expense by counsel satisfactory to Grantee, Grantor shall not be required to indemnify Grantee, or any agent, trustee, employee, or contractor of Grantee, for additional attorneys' fees and disbursements in connection with such action or proceeding. In the event Grantor is required to indemnify Grantee, the amount of such indemnity shall constitute a lien on the Property with the same effect and priority as a construction lien.

9. **Insurance.** Grantor at Grantor's sole expense shall keep those portions of the interior and exterior of the Mansion and Property Manager's Complex identified as Critical Features insured against loss from fire and other casualties, including extended coverage and all risk insurance, with change in condition and building ordinance coverage, in form and amount sufficient in all events to replace fully the damaged Critical Features without cost or expense to Grantor or contribution or coinsurance from Grantor. The balance of the Mansion and Property Manager's Complex shall be kept insured against loss from fire and other casualties as would commonly be covered in connection with historic property in the Town of Palm Beach under Florida standard fire and extended coverage policies in an amount equal to their fair market values. All such insurance shall provide for at least thirty (30) days' notice to Grantee before

IMAGE01: FL-97-24626-1 06/02/1997 12:26am

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cancellation or material change by the insurance carrier. Grantor shall deliver to Grantee, within ten (10) business days of Grantee's written request therefor, certificates of such insurance coverage.

#### ASSIGNMENT BY GRANTEE

##### 10. Assignment by Grantee.

10.1 In General. The benefits of this Easement shall be in gross. This Easement shall be assignable by Grantee provided that (a) as a condition of any assignment, Grantee requires that the purpose of this Easement continues to be carried out; and (b) the assignee, selected by Grantee in its sole discretion, at the time of assignment qualifies under Section 170(h) of the Code as a "qualified conservation organization" and qualifies under the laws of the State of Florida as an eligible donee to receive this Easement directly. Notwithstanding the provisions of the preceding sentence, assignment under the provisions of this paragraph 10.1 to the Preservation Foundation of Palm Beach, Inc., or the Palm Beach Civic Association, Inc., or their successors, during such time as Donald J. Trump is living and not under legal disability and is the owner of the Property or all of, or a majority interest in, any entity which then is the owner of the Property, shall be subject to the prior written approval of Donald J. Trump, which approval may be withheld at the sole discretion of Donald J. Trump. Without limiting Grantee's discretion under this paragraph 10.1, Grantee agrees to notify Grantor in writing at least sixty (60) days prior to any assignment or proposed assignment of this Easement under this paragraph 10.1.

10.2 Grantor's Right to Request Assignment. Notwithstanding the provisions of paragraph 10.1, Grantor may submit to Grantee a request for assignment of this Easement to a

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"qualified conservation organization," as that term is defined in Section 170(h) of the Code, designated in writing by Grantor. After Grantee's written approval of such request for assignment, which approval may be withheld in Grantee's sole discretion, Grantee as promptly as practicable will assign by recorded instrument substantially in the form of Exhibit D, attached hereto and incorporated herein by this reference, all the right, title, and interest of Grantee under this Easement (together with the original total of those funds, excluding accrued earnings, if any, transferred to Grantee by Grantor as an easement administration endowment fund pursuant to a letter dated March 15, 1994, from Grantee to Grantor, less any amounts expended by Grantee directly in connection with its administration of this Easement, all of which funds shall be separately accounted for by Grantee). The instrument of assignment shall contain provisions whereby the assignee affirmatively accepts assignment, expressly represents that it is qualified to accept assignment under the conditions of this paragraph 10.2 (which conditions will be incorporated in their entirety in the instrument of assignment), and assumes the obligations on the part of Grantee to be performed under this Easement. The right to request assignment reserved in this paragraph 10.2 shall (a) be exercisable only by Donald J. Trump during such time as Donald J. Trump is living and not under any legal disability and is the owner of the Property or all of, or a majority interest in, any entity which then is the owner of the Property; and (b) not be exercisable if Grantor has received written notice from Grantee of a claimed violation of the terms of this Easement and such matter remains unresolved or if there is a judicial action or proceeding (brought by Grantee) pending against Grantor to enforce the terms of this Easement.

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**AMENDMENT: EXTINGUISHMENT**

11. **Limitations on Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Easement, provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the State of Florida. Any such amendment shall be consistent with the purpose of this Easement; shall not affect its perpetual duration; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic, scenic, and open space values protected by this Easement. Any such amendment shall be recorded in the Public Records of Palm Beach County, Florida. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

12. **Extinguishment.** If circumstances arise in the future that render the purpose of this Easement impossible or impractical to accomplish, this Easement can be terminated or extinguished, whether with respect to all or part of the Critical Features or the Property, only by judicial proceedings brought by Grantor or Grantee in a court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or any other property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and after the satisfaction of prior claims and net of any costs or expenses associated with such sale, Grantor and Grantee shall divide the proceeds from such sale (minus any amount attributable to the value of improvements made by Grantor after the effective date of this Easement, which amount is reserved to Grantor)

IMAGE01 : FL-97-24626-1 06/02/1997 10:26am

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in accordance with their respective percentage interests in the fair market value of the Property, as such percentage interests are determined under the provisions of paragraph 12.1, adjusted, if necessary, to reflect a partial termination or extinguishment of this Easement. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with Grantee's primary purposes. This paragraph shall survive any extinguishment of the Easement and, in the event of extinguishment, is intended to constitute a lien against the Property.

12.1 Percentage Interests. For purposes of allocating proceeds pursuant to this paragraph 12, the parties hereto stipulate that as of the effective date of this grant the Easement and the restricted fee interest in the Property each represent a percentage interest in the fair market value of the Property. Said percentage interests shall be determined by the ratio of the value of the Easement on the effective date of this grant to the value of the Property, without deduction for the value of the Easement, on the effective date of this grant. The values on the effective date of this grant shall be those values prescribed by federal regulation, including the value allowed as a deduction for federal income tax purposes attributable to this Easement. The parties shall include the ratio of those values with the Baseline Documentation (on file at Grantor's and Grantee's offices) and shall amend such values, if necessary, to reflect any final determination thereof by the Internal Revenue Service or court of competent jurisdiction. For purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant, and the percentage interests of Grantor and Grantee in the fair market value of the Property thereby determinable shall remain constant.

12.2 Condemnation. If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority

through a purchase in lieu of a taking, Grantor and Grantee shall respectively be entitled to compensation in accordance with their respective percentage interests in the fair market value of the Property, as determined under the provisions of paragraph 12.1.

### **GENERAL PROVISIONS**

#### **13. General Provisions.**

13.1 **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Florida.

13.2 **Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be construed broadly to effect the purpose of this Easement and the policy and purposes of Grantee. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

13.3 **Severability.** If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement shall not be affected thereby.

13.4 **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 11.

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13.5 Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property, provided that any owner of the Property is not responsible for breaches of the terms hereof that occur after that owner ceases to have any ownership interest in the Property.

13.6 Transfers by Grantor. Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which Grantor transfers any ownership or possessory interest in the Property. Grantor further agrees to give written notice to Grantee of the proposed transfer of any such interest at least sixty (60) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

13.7 Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: Mr. Donald J. Trump  
The Trump Organization  
725 5th Avenue, 26th Floor  
New York, NY 10022

With a copy to: Stephen J. Small, Esq.  
Law Office of Stephen J. Small, Esq.  
75 Federal Street, Suite 1100  
Boston, MA 02110-1911

To Grantee: National Trust for Historic Preservation  
in the United States  
1785 Massachusetts Ave., N.W.  
Washington, D.C. 20036  
Attn: President



088 8691 Ps 784

With a copy to: General Counsel  
National Trust for Historic Preservation  
in the United States  
1785 Massachusetts Ave., N.W.  
Washington, D.C. 20036

or to such other address as any of the above parties from time to time shall designate by written notice to the others.

13.8 **Effective Date.** Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this DEED OF CONSERVATION AND PRESERVATION EASEMENT is recorded in the Public Records of Palm Beach County, Florida, after all required signatures have been affixed hereto. Grantee may re-record this instrument at any time as may be required to preserve its rights in this Easement. Grantor shall cause this Easement to be recorded in the Public Records of Palm Beach County, Florida, as soon as administratively possible after all required signatures have been affixed hereto. Grantee shall be provided the original recorded Easement; Grantor shall retain a copy of the recorded Easement.

13.9 **Subordination.** Lender is the holder of a Note secured by a mortgage dated Apr. 16, 1975, and recorded in Official Record Book 6811, Page 514, of the Public Records of Palm Beach County, Florida (the "Mortgage"), which subjects the Property to Lender's lien. Lender hereby consents to the terms and intent of this DEED OF CONSERVATION AND PRESERVATION EASEMENT and agrees that the lien represented by the Mortgage shall be subject and subordinate to the interest conveyed by this DEED OF CONSERVATION AND PRESERVATION EASEMENT, to the same effect as if this DEED

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OF CONSERVATION AND PRESERVATION EASEMENT had been executed, delivered, and recorded immediately prior to the execution, delivery, and recording of the Mortgage.

TO HAVE AND TO HOLD, the said Conservation and Preservation Easement, unto the said Grantee and its successors and permitted assigns forever. This DEED OF CONSERVATION AND PRESERVATION EASEMENT may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, Grantor, Grantee, and Lender have set their hands under seal on the days and year set forth below.

Signed, sealed and delivered in the presence of  
*[Signature]*  
Signature of Witness

Anthony P. Seveca  
Printed Name of Witness

*[Signature]*  
Signature of Witness

Howard Wilson  
Printed Name of Witness

GRANTOR:  
*[Signature]*  
Signature

DONALD J. TRUMP  
Printed Name

725 Fifth Avenue  
New York, NY 10022  
Post Office Address

26 March 1995  
Date

ACCEPTED BY GRANTEE:

NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE UNITED STATES

By: *[Signature]*  
Its: President

March 30, 1995  
Date

LENDER hereby joins this Deed Solely for the purpose of consenting to Section 13.9 hereof  
UNION LABOR LIFE INSURANCE COMPANY

By: *[Signature]*  
Its: *[Signature]* President  
-23-

Date 4/3/95

IMAGE01: FL-97-24626-1 06/02/1997 12:26am

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STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

I hereby Certify that on this day, before, me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared DONALD J. TRUMP, known to me to be the person described in and who executed the foregoing instrument, who acknowledged before me that he executed the same, that he is personally known to me and that an oath was not taken.

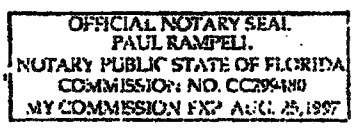
Witness my hand and official seal in the County and State last aforesaid this 26 day of MARCH, 1995

Paul Rampell  
Notary Public

PAUL RAMPPELL  
Printed Name of Notary Public

Commission No.: CC 299480

Commission Expires: 25 AUG 1997



WASHINGTON, D.C.

I hereby Certify that on this day, before, me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared RICHARD MOE, known to me to be President of the National Trust for Historic Preservation in the United States, the person described in and who executed the foregoing instrument, who acknowledged before me that he executed the same, that he is personally known to me and that an oath was not taken.

Witness my hand and official seal in the District of Columbia this 30<sup>th</sup> day of March, 1995

Barbara J. Darling  
Notary Public

BARBARA J. DARLING  
Printed Name of Notary Public

Commission No.: \_\_\_\_\_

Commission Expires: 2/28/2000



DRB 8693 Ps 792

WASHINGTON, D.C.

I hereby Certify that on this day, before, me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Thomas C. Perkins, known to me to be Vice President of Union Labor Life Insurance Company, the person described in and who executed the foregoing instrument, who acknowledged before me that he executed the same, that he is personally known to me and that an oath was not taken.

Witness my hand and official seal in the District of Columbia this 3<sup>rd</sup> day of April, 1998

Lavolya R. Williams  
Notary Public

Lavolya R. Williams  
Printed Name of Notary Public

Commission No.: \_\_\_\_\_ Lavolya R. Williams  
Notary Public, District of Columbia  
Commission Expires: \_\_\_\_\_ My Commission Expires Nov. 14, 1998

DRB 8691 Ps 793

EXHIBIT A  
TO  
CONSERVATION AND PRESERVATION EASEMENT  
FROM  
DONALD J. TRUMP  
TO  
NATIONAL TRUST FOR HISTORIC PRESERVATION  
IN THE UNITED STATES

LEGAL DESCRIPTION OF THE PROPERTY

Being all that part of the North 610.00 feet of the South 1170.00 feet of Government Lot 2 of Section 35, Township 43, South, Range 43 East, in the Town of Palm Beach, Palm Beach County, Florida, lying West of Ocean Boulevard (State Road A1A) Right of Way and more particularly described as follows, to-wit:

Beginning at a point on the West face of an existing seawall on the East shore of Lake Worth, which point is 560.00 feet North of, measured at right angles, to the South line of Government Lot 2 of said Section 35; thence North 6°09'22" West along the West face of said seawall for a distance of 77.32 feet; thence North 10°23'23" East along the West face of said seawall for a distance of 539.50 feet to a point in the South line of BINGHAM-COPP TRACT, a subdivision recorded in Plat Book 18, Page 6, Palm Beach County Public Records; thence run South 88°12'07" East along the South line of said BINGHAM-COPP TRACT for a distance of 1134.10 feet to a point in the Westerly right-of-way line of Ocean Boulevard (State Road A1A); thence run South 0°09'07" East for a distance of 82.59 feet to a point of curvature; thence run Southerly along the arc of a curve concaved to the Southwest having a radius of 1412.69 feet and a central angle of 3°03'00" for a distance of 75.20 feet to a point of tangency; thence run South 2°53'53" West for a distance of 176.28 feet to a point of curvature; thence run Southwesterly along the arc of a curve concaved to the Northwest having a radius of 2968.36 feet and a central angle of 2°27'30" for a distance of 127.36 feet to a point of compound curvature; thence continue Southwesterly along the arc of a curve, concaved to the Northwest having a radius of 158.68 feet and a central angle of 86°26'30" for a distance of 239.40 feet to a point of tangency; thence run North 88°12'07" West along the North line of Southern Boulevard (State Road 80) for a distance of 1040.43 feet to the POINT OF BEGINNING;

and

The West one-half (W 1/2) of Lot 20 and the South 15 feet of the East one-half (E 1/2) of Lot 20 and the South 15 feet of the West one-half (W 1/2) of Lot 21, all in BINGHAM-COPP TRACT, a subdivision in the Town of Palm Beach, Palm Beach County, Florida, as recorded in Plat Book 18, Page 6, Palm Beach County Public Records;

Together with an easement for the use of the tunnel as described in that certain Quit Claim Easement Deed recorded in Official Record Book 2327, Page 1970 of the Palm Beach County Public Records;

and

IMAGE01: FL-97-24626-1 06/02/1997 12:26am

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The South 358.00 feet of the North 403.00 feet of the South 1170.00 feet of Government Lot 2, Section 35, Township 43 South, Range 43 East, Palm Beach County, Florida, lying East of Ocean Boulevard (State Road A1A) as now laid out and in use; together with all riparian and littoral rights, if any, thereunto appertaining.

ORB 8691 Ps 793

**EXHIBIT B  
TO  
CONSERVATION AND PRESERVATION EASEMENT  
FROM  
DONALD J. TRUMP  
TO  
NATIONAL TRUST FOR HISTORIC PRESERVATION  
IN THE UNITED STATES**

**CRITICAL FEATURES OF MAR-A-LAGO**

The following Critical Features of Mar-a-Lago are described narratively below and graphically in Exhibits B-1, B-2, and B-3, a site drawing of exterior Critical Features and floor plans of interior Critical Features, following the narration.

1. **Main Entrance Gate.** The Gate is a double wood spindled, two-leaf gate which opens inward. The masonry is covered with Spanish tiles and is lighted by two wrought-iron figures holding torches.
2. **Perimeter Wall.** A stucco wall extends on the property line from Lake Worth to the west and around the Southern Boulevard curve (with gates) to a terminus at the east center of the Mansion. The wall re-continues to the north, passes through the Main Entrance Gate, is interrupted by the Property Manager's Complex and runs to the service entrance gate at the north property line. The seawall is not a Critical Feature but it shall be maintained in substantially the same size, color, and durability to retard erosion from Lake Worth.
3. **Main Entrance Drive.** The main drive is perpendicular and west of South Ocean Boulevard, one hundred feet from the north property line. It is approximately fourteen feet wide, bordered on both sides with concrete curbs and lined with coconut palms. The driveway circles around a guest structure through a porte-cochere to the primary entrance to the Mansion at its north facade.
4. **Property Manager's Complex.** To the north of the main entrance drive, the property manager's grouping consists of a residence, detached garage, and ancillary building, all of which are one-story, stucco, with clay barrel tile roofs.
  - 4.1 **Doors and Windows.** The doors and windows of the Property Manager's Complex to be included as part of the Critical Features are identified in the Baseline Documentation.

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5. **The Mansion.** The exterior walls, roof, carvings, columns, tiles and overall envelope of the main house, including without limitation also the exterior of the pavilion and staff housing/kitchen/service wings and connecting passageways, the portecochere and connected guest house, and the service garage adjacent to the service wing, referred to herein as the Mansion, are the single most important Critical Features.

5.1 **Doors and Windows.** The doors and windows of the Mansion to be included as part of the Critical Features are identified in the Baseline Documentation.

6. **Cloisters, Patio and Parrot Pool.** The Cloisters, Patio and Parrot Pool located adjacent and west of the Mansion are integral accessories to the Mansion.

7. **Open Vistas.** An open vista to the east overlooks the property to Ocean Boulevard from the Mansion. An open vista to the west extends from the Mansion down and across a grassed area of approximately 250 feet in width to view Lake Worth.

8. **Topographical Flow of Land.** The land flows generally from a high point around the main house at an elevation of approximately 15 feet to a low point of 4 feet along the bulkhead line at Lake Worth.

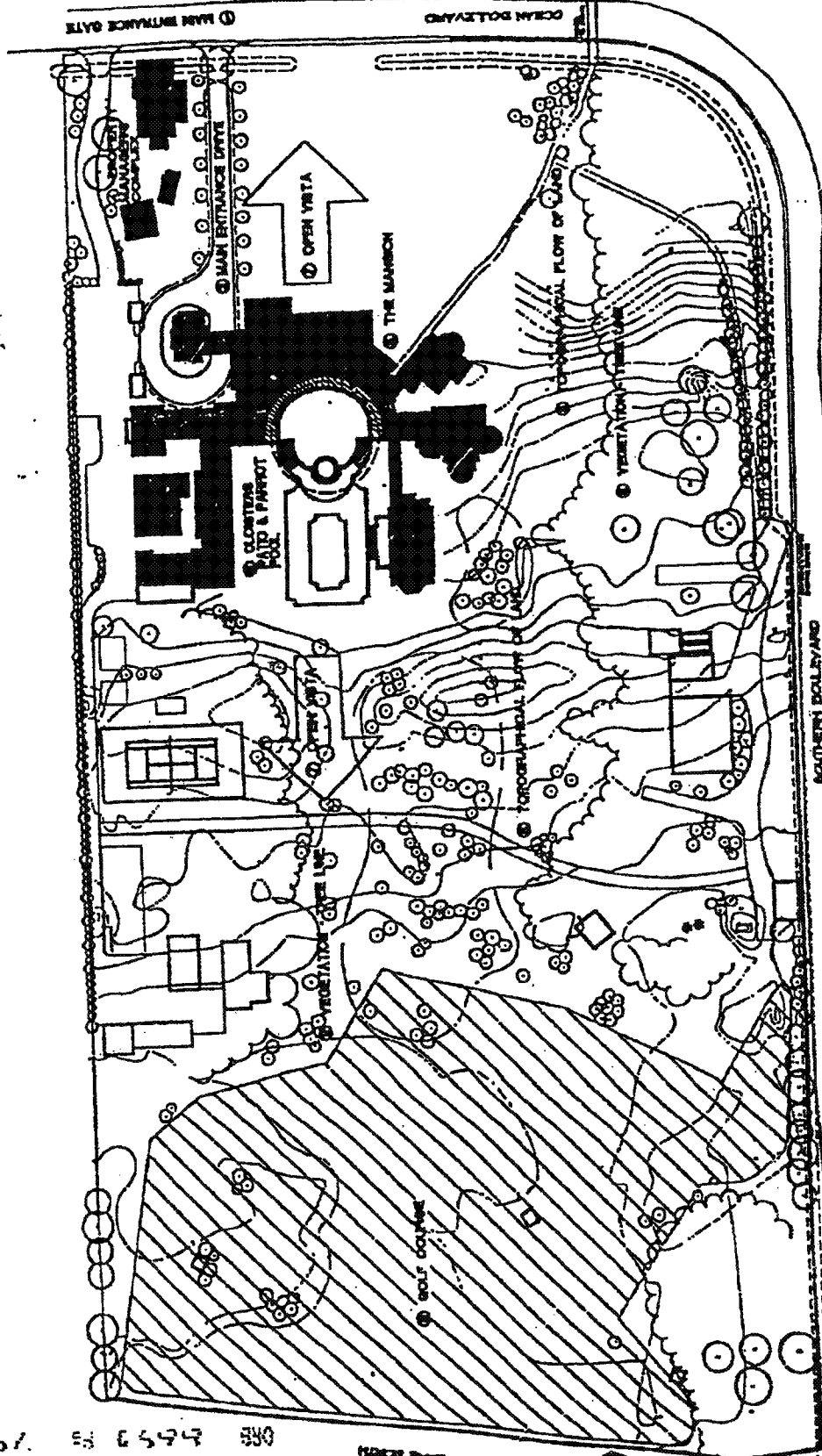
9. **Vegetation, Tree Lines and Golf Course.** The basic quantity and quality of vegetation and tree lines are Critical Features. Alteration and relocation of the fairways, tees, and greens on the golf course west of the Mansion are permitted, although the open vista provided by the presence of the golf course is a Critical Feature.

10. **Mansion Rooms.** The walls, floors, ceilings and physically-attached structures of the following rooms in the Mansion are Critical Features: (a) Entrance Hall, (b) Gentleman's Cloak Room, (c) Ladies' Cloak Room, (d) Living Room, (e) Dining Room, (f) Loggia, (g) Monkey Loggia, (h) Library, (i) Play Room in "Deenie's House", (j) Child's Bedroom and Bathroom, (k) Pine Hall in Master Suite, (l) Master Bedroom, (m) Master Bathroom, (n) Master Dressing Room, (o) Pavilion, (p) American Bedroom, (q) Adams Bedroom, (r) Venetian Sitting Room, (s) Spanish Bedroom, (t) Portuguese Bedroom (u) Dutch Bedroom, (v) upper and lower cloisters, (w) north and south second floor corridors and overlooks, (x) all stairways, (y) the Norwegian Room and associated bath in the Master Suite and (z) anterooms, vestibules, and corridors which connect the aforementioned rooms with each other or with upper or lower cloisters as depicted in the Critical Room Plan attached as part of this Exhibit B.

10.1 **Light Fixtures.** The light fixtures to be included as part of the Critical Features are identified in the Baseline Documentation. Grantor and Grantee herein agree that if any of the said light fixtures are destroyed or substantially destroyed by involuntary, unexpected casualty, notwithstanding any other provision in this Easement to the contrary Grantor may replace said light fixtures at Grantor's discretion after consultation with Grantee.



RECORDER'S MEMO: Legibility of document  
unsatisfactory when received.



THE MAR-A-LAGO CLUB  
PALM BEACH  
EXHIBIT B

EXTENSOR CRITICAL FEATURES  
SCALE 1/4"

ONE 5653 53 1977

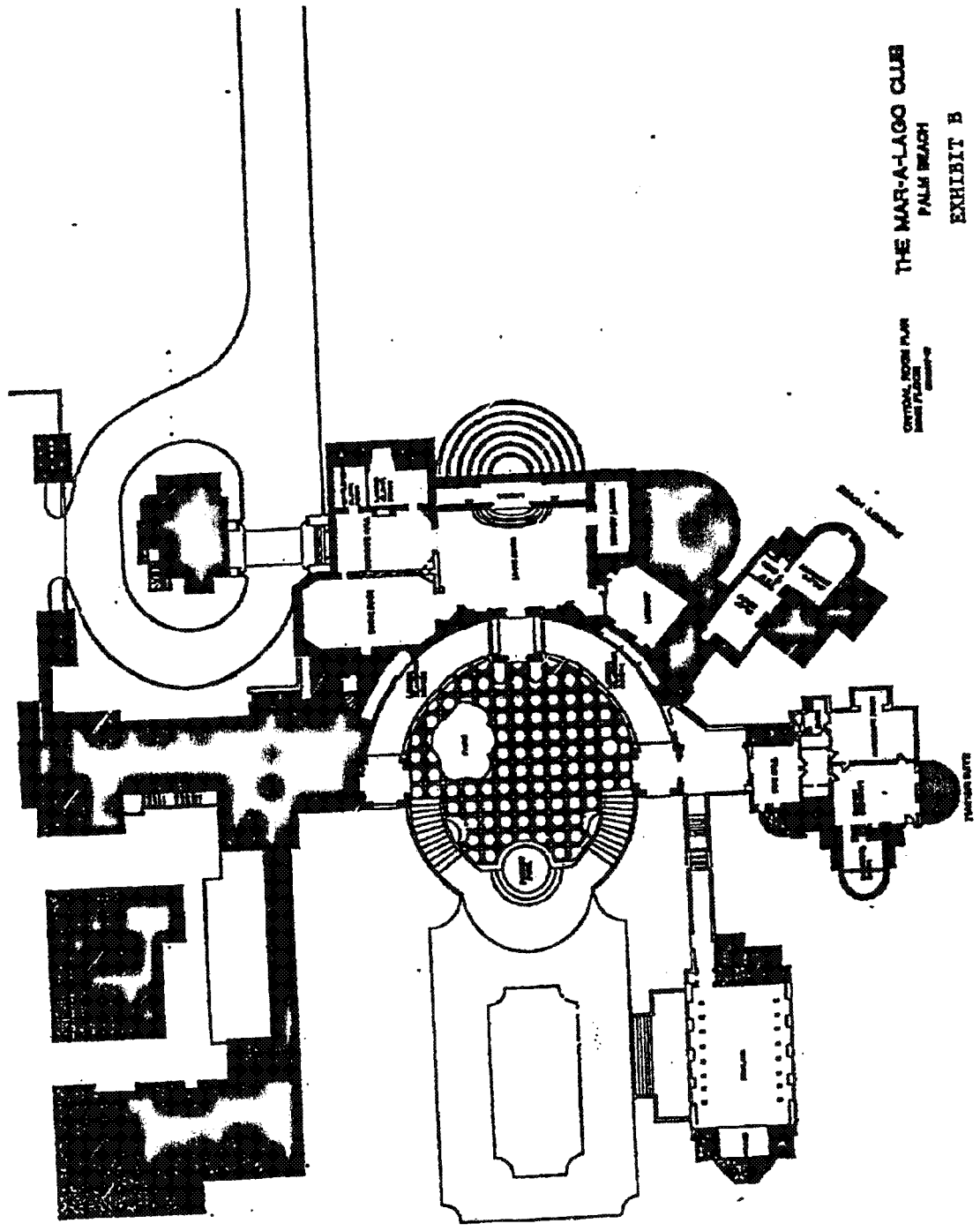
LAND NORTH

IMAGE01: FL-97-24626-1 06/02/1997 26mm

RECORDER'S MEMO: Legibility of document  
unsatisfactory when received.

THE MAR-A-LAGO CLUB  
PALM BEACH  
EXHIBIT B

COURTROOM, ROOM 1140  
11th Floor  
Courtroom



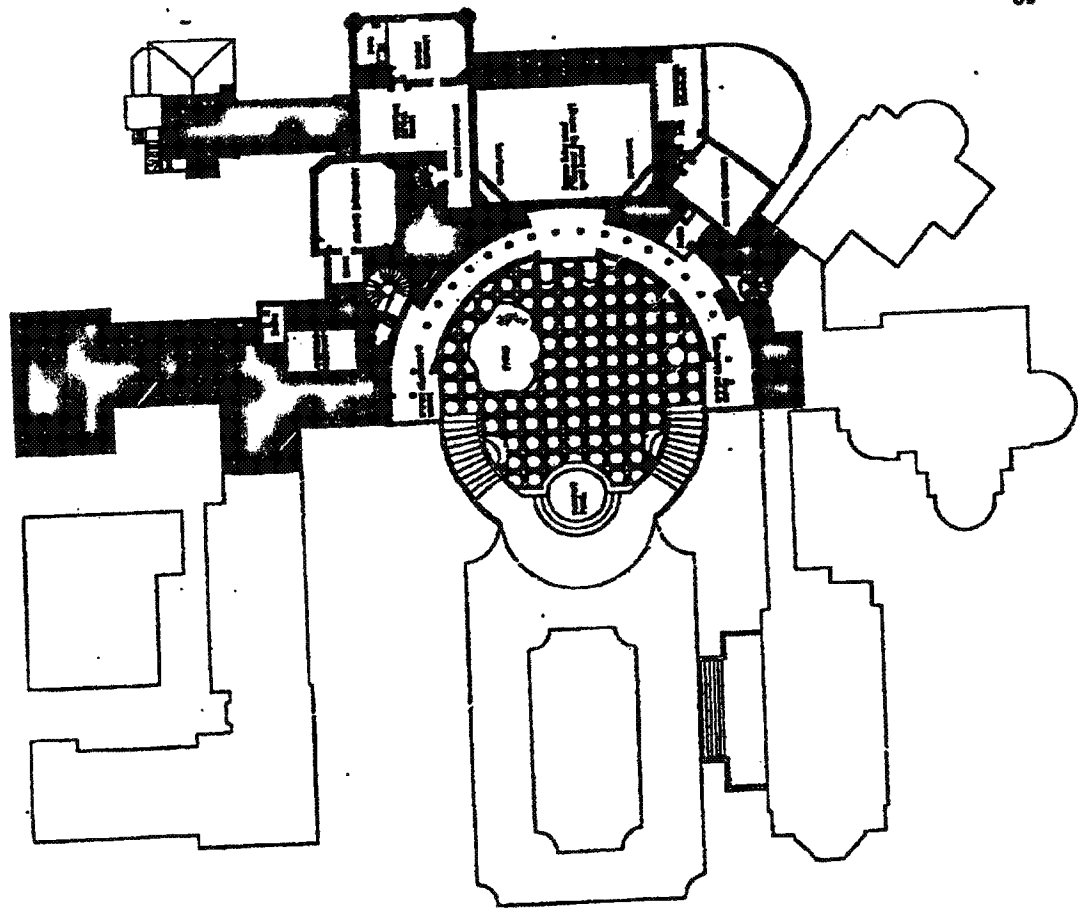
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IMAGE01: FL-97-24626-1 06/02/1997 26mm

RECORDER'S MEMO: Legibility of document  
unsatisfactory when received.

THE MAR-A-LAGO CLUB  
PALM BEACH  
EXHIBIT B

OPTIONAL ROOM PLAN  
REVISION 1/2007



088 8493 pg 754

IMAGE01: FL-97-24626-1 06/02/1997 12:26am

088 8-6-93 Ps 8000

EXHIBIT C  
TO  
CONSERVATION AND PRESERVATION EASEMENT  
FROM  
DONALD J. TRUMP  
TO  
NATIONAL TRUST FOR HISTORIC PRESERVATION  
IN THE UNITED STATES

CERTIFICATE OF COMPLIANCE

National Trust for Historic Preservation in the United States, a non-profit charitable corporation chartered under an Act of Congress, 16 U.S.C. Section 468-468(d), with a business address at 1785 Massachusetts Avenue, N.W., Washington, D.C. 20036, as Grantee of that Conservation and Preservation Easement from Donald J. Trump, Grantor, dated \_\_\_\_\_, 1995, recorded in Official Record Book \_\_\_\_\_, Page \_\_\_\_\_, of the Public Records of Palm Beach County ("Easement"), certifies to the best of its knowledge that Grantor is as of this date in compliance with Grantor's obligations contained in said Easement and that no event has occurred which, with the giving of notice or passage of time or both, might constitute an event of default or violation.

Witness the execution hereof under seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

National Trust for Historic Preservation  
in the United States

WITNESS: \_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[Acknowledgment]

IMAGE01: FL-97-24626-1 06/02/1997 12:26am

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DRB 8691 Ps 801

DOROTHY H. WILKEN, CLERK PS COUNTY, FL

EXHIBIT D  
TO  
CONSERVATION AND PRESERVATION EASEMENT  
FROM  
DONALD J. TRUMP  
TO  
NATIONAL TRUST FOR HISTORIC PRESERVATION  
IN THE UNITED STATES

ASSIGNMENT

NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE UNITED STATES, a non-profit charitable corporation chartered under an Act of Congress, 16 U.S.C. Section 468-468(d), with a business address at 1785 Massachusetts Avenue, N.W., Washington, D.C. 20036, herein referred to as "Assignor," for consideration paid, hereby ASSIGNS to

\_\_\_\_\_ a non-profit charitable corporation organized and existing under the laws of \_\_\_\_\_ with a business address at \_\_\_\_\_, herein referred to as "Assignee," all of the right, title, and interest of the Assignor, under a certain Deed of Conservation and Preservation Easement dated \_\_\_\_\_, 1995, recorded in Official Record Book \_\_\_\_\_, Page \_\_\_\_\_, of the Public Records of Palm Beach County, from Donald J. Trump, Grantor, to Assignor. This Assignment is made pursuant to the power and authority contained in paragraph 10 of said Deed of Conservation and Preservation Easement and every other power and authority of the Assignor hereunto enabling.

In consideration of the foregoing Assignment, and by the execution hereof, the Assignee hereby assumes the obligations of the Assignor under said Deed of Conservation and Preservation Easement, effective upon the recording of this Agreement with said Records.

Witness the execution hereof under seal this \_\_\_\_\_ day of \_\_\_\_\_.

NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE UNITED STATES

WITNESS: \_\_\_\_\_ By: \_\_\_\_\_  
Print Name: \_\_\_\_\_, ASSIGNEE

WITNESS: \_\_\_\_\_ By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

[Acknowledgment of Assignor]  
[Acknowledgment of Assignee]

# Faherty Affirmation

## Exhibit # 26



10/17/2002 12:07:53 20020547996  
DR BK 14280 PG 0404  
Palm Beach County, Florida  
AMT 10.00  
Doc Stamp 0.70

Prepared by and after  
recording return to:  
Paul Rampell, Esq.  
50 Coconut Row, Suite 220  
Palm Beach, FL 33480

DEED OF DEVELOPMENT RIGHTS

WHEREAS, Mar-a-Lago Club, L.L.C., L.C., a Delaware Limited Liability Company, as successor in interest to The Mar-a-Lago Club, Inc., a Florida corporation, (the "Club") is the owner of real property described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property");

WHEREAS, Donald J. Trump, his successor and assigns, ("Trump") is the holder of a contingent reversionary interest in the Property;

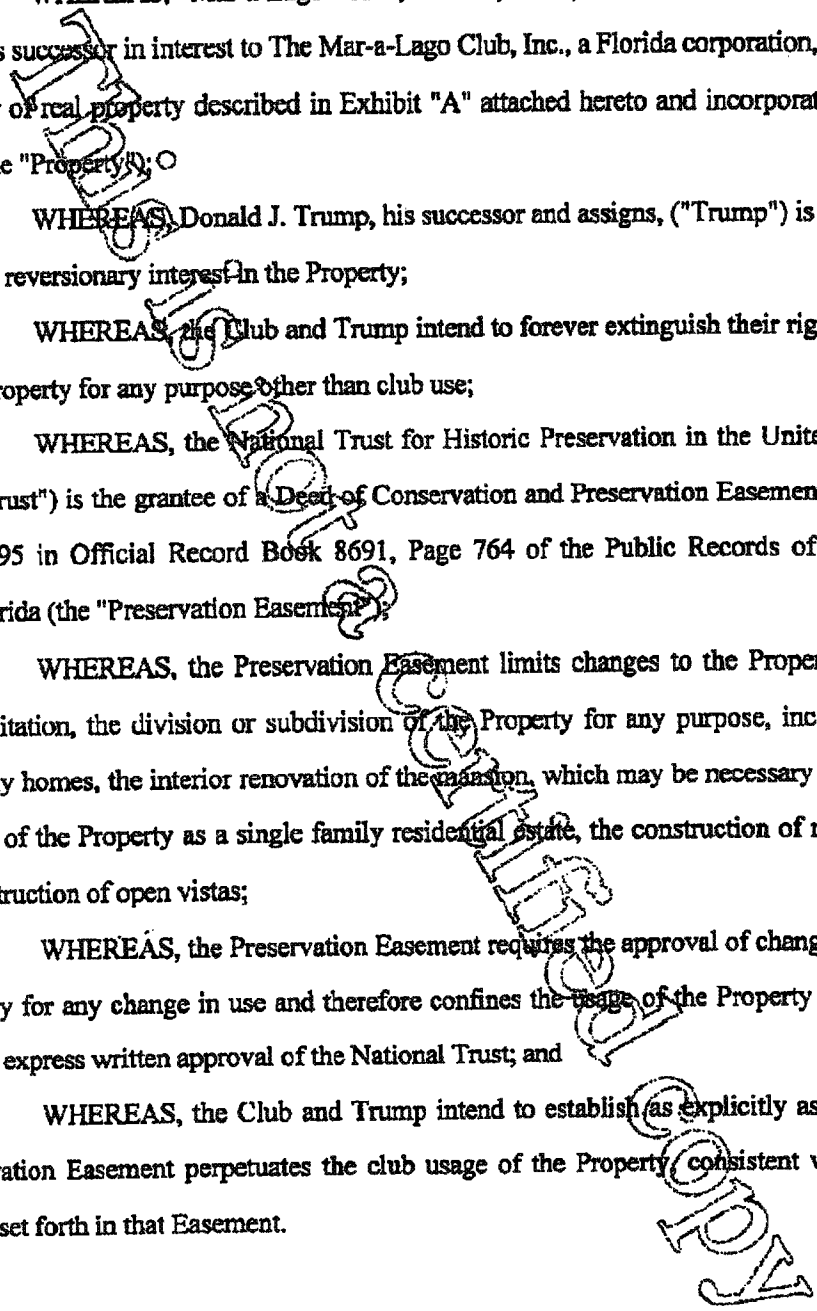
WHEREAS, the Club and Trump intend to forever extinguish their right to develop or use the Property for any purpose other than club use;

WHEREAS, the National Trust for Historic Preservation in the United States (the "National Trust") is the grantee of a Deed of Conservation and Preservation Easement recorded on April 6, 1995 in Official Record Book 8691, Page 764 of the Public Records of Palm Beach County, Florida (the "Preservation Easement");

WHEREAS, the Preservation Easement limits changes to the Property including, without limitation, the division or subdivision of the Property for any purpose, including use as single family homes, the interior renovation of the mansion, which may be necessary and desirable for the sale of the Property as a single family residential estate, the construction of new buildings and the obstruction of open vistas;

WHEREAS, the Preservation Easement requires the approval of changes that would be necessary for any change in use and therefore confines the usage of the Property to club usage without the express written approval of the National Trust; and

WHEREAS, the Club and Trump intend to establish as explicitly as possible that the Preservation Easement perpetuates the club usage of the Property consistent with the other limitations set forth in that Easement.



WITNESSETH

The Club and Trump, for good and valuable consideration the receipt and sufficiency of which is acknowledged, by these presents do hereby transfer, grant, bargain, sell, alien, remise, release, convey and confirm unto the National Trust, to the extent that such rights have not already been transferred through the Deed of Conservation and Preservation Easement, any and all of their rights to develop the Property for any usage other than club usage.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in their names.

Signed, sealed and delivered in the presence of

*[Handwritten signature]*

Norma Foerster  
Printed Name

*[Handwritten signature]*

Rhona Graff-Ricco  
Printed Name

Mar-a-Lago Club, L.L.C., L.C.

By: *[Handwritten signature]*

Donald J. Trump, President  
Mar-a-Lago, Inc., Member

*[Handwritten signature]*

Donald J. Trump, individually

Acknowledged by National Trust for Historic Preservation in the United States

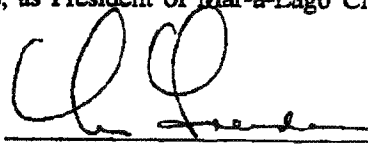
By: *[Handwritten signature]*  
Authorized Officer  
Richard Moe, President

*Certified Copy*



STATE OF  
COUNTY OF

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of September, 2002, by Donald J. Trump, as President of Mar-a-Lago Club, Inc., and individually, who is personally known to me.



Notary Public

**NICHOLA L. FORDNER**  
NOTARY PUBLIC, State of New York  
No. 01704743-00  
Qualified in New York County  
Commission Expires Sept. 28, 2005

This is not a certified copy

BOOK 14280 PAGE 0407  
Dorothy H. Wilken, Clerk

### EXHIBIT A

Being all that part of the North 610.00 feet of the South 1170.00 feet of Government Lot 2 of Section 35, Township 43, South, Range 43 East, in the Town of Palm Beach, Palm Beach County, Florida, lying West of Ocean Boulevard (State Road A1A) Right of Way and more particularly described as follows, to-wit:

Beginning at a point on the West face of an existing seawall on the East shore of Lake Worth, which point is 360.00 feet North of, measured at right angles, to the South line of Government Lot 2 of said Section 35; thence North 6°09'22" West along the West face of said seawall for a distance of 77.32 feet; thence North 10°23'23" East along the West face of said seawall for a distance of 539.50 feet to a point in the South line of BINGHAM-COPP TRACT, a subdivision recorded in Plat Book 18, Page 6, Palm Beach County Public Records; thence run South 88°12'07" East along the South line of said BINGHAM-COPP TRACT for a distance of 1134.10 feet to a point in the Westerly right-of-way line of Ocean Boulevard (State Road A1A); thence run South 0°09'07" East for a distance of 82.59 feet to a point of curvature; thence run Southerly along the arc of a curve concaved to the Southwest having a radius of 1412.69 feet and a central angle of 3°03'00" for a distance of 75.20 feet to a point of tangency; thence run South 2°53'53" West for a distance of 176.28 feet to a point of curvature; thence run Southwesterly along the arc of a curve concaved to the Northwest having a radius of 2968.36 feet and a central angle of 2°27'30" for a distance of 127.36 feet to a point of compound curvature; thence continue Southwesterly along the arc of a curve, concaved to the Northwest having a radius of 158.68 feet and a central angle of 86°26'30" for a distance of 239.40 feet to a point of tangency; thence run North 88°12'07" West along the North line of Southern Boulevard (State Road 80) for a distance of 1040.43 feet to the POINT OF BEGINNING;

and

The West one-half (W 1/2) of Lot 20 and the South 15 feet of the East one-half (E 1/2) of Lot 20 and the South 15 feet of the West one-half (W 1/2) of Lot 21, all in BINGHAM-COPP TRACT, a subdivision in the Town of Palm Beach, Palm Beach County, Florida, as recorded in Plat Book 18, Page 6, Palm Beach County Public Records;

Together with an easement for the use of the tunnel as described in that certain Quit Claim Easement Deed recorded in Official Record Book 2327, Page 1970 of the Palm Beach County Public Records;

and

The South 358.00 feet of the North 403.00 feet of the South 1170.00 feet of Government Lot 2, Section 35, Township 43 South, Range 43 East, Palm Beach County, Florida, lying East of Ocean Boulevard (State Road A1A) as now laid out and in use; together with all riparian and littoral rights, if any, thereunto appertaining.

# Faherty Affirmation

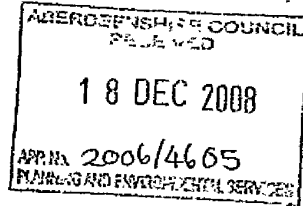
## Exhibit # 27

Directorate for the Built Environment  
Planning Decisions Division

T: 0131-244 7079 F: 0131-244 7949  
E: Andy.Kinnaird@scotland.gsi.gov.uk



Ann Faulds  
Dundas & Wilson CS LLP  
Saltire Court  
20 Castle Terrace  
EDINBURGH  
EH1 2EN



Our ref: CIN/ABS/001  
16 December 2008

Dear Ms Faulds

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997  
APPLICATION FOR OUTLINE PLANNING PERMISSION: GOLF COURSE AND RESORT  
DEVELOPMENT AT LAND AT MENIE HOUSE, BALMEDIE, ABERDEENSHIRE**

The Scottish Government's letter of 3 November 2008 gave notice that the Scottish Ministers would be minded to grant planning permission for the above development, subject to the conditions set out in Annex A to that letter, and also subject to the satisfactory conclusion of an agreement under Section 75 of the above Act to deliver the heads of agreement set out in Annex B to that letter.

Having considered the matter, the Scottish Ministers are content with the Section 75 Agreement and have received confirmation from you that the Agreement has now been lodged with the Keeper of the Registers of Scotland. Accordingly, Scottish Ministers hereby grant outline planning permission to Trump International Golf Links, Scotland for a golf course and resort development on land at Menie House, Balmedie, Aberdeenshire, subject to the conditions set out in the Annex to this letter.

The foregoing decision of the Scottish Ministers is final, subject to the right, conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997, of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date hereof. On any such application the Court may quash the decision if satisfied that it is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

Victoria Quay, Edinburgh EH6 6QQ  
www.scotland.gov.uk



A copy of this letter has been sent to Aberdeenshire Council and to the other parties who appeared at the public local inquiry. This letter, the report of the public local inquiry and other related documents are also available on the Scottish Government's website at: [www.scotland.gov.uk/Topics/Built-Environment/planning/publications/foi/MenieEstate](http://www.scotland.gov.uk/Topics/Built-Environment/planning/publications/foi/MenieEstate).

Yours sincerely



**ANDY KINNAIRD**  
Planning Decisions Manager



## ANNEX

**APPLICATION FOR OUTLINE PLANNING PERMISSION: GOLF COURSE AND RESORT DEVELOPMENT AT LAND AT MENIE HOUSE, BALMEDIE, ABERDEENSHIRE**

Ref: CIN/ABS/001

**CONDITIONS**General

1. Application for approval of reserved matters shall be made to the planning authority within 3 years beginning with the date of this outline planning permission.

*Reason: pursuant to sections 58 and 59 of the Town and Country Planning (Scotland) Act 1997.*

2. The development hereby granted shall be begun on or before whichever is the latest of the following two dates:

- (i) the expiration of 5 years beginning with the date of the outline planning permission; or
- (ii) the expiration of 2 years from the final approval of the reserved matters or in the case of approval on different dates, the final approval of the last such matters to be approved.

*Reason: pursuant to sections 58 and 59 of the Town and Country Planning (Scotland) Act 1997.*

3. No works in connection with the development hereby approved shall take place unless full details of the siting, design, external appearance and landscaping of the development and the means of access serving the development (hereinafter referred to as the 'reserved matters') have been submitted to and approved in writing by the planning authority. The reserved matters shall include:

- (i) a masterplan for the whole development;
- (ii) details of all cut and fill operations in the construction of the golf courses;
- (iii) for the championship golf course, a full topographical survey of the site as existing and as proposed, including all engineering works, site levelling and any other works required for the formation of the course;
- (iv) for the remainder of the site, a detailed levels survey (existing and proposed) and cross sections showing proposed finished ground and floor levels of all buildings forming part of the development, relative to existing ground levels and a fixed datum point;
- (v) full details of the proposed means of disposal of foul and surface water from the development;
- (vi) a phasing plan for the whole site;
- (vii) the siting, design, height and external materials of all buildings or structures;
- (viii) the details of all roads, footpaths and cycleways throughout the development;
- (ix) details of any screen walls/fencing to be provided;

- (x) measures to maximise environmental sustainability through design, orientation and planting or any other means, including an Index 21 assessment; and
- (xi) details of all landscaping, planting and screening associated with the development.

*Reason: permission for the development has been granted in principle only and subsequent approval is required for the reserved matters in accordance with sections 58 and 59 of the Town and Country Planning (Scotland) Act 1997.*

4. The masterplan to be submitted under the terms of condition 3 shall include all elements of the proposed development and in addition shall:

- (i) include the provision of appropriate community facilities, such as general store, nursery/crèche, and such other community facilities as are agreed to be necessary by the planning authority and the developer;
- (ii) identify and safeguard the favoured foraging routes and areas for badgers and connections to their setts; and
- (iii) safeguard the sites identified for artificial otter holts together with otter foraging routes and areas, and resting places.

In addition, the detailed design and construction methods for the built elements of the development shall implement the advice of the planning authority, in consultation with SNH, in relation to provisions for bats and for barn owls.

*Reason: in the interests of protecting the environmental sensitivity of the site and enhancing the habitat of protected species and to ensure that proper provision is made within the development to accommodate these requirements.*

5. Prior to the commencement of any works in connection with the development hereby approved (apart from the formation of the championship golf course) and to allow for an appropriate design framework, the developer shall enter into a design review process with the planning authority, in consultation with Architecture and Design Scotland. Once a design has been approved following this process, the development shall be carried out in accordance with the approved design.

*Reason: in order to ensure a responsive and robust design framework is created for the site.*

6. Notwithstanding the details on the indicative masterplan (Figure 3.1 of the environmental statement) and prior to the commencement of any works in connection with the area covered by the particular brief (apart from the formation of the championship golf course), two development briefs, as detailed below, shall be prepared for the further approval of the planning authority. The briefs shall specify:

- (i) the height and appearance of all new structures;
- (ii) the use of appropriate external materials including walls, fences and other boundary enclosures;
- (iii) the surfacing of all new roads, parking areas, cycleways and footpaths;
- (iv) the lighting of all streets and footpaths; and
- (v) the maintenance of all open space and treed areas not included in private house plots.

The briefs shall be prepared for the following areas within the site:

- (vi) the areas proposed for private housing for sale; and
- (vii) all other buildings within the development site.

The briefs shall incorporate the outcome of the design review process required under condition 5 above. Once approved, all development in the respective areas shall be carried out in accordance with the approved briefs.

*Reason: in order to give further consideration to those details which have still to be submitted.*

### Phasing

7. Prior to the start of any work on the site, an agreed construction programme shall be submitted to and approved in writing by the planning authority. The construction programme shall accord with the phases outlined below. For the avoidance of doubt, phase 1 of the development comprises the championship golf course, maintenance building, clubhouse, starter's hut, caddy shack, practice facilities, driving range, hotel, 36 'golf villas' and staff accommodation and phase 2 of the development comprises the first block of holiday apartments to be completed:

- (i) phase 1 of development must be complete before the start of construction of any of the private houses on the site;
- (ii) one of the blocks of holiday apartments (phase 2) shall be completed prior to work commencing on the construction of any of the private houses;
- (iii) the construction of the second block of holiday apartments shall commence prior to the completion of the 101st private house and shall be completed prior to work commencing on the construction of the 151st private house;
- (iv) the construction of the third block of holiday apartments shall commence prior to the completion of the 201st private house and shall be completed prior to work commencing on the construction of the 251st private house;
- (v) the construction of the fourth block of holiday apartments shall commence prior to the completion of the 301st private house and shall be completed prior to work commencing on the construction of the 401st private houses.

Once approved, the development shall proceed in accordance with the approved construction programme, unless otherwise agreed in writing by the planning authority.

*Reason: in order to ensure the implementation and completion of the golf course resort components of the proposal, as these are the elements of the proposed development which the planning authority considers will bring economic and social benefits to the area.*

### Provision of Bonds

8. No works in connection with the development hereby approved shall take place until such time as bonds have been concluded to the satisfaction of and lodged with the planning authority. The bonds shall be in such terms and of sufficient value to ensure that:



- (i) the landscaping works required under condition 29 below can be completed in full. The value of this bond shall be determined following approval of the landscaping works under the terms of that condition; and
- (ii) to ensure that any land upon which works have been undertaken to construct the championship golf course can be restored in accordance with a scheme to be agreed by the planning authority in consultation with SNH. The value of this bond shall be determined by the planning authority in consultation with SNH.

*Reason: to ensure the completion of the agreed landscaping scheme in the interests of the visual amenity of the area; to give effect to the evidence given by the developer; and to ensure that, in the event of the championship golf course not being completed, the site can be restored appropriately to a natural state.*

#### Championship Golf Course Details

9. The championship golf course hereby permitted shall be constructed in accordance with the drawing entitled Golf Masterplan, drawn by Hawtree Ltd, dated February 2008, submitted as a document to the public inquiry as plan T2, unless otherwise agreed in writing by the planning authority, in consultation with SNH.

*Reason: because the environmental implications of plan T2 have been assessed by the planning authority in consultation with SNH.*

10. No provision shall be made for mechanical/electrical golf buggies to be used on the championship golf course.

*Reason: to give effect to the evidence given in support of the development by the developer and to protect the environmental sensitivities of this part of the site.*

#### Environmental/ecology

11. Prior to any works commencing in relation to either golf course, an Environmental Management Plan prepared to an industry-recognised standard (either ISO40001 or the European standard EMAS) shall be submitted to and approved in writing by the planning authority, following consultation with SNH. The Plan shall relate to both the construction and operational phases of the development and shall include full details of:

- (i) methods and areas of stabilisation within the dune systems;
- (ii) routing of the course including reference to tracks, paths and any other ancillary requirements;
- (iii) specification of grass types, vegetation and seed mixes to be used and identification of planting areas;
- (iv) compliance with best practice standards in relation to soil and turf stripping and storage and provision of details on areas for storage;
- (v) identification of areas and methods for translocation of habitats;
- (vi) a phasing plan, specifying timings and durations of construction aspects in relation to each course;
- (vii) a turf management plan, with full details of fertilisers, herbicides and pesticides, including type, rates of application, duration and method;

- (viii) management of areas of fairway, greens, tees, transition rough and rough, including mowing/grazing regimes, with details of disposal of mown clippings;
- (xi) water irrigation and abstraction rates; and
- (x) identification of the proposed number of rounds per annum, by an agreed date per annum for the first 10 years of operation of each course.

The development of each golf course shall thereafter be undertaken in accordance with its approved Environmental Management Plan, which shall also include a formal reporting and review process.

*Reason: in order to protect the environmental sensitivity of the site.*

12. Prior to the commencement of any works in connection with the development hereby approved, the developer shall submit the terms of reference for an Ecological Clerk(s) of Works for the written approval of the planning authority, following consultation with SNH. Such terms of reference shall include the length of time that the Ecological Clerk(s) of Works shall be appointed. Thereafter the developer shall appoint a suitably qualified Ecological Clerk (or Clerks) of Works (to be funded by the developer). The person(s) who is/are appointed shall be approved in writing in advance by the planning authority, in consultation with SNH. Subsequently, the developer shall maintain the appointment of the Ecological Clerk(s) of Works for the site, who shall act in accordance with their approved terms of reference.

*Reason: in order to ensure that all works relating to the ecological interests of the site are undertaken in the appropriate and agreed manner.*

#### Protection of Specified Areas

13. Prior to the commencement of any works in connection with the development hereby permitted, the extent of the coastal dune ridge shall be defined on a plan to be submitted to and approved in writing by the planning authority, in consultation with SNH. Thereafter, the coastal dune ridge, as defined on the approved plan, shall be protected from all works associated with the creation of the golf courses and their future management, and shall remain as such in perpetuity to the satisfaction of the planning authority.

*Reason: in the interest of protecting the environmental sensitivity of the site.*

14. Tree surveys shall be carried out and submitted for the consideration and written approval of the planning authority for the area of the championship golf course and for the remainder of the site. In the case of the championship course, the survey shall be submitted prior to the start of work on that part of the site. The other survey shall be submitted prior to the start of work on the remainder of the site. The tree surveys shall identify existing tree species, including an estimation of their height and spread of branches, and plot their location within the site accurately, to the satisfaction of the planning authority. Those trees which it is proposed to retain or to fell and remove shall be separately identified. No tree shall be removed without the express consent of the planning authority.

*Reason: in the interests of visual amenity and to safeguard as many trees as possible on the site.*

15. No work shall start on the relevant parts of the site unless the trees to be retained as identified in the surveys to be submitted and approved pursuant to condition 14 above have been protected by suitable fencing in accordance with BS5837 2005 (Trees in Relation to Construction). The details of the protective fencing and its location shall be first submitted to and agreed in writing by the planning authority. No materials, supplies, plant, machinery, soil heaps, changes in ground levels or construction activities shall be permitted within the protected areas without the written consent of the planning authority and no fire shall be lit in the position where the flames could extend to within 5 metres of foliage, branches or trunks.

*Reason: to ensure adequate protection for the trees on the site during the construction, in the interests of the visual amenity of the area.*

16. Prior to the commencement of any works in connection with the development hereby permitted and notwithstanding the details on the submitted plans, a plan showing the extent of a buffer zone to be created around the area of ancient woodland shall be submitted to and approved in writing by the planning authority and thereafter no development shall take place within the area so defined.

*Reason: to ensure the retention of important habitat and landscape features and preserve the character of the area.*

17. Prior to commencement of any works on site a plan showing the location of pond PN8 as labelled in the environmental statement and a 20 metre wide protection zone around it shall be submitted to and approved in writing by the planning authority and thereafter no development shall take place within the area specified.

*Reason: to protect the environmental sensitivity of the site.*

#### Species and habitats

18. Prior to the commencement of any works on site a bryophyte survey and mitigation plan(s) shall be submitted to and approved in writing by the planning authority, following consultation with SNH. Once approved, the mitigation plan(s) shall thereafter be complied with.

*Reason: in order to give adequate protection to bryophytes, details of which have yet to be submitted.*

19. Prior to the commencement of any works on site and with reference to condition 4 above, management plans for otter and badger shall be submitted to and approved in writing by the planning authority, in consultation with SNH. Thereafter the approved plans shall be complied with during the construction works and during the operation of the golf resort.

*Reason: to safeguard the habitats of these protected species.*

20. Prior to the commencement of any works on site and with reference to condition 4 above, habitat management and enhancement plans, incorporating mitigation and compensatory measures for birds, bats, invertebrates and plants, shall be submitted for the further written approval of the planning authority, in consultation with SNH. For bats, the works on site shall include the felling of any trees, which shall first be surveyed for the presence of bats. Thereafter, the approved plans shall be complied with during the construction works and during the operation of the golf resort.

*Reason: in the interests of protecting the environmental sensitivity of the site and to enhance habitats.*

21. Prior to the commencement of any development on the site, details of a goose management scheme for pink footed geese shall be submitted to and approved in writing by the planning authority, following consultation with SNH and CAA. The approved scheme shall be implemented in its entirety in accordance with the approved details.

22. Prior to the commencement of any development on the site, details of mitigation measures to reduce bird disturbance in the Ythan Estuary, Sands of Forvie and Meikle Loch SPA shall be submitted to and approved in writing by the planning authority, following consultation with SNH and BAA. Amongst other things, these measures shall comprise: the provision within the application site, or other areas owned or controlled by the developer, of appropriate forms of open space; the improvement of access on the Menie Estate; and the enhancement of the recreational attraction and capacity of existing semi-natural open space on the estate. The measures shall thereafter be implemented in their entirety in accordance with the approved details.

*Reason for 21 and 22: to ensure that there would not be an adverse effect on the integrity of the Ythan Estuary, Sands of Forvie and Meikle Loch SPA and the Ythan Estuary and Meikle Loch Ramsar site and to safeguard aviation at Aberdeen airport.*

### Water and Drainage

23. Prior to the submission of any application for reserved matters for any of the buildings, development impact assessments for foul drainage and water supply shall be submitted for the further written approval of the planning authority, in consultation with Scottish Water. Thereafter, no development pursuant to this planning permission shall take place until plans indicating all details of: the proposed sewage disposal/drainage facilities; provision for surface water disposal; and the proposed water supply have been submitted to and approved in writing by the planning authority, in consultation with Scottish Water and SEPA.

*Reason: in the interests of public health and to prevent pollution.*

24. Site water management plans for: (a) the championship golf course; and (b) the remainder of the development site; shall be submitted to and approved in writing by the planning authority in consultation with SEPA and SNH. In the case of the championship golf course, the plan shall be submitted and approved prior to the start of work on that part of the site. The other site water management plan shall be submitted and approved prior to the start of work on the remainder of the site. The plans shall include: full details of foul water

disposal; the proposed means of disposal of surface water from the development; any water abstraction; and any irrigation. Unless otherwise agreed in writing by the planning authority, surface water shall be disposed of via the use of sustainable urban drainage systems. Once approved, the works shall be implemented in accordance with the agreed plans.

*Reason: to ensure the provision of an acceptable drainage system in the interests of the amenity of the area and for protection of the water environment.*

25. Foul drainage from the site shall be drained to the mains sewerage system by means of adoptable sewerage and plant, the details of which shall be submitted to and approved in writing by the planning authority in consultation with Scottish Water, and thereafter complied with.

*Reason: in the interests of public health and to prevent pollution.*

26. Details of the location and configuration of all sustainable urban drainage systems to be provided on the site and the arrangements for the maintenance thereof, shall be submitted and approved in writing by the planning authority, in consultation with SEPA and Scottish Water. In the case of the championship golf course, the details shall be submitted and approved prior to the start of work on that part of the site. Details for the remainder of the site shall be submitted and approved prior to the start of work on the remainder of the site.

*Reason: to ensure the provision of an acceptable drainage system in the interests of the amenity of the area and for the protection of the water environment.*

27. Where any watercourse crossings are required, watercourses will be bridged and not culverted. No part of the bridge structure shall lie within the banks or bed of the watercourse. Details of the proposed water crossings shall be submitted as part of the reserved matters application(s).

*Reason: to ensure the integrity of the existing watercourses on the site.*

28. Prior to the commencement of any development, a scheme for monitoring, evaluation and mitigation measures in relation to local water quality shall be submitted to and approved in writing by the planning authority, following consultation with SEPA. Once approved, these measures shall be complied with during construction works and the operation of the golf resort.

*Reason: in the interests of protecting the water quality within the site.*

#### Landscaping Details

29. Schemes of hard and soft landscaping works shall be submitted to and approved in writing by the planning authority. In the case of the area covered by the championship golf course, the scheme for that area shall be submitted and approved before works start on that part of the site. In the case of the rest of the development area, the scheme for the whole remaining area shall be submitted and approved before any work

starts on any part of the rest of the site. The landscape schemes shall be linked to the agreed phasing plan submitted and approved pursuant to condition 7 above.

Details of the schemes shall include:

- (i) existing and proposed finished ground levels relative to a fixed datum point;
- (ii) existing landscape features and vegetation to be retained;
- (iii) existing and proposed services including cables, pipelines and substations;
- (iv) the location of new trees, shrubs, hedges, grassed areas and water features;
- (v) a schedule of plants to comprise species, plant sizes and proposed numbers and density;
- (vi) the location, design and materials of all hard landscaping works including walls, fences, gates, any other means of enclosure, street furniture and play equipment;
- (vii) an indication of existing trees, shrubs and hedges to be removed;
- (viii) a programme for the completion and subsequent maintenance of the proposed landscaping.

All soft and hard landscaping proposals shall be carried out in accordance with the approved scheme and shall be completed during the planting season immediately following the commencement of the development on that part of the site, or such other date as may be agreed in writing with the planning authority.

Any planting which, within a period of 5 years from the completion of the development, in the opinion of the planning authority is dying, has been severely damaged or is becoming seriously diseased, shall be replaced by plants of similar size and species to those originally required to be planted.

*Reason: to ensure the implementation of satisfactory schemes of landscaping which will help to integrate the proposed development into the local landscape in the interests of the visual amenity of the area.*

30. No works in connection with the development hereby approved (with the exception of the championship golf course) shall take place unless details of the location and nature of public open space to be provided within the development as a whole, and the arrangements for the maintenance thereof, have been submitted to and approved in writing by the planning authority.

*Reason: to ensure that public open space is provided and maintained to an acceptable standard throughout the development.*

### Public Access

31. As part of the masterplanning exercise required by condition 3(i), a plan shall be submitted to and approved in writing by the planning authority, in consultation with the relevant recreational and community interests, which sets out both the broad approach and details of how the developer will meet its obligations under section 3 of the Land Reform (Scotland) Act 2003. This plan shall ensure that public rights of access are maintained over the development area in accordance with that Act. In particular, the plan shall:

- (i) describe action to compensate for losses arising from conversion of land to golf course use;
- (ii) describe how existing routes across the sites used by the public at present will be affected and how they will be retained or replaced;
- (iii) integrate provision for access across all sectors of the public who are participating in open-air recreation – those at the resort, the visiting public and local residents;
- (iv) show any routes proposed for promoted public access, and provide details on how these routes will be constructed and implemented;
- (v) provide details of how cyclists, horse-riders and all ability use will be accommodated;
- (vi) provide details and specifications for the provision of ancillary facilities such as parking, information boards and way-marking;
- (vii) provide details of a maintenance regime for the foregoing, including a mechanism for liaison over access with the local authorities, local community interests and the local access forum, as appropriate;
- (viii) describe in general terms how access might be affected by any special events taking place at the resort;
- (ix) describe in general how the needs of any community events that impinge on the development area will be accommodated; and
- (x) address how access will be accommodated during the construction phases.

*Reason: in order to promote compliance with Part 1 of the Land Reform (Scotland) Act 2003, and to secure and enhance existing public access at Menie.*

#### Housing and Holiday Accommodation

32. No more than 500 houses for private sale shall be built under the permission hereby granted.

*Reason: for the avoidance of doubt and in order to comply with the proposals as submitted.*

33. The 'golf villas' and holiday apartment buildings hereby approved shall be occupied on a holiday letting or fractional ownership basis only, and none of these units of accommodation shall be occupied by any group or individual for more than a total of 12 weeks in any calendar year.

*Reason: in order to give effect to the evidence given by the developer and to retain control over the occupation of these buildings as holiday accommodation.*

#### Transport and Roads

34. No development shall commence (except works related to the construction of the championship golf course) until the following details are submitted to and approved by the planning authority, in consultation with Transport Scotland:

- (i) plans showing the extent of the modifications proposed on the A90(T), necessary to mitigate the traffic implications of phases 1 and 2 of the development (as defined in condition 7 above), including mitigation works at the

- A90(T) Parkway/A956 roundabout, the A90(T) Ellon Road/B999 roundabout and the A90 (T) Parkway/ Scotstown Road roundabout;
- (ii) the provision of new or extended bus services to serve the development, including details of operating hours, frequency of service, route and timescale for introduction, together with evidence of an agreement with a public transport operator to provide the service(s), (in accordance with the proposed service outlined within the Fairhurst Transport Report, dated April 2008);
  - (iii) a comprehensive Travel Plan that sets out proposals for reducing dependency on the private car, which shall identify measures to be implemented; the system of management, monitoring, review and reporting; and the duration of the plan; and
  - (iv) the road lighting/ road drainage.

35. The development hereby permitted shall not be occupied until the existing A90(T)/ Hill of Menie Access has been permanently closed and the A90(T) road properly reinstated.

36. No additional development on the remainder of the site shall be occupied over and above that identified in phase 1 and phase 2 (as defined in condition 7 above) until after the opening of the new A90(T) Balmedie to Tipperty dual carriageway upgrade and the construction of an additional grade separated junction in the vicinity of Orrock House, north of Balmedie village, to serve the development directly from the new dual carriageway. Plans showing the additional grade separated junction shall be submitted to and approved by the planning authority, in consultation with Transport Scotland, prior to the start of development on the remainder of the site.

37. Prior to the occupation of Phase 1 of the development hereby permitted (as defined in condition 7 above), the following road works shall be implemented to the satisfaction of the planning authority, in consultation with the Transport Scotland, and in accordance with detailed plans first approved by the planning authority under condition 34 above:

- (i) the proposed A90(T)/development access roundabout;
- (ii) the modifications to the A90(T) Ellon Road/B999 roundabout; and
- (iii) the approved mitigation proposals to the A90(T) Parkway/A956 roundabout.

38. Prior to the occupation of Phase 2 of the development hereby permitted the approved mitigation proposals to the A90(T) Parkway/Scotstown Road roundabout, shall be implemented to the satisfaction of the planning authority, in consultation with Transport Scotland and in accordance with detailed plans first approved by the planning authority under condition 34 above.

39. Before each phase of the development is first occupied, the agreed bus services referred to in condition 34 above shall be introduced.

*Reason for conditions 34-39: to ensure that the development proposals will not have a significant detrimental impact on the operation of the trunk and local road network.*



### Archaeology

40. No works shall take place within the development site until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant, as agreed by Aberdeenshire Council Archaeology Service and approved by the planning authority. Thereafter the developer shall ensure that the approved programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the planning authority, in consultation with Aberdeenshire Council Archaeology Service.

*Reason: in the interests of recording and preserving such items of historical importance that exist within the site.*

### Lighting

41. Details of any external lighting installation that may illuminate any part of the golf courses and any other golf related development shall be submitted to and approved in writing by the planning authority, in consultation with SNH, prior to its installation. Once approved, the approved lighting installation shall be implemented as part of the works on site.

*Reason: to prevent adverse impacts on wildlife, at night, in the coastal environment.*

42. A lighting scheme for the remainder of the development site, other than the golf courses and ancillary golf facilities, shall be submitted to and approved in writing by the planning authority before the installation of any such lighting. Once approved, the approved lighting installation shall be implemented as part of the works on site.

*Reason: in the interests of the amenity of the area.*

### Miscellaneous

43. Waste management plans, incorporating on-site disposal, shall be submitted to and approved in writing by the planning authority, in consultation with Environmental Health. These plans shall be prepared for:

- (i) the championship golf course; and
- (ii) the remainder of the development site.

In the case of the championship golf course, the plan must be submitted and approved before works start on that part of the site. In the case of the remainder of the development site, the plan must be submitted and approved before works commence on any part of the site, apart from the championship golf course. Once approved, the provisions of the approved plans shall thereafter be complied with.

*Reason: in the interests of the sustainable disposal of waste.*

44. Details of any micro wind turbines to be installed as part of the development hereby approved shall be submitted for the further approval of the planning authority in consultation with the CAA and thereafter complied with.

*Reason: in the interests of aviation safety.*

45. Any plant and equipment, such as air conditioning, mechanical extraction, air receivers etc, must be designed and installed so as to prevent noise disturbance to adjoining properties.

*Reason: to prevent disturbance from noise.*

#### Construction Requirements

46. Prior to works commencing on any part of the site, a detailed construction method statement, which shall take account of the environmental management plan for the site and the individual species and habitat management plans, shall be submitted to and approved in writing by the planning authority, following consultation as appropriate with SNH, SEPA, Environmental Health and Transport Scotland.

The method statement shall include:

- (i) details of buffer zones, public access arrangements during construction, signage details and car parking for construction workers;
- (ii) details of storage areas to be utilised during the construction period, which shall not be on the site access or any other access roads serving the development;
- (iii) details of the installation of an effective wheel washing facility, which shall be retained in working order throughout the construction period on a particular part of the site, and used such that no vehicle shall leave the site carrying earth and mud in its wheels in such a quantity which causes noise or hazard on the road system in the locality;
- (iv) details of dust suppression measures to be employed at the site during the construction period;
- (v) proposed hours of working;
- (vi) details of any proposed construction access routes; and
- (vii) details of a soil and sand management plan, which shall include maximum reuse of sand and soil within the site.

Once approved the construction of the development on the site shall be undertaken entirely in accordance with the provisions of the approved method statement, which shall be reviewed prior to the commencement of each phase of development and amended as required with the written approval of the planning authority and following appropriate consultation.

*Reason: to ensure that all construction activity is undertaken so as to protect the environmental sensitivity of the site and the residential amenity of neighbouring properties.*

# Faherty Affirmation

## Exhibit # 28



**DATE: 24 JULY 2018**

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**PLANNING STATEMENT**

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for

**TRUMP INTERNATIONAL GOLF LINKS SCOTLAND**

in respect of

**DEVELOPMENT COMPRISING UP TO 550 DWELLINGS (UP TO 500 RESIDENTIAL  
UNITS AND A MINIMUM OF 50 LEISURE/RESORT UNITS) , COMMUNITY FACILITIES,  
DEVELOPMENT FALLING WITHIN CLASS 1 (SHOPS), CLASS 2 (FINANCIAL,  
PROFESSIONAL AND OTHER SERVICES) AND CLASS 3 (FOOD AND DRINK),  
LANDSCAPING AND SUPPORTING INFRASTRUCTURE**

---

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## 1. INTRODUCTION

1.1 Trump International Golf Links Scotland (“**TIGLS**”) is delighted to bring forward proposals for the development of its world-class golf and leisure resort at the Trump Estate. A lot has changed since the Scottish Ministers granted outline planning permission in 2008 (the “**OPP**”)<sup>1</sup>, but TIGLS’ development strategy remains the same: to maximise the economic and social benefits of its award winning Championship Golf Course, five start facilities and spectacular grounds. In doing so, it will deliver national, regional and local benefits by

- a) securing further **inward investment** in Scotland;
- b) supporting national and local government objectives to promote **tourism**, in particular, the enhancement of the North East as a global golf destination;
- c) supporting the Council’s LDP objectives for the Aberdeen to Peterhead **Strategic Growth Area**;
- d) stimulating **economic growth** in a period of economic risk and uncertainty;
- e) delivering a range of **high quality houses** to support the local housing market; and
- f) contributing to the **economic benefits** flowing from public sector investment in AWPR.

1.2 Since the initial grant of the OPP in 2008, TIGLS has consistently pursued the vision to create the world’s best golf course on the Trump Estate. The Championship Golf Course opened to play in 2012 with the new clubhouse opening in 2015. This development was the culmination of almost fifteen years’ inward investment in the Scottish planning process. That period straddled the global banking crisis and the more recent downturn in the oil and gas sector, both of which had a significant adverse effect on the local, regional and national economy. Despite that, TIGLS has continued to invest in Scotland: including the extensive and ongoing planning process and the development of the Championship Golf Course and its supporting infrastructure, including the refurbishment of MacLeod House and lodges as five star hotel accommodation.

## 2. SUMMARY

2.1 The Development is the next phase of the continued investment in, and development of, the Trump Estate. It represents a revision to the phasing originally proposed in terms of the OPP which is no longer economically viable, and is the only opportunity for continued investment in and development of the Trump Estate which is important to the Strategic Growth Area as set out in the Strategic Development Plan and the Local Development Plan. TIGLS has continued to invest in the Estate despite some challenging economic conditions and with the Development, TIGLS remains on course to deliver the investment originally proposed in the OPP.

2.2 All of the elements of the Development are within the OPP and the LDP allocation OP3: Menie. There can therefore be no objection to the principal and nature of the Development. There is also strong policy support for the Application within the terms of the development plan as the Development is consistent with the vision and aims of the SDP and LDP as well as policies relating to housing provision, design, public access, community facilities, natural heritage, climate change, services provision and developer obligations. The only aspects of the development plan with which the Development is not consistent is the link to the original phasing in the OP3 allocation and policy relating to cultural heritage due to the impact on the setting of MacLeod House. On this basis, the Development is considered to be in accordance with the

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<sup>1</sup> APP/2006/4605 and CIN-ABS-001

development plan when taken as a whole, as is required. In the event of the Council reaching a different conclusion, it cannot reasonably be said that the Development is “significantly contrary to the development plan”.

- 2.3 In the event of the Council concluding that the Development is not in accordance with the development plan, there are material considerations that significantly and demonstrably outweigh any limited adverse impacts and would overwhelmingly indicate that planning permission should be granted notwithstanding that conclusion. Both the SDP and the LDP recognise the importance of the continued development and investment at the Trump Estate to the SGA. The Development is also development which contributes to sustainable development and will achieve the four outcomes set out in SPP.
- 2.4 The initial phase of development of the Trump Estate has already brought economic and tourism benefits to the area with a significant increase in employment and a significant expansion of tourism activities. The Application offers the only opportunity to capitalise on these benefits and deliver further significant economic and tourism benefits for Scotland and the north east. These economic benefits are also not theoretical. TIGLS has engaged Aberdein Considine, a business with significant history and presence in Aberdeenshire and Scotland, to market the Development to prospective residents. At and following an initial exhibition on the Development, TIGLS has been able to attract reservations on a number of large properties forming part of Chapter 1A together with expressions of interest on many others. It is rare for a development to attract such interest prior to the submission of a planning application but it gives just a small taste of the economic potential of the Development and the exciting opportunity for Aberdeenshire and Scotland.
- 2.5 The Development will also support the delivery of the Regional Economic Strategy by broadening the economy of the area and is consistent with initiatives by Opportunity North East and VisitAberdeenshire to broaden the economy of the area by building on the region’s cultural assets including its coastline and golf courses.
- 2.6 In light of the above, it is submitted that there is no good planning reason to refuse the Application. The Application will deliver elements of the development approved in terms of the OPP, is consistent with the vast majority of the development plan policies, is development which contributes to sustainable development and will deliver further significant benefits to the economy and tourism, building on those already achieved. Failure to support the continued investment in the Trump Estate could limit the regional economy’s ability to diversify and grow tourism over the longer term.

### 3. PRINCIPAL PLANNING HISTORY

- 3.1 As noted above, in 2008, the Scottish Ministers granted the OPP for the Championship Golf Course and resort development on the Trump Estate. Before any development commenced, Aberdeenshire Council approved a Masterplan, which reflected the scope of the development approved in the OPP.
- 3.2 In 2015, TIGLS lodged a Proposal of Application Notice<sup>2</sup> (“PoAN”) with the Council.<sup>3</sup> The description of the proposed development was:

*“850 residential units, 1,900 leisure accommodation units with ancillary commercial development falling within Class 1 (shops), Class 2 (Financial,*

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<sup>2</sup> AC Ref: F/ENQ/2015/0526

<sup>3</sup> Public exhibition held on 4 May 2015.

*Professional and Other Services) and Class 3 (food and drink) and supporting infrastructure”.*

- 3.3 This application for planning permission in principle (the “**Application**”) relates to that PoAN. The proposed development, although modified, remains recognisably linked to the scope of the development description contained in the PoAN. The description of the development is now as follows:

*“550 dwellings (up to 500 residential units and a minimum of 50 leisure/resort units), community facilities, development falling within class 1 (shops), class 2 (financial, professional and other services) and class 3 (food and drink), landscaping and supporting infrastructure” (the “**Development**”).*

- 3.4 The reduction in the number of residential units from 850 to 500 is to ensure compliance with the housing allocation within the development plan. The Application also brings forward the first detailed tranche of development for 85 dwellings (within Chapter 1A) and 27 affordable key worker apartments, 540m<sup>2</sup> of retail space, 350m<sup>2</sup> of office space, a 350m<sup>2</sup> gym & fitness Centre, a 480m<sup>2</sup> townhall and two 8 suite lodges providing additional accommodation for the hotel (all within Chapter 1B).

#### **4. THE DEVELOPMENT PLAN**

The Aberdeen City and Shire Strategic Development Plan 2014

- 4.1 Part of the vision of the Aberdeen City and Shire Strategic Development Plan 2014 (the “**SDP**”) is that:

*“Aberdeen City and Shire will be an even more attractive, prosperous and sustainable European city region and an excellent place to live, visit and do business.*

- 4.2 It is also envisioned that the authorities:

*“will have acted confidently and taken the courageous decisions necessary to further develop a robust and resilient economy and to lead the way towards development being sustainable, including dealing with climate change and creating a more inclusive society.”*

- 4.3 In order to achieve the stated vision and make a contribution towards the Scottish Government’s aim of increasing sustainable economic growth, the SDP contains a number of aims. The following are the aims set out in the SDP:

- To provide a strong framework for investment decisions which help to grow and diversify the regional economy, supported by promoting the need to use resources more efficiently and effectively.
- To take on the urgent challenges of sustainable development and climate change.
- To make sure the area has enough people, homes and jobs to support the level of services and facilities needed to maintain and improve the quality of life.
- To protect and improve our valued assets and resources, including the built and natural environment and our cultural heritage.
- To help create sustainable mixed communities, and the associated infrastructure, which meet the highest standards of urban and rural design and cater for the needs of the whole population.



- To make the most efficient use of the transport network, reducing the need for people to travel and making sure that walking, cycling and public transport are attractive choices

4.4 Within the SDP area, the main focus for development up to 2035 is within the four strategic growth areas. The Application site is situated within the Aberdeen to Peterhead Strategic Growth Area (the “SGA”). In respect of the SGA, the SDP states that “*realising the economic potential of the Menie Estate golf resort will be important*” and “*the focus in the whole area needs to be on developing and diversifying the economy with a strong focus on the quality of development*” (emphasis added).

The Aberdeenshire Local Development Plan 2017

4.5 The Aberdeenshire Local Development Plan 2017 (the “LDP”) allocates the site for the development approved in the OPP as site OP3: Menie. The supporting text states:

*“The outline consent... was granted for exceptional reasons based on the predicted social and economic benefits of the proposed development. This allocation does not offer or imply any support for alternative development proposals that would deviate away from the consented scheme, including the conditions and section 75 agreement that form part of the outline consent”*

4.6 It should be borne in mind that, despite the statement that it was granted for “exceptional reasons”, the OPP was simply granted by the application of the standard statutory test in section 25 of the Town and Country Planning (Scotland) Act 1997 (the “1997 Act”), i.e by considering the development plan and material considerations. The OPP is no different to any other planning permission in that respect.

4.7 Further, this LDP statement represents a fundamental misunderstanding of the planning balance and judgement applied by the Reporters and endorsed by the Scottish Ministers in granting the OPP. The Reporters’ planning judgement involved balancing the environmental impact of development in a small part of the SSSI against the wider economic benefits of the golf resort. They found that the economic benefits outweighed any environmental impacts. It was no part of the Council’s case that the commercial/residential development was unacceptable.

4.8 The LDP adopts the vision and aims of the SDP and above all seeks to deliver “*the right development in the right place*”. The LDP also notes that “*achieving economic growth through the continued development of the Trump International Golf Resort*” is important to the SGA.

4.9 Policy H1 of the LDP provides the following:

*“We will support the development of housing on sites allocated for that purpose within the local development plan and as shown in the settlement statements. We will not allow other types of development on designated housing land unless it is linked to the housing use and still allows the site to be developed to approximately the housing numbers shown in the settlement statements”.*

4.10 Policy H2 also sets out the requirement for 25% of the residential units to be affordable housing units. In relation to design, Policy P1 requires consistency with previously agreed statements on design and the following six qualities of successful places:

- (i) Distinctive with a sense of local identity through creation of a sense of place and the aesthetics of the design features and elements.
- (ii) Safe and pleasant, encouraging both activity and privacy, providing security and protecting amenity.

- (iii) Welcoming through visual appeal, style and the creation of a welcoming environment.
  - (iv) Adaptable to future needs through the balance of land uses, building types, density, sizes and tenures (including housing for people on modest incomes), and the flexibility to adapt to the changing circumstances of occupants.
  - (v) Efficient in terms of resources used in terms of waste management, water use, heating and electricity, the use of recycled materials and materials with low embodied energy, and responding to local climatic factors associated with cold winds, rain, snow and solar gain.
  - (vi) Well connected to create well connected places that promote intermodal shifts and active travel.
- 4.11 Policy P2 requires developments to be accompanied by adequate and appropriate public open space while Policy P6 notes that the Council will support the provision of new community infrastructure. Policy E1 provides protection for habitats, species and geology while Policy E2 notes that the Council will “*refuse development that causes unacceptable effects through its scale, location or design on key natural landscape elements, historic features or the composition or quality of the landscape character*”.
- 4.12 Relevant in relation to MacLeod House, Policy HE1 provides that the Council “*will not allow development that would have a negative effect on the character, integrity or setting of listed buildings*”.

#### Development Plan Assessment

- 4.13 The starting point for any assessment of whether or not the Application is in accordance with the development plan is the fact that the Development forms part of the OP3: Menie allocation contained in the LDP, as it is within the parameters of the OPP. The only difference relates to the matter of phasing. While the supporting text for OP3 states that support is not offered for proposals which deviate away from the consented scheme, this fails to acknowledge that this Application must be determined in accordance with the development plan policies and material considerations as they apply at the time of determination.
- 4.14 The nature of the Development is acceptable for this site, as evidenced by the OPP and the LDP allocation. The change proposed by the Application will involve bringing forward the later phases of the development consisting of residential units and holiday accommodation before the completion of phase 1, particularly the hotel and golf villas. Even where the Application and Development is not entirely consistent with the OP3 allocation, that is not the end of the matter for assessing whether or not the proposal is in accordance with the development plan. It is well established that the decision maker’s role can be summarised as follows:
- “There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether in light of the whole plan the proposal does or does not accord with it.”<sup>4</sup>*
- 4.15 Both the SDP and the LDP recognise that the continued development, and realising the economic potential, of the Trump Estate golf resort is important to the SGA which, in itself, is important for developing and diversifying the economy of Aberdeen City and Shire. The “consented scheme” as referred to in OP3 is no longer economically viable and will not be delivered in the phasing originally anticipated. Like many other projects in Scotland and Aberdeenshire that have been

<sup>4</sup> *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC(HL) 33

reviewed following the global banking crisis and decline in the oil and gas sector, TIGLS has reviewed its development proposals to ensure that the development of the Trump Estate and its economic potential can be realised in accordance with the development plan. The Development and the Application is the only proposal which is going to achieve this important aspect of the development plan.

- 4.16 The Application is consistent with Policy H1 and H2 of the LDP as it will enable the development of housing on a site allocated for that purpose as shown in the settlement statements and will deliver affordable housing in accordance with the Council's requirements. In relation to the design of the Development, the proposals are consistent with Policy P1 of the LDP because every aspect of The Trump Estate has been developed with an understanding of the great natural heritage and architectural vernacular of the region, giving The Trump Estate a distinct identity. The housing has been laid out in a traditional way, bringing the dwellings closer to the street front and placing an emphasis on walkable neighbourhoods. Private parking will be accessed by cohabited rear lanes, where pedestrians will feel safe and take priority. There will be ample public amenity space provided by way of formalised parks and walking routes through the existing mature woodland. The proposals also recognise that housing in the countryside is not sustainable without the provision of community facilities. In addition to the already established championship golf course, clubhouse and MacLeod House hotel, Chapter 1A and 1B will bring forward housing, retail, hotel, commercial and community facilities simultaneously, providing unparalleled country living. As Chapters 2 to 8 are developed, more facilities will be provided to further support the growing community including retail and an equestrian centre. The development will be sustainable by way of well insulated building envelopes and the use of low energy heating systems.
- 4.17 Upon completion of the Development, there will be public access paths that will connect the Development to the paths proposed and existing as part of the development of the Championship Golf Course and MacLeod Course. This will ensure that the development is connected to the Aberdeenshire Coastal Path, which is a core path, and Balmedie Country Park to the south, as well as the paths within the Trump Estate itself. Residents and visitors will be able to enjoy the tranquil and picturesque environment provided by the mature landscape of the Trump Estate and its surroundings. The Development will therefore comply with Policy P2 of the LDP. Community infrastructure, by way of a town hall facility, will be provided in accordance with Policy P6 of the LDP as part of the Development vision to create a sustainable community and exceptional country-living.
- 4.18 In respect of Policies E1 and E2 of the LDP, a summary of the key findings is provided for:
- landscape and visual impacts;
  - trees and woodland management; and
  - ecology.

*Landscape and Visual*

- 4.19 The Development will lead to adverse effects on local landscape character and visual amenity, including:
- The policy landscape surrounding MacLeod House and the open farmland to south, due to loss of areas of mature trees and open ground to housing, resort development and associated infrastructure.

- Some characteristics of the North East Aberdeenshire Coast SLA, a local landscape designation covered by LDP policy E2.
- Views from nearby visual receptors including residents and road users.

4.20 The effects will be in proportion to the scale of the development, similar to the effects of other existing and proposed settlements within Formartine. Effects are capable of mitigation through design, integration and screening of proposed development areas with existing tree belts and new structure planting.

*Trees and Woodland Management*

4.21 An initial tree survey was undertaken as part of the OPP (Condition 14 – Ironside Farrar and Struan Dalgleish Arboriculture, 2009) to address a series of conditions relating to trees and woodland.

4.22 Condition 16 of the OPP relates to the Ancient Woodland Inventory (“AWI”) site at Menie House Wood and creation of a suitable buffer. There will be some impacts on the Menie House Wood AWI arising from the development proposals in Chapter 1A although the masterplan team have worked to reduce the overall impacts through design which maintains a line of trees as a visual screen from MacLeod House and have adjusted the northerly access to meander its way through the existing trees in a way that again minimises the impact.

4.23 Overall, the Development utilises existing open space where possible. Tree removal is limited to a semi-mature area of planting. The significant areas of mature trees are to be retained. There is opportunity within the wider site for re-placement landscape planting to be undertaken to mitigate for tree loss due to development as shown by the landscape framework. Once details are available for each of the Chapters, a detailed Arboricultural Impact and Tree Protection Plan can be produced.

4.24 Within Chapter 1B, 175 tagged trees / small groups of trees will require to be removed to accommodate the proposals. This includes trees, although beyond the proposed construction areas, that would be left unviable following the required removal of their neighbours. The potential exists to retain 15 trees / small groups of trees. These nearly all occur to the west of the water course within the northern part of the site.

*Ecology*

4.25 In relation to protection and enhancement of natural heritage and ecological interest, an updating desk-top study was completed prior to undertaking a suite of surveys in 2018. Surveys included a phase 1 habitat survey, two-visit breeding bird, invasive non-native species, European and & UK protected species surveys and spring goose counts to supplement previous knowledge of the site.

4.26 There are no known statutory or non-statutory nature conservation designations within or adjacent to the site boundary. At a distance of approximately 500m or more there lies the boundary of Foveran Links SSSI and Newburgh-Balmedie Local Nature Conservation Site. There are no known likely adverse impacts.

4.27 A total of 29 habitats were surveyed, on and adjacent to the site, all man-made and dominated by intensive agriculture and forestry.

4.28 Otter frequent the ornamental ponds to the south of Macleod House, whilst signs of badger have been noted, both foraging signs and latrines, but no setts. No signs of red squirrel or water vole

have been recorded and at the time of survey they are both considered to be absent. A specialist bat survey is underway and due for reporting at the end of July 2018.

- 4.29 A typical farm and woodland breeding bird assemblage has been recorded with no rare or scarce species. Breeding Red List Species of Conservation Concern are present and include a song thrush and yellowhammer. Goose surveys in 2018, suggest a recent change in behaviour, with the cereal fields to the north east of Horseshoe Cottage, that lie within the red line boundary, no longer used by significant numbers of feeding or roosting geese, nor are the Blairton flight ponds used for night-time roosting or day-time bathing and drinking. The main goose activity in 2018 centred on feeding and resting opportunities afforded by improved and semi-improved pasture 500m to the south of residential development, on Blairton Farm. The resource on Blairton Farm included seasonal pools used by the geese. A small number of pink-footed geese were recorded feeding on rank grassland at Pettens Links (peak 118 birds), although it seems this location provides a temporary refuge when farm activities disturbed the improved grassland. The conclusion of the updating goose surveys was that there were no significant night-time roosts and the overall level of use of local foraging resources was low. The latter based on SNH methodology applied to goose monitoring at Loch Strathbeg.
- 4.30 The main impact will be the loss of 2.04ha of a listed AWI site to Chapters 2 and 4 and the potential loss of a nationally scarce associated lichen *Arthonia anomorphila* (Aa). The status of the latter species and its presence amongst trees to be removed is being investigated because it is a possible species for which the UK may hold international responsibilities. The AWI (Site 31/11467) is long-established of plantation origin and development will reduce the overall area of the AWI by over 50%. The masterplan has been amended to retain a greater number of trees in this area. There are potential losses of a further five notable woodland lichens, three are nationally scarce, one nationally rare, and two were new to Aberdeenshire when recorded in September 2006. All five were with associated with the wooded northern sectors of Menie woodland, where (Aa) was also recorded. Detailed assessment of the likely impacts on these lichen species will follow final detailed tree survey based on architectural layouts and micro-sighting.
- 4.31 The location of the Development in proximity to MacLeod House requires consideration of Policy HE1 of the LDP.
- 4.32 The proposed development site occupies much of the extent of a former garden and designed landscape that forms the setting for the Category B Listed Menie House. The western part of the proposed development site also overlies an area where cropmarks, visible on aerial photographs, suggest the possibility of buried archaeological remains. Evidence from finds in the wider landscape immediately around the proposed development site also indicates activity in the locality in the prehistoric period, from the Mesolithic to the Bronze Age.
- 4.33 Taking into account the known archaeological sites and features within and in the vicinity of the proposed development site, it has been assessed that there is a moderate to high probability of discovering buried archaeological remains within the proposed development site. A scheme of mitigation works, to offset the predicted effect on the archaeological resource would need to be approved by the Council. A draft Written Scheme of Investigation accompanies the Application.
- 4.34 If significant discoveries were made during archaeological investigations, and preservation in situ of any sites or features was not possible provision would be made for the excavation, where necessary, of any archaeological remains. This provision would include the consequent production of written reports on the findings, with post-excavation analyses and publication of the results of the work, where appropriate.

- 4.35 Within 1km of the proposed development there are eight listed buildings: one Category A listed building, five Category B Listed Buildings, and one Category C Listed Building. There are no Scheduled Monuments, Inventory Gardens and Designed Landscapes or Inventory Historic Battlefields within 1km of the proposed development site. The assessment of the potential impact of the proposed development on the settings of these listed buildings has resulted in the identification of a moderate adverse effect on the setting of Category B Listed Menie House.
- 4.36 The Council's Policy C1 requires developments to be designed to reduce carbon dioxide emissions and the standards established through current building regulations to be met, as a minimum. The Trump Estate will meet the requirements of the current building regulations using a fabric first approach. This involves building well insulated buildings which significantly reduce demand on heating systems and subsequently reduce CO2 emissions. The primary heating systems for the buildings will also be supplemented by low carbon generating technologies such as wood burning stoves.
- 4.37 Policy RD1 of the LPD requires suitable services to be provided as part of the Development. The Council's Transportation & Roads team has been consulted on the principles of road hierarchy as well as the main access arrangements and connectivity to the wider network. The Roads Standards Group has advised on acceptable requirements, which are incorporated into the Development. Scottish Water advises that the Strategic Water Study for the Balmedie – Ellon corridor will reach a Stage 1 report around the year end. Stage 2, which details any necessary network mitigations, is scheduled for July 2019. On waste water, Balmedie WWTW has some capacity but insufficient for the whole development. The waste water pipeline from Newburgh to Balmedie, which passes through Menie Estate will require a Development Impact Assessment, which will be advised upon as part of the Planning response. TIGLS has been in consultation with the relevant utilities providers and suitable services will be provided as part of the Development.
- 4.38 TIGLS has also held discussions with the Council's developer obligations team and will enter into a planning obligation in connection with the Development in accordance with Policy RD2 of the LDP. Draft heads of terms have been submitted as part of the Application and TIGLS will progress discussions further alongside the consideration of the Application with a view to having an agreed form of planning obligation at the time that the Application is determined.
- 4.39 When the development plan is considered as a whole, it is submitted that the Application and Development is in accordance with the development plan. It is acknowledged that the assessment of whether or not a proposal is in accordance with the development plan involves a difficult balancing exercise. In this case, substantial support can be drawn from the fact that all of the elements of the Development are supported by the OP3 allocation and it is the only proposal which will enable the continued development of the Trump Estate and its economic potential to be realised, which is important to the SGA.
- 4.40 The Development is also consistent with Policies H1, H2, P1, P2, P6, E1, E2, C1, RD1 and RD2 of the LDP. As a result, the Development is also consistent with the vision and aims of the SDP and LDP. The only aspects of the development plan with which the Development is not consistent is the part of the supporting text for OP3 which links the allocation to phasing which is no longer economically viable and Policy HE1 in relation to the impact on the setting of MacLeod House.
- 4.41 Even if the Council places significantly greater weight on the supporting text for OP3 and reaches a conclusion that the Development is not in accordance with the development plan, it is submitted that when the plan is considered as a whole it cannot reasonably be said that the Development is

“significantly contrary to the development plan” within the meaning of regulation 27 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.

## 5. MATERIAL CONSIDERATIONS

5.1 A wide range of material considerations are relevant to the consideration of the Application. This section discusses the principal material considerations which will be relevant to the Council’s determination of the Application.

### National Planning Framework

5.2 Scotland’s Third National Planning Framework (“NPF”) identifies tourism as a key sector for Aberdeen and the north east city region. It also recognises that much of the new housing development in the city region will be in a number of SGAs, including the corridor northwards from Aberdeen to Peterhead. NPF also acknowledges the ‘Energetica’ corridor from Aberdeen to Peterhead which seeks to provide a hub for investment in the energy, engineering and technology sectors. The housing provided by Development will help support the growth being sought through Energetica.

### Scottish Planning Policy

5.3 One of the overarching parts of Scottish Planning Policy (“SPP”) is the presumption in favour of development that contributes to sustainable development. Essentially, this policy is aimed at achieving the right development in the right place. The question of whether or not development contributes to sustainable development is usually assessed by reference to the extent to which the development is consistent with the following principles:

- (i) Giving due weight to net economic benefit.
- (ii) Responding to economic issues, challenges and opportunities, as outlined in local economic strategies.
- (iii) Supporting good design and the six qualities of successful places.
- (iv) Making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities.
- (v) Supporting delivery of accessible housing, business, retailing and leisure development.
- (vi) Supporting delivery of infrastructure, for example transport, education, energy, digital and water.
- (vii) Supporting climate change mitigation and adaptation including taking account of flood risk.
- (viii) Improving health and well-being by offering opportunities for social interaction and physical activity, including sport and recreation.
- (ix) Having regard to the principles for sustainable land use set out in the Land Use Strategy.
- (x) Protecting, enhancing and promoting access to cultural heritage, including the historic environment.
- (xi) Protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment.
- (xii) Reducing waste, facilitating its management and promoting resource recovery.

(xiii) Avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.

5.4 This assessment is similar to the assessment of whether or not a Development accords with the development plan. There may be some principles with which the Development is consistent, and others which the Development is inconsistent, but the conclusion should be based on the principles as a whole. It should be borne in mind that not all principles will be relevant to all proposals.

5.5 The Development will deliver significant economic benefits<sup>5</sup> and has responded to economic issues, not least the need to diversify the economy in the city region and by supporting tourism as a key sector. It is clear that the Development is consistent with the principles set out at (i) and (ii) above.

5.6 For the reasons set out at 4.16 above, the design of the Development is consistent with the principle at paragraph (iii). Consistent with paragraphs (v) and (vi), the Development will also support the delivery of accessible housing, business, retailing and leisure development as well as infrastructure.

5.7 The Development will also:

- support climate change mitigation and adaptation through well insulated buildings which significantly reduce demand on heating systems and subsequently reduce CO2 emissions;
- improve health and well-being by offering opportunities for social interaction and physical activity through the community facilities provided, the public access paths, gym facilities and also the access to the golfing facilities;
- protect, enhance and promote access to natural heritage, including green infrastructure, landscape and the wider environment through the public access provision and the mitigation of landscape and visual impacts through design; and
- avoid over-development.

The Development is therefore also consistent with paragraphs (vii), (viii), (xi) and (xiii) above.

5.8 Having regard to the principles as a whole, the Development is clearly development which contributes to sustainable development. Furthermore, there are no *“adverse impacts which would significantly and demonstrably outweigh the benefits [of the Development] when assessed against the wider policies”* in terms of paragraph 33 of SPP. Quite the opposite is true. There are positive impacts, particular in relation to the economy and tourism as described below, which significantly and demonstrably outweigh any limited adverse impacts of the Development

5.9 The Development also contributes to achieving the four outcomes set out in SPP:

1. A successful, sustainable place – supporting sustainable economic growth and regeneration, and the creation of well-designed, sustainable places.
2. A low carbon place – reducing our carbon emissions and adapting to climate change.
3. A natural, resilient place – helping to protect and enhance our natural and cultural assets, and facilitating their sustainable use.
4. A more connected place – supporting better transport and digital connectivity.

#### Economic Growth

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<sup>5</sup> Discussed further below



- 5.10 The Scottish Economy has changed significantly since the submission of the application for the OPP and it faces further significant change as the UK prepares to leave the European Union. The Scottish Government's State of the Economy report from March 2017, November 2017 and June 2018 stated respectively:

*"There is considerable uncertainty about the outlook for the UK and Scottish economies following the EU referendum. Current forecasts tend to project that output growth will remain below trend in 2017".<sup>6</sup>*

*"Brexit remains the key risk to Scotland's economy which continues to present a significant risk to business and consumer sentiment in Scotland with investment sensitive to changing market signals".<sup>7</sup>*

*"[I]ndependent forecasts continue to expect the uncertainty from Brexit to weigh on business investment decisions and consequently on economic growth".<sup>8</sup>*

- 5.11 TIGLS' investment in the Trump Estate started before the global banking crisis but continued throughout that period, despite difficult market conditions that saw many projects stall. Any criticism of a lack of investment in the Trump Estate is therefore misplaced. TIGLS has completed many aspects of phase 1 of the OPP development. The Championship Golf Course, clubhouse, short game practice area, driving range and maintenance facility have been constructed and are operational. MacLeod House and lodges have also been refurbished into five star hotel accommodation. TIGLS has also delivered roads, parking and other infrastructure as part of phase 1 of the overall development. This initial phase of development has already brought economic benefits to the area with a significant increase in employment and a significant expansion of tourism activities.
- 5.12 A greater proportion of TIGLS' spending on goods and services is with Scottish suppliers, compared to the Scottish industry averages. TIGLS is therefore committed to contributing to the Scottish economy and is more embedded into the Scottish economy than other businesses in the same sector. Data also suggests that TIGLS' investment and development has been important in encouraging overseas visitors to stay longer in the north east and to spend more money in the area.
- 5.13 TIGLS remains fully committed to pursuing its vision for a global golf resort of international renown, building on the success of the investment to date.
- 5.14 The Economic Impact Assessment<sup>9</sup> of the Development concludes that the level of investment associated with the Development is in line with that originally anticipated for the OPP development. TIGLS is therefore on track to deliver the investment originally reported. In respect of the construction of the Development alone, it *"will support nearly 2,000 full-time equivalent jobs across Aberdeen and Aberdeenshire and stimulate nearly £250 million of output across the region"*.
- 5.15 The Economic Impact Assessment further concludes that *"[o]ver the longer term, the proposed development will add 268 jobs and £29 million of output to the Scottish economy. Most of this*

<sup>6</sup><https://beta.gov.scot/publications/state-of-the-economy-march-2017/State%20of%20the%20Economy%20-%20Publication%20-%20March%202017.pdf?inline=true>

<sup>7</sup><https://beta.gov.scot/publications/state-of-the-economy-november-2017/State%20of%20the%20Economy%20-%20publication%20-%2010%20November%202017.pdf?inline=true>

<sup>8</sup> <http://www.gov.scot/Resource/0053/00537705.pdf>

<sup>9</sup> An economic impact assessment of the Development has been undertaken by 4-consulting, led by Richard Marsh. Quotes from the economic impact assessment are used throughout this Statement where relevant, with extracts of the economic impact assessment set out in the Appendix to this Statement.

*will be captured within Aberdeen and Aberdeenshire where an additional 244 jobs and £25 million of output will be sustained”.*

- 5.16 This application is the only opportunity to realise the economic potential of the Trump Estate, which has already made a valuable contribution to the economy since the grant of the OPP, and support the delivery of the Regional Economic Strategy by broadening the economy of the area.

#### Tourism

- 5.17 Tourism is a vital part of the Scottish economy. The Scottish Government has said the following on tourism:

*“Tourism and events is one of Scotland's most important industries, helping to create wealth and jobs and build upon our strong international reputation. We aim to help our tourism and events industry to grow further and to attract more visitors to Scotland.”*

- 5.18 Tourism is also recognised as a growth sector in the Scottish Government’s economic strategy. In addition, the Tourism Strategy Annual Report 2018 highlights that the economic value of golf tourism and events to Scotland has increased by 30% since 2008.

- 5.19 The development vision for the Golf Resort is to enhance the existing, award winning reputation for the Championship Golf Course by creating a sustainable community and resort which will offer a tranquil setting with the highest quality accommodation and world-class golf and leisure facilities. TIGLS will also continue in its objective of increasing national and international tourists and securing national and international competitions for the resort. This can be achieved by:

- creating a global golf destination of a world-class standard;
- contributing a world class championship course to the existing cluster of leading golf courses within the north east, thereby competing with other Scottish ‘clusters’, such as in East Lothian;
- co-operating with Trump Turnberry and the wider Trump International global portfolio to promote the Trump Scotland brand at home and abroad.

- 5.20 Opportunity North East and VisitAberdeenshire are working on an initiative to broaden the economy of the area by building on the region’s cultural assets including its coastline and golf courses. As set out in the Economic Impact Assessment, there has been a significant benefit to tourism. The following quotes highlight just some of the key conclusions:

- *“Since the opening of Trump International Golf Links there has been a significant expansion of local tourism activities around The Trump Estate”.*
- *“Trump International Golf Links has created a halo effect providing a fillip to the promotion, marketing and image of the region”.*
- *“Trump International Golf Links has provided fertile ground for other tourism businesses to grow and Northern Aberdeenshire now stands alongside Scotland’s leading tourism areas”.*
- *“This suggests that The Trump Estate has played an important role in encouraging overseas visitors to stay longer within the region and spend more money in the local area”.*

- *“Golfers visiting Aberdeenshire are now more likely to stay overnight in the region due to the wider choice of world-class golf courses in the North East. Prior to the opening of The Trump Estate, visitors were more likely to play a single course in the North East and travel elsewhere without staying overnight”.*

5.21 The Development offers an important opportunity to capitalise on these initial benefits and deliver further economic and tourism benefits.

Inward Investment

5.22 During the 2017 general election hustings, the First Minister promoted Scotland’s recent successful performance in attracting inward investment. The EY Report published on 22 May 2017 confirmed record numbers of inward investment in Scotland, although average job creation had declined and Scotland’s perceived attractiveness to international investors had decreased. The authors recommended “Time to Act” citing a short window in which to address concerns of international investors and the need for a clear strategy with trade, skills and infrastructure at its core.

5.23 The Trump Estate is and will continue to be funded by inward investment. This project will therefore support the Scottish Government’s aspiration to work “to attract new investors to Scotland and to support existing investors to develop, grow and continue investing in Scotland far into the future.”<sup>10</sup>

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<sup>10</sup> <https://beta.gov.scot/policies/international-trade-and-investment/attracting-and-supporting-investors/>

## APPENDIX

## Extracts from Economic Impact Assessment by 4-consulting

*“Construction expenditure associated with the overall development of The Trump Estate was originally estimated to be £720 million. Capital investment associated with the phase one development was around £100 million and the masterplan is still on track to secure the original investment.”*

*“The total development cost of phase two is £147.2 million. In terms of construction impacts alone, building the next phase of development will support nearly 2,000 full-time equivalent jobs across Aberdeen and Aberdeenshire and stimulate nearly £250 million of output across the region.”*

*“The total development cost of phase two is £147.2 million. In terms of construction impacts alone, building the next phase of development will support nearly 2,000 full-time equivalent jobs across Aberdeen and Aberdeenshire and stimulate nearly £250 million of output across the region.”*

*“Over the longer term, the proposed development will add 268 jobs and £29 million of output to the Scottish economy. Most of this will be captured within Aberdeen and Aberdeenshire where an additional 244 jobs and £25 million of output will be sustained.”*

*“Trump International Golf Links has created a halo effect providing a fillip to the promotion, marketing and image of the region. Trump International Golf Links has provided fertile ground for other tourism businesses to grow, Northern Aberdeenshire now stands alongside Scotland’s leading tourism areas. If the rest of Aberdeenshire could match, and build upon, the world class benchmark set by The Trump Estate, then the region would benefit from several thousand additional tourism jobs.”*

*“The Regional Economic Strategy seeks to support the diversification of the North East’s economy. The strategy describes tourism as a key sector, with significant opportunities to grow by converting business visitors to leisure visitors. In particular, golf is identified as an outstanding regional asset.*

*VisitAberdeenshire are seeking to increase the visits from both holiday golfers and luxury golfers and find ways to increase overnight stays and off course spending. Opportunity North East (ONE) are working with VisitAberdeenshire to broaden the economy by building on the region’s cultural assets including its coastline and golf courses.*

*The proposed development also falls within Energetica, Scotland’s Energy Corridor. This is a long-term programme, cited in the National Planning Framework, aiming to make the most of the stunning coastal setting, improve infrastructure and target growth in the tourism industry.*

*The proposed development of The Trump Estate will help support the vision underpinning each of the above strategies. It will allow further development of a key regional industry by further leveraging a world-class asset and helping to further diversify and broaden the economy.”*

*“The proposed development delivers a significant net economic benefit and responds to the economic challenges facing Aberdeenshire.”*

*“Employment within 10km of The Trump Estate area increased significantly in 2012, at the same time when The Trump Estate course opened. Employment continued to grow with 200 jobs added between 2012 and 2016.*

*Employment within 20km of The Trump Estate also increased significantly since the course opened in 2012. An additional 120 jobs were added to the area within 20km of The Trump Estate between 2012 and 2016. The number of jobs added within 10km is higher as other job losses in the surrounding area were offset by job creation at The Trump Estate.”*

*“This suggests The Trump Estate network is more strongly embedded into the Scottish economy, compared to Scottish Industry averages.”*

*“Our consultations indicated that The Trump Estate has a positive impact on other golf courses and tourism businesses within the region. Golfers visiting Aberdeenshire are now more likely to stay overnight in the region due to the wider choice of world-class golf courses in the North East. Prior to the opening of The Trump Estate, visitors were more likely to play a single course in the North East and travel elsewhere without staying overnight.”*

# Faherty Affirmation

## Exhibit # 29

# Development Appraisal July 2017

Enabling Infrastructure

85 Houses

Neighbourhood Commercial Centre

451 House Plots

at

Trump International, Menie, Aberdeenshire



14 July 2017

# Ryden

## 1.0 Summary

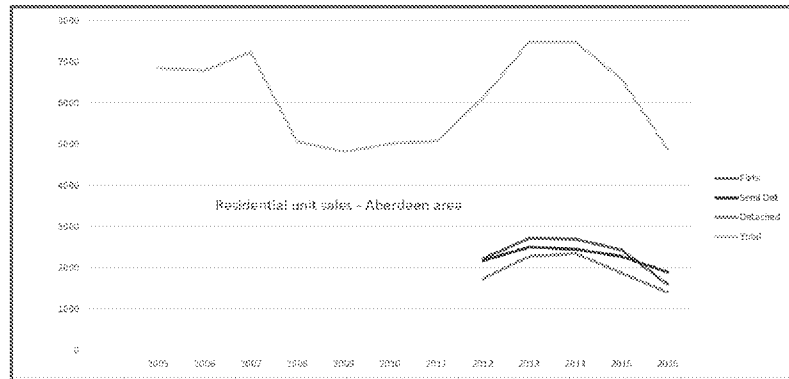
- 1.1 Trump International Golf Links Scotland has outline planning permission to develop a golf course and resort at Menie Estate near Aberdeen. An Estate Masterplan is approved subject to conditions and includes a 70 ha (173 acres) residential area, a 70 ha resort area and a 20 ha (49 acres) golf villa area.
- 1.2 Covell Matthews Architects have prepared plans and drawings that illustrate the potential residential development. These include:
1. An Economic Assessment Masterplan dated May 2017;
  2. Drawings of eight potential house types and four potential detached garage options prepared between January and April 2017.
- 1.3 The proposed house sizes and types follow recent research into demand for housing in the Aberdeen area. Aligned to the Trump brand the proposed house designs are to very high standards that exceed what mainstream builders provide in the Aberdeen area.
- 1.4 Ryden LLP have undertaken development appraisals of the proposed residential development. As agreed with Sarah Malone of Trump International, we have prepared appraisals that reflect a development scenario where:
- a. The road and mains utility infrastructure essential for the residential development to take place is extended into the Trump Estate;
  - b. Chapter 1A of 85 dwellings is developed by Trump International. Roads and mains services are brought to each plot and the 85 houses are built by Trump International to its high standards;
  - c. Chapter 1B, a Resort Centre, is developed by Trump International. It is to include a village hall, local retail units, and 21 apartments for occupation by key workers.
  - d. Chapters 2 to 8 as shown on the Masterplan have roads and mains services extended to their boundaries by Trump International but are sold to other developers as residential development land. 451 house plots are provided by Chapters 2 to 8.
- 1.5 Compared with a different scenario where all 557 houses and apartments are built by Trump International, the scenario we have selected significantly reduces the developer risk for Trump International. Over the timeline of the development this approach requires less than 40% of the capital investment that building 557 houses would require, and the likely timescale for achieving over 500 residential properties on the Trump Estate would reduce from around 20 years to around 8 years.
- 1.6 We estimate that developer profit for Trump International should reflect around 30% of sales income and over 40% on the capital invested.



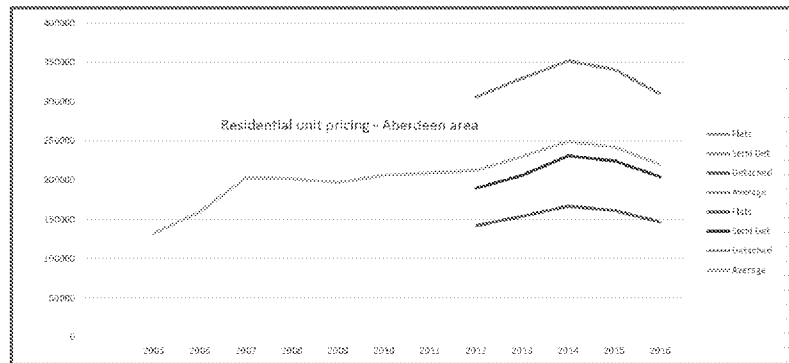
## 2.0 Aberdeen Housing Market Overview

2.1 During the past two years the residential market in the Aberdeen area has proved to be difficult. The supply of new and second hand housing has exceeded demand. Property prices accordingly dropped, in some instances by 25%. Sales have continued to take place, but at a slower rate and at lower prices than during 2014/15.

2.2 The chart on the right illustrates (in yellow) the year on year change in the total number of houses and flats sold in the Aberdeen area between 2005 and 2016.



2.3 Plotted on the right in yellow is the average price achieved for all residential property in the Aberdeen housing market between 2005 and 2016. The average price of detached (orange), semi-detached (blue) and flats (grey) over the period 2012 to 2016 is also plotted.



2.4 The Aberdeen residential market has been challenging for developers but they continue to build new houses in the Aberdeen area and continue to look for new development sites. They feel they can still attract buyers with the right product in what has become a more discerning marketplace. Ongoing house construction and the purchase of new housing sites by local and national builders would not be taking place if they were not confident of achieving a reasonable level of future sales.

2.5 The plans for most developments have been amended to provide a mix of smaller detached and semi-detached dwellings including bungalows. Very few single storey houses have been built during the past 20 years because the reduced floor area on each house plot made them unpopular with builders. However, these properties have always been popular with buyers. Several builders have recently started to construct them again to achieve better rates of sale than two storey properties have been giving them.

2.6 Currently, the best performing “prime” housing sites in the Aberdeen area are being developed by Cala Homes in the Lower Deeside suburbs of Cults and Milltimber. Cala are continuing to focus on building good sized detached family houses of 1,800 to 3,000 sq ft (167 to 280 sq m) and achieve comparatively high prices. However, even they have

been using part exchange to maintain sales at around 2 sales per month. The net sale prices they have been achieving recently reflect £235 to £295 per sq ft (£2,530 to £3,200 per sq m). These developments have proved the exception because the Lower Deeside location continues to be the most attractive one for local buyers able to spend over £500,000 on a new house.

- 2.7 The proposed houses in Chapter 1A of the Trump Estate correctly focus on a wider market for two and three bedroom dwellings but also include 4 different styles of four bedroom house, and 7 exclusive luxury mansion houses for the largest plots.

### 3.0 House Plots in Chapters 2 to 8

- 3.1 The Masterplan illustrates housing Chapters 2 – 8 with between 35 house plots and 74 house plots in each of these Chapters.

- 3.2 The Masterplan is indicative only but by scaling from it the proposed house plot sizes in Chapters 2 to 8 are each approximately as follows:

Large detached plots	520 to 550 sq m (5,600 to 5,920 sq ft)
Small Detached plots	387 to 440 sq m (4,165 to 4,735 sq ft)
Semi-detached & townhouse plots	320 to 340 sq m (3,445 to 3,660 sq ft)

- 3.3 Our appraisal assumes that each house plot achieves an average sale price of £50,000. This is based on comparable land sales we are aware of and assumes normal ground conditions and also that developer obligations have already been met by Trump International (see development costs below). It also assumes that responsibility to provide affordable housing rests with the purchaser of each Chapter.

### 4.0 Proposed Housing in Chapter 1A

- 4.1 The Chapter 1A housing mix which we have appraised is illustrated in the drawings prepared by Covell Matthews and is as follows:

House Type	Bedrooms	Sq Ft	Sq M	No.
Blairton	2	934	87	24
Formartine	3	1,432	133	8
Ythan	3	1,367	127	20
Gordon	4	1,776	165	4
Fyvie	4	1,830	170	4
Eagleden	4	1,895	176	10
Turnberry	4	1,722	160	8
Balmoral	5	3,972	369	7
				<b>85</b>

- 4.2 The above floor areas exclude any garages. The houses have been designed with detached garages that would be ordered as an extra. It is important to note that analysis

of other house sales on a rate per sq ft or sq m basis excludes any garage area. However, the vast majority of the comparable houses on other developments include a single or double garage. Any comparison of other construction costs or sale prices with the Chapter 1A houses must take this into account.

- 4.3 We have obtained price estimates from two contractors for the construction of each proposed house type. These costs are approximate only at this stage but are extremely helpful for the purposes of the development appraisal. The house construction costs we have used are as follows:

House Type	Bedrooms	Sq Ft	Cost	Per Sq Ft
Blairton	2	934	£147,489	£157.91
Formartine	3	1,432	£187,822	£131.16
Ythan	3	1,367	£148,428	£108.58
Gordon	4	1,776	£226,757	£127.68
Fyvie	4	1,830	£234,207	£127.98
Eagleden	4	1,895	£244,658	£129.11
Tumberry	4	1,722	£205,226	£119.18
Balmoral	5	3,972	£455,716	£114.73
Single Garage		450	£37,868	£84.15
Single + Car Port		592	£43,932	£74.21
Single + Car Port + Upper Room		657	£51,233	£77.98
Double + Upper Room		829	£62,905	£75.88

- 4.4 Our estimated sale prices take account of the high quality appearance and expected excellent internal specification of each house. We have looked at prices obtained by other housing developments in the Aberdeen area and sought to adjust these to take account of the location and proposed house sizes and designs.
- 4.5 We have also considered the potential sale price for each house type with the benefit of premium Trump branding and international marketing. These estimated sale prices align sale rates with the best new build housing available in the Aberdeen Housing Market Area. The largest £1 million plus Balmoral mansions will require targeted branding and international marketing in any event because to the north of Aberdeen no house on a development has yet achieved in the region of £1 million. Of the other house types proposed we believe that the detached 3 and 4 bedroom single storey houses in particular have the potential to achieve prices over 10% higher with the benefit of Trump branding and marketing.

4.6 The house sale prices we have assumed are summarised below:

House Type	Bedrooms	Sq Ft	Sale Price Excl Garage	Per Sq Ft	Price Trump Branding	Premium
Blairton	2	934	£265,000	£284	£275,000	3.8%
Formartine	3	1,432	£330,000	£230	£385,000	16.7%
Ythan	3	1,367	£315,000	£230	£320,000	1.6%
Gordon	4	1,776	£425,000	£239	£475,000	11.8%
Fyvie	4	1,830	£430,000	£235	£490,000	14.0%
Eagleden	4	1,895	£440,000	£232	£470,000	6.8%
Tumberry	4	1,722	£400,000	£232	£410,000	2.5%
Balmoral	5	3,972	£1,000,000	£252	£1,070,000	7.0%

## 5.0 Development Costs

5.1 The estimated contractor cost of building each house type proposed in Chapter 1A is outlined in Section 3.3 above. We have added a 3% contingency to the cost estimates giving an aggregate house construction cost in Chapter 1A of £17,687,736 (average £208,091 per house). This estimate does not include any garages with the houses. For the appraisal we have assumed that garages will be built to order and sold at cost plus a modest profit.

5.2 Large scale housing development always requires significant up front cost to install the necessary infrastructure. At Menie, a new road access is needed. New links into utilities are also needed. An increase in the capacity of mains utilities may also be necessary. We have obtained input from Fairhursts Civil Engineers on budget road, utility and site servicing costs. Further detailed surveys on the precise location and capacity of existing utilities are necessary for there to be a high level of confidence about the utility and site servicing costs we have adopted. The cost estimates we have adopted are however based on Fairhursts experience of other projects of a comparable scale in the Aberdeen area.

### Main Infrastructure

5.3 We have estimated that the main infrastructure investment that is necessary for the development will cost in the region of £4,253,075. This includes a contingency of 3% on most of the costs. The vast majority of this cost must be incurred near the start of the development. The second electricity sub-station and second SUDS pond are however not likely to be required until after approximately 300 houses have been built on the Estate. This cost estimate is made up as follows:

Item	Cost Estimate	Comment
Main Access Road	£1,640,275	910m @ £1,750 per m + 3%
Off Site Traffic Calming	£257,500	£250,000 + 3%
Main Sewer	£772,500	£750,000 + 3%
Mains Water	£381,100	£370,000 + 3%
2 Electricity sub-stations	£144,200	£70,000 each + 3%
2 SUDS Ponds	£257,500	No. 1 @ £150,000, No. 2 @ £100,000 + 3% contingency
Prelims on site servicing	£800,000	

#### Phased Utilities & Roads

- 5.4 A significant length of distribution road is planned to optimise road access to each proposed phase of housing. Mains services will normally run beneath these roads and it is now normal for housing developers to sell parcels of land to each other with road access and mains services at the edge of the parcel and an outline planning consent for a specific number of residential units within the parcel. Our appraisal assumes that Chapters 2 to 8 are serviced, marketed and sold on that basis.
- 5.5 We have been advised by Fairhursts that a realistic cost estimate for the main distributor roads is currently £1,250 per linear metre. We have adopted this cost. The table below illustrates the estimated cost of providing these roads. This work, and cost, would normally be phased throughout the duration of the development to reduce the impact on cash flow.

Phase	Units	Main Roads	
		Metres	Cost
1A	85	1,200	£1,500,000
1B	21		
2&3	132	1,700	£2,125,000
4	74	500	£625,000
5	74	500	£625,000
6	67	950	£1,187,500
7	35	1,200	£1,500,000
8	69	285	£356,250
<b>Total</b>	<b>557</b>	<b>6,335</b>	<b>£7,918,750</b>

- 5.6 The remaining cost for roads and utilities relates only to Chapter 1 of the development. The sale of Chapters 2 to 8 as serviced land means that only in Chapter 1A and Chapter 1B will it be necessary for Trump International to construct Estate roads and paths, connect houses to utilities, carry out landscaping work and abnormal earthworks associated with house construction.
- 5.7 Chapter 1B is relatively small and is designated for a Village Hall, three or four neighbourhood retail units and 21 apartments for key workers. We do not have any further information about Chapter 1B. For appraisal purposes we have assumed a cost of £1,236,000 for construction of the hall and a cost of £216,300 for construction of the

retail units. We have assumed that the cost of providing the hall can be offset against the developer contribution required for the Estate. We have assumed that the retail units have an aggregate Market Value on completion of £300,000. We have assumed that the cost of providing the key worker accommodation is approximately the same as its market value on the special assumption that it must be maintained as “affordable” accommodation.

5.8 In the development of Chapter 1A, we were advised by Fairhursts to allow £920 per linear metre for estate roads and £175 per linear metre for footpaths. The cost estimates below for Chapter 1A exclude a contingency.

Estate Roads		Pathways		Utility		
Metres	Cost	Metres	Cost	Connections	Landscaping	Earthworks
860	£791,200	725	£126,875	£81,600	£199,750	£97,500

5.9 The aggregate estimated cost of distributor roads, and Chapter 1A plot servicing is £9,492,144 including a 3% contingency.

**Developer Obligation**

5.10 Indications from Aberdeenshire Council to Sarah Malone are that Developer Obligations from a development of 500 mainstream plus 50 holiday let properties at Menie Estate, excluding any commuted sum for affordable housing, will be no more than £3.6 to £3.8 million. This is due to an offset against the cost of providing a village hall. A court ruling on the enforceability of the Sustainable Transport Fund contributions could lead to the figure being reduced. In our appraisal we have adopted a developer obligation of £3,730,165. We have assumed that payment of this is phased to correspond with the development of the various Chapters of the Estate.

**Professional Fees, Planning Costs & Development Marketing**

5.11 We have allowed for professional and planning fees at 4.5% of development costs which is approximately £1.65 million. We have estimated that a marketing budget of approximately £1 million will be necessary to sell the development in Chapter 1 and market the remaining Chapters of the Estate as development land.

**Interest Charges**

5.12 We have no information about the nature of any borrowing arrangements for the proposed development. We have applied an interest rate of 5% to all capital invested. We have assumed that with the phased nature of the development, receipts from house and land sales will be used to reduce debt.

## 6.0 Profit

- 6.1 We understand the land designated for the residential development was acquired for a relatively modest amount. If it is not developed for housing, in line with the Masterplan for the Estate, the land would have a low value as amenity or agricultural land. The surplus generated from the proposed development can therefore be considered to be profit.
- 6.2 Our appraisal based on comparable sales shows an estimated profit of £16,525,000 representing 29.3% profit compared with GDV (Gross Development Value) and 41.5% profit on the estimated cost of the development to Trump International.
- 6.3 Our appraisal based on premier sale prices with the benefit of Trump branding and international marketing shows an estimated profit of £18,546,000 representing 31.8% profit compared with GDV (Gross Development Value) and 46.5% profit on the estimated cost of the development to Trump International.
- 6.4 A summary of our development appraisals is on page 11.
- 6.5 The normal developer's profit sought in the current Aberdeen housing market is around 20% of GDV with up to 25% of GDV sought where the development risk is considered to be significant.
- 6.6 A cash flow of the proposed development shows the break-even point being reached approximately 33 months after the start of the project. The peak capital requirement is approximately £9 million and occurs around 18 months into the project.
- 6.7 We would expect the residential development to take less than 10 years if undertaken in the way outlined in our appraisal. In the region of 12 to 18 months would be required to install the main road and utilities and open up the Estate for residential development.
- 6.8 We would expect Phases 1A and 1B to take 3 to 4 years to be fully developed from the start of construction work in Chapter 1. Residential development land sales of individual Chapters 2 to 8 could be concluded as soon as road access and mains services have been installed to the edge of a Chapter but we would expect these sales to be phased. In our appraisal we have assumed the sale of one Chapter per year, giving an overall development timescale of around 8 years.
- 6.9 We trust the above summary of assumptions made and summary of our development appraisal, which is on page 11, are of assistance. Please contact our Richard Lang if you have any queries or wish further assistance.

- 6.10 The development appraisals we have undertaken are based on our opinion of achievable house prices given the location of the land and plans and drawings we have been provided with that illustrate the proposed development. Our findings reflect information we have been provided with relating to normal site servicing costs and estimated house construction costs based on architects sketch drawings. The profit calculation in a development appraisal is sensitive to changes in assumed sale prices and costs. Any change to these variables is likely to result in a change to the calculated profit.

-----  
Richard Lang BLE (Hons) MRICS ACIArb  
Partner  
For and on behalf of Ryden LLP

14 July 2017



Summary of Development Appraisals

Trump International, Balmedie, Aberdeenshire

Phased development of 85 Houses + commercial centre with 21 "affordable" dwellings + 451 house plots



Chapter 1 House Sale Prices - adjusted for Balmedie / Menie location. House Plots in Charters 2 to 8 @ £50,000 per plot average.

Phase	No. Houses	GDV (Sales Income)	Main Infrastructure	Houses Build Cost	Phase Utilities & Roads	Developer Obligation	Fees & Marketing	Interest Charges	Land Value + Profit	Profit on Sales	Profit on Costs	Year No.	
ALL	557	£56,360,000	£4,253,075	£19,140,036	£9,492,144	£3,730,165	£2,648,252	£570,374	£16,525,954	29.3%	41.5%		
1A	85	£33,360,000	£4,077,975	£17,687,736	£2,880,831	£3,730,165						1 - 3	
1B	21	£300,000		£1,452,300									2
2	62	£3,100,000			£2,188,750								1
3	70	£3,500,000											3
4	74	£3,700,000			£643,750								2
5	74	£3,700,000			£643,750								6
6	67	£3,500,000	£175,100		£1,223,125								4
7	35	£1,750,000			£1,545,000								7
8	69	£3,450,000			£366,938							5	

Chapter 1 House Sale Prices - Prices aligned with suburban Aberdeen best comparable new builds in class. House Plots in Charters 2 to 8 @ £50,000 per plot average.

Phase	No. Houses	GDV (Sales Income)	Main Infrastructure	Houses Build Cost	Phase Utilities & Roads	Developer Obligation	Fees & Marketing	Interest Charges	Land Value + Profit	Profit on Sales	Profit on Costs	Year No.	
ALL	557	£58,410,000	£4,253,075	£19,140,036	£9,492,144	£3,730,165	£2,711,642	£536,408	£18,546,530	31.8%	46.5%		
1A	85	£35,410,000	£4,077,975	£17,687,736	£2,880,831	£3,730,165						1 - 3	
1B	21	£300,000		£1,452,300									2
2	62	£3,100,000			£2,188,750								1
3	70	£3,500,000											3
4	74	£3,700,000			£643,750								2
5	74	£3,700,000			£643,750								6
6	67	£3,500,000	£175,100		£1,223,125								4
7	35	£1,750,000			£1,545,000								7
8	69	£3,450,000			£366,938							5	

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# Faherty Affirmation

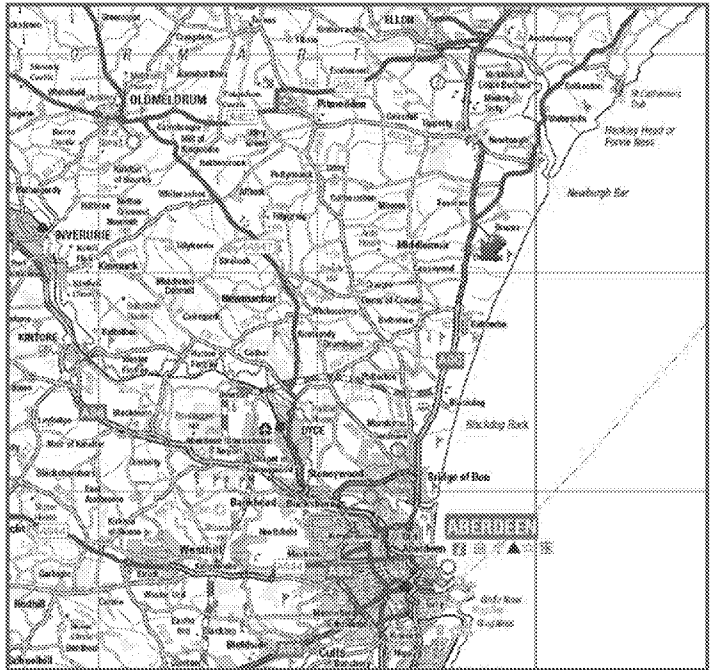
## Exhibit # 30

# Residential Development Study

In respect of  
Menie Estate  
Balmedie  
Aberdeenshire  
AB23 8YE

On behalf of  
Trump International Golf Links

25 September 2015



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## Appendices

Appendix 1.0: Location Plans

Trump International Golf Links

Menie Estate, Balmedie, Aberdeenshire, AB23 8YE

**1.0 INTRODUCTION****1.1 Instruction**

- 1.1.1 In accordance with instructions received from Sarah Malone on behalf of Trump International Golf Links, we confirm that we have made the necessary enquiries in order to provide a report regarding the delivery of new homes at the Menie Estate.
- 1.1.2 We understand the client to be Trump International Golf Links.
- 1.1.3 This report was prepared by Richard Lang BLE (Hons) MRICS ACI Arb of Ryden LLP and Gordon Gibb MRICS of Allied Surveyors, Aberdeen. We would confirm that they are experienced in providing advice on and valuing properties and development proposals of this nature and have the appropriate knowledge to prepare this report.
- 1.1.4 The purpose of the report is to provide a strategic insight into the local housing market and the subsequent impact of the prevailing market conditions on the demand for housing at the Menie Estate. We also aim to provide advice regarding the size and specification of housing that is likely to have the greatest demand, given these market conditions.
- 1.1.5 The subjects comprise approximately 212 hectares (524 acres) of land at the Menie Estate. The land has been divided into 11 zones, all of which have potential to be developed for residential use.
- 1.1.6 For clarification, we have specifically been instructed to prepare a residential development study based on our market knowledge and detailed market investigations and research. The findings of the study will be used to assist the client and their advisors in maximising potential development of the land. We have therefore enquired extensively into the Aberdeen and wider North-East Scotland housing market in order to provide the best advice possible.
- 1.1.7 We have relied upon the sources of the information contained within this report being dependable and accurate. Where possible, we have sought to use known and respected sources of information as the basis of our report. Some of the information relied on comes from second hand sources. However, we have where possible utilised information and knowledge that we have gathered first hand.

Trump International Golf Links

Menie Estate, Balmedie, Aberdeenshire, AB23 8YE

**2.0 Menie Estate, Balmedie, Aberdeenshire, AB23 8YE****2.1 Location**

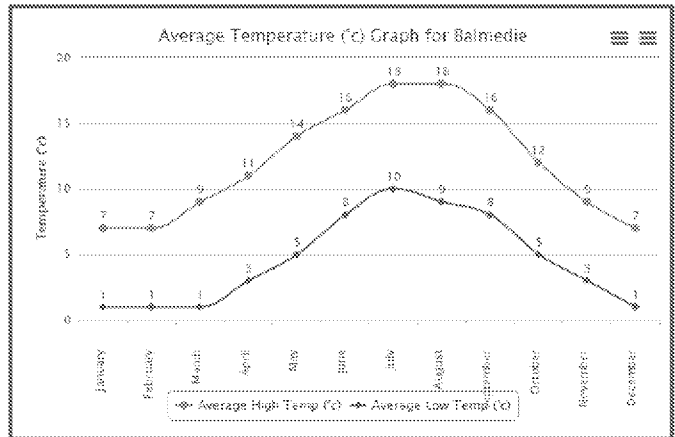
- 2.1.1 Aberdeen is on the North Sea coast and with a population of 229,000 in 2014 is the third largest city in Scotland and 27<sup>th</sup> largest in the UK. Aberdeen is the dominant city in the north of Scotland being an administrative centre and the main focus for retailing, education, health, research, commerce and industry. It has a regional catchment population of around 500,000.
- 2.1.2 Aberdeen is located 546 miles north of London and 128 miles north of Edinburgh. It is the UK capital for oil and gas exploration and production on the UK Continental Shelf and further afield. Over the past 15 years the city has become a worldwide centre of excellence for sub-sea engineering. More deep rooted are its two Universities, the oldest, The University of Aberdeen, having been founded in 1495.
- 2.1.3 The city benefits from an international airport, a main railway station, and a busy harbour. The airport offers flights to around 50 destinations in the UK and Europe including daily flights to the international hub airports of London Heathrow & Gatwick, Amsterdam, Frankfurt and Paris.
- 2.1.4 Scotland's population of 5.35 million makes up only 8.25% of the UK population of 64.9 million although Scotland has 32% of the UK land area. Within Scotland the population density is very mixed with 65% of Scotland's people living in a Central Belt that takes up only 13% of the land area. Outside of Scotland's Central Belt the country is mostly rural with spectacular coastlines and mountain ranges providing world famous scenery. Aberdeen has a rural hinterland to the north, west and south and the North Sea to the east.
- 2.1.5 The Menie Estate lies approximately 8 miles to the north of the city of Aberdeen in a rural location and enjoys views east to the North Sea. A world class links golf course has been developed on Menie Links and a 5 star hotel opened in 2014. The closest villages are along the North Sea coast at Balmedie 1<sup>1</sup>/<sub>4</sub> miles to the south and Newburgh 2<sup>1</sup>/<sub>2</sub> miles to the north.
- 2.1.6 At Appendix 1.0, we have provided Location Plan extracts to illustrate the situation of Menie Estate in the context of NE Scotland and the Aberdeen area.
- 2.1.7 Menie Estate is within the Housing Market Area for Aberdeen. Within that area the towns and villages are largely commuter settlements for the city.
- 2.1.8 The Estate is within a 20 minute drive of Aberdeen City Centre and from Aberdeen Airport which is located at Dyce approximately seven miles northwest of the City Centre and approximately 9 miles to the South-West of the Estate. The Estate is readily accessible from the south by the A90 trunk road which currently links directly to the main Estate entrance. The A90 provides predominantly dual carriageway access to Aberdeen and beyond to Dundee, Perth and thereafter the national motorway network. On the outskirts of Aberdeen a new western peripheral road construction project is currently underway and due to complete in 2018. That road will improve travel times around Aberdeen, to the Airport, and between the city's suburbs in particular.

Trump International Golf Links

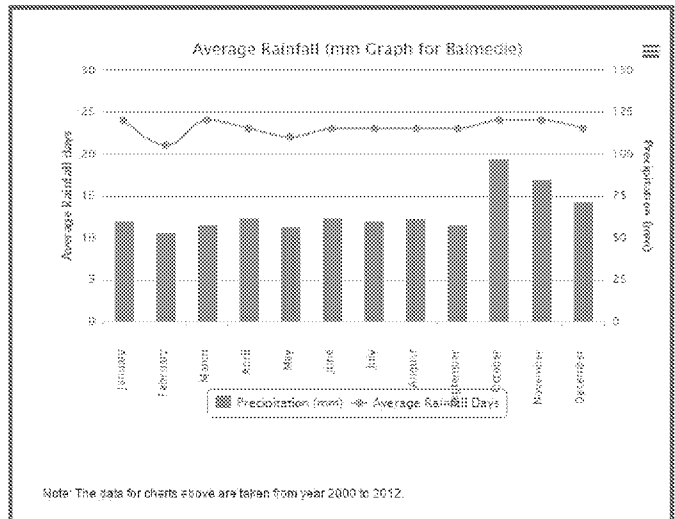
Menie Estate, Balmedie, Aberdeenshire, AB23 8YE

2.1.9 Part of the current road improvement works is a new 8 mile dual carriageway section of the A90 between Balmedie in the south and Tipperty in the north. It is being built several hundred metres to the west of the existing A90 and will complete a dual carriageway link between Aberdeen and Ellon in the north. The new road will move the bulk of traffic further away from Menie Estate and mean that after spring in 2017 access to Menie Estate from the A90 will be by exit at a grade separated junction south of Balmedie then through Balmedie onto the existing road to Menie Estate.

2.1.10 The climate of Balmedie usually offers warm summers and mild winters compared with Scottish averages. The warmest month is usually July when daytime temperatures reach 18.3 deg. C and the average overnight temperature is 10.9 deg. C. The coldest month is usually January when the average daily temperature is 6.7 deg. C and the overnight temperature is typically 1 deg. C.



2.1.11 Rainfall in Balmedie is low for Scotland totalling 755mm in a typical year and precipitation is distributed relatively evenly falling on about 134 days per year. For Scotland Balmedie has high sunshine totals with 1469 hours recorded in a typical year.



2.1.12 Summaries of average temperature, sunshine and rainfall are provided on the adjacent tables taken from World Weather Online and Gazetteer for Scotland.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Total
<b>Sunshine (hours per month)</b>	58	82	123	154	207	172	168	164	126	102	67	46	1469
<b>Precipitation (mm)</b>	58	48	53	56	53	58	59	57	65	88	89	71	755
<b>Days with Precipitation</b>	12	10	11	10	10	10	11	11	10	13	14	12	134
<b>Days of Air Frost</b>	10	9	6	2	0	0	0	0	0	1	4	10	42

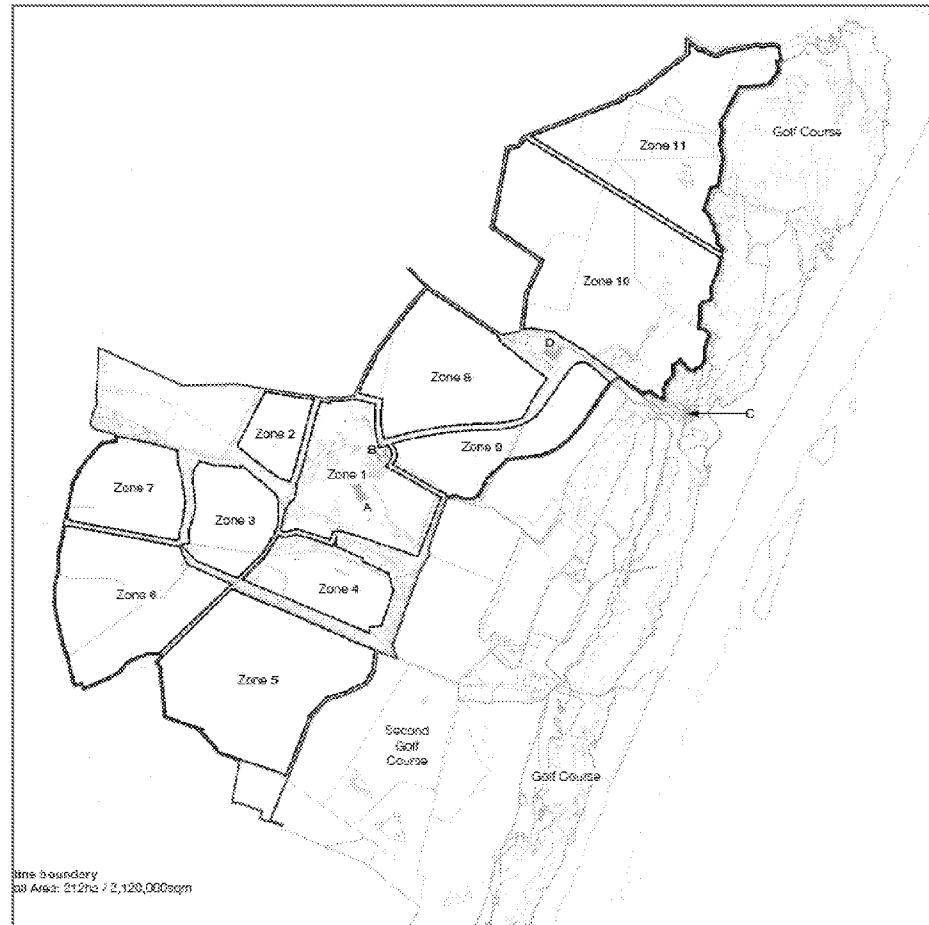


Trump International Golf Links

Menie Estate, Balmedie, Aberdeenshire, AB23 8YE

**3.0 Description**

- 3.1 The Menie Estate comprises over 1,500 acres of predominantly open rural land, including a Site of Special Scientific Interest. The Estate has at its centre the original estate house, MacLeod House, which is now a 5 star hotel at the centre of the Trump International development.
- 3.2 The site is broadly undulating in nature, which increases its scope and flexibility for housing development.



- 3.3 We have been provided with the above Zoning Diagram, prepared by Covell Matthews, which splits the site into eleven Zones, excluding the existing and proposed golf courses. All eleven Zones have potential for residential development although some locations within the development are superior to others, because of their topography and outlook. Many of the sites are elevated which enhances their views towards the North Sea.
- 3.4 To ensure a good rate of sale, it will be important to carefully manage the orientation of the houses and select the correct size and style of dwelling for construction in specific areas within the Estate. We will further develop this within Section 11.
- 3.5 Existing built development on Menie Estate is minimal, consisting of MacLeod House (A) and nearby former farm buildings converted into offices (B), plus the clubhouse for the Trump International Golf Course (C).

**4.0 Local Population Demographics & Economy**

- 4.1 Over the past 40 years, Aberdeen and the wider North-East of Scotland have enjoyed relatively low levels of unemployment and high levels of disposable income in comparison to other parts of the UK. This is primarily due to the City's position as the main European centre for the North Sea Oil and Gas Industry. The Centre for Cities Report in January 2015 noted that in 2014 average workplace earnings per week for Aberdeen were £625 compared with the UK average of £501. This placed Aberdeen as the city with the 2<sup>nd</sup> highest average weekly earnings in the UK behind London.
- 4.2 The Centre for Cities January 2015 Report also recorded that the employment rate in Aberdeen at November 2014 was 77.1% (UK average 71.9%), the 6<sup>th</sup> best out of 64 cities in the UK and the unemployment claimant count was the 6<sup>th</sup> lowest at 1% (UK average 2.1%). Aberdeen's working age population is around 160,000
- 4.3 Aberdeen's population of 229,000 in 2014 has grown by 20% in the 23 years since the 1991 Census. In 2012 Aberdeen City Council forecast that by 2037 the population will grow by a further 25% to 288,000. This is the second highest projected population rise in Scotland out of 32 Council areas. In Aberdeenshire, the rise in population between 2012 (population 257,740) and 2037 is projected to be 44,273 (+17.3%); the 6<sup>th</sup> highest rate of projected population growth in Scotland and a significantly higher rate of growth than the Scottish average of +8.8%.
- 4.4 Between the most recent national Census of 2011 and the previous 2001 Census Aberdeen's population grew by 5% and the Aberdeenshire population increased by 11.5% during that decade. With population projections for Aberdeen City and Shire showing a further significant increase in the number of people living in the region demand for new housing is likely to continue to grow strongly.
- 4.5 The age structure of the Aberdeen City & Shire population is projected to change significantly over the period up to 2037. The main change will be an increasing number of people aged 65 years and over. That age group is projected to rise by 55.4% in Aberdeen City and 74.4% in Aberdeenshire. The number of children (aged up to 16 years old) is projected to increase by 44.8% in Aberdeen City and by 13.7% in Aberdeenshire. The number of people aged 16 to 64 is projected to increase in Aberdeen City by 19.3% in the period between 2012 and 2037, but increase by a more modest 3.5% in Aberdeenshire, a combined 11.3% increase in the Aberdeen City & Shire area over that 25 year period. In compiling the above population growth estimates Aberdeen City Council assumed an annual net migration gain to Aberdeen City of 1,750 from 2018 onwards and an annual net migration gain to Aberdeenshire of 1,250 from 2018 onwards.
- 4.6 Aberdeen's sphere of influence in the economy of both North East Scotland and the UK is considerable given the relatively modest population of the city. The rural nature of NE Scotland means the influence of Aberdeen reaches over a wide geographical area. As the main centre of employment the city draws people in from rural areas presenting them with opportunities to earn higher wages in skilled work. The specialised nature of the oil and gas industry in the city means that for many the draw extends beyond NE Scotland. The good employment prospects and high salaries have attracted thousands of people to move to the Aberdeen area from further afield.

Trump International Golf Links

Menie Estate, Balmedie, Aberdeenshire, AB23 8YE

- 4.7 Aberdeen currently has several commuter suburbs which are predominantly residential with industrial estate or business park areas. Four satellite market towns, each located around 16 miles from Aberdeen city centre, are mainly residential commuter settlements, but also offer significant local facilities such as secondary schools, surgeries, town centre retailing and industrial estate areas that make them less dependent on Aberdeen than the other commuter settlements. These market towns are: Ellon (population 10,100), Inverurie (12,760), Banchory (7,520) and Stonehaven (11,370). Within the 16 mile radius of Aberdeen created by these towns and beyond the city suburbs there are a few commuter villages that have, over the past decade, expanded towards the size of small towns; most notably Westhill (population 11,600) and Portlethen (8,200), but also Kintore (4,680), Kemnay (3,830) and Newtonhill (3,040). Other commuter villages located near Aberdeen are: Balmedie (population 2,520), Newburgh (1,470), Potterton (920), Newmachar (2,510), Kingseat (750), Blackburn (2,980) and Drumoak (860).
- 4.8 Within the City of Aberdeen there are several distinct suburbs. The largest are Bridge of Don and Dyce which include large residential areas and significant industrial estates and office parks. Other predominantly residential suburbs include; Bucksburn, Kingswells, Cults, Milltimber, Peterculter and Cove.
- 4.9 UK Oil and Gas estimated in Sept 2015 that around 375,000 jobs are currently supported by the oil and gas sector across the UK, with almost half of these jobs located in Scotland, primarily in the North-East and Aberdeen. The jobs provided are generally of a highly skilled and often specialist nature and as such average salaries in the sector are high. In 2012, the average salary of an employee in the Oil and Gas Sector was in the region of £64,000 a year, more than double the UK average annual salary. Such high levels of disposable income have positive multiplier effect implications to the North-East of Scotland economy, with generally high levels of demand for a wide range of goods and services.
- 4.10 Aberdeen City and Shire also benefits from other thriving industries, such as tourism, education, professional services, food and drink and life sciences. The North-East boasts the UK's largest white fish landing port (Peterhead) and is a significant contributor to Scotland's agricultural output. The whisky industry centred on the Speyside distilleries is another key economic driver. Scotch whisky production and promotion supports around 40,000 jobs in the UK. The quality and success of these and other industries has further enhanced the vibrancy and diversity of the local economy in recent times.
- 4.11 Nonetheless, the North-East of Scotland economy remains heavily reliant on the success and prosperity of the Oil and Gas Industry, which remains the dominant industry in the Aberdeen area and the single biggest driver of economic activity.
- 4.12 Having reached a historical high of over \$140 per barrel in July 2008, the oil price fell rapidly to below \$40 per barrel by the end of 2008. The oil price then recovered and from January 2011 until June 2014 was generally trading at a price above \$100 per barrel. During that period many businesses in the Aberdeen area expanded rapidly as record levels were invested in exploring for new oil and gas reserves and investing in new and existing infrastructure to increase production. Wages and salaries of workers in the oil and gas industry rose sharply during this period as businesses struggled to fill an expanding number of posts with experienced staff.

- 4.13 However, the price of Brent Crude started falling after June 2014 and fell rapidly in the last quarter of 2014 to around \$45 per barrel in January 2015. It is currently trading at around \$50 per barrel and nearly all analysts currently expect the crude oil price to remain at below \$70 per barrel for at least a further 12 months.
- 4.14 Oil & Gas UK reported in September 2015 that; *“the industry is embracing change and taking bold and purposeful action to emerge leaner, fitter and with a competitive and efficient cost base that will ensure a positive and sustainable future.”* Oil companies and oil service companies have cut costs since mid-2014. This has involved laying off contractors and staff, negotiating pay cuts and reduced contract rates, and cancelling projects or putting them “on hold” until further notice. Oil & Gas UK has estimated that 65,000 UK jobs have been lost by the industry over the past 18 months. This has had a negative impact on output, employment and wage growth levels in the energy industry over the past year and has inevitably hit the disposable incomes of some households and therefore impacted on the wider economy of Aberdeen City and Shire.
- 4.15 In the Aberdeen Housing Market area the importance of the Oil and Gas Sector means that, above all else, demand for property is influenced by the fortunes of companies in that industry. These fortunes have historically reflected the rise and fall of the oil price.
- 4.16 The local economic picture does, however, remain positive. The current drop in oil price is having a negative impact on the region, but the economic fundamentals of the region remain very strong. Employment levels and wages continue to be above the national average. Aberdeen City and Shire has a pool of skilled workers with specialised knowledge that has been accumulated both locally and internationally in overseas oilfields over the years. We are of the opinion that Aberdeen will remain at the forefront of the oil and gas industry, despite declining production and investment in the UK Continental Shelf.
- 4.17 The Centre for Cities January 2015 report illustrated many positive reasons to be confident about Aberdeen’s prospects:
- Aberdeen had 2,560 more businesses in 2014 than in 2004, a 40.6% increase in the number of businesses over that 10 year period and the highest percentage increase of any city in the UK.
  - Over the 10 years to 2014 Aberdeen saw 13,300 more jobs created, a 7.9% increase, placing it 9<sup>th</sup> out of 64 UK cities. Of these jobs, 11,278 (85%) were in the private sector.
  - In 2013 Aberdeen had 390 businesses per 10,000 people, the 5<sup>th</sup> highest ratio out of 64 UK cities. In the same year Aberdeen had 63.6 new businesses start up per 10,000 people placing it 6<sup>th</sup> out of 64 cities in the UK. The UK average was 54.0 new businesses per 10,000 population. However, the rate of business closures in the same year was close to the UK average with 39.2 per 10,000 people (UK average 37.1).
  - In 2014 the house price affordability ratios in Aberdeen (average house price compared with average annual earnings) was 7.4, compared with the UK average of 9.6.

Trump International Golf Links

Menie Estate, Balmedie, Aberdeenshire, AB23 8YE

- 4.18 In addition to economic reasons Aberdeen City and Shire attract and retain people through the quality of life that the area offers to residents. Aberdeen provides a vibrant, cosmopolitan city with the wide range of shops, cafes, restaurants, nightlife and entertainment that one would expect in a city of its standing. The areas surrounding Aberdeen provide world class opportunities for outdoor pursuits and activities, including golf, walking, cycling, horse riding, field sports, fishing, and skiing. The local health and education systems are very good with private and well regarded state options available. The area has a low level of recorded crime, good quality housing and a superb natural environment. This all contributes to the excellent placing Aberdeen and Aberdeenshire regularly achieve against quality of life indicators.
- 4.19 The local economy is likely to diversify further in the years ahead, with oil field decommissioning and renewable energy projects offering particular potential, given the area's energy background. These industries are likely to be attracted by the highly transferable skills and knowledge base that exists in the regions workforce.
- 4.20 We therefore anticipate that the Energy Industry will continue to support substantial levels of employment locally. The large number of companies in the area should continue to generate demand for labour and because of the highly skilled workforce and business networks in the area it should remain an attractive location for new start businesses. We would expect high employment levels and wages in the region to be sustained into the future. Combined with the excellent natural environment and quality of life that exists in the region, we would expect a continued growing economy, based on a well-motivated, talented and productive workforce.

## 5.0 Current Residential Market – UK, Scotland & Local

### UK & Scotland Housing Markets

- 5.1 From 2000-2007, the UK rode a wave of optimism and house price inflation which saw some properties triple in value. This was largely due to cheap and easy access to money. The worldwide recession and UK credit crunch put a stop to this, with many areas seeing a significant fall in prices. The main exceptions to this were London and the South East and the Aberdeen area. In the Aberdeen area, although prices did fall, there still remained a decent market where transactions took place. Following a difficult period in 2008-2009, in 2010 the market started to fully recover in North East Scotland. Prices have now surpassed their pre-recession peak in most instances.
- 5.2 London and South East England are in a league of their own, largely fuelled by foreign money, with that area being viewed as one of the best in the world for investment. The rest of the UK has lagged behind, with many parts, for example the North of England, still struggling from a residential perspective. Residential markets around Scotland's cities have improved significantly over the last two years, with the exception of Dundee which continually trails behind, due to having a weaker local economy. The latest Royal Institution of Chartered Surveyors (RICS) residential market survey highlights "price expectations for Scotland remain positive with a net balance of 49% of surveyors predicting a rise in property over the next three months. The upward shift in prices is part being driven by a decline in the number of houses coming onto the market, with supply continuing to fall behind demand in most parts of the UK."
- 5.3 As a whole, the UK Residential Property market has been experiencing a period of growth in recent times. According to the Office for National Statistics (ONS), UK house prices, on average, grew by 5.2% in the year to July 2015 although according to the same source, the equivalent figure for Scotland was -1.3%.
- 5.4 The main reason behind the UK growth in prices has been simple demand and supply dynamics. According to the RICS, the number of homes being placed on the market for sale has fallen in most months over the past year, with new instructions falling at their fastest rate since 2009. On the demand side, improving economic indicators including increasing levels of employment and growing real wages combined with a growing population are all contributing to a high level of demand in the market. Lenders are also offering attractive, low interest rate mortgages to potential purchasers, which is fuelling the demand side yet further.
- 5.5 In Scotland, the supply side story is slightly different to that of the UK as a whole. According to the latest RICS UK Residential Market Survey, there continues to be a moderate growth in supply of houses coming to the market in Scotland. This has led to a slowdown and, for a while in early 2015, a reversal in house price growth in Scotland in contrast to the UK as a whole. The Halifax price change index for Scotland in Q2 of 2015 is, however, much more positive with an 8.5% average house price increase recorded in Q2 of 2015 and a 12.2% price increase recorded between Q2 of 2014 and Q2 of 2015.

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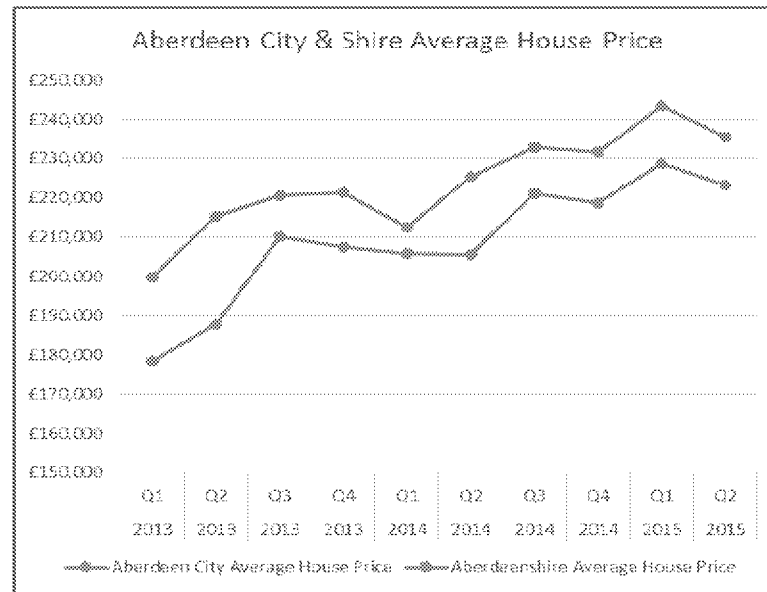
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- 5.6 According to Registers of Scotland, the average house price in Scotland in the period April to June of 2015 stood at £167,765, a 3.5% increase on the same period in 2014 and the highest quarterly figure ever logged by Registers of Scotland, since records began in 2003.
- 5.7 The recent introduction of Land and Buildings Transaction Tax (LBTT) from April 2015 has made purchasing a home priced at less than £333,000 cheaper in comparison to the previous Stamp Duty Land Tax (SDLT) system. However, under the new tax property priced above £350,000 now attracts more tax payable. This is having some impact on the demand-supply relationship in the market moving forward. It remains too early to establish whether this will have a long-term impact on demand.

#### Local Housing Market

- 5.8 The North East of Scotland, and more specifically Aberdeen and its environs, have been protected from many of the recent woes of the UK economy due to the oil and gas economy which employs a large percentage of local people directly or indirectly. With the oil price remaining above \$100 per barrel for almost four years from late 2010, the local economy was booming, accelerating the demand for goods and services, especially housing, both in the new and second hand markets. In that period, according to the Aberdeen Solicitors Property Centre (ASPC), average prices increased by over 20%.
- 5.9 The fall in oil price since late summer 2014 down to around \$50 per barrel for much of 2015 is having an effect on the local economy, with a large number of redundancies occurring and further job cuts predicted. This is, in turn, having an effect on the local property market, especially at the higher end where a large number of purchasers were well paid employees in the oil industry. The market is proving to be tougher in 2015 and all expectations are that these challenges will continue into 2016 with prices likely to remain fairly static, or worse, in the short term until the oil price and confidence starts to recover.
- 5.10 Statistics released from the ASPC show that in the first months of this year (2015), in comparison to the corresponding period in 2014, 30% (1,000 properties) more properties were marketed for sale on the second hand market. However, there were only 750 house sales in that period. Whilst this statistic indicates that there are many properties not selling as quickly as before, it does indicate that there is still a good market.
- 5.11 The latest statistics released by the ASPC show that in the second quarter of this year, sales volumes were 9.4% down than in the corresponding quarter of 2014. Their view is that the market is holding up reasonably well especially at the lower level, specifically properties priced at less than £350,000. Higher value properties are struggling to sell, both new and second hand. This is partly due problems being faced in the oil industry together with the effects of the old Stamp Duty – now Land and Buildings Transaction Tax which proves more costly for properties above £330,000 and is very punitive for properties in excess of half a million pounds.
- 5.12 This is a double blow for Aberdeen City and Shire. Through 2015 it is becoming apparent that the low oil price and high property taxation has severely affected the market for higher priced properties. The one positive remains the low cost of borrowing which is helping to keep the market for lower priced properties relatively active.

- 5.13 Therefore, for this development, it may be better to focus initially on the lower priced properties proposed within the development. It is important to establish a track record on site and a reasonable level of sales activity. Otherwise, the site could be perceived as weaker than should be the case. The Muir Development at Blairs, discussed in Section 8, illustrates this point.
- 5.14 Looking backwards at house price data for the Aberdeen Housing Market Area, the economic buoyancy of the area has kept prices above the Scottish average for many years. Registers of Scotland have recorded an average residential property price in Aberdeen City of £223,291 in April to June 2015, £228,727 in Jan. to March 2015 and £218,807 in Oct. to Dec. 2014. The corresponding average residential property price for Aberdeenshire follows a similar pattern: £235,351 in April to June 2015, £243,292 in Jan. to Mar. 2015 and £231,718 in Oct. to Dec 2014.
- 5.15 The graph below charts the average house price (all houses) recorded by the Register of Scotland in the Aberdeen City and Aberdeenshire Council areas in each quarter between the start of 2013 and Q2 (April to June) of 2015.



- 5.16 Taking a longer view back over the period 2006 to 2014, the average price of a residential property in the Aberdeen Housing Market Area recorded by Aberdeen Solicitors Property Centre (ASPC) in Q4 of each year has been as follows:

Year	Average Price	% Change in 12 Months
2014	£251,838	+9.2%
2013	£230,621	+8.6%
2012	£212,358	+1.9%
2011	£208,398	+1.0%
2010	£206,327	+4.6%
2009	£197,156	-2.0%
2008	£201,115	-0.6%
2007	£202,479	+26.8%
2006	£159,634	+21.2%



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5.17 Below we have set out a table outlining recent second hand house sales in areas within 5 miles of the Menie Estate. They illustrate and provide hard evidence of the recent level of house prices achieved and sought in the area where Menie Estate is situated:

Address	No. of Bedrooms	Floor Area (sq m)	Price	Date
3 Laingseat Road, Potterton, Aberdeen, AB23 8UE	4	146	£307,476	27/06/2014
38 Keith Avenue, Balmedie, Aberdeen, AB23 8ZR	3	145	£310,000	09/03/2015
40 Oldmill Crescent, Balmedie, Aberdeen, AB23 8WA	4	148	£310,000	08/10/2014
9 Chapelwell Wynd, Balmedie	4	110	£315,000	23/04/2015
Overhill Farm Cottage, Newburgh AB41 6BA	4	159	£320,000	19/08/2015
Pettens Barn, Balmedie AB23 8YB	3	139	£325,000	01/05/2015
Dam Brae, Balmedie AB23 8YD	3	127	£325,000	13/05/2015
13 Denview Crescent, Potterton, Aberdeen, AB23 8ZN	4	157	£333,350	07/05/2014
Hill of Savocho, Newburgh AB41 6BD	3	126	£340,000	25/07/2015
7 Gourdie Park, Potterton	4	150	£350,333	23/03/2015
12 Gean Court, Balmedie, Aberdeen, AB23 8ST	4	146	£358,000	05/08/2014
3A Belhelvie Village, Balmedie, Aberdeen, AB23 8YU	4	157	£367,000	10/03/2015
14 Chapelwell Wynd, Balmedie AB23 8HN	5	146	£370,000	04/09/2015
Parkview, Potterton AB23 8UY	5	143	£373,000	23/07/2015
4 Chapelwell Wynd, Balmedie, Aberdeen, AB23 8HN	5	181	£390,000	19/01/2015
34 Lumsden Way, Balmedie, Aberdeen, AB23 8TS	4	159	£390,500	31/07/2014
11 Chapelwell Place, Balmedie, Aberdeen, AB23 8HU	4	144	£397,777	07/05/2014
7 Chapelwell Place, Balmedie, Aberdeen, AB23 8HU	5	154	£399,189	24/04/2014
28 Cairntack Road, Belhelvie, Aberdeen, AB23 8RD	5	195	£400,000	11/07/2014
22 Lumsden Way, Balmedie, AB23 8TS	4	153	£410,500	12/05/2015
3 Bridge Gardens, Newburgh, Ellon, AB41 6BZ	4	226	£440,000	23/04/2014
Millden Steading East, Balmedie, Aberdeen, AB23 8YY	4	172	£450,000	27/03/2014
9 Keir Heights, Balmedie, AB23 8WJ	5	259	£465,000	31/03/2015
Hill of Minnes, Udney, AB41 6RE	5	287	£475,000	20/07/2015
Drumhead Lodge, Balmedie, Aberdeen, AB23 8YR	5	269	£495,000	27/11/2014
Seven Acres, Balmedie, AB23 8YJ	5	261	£540,000	20/03/2015
Forvie House, 31 Main Street, Newburgh, AB41 6BE	6	330	£560,000	15/04/2014
Cranfield, Bridge of Don, Aberdeen, AB23 8NR	5	272	£580,000	14/10/2014
Pettens Farm, Balmedie, Aberdeen, AB23 8YB	4	235	£630,000	24/05/2014

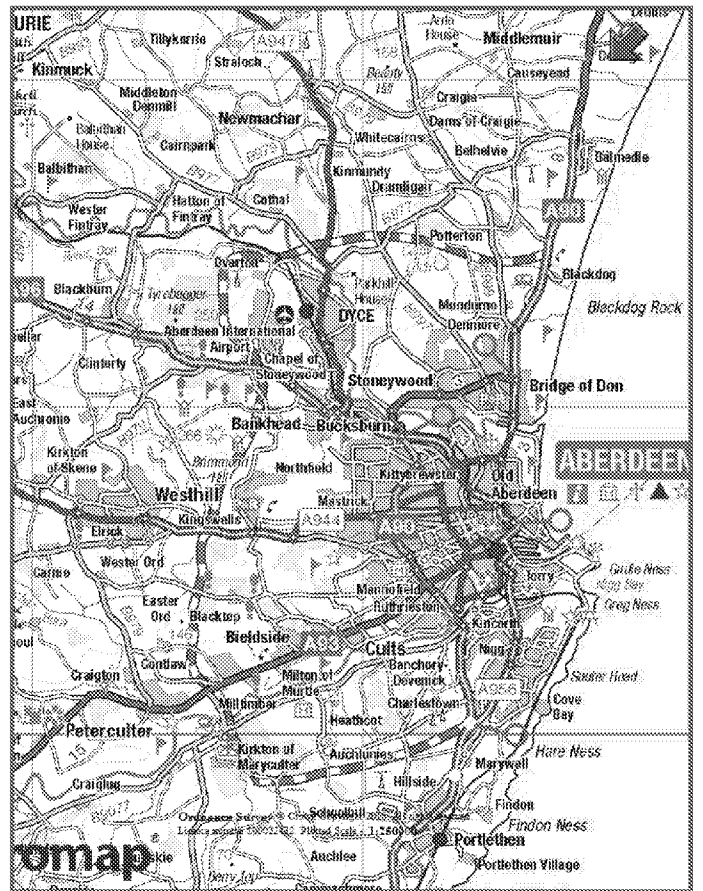
Address	No. of Bedrooms	Floor Area (sq m)	Price	Date
Brydon, 1 Keir Heights, Balmedie, Aberdeen, AB23 8WJ	5	251	Asking Price £510,000	On market 10/12/2014
10 Bridge Gardens, Newburgh, AB41 6BZ	4	227	Asking Price £450,000	On market 04/08/2015
Home Farm, Potterton	4	263	Asking Price £495,000	On market 01/08/2015

6.0 Overview of Aberdeen's Residential Areas

6.1 As we have already discussed, the main sector of employment in Aberdeen City and Shire is the oil and gas industry. The desirability of housing is based on many factors but foremost are:

1. Proximity to education, transport, amenities and work.
2. Availability and quality of housing

6.2 By looking at house prices, desirability can be determined. In Aberdeen City the established prime residential areas are predominantly the West End and Lower Deeside suburbs of Cults, Bieldside and Milltimber. These areas contain the majority of the large and expensive houses in the Aberdeen area. Many of these are traditional granite and slate built mansion houses but the past decade has seen a significant number of prime house plots redeveloped with modern detached houses and several developers have built speculatively within the existing prime areas aiming to attract buyers at the top end of the local housing market.



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- 6.3 The remainder of the City and suburbs follow behind the West End and Lower Deeside, some fairly closely. There are particular pockets of the city such as Ferryhill and parts of Hilton where good quality housing attract good levels of demand and prices. Similarly, Kingswells, Westhill and large parts of Bridge of Don are not far behind Lower Deeside in popularity.
- 6.4 Outwith Aberdeen, the market remains good out to a range of 15-20 miles and the towns of Stonehaven, Banchory, Inverurie and Ellon. Further away from Aberdeen than this, with some notable exceptions (eg. Royal Deeside), house prices drop fairly significantly.
- 6.5 Aberdeen City Centre and West End provide four private schools; Robert Gordons College, Albyn School and St Margaret's School for Girls are in the Scottish education system and all three have an excellent reputation and are well attended. The fourth private school is the International School (American School) at Pitfodells / Cults. However, in the Aberdeen area many people who could afford to send their children to private school don't. This is because many of the state schools in the Aberdeen area also have a very good reputation. Cults Academy, Aberdeen Grammar School and Banchory Academy consistently perform very well in school league tables being placed in the top 15 state schools in Scotland. Other state schools at Oldmachar (Bridge of Don), Ellon, Mackie (Stonehaven), Westhill and Inverurie also perform well. Within Aberdeen City there is certainly an effect on housing demand based on which secondary school an area is zoned for but it is less marked than in many other UK cities. In Aberdeenshire, the effect of school catchment areas is less noticeable with all the state schools in the commuter belt having a decent reputation.
- 6.6 The traditional commuter towns are Stonehaven and Banchory, both of which have many fine examples of good stone housing and old town centres. These communities have grown significantly with modern housing now outweighing the old properties, however, they have retained their popularity due to good schooling, amenities and focal points. They remain at the pinnacle of Aberdeen commuter towns with up to, and in some cases beyond, £1 million being paid for the best houses there.
- 6.7 Below we provide an overview of the most popular settlements in Aberdeen City and Shire:
- Banchory**
- 6.8 Banchory is located 18 miles to the West of Aberdeen on Royal Deeside. Banchory has expanded significantly over the last decade, with large swathes of new housing having been constructed to the northern side of the town at the Hill of Banchory. Since 2007, around 250 new homes have been constructed in the town. The Hill of Banchory has also recently had a new primary school built, providing education for up to 325 Primary School age pupils.
- 6.9 Banchory offers excellent amenities and the local state secondary school has a good reputation. It has a thriving high street with numerous independent retailers such as Bentley's Fashion and Taylors of Banchory. There are also several good hotels and restaurants such as Raemoir House, Banchory Lodge, The Cowshed and Tor Na Coille House Hotel. It is situated in a fantastic natural environment on the banks of the River Dee (Royal Deeside). There is a large public park beside the town centre and the town has a golf course and a separate golf centre. It is within a 20 minute drive of Westhill, which has become a Global Centre of Excellence in Subsea Engineering and home to numerous company Headquarters, such as Subsea 7, Technip

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and Taqa. Prime Four Business Park at Kingswells, home to Oil Companies such as Nexen, Premier Oil, Apache, and (from 2016) Statoil is also within a 25 minute drive of the town.

- 6.10 In common with some of the other large towns in North-East Scotland, the main weaknesses of Banchory relate to transport and infrastructure. Banchory has no railway station and although it has three separate roads connecting it with Aberdeen none are dual carriageway.

#### **Stonehaven**

- 6.11 Stonehaven is located approximately 15 miles south of Aberdeen. It occupies a coastal setting on a picturesque bay, has a small harbour and is popular as a tourist town. It has expanded significantly in recent years, with the housing stock increasing by 22.8% between 2001 and 2013.

- 6.12 The town has excellent transport links, with the main railway line to both Aberdeen and the South passing through. There is also a frequent bus service to Aberdeen and a dual carriageway road link via the main A90. It has several public parks and a beach, swimming pools and a golf course that offers extensive views out to sea.

- 6.13 Stonehaven is located within a 20 minute drive of the industrial estates on the south side of Aberdeen which are the base of many major employers in the oil and gas industry such as Shell, Total, AMEC, Maersk Oil and Wood Group.

#### **Inverurie**

- 6.14 Inverurie is a Royal Burgh and vibrant market town situated approximately 16 miles to the North-West of Aberdeen. The town has become extremely popular as a place to live, particularly within the last decade, due to its good transport links to Aberdeen, picturesque setting, good quality of housing and wide range of local shopping and other services. Housing has expanded rapidly here, probably more so than in any of Aberdeen's satellite towns, and demand for housing remains good. Around 900 new homes have been constructed in the town since 2007.

- 6.15 Inverurie is connected to Aberdeen by both the A96 dual carriageway and the main Aberdeen to Inverness railway line. Both provide fast and efficient transport into Aberdeen and also Dyce, which is a major base for numerous large oil & gas industry companies and such as BP, Halliburton, Weatherford and Aker Solutions. Inverurie and nearby Kintore have also grown in popularity as employment centres in their own right.

- 6.16 An historic town centre and high street with varied retail offering is another strength and reason for its popularity. Long established independent retailers such as Mitchell's and Sinclair's Jewellers add character and vibrancy to the town centre. The town is also in close proximity to North-East Scotland's most iconic hill, Bennachie. There are several parkland golf courses in the Inverurie area and the nearby hills offer excellent opportunities for outdoor pursuits such as hillwalking and mountain biking.

**Ellon**

- 6.17 Ellon is situated approximately 16 miles to the north of Aberdeen and is a popular commuter settlement. It is another town which has experienced rapid growth with the housing stock increasing by more than 25% since 2001. Transport links to Ellon are poorer than to most of Aberdeen's satellite towns with only partial dual carriageway (to be remedied in 2017) and no railway. There is a regular bus service to Aberdeen.
- 6.18 Ellon does not have the "Royal Deeside" cache that underpins Banchory's popularity but is set in a rural setting that is an attractive and appealing environment in which to live. The town's expansion has led to the recent construction and opening of a new Secondary School in the town which provides a dramatically improved learning environment.
- 6.19 The town is located within the Energetica corridor which extends 30 miles from Aberdeen to Peterhead that is intended to provide a global hub for the energy sector. The Energetica brand seeks to build on and continue to attract energy industry companies, by promoting the area and offering business incentives to locate in the corridor. This promotion also aims to draw more people to the area to both live and work.
- 6.20 Ellon's weaknesses are a shortage of public transport options, given its size, no rail connection, and a local road system facing capacity difficulties, as commuters have limited alternative options when travelling to work in Aberdeen.

**Kintore**

- 6.21 The village / town of Kintore has also witnessed very rapid expansion in the last 10-15 years. A generous release of land for new housing development has seen the town's population grow by 118% in the decade from 2003-2012 and it has continued to increase in size. The town's location 13 miles NW of Aberdeen city centre and 7 miles from Dyce make it popular as a commuter settlement.
- 6.22 The dual carriageway connection to Aberdeen and Dyce, affordable and available homes compared with other towns, a rural setting, and a modern primary school are key strengths of Kintore. Kintore is also due to have a new mainline railway station constructed on the northern edge of the town, with that work scheduled for completion in 2019.
- 6.23 Kintore has also expanded as an employment centre in recent years with the development of business parks on the outskirts of the town. Local employment opportunities have undoubtedly also contributed to growth from a residential perspective.

**Other Settlements**

- 6.24 There are many other towns surrounding Aberdeen, but none are as popular as those described above. With the settlements that lie between, the main factors that enhance desirability are proximity and accessibility to Aberdeen and whether they have a USP (Unique Selling Point).

Examples of this include:

- The Quay at Newburgh with views over the Ythan Estuary.

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- The village of Drumoak, being beside the River Dee and having access to popular primary and secondary education.
  
- 6.25 The suburban residential areas of Aberdeen have also seen considerable expansion. Areas such as Westhill, Kingswells, Bridge of Don, Cove, Portlethen and Dyce have all grown. Westhill, Kingswells and Bridge of Don have proven to be particularly popular residential areas.
  
- 6.26 Kingswells and Westhill occupy semi-rural locations immediately to the west of the City. They have good local amenities. Kingswells has improved with the recent completion of a DeVere "Village Urban Resort" hotel and gym, a nursery and further retail outlets at the growing Prime Four Business Park. Westhill offers significant shopping facilities and both settlements benefit from extensive green spaces, enhancing their appeal. Proximity to places of work such as Arnhall Business Park, Prime Four, and the West End of Aberdeen, also add to the popularity.
  
- 6.27 Bridge of Don is Aberdeen's largest suburb with a population of 22,800. It has grown since the 1970's and a steady release of land for new house building and business use has allowed it to provide comparatively affordable private housing in relatively close proximity to Aberdeen City Centre and significant local employment opportunities on industrial estates and science parks that have attracted occupiers such as Vetco Gray, Sparrows Offshore and ITS Testing.

**7.0 Residential Trends in Aberdeen City & Shire**

- 7.1 The Aberdeen City and Shire area is heavily reliant on the motor car and private transport. Many of the areas large employers are companies in the oil & gas industry based on the periphery of Aberdeen to where public transport is quite poor. Consequently Aberdeen's satellite towns have expanded in size and popularity, as they often offer travel to work times comparable or shorter than a cross city journey on congested roads. As outlined in section 6.0 the area now has several significant dormitory/commuter settlements.
- 7.2 The area's high dependency on the car was illustrated in the 2011 Census which records Aberdeenshire as having the highest percentage of households with access to one or more cars in Scotland at 85.7%. This means when people are looking to purchase a new home, public transport is usually not a fundamental consideration.
- 7.3 A low reliance on public transport means those services which are provided, especially in Aberdeenshire, are often under-utilised. This in turn discourages investment in improved public transport and the consequence is that in the City and Shire public transport provision is poorer than in most other city regions of the UK. As the roads have become more congested use of the railways and stations at Stonehaven, Portlethen, Aberdeen City Centre, Dyce and Inverurie has grown. However, most residential areas in the region have no rail link which further enforces reliance on the car.
- 7.4 In many settlements, expansion has occurred at such a rapid rate in recent years that infrastructure and services have failed to keep up with the pace of growth and development. This has taken many schools over capacity; given rise to increased traffic congestion on some routes; and placed strain on Council and Health services.
- 7.5 Both Aberdeen City and Aberdeenshire had Local Development Plans approved by the Scottish Ministers and adopted in 2012. These Plans outline the Council policies for proposed development scheduled to take place in the period 2012 to 2017 and beyond, although new draft Local Development Plans to cover the period 2017 to 2021 are currently heading towards their adoption.
- 7.6 The Development Plans provide insight into the strategy behind planning consents that have been granted and guidance for new development proposals. The 2012 Aberdeenshire Plan identifies a clear focus on development along the existing major transport corridors of the A90 and A96 and the main railway line north and south of Aberdeen City. The plan expects 75% of all growth and development to take place along these corridors. The plan highlights these as the strategic growth areas; that is the areas where growth of employment and the facilitation of wider economic growth for the region is a key aim.
- 7.7 Outwith these key areas, the remaining 25% growth was expected to be of a local nature and to meet local needs in the more rural areas of Aberdeenshire.
- 7.8 It is clear from study of the development plan that key settlements such as Inverurie, Ellon and Banchory will continue to absorb the majority of the growth in Aberdeenshire. The objectives of the development plan are clear; to continue to grow the local economy through sustainable development whilst utilising existing transport infrastructure and protecting the environment.

- 7.9 The plan very much looks towards the future; it seeks to promote the creation of sustainable communities, whereby more people live and work locally and seeks a long term reduction in the levels of commuting, which it describes as something “which we cannot maintain on a long term basis”. To fulfil these objectives, the plan has set out significant areas for both housing and employment land focussed within settlements such as Inverurie, which are large enough and sufficiently well served by transport infrastructure to attract companies that will provide local employment. The Council hopes that by facilitating the provision of more good quality employment opportunities locally, fewer people will commute and the negative environmental impact of new housing required to meet local population growth will be minimised. The development plan and its objectives have driven allocation decisions in terms of recent and proposed residential developments.
- 7.10 In addition, the Aberdeen City Local Development Plan provides the basis of the City’s role in the provision of new housing within the context of the wider North East region. Aberdeen is to accommodate at least half of the new housing and employment land required to meet the needs of the North East of Scotland as a whole over the next 20 years, with a significant proportion of the land required coming from the redevelopment of brownfield sites.
- 7.11 The plan envisages that the remaining housing provision will continue to be focused on the key suburbs of the Bridge of Don, Dyce, Kingswells and Cove as has been the case in the recent past. Around 17,000 homes are targeted to be built over the next 15 years across these suburbs. In addition, a large scale expansion of the Countesswells area to the Western edge of the City is expected to provide around 3,000 new homes by 2023.
- 7.12 In terms of the size and style of residential property being built by house builders active in the area, typical large scale developments are of mixed size. However, developments that are suburban, on the outskirts of towns or in attractive rural settings tend to provide three to five bedroom homes. The larger homes tend to be located in the most prestigious areas, such as the West End of Aberdeen City, the Lower Deeside suburbs and Westhill.
- 7.13 New home prices, depending on location and size, vary from £250,000 up to around £850,000. Only in a very few developments in prime locations have prices exceeded this. Properties at the higher end of this price bracket are found in the quieter, more secluded areas and/or areas with more attractive surroundings. Houses are generally one and a half to two storeys in height and are of generally modern design, finished with clean modern materials, including tiled roofs and harled walls.
- 7.14 The main housebuilders in the area can be categorised between volume builders, medium sized local builders and niche local builders. Each builder seeks to offer a USP. The volume builders will generally offer generic properties with finishes to a standard and cost that they feel is appropriate for the locality, size and expected sale price of the property. Several of the niche builders succeed by being more responsive to buyer demand over bespoke house types and extras although they do not have the financial clout to compete with volume builders when bidding for the largest sites that come onto the market.



7.15 Below is a list of the house builders currently active in the Aberdeen Housing Market Area:

Type of Builder	Company	Comments
Volume	Stewart Milne Homes	Based in Westhill but one of Scotland's largest housebuilders. Aberdeen is their heartland and over the past 25 years they have enjoyed the largest share of the local market. Currently promoting a major development at Countesswells (yet to start) and building in several of Aberdeen's suburbs and commuter towns.
	Dandara	Have focussed on the Aberdeen area over the past decade. Have been aggressive in bidding for well-located housing sites such as Hazlewood, Oakbank and the Raeden Centre in the West End. Also have a major development at Stoneywood and a large proposed site in Inverurie. Have successfully marketed their product as being superior.
	Cala	National builder that started life in Aberdeen. Currently developing two large housing sites in Milltimber and Cults and sites in Bridge of Don. Is the favoured bidder at Persley Den which should generally be less expensive housing aimed at a different sector of the resi. market.
	Persimmon	National builder that in the Aberdeen area often purchases housing land from other volume builders to keep active.
	Barratt	National volume builder that looks for sites to take from 20 up to several hundred units. Carry less of a land bank than most other builders which means they will regularly bid for available sites.
Large Local	Scotia Homes	Based in Ellon. Contracted in size significantly after the banking crisis but now very active again and building in Bridge of Don, Cove and Ellon.
	Kirkwood Homes	Active on sites of up to 60 units at a number of suburban and rural locations in Aberdeen City & Shire.
	Bancon Homes	Based in Banchory where they have been active for many years, nearer Aberdeen they are involved in an ambitious development at Maidencraig, Kingswells and are building in two other suburbs.
	Malcolm Allan Housebuilders	Based near Inverurie and most active in Inverurie and Kintore, including some large sites, but also develops sites in Aberdeen and its suburbs.
	Deveron Homes	Based in Huntly, tend to build in rural Aberdeenshire towns including commuter towns for Aberdeen.
Other Scottish Builders active in Aberdeen	Muir Homes	A Scotland wide developer based in Fife. Is undertaking a significant new development at Blairs that is remote from existing settlements.
	Tulloch	Based in Inverness they announced in 2015 that they are back in Aberdeen where they have a flatted development
	Stephen Homes, Zero C, AJC Homes	These three builders (one local) are developing at Chapelton the new village being created to the west of Newtonhill. The area is zoned for 4.000 new houses.

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Type of Builder	Company	Comments
Expanding Local Builders	Claymore Homes	Based in Peterhead they have experience of developments of up to 80 houses and have built several small developments in Aberdeen and commuter villages.
	Colaren	Also based near Peterhead they have several years of experience and are involved in increasingly large developments in North Aberdeenshire.
Small & Niche Local Builders	Drumrossie Homes	Have mainly built houses in Inch but have also developed apartments in Aberdeen
	Forbes Homes	Small scale housing developments aimed at the top end of the market. Have achieved £1 million + for new houses in Cults.
	Churchill Homes	Bespoke houses aimed at the top end of the market in the locality where the development is taking place.
	Veitchi Homes	A division of the flooring manufacturer with its own Scotland wide labour force. Has been selective in developing a few small scale sites in the Aberdeen Housing Market Area, where they usually aim towards the top end of the market.
	Ury Estate	Have planning permission to build over 50 very large homes at Ury Estate, Stonehaven together with a new 18 hole golf course and hotel in the 'A' listed Ury House, a ruin that is to be restored. To date only one house has been built. Marketed as unique, quoting prices for houses are in excess of £1 million.

**8.0 Focus on Specific Developments**

8.1 There are many developments currently ongoing within Aberdeen City & Shire in a variety of locations ranging from small single digit developments to new towns at Elsick and proposed at Countesswells and Grandhome. We have focused on developments that are closest to the Menie Estate, but also included some other developments where high prices are being paid. Within the individual developments, we have looked at the highest priced properties, which can be helpful in identifying what maximum prices are for a potential new development such as this.

**1. Shadyneuk, Balmedie**

Developed by Tor Ecosse, a small development built on the northern outskirts of the village of Balmedie. House type – detached house with five bedrooms, three public rooms and three bathrooms 222 sq m sold for £580,000 (£2,613 per m<sup>2</sup>).

**2. Cala Homes Development – The Links at Dubford, Bridge of Don**

The largest house type, the Melville, 228 sq m detached house with three public rooms, five bedrooms, three bathrooms and double garage marketed at £620,000 (£2,719 per m<sup>2</sup>). It should be noted that incentives are being offered on some of these plots including part exchange and LBTT payments.

**3. Churchill Homes Development at Ythsie, near Ellon**

Two house types: Type A 290 sq m four bedrooms 0.6 acres sold for £685,000 (£2,362 per m<sup>2</sup>); type B of 250 sq m with four bedrooms for £540,000 (£2,160 per m<sup>2</sup>).

**4. Meldrum House Development, Old Meldrum**

Proposed development of very large detached dwellings with views over Meldrum House golf course. All of the proposed dwellings are believed to be in excess of 500 sq m with expected prices to be over £1 million. However, to date, none have sold. There is anecdotal evidence that one has been reserved though no building work has, as yet, commenced.

**5. Dandara at Countesswells, West Aberdeen**

There is a wide range of house types and styles within this development with a different pricing structure dependent upon the location within the site. A number of the houses are being offered for sale in excess of £1 million. A recent sale of a detached four bedroom house of 194 sq m sold for £800,000 (£4,123 per m<sup>2</sup>). The £1 million priced properties are likely to be 250 sq m or larger.

**6. Cala Homes Developments at Hayfield Grange and Rosefield Gardens, Cults**

Hayfield Grange was a small select development of 10 executive houses. The show house of 385 sq m was sold for £1.58 million. It has five bedrooms, three public rooms and is located on a reasonably generous sized plot. Another house on the development at 300 sq m with similar accommodation sold for £1.2 million. Notably, the next phase of Cala development at Rosefield Gardens has 73 houses but house styles are aimed at achieving prices of between £500,000 and £800,000 and a faster rate of sale than was achieved at Hayfield Grange.

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**7. Muir Homes at Blairs, South Deeside Road**

This is a development of circa 200 houses off the South Deeside Road and close to Blairs College. An initial phase of 50 houses was planned with significant infrastructure costs at the outset and a number of houses now constructed. However to date, there has only been one sale. Prices range from £500,000 to £1 Million with floor areas 119 sq m to 371 sq m.

**8. Ury Estate, Blue Lodge, Stonehaven**

This is a proposed development of 51 houses beside a proposed Jack Nicklaus designed golf course close to the west edge of Stonehaven. The location and outlook are rural with views over a river and towards the listed Ury House. The site is also close to the A90 and the turn off for the south leg of the new AWPR. Houses are being marketed as of an extremely high specification that is unique in Scotland and they are proposed as being between 297m<sup>2</sup> and 642m<sup>2</sup> in size with 5 house types available. Sought prices range from £930,000 up to £1.7 million, reflecting rates of £2,650 to £3,135 per m<sup>2</sup>. However we are not aware of any having been sold this year.

- 8.2 Developments 1-3 are located within a broadly similar geographical location to Menie, all being to the north of the City.
- 8.3 Development 1 is located within an attractive wooded situation although, apart from that, there are no specific redeeming features for the site.
- 8.4 Development 2 is an annexation to the established suburb of Bridge of Don and forms part of a large nondescript development where there are three or four developers constructing different properties with limited local amenities available within walking distance. It is, however, close to the Bridge of Don Industrial Estate and within very easy reach of the A90.
- 8.5 Development 3 is a small development of nine large properties of two different styles. The development has been ongoing for several years with, as far as we are aware, only two having sold. The developer has previously had good success with sales, especially out at Maryculter where prices achieved were reaching £1 million almost 10 years ago. This development is in a reasonable location with good sized plots although, again, there is no specific attribute about the site to act as a magnet for purchasers.
- 8.6 Development 4 is a small proposed development of extremely large properties on the edge of the Meldrum House Golf Course. Meldrum House is a private members course on the outskirts of the village of Oldmeldrum. The course is well regarded within the North East, and although it does not have the same reputation as Trump International, nevertheless, this would be an attractive situation for dwellings. The developer has attempted to maximise sale prices by maximising house size. As mentioned earlier, no properties have been built as yet, although speculation is that one has been reserved. This is not a particularly impressive achievement considering that the marketing has been ongoing for over two years.

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- 8.7 Development 5 is a large scale development where planning consent has been granted for 350 houses on open fields immediately to the west of the City. The development is very well located, providing good access to Hazlehead Park and easy access to the City Centre. The development has proved popular, with 80% of the current properties for sale having been sold or reserved. Pricing has been tiered depending on location within the development, with those houses located off Hazledene Road being priced higher than those off Countesswells Road. Pricing commences at just over £500,000 and extends beyond £1 million though specific pricing at the top level has not yet been released. This is a high quality development and accordingly has been popular.
- 8.8 Development 6 by Cala Homes commenced with a select development of 10 houses in advance of the larger Friarsfield / Rosefield Gardens development just to the west. The development is situated on the outskirts of the popular suburb of Cults. Cults and adjacent Bieldside are the two most popular suburbs in and around Aberdeen with prices for larger houses regularly exceeding £1 million. The initial 10 houses, each on a plot of approximately ¼ acre, were sold as follows:

Plot	House Type	Size (sq m)	Price	Sale date	Sale rate per sq m
1	Waverly	346	£1,580,000	Dec-13	£4,566
2	Roxburgh	302	£1,200,000	Mar-14	£3,974
3	Ramsay	259	£1,125,000	Feb-14	£4,344
4	Ranald	261	£1,175,000	Mar-14	£4,502
5	Macrae	229	£950,000	Dec-13	£4,148
6	Macrae	229	£980,000	Dec-13	£4,279
7	Ranald	261	£999,000	Feb-14	£3,828
8	Ramsay	259	£999,000	Sep-13	£3,857
9	Ramsay	259	£1,075,000	Jun-13	£4,151
10	Roxburgh	302	£1,180,000	Jun-13	£3,907

- 8.9 These houses are very large within their market with an average house size of 270.7 sq m. The average price achieved was £1,126,300, an overall average sale price of £4,161 per sq m. Cults' close proximity to Aberdeen, its local schools' reputations, and good local amenities enhance the suburb's popularity. Similar to Dandara's Hazelwood development, prices for the smaller houses in the 73 unit Rosefield Gardens development have commenced just above £500,000.
- 8.10 Development 7 is a medium sized development which has been planned for some time, circa 20 years. The combination of being too optimistic with asking prices together with a downturn in the local market has caused the development to stall and led to a significant re-think by the builders, regarding marketing and pricing.
- 8.11 Development 8 by Ury Estate appears to have started as the majority of prospective purchasers have been enduring the recent turmoil in the oil and gas industry that has caused demand for properties in this price bracket to slump. This small developer may be prepared to wait on the market recovering or accept a potentially slow rate of sale for what is at present a unique product in the area. It is however likely that possible buyers will have little confidence that the eventual development will reflect the current proposal. There remain many "proposed" events that have not yet happened such as creation of the golf course and restoration of Ury House.

- 8.12 Developments 5 & 6 are two of the prime developments currently ongoing within Aberdeen, with high prices being paid for most properties within these developments. These prices are being attained due to the location to the west of the city, which is the area that has always achieved the highest prices. It is however becoming clear that for houses priced above £500,000 in all locations the rate of sale achieved in 2013 and 2014 has been of only limited assistance towards forecasting the rate of sale in 2015 and 2016. As rates of sale have slowed down the level of incentives available to buyers have been increasing as 2015 has progressed effectively reducing sale prices.
- 8.13 Clearly there is nothing that the Menie Estate can do about its location relative to Aberdeen city and the established prime residential areas. It is accordingly imperative to focus on the specifics of the Estate and site rather than its geographical location.

## 9.0 Focus on Trump Resort & Demand Considerations

### Who are the likely purchasers of housing at Menie Estate?

- 9.1 As outlined by the popularity of the towns mentioned in Section 6, there are many ways to attract purchasers. Aberdeen and its four principal commuter towns have an inherent advantage; an established community with good amenities such as a retail high street and local secondary schooling. Setting these locations aside, the way other developments have prospered is by maximising their locational advantages and adding other attributes. Menie Estate is an area of natural beauty and in some locations has views over the North Sea and towards Aberdeen. It is our experience that the value of housing in these types of locations can be significantly higher. Other locations within the development where value could be maximised include properties with views towards MacLeod House, the new club house or over one of the golf courses.
- 9.2 However, there are other locations close by, for example Balmedie, with attractive scenery but where, with the odd exception, prices struggle to achieve above £400,000. Menie Estate has the Trump name, which is a worldwide marketing brand and homeowners need to feel part of this and part of the brand if it is to differentiate itself. If a house is located on the very edge of the Estate with no views or associated benefits, then people will consider that they might as well live in Balmedie, Newburgh, Blackdog or Foveran where house prices will be lower. It is, in our opinion, therefore, essential to offer purchasers something different and unique. Locational factors will only enhance this and consequently increase prices. Options could include:
1. A lodge and electronic entry at the entrance to the Estate.
  2. Selective golf membership for one or both courses, even on a very limited basis, for example a tee time per week or only after 4 pm.
  3. Access to any future golf tournaments on Trump International Links.
  4. Maintenance/factoring service for any communal areas within the development.
- 9.3 Benefits could be tailored selectively dependent on price or dependent on whether houses were built on behalf of the Trump Estate.
- 9.4 There is no doubt that the golf course is viewed as one of, if not the best, in the North East of Scotland and accordingly many golfing enthusiasts, players and spectators will want to be associated with the development. To ensure purchasers do feel part of the development it is important to major on this issue. The fact that the course is now established and operational gives the Estate an advantage over say Ury Estate.
- 9.5 It is our opinion that potential purchasers will come from many different locations although we would expect the vast majority of potential purchasers to be (a) those already living in the Aberdeen City and Shire area and keen to relocate and (b) those moving to the area to work, primarily in the oil industry. There is virtually no existing market in the Balmedie and Newburgh area for expensive mansion style houses or exclusive properties and so Menie Estate will have to work very hard to attract and convince wealthy buyers to locate here rather than elsewhere in Aberdeen, its suburbs or surrounding towns.

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- 9.6 Private schooling is available in the centre and West End of Aberdeen around 30 to 35 minutes drive from Menie Estate during the busiest periods. Alternatively, for state schooling Menie Estate is currently in the catchment area for Foveran Primary School and Ellon Academy. From a practical perspective the small local primary school is unlikely to be able to accommodate more than a handful or so of children from a new housing development at Menie Estate. Ellon Academy in contrast is a brand new secondary school with capacity although the larger the development at Menie Estate the more acute a capacity issue may become there as well. Clearly, where children will go to school and how convenient it is to get there will be very important issues for potential house purchasers with school age children. Menie Estate will be further from Aberdeen's private schools than the existing popular West End or Lower Deeside areas.
- 9.7 The affluent established suburbs of Cults and Bielside and West End area of Rubislaw Den provide good examples of established markets for large mansion houses in or close to Aberdeen. Menie Estate would likely have to attract purchasers who might otherwise choose to locate in these places or to larger houses on Lower Deeside by promoting the relative value of the houses on offer at Menie, the countryside location and aspirational lifestyle available within easy commuting distance of the city.
- 9.8 Notwithstanding an established market in Cults and the surrounding area (including Bielside and Milltimber) for mansion houses – both for second hand sales of traditional Victorian mansions and also new build mansions. We have checked the Registers of Scotland to establish the size of that market there. As illustration, between July 2014 and May 2015 in the AB15 9 Postcode Area (which covers Cults and Bielside) we noted 53 sales at prices in excess of £500,000. Of these sales:
- 29 were at prices of between £500,000 and £700,000
  - 17 were at prices of between £700,000 and £1,000,000.
  - 7 sales were at prices in excess of £1,000,000.
- 9.9 The industrial estates and science parks at Bridge of Don and Dyce are relatively easy to access, as are the expanding employment centres further north. With completion of the Aberdeen Western Peripheral Route by 2018 and full dual carriageway link from Aberdeen to Ellon in 2017 access will soon be significantly improved from the north of the city to the city centre and to all the other peripheral business parks around Aberdeen. This should remove as an issue one of the concerns many commuters currently have about living north of Aberdeen and make the Menie Estate and other locations nearby far more accessible and appealing for house purchasers.



10.0 Masterplan Review: Residential Development

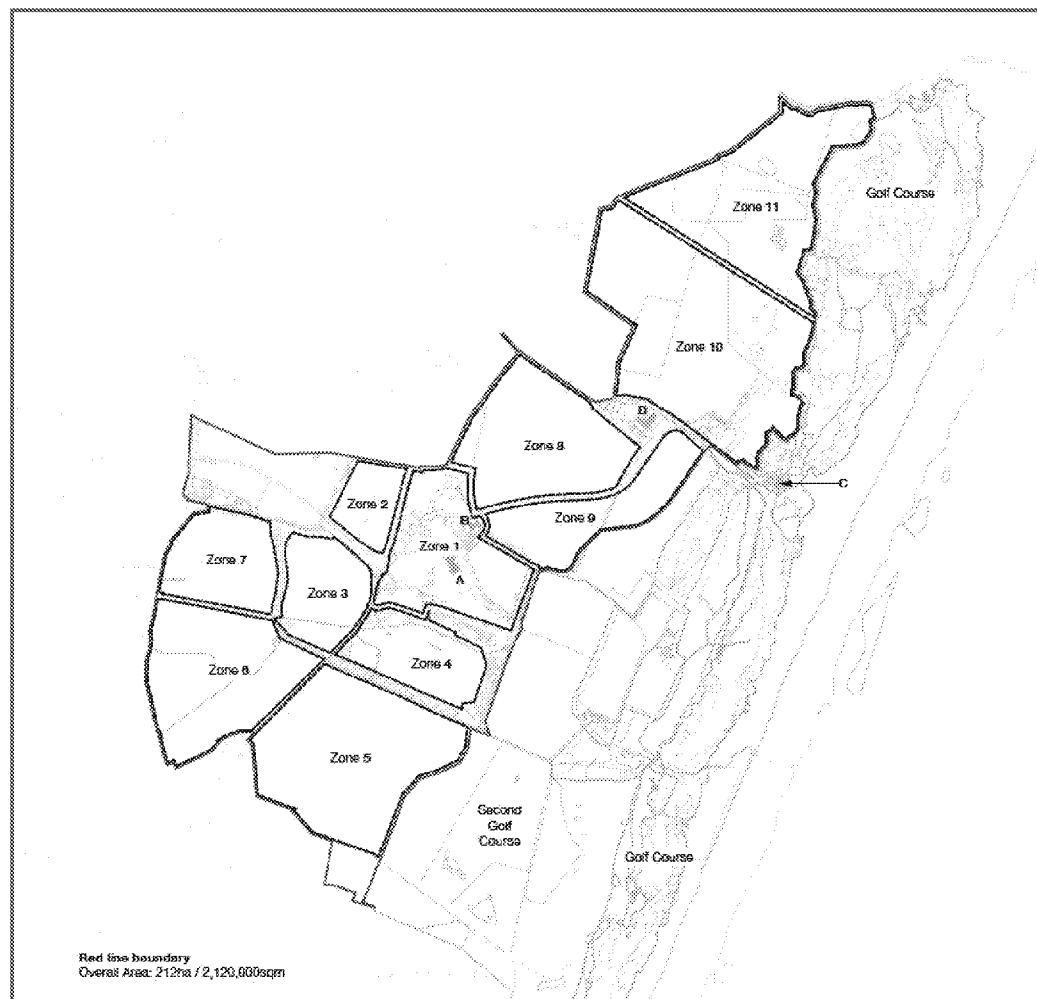
10.1 Houses could sell within the Estate irrespective of where they are located. The rate of sale will depend on a number of factors:-

- i) State of the market at that time.
- ii) Level of pricing.
- iii) Time of year – Spring to Autumn being the busiest.
- iv) Range of properties available at one time – smaller range leads to lower demand.
- v) Availability of other housing in the wider area.

10.2 As a general rule, for a development of this size we would expect a rate of sale of around 25 properties per year. Within the suggested Masterplan framework, the houses having the better situations will sell most quickly.

10.3 Zones 1, 3, 4, 8 & 9 are, in our opinion, superior to the others due to views of either MacLeod House and its policies, the golf course/clubhouse or the sea.

10.4 In Section 11, we will elaborate, in our opinion, for the initial tranche of housing.



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**11.0 Conclusions & Initial Recommendations**

- 11.1 As we discussed in Section 8, there are many developments ongoing throughout the North East, with good sales having been achieved in most of them. The main factor in determining house prices is location.
- 11.2 It is our view that house prices in excess of £1 million which have been achieved on other developments we have discussed will not consistently be achievable on the Menie Estate in any more than the odd instance. It may not be advisable to focus on this price level.
- 11.3 Individual plots could be sold to purchasers dependent on certain criteria so they could create a property which, given the right circumstances, could be worth in excess of £1 million. However, our view is that £750,000 to £800,000 is about the top threshold which could be achieved on the site. This would be for a property built to the Trump International Vernacular in the order of 300-350 square metres with five bedrooms and at least a 0.25 acre plot. Prices will vary depending on specific location within the development. To achieve the greatest rate of sales, it is best to have a large range of properties. The wider range of types and styles, then the more choice for purchasers and consequent higher level of demand.
- 11.4 The scenario we have set out in the table below is for an initial 25 houses to be built by or on behalf of the Trump Estate to their specific design and aesthetic. We would suggest between four and five different styles and sizes of houses, all being detached:-

Suggested No. of Plots	Suggested approx. size m <sup>2</sup>	Estimated Sale Price	Estimated Sale Price per m <sup>2</sup>	Notes
1	325	£800,000	£2,462	Suggest living space above detached garage. c0.25 acre plots
5	300	£725,000	£2,417	
6	250	£625,000	£2,500	5 bed on plots of 0.2 to 0.25 acre
6	210	£525,000	£2,500	5 bed
7	170	£425,000	£2,500	5 bed

- 11.5 As these would be the first properties constructed on the site, it is essential to set a tone for the development and also to sell the properties at a reasonable rate. This would be important to show to the wider community and potential developers the benefits of residing and building within the development. We therefore believe it would be beneficial to locate in an attractive situation within the site, with specific views over or towards an attractive outlook/building.
- 11.6 The options for this would be:-
- i) Lower Zone 1
  - ii) Zone 4
  - iii) Zone 8 or 9

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- 11.7 These areas highlighted above, with the exception of the "Escarpment" or houses overlooking the golf course, are the best for housing owing to their outlook towards either MacLeod House or the sea. Most mainstream housing has no outlook, but generally still sells well in the Aberdeen Housing Market Area. Housing in the areas noted above would be more attractive than the competition and should sell better because of this, and because of the association with Trump International Golf Links.
- 11.8 After this initial phase of housing, then we believe it would be important to build some smaller properties, possibly with three bedrooms and even some semi-detached houses. This would allow the demand to come from the widest group possible and therefore increase the flow of sales. These smaller properties could be located on the slightly poorer, more remote areas within the development.

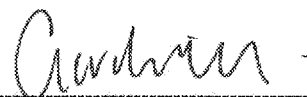
House Type	Suggested approx. Size sq m	Estimated Sale Price	Estimated Sale Price per sq m	Proportion
5 bed detached	180	£450,000	£2,500	15%
4 bed detached	150	£400,000	£2,650	30%
3 bed detached	110	£310,000	£2,800	35%
3 bed semi	100	£275,000	£2,750	20%

- 11.9 Overall, we are of the opinion that this approach and strategy is most likely to ensure a reasonable rate of sale and maximise the value of the land for housing, given the factors discussed throughout the report.

We trust this is sufficient for your current purposes, however, should you require any further assistance or clarification, please do not hesitate to contact us.



Richard Lang BLE (Hons) MRICS ACI Arb  
**Partner**  
 RICS Registered Valuer  
 For and on Behalf of Ryden LLP



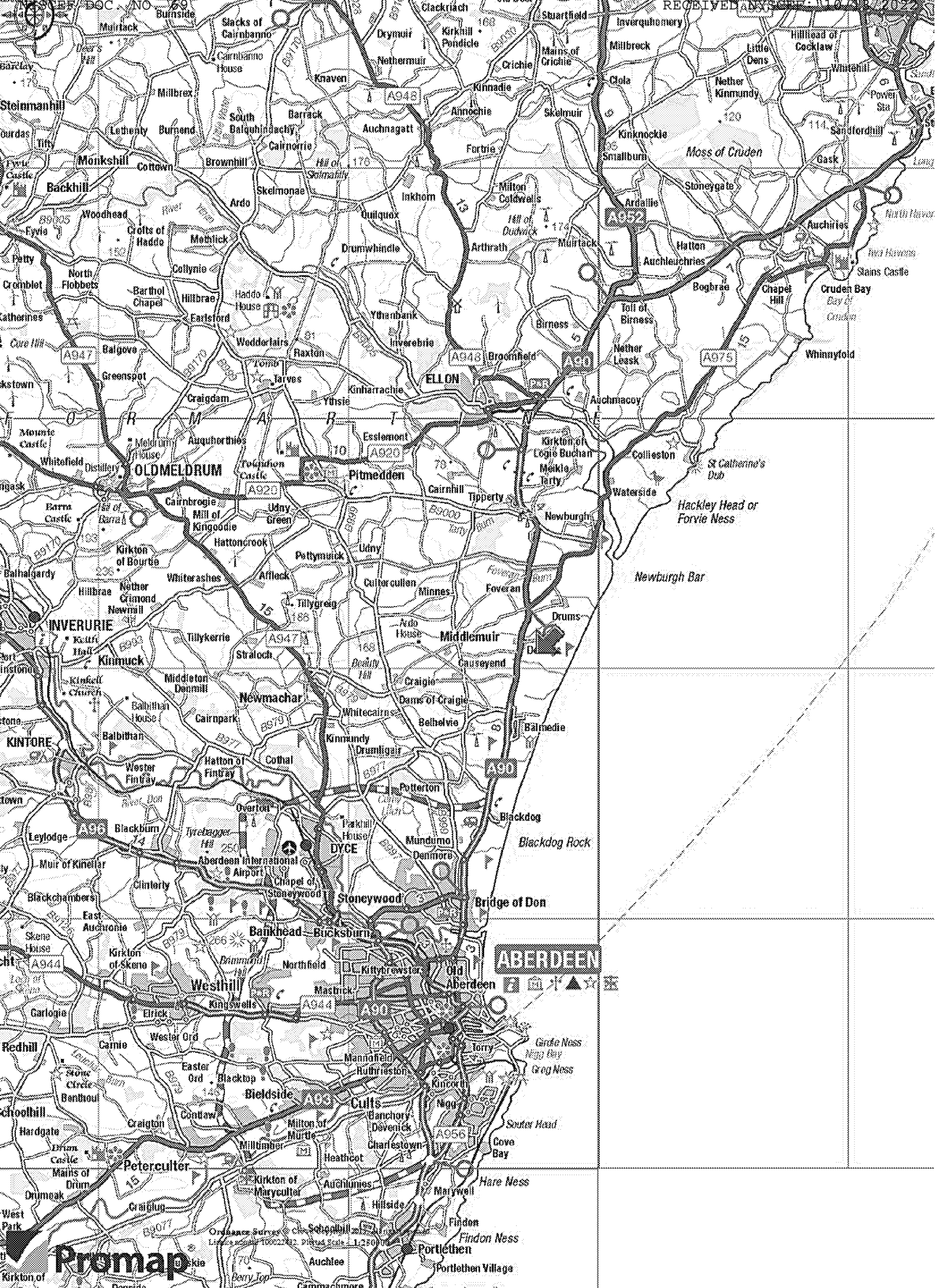
Gordon Gibb BLE MRICS  
**Director**  
 RICS Registered Valuer  
 For and on Behalf of Allied Surveyors Aberdeen

25 September 2015

# **APPENDIX 1.0**

## **Location Plans**





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Promap

# Faherty Affirmation

## Exhibit # 31

Aberdeen Land Valuation  
10.30.19

PEC

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	TOTAL	
		2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042		
<b>Value of Land:</b>																											
<b>Housing Phase</b>	<b>Years</b>	<b>Acres</b>	<b>Homes Per Acre</b>	<b>Homes</b>	<b>Value Per Acre</b>	<b>Total Value</b>																					
1	1 thru 8	110	5	550	£ 500,000	£ 55,000,000	£ 27,500,000	£ 9,166,667	£ 9,166,667	£ 9,166,667																£ 55,000,000	
2	9 thru 16	180	5	900	£ 625,000	£ 112,500,000				£ 56,250,000	£ 18,750,000	£ 18,750,000	£ 18,750,000													£ 112,500,000	
3	17 thru 24	117	5	585	£ 812,500	£ 95,062,500											£ 47,531,250	£ 15,843,750	£ 15,843,750	£ 15,843,750						£ 95,062,500	
<b>Total</b>		<b>407</b>		<b>2,035</b>		<b>£ 262,562,500</b>	<b>£ 27,500,000</b>	<b>£ 9,166,667</b>	<b>£ 9,166,667</b>	<b>£ 9,166,667</b>	<b>£ -</b>	<b>£ -</b>	<b>£ -</b>	<b>£ -</b>	<b>£ -</b>	<b>£ -</b>	<b>£ -</b>	<b>£ -</b>	<b>£ 47,531,250</b>	<b>£ 15,843,750</b>	<b>£ 15,843,750</b>	<b>£ 15,843,750</b>	<b>£ -</b>	<b>£ -</b>	<b>£ -</b>	<b>£ -</b>	<b>£ 262,562,500</b>
<b>Housing Amenity Fees:</b>																											
	Houses Built	69	69	69	69	69	69	69	69	113	113	113	113	113	113	113	113	73	73	73	73	73	73	73	73	2,035	
	Cumulative Houses Built	69	138	206	275	344	413	481	550	663	775	888	1,000	1,113	1,225	1,338	1,450	1,523	1,596	1,669	1,743	1,816	1,889	1,962	2,035		
	Housing Amenity Monthly Fee	£ 250	£ 257.50	£ 265.23	£ 273.18	£ 281.38	£ 289.82	£ 298.51	£ 307.47	£ 316.69	£ 326.19	£ 335.98	£ 346.06	£ 356.44	£ 367.13	£ 378.15	£ 389.49	£ 401.18	£ 413.21	£ 425.61	£ 438.38	£ 451.53	£ 465.07	£ 479.03	£ 493.40		
	Housing Amenity Fee Profit (Monthly Fee x 12 months x houses x 70% profit)	£ 144,375	£ 297,413	£ 459,502	£ 631,050	£ 812,477	£ 1,004,221	£ 1,206,739	£ 1,420,504	£ 1,762,394	£ 2,123,518	£ 2,504,724	£ 2,906,891	£ 3,330,934	£ 3,777,803	£ 4,248,486	£ 4,744,011	£ 5,132,754	£ 5,540,552	£ 5,968,198	£ 6,416,517	£ 6,886,363	£ 7,378,626	£ 7,894,226	£ 8,434,122	£ 85,026,401	
<b>Total</b>		<b>£ 27,644,375</b>	<b>£ 9,464,079</b>	<b>£ 9,626,169</b>	<b>£ 9,797,717</b>	<b>£ 812,477</b>	<b>£ 1,004,221</b>	<b>£ 1,206,739</b>	<b>£ 1,420,504</b>	<b>£ 58,012,394</b>	<b>£ 20,873,518</b>	<b>£ 21,254,724</b>	<b>£ 21,656,891</b>	<b>£ 3,330,934</b>	<b>£ 3,777,803</b>	<b>£ 4,248,486</b>	<b>£ 4,744,011</b>	<b>£ 52,664,004</b>	<b>£ 21,384,302</b>	<b>£ 21,811,948</b>	<b>£ 22,260,267</b>	<b>£ 6,886,363</b>	<b>£ 7,378,626</b>	<b>£ 7,894,226</b>	<b>£ 8,434,122</b>	<b>£ 347,588,901</b>	
	Discount Factor	0.961538	0.924556	0.888996	0.854804	0.821927	0.790315	0.759918	0.730690	0.702587	0.675564	0.649581	0.624597	0.600574	0.577475	0.555265	0.533908	0.513373	0.493628	0.474642	0.456387	0.438834	0.421955	0.405726	0.390121		
	<b>Present Value of Trump Cash Flows</b>	<b>£ 26,581,130</b>	<b>£ 8,750,073</b>	<b>£ 8,557,629</b>	<b>£ 8,375,129</b>	<b>£ 667,797</b>	<b>£ 793,651</b>	<b>£ 917,023</b>	<b>£ 1,037,949</b>	<b>£ 40,758,738</b>	<b>£ 14,101,401</b>	<b>£ 13,806,664</b>	<b>£ 13,526,830</b>	<b>£ 2,000,473</b>	<b>£ 2,181,587</b>	<b>£ 2,359,034</b>	<b>£ 2,532,866</b>	<b>£ 27,036,291</b>	<b>£ 10,555,893</b>	<b>£ 10,352,876</b>	<b>£ 10,159,295</b>	<b>£ 3,021,968</b>	<b>£ 3,113,451</b>	<b>£ 3,202,895</b>	<b>£ 3,290,332</b>	<b>£ 217,680,973</b>	
	Discount Rate	4% conservative based on conservative growth rate																									
	Growth Rate	3.0% conservative based on uncertain economic & political environment																									
<b>Growth Rate Calc:</b>																											
	2.80%	£ 623,613	Phase 2																								
	3.30%	£ 813,512	Phase 3																								
	3.10%	£ 814,908																									
	-0.029888474																										
<b>Assumptions:</b>																											
Value per acre based on 2019 off-market offer from Dandara																											
Infrastructure is developer's obligation																											
Land Sales: 4 year sellout; 50% up front then remaining balance equal installments over the next 3 years																											
Being conservative by not valuing Trump branded housing, which will be another source of income.																											
May be similar plan to LA where initially we built homes but ultimately decided to sell land.																											



# Faherty Affirmation

## Exhibit # 32

Aberdeen Land Valuation

	1 2020	2 2021	3 2022	4 2023	5 2024	6 2025	7 2026	8 2027	9 2028	10 2029	11 2030	12 2031	13 2032	14 2033	15 2034	16 2035	17 2036	18 2037	19 2038	20 2039	TOTAL		
<b>Chapters 1-8 (87.5 acres)</b>																							
Land Sales Chapters 2-8 (69.5 acres)	£ -	£ -	£ 5,500,000	£ 6,351,992	£ 8,112,270	£ 11,472,326	£ 3,193,416														£ 34,630,004		
Costs	£ -	-£ 4,340,387	-£ 3,823,008	-£ 4,279,912	-£ 4,905,643	-£ 2,488,728	-£ 191,147															-£ 20,028,825	
<b>Net Cash Flow Chapters 2-8</b>	<b>£ -</b>	<b>-£ 4,340,387</b>	<b>£ 1,676,992</b>	<b>£ 2,072,080</b>	<b>£ 3,206,627</b>	<b>£ 8,983,598</b>	<b>£ 3,002,269</b>															<b>£ 14,601,179</b>	
Land Chapter 1A (18 Acres @ 500k per acre)	£ -		£ 1,800,000	£ 1,800,000	£ 1,800,000	£ 1,800,000	£ 1,800,000															£ 9,000,000	
<b>Net Cash Flow Chapters 1-8</b>	<b>£ -</b>	<b>-£ 4,340,387</b>	<b>£ 3,476,992</b>	<b>£ 3,872,080</b>	<b>£ 5,006,627</b>	<b>£ 10,783,598</b>	<b>£ 4,802,269</b>															<b>£ 23,601,179</b>	
<b>Chapters 9-16 Part 1 (87 acres)</b>																							
Price per acre					£ 515,000	£ 530,450	£ 546,364	£ 562,754	£ 579,637	£ 608,619	£ 639,050	£ 671,002											
Acres Sold					13.8	16.0	20.4	28.8	8.0													87.00	
Land Sales					£ -	£ 7,329,492	£ 8,718,832	£ 11,469,065	£ 16,706,071	£ 4,882,785	£ -	£ -										£ 49,106,245	
Costs					-£ 4,470,599	-£ 3,937,698	-£ 4,408,309	-£ 5,052,812	-£ 2,563,390	-£ 200,704	£ -	£ -										-£ 20,633,513	
Growth Rate					3.0%	3.0%	3.0%	3.0%	3.0%	5.0%	5.0%	5.0%											
<b>Net Cash Flow Chapters 9-16 Part 1</b>					<b>-£ 4,470,599</b>	<b>£ 3,391,793</b>	<b>£ 4,310,523</b>	<b>£ 6,416,253</b>	<b>£ 14,142,681</b>	<b>£ 4,682,081</b>	<b>£ -</b>	<b>£ -</b>										<b>£ 28,472,733</b>	
<b>Chapters 9-16 Part 2 (87 acres)</b>																							
Price per acre													£ 671,002	£ 704,552	£ 739,780	£ 791,565	£ 846,974	£ 906,262	£ 969,701	£ 1,037,580			
Acres Sold														13.8	16.0	20.4	28.8	8.0				87.00	
Land Sales														£ -	£ 9,735,152	£ 11,805,361	£ 16,132,271	£ 24,411,157	£ 7,270,699	£ -	£ -	£ 69,354,640	
Costs														-£ 4,557,406	-£ 4,014,158	-£ 4,493,908	-£ 5,249,038	-£ 2,662,939	-£ 204,527	£ -	£ -	-£ 21,181,977	
Growth Rate														5.0%	5.0%	5.0%	7.0%	7.0%	7.0%	7.0%	7.0%		
<b>Net Cash Flow Chapters 9-16 Part 2</b>														<b>-£ 4,557,406</b>	<b>£ 5,720,993</b>	<b>£ 7,311,454</b>	<b>£ 10,883,233</b>	<b>£ 21,748,218</b>	<b>£ 7,066,172</b>	<b>£ -</b>	<b>£ -</b>	<b>£ 48,172,663</b>	
<b>Chapters 9-16 Part 3 (43.5 acres)</b>																							
Price per acre														£ 671,002	£ 704,552	£ 739,780	£ 791,565	£ 846,974	£ 906,262	£ 969,701	£ 1,037,580		
Acres Sold															6.9	8.0	10.2	14.4	4.0			43.50	
Land Sales														£ -	£ -	£ -	£ 5,468,721	£ 6,757,979	£ 9,234,919	£ 13,974,167	£ 4,162,112	£ 39,597,898	
Costs																	-£ 2,278,703	-£ 2,045,309	-£ 2,289,753	-£ 2,624,519	-£ 1,331,469	-£ 102,264	-£ 10,672,018
Growth Rate														5.0%	5.0%	7.0%	7.0%	7.0%	7.0%	7.0%	7.0%		
<b>Net Cash Flow Chapters 9-16 Part 3</b>														<b>£ -</b>	<b>£ -</b>	<b>-£ 2,278,703</b>	<b>£ 3,423,412</b>	<b>£ 4,468,226</b>	<b>£ 6,610,400</b>	<b>£ 12,642,698</b>	<b>£ 4,059,848</b>	<b>£ 28,925,880</b>	
<b>Membership Fees for Homeowners:</b>																							
Houses Built and Sold					75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	1,200.00	
Cumulative Houses Built and Sold					75	150	225	300	375	450	525	600	675	750	825	900	975	1,050	1,125	1,200			
Golf & Associated Club Membership Monthly Fee					£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	
Golf & Associated Club Membership Profit (40% of homes built x Monthly Fee x 12 months)					£ 72,000	£ 144,000	£ 216,000	£ 288,000	£ 360,000	£ 432,000	£ 504,000	£ 576,000	£ 648,000	£ 720,000	£ 792,000	£ 864,000	£ 936,000	£ 1,008,000	£ 1,080,000	£ 1,152,000	£ 1,224,000		
<b>Net Cash Flow Chapters 1-16</b>	<b>£ -</b>	<b>-£ 4,340,387</b>	<b>£ 3,476,992</b>	<b>£ 3,872,080</b>	<b>£ 5,078,627</b>	<b>£ 6,456,999</b>	<b>£ 8,410,062</b>	<b>£ 4,598,523</b>	<b>£ 6,776,253</b>	<b>£ 14,574,681</b>	<b>£ 5,186,081</b>	<b>£ 576,000</b>	<b>-£ 3,909,406</b>	<b>£ 6,440,993</b>	<b>£ 5,824,750</b>	<b>£ 15,170,645</b>	<b>£ 27,152,444</b>	<b>£ 14,684,571</b>	<b>£ 13,722,698</b>	<b>£ 5,211,848</b>	<b>£ 138,964,455</b>		
Discount Factor	0.961538	0.924556	0.888996	0.854804	0.821927	0.790315	0.759918	0.730690	0.702587	0.675564	0.649581	0.624597	0.600574	0.577475	0.555265	0.533908	0.513373	0.493628	0.474642	0.456387			
<b>Present Value of Trump Cash Flows</b>	<b>£ -</b>	<b>-£ 4,012,932</b>	<b>£ 3,091,033</b>	<b>£ 3,309,870</b>	<b>£ 4,174,261</b>	<b>£ 5,103,060</b>	<b>£ 6,390,956</b>	<b>£ 3,360,096</b>	<b>£ 4,760,905</b>	<b>£ 9,846,132</b>	<b>£ 3,368,779</b>	<b>£ 359,768</b>	<b>-£ 2,347,888</b>	<b>£ 3,719,513</b>	<b>£ 3,234,277</b>	<b>£ 8,099,731</b>	<b>£ 13,939,339</b>	<b>£ 7,248,717</b>	<b>£ 6,513,374</b>	<b>£ 2,378,619</b>	<b>£ 82,537,613</b>		

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Discount Rate 4% conservative based on conservative growth rate  
 Growth Rate Chapters 9-16 First 5 Years 3.0% conservative based on uncertain economic & political environment  
 Growth Rate Chapters 9-16 Next 5 Years 5.0% as the site matures, the land prices will increase  
 Growth Rate Chapters 9-16 Final 5 Years 7.0% as the site matures, the land prices will increase

**Assumptions:**  
 Value per acre based on 2 off-market offers from Dandara and Lifecare at 500k per acre  
 Net Cash Flow for Chapters 1-8 from Richard Leng, Partner at Ryden LLP (Land Valuation & Appraisal) see attached  
 Chapters 9-16 extrapolated from Ryden LLP Cash Flow

Being conservative by not valuing Trump branded housing, which will be another source of income.  
 May be similar plan to LA where initially we built homes but ultimately decided to sell land.  
 Being conservative by not valuing Chapter 1B (retail units, gym, town hall, apartment buildings), which will be another source of income

495 acres of Gross Developable Land including green amenity spaces in addition to roads and infrastructure  
 350-370 Gross Developable Acres for Land Sales  
 87% is fully developable land 304.5 net developable acres

# Faherty Affirmation

## Exhibit # 33

Aberdeen Land Valuation  
09.17.21

	1 2021	2 2022	3 2023	4 2024	5 2025	6 2026	7 2027	8 2028	9 2029	10 2030	11 2031	12 2032	13 2033	14 2034	15 2035	16 2036	17 2037	18 2038	19 2039	20 2040	TOTAL
<b>Chapters 1-8 (87.5 acres)</b>																					
Land Sales Chapters 2-8 (69.5 acres)	£ -	£ -	£ 5,500,000	£ 6,351,992	£ 8,112,270	£ 11,472,326	£ 3,193,416														£ 34,630,004
Costs	£ -	-£ 4,340,387	-£ 3,823,008	-£ 4,279,912	-£ 4,905,643	-£ 2,488,728	-£ 191,147														-£ 20,028,825
<b>Net Cash Flow Chapters 2-8</b>	£ -	-£ 4,340,387	£ 1,676,992	£ 2,072,080	£ 3,206,627	£ 8,983,598	£ 3,002,269														£ 14,601,179
Land Chapter 1A (18 Acres @ 500k per acre)	£ -		£ 1,800,000	£ 1,800,000	£ 1,800,000	£ 1,800,000	£ 1,800,000														£ 9,000,000
<b>Net Cash Flow Chapters 1-8</b>	£ -	-£ 4,340,387	£ 3,476,992	£ 3,872,080	£ 5,006,627	£ 10,783,598	£ 4,802,269														£ 23,601,179
<b>Chapters 9-16 Part 1 (87 acres)</b>																					
Price per acre						£ 515,000	£ 530,450	£ 546,364	£ 562,754	£ 579,637	£ 608,619	£ 639,050	£ 671,002								
Acres Sold						13.8	16.0	20.4	28.8	8.0											87.00
Land Sales						£ -	£ 7,329,492	£ 8,718,832	£ 11,469,065	£ 16,706,071	£ 4,882,785	£ -	£ -								£ 49,106,245
Costs						-£ 4,470,599	-£ 3,937,698	-£ 4,408,309	-£ 5,052,812	-£ 2,563,390	-£ 200,704	£ -	£ -								-£ 20,633,513
Growth Rate						3.0%	3.0%	3.0%	3.0%	3.0%	5.0%	5.0%	5.0%								
<b>Net Cash Flow Chapters 9-16 Part 1</b>						-£ 4,470,599	£ 3,391,793	£ 4,310,523	£ 6,416,253	£ 14,142,681	£ 4,682,081	£ -	£ -								£ 28,472,733
<b>Chapters 9-16 Part 2 (87 acres)</b>																					
Price per acre													£ 671,002	£ 704,552	£ 739,780	£ 791,565	£ 846,974	£ 906,262	£ 969,701	£ 1,037,580	
Acres Sold													13.8	16.0	20.4	28.8	8.0				87.00
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Costs													-£ 4,557,406	-£ 4,014,158	-£ 4,493,908	-£ 5,249,038	-£ 2,662,939	-£ 204,527	£ -	£ -	-£ 21,181,977
Growth Rate													5.0%	5.0%	5.0%	7.0%	7.0%	7.0%	7.0%	7.0%	
<b>Net Cash Flow Chapters 9-16 Part 2</b>													-£ 4,557,406	£ 5,720,993	£ 7,311,454	£ 10,883,233	£ 21,748,218	£ 7,066,172	£ -	£ -	£ 48,172,663
<b>Chapters 9-16 Part 3 (43.5 acres)</b>																					
Price per acre													£ 671,002	£ 704,552	£ 739,780	£ 791,565	£ 846,974	£ 906,262	£ 969,701	£ 1,037,580	
Acres Sold																6.9	8.0	10.2	14.4	4.0	43.50
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Costs													-£ 2,278,703	-£ 2,045,309	-£ 2,289,753	-£ 2,624,519	-£ 1,331,469	-£ 102,264	-£ 102,264	-£ 10,672,018	
Growth Rate													5.0%	5.0%	7.0%	7.0%	7.0%	7.0%	7.0%	7.0%	
<b>Net Cash Flow Chapters 9-16 Part 3</b>													£ -	£ -	-£ 2,278,703	£ 3,423,412	£ 4,468,226	£ 6,610,400	£ 12,642,698	£ 4,059,848	£ 28,925,880
<b>Membership Fees for Homeowners:</b>																					
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Cumulative Houses Built and Sold					75	150	225	300	375	450	525	600	675	750	825	900	975	1,050	1,125	1,200	
Golf & Associated Club Membership Monthly Fee					£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200	£ 200
Golf & Associated Club Membership Profit (40% of homes built x Monthly Fee x 12 months)					£ 72,000	£ 144,000	£ 216,000	£ 288,000	£ 360,000	£ 432,000	£ 504,000	£ 576,000	£ 648,000	£ 720,000	£ 792,000	£ 864,000	£ 936,000	£ 1,008,000	£ 1,080,000	£ 1,152,000	£ 9,792,000
<b>Net Cash Flow Chapters 1-16</b>	£ -	-£ 4,340,387	£ 3,476,992	£ 3,872,080	£ 5,078,627	£ 6,456,999	£ 8,410,062	£ 4,598,523	£ 6,776,253	£ 14,574,681	£ 5,186,081	£ 576,000	-£ 3,909,406	£ 6,440,993	£ 5,824,750	£ 15,170,645	£ 27,152,444	£ 14,684,571	£ 13,722,698	£ 5,211,848	£ 138,964,455
Discount Factor	0.961538	0.924556	0.888996	0.854804	0.821927	0.790315	0.759918	0.730690	0.702587	0.675564	0.649581	0.624597	0.600574	0.577475	0.555265	0.533908	0.513373	0.493628	0.474642	0.456387	
<b>Present Value of Trump Cash Flows</b>	£ -	-£ 4,012,932	£ 3,091,033	£ 3,309,870	£ 4,174,261	£ 5,103,060	£ 6,390,956	£ 3,360,096	£ 4,760,905	£ 9,846,132	£ 3,368,779	£ 359,768	-£ 2,347,888	£ 3,719,513	£ 3,234,277	£ 8,099,731	£ 13,939,339	£ 7,248,717	£ 6,513,374	£ 2,378,619	£ 82,537,613

Discount Rate 4% conservative based on conservative growth rate  
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**Assumptions:**

Value per acre based on 2 off-market offers from Dandara and Lifecare at 500k per acre  
 Net Cash Flow for Chapters 1-8 from Richard Leng, Partner at Ryden LLP (Land Valuation & Appraisal) see attached  
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 Being conservative by not valuing Chapter 1B (retail units, gym, town hall, apartment buildings), which will be another source of income

495 acres of Gross Developable Land including green amenity spaces in addition to roads and infrastructure  
 350-370 Gross Developable Acres for Land Sales  
 87% is fully developable land 304.5 net developable acres

# Faherty Affirmation

## Exhibit # 34

**ABERDEENSHIRE COUNCIL****WOODHILL HOUSE, ABERDEEN, 26 SEPTEMBER, 2019**

**Present:** Councillors K Adam, W Agnew, D Aitchison, A Allan, P Argyle, N Baillie, D Beagrie, L Berry, A Bews, R Bruce, C Buchan, M Buchan, S Calder, G Carr, R Cassie, I Davidson, S Dickinson, A Duncan, E Durno, A Evison, M Ewenson, A Fakley, M Findlater, M Ford, P Gibb, J Gifford, V Harper, A Hassan, F Hood, W Howatson, J Hutchison, M Ingleby, J Ingram, P Johnston, A Kloppert, A Kille, J Latham, S Leslie, D Lonchay, R McKail, A McKelvie, D Mair, I Mollison, G Owen, C Pike, G Reid, G Reynolds, D Robertson, M Roy, A Simpson, H Smith, N Smith, S Smith, A Stirling, I Sutherland, I Taylor, R Thomson, B Topping, I Walker, A Wallace, L Wilson, R Withey and J Whyte.

**Apologies:** Councillors A Buchan, Blackett, Cox, Forsyth, Partridge, Petrie (Maternity Leave) and Ross

**Officers:** Chief Executive, Director of Business Services, Director of Education and Children's Services, Director of Infrastructure Services, Chief Officer, Health and Social Care Partnership, Head of Finance, Head of Legal and Governance, Planning Service Manager (M Stewart) and Principal Committee Services Officer.

**CHAIR**

Councillor W Howatson, Provost of the Council, presided.

**ANNOUNCEMENTS**

Prior to consideration of the business of the meeting, the Provost congratulated James Ingleby, who had been honoured in the Queen's Birthday Honours List and awarded the Commander of the Royal Victorian Order for his services as Lord Lieutenant of Aberdeenshire.

The Provost also congratulated Mairi Forsyth (Peterhead Academy) who had been selected to play for the Scotland Women's Rugby squad in the forthcoming tour of South Africa, John Black (Meethill School) and Jamie Fairbairn (Banff Academy) who had both been shortlisted at the Scots Language Awards in the category of Teacher of the Year and Meethill School which had also been selected in the category of School of the Year.

The Provost further acknowledged awards of "Much Loved Park" to Aden Country Park and "Tree of the Year" to "The Peace Tree" at Dunnottar Church.

Finally, the Provost advised that nominations could now be submitted for the Inspiring Aberdeenshire Awards and voting in respect of the Aberdeenshire Architecture and Landscape Design Awards was now open and encouraged all interested parties to participate.

**1. DECLARATION OF MEMBERS' INTERESTS**

The Provost asked members if they had any interests to declare in terms of the Councillors' Code of Conduct and the following declarations were intimated:-

- (i) Item 4 – Councillor Ford given his stated views that Aberdeenshire Council's standing and reputation had been damaged by being associated with the site owner

because of the site owners behaviour and left the meeting during consideration and determination thereof; and

- (ii) Item 12 – Councillor Evison as President of CoSLA but having applied the objective test concluded the interest to be remote and insignificant and would remain and participate.

## 2A. STATEMENT ON EQUALITIES

In making decisions on the following items of business, the Council **agreed**, in terms of Section 149 of the Equality Act, 2010:-

- (1) to have due regard to the need to:-
  - (a) eliminate discrimination, harassment and victimisation;
  - (b) advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and
  - (c) foster good relations between those who share a protected characteristic and persons who do not share it.
- (2) where an Equality Impact Assessment was provided, to consider its contents and take those into account when reaching their decision.

## 2B. EXEMPT INFORMATION

The Council **agreed**, in terms of Sections 50A (4) and (5) of the Local Government (Scotland) Act 1973, to exclude the public from the meeting during consideration of Item 19 below so as to avoid disclosure of exempt information of the class described in paragraph 8 of Part 1 of Schedule 7A to the Act.

### 3. MINUTE OF MEETING OF ABERDEENSHIRE COUNCIL OF 27 JUNE, 2019

The Minute of Meeting of Aberdeenshire Council of 27 June, 2019, had been circulated, was **approved** as a correct record, and thereafter signed by the Chair.

### 4. PLANNING APPLICATION - APP/2018/1814 - ERECTION OF 550 DWELLINGHOUSES (UP TO 500 RESIDENTIAL UNITS AND A MINIMUM OF 50 LEISURE/RESORT UNITS), COMMUNITY FACILITIES (CLASS 10 NON-RESIDENTIAL INSTITUTIONS AND CLASS 11 ASSEMBLY AND LEISURE), DEVELOPMENT FALLING WITHIN CLASS 1 (SHOPS), CLASS 2 (FINANCIAL, PROFESSIONAL AND OTHER SERVICES), CLASS 3 (FOOD AND DRINK), LANDSCAPING AND SUPPORTING INFRASTRUCTURE AT LAND AT MENIE ESTATE, BALMEDIE, ABERDEENSHIRE

With reference to the Minute of Meeting of the Formartine Area Committee of 3 September, 2019 (Item 6A), a report dated 12 September, 2019 by the Director of Infrastructure Services had been circulated requesting consideration of an application for Planning Permission in Principle for the Erection of 550 Dwellinghouses (Up to 500 Residential Units and a minimum of 50 Leisure/Resort Units), Community Facilities (Class 10 Non-residential Institutions and Class 11 Assembly and Leisure), Development Falling Within Class 1 (Shops), Class 2 (Financial, Professional and Other Services), Class 3 (Food and Drink), Landscaping and Supporting Infrastructure at Land at Menie Estate, Balmedie, Aberdeenshire.

The report explained that this was an application for major development, which in the opinion of the Head of Planning and Environment was a significant departure from the Development Plan and in terms of Section A.11.1 of Part 2A List of Committee Powers and Section

C.2.1b of Part 2C Planning Delegations of the Scheme of Governance required to be determined by Full Council.

The Provost advised that a request to speak had been received from the applicant's agent and the Council **agreed** to hear from Mr McMurray and Ms Malone prior to determination of the application.

The Planning Service Manager then introduced the report, making reference to various elements of the application including size and location of the application site; planning history and proposed phasing of development as required by the original planning consent; related site allocation (OP3) within the Balmedie Settlement Statement in the current Local Development Plan which included specified phasing of the development; the hybrid nature of the application under consideration which included eight chapters (or phases) of development, six of which submitted with indicative details for in principle development and two (Parts 1A and 1B) submitted with full details; road access arrangements including public network capacity and confirmation that a grade separated junction was no longer required; proposed changes to the phasing of the development which required the application to be considered as a departure from the Local Development Plan; the applicant's justification for the proposed changes to the phasing of development related to changing economic circumstances and demand since the date of the original planning approval in 2008; the applicant's ongoing commitment to delivering elements of the original vision as components of future phases; the consideration and determination process for the application including a predetermination hearing, Area Committee consultation, consultee responses and public comments received; relevant national and local planning policies; and key material issues relating to the application. In conclusion, the application was recommended for delegated approval as a departure from the local development plan subject to a Direction and conditions detailed in the report.

On behalf of the applicant, the Council then heard from Mr McMurray and Ms Malone in support of the application. It was considered that all technical matters had now been addressed and the only determining issue in respect of the application was the justification for the change in phasing having regard to current circumstances. Reference was made to the organisation's commitment to continuing its investment and desire to see the next phase of development come to fruition and the region and tourism economy flourishing as a result. Details of the proposed Phase 2 mixed development proposals were provided together with further explanation of the proposed change in emphasis in respect of the phasing of the development with particular reference to hotel and holiday accommodation. In conclusion, the Council was requested to support the application.

Mr McMurray and Ms Malone responded to questions from Members on the transport impact assessment undertaken with particular reference to impact on Balmedie.

The Planning Service Manager also responded to questions from Members on commuted sums for affordable housing in terms of value and how and when this would be delivered, the loss of prime agricultural land, any environmental impact work undertaken by Scottish Natural Heritage prior to the land being purchased by the developer and any intervention required since that time, the traffic impact assessment undertaken including the impact of increased traffic on the local road network and on the village of Balmedie, and developer contributions towards education provision.

Following discussion, Councillor Gifford moved, seconded by Councillor Wallace, that Council agree that authority to grant planning permission in principle be delegated to the Head of Planning and Environment subject to (1) the satisfactory submission of a further Bat Survey; (2) the conclusion of a Section 75 Legal Agreement; and (3) the Direction and Planning conditions detailed in the report.



As an amendment, Councillor Thomson moved, seconded by Councillor Johnston, that Council refuse the application for reasons based on the development being a departure from the Local Development Plan and the extent of the Economic benefits that might be delivered were not sufficient to justify the departure.

Members of the Council voted:-

for the motion	(38)	Councillors Agnew, Argyle, Beagrie, Berry, Bruce, M Buchan, Carr, Davidson, Dickinson, Duncan, Fakley, Findlater, Gifford, Hood, Howatson, Hutchison, Ingleby, Ingram, Kille, Leslie, Lonchay, Mair, McKail, McKelvie, Mollison, Owen, Pike, Robertson, Roy, Simpson, H Smith, N Smith, Stirling, Sutherland, Taylor, Walker, Wallace and Withey.
for the amendment	(24)	Councillors Adam, Aitchison, Allan, Baillie, Bews, C Buchan, Calder, Cassie, Durno, Evison, Ewenson, Gibb, Harper, Hassan, Johnston, Kloppert, Latham, Reid, Reynolds, S Smith, Topping, Thomson, Whyte and Wilson.
absent from the vote	(1)	Councillor Ford.

The **motion** was carried and the Council **agreed**:

- (1) that authority to grant Planning Permission in Principle be delegated to the Head of Planning and Environment, subject to:-
  - (a) the satisfactory submission of a further Bat Survey;
  - (b) the conclusion of a Section 75 Legal Agreement; and
  - (c) the following Direction and Planning Conditions.

#### **Direction**

#### **DIRECTION UNDER SECTION 59(5) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997:**

Aberdeenshire Council hereby directs that application for approval of all matters specified in conditions to a grant of Planning Permission in Principle must be made before whichever is the latest of the following dates:

- (i) The expiration of 15 years beginning with the date of the planning permission in principle; or,
- (ii) The expiration of 6 months from the date on which an earlier application (Matters Specified in Condition) for the requisite approval was refused or dismissed following an appeal or review.
- (iii) The expiration of 6 months from the date on which an appeal against such refusal was dismissed.

In relation to any matter under parts (i) and (ii) above, only one application for approval of matters specified in conditions may be made after the expiration of the planning permission in principle.

The development hereby granted shall be begun before the expiration of 15 years from the final approval of the matters specified in conditions or, in the case of approval on different dates, the final approval of the last such matters to be approved.

### Conditions

- 01 With the exception of Chapters 1A and 1B, details of the specified matters listed below shall be submitted for consideration by the Planning Authority for each phase of the proposed development, in accordance with the timescales and other limitations identified in the relevant direction made under Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended).

No development in connection with each phase shall begin on the site unless all of the details listed in this condition have been submitted to and approved in writing by the Planning Authority for each phase. The development shall be carried out in complete accordance with the details approved in relation to this condition.

#### Specified matters:

- (a) A detailed levels survey (existing and proposed) and cross sections showing proposed finished ground and floor levels of all buildings forming part of the development, relative to existing levels and a fixed datum point;
- (b) Full details of the proposed means of disposal of foul and surface water from the development;
- (c) The siting, design, height and external materials of all buildings or structures;
- (d) The details of all roads, footpaths and cycleways throughout the development;
- (e) Details of any screen walls/fencing to be provided;
- (f) Measures to maximise environmental sustainability through design, orientation and planting or any other means;
- (g) Details of all landscaping, planting and screening associated with the development;
- (h) Details of the maintenance of all open space and treed areas not included in private house plots;
- (i) A tree survey identifying all existing trees proposed to be removed or retained;
- (j) A Badger Survey;
- (k) Full details of waste/recycling collection point.

**Reason:** Permission for the development has been granted in principle only and subsequent approval is required for these matters in accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended).

- 02 Concurrently with the submission of the first application for the approval of MSC, plans showing the proposed phasing of the development shall be submitted to and approved in writing by the Planning Authority. Following approval of this phasing scheme, the development shall be implemented in accordance with the approved scheme.

**Reason:** To ensure the timeous provision of, and to retain control over, the development.

- 03 The total number of houses hereby granted shall not exceed 550 units. No more than 500 of the 550 houses hereby granted shall be sold as private houses.

**Reason:** The development of further private housing on this site as permanent residential units would not comply with the Council's Local Development Plan policies regarding residential development in this area. Furthermore, to ensure that the scale of development does not exceed that assessed by the supporting Transport Assessment, and to ensure that the scale and operation of the proposed development does not adversely affect the safe and efficient operation of the trunk road network.

- 04 The golf villas and leisure/resort units hereby approved shall be occupied on a holiday letting or fractional ownership basis only and for no other purposes whatsoever including use as permanent residential units without the prior express grant of planning permission by the Planning Authority. The golf villas and leisure/resort units shall not be occupied as a person's sole or main residence and the owner of the golf villas and leisure/resort units shall maintain an up-to-date register of the name of each occupier of the golf villas and leisure/resort units on the site, their length of stay and their main home address, and shall make this information available at all reasonable times to the Planning Authority.

**Reason:** The occupation of the golf villas and leisure/resort units as permanent residential units would not comply with the Council's Local Development Plan policies regarding residential development in this area and would undermine the economic and social benefits of the development.

- 05 No works in connection with the permission hereby approved shall commence, unless further details for the proposed scheme of compensatory tree planting outlined have been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include:

- (a) The location of the compensatory tree planting.
- (b) A schedule of planting to comprise species, plant sizes and proposed numbers and density.
- (c) A programme for the implementation, completion and subsequent management of the proposed compensatory tree planting. *(The agreed compensatory tree planting scheme MUST be comprehensive and include timescales for the implementation of the works)*

The compensatory tree planting shall be carried out in complete accordance with the approved scheme. Any planting which, within a period of 5 years from the completion of the compensatory tree planting, in the opinion of the Planning Authority is dying, being severely damaged or becoming seriously diseased, shall be replaced by plants of similar size and species to those originally required to be planted.

**Reason:** In order to maintain woodland cover in accordance with the aims of local and national planning policies.

- 06 In accordance with condition 1 g), h) and i), no works in connection with each relevant phase of the development approved shall commence unless a scheme of hard and soft landscaping works has been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include:
- (a) A tree survey in accordance with BS 5837:2012.
  - (b) Existing landscape features and vegetation to be retained.
  - (c) Protection measures for the landscape features to be retained.
  - (d) Existing and proposed finished levels.
  - (e) The location of new trees, shrubs, hedges, grassed areas and water features.
  - (f) A schedule of planting to comprise species, plant sizes and proposed numbers and density.
  - (g) The location, design and materials of all hard landscaping works including any *walls, fences, gates, street furniture and play equipment*.
  - (h) An indication of existing trees, shrubs and hedges to be removed.
  - (i) A programme for the implementation, completion and subsequent management of the proposed landscaping.

All soft and hard landscaping proposals shall be carried out in accordance with the approved planting scheme and management programme. Any planting which, within a period of 5 years from the completion of the development, in the opinion of the Planning Authority is dying, being severely damaged or becoming seriously diseased, shall be replaced by plants of similar size and species to those originally required to be planted. Once provided, all hard landscaping works shall, thereafter, be permanently retained.

**Reason:** To ensure the implementation and management of a satisfactory scheme of landscaping, which will help to integrate the proposed development into the local landscape in the interests of the visual amenity of the area.

- 07 No individual dwellinghouse or building hereby approved shall be erected unless an Energy Statement, which demonstrates that the proposed energy efficiency measures adhere to the highest standard of current building regulations applicable to that dwellinghouse or building, has been submitted to and approved in writing by the Planning Authority. The Energy Statement shall include the following items:
- (a) Full details of the proposed energy efficiency measures and/or renewable technologies to be incorporated into the development.
  - (b) Calculations using the SAP or SBEM methods which demonstrate that the reduction in carbon dioxide emissions rates for the development, arising from the measures proposed, will enable the development to comply with Policy C1 of the Aberdeenshire Local Development Plan 2017.

The development shall not be occupied unless it has been constructed in full accordance with the approved details in the Energy Statement. The carbon reduction measures shall be retained in place and fully operational thereafter.

**Reason:** To ensure this development complies with the on-site carbon reductions required in Scottish Planning Policy and Policy C1 of the Aberdeenshire Local Development Plan 2017.

- 08 No works in connection with the development hereby approved shall commence unless an archaeological written scheme of investigation (WSI) has been submitted to and approved in writing by the Planning Authority and a programme of archaeological works has been carried out in accordance with the approved WSI. The WSI shall include details of how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the written scheme of investigation will be provided throughout the implementation of the programme of archaeological works. Should the archaeological works reveal the need for post excavation analysis the development hereby approved shall not be brought in to use unless a post-excavation research design (PERD) for the analysis, publication and dissemination of results and archive deposition has been submitted to and approved in writing by the Planning Authority. The PERD shall be carried out in complete accordance with the approved details.

**Reason:** To safeguard and record the archaeological potential of the area.

- 09 The proposed development shall be connected to the public water supply, as indicated in the submitted application, and shall not be connected to a private water supply without the separate express grant of planning permission by the Planning Authority.

**Reason:** To ensure the long-term sustainability of the development and the safety and welfare of the occupants and visitors to the site.

- 10 No works on any phase of the development hereby approved shall commence unless a detailed site-specific Construction Method Statement has been submitted to and approved in writing by the Planning Authority. The Construction Method Statement shall include details of the proposed routing of construction traffic, temporary road openings, traffic management requirements and type and volume of traffic. Once agreed, all construction works on the site shall comply with the approved Construction Method Statement.

**Reason:** In the interests of protecting the environmental sensitivity of the site and its surroundings and to control environmental pollution.

- 11 No works in connection with each phase of the development hereby approved shall commence unless a Tree Protection Plan has been submitted to and approved in writing by the Planning Authority. Tree protection measures shall be shown on a layout plan accompanied by descriptive text and shall include:

- (a) The location of the trees to be retained, their root protection areas and canopy spreads (as defined in BS 5837: 2012 Trees in relation to design, demolition and construction).
- (b) The position and construction of protective fencing around the retained trees (to be in accordance with BS 5837: 2012 Trees in relation to design, demolition and construction).
- (c) The extent and type of ground protection, and any additional measures required to safeguard vulnerable trees and their root protection areas.
- (d) An Arboricultural Impact Assessment which evaluates the direct and indirect impacts of the proposed development on the trees to be retained and proposed mitigation.
- (e) An Arboricultural Method Statement to demonstrate that operations can be carried out with minimal risk of adverse impact on trees to be retained.

- (f) A method statement for any works proposed within the root protection areas of the trees shown to be retained.

No works in connection with the development, hereby approved, shall commence unless the tree protection measures have been implemented in full, in accordance with the approved tree protection plan. No materials, supplies, plant, machinery, soil heaps, changes in ground levels or construction activities shall be permitted within the protected areas without the written consent of the Planning Authority. No fire shall be lit in the position where the flames could extend to within 5 metres of foliage, branches or trunks. The approved tree protection measures shall be retained in situ until the development has been completed.

**Reason:** In order to ensure adequate protection for the trees and hedges on the site during the construction of development, and in the interests of the visual amenity of the area.

- 12 No works in connection with the development hereby approved shall commence unless full details for the implementation and delivery of the agreed Outdoor Access Management Plan for continuing and enhanced non-motorised public access has been submitted to and approved in writing by the Planning Authority. The development shall be carried out in complete accordance with the approved Outdoor Access Management Plan and timescales agreed.

**Reason:** To ensure the adequate provision of public access within and around the site.

- 13 No works in connection with the development hereby approved shall commence, unless a scheme of signage in respect of the Outdoor Access Management Plan strategy on the site has been submitted to and approved in writing by the Planning Authority. The scheme shall include details of:

- (a) The location of the proposed signage.
- (b) The design and appearance of the proposed signage, including any structures and fittings.
- (c) Timescales for and details of the implementation and phasing of the signage works.
- (d) The proposed maintenance of the signage.

The signage shall be carried out in accordance with the approved scheme and shall be permanently retained thereafter.

**Reason:** To protect the proposed *public path network* on the site and in the interests of public access within and around the site.

- 14 The development hereby approved shall be carried out in accordance with the approved Ecological Impact Assessment, Version 1, 30 July 2018 and subsequent Mitigation and Management Plans – Supplementary Note, by Ironside Farrar Environmental Consultants, April 2019.

**Reason:** In the interests of protecting the biodiversity of the environment.

- 15 Prior to commencement of any works in relation to Chapter 1B, the approximate 40 metre culverted section of the channel referred to as 'Crossing C' within the Flood Risk Assessment [Fairhurst; Menie Estate Aberdeenshire; Flood Risk

Assessment; January 2019; Doc. No. 116740/G/W/03; Revision 2; Dated: 02/05/19] shall be removed and returned to open channel to the satisfaction of the Planning Authority in Consultation with SEPA and Infrastructure Services (Flood Protection).

**Reason:** In order to protect people and property from flood risk.

- 16 Finished floor levels (FFL) for all buildings within Phase 1B shall be set at a minimum elevation of the 0.5% annual exceedance probability (AEP) + climate change allowance flood level + 600mm freeboard, as stated within the Flood Risk Assessment based on the cross-section upstream of the built development (i.e. minimum FFL = 23.47m AOD).

**Reason:** in order to protect people and property from flood risk.

- 17 No land-raising or built development shall take place within the 0.5% annual exceedance probability (AEP) + climate change allowance floodplain, as defined on drawing [Fairhurst; Proposed 200 Year & 200 Year and CC Flood Extents; Dwg. No.16740/2108; Revision A; Dated: 18/04/19].

**Reason:** In order to protect people and property from flood risk.

- 18 As recommended within the Flood Risk Assessment [Fairhurst; Menie Estate Aberdeenshire; Flood Risk Assessment; January 2019; Doc. No. 116740/G/W/03; Revision 2; Dated: 02/05/19], no alterations to the bank levels within the vicinity of 'Crossing D', and no alterations to ground levels that would result in new flood-water flow-paths being introduced, shall be made.

**Reason:** In order to protect people and property from flood risk.

- 19 With the exception of Chapters 1A and 1B, no works in connection with the development hereby approved shall commence unless detailed, quantitative flood risk analysis/modelling has been undertaken for Chapters 2 to 8, and the results have been submitted to and approved in writing to by the Planning Authority. This should include appropriate drawings presenting the level and extent of the 0.5% annual exceedance probability (AEP) + climate change allowance floodplain.

**Reason:** In order to protect people and property from flood risk.

- 20 Buffer strips in line with Aberdeenshire Council's guidance shall be maintained in perpetuity around all watercourses/waterbodies.

**Reason:** In order to protect people and property from flood risk.

- 21 Prior to the commencement of any development related to Chapter 1A and 1B hereby approved, and as part of any future Matters Specified in Conditions (MSC) application for any further phase of the development hereby approved, full detailed surface water (SUDS) drainage design shall be submitted to and approved in writing by the Planning Authority. Details shall include appropriate drawings and calculations which address the following matters:

- (a) The Drainage Impact Assessment (DIA) for each phase of the development should include the detailed design of the proposed SUDS components (e.g. basin/swale sizing, surface water sewer layout, etc.).

- (b) Surface water should be suitably attenuated, with this attenuation designed for a minimum of a 1-in-30 year return period event + climate change allowance.
- (c) Further to the attenuation provided, surface water to be discharged to a watercourse shall be controlled to achieve limited discharge relative to the pre-development greenfield run-off rate.
- (d) It should be confirmed that surface water will not enter buildings based on a 1-in-200 year return period event + climate change allowance. This should be supported by appropriate drawings presenting ground levels and flow paths, as well as demonstrating how the 1-in-200 year return period event + climate change allowance flow will be conveyed to the detention basin area.
- (e) The surface water drainage system[s] shall be provided in accordance with the approved details and be permanently retained thereafter in accordance with the approved scheme.

**Reason:** In order to ensure that adequate drainage facilities are provided, and retained, in the interests of the amenity of the area.

- 22 No works in connection with the development hereby approved shall commence unless a plan/map showing all watercourses in their current condition (i.e. the shape of the watercourse at present – is it a canalised trench or natural bed and bank type?), in the context of the landscape and the siting of any proposed activity within or adjacent to the watercourse, have been submitted to and approved in writing to by the Planning Authority. For the avoidance of doubt, all crossings shall be formed by single span bridges. The development shall be carried out in complete accordance with the approved details.

**Reason:** To ensure that all proposed crossings will not impact on bed or bank of watercourses on site.

- 23 No works in connection with the development hereby approved shall commence until an assessment of potential environmental enhancement measures, including a map showing locations, have been submitted to and approved in writing by the Planning Authority. As part of the details of this assessment, and to ensure this development is an exemplary development, the following is required:

- (a) All SUDS features are to be biodiversity and ecologically enhancing (which excludes the use of storm cells on this rural non-constrained site).
- (b) All straightened watercourses should be re-naturalised.

**Reason:** In accordance with Aberdeenshire Local Development Plan Policy P1 and P2 and to ensure a high standard of place making.

- 24 No dwellinghouse hereby approved shall be occupied unless its access, driveway, parking and turning area has been provided and fully paved in accordance with the details shown on the approved plans and the drop kerb footway crossing has been formed at the new access. The first five metres of the driveway measured from the back of the footway/ carriageway shall be fully paved and shall have a maximum gradient not exceeding 1:20. Any access or driveway shall be internally drained and formed in such a way to prevent any flow of surface water either onto or from the public road. Once provided, the access, driveway and parking area shall thereafter be permanently retained as such.



**Reason:** To ensure the timely completion of the access, driveway and parking area to an adequate standard; to prevent the carriage of loose driveway material on to the public road and to ensure the retention of adequate off-street parking facilities, all in the interests of road safety.

- 25 No dwellinghouse hereby approved shall be occupied unless a Residential Travel Pack has been submitted to and approved in writing by the Planning Authority in consultation with Aberdeenshire Council Roads Development Team. All new homes shall be provided with the Travel Pack at the time of first occupation.

**Reason:** To promote the use of sustainable travel to all new residents.

- 26 Prior to completion of the internal loop road in Chapter 1A, an updated Public Transport Strategy shall be submitted to and approved in writing by the Planning Authority in consultation with Aberdeenshire Council Roads Development Team. The Strategy should detail which bus services will be diverted through the site as confirmed with a service provider, and the location and design of internal bus halts. The Strategy should be agreed in consultation with Aberdeenshire Council's Public Transport Unit and Roads Development Team and implemented prior to any further development beyond Phase 1B.

**Reason:** To deliver an acceptable level of public transport provision for future phases of development.

- 27 No works in connection with the development hereby approved shall commence until full details of new northbound and southbound bus lay-by's to be provided on the B977 in the vicinity of 'The Firs' property, with a direct footway link built to adoptable standard connecting to the internal Primary Road, have been submitted to and approved in writing to by the Planning Authority. The bus halts shall be designed and agreed in consultation with Aberdeenshire Council Public Transport Unit and Roads Development Team and implemented prior to occupation of the first dwellinghouse.

**Reason:** In order to ensure access to public transport services for residents at an agreed maximum walking distance of 650m, as referred to in Paragraph 4.5.5 of the Transport Assessment (Issue 4, 15/02/19).

- (2) the reason for the decision as follows:

The proposal is considered to comply in principle with the identified OP3 site allocation identified within the Aberdeenshire Local Development Plan 2017 settlement statement for Balmedie. The proposal continues to provide significant social and economic benefits to the locality and wider region, even when taking account of amendments made to the previous scheme envisaged for this site, to reflect the current local economic climate. Furthermore, the proposal and mitigation measures set out and contained therein are considered to be acceptable in terms of the relevant Policies contained within the Aberdeenshire Local Development Plan 2017.

**5. PLANNING APPLICATION - APP/2019/0982 - NATIONAL ERECTION OF ELECTRICITY SUBSTATION COMPRISING PLATFORM AREA, CONTROL BUILDING, ASSOCIATED PLANT & INFRASTRUCTURE, ANCILLARY FACILITIES, LANDSCAPE WORKS AND ROAD ALTERATIONS AND IMPROVEMENTS AT SITE TO THE SOUTH OF NEWTON OF SANFORD, BODDAM, PETERHEAD, ABERDEENSHIRE**

With reference to the Minute of Meeting of the Buchan Area Committee of 8 October, 2019 (Item 5A) a report dated 10 September, 2019 by the Director of Infrastructure Services had been circulated requesting consideration of an application for Full Planning Permission for erection of electricity substation comprising platform area, control building, associated plant and infrastructure, ancillary facilities, landscape works and road alterations and improvement works at Site to the South Of Newton Of Sanford, Boddam, Peterhead, Aberdeenshire.

The report explained that this was an application for national development which in terms of Section A.11.1 of Part 2A List of Committee Powers and Section C.1.1 of Part 2C Planning Delegations of the Scheme of Governance required to be determined by Full Council.

The Provost advised that a request to speak had been received from the applicant's agent and the Council **agreed** to hear from Mr Hart prior to determination of the application.

The Council heard from the Planning Service Manager on the detail of the proposed development including site location and layout, existing and proposed network connections, development footprint area together with associated structures, proposed improvements to the local road network, principal of the development, relevant national and local planning policies, previous planning approvals and key material considerations. The application was recommended for approval subject to the conditions detailed in the report.

The Council then heard from Mr Hart and Ms Gray on behalf of the applicant in support of the application. Mr Hart advised that Scottish Hydro Electric (SHE) was the Transmission licence holder in the north of Scotland and outlined the duties associated with that role. He explained that the proposed development formed an integral part of the reinforcements to the transmission network in the North East of Scotland. Reference was made to relevant national planning policy, site structures and layout, improvements proposed to the local road network to accommodate the access to the development, the voluntary environmental assessment submitted and associated mitigation measures proposed and the outcome of the CCTV survey of the proposed outfall point to clarify the capacity. In conclusion, he urged the Council to approve the application.

Mr Hart responded to questions from Members on the proposed scheduling and timescale for completion of the development and whether consultation had taken place with the Ministry of Defence on the potential impact of the development on the remote radar head at the former RAF Buchan.

The Council **agreed**:

- (1) to delegate authority to the Head of Planning and Environment to grant Full Planning Permission subject to consultation with the Ministry of Defence on any potential impact on the remote radar head at the former RAF Buchan and to the following conditions:

01 Landscaping Scheme

That no works in connection with the development hereby approved shall take place unless a scheme of hard and soft landscaping works has been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include:

- (a) Existing and proposed finished ground levels relative to a fixed datum point;
- (b) The location of new trees, shrubs, hedges, grassed areas and water features;
- (c) A schedule of plants to comprise species, plant sizes and proposed numbers and density;
- (d) A programme for the completion and subsequent maintenance of the proposed landscaping

All soft and hard landscaping proposals shall be carried out in accordance with the approved scheme and shall be completed in line with the phasing as set out within the approved scheme or such other date as may be agreed in writing with the Planning Authority. Any planting which, within a period of 5 years from the completion of the development, in the opinion of the Planning Authority is dying, being severely damaged or becoming seriously diseased, shall be replaced by plants of similar size and species to those originally required to be planted.

Reason: To ensure the implementation of a satisfactory scheme of landscaping which will help to integrate the proposed development into the local landscape in the interests of the visual amenity of the area.

02 Archaeology (WSI)

No works in connection with the development hereby approved shall commence unless an archaeological written scheme of investigation has been submitted to and approved in writing by the Planning Authority and a programme of archaeological works has been carried out in accordance with the approved written scheme of investigation. The written scheme of investigation shall include details of how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the written scheme of investigation will be provided throughout the implementation of the programme of archaeological works. Should the archaeological works reveal the need for post excavation analysis the development hereby approved shall not be brought into use unless a post-excavation research design (PERD) for the analysis, publication and dissemination of results and archive deposition has been submitted to and approved in writing by the planning authority. The PERD shall be carried out in complete accordance with the approved details.

Reason: To safeguard and record the archaeological potential of the area.

03 CEMP

No works in connection with the development hereby approved (including demolition, ground works and vegetation clearance) shall commence unless a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Planning Authority. The CEMP shall include the following:

- (a) Risk assessment of potentially damaging construction activities;

- (b) Identification of biodiversity protection zones;
- (c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- (d) The location and timing of sensitive works to avoid harm to biodiversity features;
- (e) The times during construction when specialist ecologists need to be present on site to oversee works;
- (f) Responsible persons and lines of communication;
- (g) The role and responsibilities on site of an Ecological Clerk of Works (ECoW) or similarly competent person;
- (h) Use of protective fences, exclusion barriers and warning signs;
- (i) Details of lighting, both during construction and operation of the site.
- (j) Hours of operation during the construction period.

The CEMP must address the mitigation details contained within Appendix 2.1 'Schedule of Mitigation' of the Environmental Appraisal, dated April 2019.

In the event that the CEMP references other SHE Transmission documents, including (but not limited to) General Environmental Management Plans (GEMPs) or Species Protection Plans (SPPs), these plans must be also be submitted to Aberdeenshire Council for agreement as part of the wider CEMP.

All works carried out during the construction period shall be undertaken strictly in accordance with the approved CEMP.

Reason: In the interests of protecting the biodiversity of the environment, the amenity of the surrounding area and road safety.

#### 04 Drainage

Prior to the commencement of any development on the site, a Finalised Drainage Scheme shall be submitted to the Planning Authority for approval.

The Finalised Drainage Scheme must reflect the details of the previously submitted scheme and the CCTV survey of existing drainage infrastructure. For the avoidance of doubt the previously submitted scheme is considered to comprise:

- (a) 'Proposed Peterhead 400kV Substation - Outline Drainage Assessment', SLR Ref: 428.04707.00011, SLR, dated July 2019
- (b) 'Proposed Peterhead 400kV Substation Proposed Drainage Layout', Drawing no. LT135\_PEHE\_0804\_0003, dated 25.04.19.

Thereafter, the development shall be carried out in accordance with the amended drainage scheme unless otherwise agreed in writing with the Planning Authority.

The drainage scheme shall be retained in perpetuity.

Reason: In the interests of ensuring the development site is adequately drained and does not have a negative impact upon water management.

#### 05 Access

That no other development in connection with the permission hereby approved shall take place and the access hereby approved shall not be brought into use unless constructed in accordance with the following specification:

- (a) The maximum gradient of the first 5m of the new access (as measured from the edge of the public road) shall not exceed 1 in 20.
- (b) The first 5m of the new access (as measured from the edge of the public road) shall be fully paved.
- (c) Visibility Splays measuring 2.4m by 120.0m shall be formed on either side of the junction of the vehicular access with the public road. Once formed, the visibility splays shall be permanently retained thereafter and no visual obstruction of any kind shall be permitted within the visibility splays so formed.

Reason: To enable drivers of vehicles using the access to have a clear view of other road users and pedestrians in the interests of road safety.

#### 06 Parking

Prior to the occupancy or operation of the development, off-street parking for 5 cars, surfaced in hard standing materials shall be provided within the site.

Reason: In the interests of road safety, through ensuring the development provides adequate off-street parking.

#### 07 Construction Traffic Management Plan

No works in connection with the permission hereby granted shall commence unless a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Planning Authority in consultation with Transport Scotland (where the scheme would impact upon the Trunk Road network). The CTMP must include:

- (a) The proposed routing of all construction traffic.
- (b) Details of any traffic management measures proposed during construction (including signage). Traffic management measures must be undertaken by a recognised QA traffic management consultant.
- (c) Detail of any abnormal loads, including their routing

Thereafter, the development shall be carried out in accordance with the approved CTMP.

Reason: In the interests of road safety and to avoid degradation of the road and bridge network.

08 Wheel Washing

No development shall take place unless, details of wheel washing facilities (or an alternative appropriate solution as agreed, in writing, by the Planning Authority in consultation with Transport Scotland) are agreed, in writing, with the Planning Authority in consultation with Transport Scotland. The agreed plant and facilities shall be provided within the construction site and shall remain in place for the duration of the construction period, unless otherwise agreed, in writing, by the Planning Authority.

Reason: To ensure that material from the site is not deposited on the trunk road to the detriment of road safety.

**DIRECTION UNDER SECTION 58 (2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 as amended by Planning etc. (Scotland) Act 2006:**

That subsection (1) of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended) shall apply in respect of the permission, with the substitution of the period of three years referred to in that subsection with the period of five (5) years, as is considered appropriate by the Planning Authority in this instance on the basis of the scale of the development. The provisions of section 5(1) shall therefore be read as follows:

The planning permission is to lapse on the expiration of a period of five (5) years (beginning with the date on which the permission is granted) unless the development to which the permission relates is begun before that expiration.

(2) the reason for the decision as follows -

The proposal and mitigation measures set out and contained therein are considered to be acceptable in terms of the relevant Policies contained within the Aberdeenshire Local Development Plan 2017. The proposal is consistent with the Development Plan's aim of reducing carbon emissions and adapting to climate change. It also contributes to the Scottish Government's aim, as stated in National Planning Framework 3, of moving Scotland towards being a low carbon place.

**6. ANNUAL ACCOUNTS 2018/19 FOR ABERDEENSHIRE COUNCIL AND ITS CHARITABLE TRUSTS AND THE INDEPENDENT AUDITOR'S REPORT TO COUNCILLORS 2018/19**

A report dated 11 September, 2019 by the Head of Finance had been circulated together with the audited Annual Accounts for Aberdeenshire Council and its Charitable Trusts for the financial year 2018/19 and the report by the Council's External Auditors, Audit Scotland, following completion of the audit for the financial year 2018/19. The report contained a detailed action plan which identified areas requiring improvement and advised that a report on progress towards achieving the actions would be presented to the Audit Committee on 26 March 2020.

The Head of Finance introduced the report, thanked Members for their input and involvement in the annual accounts and advised that the Council's financial stewardship continued to be recognised as robust. The audit certificate was unmodified, providing assurance that the financial statements gave a true and fair view of the financial position of Aberdeenshire Council at 31 March 2019. He explained that a key aspect of preparing the annual accounts revolved

around the Council's annual governance statement and a section on the annual governance statement had been added as part of the Council's *How Good is our Governance* report which would be reported back through Audit Committee. He confirmed that the accounts had been signed off by the Council's Audit Committee on 19 September 2019 and made reference to the proposed actions identified in the Action Plan attached to the External Auditor's report.

The Council **agreed**:

- (1) to endorse the audited Annual Accounts 2018/19 for the Council's Charitable Trusts and the Independent Auditor's report;
- (2) to note the unmodified audit certificates for Aberdeenshire Council and its Charitable Trusts for 2018/19; and
- (3) to note that the Audit Committee would engage with Policy Committee Chairs and Policy Committees on the delivery of actions in the action plan.

## 7. FINANCIAL PERFORMANCE QUARTER 1 – REVENUE BUDGET

A report dated 13 September, 2019 by the Director of Business Services had been circulated seeking consideration and approval of the Council's financial performance position for revenue expenditure for Quarter 1 to 30 June 2019. The report advised that a new style of quarterly reporting had been adopted delivering a more progressive approach to financial performance reporting and would provide Policy Committees with information on actual expenditure compared to year to date budget allowing scrutiny on current performance, identification of any emerging issues to date and agreement on service delivery for the remainder of the year.

The Head of Finance introduced the report, explained that the new style reporting encouraged and promoted transparency of service delivery connected to financial performance and advised that, at the end of Quarter 1, Council spend was slightly less than 25% of total budget.

The Council **approved** the Council's financial performance position for revenue expenditure for Quarter 1 to 30 June 2019 as detailed in the report.

## 8. NON-HRA CAPITAL BUDGET 2019/20 Q1 PERFORMANCE REPORT & CAPITAL PLAN 2019-2034 UPDATE

There had been circulated a report dated 20 August 2019 by the Director of Business Services which (1) detailed expected expenditure and income on projects contained within the Council's Non-Housing Revenue Account (HRA) Capital Budget; (2) highlighted projects which showed variations requiring amendments to be made to the Capital Plan; (3) explained the arrangements for the transfer of budget between projects and consolidation of budgets relating to the Regeneration Project at Saltoun Square, Improved Disabled Access and Support for Learners, (4) advised that an expenditure budget line required to be added to the Capital Plan in respect of Town Centre projects along with matching grant to aid the monitoring of expenditure, and (5) sought approval for an increase in funding required to carry out upgrade works at Greenbanks Travellers Site in Banff.

The Head of Finance introduced the report and explained the change in reporting format to include actual spend, the addition of an expenditure line for Town Centre projects and funding options for the upgrade works at Greenbanks Travellers Site in Banff.

Having also heard from the Head of Property and Facilities Management on the increased costs associated with the Greenbanks Travellers Site which related to tenders received for

the works being higher than estimated, required scope changes for internal services and construction inflation costs, the Council **agreed**:-

- (1) to revisions to the capital budget for 2019/20 referred to at Appendix 1 and detailed in Appendix 2 of the report, giving new totals for expenditure and receipts & revenue financing of £168,106,000 and £52,320,000 respectively;
- (2) to revisions to the capital budget for future years, as detailed at Appendix 1 and Appendix 2 in the report;
- (3) to the transfer of budget between projects and consolidation of budgets as detailed at paragraphs 2.8 and 2.9 in the report;
- (4) to the allocation of additional budget of £168,000 to fund the Greenbanks Travellers Site project; and
- (5) to the revenue financing costs set out in paragraph 4.2 of the report.

#### **9. COUNCIL PLAN 2017-2022 – ANNUAL PERFORMANCE REPORT 2018/19 (ABERDEENSHIRE PERFORMS)**

With reference to the Minute of Meeting of the Council of 23 November 2017 (Item 10), a report dated 26 August 2019 by the Director of Business Services had been circulated summarising the performance of the Council in delivering the priority outcomes in the Council Plan, based on data such as key performance indicators, risks, financial management and resident surveys.

The Chief Executive provided an overview of the performance of the Council, which continued to show sustained improvement, and commented on the challenges ahead.

The Leader of the Council introduced the report highlighting the good services delivered, achievements, recognition and partnership working and members viewed a video presentation providing an overview of performance across the Council as a whole.

The Policy Committee Chairs then highlighted key achievements from 2018/19 and the focus for the current year.

The Council **agreed**:

- (1) to approve the Council Plan 2017-2022 Annual Performance Report 2018/19; and
- (2) to instruct the Chief Executive to report the performance of the Council Plan 2017-2022 in September 2020.

#### **10. ABERDEENSHIRE HEALTH AND SOCIAL CARE PARTNERSHIP PERFORMANCE AND OUTCOMES FRAMEWORK: ANNUAL PERFORMANCE REPORT 2018/19**

A report dated 29 August, 2019 by the Chief Officer, Aberdeenshire Health and Social Care Partnership, had been circulated on the publication of the Aberdeenshire Health and Social Care Partnership Annual Report for 2018/19. The report advised that Section 42 of the Public Bodies (Joint Working) (Scotland) Act 2014 required a performance report to be produced by integration authorities and published annually before 31 July on specific matters including (1) how the Partnership had performed against national Health and Wellbeing Outcomes, (2) a summary of financial performance for the current reporting year, (3) a description of



arrangements put in place to involve and consult with localities and an assessment of how they had contributed to the provision of services, and (4) details of any inspections carried out relating to the functions delegated to the Partnership by Healthcare Improvement Scotland and the Care Inspectorate.

The Chief Officer introduced the report, highlighting a number of positive achievements over the third year of operation together with challenges and priorities over the coming years.

The Council also heard from the Vice Chair of the Integration Joint Board (IJB), who congratulated the Chief Officer and his Team on their performance and achievements over 2018/19.

The Council **agreed** to:

- (1) acknowledge the publication of the Aberdeenshire Health and Social Care Partnership (HSCP) Annual Report for 2018 -19; and
- (2) acknowledge the achievements made by the Integration Joint Board in its third year of operation.

#### **11. EQUALITIES MAINSTREAMING AND OUTCOMES PROGRESS REPORT 2019**

With reference to the Minute of Meeting of the Council of 27 April, 2017 (Item 6), a report dated 21 August, 2019, by the Director of Business Services had been circulated advising of progress towards integrating equality into the work of the Council and presenting a summary of progress in respect of the current equalities outcomes and highlighting the actions to be taken over the next two years of the outcomes life cycle. The report referred to the specific duty under the Equality Act 2010 to publish a report on mainstreaming the equality duty and to demonstrate progress on equality outcomes.

The Council **agreed**:

- (1) to acknowledge the progress made towards meeting the Public Sector Equality Duty and specific duties in terms of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012; and
- (2) to delegate authority to the Director of Business Services to proof check and approve the amended Equality Mainstreaming & Outcomes Progress report 2017-2019 document prior to publication, following consultation with the Provost, Deputy Provost and Leader of the Opposition.

#### **12. MEMBERS' EXPENSES RELATING TO COSLA BUSINESS**

With reference to the Minute of Meeting of the Council of 21 January, 2016 (Item 4) there had been circulated a report dated 22 August, 2019 by the Director of Business Services proposing a review of the arrangements for payment of Members' expenses in connection with COSLA business.

The Council **agreed**:

- (1) to pay the travel and other expenses of Members of the Council –
  - (a) appointed to the position of Leader of Aberdeenshire Council for the purposes of attending COSLA Leaders meetings;

- (b) appointed to the COSLA Convention to attend all meetings of the Convention and the Excellence Awards;
- (c) appointed to attend any of the four COSLA Policy Boards;
- (d) to attend any other policy or short life working group as agreed through COSLA Leaders or the COSLA Convention, with nominations to be approved by the Business Services Committee on a case by case basis;
- (e) nominated through COSLA under the political group arrangement to participate in any policy body or other working group with nominations to be approved by the Business Services Committee on a case by case basis; and
- (f) appointed as substitutes in each case.

The Council will not pay travel expenses for attendance at political group meetings.

- (2) to delegate authority to the Business Services Committee to approve payment of Members' expenses in connection with COSLA business as detailed at 1 (d) and 1 (e) above.

### 13. AREA IMPROVEMENT WORKING GROUP – REPORT OF FINDINGS AND RECOMMENDATIONS

With reference to the Minute of Meeting of the Council of 22 November, 2018 (Item 11) there had been circulated a report dated 22 August, 2019 by the Director of Business Services seeking consideration of (1) the recommendations of the Area Improvement Working Group together with a proposed Action Plan to monitor progress on the delivery of agreed actions; and (2) a proposal to re-establish the Area Improvement Working Group with an amended remit to monitor progress towards delivering the actions contained in the Action Plan in relation to the cultural and behavioural aspects of area working so as to ensure implementation of the agreed actions; and to make recommendations, where necessary, to the Procedures Committee on any proposed improvements affecting the Scheme of Governance arising from the Action Plan.

The Council **agreed**:

- (1) to approve the recommendations of the Area Improvement Working Group as contained within Appendix 1 and the Action Plan as contained within Appendix 2 of the report; and
- (2) to re-establish the Area Improvement Working Group as proposed with an amended remit to allow it to monitor and ensure the implementation of the Action Plan, and to note that any further decision-making would be referred to the Procedures Committee.

### 14. TIMETABLE OF MEETINGS 2020/2021

A report dated 15 August 2019 by the Director of Business Services had been circulated requesting the Council to approve the timetable of meetings of the Council, Policy Committees, the Audit Committee, the Sustainability Committee and Area Committees for the period May 2020 to April 2021.

The Council **agreed** to approve the timetable of meetings of the Council, Policy Committees, the Audit Committee, the Sustainability Committee and Area Committees for the period May 2020 to April 2021 as set out in Appendix 1 of the report.

## 15. SCHEME OF GOVERNANCE

There had been circulated a report dated 11 September, 2019 by the Director of Business Services on (1) proposed amendments to the Scheme of Governance at Parts 1 (Standing Orders), 2A (List of Committee Powers), 2B (List of Officers Powers), 2C (List of Planning Delegations), 3 (Financial Regulations), 4C (Procurement Guidelines), 4D (Financial Delegations Tables), 4F (Member Promoted Issues Form and Guidance) and 4H (Glossary of Terms); and (2) a proposed addition to Part 4 in the form of Guidance on Petitions, following consideration of all of the proposals by the Procedures Committee at its meetings on 24 May and 6 September, 2019.

The Head of Legal and Governance introduced the report and responded to Members questions on the governance arrangements relating to Pupil Equity Funding, proposed threshold for submission of petitions and the definition of senior councillors.

Thereafter, Councillor Ford moved, seconded by Councillor Johnston, that the Council approve the recommendations contained in the report subject to the minimum signature threshold for valid petitions being set at 15 for all relevant Committees and Full Council.

As an amendment, Councillor Gifford moved, seconded by Councillor Argyle, that the Council approve the recommendations contained in the report including the minimum signature thresholds for valid petitions for Area Committees (50), Policy Committees (100) and Full Council (200).

As a further amendment, Councillor Thomson moved, seconded by Councillor Evison, that the Council approve the recommendations contained in the report including the minimum signature thresholds for valid petitions for Area Committees (15), Policy Committees (100) and Full Council (200) with the Chair having discretion across all relevant Committees and Full Council to accept lower numbers, in exceptional circumstances.

On a vote between the first amendment by Councillor Gifford and the second amendment by Councillor Thomson, Members of the Council voted:

for amendment by Councillor Gifford	(33)	Councillors Agnew, Argyle, Beagrie, Berry, Bruce, M Buchan, Carr, Dickinson, Ewenson, Fakley, Findlater, Gifford, Hassan, Hood, Howatson, Ingleby, Kille, Leslie, Mair, McKail, McKelvie, Mollison, Owen, Pike, Roy, Simpson, N Smith, Stirling, Sutherland, Taylor, Walker, Whyte and Withey.
for the amendment by Councillor Thomson	(24)	Councillors Adam, Aitchison, Allan, Baillie, Bews, Buchan, Cassie, Davidson, Duncan, Evison, Ford, Gibb, Harper, Ingram, Johnston, Kloppert, Lonchay, Reid, Reynolds, Robertson, S Smith, Topping, Thomson and Wilson.
declined to vote	(1)	Councillor Calder.
absent from the vote	(5)	Councillors Durno, Hutchison, Latham, H Smith and Wallace.

The amendment by Councillor Gifford was carried.

Thereafter on a vote between the motion and the amendment by Councillor Gifford, Members of the Council voted:

for the motion	(23)	Councillors Adam, Aitchison, Allan, Baillie, Bews, C Buchan, Calder, Cassie, Davidson, Evison, Ford, Harper, Ingram, Johnston, Kloppert, Leslie, Reid, Reynolds, Robertson, S Smith, Topping, Thomson and Wilson.
for the amendment by Councillor Gifford	(33)	Councillors Agnew, Argyle, Beagrie, Berry, Bruce, M Buchan, Carr, Dickinson, Ewenson, Fakley, Findlater, Gibb, Gifford, Hassan, Hood, Howatson, Ingleby, Kille, Lonchay, Mair, McKail, McKelvie, Mollison, Owen, Pike, Roy, N Smith, Stirling, Sutherland, Taylor, Walker, Whyte and Withey.
declined to vote	(2)	Councillors Duncan and Simpson.
absent from the vote	(5)	Councillors Durno, Hutchison, Latham, H Smith and Wallace.

The amendment by Councillor Gifford was carried and the Council **agreed**:

- (1) to approve the amendments to Part 4 of the Scheme of Governance in Appendices 6 and 7 with implementation on 27<sup>th</sup> September 2019;
- (2) to note the amendments to Parts 1, 2 and 3 of the Scheme of Governance and that a further report requesting approval would be reported to Full Council on 21<sup>st</sup> November 2019;
- (3) that further consideration be given to the current Officer delegations and expenditure approval process in respect of Pupil Equity Funding with a view to streamlining the process; and
- (4) that further clarification on the Senior Councillor definition in the Glossary of Terms be circulated to Members.

## 16. CLIMATE CHANGE EMERGENCY

With reference to the Minute of Meeting of the Infrastructure Services Committee of 22 August, 2019 (Item 14) there had been circulated a report dated 28 August, 2019 by the Director of Infrastructure Services seeking consideration of a decision by the Infrastructure Services Committee relating to the Scottish Government's climate change emergency declaration which had been referred, as provided for in the Council's Standing Orders at 5.5, to Full Council for final determination.

Councillor Argyle moved, seconded by Councillor Pike, that the Council confirm the decision of Infrastructure Services Committee to –

- (1) support COSLA and the Sustainable Scotland Network in their approach to the Scottish Government to seek direction and resources to support a national approach to the declared Climate Change Emergency for Scotland; and
- (2) reaffirm the Council’s commitment to the Environmental and Climate Change Policy, the Council’s target of 44% reduction by 2025 and the Carbon Budget process to achieve this.

As an amendment, Councillor Johnston moved, seconded by Councillor Reid, that the Council agree to -

- (1) support, the decision reached at COSLA and the Sustainable Scotland Network, to approach the Scottish Government, to seek resources and jointly lead a national approach to the declared Climate Change Emergency for Scotland; and
- (2) recognise the Council’s commitment to the Environmental and Climate Change Policy and to recommend to Full Council, that Aberdeenshire Council declares a Climate Change Emergency, and to instruct Officers to report to all policy Committees, to review and renew the Council’s targets.

Members of the Council voted:

- |                      |      |  |
|----------------------|------|--|
| for the motion       | (33) | Councillors Argyle, Beagrie, Berry, Bruce, M Buchan, Carr, Davidson, Dickinson, Ewenson, Fakley, Findlater, Gibb, Gifford, Hood, Howatson, Ingleby, Kille, Leslie, Lonchay, McKail, McKelvie, Mollison, Owen, Pike, Roy, Simpson, N Smith, Stirling, Sutherland, Taylor, Walker, Whyte and Withey. |
| for the amendment    | (21) | Councillors Adam, Aitchison, Allan, Baillie, Bews, C Buchan, Calder, Cassie, Duncan, Evison, Ford, Harper, Johnston, Kloppert, Reid, Reynolds, Robertson, S Smith, Thomson, Topping and Wilson.  |
| declined to vote     | (3)  | Councillors Hassan, Ingram and Mair.   |
| absent from the vote | (5)  | Councillors Durno, Hutchison, Latham, H Smith and Wallace  |

The motion was carried and the Council **agreed** to confirm the decision of Infrastructure Services Committee to –

- (1) support COSLA and the Sustainable Scotland Network in their approach to the Scottish Government to seek direction and resources to support a national approach to the declared Climate Change Emergency for Scotland; and
- (2) reaffirm the Council’s commitment to the Environmental and Climate Change Policy, the Council’s target of 44% reduction by 2025 and the Carbon Budget process to achieve this.

In terms of Standing Order 5.2.6, Councillors Ford, Johnston and Topping requested that their dissent with regard to the foregoing decision be recorded.

## 17. REQUEST TO APPROVE REASONS FOR COUNCILLOR ABSENCE

A report by the Director of Business Services had been circulated seeking approval of the reasons for absence from Council meetings for a period exceeding six consecutive months in respect of Councillor Blackett, due to ill health, and Councillor Petrie, for maternity leave, noting that both Councillors would continue to be members of the authority during the approved period as provided for in Section 35 (1) of the Local Government (Scotland) Act 1973.

The Council **agreed**:

- (1) to approve the reasons for absence as set out in the report from Council meetings for a total period not exceeding 12 consecutive months for Councillor Gwyneth Petrie and Councillor Geva Blackett; and
- (2) to note that both Councillors would continue to be members of the authority during the approved period of absence.

## 18. VACANCY - VICE CHAIR OF COMMUNITIES COMMITTEE

A report dated 16 September, 2019 by the Director of Business Services had been circulated requesting that the Council take the necessary steps to fill the vacant position of Vice Chair of the Communities Committee following notification from Councillor Walker that she wished to resign from that role.

The Council **agreed**:

- (1) to acknowledge and thank Councillor Walker for her work in the role as Vice Chair of the Communities Committee;
- (2) that Councillor Roy be appointed as Vice Chair of the Communities Committee;
- (3) that Councillor Findlater be appointed to the resultant vacancy of Vice Chair of Business Services Committee; and
- (4) that Councillor Bruce be appointed to the resultant vacancy of Vice Chair of Education and Children's Services Committee.

## 19. PROCUREMENT - OFFICE SPACE STRATEGY

With reference to the Minute of Meeting of the Council of 26 April, 2018 (Item 9), there was circulated a report by the Director of Business Services seeking (1) the addition of an item to the Business Services Directorate Work Plan for the approval a two stage tender process to appoint a preferred contractor and conclude negotiations to agree a tender value for the Office Space Strategy projects including Woodhill House alterations and refurbishment and Inverurie Town Hall upgrade and new office extension; (2) approval of the revised business case at Appendix 2; (3) approval of capped expenses payment to the preferred contractor should the projects referred to not proceed to tender stage two; and (4) agreement that the Business Services Committee would consider any subsequent tender awards for approval.

The Council **agreed**:

- (1) to approve the addition of an item to the Business Services Directorate's Annual Work Plan 2019/20 for the approval a two stage tender process to appoint a preferred contractor and conclude negotiations to agree a tender value for Office Space Strategy

projects Woodhill House Alterations and Refurbishment and Inverurie Town Hall upgrade and new office extension;

- (2) to approve the Revised Business Case as detailed in Appendix B of the report, and resultant capital expenditure of £34,182,525;
- (3) to £50,000 capped expenses payment to preferred contractor should the projects detailed at (1) above not proceed to tender stage two; and
- (4) to note that the Business Services Committee would consider any subsequent tender awards for approval.

# Faherty Affirmation

Exhibit # 35

*Excerpted*



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STATE OF NEW YORK  
OFFICE OF ATTORNEY GENERAL

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In re:

FINANCIAL STATEMENTS INVESTIGATION

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March 4, 2020

9:11 a.m.

EXAMINATION UNDER OATH of  
JEFFREY MCCONNEY, held at the offices of  
STATE OF NEW YORK OFFICE OF ATTORNEY  
GENERAL, 28 Liberty Street, New York, New  
York before Wayne Hock, a Notary Public of  
the State of New York.

Page 62

1 J. McConney  
 2 to the process of reaching out that you  
 3 just described?  
 4 A. I can't define a time. With  
 5 anything else you do, when you send out a  
 6 request to somebody, you have people that  
 7 answer you as soon as you send the e-mail,  
 8 there's people that will get it done at  
 9 some point in time, and some that you just  
 10 have to keep going after. It's just human  
 11 nature. I can't say it takes thirty days,  
 12 it takes eighteen and a half days, there's  
 13 no real time frame.  
 14 Q. I'm trying to get a general  
 15 sense in the period of four or five months  
 16 how long that process takes.  
 17 A. Well, if we start in July and  
 18 end in October, four months. It depends  
 19 when we physically start and how much we  
 20 push. But it does take through almost a  
 21 day that we have -- provide the  
 22 information to Mazars and it's looked at  
 23 and questions are asked. It goes down to  
 24 the last week that the financial statement  
 25 is due.

Page 63

1 J. McConney  
 2 Q. And apart from gathering data,  
 3 you perform valuations on those  
 4 spreadsheets; is that correct?  
 5 A. There are mathematical  
 6 computations based on data to come up with  
 7 a valuation, yes.  
 8 Q. Tell me about the process of  
 9 arriving at those mathematical  
 10 computations.  
 11 A. Different assets are valued  
 12 differently. There's no hard and fast  
 13 rule. We can use -- for the assets we  
 14 have in New York where we have a loan,  
 15 Trump Tower, 40 Wall Street, we produce a  
 16 financial statement to the banks. We can  
 17 use that -- sometimes we use that  
 18 financial statement information, the P&L,  
 19 come up with an NOI, obtain a cap rate  
 20 from a third party, and use that as a  
 21 valuation. Sometimes there's a comparable  
 22 sale and we can use that.  
 23 So each asset is looked at and  
 24 valued based on different criteria. Some  
 25 of the shopping centers we used to use a

Page 64

1 J. McConney  
 2 multiplier of the rent roll and decided a  
 3 better valuation process was to use NOI  
 4 and a cap rate that we were using for the  
 5 larger properties, like 40 Wall Street and  
 6 Trump Tower. The golf courses we use  
 7 based on their fixed assets. We figured a  
 8 good indication is how much money we spent  
 9 to build the clubhouse and the  
 10 improvements to the property to give us an  
 11 idea of what the value is.  
 12 We can't do appraisals every  
 13 year. It would take us months and months  
 14 and months to provide the data, have  
 15 somebody look at it, and put the together  
 16 information.  
 17 This is our snapshot as of  
 18 June 30 what we feel our assets are worth.  
 19 You may disagree with it, and that's your  
 20 right, but this is what we feel it's  
 21 worth.  
 22 Q. Who other than you at Trump  
 23 Organization is involved in that process?  
 24 A. Allen Weisselberg is the CFO.  
 25 Patrick Birney, he's been taking over more

Page 65

1 J. McConney  
 2 of it recently, he's involved. We may  
 3 have some people that are type up a  
 4 schedule like for escrows or something,  
 5 they're not involved in the valuations,  
 6 they're just taking data we give them and  
 7 help fill out an Excel spreadsheet. Like  
 8 somebody puts together this cash schedule  
 9 which takes a while. To monitor two  
 10 hundred bank accounts takes a while to  
 11 kind of look at. But they're just taking  
 12 the information we have and gathering it  
 13 for a spreadsheet. It's mainly Allen and  
 14 Patrick.  
 15 Q. You said that Patrick has been  
 16 taking on a greater role recently?  
 17 A. Yes.  
 18 Q. When did that start?  
 19 A. We just did '19 so I think he's  
 20 heavily involved I think June of '17 is  
 21 when he started getting more heavily  
 22 involved. Maybe '16 but it was probably  
 23 June of '17.  
 24 When I say June of '17, I mean  
 25 the statement dated June of '17.

Page 318

1 J. McConney  
 2 THE WITNESS: They're asking  
 3 prices.  
 4 Q. The issue of adding a thirty  
 5 percent premium for a completed facility,  
 6 who did you discuss that with at The Trump  
 7 Organization?  
 8 A. Allen Weisselberg.  
 9 Q. Anyone else?  
 10 A. Not that I remember.  
 11 Q. Anybody outside The Trump  
 12 Organization tell you oh, that's  
 13 appropriate?  
 14 A. I don't remember.  
 15 MS. FAHERTY: Who suggested  
 16 thirty percent to you?  
 17 THE WITNESS: It may have been  
 18 Allen Weisselberg.  
 19 MS. FAHERTY: Okay.  
 20 Anyone else?  
 21 THE WITNESS: Not that I can  
 22 remember, no.  
 23 MS. FAHERTY: That wasn't your  
 24 figure; was it?  
 25 THE WITNESS: No.

Page 319

1 J. McConney  
 2 MR. ROSEN: Just for the record,  
 3 I think it's appropriate for one  
 4 questioner. I see you guys have been  
 5 passing notes. If you want to yield  
 6 time at the end -- you're coming at  
 7 him five different places. I'm just  
 8 noting my objection to that.  
 9 MR. HAREN: Your objection is  
 10 noted.  
 11 Q. We referenced two properties  
 12 earlier. They're reflected in rows two  
 13 hundred through two hundred nine, 1520  
 14 South Ocean and another property for sale  
 15 in Palm Beach.  
 16 Do you see those?  
 17 A. Yes.  
 18 Q. Did you have any basis to  
 19 believe that these properties were not  
 20 completed at the time you used them as  
 21 comparable properties to Mar-a-Lago?  
 22 A. Again, I'd have to look at the  
 23 backup I used in order to pick these  
 24 properties to see what they were. I'd  
 25 have to look at the backup.

Page 320

1 J. McConney  
 2 Q. You don't recall?  
 3 A. I don't recall using houses  
 4 under construction that I can remember.  
 5 Q. Could you look at page eight of  
 6 the 2011 financial statement, Exhibit 2.  
 7 Under the heading club  
 8 facilities and related real estate on that  
 9 page, could you read the third sentence to  
 10 the end of the paragraph into the record,  
 11 please.  
 12 A. "Several of these clubs?"  
 13 Q. No.  
 14 I'll just read it.  
 15 "The estimated current value of  
 16 one billion three hundred fourteen million  
 17 six hundred thousand is based on an  
 18 assessment of the cash flow that was  
 19 expected to be derived from club  
 20 operations, the sale of residential units  
 21 after subtracting the estimated costs to  
 22 be incurred, or recent sale of properties  
 23 in a similar location. That assessment  
 24 was prepared by Mr. Trump working in  
 25 conjunction with his associates and

Page 321

1 J. McConney  
 2 outside professionals."  
 3 Do you see that?  
 4 A. Yes.  
 5 Q. Do you remember who the  
 6 associates referred to here are?  
 7 A. I think it would vary by each  
 8 entity, but I don't remember specifically  
 9 who it was, who they were.  
 10 Q. And how about the outside  
 11 professionals?  
 12 A. The same answer.  
 13 Q. Could you review the --  
 14 MR. HAREN: Let's do one more  
 15 question and take a quick break, if  
 16 that works.  
 17 Q. I'm just going to ask you the  
 18 question and then you can review the rows  
 19 of the supporting data.  
 20 Am I correct that there's no  
 21 outside professional identified in rows  
 22 one hundred eighty-three to five hundred  
 23 thirty-one to support the reported  
 24 valuation or valuations of Mr. Trump's  
 25 clubs and related real estate for the

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CERTIFICATION BY REPORTER

I, Wayne Hock, a Notary Public of the State of New York, do hereby certify:

That the testimony in the within proceeding was held before me at the aforesaid time and place;

That said witness was duly sworn before the commencement of the testimony, and that the testimony was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 5TH day of March, 2020.

*Wayne Hock*

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STATE OF NEW YORK  
OFFICE OF ATTORNEY GENERAL

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In re:

FINANCIAL STATEMENTS INVESTIGATION

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March 5, 2020

9:56 a.m.

CONTINUED EXAMINATION UNDER OATH  
of JEFFREY MCCONNEY, held at the offices  
of STATE OF NEW YORK OFFICE OF ATTORNEY  
GENERAL, 28 Liberty Street, New York, New  
York before Wayne Hock, a Notary Public of  
the State of New York.

Page 524

1 J. McConney  
 2 think it is the office space for Trump  
 3 Tower and the retail space for Trump  
 4 Tower, but it doesn't say that.  
 5 Q. You would agree that this  
 6 appears in the portion of the spreadsheet  
 7 referring to the Trump Tower valuation;  
 8 right?  
 9 A. Right. But going back to 2011,  
 10 again my best remembrance is that's the  
 11 square footage. But just because it's in  
 12 that space, I can't say that's the Trump  
 13 Tower square footage. I'm pretty sure it  
 14 is. I'm just not going to make that a  
 15 definitive statement unless I have  
 16 something else showing me the square  
 17 footage we used in those years.  
 18 Q. Is it roughly correct that the  
 19 Trump Tower's about thirty-nine percent  
 20 retail and sixty-one percent office space?  
 21 A. I don't remember the breakdown.  
 22 Q. The person Doug Larson who you  
 23 referenced a few minutes ago is also  
 24 referenced here between row fifty-six and  
 25 fifty-nine in column C; is that correct?

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1 J. McConney  
 2 A. Yes.  
 3 Q. How do you know Mr. Larson?  
 4 A. I've known Doug for a long time.  
 5 I don't know him personally. I don't  
 6 remember if he did an appraisal for us or  
 7 when we obtained a loan he did some work  
 8 for us. I don't know how he became  
 9 acquainted.  
 10 Q. Roughly how long have you known  
 11 him?  
 12 A. Over ten years.  
 13 Q. And you're aware of his work as  
 14 an appraiser at Cushman and Wakefield?  
 15 A. Yes.  
 16 Q. It says here that Mr. Larson  
 17 provided you a cap rate of four percent  
 18 for a building on Seventh Avenue; is that  
 19 right?  
 20 A. Yes.  
 21 Q. And how did he provide with you  
 22 that information?  
 23 A. There was probably a document he  
 24 sent us, these reports for class A office  
 25 buildings in midtown, I think he's got it

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1 J. McConney  
 2 broken down between midtown and downtown;  
 3 I don't know if there's a third report.  
 4 So we get the downtown report for 40 Wall  
 5 Street, to value 40 Wall Street with the  
 6 cap rates and properties in those  
 7 locations and the midtown report which we  
 8 provide information about various sales  
 9 that have happened, he usually has eight  
 10 or ten of them on there and it just goes  
 11 whatever period of time it covers.  
 12 Q. And so you're referring to there  
 13 might be a report prepared by Mr. Larson's  
 14 group at Cushman that describes some sales  
 15 that occurred in midtown in a particular  
 16 quarter in a particular year with generic  
 17 market information?  
 18 A. Yes.  
 19 Q. Thank you.  
 20 And you're understanding is  
 21 there's one for midtown and one for  
 22 downtown?  
 23 A. Yes, those are the two I know  
 24 of.  
 25 Q. The discussions or e-mails Mr.

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1 J. McConney  
 2 Larson -- discussions you might have had  
 3 with Mr. Larson or e-mails Mr. Larson  
 4 might have sent you, were these part of  
 5 any formal engagement of Cushman and  
 6 Wakefield?  
 7 A. No.  
 8 Q. Did you engage them to perform  
 9 any valuation services of Trump Tower?  
 10 A. For this purpose, not that I  
 11 remember, no.  
 12 Q. Thank you.  
 13 Did you tell Mr. Larson you were  
 14 using the information he provided to  
 15 prepare Mr. Trump's personal financial  
 16 statement?  
 17 A. I don't remember if we told him  
 18 exactly the purpose. We told him we were  
 19 valuing Mr. Trump's assets. I don't know  
 20 if we told we were using it for a  
 21 statement of financial condition. But I  
 22 know he said after a few years I'm working  
 23 on my annual project, send me what you  
 24 normally send us or send me these reports.  
 25 I may have said to him at some

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1 J. McConney  
 2 point in time specifically exactly what we  
 3 were using the reports for, but these are  
 4 I don't want to say public reports but  
 5 documents that he didn't prepare for us,  
 6 he gave to whoever he gave it to, so I  
 7 really don't remember if I gave him the  
 8 specific purpose what we were using it  
 9 for.  
 10 Q. Thank you.  
 11 And would he have had any reason  
 12 to believe that the information he was  
 13 providing would be used for a financial  
 14 statement that would be submitted to a  
 15 financial institution in connection with a  
 16 loan?  
 17 A. Can you ask that again?  
 18 MR. HAREN: Could you read the  
 19 question back, please.  
 20 (Whereupon the requested portion  
 21 was read back by the reporter)  
 22 THE WITNESS: I'm not sure we  
 23 submitted the financial statement in  
 24 connection with a loan. I'm sure we  
 25 provided it just for general

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1 J. McConney  
 2 information and then, when we provided  
 3 -- we provided specific information  
 4 for the property for the loan. This  
 5 was just general information of what  
 6 Mr. Trump's worth is.  
 7 MR. ROSEN: Repeat the question.  
 8 I just blanked out.  
 9 (Whereupon the requested portion  
 10 was read back by the reporter)  
 11 MR. ROSEN: He being Doug Larson?  
 12 MR. HAREN: Yes.  
 13 THE WITNESS: Again, it's a  
 14 ten-year acquaintance. I don't  
 15 remember if at the very beginning I  
 16 told him what it was for. I may or  
 17 may not have. So it's hard for me to  
 18 answer that question.  
 19 Q. You don't recall giving him a  
 20 basis to believe that; right?  
 21 A. If I told him in one year that  
 22 we're putting together Mr. Trump's  
 23 financial statement, I don't remember if I  
 24 said we're giving it to the banks. So  
 25 what he gathered from the conversation or

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1 J. McConney  
 2 e-mail that we had, you'd have to ask him  
 3 what he construed it to be. I don't  
 4 remember or not remember telling him we're  
 5 doing this for a bank loan.  
 6 Q. So you don't recall giving Mr.  
 7 Larson a basis to believe that the  
 8 information he was providing to you would  
 9 be used to generate a financial statement  
 10 that would be submitted to a bank in  
 11 connection with a loan; right?  
 12 A. One more time, please?  
 13 MR. HAREN: Could you read back  
 14 the question.  
 15 MR. ROSEN: It's a long question.  
 16 (Whereupon the requested portion  
 17 was read back by the reporter)  
 18 THE WITNESS: Yeah, I don't  
 19 remember.  
 20 MR. ROSEN: Why don't you break  
 21 it down into smaller parts.  
 22 MR. HAREN: Would you just repeat  
 23 the question? Is the answer to the  
 24 question yes?  
 25 (Whereupon the requested portion

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1 J. McConney  
 2 was read back by the reporter)  
 3 THE WITNESS: Okay.  
 4 So it's compound. I don't  
 5 remember.  
 6 Again --  
 7 MR. ROSEN: You don't remember.  
 8 Q. You don't remember giving him  
 9 such a basis; right?  
 10 A. Correct.  
 11 Q. Thank you.  
 12 Row fifty-seven to fifty-nine in  
 13 column C there's a sentence that reads,  
 14 "Trump Tower is located in a prime  
 15 location and there were no comps available  
 16 in our area so a cap rate of 3.5 percent  
 17 was used for this calculation."  
 18 Do you see that?  
 19 A. Yes.  
 20 Q. So you used a 3.5 percent cap  
 21 rate instead of the four percent you  
 22 stated was provided by Mr. Larson; right?  
 23 A. Correct.  
 24 Q. And the reason is the reason  
 25 reflected in the quote I just read?

<p style="text-align: right;">Page 540</p> <p>1 J. McConney</p> <p>2 rows thirty-three to forty-one contain a</p> <p>3 valuation for Trump Tower for the June 30,</p> <p>4 2012 financial statement?</p> <p>5 A. Can you just scroll up a little</p> <p>6 bit so I can see the heading in the</p> <p>7 column, for what year it is?</p> <p>8 Yes.</p> <p>9 Q. Thank you.</p> <p>10 In rows fifty-two to fifty-four</p> <p>11 there is a reference to, "information</p> <p>12 provided by Doug Larson of Cushman and</p> <p>13 Wakefield, Inc. which reflects cap rates</p> <p>14 of 3.12 percent and 3.23 percent for</p> <p>15 office buildings at 666 and 645 Fifth</p> <p>16 Avenue. We used the average rate for</p> <p>17 these two properties," parens, "i.e. 3.1</p> <p>18 seventy-five percent," end parens.</p> <p>19 A. Yes, I see that.</p> <p>20 Q. And I read that correctly?</p> <p>21 A. Yes.</p> <p>22 Q. Did Mr. Larson provide this</p> <p>23 information in the same way you described</p> <p>24 him providing the market information for</p> <p>25 the 2011 statement?</p>	<p style="text-align: right;">Page 542</p> <p>1 J. McConney</p> <p>2 another valuation of Trump Tower in</p> <p>3 another set of supporting data, your</p> <p>4 answers to those two questions would be</p> <p>5 the same?</p> <p>6 A. I don't remember those</p> <p>7 questions.</p> <p>8 Can you just give me a vague</p> <p>9 idea --</p> <p>10 MR. HAREN: We'll just get to</p> <p>11 them when we get to them.</p> <p>12 Can we mark as an exhibit a</p> <p>13 document with the Bates</p> <p>14 number MAZARS-NYAG-00003471.</p> <p>15 (Whereupon, a document entitled</p> <p>16 Trump Tower Commercial LLC Statement</p> <p>17 of Income and Members' Equity</p> <p>18 was marked Exhibit 55</p> <p>19 for identification.)</p> <p>20 Q. Do you see in column H of the</p> <p>21 spreadsheet row thirty-four where there's</p> <p>22 a code 4800.02?</p> <p>23 A. That's Bender's code.</p> <p>24 Q. Yes, but do you see that the</p> <p>25 code is there?</p>
<p style="text-align: right;">Page 541</p> <p>1 J. McConney</p> <p>2 A. I believe so, yes.</p> <p>3 Q. And I asked you some questions</p> <p>4 about whether Mr. Larson -- whether you</p> <p>5 told Mr. Larson that you were asking for</p> <p>6 this information for purposes of preparing</p> <p>7 a financial statement.</p> <p>8 Do you remember that?</p> <p>9 A. Yes.</p> <p>10 Q. Would your answers to those</p> <p>11 questions for purposes of the 2011</p> <p>12 statement be the same for purposes of the</p> <p>13 2012 statement?</p> <p>14 A. Yes.</p> <p>15 Q. And the question I asked about</p> <p>16 whether Mr. Larson -- whether you gave Mr.</p> <p>17 Larson any reason to believe that the</p> <p>18 information he was providing would be used</p> <p>19 to prepare a financial statement that</p> <p>20 would be submitted to a bank, your answer</p> <p>21 would be the same for the 2012 statement;</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. And to the extent you relied on</p> <p>25 Mr. Larson for another cap rate for</p>	<p style="text-align: right;">Page 543</p> <p>1 J. McConney</p> <p>2 A. Yes, those blue codes are all</p> <p>3 Bender's, yes.</p> <p>4 Q. Thank you.</p> <p>5 I will just represent to you</p> <p>6 that this file was produced by Mazars and</p> <p>7 had a file name of</p> <p>8 4800.02trumptowercomercial -- spelled with</p> <p>9 one M -- 6-30-12.pdf.</p> <p>10 Is this your backup for the 2012</p> <p>11 Trump Tower valuation?</p> <p>12 A. Yes.</p> <p>13 Q. And on the second page of the</p> <p>14 document with the Bates stamp ending in</p> <p>15 3472, do you see that in the table there</p> <p>16 are two sales, one for 645 Fifth Avenue</p> <p>17 and one for 666 Fifth Avenue?</p> <p>18 A. Yes.</p> <p>19 Q. And one of those has a cap rate</p> <p>20 of 3.12 percent; correct?</p> <p>21 A. Yes.</p> <p>22 Q. And another has a cap rate of</p> <p>23 3.23 percent; correct?</p> <p>24 A. Yes.</p> <p>25 Q. Am I correct that the eight</p>



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1

2 INDEX (continued)

3 EXHIBITS (continued)

4 FOR ID DESCRIPTION PAGE

5 Exhibit 56 One-page document 549

6 Exhibit 57 Four-page document 552

7 Exhibit 58 Document entitled

8 Trump Tower Commercial

9 LLC Statement of Income

10 and Members' Equity dated

11 December 31, 2015 568

12 Exhibit 59 Document entitled

13 Trump Tower Commercial

14 LLC Statement of Income

15 and Members' Equity dated

16 December 31, 2016 573

17 Exhibit 60 E-mail dated

18 September 1, 2017 575

19 Exhibit 61 Four-page document 576

20 Exhibit 62 Document entitled

21 Trump Tower Commercial

22 LLC Statement of Income

23 and Members' Equity dated

24 December 31, 2017 585

25

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1

2 CERTIFICATION BY REPORTER

3

4 I, Wayne Hock, a Notary Public of the

5 State of New York, do hereby certify:

6 That the testimony in the within

7 proceeding was held before me at the

8 aforesaid time and place;

9 That said witness was duly sworn

10 before the commencement of the testimony,

11 and that the testimony was taken

12 stenographically by me, then transcribed

13 under my supervision, and that the within

14 transcript is a true record of the

15 testimony of said witness.

16 I further certify that I am not

17 related to any of the parties to this

18 action by blood or marriage, that I am not

19 interested directly or indirectly in the

20 matter in controversy, nor am I in the

21 employ of any of the counsel.

22 IN WITNESS WHEREOF, I have hereunto

23 set my hand this 6th day of March, 2020.

24 *Wayne Hock*

25

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1

2 INDEX (continued)

3 EXHIBITS (continued)

4 FOR ID DESCRIPTION PAGE

5 Exhibit 63 E-mail dated

6 April 20, 2018 591

7 Exhibit 64 Three-page document 591

8

9 ATTORNEY HAREN FROM STATE OF NEW YORK

10 OFFICE OF THE ATTORNEY GENERAL HAS

11 RETAINED ALL EXHIBITS

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STATE OF NEW YORK  
OFFICE OF ATTORNEY GENERAL

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IN re:  
FINANCIAL STATEMENTS INVESTIGATION

----- x

June 15, 2020  
9:43 a.m.

725 Fifth Avenue  
New York, New York 10022

CONTINUED DEPOSITION of JEFF MC CONNEY,  
taken pursuant to Notice, held via WebEx before  
Fran Insley, a Notary Public of the States of  
New York and New Jersey.

<p style="text-align: right;">Page 772</p> <p>1                   McConney</p> <p>2     A.   Yes.</p> <p>3     Q.   I just want to -- that is the prime</p> <p>4 number just to justify 6 percent, right?</p> <p>5     A.   I think so, yes.</p> <p>6     Q.   If we could pull up the 2011</p> <p>7 Statement of Financial Condition that was</p> <p>8 marked as Exhibit 2, please.</p> <p>9           MR. HAREN: Alex, could you turn to</p> <p>10 page -- let's just make the record clear.</p> <p>11 The document we are looking at was marked</p> <p>12 as Exhibit 2 in Mr. McConney's prior</p> <p>13 testimonial session and has a Bates number</p> <p>14 MAZARS-NYAG-00003131.</p> <p>15       Alex, if you could turn to page 6,</p> <p>16 please.</p> <p>17     A.   Could you make it a little larger,</p> <p>18 please.</p> <p>19     Q.   Do you see in the last paragraph</p> <p>20 says, quote, "The current value of 263,700,000</p> <p>21 reflects the net proceeds which Mr. Trump, in</p> <p>22 conjunction with his associates and outside</p> <p>23 professionals, expect to be derived from the</p> <p>24 rental activities pursuant to the lease</p> <p>25 described above as well as the residual value</p>	<p style="text-align: right;">Page 774</p> <p>1                   McConney</p> <p>2 back to how was the value of the bonds arrived</p> <p>3 at the first time. To answer your question,</p> <p>4 the words, the bonds that were issued by Bear</p> <p>5 Stearns in 1995 was the basis for this</p> <p>6 computation is not in that paragraph.</p> <p>7     Q.   Does anything in Rows 63 to 107 of</p> <p>8 the 2011 supporting data we were looking at and</p> <p>9 that was marked as Exhibit 5 refer to net</p> <p>10 proceeds expected to be derived from rental</p> <p>11 activity?</p> <p>12     A.   I go back to it. I don't know how</p> <p>13 Bear Stearns arrived at the value of bonds of</p> <p>14 92 million and how the investors looked at it.</p> <p>15 I don't know off the top of my head what their</p> <p>16 basis was.</p> <p>17     Q.   So my question is, does anything in</p> <p>18 Rows 63 to 107 of the supporting data</p> <p>19 spreadsheet that is Exhibit 5 refer to net</p> <p>20 proceeds expected to be derived from rental</p> <p>21 activity?</p> <p>22     A.   Those exact words don't.</p> <p>23     Q.   And there is no mention here of</p> <p>24 gross revenue expected to be derived from</p> <p>25 rental activities, is there?</p>
<p style="text-align: right;">Page 773</p> <p>1                   McConney</p> <p>2 of the property." Did I read that correctly?</p> <p>3     A.   Yes.</p> <p>4     Q.   Is there any reference in the</p> <p>5 discussion with Nike Town on page 6 of the 2011</p> <p>6 Statement of Financial Condition that indicates</p> <p>7 the reported property value is based on the par</p> <p>8 value of the bonds as issued in 1995?</p> <p>9     A.   Well, isn't that the basis of the</p> <p>10 starting point? However, they figured out --</p> <p>11 they being the sellers of the bonds -- figured</p> <p>12 out how much they could sell and what interest</p> <p>13 rate they would have to ascribe to it.</p> <p>14 Wouldn't that be part of the cash flow from the</p> <p>15 property? I don't know how they arrived at</p> <p>16 that bond price and just the value increase</p> <p>17 year after year. Wouldn't you have to look at</p> <p>18 the initial computation of the bonds and how</p> <p>19 that was arrived at, isn't that basically where</p> <p>20 that is coming from?</p> <p>21       MR. HAREN: Fran, can you read back</p> <p>22 my question, please?</p> <p>23       (Whereupon, the record was read by</p> <p>24 the reporter.)</p> <p>25     A.   I hear your question, but I'm going</p>	<p style="text-align: right;">Page 775</p> <p>1                   McConney</p> <p>2     A.   Well, that is where the funds came</p> <p>3 from to pay off the bonds. The rental income</p> <p>4 from Nike Town.</p> <p>5     Q.   But we see other valuations from</p> <p>6 this supporting data spreadsheet and other</p> <p>7 supporting data spreadsheets where there is a</p> <p>8 revenue figure and expense figure and you get</p> <p>9 to a net income. Nothing like that is done</p> <p>10 here for Nike Town, correct?</p> <p>11     A.   The bonds created that value based</p> <p>12 on the revenue stream from Nike.</p> <p>13       MR. HAREN: Fran, can you read back</p> <p>14 my question?</p> <p>15       (Whereupon, the record was read back</p> <p>16 by the reporter.)</p> <p>17     A.   If you are saying do I specifically</p> <p>18 have a revenue number less expenses to a NOI</p> <p>19 number, those -- that computation is not here.</p> <p>20 That's correct.</p> <p>21     Q.   Is there any outside professional</p> <p>22 mentioned between Rows 63 and 107 of 2011</p> <p>23 supporting data spreadsheet?</p> <p>24     A.   Those are the individuals who</p> <p>25 prepared the bond offering, the initial</p>

45 (Pages 772 - 775)

<p style="text-align: right;">Page 776</p> <p>1                   McConney</p> <p>2 valuation, the starting point.</p> <p>3           MR. HAREN: So, Alex, if you could</p> <p>4 pull back up the financial statement,</p> <p>5 Exhibit 2.</p> <p>6 Q. The last paragraph here I read a</p> <p>7 little bit ago, that said, "The current value</p> <p>8 of 263,700,000 reflects the net proceeds which</p> <p>9 Mr. Trump, in conjunction with his associates</p> <p>10 and outside professionals, expect to be derived</p> <p>11 from rental activities pursuant to the lease</p> <p>12 described above as well as the residual value</p> <p>13 of the property."</p> <p>14 Is it your testimony that outside</p> <p>15 professionals here refers to the people who did</p> <p>16 the bond offering?</p> <p>17 A. Yes.</p> <p>18 Q. Did you consult with the people who</p> <p>19 did the bond offering in doing the valuation of</p> <p>20 the 2011 supporting data?</p> <p>21 A. No.</p> <p>22 Q. Thank you. Did you or anyone else</p> <p>23 at The Trump Organization estimate any net</p> <p>24 proceeds to be derived from the Nike Town</p> <p>25 property by Mr. Trump or The Trump Organization</p>	<p style="text-align: right;">Page 778</p> <p>1                   McConney</p> <p>2 valuation is the same as the 2011 valuation,</p> <p>3 but adjusted upward by 6 percent?</p> <p>4 A. Yes.</p> <p>5           MR. HAREN: Alex, let's pull up the</p> <p>6 2012 Statement of Financial Condition</p> <p>7 which was marked as Exhibit 6 in your</p> <p>8 prior testimony. Let's turn to page 6.</p> <p>9 Q. The page of the Statement of</p> <p>10 Financial Condition for 2012 that we are</p> <p>11 looking at right now is a description of the</p> <p>12 Nike Town property and its valuation, right?</p> <p>13 A. Yes.</p> <p>14 Q. And the paragraph at the bottom of</p> <p>15 the page reads, quote, "The current value of</p> <p>16 \$279,500,000 reflects the net proceeds which</p> <p>17 Mr. Trump, in conjunction with his associates</p> <p>18 and outside professionals, expect to be derived</p> <p>19 from rental activities pursuant to the lease</p> <p>20 described above, as well as the residual value</p> <p>21 of the property." Did I read that correctly?</p> <p>22 A. Yes, you did.</p> <p>23 Q. Is there any reference in the</p> <p>24 discussion of Nike Town on page 6 of the 2012</p> <p>25 Statement of Financial Condition that indicates</p>
<p style="text-align: right;">Page 777</p> <p>1                   McConney</p> <p>2 in connection with preparing 2011 financial</p> <p>3 data?</p> <p>4 A. Can you ask that again, please?</p> <p>5           MR. HAREN: Fran, can you read back</p> <p>6 my question.</p> <p>7 (Whereupon the record was read back</p> <p>8 by the reporter.)</p> <p>9 A. No.</p> <p>10 Q. Let's turn to the 2011 supporting</p> <p>11 data, which was marked as -- excuse me, the</p> <p>12 2012 supporting data which was marked as</p> <p>13 Exhibit 10 in your prior testimony.</p> <p>14           MR. HAREN: Let's just, so the</p> <p>15 record is clear, Alex, could you scroll up</p> <p>16 to the top?</p> <p>17 Q. Mr. McConney, the document we are</p> <p>18 looking at is the 2012 supporting data,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. And let's scroll down to Row 104 --</p> <p>22 there you go. Keep scrolling. I'm looking at</p> <p>23 Row 103 to 104?</p> <p>24 A. Okay.</p> <p>25 Q. Is it correct that the 2012</p>	<p style="text-align: right;">Page 779</p> <p>1                   McConney</p> <p>2 the reported property value is based on the par</p> <p>3 value of the bonds issued in 1995?</p> <p>4 A. No.</p> <p>5           MR. HAREN: Let's go back to the</p> <p>6 supporting data, Alex.</p> <p>7 Q. Is there anything in Rows 60 to 107</p> <p>8 of the 2012 financial statement that refers to</p> <p>9 net proceeds expected to be derived from rental</p> <p>10 activities?</p> <p>11 A. No specific words, no.</p> <p>12 Q. There is no mention of revenue or</p> <p>13 expenses, right?</p> <p>14 A. Let me defer to my answer from the</p> <p>15 last financial statements built into the bonds</p> <p>16 and the value of the bonds, but those specific</p> <p>17 words, no.</p> <p>18 Q. So your testimony about the meaning</p> <p>19 of the phrase "outside professionals" on the</p> <p>20 financial statement is the same for 2012 as it</p> <p>21 was for 2011?</p> <p>22 A. Correct.</p> <p>23 Q. Did you or anyone else at The Trump</p> <p>24 Organization estimate any net proceeds to be</p> <p>25 derived from the Nike Town property in</p>

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1                   McConney  
2 the topic of brand value?  
3     A.   That's all that I remember.  
4           MR. HAREN: Do my colleagues have  
5 any questions about those points?  
6           MR. SOLOMON: It's Lou Solomon. I  
7 do actually.  
8 EXAMINATION BY MR. SOLOMON:  
9     Q.   How are you?  
10    A.   Good.  
11    Q.   Sorry for the late hour, but I just  
12 wanted to follow-up on something. Am I correct  
13 you said that the conclusion from Predictive  
14 was communicated by letter to The Trump  
15 Organization?  
16    A.   I don't know who it was sent to, but  
17 we received a document with writing from  
18 Predictive.  
19    Q.   When Predictive was asked to come up  
20 with this brand value, do you -- do you or did  
21 you at the time have any understanding as to  
22 the reason why they were tasked with that  
23 endeavor?  
24    A.   Not that I remember.  
25           MR. SOLOMON: That's all I have.

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1                   McConney  
2           MR. HAREN: If no one else has  
3 questions, then we may just clear the  
4 5:00 o'clock hour.  
5           Mr. McConney, thank you for your  
6 time. Thanks everyone else and thanks to  
7 the reporter for your work today and that  
8 concludes today's examination of Jeffrey  
9 McConney.  
10    MR. ROSEN: Eric, you're done with  
11 Jeff now, correct?  
12    MR. HAREN: For the moment, yes.  
13    MR. ROSEN: You're not contemplating  
14 any additional days of testimony, correct?  
15    MR. HAREN: Not at the moment,  
16 correct.  
17    MR. ROSEN: Thank you. Good job  
18 today. Thanks for your professionalism  
19 everybody.  
20    MR. HAREN: You too.  
21           (Time noted: 4:59 p.m.)  
22  
23  
24  
25

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1  
2                   ACKNOWLEDGMENT  
3  
4 STATE OF                 :  
  :ss  
5 COUNTY OF                 :  
6  
7           I, JEFF MC CONNEY, hereby certify that  
8 I have read the transcript of my testimony  
9 taken under oath in my continued deposition on  
10 the 15th day of June, 2020; that the transcript  
11 is a true, complete record of my testimony and  
12 that the answers on the record as given by me  
13 are true and correct.  
14  
15   \_\_\_\_\_  
  JEFF MC CONNEY  
16  
17 Signed and subscribed to before  
18 me this                     day of  
19   , 2020.  
20  
21   \_\_\_\_\_  
  Notary Public of the State of  
22  
23  
24  
25

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1  
2  
3                   CERTIFICATE  
4           I, FRAN INSLEY, hereby certify that the  
5 Continued Deposition of JEFF MC CONNEY was held  
6 before me on the 15th day of June, 2020; that  
7 said witness was duly sworn before the  
8 commencement of testimony; that the testimony  
9 was taken stenographically by myself and then  
10 transcribed by myself; that the party was  
11 represented by counsel as appears herein;  
12           That the within transcript is a true  
13 record of the Continued Deposition of said  
14 witness;  
15           That I am not connected by blood or  
16 marriage with any of the parties; that I am not  
17 interested directly or indirectly in the  
18 outcome of this matter; that I am not in the  
19 employ of any of the counsel.  
20           IN WITNESS WHEREOF, I have hereunto set  
21 my hand this 16th day of June, 2020.  
22  
23   *Fran Insley*  
24   \_\_\_\_\_  
  FRAN INSLEY  
25

# Faherty Affirmation

## Exhibit # 36

**Donald J. Trump & Melania Knavs**

**Taxpayers' Response to  
IRS Notification Form (Form 5701)  
Pursuant to Revenue Procedure 99-28**

**For Tax Year Ended December 31, 2005**

**August 8, 2011**

*Prepared for Purposes of Settlement  
Pursuant to Fed. R. Evid. 408*

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**Taxpayer's Response to IRS Notification Form (Form 5701)**  
**Pursuant to Revenue Procedure 99-28**

In December 2005, Donald J. Trump (“**Taxpayer**”) donated a conservation easement (the “**Easement**” or “**Easement Deed**”)<sup>1</sup> over 505 acres of property in Bedminster, New Jersey (the “**Property**”) to the Township of Bedminster (the “**Township**” or “**Bedminster**”). It is undisputed that, via this Easement, Taxpayer restricted the Property from any residential or commercial development (other than as a golf course), for himself and all future owners, *in perpetuity*. In exchange for his donation, Taxpayer claimed the tax benefit specifically provided for by Congress to encourage such donations—a charitable deduction equal to the value of the forfeited property rights. Nevertheless, the Examination Division (“**Exam**”) of the Internal Revenue Service (“**IRS**”) challenges this deduction based on a general misunderstanding of, or in several instances, an outright disregard for the facts. Compounding Exam’s factual errors is its incorrect interpretation of certain of the relevant statutes, regulations, and cases.

Exam also relies on a demonstrably implausible appraisal report to conclude that, even if all of the requirements of a qualified conservation contribution are satisfied, the Easement itself has absolutely no value. Exam’s appraisal is so flawed that it cannot be relied upon.

**I. Introduction**

**A. Issues To Be Decided**

Exam proposes to disallow a \$39,100,000 charitable contribution deduction claimed by Taxpayer on his 2005 individual federal income tax return. Exam’s challenge to the deduction requires resolution of two issues: whether Taxpayer’s donation of the Easement qualified as a valid conservation contribution as defined by Internal Revenue Code section 170,<sup>2</sup> and, if so, whether Taxpayer correctly valued that donation.

Exam’s analysis posits facts that are either incorrect or incomplete. In general, it completely ignores (rather than rebuts) facts (provided and highlighted by the Taxpayer during this audit) that do not support its conclusion. At bottom, the facts are simple and undeniable: the plain language of the Easement *permanently restricts* Taxpayer and any future owner from using over 500 acres of pristine and scenic property in Bedminster, New Jersey for any residential or commercial operation other than as a golf course. Residents of Bedminster, who once feared that Taxpayer’s purchase of the Property signaled the imminent destruction of their scenic Township, literally celebrated the magnitude of his gift. Unquestionably, Bedminster’s citizenry understood that Taxpayer had made a valuable gift. Nevertheless, Exam attempts to manufacture technical foot-faults in order to deny Taxpayer his charitable deduction.

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<sup>1</sup> Conservation Easement between Lamington Farm Club LLC and the Township of Bedminster (Dec. 29, 2005) [hereinafter the “**Easement Deed**”].

<sup>2</sup> Unless otherwise specified, all references to “Code,” “section(s),” or “§” herein are to the Internal Revenue Code of 1986 (26 U.S.C., *et seq.*) as in effect for the year at issue; all references to “Treasury Regulation(s),” “Treas. Reg. §,” or “Regulation(s)” refer to regulations promulgated by the U.S. Treasury Department, as in effect for the years at issue.

All of Exam's arguments are without merit. Taxpayer's donation complied with all the requirements of section 170 and Taxpayer properly valued his gift.

## B. Executive Summary

Taxpayer purchased the Property in two separate transactions between August and October 2002. On August 30, 2002, LFB Acquisition LLC (a single member LLC of which Taxpayer was the sole member) ("**LFB**") and Lamington Farm Club LLC ("**LFC**") executed a Purchase and Sale Agreement whereby LFB acquired 100 percent of the existing membership interests from various members in LFC. Through the purchase of LFC memberships, LFB indirectly acquired certain lots on the Property, as well as options to purchase additional lots. These options were exercised on September 12, 2002, and October 10, 2002, respectively.

On December 29, 2005, for consideration of \$1, Taxpayer donated the Easement to the Township. The Easement restricts Taxpayer and any future owner of the Property from, *inter alia*, residentially or commercially developing the Property, other than for use as a golf course. The Easement recites Taxpayer's desire to maintain the Property's scenic viewsheds for the enjoyment of the general public as well as to protect and preserve significant natural habitats for threatened species that inhabit the Property, the Bobolink and the Grasshopper Sparrow. The Easement also provides public access to over six miles of equestrian trails that traverse the Property. In lieu of the residential development planned by the Property's prior owner, Taxpayer eventually constructed a second golf course as permitted by the Easement.

Taxpayer claimed a charitable deduction for the contribution on his 2005 federal income tax return. To value the contribution, Taxpayer retained Robert F. Heffernan ("**Heffernan**"), an appraiser with over 35 years of experience in Somerset County and particular expertise in valuing voluntary restrictions on property.

Based on his extensive experience in the area, as well as a review of then-current golf market conditions (including pro formas that projected that operating the Property as a golf club would result in net losses through at least 2009), Heffernan determined that the highest and best use of the Property, before donation of the Easement, was as a residential subdivision consisting of 33 lots, ranging in size from 10 to 27 acres ("**Residential Concept B**"). Residential Concept B was designed by Gladstone Design, Inc. ("**Gladstone**"), a locally-based engineering and land survey consulting firm. As described in more detail below, Gladstone reviewed the appropriate historical soil testing and other relevant engineering testing and concluded that a 33-lot residential subdivision was viable. Gladstone's conclusions were communicated to and relied upon by Heffernan in his highest and best use analysis.<sup>3</sup> Heffernan determined that the value of an unrestricted 33-lot residential subdivision was \$49,500,000.

Heffernan also valued the land as it existed post-donation and concluded that the Easement resulted in restricting the property from its highest and best use, i.e., a 33-lot

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<sup>3</sup> See Appraisal of Robert F. Heffernan & Associates (Dec. 31, 2005) [hereinafter the "**Heffernan Appraisal**"] at 34. Gladstone, in response to Exam's inquiries, confirmed this advice via letter to Taxpayer on May 13, 2010. See Opinion Letter from Ronald A. Kennedy, P.E., Gladstone Design, Inc. to Trump National Golf Club at Bedminster (May 13, 2010) [hereinafter the "**Gladstone Opinion Letter**"]. The Gladstone Opinion Letter was submitted as part of Taxpayer's Supplemental Response to Information Document Request ("**IDR**") #4 on May 17, 2010.

residential subdivision. Heffernan also concluded that operating the Property as a golf course was not the highest and best use of the Property due to a predicted lack of profitability and market conditions reflecting a trend of declining demand for golf. Heffernan concluded that the highest and best use of the Property, post-donation, was to restore the Property to a large estate residence. Heffernan valued this use at \$10,400,000. Thus, the total market value of the Easement donated was \$39,100,000, the difference between the Property's "before and after" values.

### C. Exam's Proposed Disallowance

Exam posits four arguments to support disallowing 100 percent of Taxpayer's claimed deduction for the Easement.<sup>4</sup> Specifically, Exam contends that Taxpayer's donation did not have a valid conservation purpose, that Taxpayer failed to obtain contemporaneous written acknowledgement of the donation as required by section 170(f)(8), and that the rights of the Township under the Easement were not enforceable in perpetuity. Alternatively, Exam contends that even if Taxpayer's donation satisfied the legal requirements for a charitable deduction, the deduction should be denied in full as the value of the deduction is zero. Each claim is demonstrably wrong.

First, Taxpayer's donation preserved unique scenic vistas available to the general public along a publicly-accessible road recognized by the Township as a "scenic corridor," protected over 135 acres of significant natural habitat for the threatened Bobolink and Grasshopper Sparrow species, and provided more than six miles of equestrian trails for use by the general public. Second, Taxpayer complied with section 170(f)(8)'s contemporaneous written acknowledgement requirement. The Easement Deed describes the property donated, states it was donated in exchange for \$1 of consideration, and was signed and accepted for the Township by the Deputy Mayor of Bedminster on the date of the donation. This is precisely what section 170(f)(8) requires. Finally, the rights of the Township, as donee, were protected in perpetuity as required by section 170(h)(2)(C) and Treas. Reg. § 1.170A-14(g)(2). The relevant agreements, as well as the understanding by all parties to those agreements (both then and now) establish that the rights granted by the Easement to the Township of Bedminster were not subject to the mortgage and the mortgagee had no rights in the eased property to subordinate. The Township's rights to enforce the Easement's restrictions were superior to those of the mortgagee; consequently, any additional "subordination agreement" would have been superfluous.

Exam's appraisal suffers from such severe deficiencies that no reasonable trier of fact could credit its conclusions. It incorrectly applies basic principles of valuation and is based on key assumptions that cannot be sustained. Exam's appraisal does not rebut, but simply ignores Taxpayer submissions that do not support its predetermined conclusion. Further, the appraisal's failure to allocate any value to the foregone commercial and residential development rights is a position that the courts have consistently rejected.

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<sup>4</sup> See Revenue Agent's Report at 27-29 [hereinafter the "RAR"].

## II. Detailed Factual Statement

### A. Physical Description of the Property

The Property is located at 567 Lamington Road in Bedminster, New Jersey. Bedminster lies within Somerset County. Between 1990 and 2000, Somerset County's population grew by 23.8 percent, the largest percentage population increase in the state of New Jersey. But, due to its physical characteristics and the preferences of its population (as expressed in land-use and zoning restrictions), it is not densely populated. It is the wealthiest county in the state of New Jersey, based on 1998 per capita income estimates. An extensive network of highways and public transportation provides residents of Somerset County with access to major cities such as Newark and New York City. Such proximity to major interstate highways benefits commuters, but makes preserving Bedminster's rural charm and character a continuing challenge.

Bedminster is located in the northwestern portion of Somerset County and presents a diversity of landscapes, parklands and residences. The Township presents a mix of history and natural beauty. Township residents enjoy outdoor activities, including equestrian activities, cycling, hunting, and fishing. The Township's success in preserving open space is "a source of community pride."<sup>5</sup> It spans roughly 26.5 square miles and is approximately 40 miles west of New York City and 25 miles west of Newark. The average Bedminster resident is significantly more affluent than the average Somerset County resident, with median incomes averaging at \$107,000. Estate-style residences in Bedminster range in value from \$1,500,000 to \$20,000,000.<sup>6</sup> Stringent zoning laws limit the supply of residential housing and insure a low density of population. At the same time, the relative scarcity of high-end residential housing and lots creates strong demand for residential housing.

The Property comprises approximately 505 contiguous acres located in the central portion of Bedminster. Bisecting the Property is Cowperthwaite Road, a 5,870 foot-long road that is maintained by Taxpayer and, contrary to Exam's assertions, is both accessible to the public *and* used by the public.<sup>7</sup> The Property itself contains rolling hills, open spaces and wooded areas, and serves as a habitat by several species designated by the State of New Jersey as "threatened," including the Bobolink and the Grasshopper Sparrow. Additionally (and again, contrary to Exam's assertion<sup>8</sup>) the public has full access to over six miles of equestrian trails that line the edges of Cowperthwaite Road and run throughout the Property.<sup>9</sup>

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<sup>5</sup> See *Virtual Tour of Bedminster*, available at [http://www.bedminster.us/index.asp?Type=B\\_LOC&SEC={8008C47B-DFD6-4CCA-859B-ED65ABE4DBF9}](http://www.bedminster.us/index.asp?Type=B_LOC&SEC={8008C47B-DFD6-4CCA-859B-ED65ABE4DBF9}) (last visited July 26, 2011).

<sup>6</sup> Heffernan Appraisal at 31.

<sup>7</sup> See Declaration of Covenants and Restrictions by LFC (June 23, 2004) [hereinafter "**Declaration of Covenants**"] at § 4 ("The Grantor in perpetuity does convey by this Declaration uninhibited public access over the Roadways described herein . . ."). *Id.* at § 10. This declaration was provided to Exam as part of Taxpayer's Supplemental Response to IDR #3 on April 6, 2010.

<sup>8</sup> RAR at 20-21.

<sup>9</sup> See Easement Deed at 6.



## B. Taxpayer's Acquisition of the Property

The Morgan Cowperthwaite family originally purchased the Property in 1917. At that time, the Property was used for a range of activities, from fox hunting to weddings, as well as grazing land for cattle. The Property remained in the Cowperthwaite family's name until it was purchased in 1981 by John Z. DeLorean. In January 2000, the Property was sold at a bankruptcy auction to LFC, and minority equity partner National Fairways, Inc. ("NFI"), a Connecticut-based developer and manager of upscale golf courses. NFI planned to develop the land into an 18-hole golf course and residential lots. In 2002, NFI experienced financial difficulties, fell into bankruptcy, and the project stalled. Like many golf course developers, NFI underestimated the magnitude of the resources necessary to construct a high-end golf course and residential community and overestimated the demand for golf, which was declining.

Indeed, in the year 2000, golf facility closures accelerated significantly, peaking at a high of 146 in 2006, the year after Taxpayer's donation.<sup>10</sup> The failure to accurately project costs and manage development often results in stalled projects that are rescued by buyers whose main objective is something other than profit maximization.<sup>11</sup>

On August 30, 2002, Taxpayer (through LFB) entered into a Purchase and Sale Agreement with LFC whereby Taxpayer acquired 100 percent of the membership interests in LFC. The Purchase and Sale Agreement transferred ownership of certain "LFC Assets" to LFB, including ownership of certain parcels on the Property. Specifically, through his purchase of the LFC membership interests, Taxpayer indirectly acquired Lots 13, 13Q Farm, 14, 14Q Farm, 9, 10Q Farm, and 11 of the Property.

The Purchase and Sale Agreement also granted the Taxpayer options to purchase additional parcels on the Property. Over the next six weeks, Taxpayer exercised these options and acquired the remaining lots on the Property in two separate purchases. Specifically, on September 12, 2002, Taxpayer (again through LFB) purchased Lot 8 from Dorothy and Cleveland Jewett. Finally, on October 10, 2002, Taxpayer acquired Lots 12.02 and 12.03. LFB subsequently granted these lots to LFC on February 6, 2004, in exchange for \$10.00.<sup>12</sup>

At the time of his acquisition, Taxpayer, a renowned real estate developer, well understood that the Property was suitable for residential development. Indeed, 14 estate lots on a contiguous parcel of the Property had nearly gained full approval.<sup>13</sup> Final approval for the residential lots was highly likely as evidenced by the fact that prospective buyers were contracting for the purchase of individual lots. In fact, reflecting the strong demand for

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<sup>10</sup> David Hueber and Elaine Worzala, "Code Blue" For U.S. Golf Course Real Estate Development: "Code Green" for Sustainable Golf Course Redevelopment, *Journal of Sustainable Real Estate*, May 2010, at 8.

<sup>11</sup> *Part of Stalled Development in New Jersey; Trump Buys Golf Course*, *New York Times*, Sept. 22, 2002.

<sup>12</sup> See Bargain and Sale Deed between LFB (as Grantor) and LFC (as Grantee) (Feb. 6, 2004). This document was provided to Exam as part of Taxpayer's Response to IDR #1 on September 14, 2009.

<sup>13</sup> See Purchase and Sale Agreement between LFB and LFC (Aug. 30, 2002) ("LFC has received the Development Approvals for the construction of the Golf Club and the Residential Lots . . . The Development Approvals are complete to construct the Golf Club and Residential Lots except for the Remaining Development Approvals."). This agreement was provided to Exam as part of Taxpayer's Response to IDR #1 on September 14, 2009.

residential housing in Bedminster, prior to Taxpayer's purchase, LFC had entered into agreements for sale of two of the 14 planned residential lots on the Property, one for \$1,485,000 and the other for \$1,500,000.<sup>14</sup>

### C. The Donation of the Easement

#### 1. Taxpayer's Decision to Donate a Conservation Easement to the Township

Taxpayer has a well-known passion for developing golf courses. Not including the courses at Bedminster, Taxpayer owns and operates several other high-end golf courses both within and outside of the United States, including courses in Puerto Rico, the Grenadines, California, New York, New Jersey, Washington, D.C., Philadelphia, and Florida. Taxpayer currently is constructing an additional course in Scotland. While Taxpayer's intent is to operate golf courses to cover expenses and turn a modest profit, he is also a savvy real estate investor who recognizes that using prime land for golf courses does not maximize profit. In fact, at the time of the donation, Taxpayer acknowledged that "housing would have been much more profitable."<sup>15</sup> But Taxpayer was willing to dedicate the Property to a less profitable use because he thought that he could develop it into a golf facility capable of fulfilling his dream to host a major tournament.

Taxpayer also recognized that a donation of a conservation restriction to Bedminster would allow him to enhance his reputation as a developer of premier golf clubs while preserving the natural habitat and open space provided by the Property. "I've given up a lot of dollar opportunity, but it's such an amazing open space, I thought it was the right thing to do."<sup>16</sup> Appreciation from the Township and its citizens for the foregone residential development opportunity was widespread. Committeeman (and future mayor of Bedminster) Robert Holtaway publicly thanked Taxpayer "for helping us to preserve a large, large piece of land," while Bedminster's then Deputy Mayor, Don Cross, stated that the donation was "awfully generous."<sup>17</sup>

#### 2. The Easement's Permanent Restrictions Further the Townships' Well-Articulated Conservation Goals

On December 29, 2005, and in exchange for \$1.00 consideration, Taxpayer donated to the Township "an easement and interest in perpetuity on, over and upon the Property . . . ."<sup>18</sup> The purpose for the Easement was to preserve the Property's natural, scenic, and open space condition by prohibiting any use of the Property that would "significantly impair or interfere with the scenic, open space, ecological, plant and wild life habitat," and other conservation

<sup>14</sup> Further details of these sales are set out below.

<sup>15</sup> Sandy Stuart, *Trump Signs Deed Restriction for Links*, *Bernardsville News*, Dec. 15, 2005.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Easement Deed at 6.

values.<sup>19</sup> Specifically, the Easement prohibits any residential or commercial use of the Property, other than as a golf course.<sup>20</sup>

The Easement also granted the Township all rights necessary to enforce the terms of the Easement and protect and preserve the conservation values stated therein.<sup>21</sup> The Township is allowed to enter the Property in order to monitor Taxpayer's compliance with the terms of the Easement.<sup>22</sup> As one of the most affluent communities in New Jersey, Bedminster had not only the commitment to preserve open space and conservation values, but it also had the resources necessary to monitor Taxpayer's compliance with the Easement's restrictions. The Township is "entitled to receive, from the net proceeds of any condemnation award or of a sale, lease, exchange, or other disposition of all or any portion of the Property . . . an amount equal to the stipulated fair market value of the Easement, or proportionate part thereof . . ." The Township is required to use such proceeds "consistent with the conservation purposes" of the Easement.<sup>23</sup>

The Easement directly furthered and promoted specifically stated conservation and community values that Bedminster had long pursued. As far back as 1991, the Township identified the careful management of future residential development as integral to preserving the rural and agricultural character of Bedminster, and memorialized its objectives in the "Master Plan of Bedminster Township."<sup>24</sup> Many of Bedminster's stated objectives, such as protecting scenic vistas of the rural countryside, are intended to preserve, protect, and enhance "Bedminster's natural and cultural resources."<sup>25</sup> Notably, the Master Plan specifically identifies Cowperthwaite Road as a scenic corridor worthy of preservation,<sup>26</sup> actively seeks acquisition of open space easements along critical wildlife corridors in order to protect wildlife habitats,<sup>27</sup> and encourages activities that further the traditional recreational pastimes of Bedminster's residents, such as equestrian activities.<sup>28</sup>

Because much of the work necessary to develop the Property for residential use had been completed by the time of Taxpayer's acquisition of the Property, Bedminster residents assumed that Taxpayer—a well-known developer—would divide the Property into lots and sell them.

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<sup>19</sup> Easement Deed at § 1.

<sup>20</sup> Easement Deed at § 3. Taxpayer reserved the right to construct and operate two 18-hole golf courses, a country club, and associated appurtenances, as well as perform any and all acts necessary in order to carry on and maintain all activities necessarily incident to operating a golf course. See Easement Deed at § 4.

<sup>21</sup> Easement Deed at § 2(a).

<sup>22</sup> Easement Deed at § 2(b).

<sup>23</sup> Easement Deed at § 8(c).

<sup>24</sup> See The Bedminster Township Planning Board, *Master Plan of Bedminster Township* (Jan. 2003, as revised through January 2005) [hereinafter the "Master Plan"] at 1.

<sup>25</sup> Master Plan at 2.

<sup>26</sup> Master Plan at 257.

<sup>27</sup> Master Plan at 214-15.

<sup>28</sup> Master Plan at 61.

The construction and sale of estate-style residences seemed inevitable. As one Bedminster resident stated in the fall of 2002, “I’ve lived here all my life, and every house that goes up, I resent. He’s building 14 houses. I don’t think anybody’s enthusiastic.”<sup>29</sup> However, the residents were surprised and gratified to learn that their interests and Taxpayer’s interests regarding the Property were aligned when Taxpayer extinguished his development rights through the Easement. Taxpayer decided to preserve the Property because “[i]t’s a very special place, and I felt I had an obligation to keep it that way.”<sup>30</sup>

### III. Response to Exam’s Legal Arguments

Exam argues that the donation of the Easement does not qualify for a deduction because (1) it does not meet any of the four conservation purposes of section 170(h)(4) and Treas. Reg. § 1.170A-14(d); (2) Taxpayer failed to satisfy the contemporaneous written acknowledgement requirement of section 170(f)(8); and (3) the rights of the Township, as Donee, are not enforceable in perpetuity.

Each of these arguments is wrong. First, Exam overlooks, ignores, or misconstrues key facts and directly on-point case law in concluding that no conservation purpose was met. Second, Exam ignores Taxpayer’s submission (that was submitted nearly two years ago and for which no follow-up questions were asked in six subsequent IDRs) demonstrating satisfaction of the contemporaneous written acknowledgement requirement. Finally, to support its arguments that the Easement is not enforceable in perpetuity, Exam relies on out-of-context statements in lieu of the plain language of the contracts between Taxpayer and its lender, subsequent agreements that confirmed the parties’ mutual understanding, and a sworn declaration by its lender to clarify its understanding of the agreements it made with Taxpayer.

#### A. The Easement Satisfied Not One, But Three, of the Code’s Conservation Purposes

Section 170(h) allows a deduction for a qualified conservation contribution if that contribution is made “exclusively for conservation purposes.”<sup>31</sup> Section 170(h)(4) defines a valid conservation purpose as: (i) the preservation of land areas for outdoor recreation by, or the education of, the general public (the “**Outdoor Recreation Purpose**”); (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem (the “**Habitat Purpose**”); (iii) the preservation of open space (the “**Open Space Purpose**”); and (iv) the preservation of an historically important land area or certified historic structure. Though a

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<sup>29</sup> Michael Gross, *Good Trump Hunting*, Daily News, Sept. 22, 2002. Residents’ concern regarding housing development was not unwarranted. As discussed above, two contracts for the sale of real estate on the Property had already been executed at the time of Taxpayer’s purchase in 2002.

<sup>30</sup> Sandy Stuart, *Trump Signs Deed Restriction for Links*, Bernardsville News, Dec. 15, 2005.

<sup>31</sup> I.R.C. § 170(h)(1)(A)-(C). The statute also requires that the contribution be made to a qualified organization (not at issue here) and that it be a qualified real property interest. See discussion *infra* Section III.C.

deductible contribution need only meet one of these four purposes,<sup>32</sup> Taxpayer's donation satisfies *three* of the four conservation purposes identified by the Code.

Exam's assertion that the restrictions on the Property did not satisfy any conservation purpose is contrary to both the uncontroverted facts and the applicable legal standards. First, Exam contends that the Open Space Purpose was not satisfied because the Easement does not permit public access to the Property and visual access along the boundaries of the Property was allegedly impaired by heavy growth of shrubs and trees.<sup>33</sup> Second, Exam argues that the Habitat Purpose was not met because a prior easement already protected 26 acres (out of approximately 505 acres of property) of habitat.<sup>34</sup> Finally, Exam asserts that the Easement fails the Outdoor Recreation Purpose because the Property's equestrian trails were not available to the general public.<sup>35</sup>

Exam is wrong on all three counts. First, Exam's interpretation of the Easement simply ignores documents that establish that Cowperthwaite Road (which bisects the Property) is accessible by the public, and provides unique scenic viewsheds unavailable anywhere else in Bedminster. Second, Exam disregards the fact that the Easement expanded the 26 acres of pre-existing protected grassland bird habitat to over 135 acres of protected habitat and then misinterprets the relevant legal standard in arguing that the existence of the 26 acres of protected habitat prohibits a deduction. Finally, Exam ignores the Easement itself as well as several Taxpayer submissions and IDR responses explaining that the Easement granted public access to over six miles of equestrian trails and use of equestrian-related improvements on the Property for the general public's recreational use. Ignoring, without rebutting, shows an intent by Exam to bend the facts to fit its arguments.

### **1. The Easement Preserves Open Space for the Enjoyment and Benefit of the General Public in Bedminster**

The regulations define the preservation of open space as a valid conservation purpose where such preservation is for the scenic enjoyment of the general public *or* pursuant to a clearly delineated Federal, State, or local governmental policy. Though a donation needs only one of these two alternatives to satisfy the Code's Open Space Purpose,<sup>36</sup> Taxpayer's donation satisfies both alternatives. In either case, the Code also requires that a donation yield a significant public benefit.<sup>37</sup>

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<sup>32</sup> *Herman v. Comm'r*, 98 T.C.M. (CCH) 197, 200 (2009) ("Under the statute, each of these four prongs is a conservation purpose in and of itself, and a taxpayer's satisfaction of one of these prongs suffices to establish the requisite conservation purpose.")

<sup>33</sup> RAR at 20.

<sup>34</sup> RAR at 21.

<sup>35</sup> RAR at 20-22.

<sup>36</sup> Treas. Reg. § 1.170A-14(d)(4)(vi)(C).

<sup>37</sup> I.R.C. § 170(h)(4)(A)(iii).

**a. The Easement Preserves Unique, Open Space Vistas for the Scenic Enjoyment of the General Public**

Preservation of land may be for the scenic enjoyment of the general public if development of the property would impair the scenic character of the landscape or would interfere with a scenic panorama that can be enjoyed from, among other places, a public road or trails.<sup>38</sup> The Treasury Regulations provide a variety of factors to consider in determining whether an easement provides for the scenic enjoyment of the general public, including the compatibility of the land use with other land in the vicinity,<sup>39</sup> the openness of the land,<sup>40</sup> and the property's relief from urban closeness,<sup>41</sup> among others. Visual access, as opposed to physical access, is sufficient to satisfy the scenic enjoyment requirement.<sup>42</sup>

Taxpayer's donation readily satisfies the Open Space Purpose. As explained above, the Property is bisected by more than a mile of a publicly accessible road.<sup>43</sup> In addition to views of the Property itself, other viewsheds are available from Cowperthwaite Road, such as the four mountain ranges that surround Somerset County and expansive vistas overlooking the Township. The Property offers one of the highest vantage points in Bedminster, and is one of the only places where such expansive views of the surrounding environment are available to the general public.<sup>44</sup> The road is not burdened by commuters and is instead populated by joggers, bicyclists, hikers, and equestrians (who frequent the publicly available trails that line Cowperthwaite Road) seeking to enjoy the open space and viewsheds offered from the road. From the road, residents can view magnificent vistas without the threat of commercialization or impairment by residential structures. Nothing obstructs the public's ability to enjoy these viewsheds, and, due to the Easement, nothing ever will.

The IRS's own guidance on the open space requirement supports Taxpayer's position. In a Private Letter Ruling issued in 1996, the IRS found that the purpose of preserving open space was met where "[d]evelopment of the [property] would interfere with and potentially destroy the natural vistas by the public from three miles of County Road R, a heavily-traveled road that provides access to National Forest nearby."<sup>45</sup> Similarly, Example 1 of Treas. Reg. § 1.170A-14(f) hypothesizes a conservation easement donated to combat the "increasing intensity of land development in State S." That easement imposes restrictions on the use of the property for purposes of maintaining its scenic values and requires that the property be "maintained forever as open space devoted exclusively to conservation purposes and wildlife protection, and that there

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<sup>38</sup> Treas. Reg. § 1.170A-14(d)(4)(ii)(A).

<sup>39</sup> Treas. Reg. § 1.170A-14(d)(4)(ii)(A)(1).

<sup>40</sup> Treas. Reg. § 1.170A-14(d)(4)(ii)(A)(3).

<sup>41</sup> Treas. Reg. § 1.170A-14(d)(4)(ii)(A)(4).

<sup>42</sup> Treas. Reg. § 1.170A-14(d)(4)(ii)(B).

<sup>43</sup> As noted above, Taxpayer provided this information to Exam as part of its Supplemental Response to IDR #3 on April 6, 2010, yet Exam erroneously maintains that Cowperthwaite Road is not publicly accessible.

<sup>44</sup> Examples of such viewsheds can be provided upon request.

<sup>45</sup> P.L.R. 96-32-003 (May 7, 1996).

be no commercial, industrial, residential, or other development use of such parcel.”<sup>46</sup> Because the public had the opportunity to “use . . . the property and appreciate its scenic values,” the donation qualifies for a deduction.<sup>47</sup>

Exam relies on the Easement Deed to argue that public access to the Property is not permitted and thus the Easement fails to satisfy the Code’s scenic enjoyment requirement.<sup>48</sup> Exam is flat-out wrong and this is an example of Exam’s consistent practice of ignoring established facts that do not fit its story.

In its RAR, Exam states that “[t]he subject easement deed states the right of access to or use of the property is not conveyed to the general public.”<sup>49</sup> In fact, the text of the Easement provides in section 14 that “nothing herein contained shall be construed to convey to the general public any right of access to or use of the Property . . . .”<sup>50</sup> However, LFC had granted the public an easement to use Cowperthwaite Road 18 months *before* the Easement was donated, allowing full access to the road (whether by foot, bike, or car). The deed reflecting that easement was provided to Exam on April 6, 2010, as part of Taxpayer’s Supplemental Response to IDR #3. The deed grants uninhibited public access over Cowperthwaite Road: “The Township shall have a perpetual easement over all of the Roadways [including Cowperthwaite Road] described herein . . . . Said easement shall be unlimited and unrestricted . . . .”<sup>51</sup> Exam also mistakenly interprets section 14 of the Easement; it does not, and in fact, cannot prohibit public access to the Property, but rather it clarifies that the Easement was not granting any additional rights to the general public than those rights which were previously granted. Moreover, the notion that the Easement intended to prohibit public access to the Property is belied by the Easement’s express intent to provide public access to over six miles of equestrian trails *located on the Property*.<sup>52</sup>

Exam also asserts that “[o]n several occasions, I noted that visual access to the open space on the golf course property is not possible due to the heavy growth of shrubs and trees *surrounding* the property.”<sup>53</sup> Whether these viewsheds are available from outside the Property is irrelevant. Exam itself toured the Property and was able to observe the scenic vistas available from the *publicly accessible* Cowperthwaite Road that runs *through* the Property.<sup>54</sup> The undisputed fact that the public can enjoy these viewsheds satisfies the Open Space Purpose.

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<sup>46</sup> Treas. Reg. § 1.170A-14(f), Ex. (1).

<sup>47</sup> *Id.*

<sup>48</sup> RAR at 6, 19-20.

<sup>49</sup> RAR at 19.

<sup>50</sup> Easement Deed at § 14.

<sup>51</sup> *See* Declaration of Covenants at §§ 4, 10.

<sup>52</sup> Easement Deed at 6.

<sup>53</sup> RAR at 20 (emphasis added).

<sup>54</sup> Exam toured the Property on June 22, 2010.

**b. The Easement Furthers the Conservation Policies of the Township of Bedminster**

Because the Easement satisfies the scenic enjoyment element of the Open Space Purpose, it need not satisfy any alternative test. Nonetheless, the Easement readily satisfies the alternative test under the Open Space Purpose because it was donated pursuant to a clearly delineated local conservation policy (the “**Local Policy Test**”). The Treasury Regulations provide that while it is insufficient for a donation to conform to general declarations of local conservation goals to satisfy the Local Policy Test, it may be met by donations that promote specific, identified conservation projects, such as the preservation of land that is locally recognized as being significant.<sup>55</sup> This test may also be met by demonstrating review and acceptance of the easement by a governmental agency.<sup>56</sup>

The conservation values preserved by the Easement fulfill several specific conservation policies articulated by the Township of Bedminster. Importantly, in its Master Plan (which has been in existence since 1991), Bedminster declares that scenic vistas are “a public resource” and emphasizes that “[t]he character and quality of exceptional viewsheds should be maintained and enhanced.”<sup>57</sup> In fact, Bedminster specifically designates Cowperthwaite Road a “scenic corridor.”<sup>58</sup> Moreover, the Township specifically encourages protecting endangered and threatened species, such as the Bobolink and Grasshopper Sparrow, through the acquisition of open space easements along “critical wildlife corridors.”<sup>59</sup>

The Treasury Regulations provide that “the protection of the scenic, ecological, or historic character of land that is contiguous to, or an integral part of, the surroundings of existing recreation or conservation sites” is a sufficiently specific conservation policy to meet the Local Policy Test.<sup>60</sup> Here, the Easement protects the viewsheds available from a Township-designated “scenic corridor” and preserves the threatened ecological habitats of the Bobolink and Grasshopper Sparrow. There is no question that the Easement furthered clearly delineated local and state policies.

Moreover, Bedminster’s acceptance of the Easement confirms the donation’s promotion of the Township’s conservation policies. Taxpayer provided Exam a copy of Bedminster Township Ordinance No. 2005-42, “An Ordinance Authorizing the Township of Bedminster to Accept a Conservation Easement from Lamington Farm Club, LLC” (the “**Ordinance**”).<sup>61</sup> The Ordinance authorized the Township to accept the Easement and recites the public benefits associated with the donation. The Ordinance specifically acknowledges the Property’s “natural, scenic, open space and conservation values” that are “of importance to Lamington, the Township

<sup>55</sup> Treas. Reg. § 1.170A-14(d)(4)(iii)(A).

<sup>56</sup> Treas. Reg. § 1.170A-14(d)(4)(iii)(B).

<sup>57</sup> Master Plan at 61.

<sup>58</sup> Master Plan at 257.

<sup>59</sup> Master Plan at 215.

<sup>60</sup> Treas. Reg. § 1.170A-14(d)(4)(iii)(A).

<sup>61</sup> The Ordinance was provided to Exam as part of Taxpayer’s Response to IDR #1 on September 14, 2009.



of Bedminster, the County of Somerset, and the State of New Jersey.”<sup>62</sup> Additionally, the Ordinance recognizes that the conservation values protected by the Easement serve to advance “the purposes of the Bedminster Township Master Plan and the Bedminster Township Zoning Ordinances” and expressly “desires that the open space, habitat, natural resource, and other scenic and conservation values associated with the Property” be preserved and protected.<sup>63</sup>

These undisputed facts establish that the conservation values protected by the Easement are aligned with and further the specific conservation objectives of Bedminster. Bedminster sought to promote preservation of *the specific viewsheds* that are available only from the Property and to protect ecological habitats of threatened species, the Bobolink and Grasshopper Sparrow, which *in fact inhabit* the Property. Thus, the donation readily satisfies the Local Policy Test of the Open Space Purpose.

### c. The Easement Yields a Significant Public Benefit

All contributions made for the preservation of open space must also yield a significant public benefit.<sup>64</sup> The mere preservation of ordinary land is not sufficient to yield a significant public benefit. However, the preservation of ordinary land, coupled with other factors, may yield a significant public benefit. These factors include (i) the intensity of land development in the vicinity of the property;<sup>65</sup> (ii) the consistency of the proposed open space use with public programs for conservation in the region;<sup>66</sup> and (iii) the likelihood that development of the property would lead to or contribute to the degradation of the scenic, natural, or historic character of the area.<sup>67</sup>

First, the conservation values protected by the Easement promote the stated conservation policies of Bedminster as promulgated in the Township’s Master Plan.<sup>68</sup> The Easement furthers Bedminster’s general policy of preserving the historic rural nature of the Township.<sup>69</sup> For example, the Master Plan’s objectives include the preservation of “scenic vistas of the rural countryside”<sup>70</sup> through the “public acquisition [of] areas of unique recreational or scenic value, or environmental sensitivity.”<sup>71</sup> The Easement preserves viewsheds not only of the subject property (itself containing rolling hills and natural habitats for threatened species of the Bobolink and Grasshopper Sparrow), but also offers one of the highest vantage points in Bedminster,

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<sup>62</sup> See Ordinance at ¶ 2.

<sup>63</sup> *Id.* at ¶¶ 5, 7.

<sup>64</sup> Treas. Reg. § 1.170A-14(d)(4)(iv)(A).

<sup>65</sup> Treas. Reg. § 1.170A-14(d)(4)(iv)(A)(2).

<sup>66</sup> Treas. Reg. § 1.170A-14(d)(4)(iv)(A)(3).

<sup>67</sup> Treas. Reg. § 1.170A-14(d)(4)(iv)(A)(5).

<sup>68</sup> See P.L.R. 2000-02-020 (Oct. 12, 1999) (noting consistency with local master plans yields significant public benefit).

<sup>69</sup> See Master Plan at 2 (“This Master Plan is dedicated to preserving, protecting and enhancing Bedminster’s natural and cultural resources, and promoting a sustainable future for the Township and the region”).

<sup>70</sup> Master Plan at 2.

<sup>71</sup> Master Plan at 8.

allowing the general public to enjoy panoramic vistas of the Township's unique rural setting unspoiled by residential development. The preservation of these vistas furthers the conservation policies of Bedminster's Master Plan and therefore yields a significant public benefit.

Additionally, the Code's "public benefit" requirement is intertwined with its clearly delineated governmental policy element.<sup>72</sup> Where the donation is made pursuant to a specific government policy, the acceptance of an easement by a governmental organization establishes that the donation yields a significant public benefit.<sup>73</sup> When analyzing similar facts, the IRS agreed. In Private Letter Ruling 96-03-018, the IRS concluded that "[m]ost importantly, Township has indicated that it 'strongly supports' taxpayers' efforts to protect 'an important property' within Township, which will result in 'important public benefits.' Therefore, taxpayers have satisfied the requirement that there be a significant public benefit."<sup>74</sup> As explained above, the Easement furthered specific conservation policies advocated by Bedminster.

Finally, had development of the Property occurred, it would have substantially degraded the scenic nature of the area. Taxpayer had the option of constructing, at a minimum, 33 estate houses on the Property prior to the donation of the Easement. This would equal approximately one house every 15 acres. The IRS's own examples, as promulgated in the Treasury Regulations, support a finding that construction of this magnitude would destroy the scenic nature of an area. Example 3 of the regulations concludes that "[r]andom building on the property, *even as little as one home for each 90 acres*, would destroy the scenic character of the view."<sup>75</sup> Example 3 holds that the taxpayer satisfies the significant public benefit element of the test for satisfying the open space conservation purposes. Far worse than in Example 3, had Taxpayer not made the donation of the Easement and instead developed one estate lot every 15 acres (in contrast to one home every 90 acres), the unique scenic character of the views would have been destroyed.<sup>76</sup> Like the taxpayer in the example, Taxpayer's donation of the Easement preserved the scenic viewsheds and yields a significant benefit to the public.

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<sup>72</sup> Treas. Reg. § 1.170A-14(d)(4)(vi).

<sup>73</sup> Treas. Reg. § 1.170A-14(d)(4)(vi)(A) ("The more specific the governmental policy with respect to the particular site to be protected, the more likely the governmental decision, by itself, will tend to establish the significant public benefit associated with the donation.").

<sup>74</sup> P.L.R. 96-03-018 (Oct. 19, 1995).

<sup>75</sup> Treas. Reg. § 1.170A-14(f), Ex. (3) (emphasis added).

<sup>76</sup> The fact that Somerset County was the fastest growing county in New Jersey makes the likelihood of increased demand, and ensuing pressure for residential development, more likely. *See, e.g.*, P.L.R. 84-20-016 (Feb. 10, 1984) ("X is located within commuting distance from a major metropolitan area. It has been represented that the county where X is situated has been one of the fastest growing counties in the country. Accordingly, there is intense development pressure within the area.").

## 2. The Easement Protects the Significant and Relatively Natural Habitat of the Threatened Bobolink and Grasshopper Sparrow

Protection of a relatively natural and significant habitat of fish, wildlife, or plants, or similar ecosystem also qualifies as a valid conservation purpose.<sup>77</sup> Here, Taxpayer's donation also meets another of the Code's designated conservation purposes, the Habitat Purpose, because the restrictions imposed by the Easement protect the significant and relatively natural habitat of the threatened Bobolink and Grasshopper Sparrow.

The Property is a significant and natural habitat for two threatened species, the Bobolink<sup>78</sup> and the Grasshopper Sparrow.<sup>79</sup> Accordingly, Exam does not challenge the fact that the Property constitutes a significant and relatively natural habitat for threatened species. Instead, Exam relies solely upon the argument that prior easements already provided for 26 acres of grassland bird habitat, and therefore Taxpayer may not take a deduction in 2005 for an easement that was granted in a prior year.<sup>80</sup> Again, Exam ignores the facts and concludes either that (i) no expansion of the grassland bird habitat was achieved by the Easement or (ii) that such expansion is insufficient to satisfy this conservation purpose.

First, it is undisputed that the Easement allows expansion of the pre-existing 26-acre grassland bird habitat by over 110 acres. Taxpayer more than quadrupled the acreage dedicated to grassland habitats, increasing such protected areas from 26 acres to over 135 acres, encompassing nearly one-third of the total Property. This enlargement of the protected area is depicted in the Grassland Bird Habitat Map, attached as Exhibit 1. The striped areas of the Grassland Bird Habitat Map reflect the protected grassland habitats *prior to* Taxpayer's donation. The shaded areas of the map reflect the protected grassland habitats *after* Taxpayer's donation. Therefore, the Easement not only preserved existing habitats, it increased the size of the habitat.

<sup>77</sup> I.R.C. § 170(h)(4)(A)(ii); Treas. Reg. § 1.170A-14(d)(3)(i).

<sup>78</sup> "Bobolinks inhabit low-intensity agricultural habitats, such as hayfields and pastures." *See* <http://www.state.nj.us/dep/fgw/ensp/pdf/end-thrtened/bobolink.pdf> (last visited July 28, 2011). The historic clearing of forests in the 18th and 19th centuries allowed grassland species such as the Bobolink to flourish. However, by the early 20th century, the population of the Bobolink began to decline as a "result of market hunting" and "modernized farming techniques." In New Jersey, "changing agricultural practices" (such as the "conversion of fallow fields to forests") further contributed to the Bobolink's shrinking population. The Bobolink is "imperiled in New Jersey because of rarity." *See id.* (citing Office of Natural Lands Management 1992). In 1979, New Jersey declared and listed the Bobolink a threatened species. *Id.*

<sup>79</sup> The Grasshopper Sparrow "breeds in grassland, upland meadow[s], pasture[s], hayfield[s] and old field habitats." *See* <http://www.state.nj.us/dep/fgw/ensp/pdf/end-thrtened/grasshoppersparrow.pdf> (last visited July 28, 2011). Optimum habitats contain "short-to medium-height bunch grasses interspersed with patches of bare ground . . ." While shrubs and fence posts are used for song perches, "habitats may become unsuitable" . . . "if shrub cover becomes too dense." Historically, New Jersey boasted a robust Grasshopper Sparrow population. As "expanding development of open areas" increased in the 1950s and 1960s, the population of the sparrows decreased. Continued population declines in the 1970s and 1980s were specifically noted in the northeast. As a result of the declining population and "severe habitat loss", in 1979, New Jersey declared and listed the Grasshopper Sparrow as a threatened species. *See id.*

<sup>80</sup> RAR at 21.

Second, Exam's argument that such expansion is irrelevant fails to recognize the fact that although a portion of the donated property was previously restricted, a taxpayer is not precluded from satisfying the natural habitat requirement by restricting the remainder of the property and creating a much greater protected area. In the leading case on the Habitat Purpose, *Glass v. Commissioner*, the Sixth Circuit determined:

Although a portion of Taxpayers [sic] encumbered property is already protected by Emmet County's 60-foot setback requirement, the Easements in essence double that protection to 120 feet . . . [T]here is no evidence in the record that this set-back requirement or building on adjacent properties precludes Taxpayers from satisfying the natural habitat requirements of I.R.C. § 170(h).<sup>81</sup>

Taxpayer's donation not only preserved, but allowed for the creation of, over 135 acres of natural habitat for use by two state-designated threatened species. Exam does not (and cannot) dispute these facts. Accordingly, Taxpayer's Easement readily satisfies the Habitat Purpose.

### 3. The Easement Provides for the Creation and Preservation of Equestrian Trails for the Use of the General Public

The Easement also meets a third conservation purpose, the Outdoor Recreation Purpose. The Easement provides for the protection of land areas for outdoor recreation for the general public.<sup>82</sup> The Treasury Regulations state that a donation of "a nature or hiking trail for the use of the general public" meets the conservation purpose test for purposes of section 170(h).<sup>83</sup> Preservation of land areas for this purpose satisfies the test as long as the outdoor recreation is available for the substantial and regular use of the general public.<sup>84</sup>

Here, the Easement not only preserves land area for the outdoor recreation of the general public—it *creates* it. Specifically, it provides for the creation of over six miles of equestrian trails that are dedicated for use by the general public.<sup>85</sup> Such trails were created (and pointed out to Exam during its site visit) and are utilized by the general public. Taxpayer's equestrian-related improvements made subsequent to the donation (such as the construction of an equestrian center, an eight-stall horse barn, and a schooling ring, all available for use by the general public) encourage and enhance the public's recreational activities. Accordingly, the Easement's provision for the creation of six additional miles of equestrian trails for use by the general public meets a third designated conservation purpose, the protection of land for outdoor recreational use by the general public.

<sup>81</sup> 471 F.3d 698, 712 (6th Cir. 2006).

<sup>82</sup> Treas. Reg. § 1.170A-14(d)(1)(i).

<sup>83</sup> Treas. Reg. § 1.170A-14(d)(2)(i).

<sup>84</sup> Treas. Reg. § 1.170A-14(d)(2)(ii).

<sup>85</sup> Easement Deed at 6.

Purporting to rely on the Property's website, Exam erroneously alleges that the public has no access to the equestrian trails on the Property.<sup>86</sup> Nothing in the quoted language restricts public access to these facilities. In any event, the Easement itself is quite clear and it provides for public access to the equestrian trails on the Property, and Taxpayer has no ability (or desire) to prohibit public access to the trails.<sup>87</sup>

### **B. The Requirements of Section 170(f)(8) Are Satisfied**

Exam's argument that Taxpayer failed the Code's contemporaneous written acknowledgement requirement is as flawed as its determination on conservation purpose. Section 170(f)(8) mandates that a taxpayer satisfy three separate requirements to demonstrate contemporaneous written acknowledgment, yet Exam fails to point to any deficiency in Taxpayer's contemporaneous written acknowledgment. In fact, the Easement itself contains the requisite elements of the contemporaneous written acknowledgment requirement.

Section 170(f)(8) requires a taxpayer claiming a deduction for a charitable contribution in excess of \$250 to provide contemporaneous written acknowledgment of such donation from the donee organization. The acknowledgment must: (i) state the amount of cash and a description of the property donated; (ii) contain a statement whether any goods or services were provided in consideration for the donation and a good faith estimate of the value of any such goods or services; and (iii) be "contemporaneous" with the donation, meaning the acknowledgment is obtained on or before the earlier of the date on which the taxpayer files its returns or the due date of the return, including extensions.<sup>88</sup> "Goods or services" includes, among other items, cash.<sup>89</sup> Neither the Code nor the Regulations specify any particular form for an acknowledgment. Easement deeds are sufficient to satisfy the requirements of section 170(f)(8) as long as they include the requisite information.

During the audit, Exam requested that Taxpayer provide the contemporaneous written acknowledgement of the donation. Taxpayer referred Exam to the Easement itself.<sup>90</sup> The Easement includes all of the requisite information specified by section 170(f)(8). It is acknowledged and accepted by the Deputy Mayor of Bedminster, Donald Cross, as a representative of the Donee at the time of the donation.<sup>91</sup> Second, the Easement itself includes a description of the Property in its text<sup>92</sup> as well as in an attachment thereto. Finally, the Easement states that the donation was made in exchange for consideration of \$1.00.<sup>93</sup> Thus, Taxpayer

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<sup>86</sup> RAR at 20-21.

<sup>87</sup> Easement Deed at 6.

<sup>88</sup> I.R.C. § 170(f)(8)(A)-(C).

<sup>89</sup> Treas. Reg. § 1.170A-13(f)(5) ("Goods or services means cash, property, services, benefits, and other privileges.").

<sup>90</sup> See Response to IDR #1, Request 36 (Sept. 14, 2009).

<sup>91</sup> See Easement Deed at 16.

<sup>92</sup> See Easement Deed at 1.

<sup>93</sup> See Easement Deed at 16.

satisfied each requirement of section 170(f)(8) and any argument by Exam to the contrary is without merit.

In *Simmons v. Commissioner*,<sup>94</sup> the court rejected the Commissioner's argument that the taxpayer failed to satisfy section 170(f)(8) and held that a deed itself could meet the Code's contemporaneous written acknowledgement requirement. "The deeds themselves satisfy the requirements of section 170(f)(8)(A) and (B), as they are signed by a representative of the [donee], are contemporaneous with the donation of the easements, and describe the property donated."<sup>95</sup> More recently, the Tax Court confirmed that the form of the contemporaneous written acknowledgment is irrelevant so long as the required information is present.<sup>96</sup> Taxpayer's Easement deed contains the precise information requested by section 170(f)(8) that was accepted by the Tax Court in *Simmons*.

Exam's reliance on *Schrimsher* is misplaced.<sup>97</sup> First, the facts of *Schrimsher* are easily distinguishable from the facts at issue. In *Schrimsher*, the easement stated that the donation was made in exchange for consideration of ten dollars "plus other good and valuable consideration." The taxpayer there did not describe this "other good and valuable consideration" and the Court found this fatal to the taxpayer's ability to satisfy the requirements of section 170(f)(8)(B)(ii). The Easement here contains no such language, all consideration is described, and *Schrimsher* is inapposite.

Additionally, the *Schrimsher* court relied on the finding that the stated consideration in the easement deed of ten dollars and other good and valuable consideration was "fictitious."<sup>98</sup> The remainder of the Tax Court's opinion is based on its finding that if the stated consideration was fictitious, there was no statement of consideration at all in the easement deed. "But even if the commission actually provided no consideration for the contribution, the written acknowledgement must say so in order to satisfy the requirement of section 170(f)(8)(B)(ii)."<sup>99</sup> The consideration in Taxpayer's deed was not "fictitious." *Schrimsher* is therefore inapplicable.

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<sup>94</sup> *Simmons v. Comm'r*, 98 T.C.M. (CCH) 211 (2009), *aff'd on other grounds*, No. 10-1063, 2011 WL 2451012 (D.C. Cir. June 21, 2011).

<sup>95</sup> *Id.* at \*7. The Commissioner did not appeal the Tax Court's finding that an easement deed can satisfy the contemporaneous written acknowledgement requirement.

<sup>96</sup> See *Schrimsher v. Comm'r*, 101 T.C.M. (CCH) 1329 (2011) (denying charitable deduction for donation of conservation easement that did not meet various requirements under section 170, including section 170(f)(8) requirements).

<sup>97</sup> RAR at 18-19.

<sup>98</sup> *Schrimsher*, 101 T.C.M. (CCH) 1329 (2011).

<sup>99</sup> *Id.*

### C. The Conservation Purposes Protected By The Easement Are Protected In Perpetuity

The Easement grants the Township an interest in the Property to preserve and protect the conservation values of the Property in perpetuity.<sup>100</sup> The terms of the Easement assure that the Property will be retained predominantly in its natural, scenic, and open space condition by restricting the use of the Property to only those activities, including recreational activities, that are consistent with the conservation purposes of the Easement.<sup>101</sup> Specifically, *inter alia*, the Easement prohibits all residential and commercial use of the Property, other than golf course use, from the date of conveyance onward.<sup>102</sup> To further ensure that the conservation values enumerated in the Easement are protected in perpetuity, the Easement grants the Township various rights and remedies to enforce the restrictions placed on the Property.<sup>103</sup> Among these rights is the right to share in any condemnation proceedings should the Easement somehow be extinguished.

Exam argues, however, that such rights are not protected in perpetuity because, at the time of the donation, there was an existing mortgage on the Property. Exam fails to recognize that the Easement was *not* subject to the mortgage. In fact, the mortgage was subject to the Easement. Hence, there was no interest for the mortgagee to subordinate.

At bottom, Exam's erroneous conclusion is based on its fundamental misunderstanding of the Loan Agreement between Textron Financial Corporation ("**Textron**") and LFC<sup>104</sup> and the Mortgage between LFC and Textron,<sup>105</sup> which secured the obligations under the Textron Loan Agreement. As explained numerous times during the audit, and confirmed by Textron,<sup>106</sup> the Easement was not conveyed subject to the Mortgage. As a result, no subordination agreement was required because the Township acquired the Easement free and clear of the mortgage.

Exam also asserts that the Township was not entitled to any condemnation proceeds in the event its rights were extinguished. As explained below, pursuant to the Easement, the Township, as owner of the property rights that were conveyed in the Easement and excepted

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<sup>100</sup> See Easement Deed at 6.

<sup>101</sup> See Easement Deed at 6, §1.

<sup>102</sup> See Easement Deed at §§ 3, 4. The fact that the Property can still operate as a golf course is no barrier to compliance with section 170. In the only published case where a conservation easement was donated over a golf course, the IRS conceded that the technical requirements of section 170 (including conservation purpose), were met. See *Kiva Dunes Conservation, LLC v. Comm'r*, 97 T.C.M. (CCH) 1818 (2009) (respondent conceded on brief that petitioner Kiva Dunes was entitled to a section 170(a)(1) charitable deduction for 2002 for a conservation easement over a golf course).

<sup>103</sup> See Easement Deed at §§ 2, 5.

<sup>104</sup> See Loan Agreement between LFC and Textron (Feb. 11, 2004) [hereinafter the "**Textron Loan Agreement**"].

<sup>105</sup> See Mortgage, Security Agreement and Fixture Filing between LFC as mortgagor and Textron as mortgagee (Feb. 11, 2004) [hereinafter the "**Mortgage**"].

<sup>106</sup> See Declaration of Andrew Much on Behalf of Textron Financial Corporation (Jan. 4, 2011) [hereinafter the "**Much Declaration**"] at ¶ 5.

from the Textron Loan Agreement and Mortgage, was in fact entitled to its pro rata share of any condemnation proceeds based on the fair market value of the Easement.<sup>107</sup>

### 1. The Easement Is Not Subject to the Mortgage

Pursuant to section 170(h)(1), a “qualified conservation contribution” must be of a qualified real property interest. Further, pursuant to section 170(h)(5), a “qualified real property interest” must be protected in perpetuity.<sup>108</sup> Treas. Reg. § 1.170A-14(g)(2) provides:

In the case of conservation contributions . . . no deduction will be permitted . . . for an interest in property *which is subject to a mortgage* unless the mortgagee subordinates its rights in the property to the right of the qualified organization to enforce the conservation purposes of the gift in perpetuity. (emphasis added)

This regulation does not apply because the easement was *not* subject to the Mortgage as the property rights of the donee, Bedminster, are already superior to the rights of the mortgagee, Textron.<sup>109</sup> LFC negotiated the Textron Loan Agreement while contemplating a future conservation easement. Textron agreed from the outset that its rights as lender and mortgagee would be subordinate to the holder of a future conservation easement. This agreement was memorialized in the Textron Loan Agreement and the Mortgage, which both specified that any future conservation easements were excluded from the Mortgage collateral. Textron itself has confirmed in a sworn declaration that it understands that the operation of the Textron Loan Agreement and Mortgage serve to exclude the rights in the Property conveyed to the Township from the Mortgage.<sup>110</sup> Further, the course of dealings between Textron and LFC over the years demonstrates that Textron’s rights in the eased Property were subordinated to the Township’s rights in the Easement.

#### a. The Textron Loan Agreement and Mortgage

In late 2003, LFC sought a construction loan from Textron to finance a portion of the costs of construction for the first 18-hole golf course on the Property. During loan negotiations, LFC made clear that it intended to protect the conservation values of the Property by encumbering it with deed restrictions.<sup>111</sup> Textron agreed that its rights would not extend to

<sup>107</sup> Taxpayer and Exam agree that the Treasury Regulations provide that conservation purposes can be treated as protected in perpetuity even if an easement is extinguished so long as the donee is entitled to its proportionate share of the condemnation proceeds.

<sup>108</sup> I.R.C. § 170(h)(2)(C).

<sup>109</sup> The Treasury Regulations also provide a safe harbor for satisfying the “enforceable in perpetuity” requirement by stating that where the possibility of a future event defeating the interests of the donee is so remote “as to be negligible” then the deduction shall not be disallowed for otherwise qualified conservation contributions. Here, even if subordination of an interest not subject to a mortgage was somehow contemplated by the Treasury Regulations, the possibility of Textron foreclosing on the Property is indeed a future event that is so remote “as to be negligible” because Taxpayer had guaranteed repayment of the loan made by Textron to LFC.

<sup>110</sup> See Much Declaration.

<sup>111</sup> Much Declaration at ¶ 9.



future conversation restrictions.<sup>112</sup> But Textron demanded further assurances that the loan would be repaid. Taxpayer then agreed to give Textron a personal guaranty for payment of all obligations under the loan, and Textron agreed to accept a mortgage that would exclude future conservation easements.<sup>113</sup>

In February 2004, Textron and Taxpayer executed the Textron Loan Agreement and the Mortgage. As agreed by Textron, it provided for the granting of future conservation easements. Section 2.25 of the Textron Loan Agreement stated that the Mortgage constituted a valid and enforceable first lien on the Property, *subject to* “Permitted Encumbrances.” “Permitted Encumbrances” are defined as all “liens, claims, assessments, encumbrances and *rights of others encumbering title to the [Property]* . . . which are set forth on Exhibit E” to the Textron Loan Agreement (emphasis added). Exhibit E—Permitted Encumbrances provides for, *inter alia*, future deed restrictions in items 22, 23 and 24. Item 23 specifically provides that a deed restriction for conservation purposes is a Permitted Encumbrance.<sup>114</sup> While LFC subsequently granted restrictions relating to Items 22 and 24,<sup>115</sup> no conservation restriction was placed (or had been placed as of December 29, 2005) on the Property that could have been identified as Item 23, except for the Easement.

Correlatively, the granting clause of the Mortgage itself provides:

Mortgagor covenants that . . . the [Property] is unencumbered except for those matters expressly set forth on Exhibit ‘E’ to the [Textron] Loan Agreement (the ‘Permitted Exceptions’<sup>116</sup>) and that Mortgagor does warrant and will forever defend the title thereto against the claims of all persons whomsoever, *except as to the Permitted Exceptions.* (emphasis added)<sup>117</sup>

Moreover, section 1.15(c) of the Mortgage specifically recognizes that LFC has the right to place deed restrictions on the Property (including the Easement) without Textron’s consent:

Except as permitted by the terms of the Loan Agreement, including, without limitation, Section 2.6 thereof, *or as already enumerated as a Permitted Exception*, Mortgagor shall not enter

<sup>112</sup> Much Declaration at ¶ 9, 12-17.

<sup>113</sup> See Much Declaration at ¶ 8.

<sup>114</sup> See Much Declaration at ¶ 15-16.

<sup>115</sup> Item 22 reflects Textron’s agreement to allow Taxpayer to grant the public access to Cowperthwaite Road. Item 24 reflects Textron’s agreement to allow deed restrictions to be placed on the existing residential structures on the Property. Taxpayer subsequently granted the public access to Cowperthwaite Road via the Declaration of Covenants and placed restrictions on the structures via Deed Restricting Residential Structures by LFC (Jan. 29, 2004).

<sup>116</sup> “Permitted Exceptions” refer to and are identical to “Permitted Encumbrances.” See Much Declaration ¶ 19.

<sup>117</sup> See Mortgage at 1.

into any easements, rights of way, agreements affecting property lines or similar agreements affecting the Premises without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed. (emphasis added)

The Easement is a Permitted Exception (including Permitted Exceptions that may be executed at a later date).<sup>118</sup> Permitted Exceptions were proper encumbrances to title and not subject to the Mortgage.<sup>119</sup>

Section 2.25 of the Textron Loan Agreement, the granting clause of the Mortgage, and section 1.15(c) of the Mortgage establish that Textron agreed that LFC could place conservation restrictions on the Property and that Textron's rights in the Property were subject to these restrictions. Therefore, under Treas. Reg. § 1.170A-14(g)(2), because the rights conveyed in the Easement are not subject to the Mortgage, no separate subordination agreement is required, and pursuant to section 170(h)(5), the Easement is a qualified interest in real property and the conservation purposes protected by the Easement are protected in perpetuity.

**b. The Parties' Course of Dealings Demonstrate That the Easement Is Not Subject to the Mortgage**

**(i) Loan Conversion**

The parties' actions confirm their understanding that the Easement was not subject to the Mortgage. Prior to executing the Textron Loan Agreement, LFC negotiated for the right to convert the loan from a construction loan to a permanent loan. Textron agreed to include the conversion right so long as, *inter alia*, LFC was not in default of the Textron Loan Agreement at the time of the exercise of the right. LFC exercised the conversion right and the conversion was made via the Third Loan Modification Agreement, whereby the construction loan was converted to a permanent loan, effective June 1, 2006.<sup>120</sup> Textron acknowledged on Schedule 1 to the Third Amendment that an event of default had not occurred. At that time, the donation of the Easement had been made, and Textron was aware of the Easement's existence. Because the Easement was specifically excluded from the Mortgage, Textron agreed to the conversion without objection.

Importantly, as part of this conversion, LFC provided Textron with a title report.<sup>121</sup> The Title Report specifically listed the Easement as Exception 36 to clear title, and a copy of the Easement was attached to the report.<sup>122</sup> Textron reviewed and accepted the Easement, including

<sup>118</sup> See Much Declaration at ¶ 17-19.

<sup>119</sup> See Much Declaration at ¶ 20-21.

<sup>120</sup> See Third Loan Modification Agreement between LFC and Textron (June 1, 2006) [hereinafter the "**Third Amendment**"]. This agreement was provided as part of Taxpayer's Supplemental Response to IDR #5 on August 10, 2010.

<sup>121</sup> Fidelity National Title Insurance Co. Report (May 23, 2006) [hereinafter the "**Title Report**"]. The Title Report was provided as part of Taxpayer's Response to IDR #5 on June 24, 2010.

<sup>122</sup> See Much Declaration at ¶ 26.

those sections related to the restriction's perpetuity. For example, section 7(a) of the Easement provides "[t]his Conservation Easement shall be perpetual and run with the Property, and shall be binding upon all future owners of an interest therein, creating open space easements and restrictions."<sup>123</sup> Additionally, section 10 of the Easement incorporates the terms of the Easement (including the Township's right to enforce its restrictions in perpetuity) into any other legal instrument to which LFC is a party, including the Textron Loan Agreement.<sup>124</sup> Textron was aware of these provisions, and, consistent with its understanding of the original Textron Loan Agreement and Mortgage, could not (and did not) raise any objection to the Easement<sup>125</sup> or the encumbrance it placed on the Property as part of the closing of the Third Amendment or at any time thereafter.<sup>126</sup>

### (ii) Title Insurance

Additionally, in connection with the loan conversion, Fidelity Title Insurance Company ("Fidelity") issued an endorsement to Textron's existing title insurance, which was previously issued on February 5, 2004, prior to the Easement.<sup>127</sup> The endorsement specifically provided for insurance against, among other events, the lack of priority of the Mortgage over any encumbrances and modified the original title policy of the Mortgage. The endorsement recognized the Easement as an encumbrance on the Property, and specifically excepted the rights granted in the Easement from coverage provided to Textron.<sup>128</sup> Prior to accepting the endorsement, Textron's outside counsel negotiated with Fidelity the scope of title insurance coverage to be provided pursuant to the endorsement. During the negotiations, recognizing the priority of the provisions of the Textron Loan Agreement and the Mortgage, Textron's outside counsel did not request that Exception 28, which removed the Easement from coverage, be changed to require affirmative coverage relating to the Easement.

### (iii) Repayment of the Loan

LFC satisfied the loan in full on July 23, 2010, and Textron and LFC entered into an Omnibus Termination Agreement.<sup>129</sup> Among its other purposes, this agreement served to clarify and memorialize the parties' understanding of their various agreements.<sup>130</sup> In particular, Textron

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<sup>123</sup> See Easement Deed at § 7(a).

<sup>124</sup> See Easement Deed at § 10.

<sup>125</sup> See Much Declaration at ¶ 29.

<sup>126</sup> Moreover, the Title Report does not contain any exception to title dated between the execution of the Textron Loan Agreement and Taxpayer's donation that could be interpreted as consistent with Permitted Encumbrance 23, other than the Easement itself.

<sup>127</sup> See Much Declaration at ¶ 30.

<sup>128</sup> See Exception 28 to Fidelity Endorsement; Much Declaration at ¶ 31.

<sup>129</sup> See Omnibus Termination Agreement between Textron, LFC, Taxpayer, Trump National Golf Club, LLC and Trump International Golf Club, L.C., (July 23, 2010) [hereinafter "**Termination Agreement**"], provided as part of Taxpayer's Response to IDR #5 on August 8, 2010.

<sup>130</sup> See Much Declaration at ¶ 35.

expressly acknowledged that the Easement was a Permitted Encumbrance and that the Mortgage was subject to Permitted Encumbrances.<sup>131</sup>

Schedule 1 to the Termination Agreement states that “[e]ach of the Recorded Documents [including Schedule B-II] constituted a Permitted Encumbrance pursuant to the terms of the [Textron] Loan Agreement.”<sup>132</sup> Schedule 1 to the Termination Agreement also states that Textron “received copies of all documents recorded against the Property during the term of the loan as shown on Schedule B-II to the title report” (discussed above). The Easement was listed as Exception 36 on the Title Report.<sup>133</sup>

## 2. The Easement Granted the Township Proceeds of Any Condemnation of the Property

Although a conservation easement may be perpetual because it is not subject to a mortgage, the Treasury Regulations also require that in the event there are unexpected changes that make the continued use of the property for conservation purposes impossible or impracticable such that the easement is extinguished, in order for the conservation easement to be treated as protected in perpetuity the donee must share proportionately in condemnation proceeds (the “extinguishment provision”).<sup>134</sup>

Based on its review of the wrong document, Exam argues that the extinguishment provision is not satisfied. As explained above, the rights in the Property conveyed in the Easement are not subject to the Mortgage. Following execution and recordation of the Easement, the Township of Bedminster owned the rights in the Property conveyed in the Easement. Therefore, the Mortgage provisions only apply to the rights in the Property that were retained by Taxpayer and that secured payment of the obligations under the loan. The provisions in the Easement, and not the Mortgage, control whether the extinguishment provision is satisfied.

Section 8(c) of the Easement specifically grants the Township the right to a share of the net proceeds awarded from any condemnation, sale, lease, exchange or other disposition of all or any portion of the Property following termination or extinguishment of the Easement. The Township is entitled to an amount equal to the stipulated fair market value of the Easement or proportionate part thereof. The language of the Easement virtually tracks the language of the extinguishment provision in Treas. Reg. § 170A-14(g)(6). As explained in *Kaufman v. Commissioner*, because the Township is entitled to the condemnation proceeds, the extinguishment provision is satisfied.<sup>135</sup>

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<sup>131</sup> See Much Declaration at ¶ 36.

<sup>132</sup> See Termination Agreement, Schedule I at ¶ 14.

<sup>133</sup> See Title Report; Much Declaration at ¶ 37-38.

<sup>134</sup> Treas. Reg. § 1.170A-14(g)(6)(i)-(ii); *Kaufman v. Comm’r* (“*Kaufman I*”), 134 T.C. 182, 186 (2010), *aff’d on reconsideration*, (“*Kaufman II*”) No. 15997-09, 2011 WL 1235307 (T.C. Apr. 4, 2011).

<sup>135</sup> *Kaufman I*, 134 T.C. at 186; *Kaufman II*, 2011 WL 1235307 at \*13.

### 3. Declaration of Andrew Much on Behalf of Textron

Despite the overwhelming evidence to the contrary, and without notice to Taxpayer, Exam contacted Textron and administered a pop quiz regarding the agreements between Textron and LFC. Exam misrepresents the facts to justify its third-party contact with Textron. In its RAR, Exam states that Taxpayer did not provide any documents from Textron that would explain Textron's understanding of what was meant by "Permitted Encumbrances" or what they would cover.<sup>136</sup> Yet, among many other documents, Taxpayer had provided Ms. Susan Ruggiano, IRS Exam, the Textron Loan Agreement, the Mortgage, the Third Loan Modification Agreement, the Title Report, and the Termination Agreement.<sup>137</sup> Not satisfied with the plain language of the documents (reflecting that the Mortgage was not subject to the Easement), Ms. Ruggiano called Textron seeking responses to specific inquiries regarding the Mortgage and the Easement.

Ms. Ruggiano was eventually routed to Andrew Much, a member of Textron's general counsel's office, who had been involved in the loan made by Textron to LFC, including the negotiation of its terms.<sup>138</sup> Ms. Ruggiano specifically requested a mortgage subordination agreement, information regarding language in the Mortgage regarding condemnation payments, and clarification of Permitted Encumbrances.<sup>139</sup> Mr. Much was taken aback by Ms. Ruggiano's call. He did not recall the details she inquired about, did not have the files readily available, and thus was unable to answer her questions.<sup>140</sup> Ms. Ruggiano called Mr. Much several times to follow-up.<sup>141</sup> Mr. Much was still unable to respond as he had not yet obtained the legal work file.

Mr. Much eventually obtained the work file, briefly reviewed selected documents so he could respond to Ms. Ruggiano, and sent Ms. Ruggiano an e-mail, subject matter "Farm Inquiry".<sup>142</sup> First, Mr. Much answered her request for a mortgage subordination agreement by stating, "[t]here is no evidence from our loan documents or files that we subordinated our rights to any conservation easement entered into following the date of our loan or that we ever intended to do so."<sup>143</sup> Mr. Much did not elaborate on this statement—he had reviewed the documents in the work file and there were no subordination or draft subordination agreements in the file. At the time, Mr. Much did not undertake to explain that when the loan and Mortgage were issued, the Mortgage was taken subject to Permitted Encumbrances, and the Easement was a Permitted

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<sup>136</sup> RAR at 6-7.

<sup>137</sup> The Termination Agreement, dated July 23, 2010, had recently been executed in connection with satisfaction of the loan.

<sup>138</sup> See Much Declaration at ¶ 5.

<sup>139</sup> See Much Declaration at ¶ 41.

<sup>140</sup> See Much Declaration at ¶ 40.

<sup>141</sup> See Much Declaration at ¶ 40.

<sup>142</sup> See E-mail from Andrew Much to Susan Ruggiano (Oct. 8, 2010, 9:51 AM), subject: Farm Inquiry [hereinafter the "Much E-mail"].

<sup>143</sup> See RAR at 14; Much E-mail.

Encumbrance.<sup>144</sup> Mr. Much understood Ms. Ruggiano's request to be far simpler—a request for a separate mortgage subordination agreement and his statement to her is correct in that there was no separate mortgage subordination agreement.

Second, with regard to Ms. Ruggiano's request for information regarding section 1.5 of the Mortgage addressing condemnation, Mr. Much chose not to interpret the provision and instead referred her directly to the language of section 1.5. Mr. Much did not view it as appropriate to provide Ms. Ruggiano a legal interpretation of the entire work file and how the various provisions would interact. As discussed above, Ms. Ruggiano persists in viewing this provision of the Mortgage in isolation to erroneously conclude that post-Easement, Textron still had the right to condemnation proceeds relating to the Easement.

Lastly, Mr. Much closed his e-mail to state, “[t]he fact that we deemed the conservation easements and other easements to be ‘permitted encumbrances’ at Exhibit ‘E’ of the [Textron] Loan Agreement is really of no consequences to this inquiry.”<sup>145</sup> Ms. Ruggiano's interpretation of this statement is nonsensical. She assumes this statement is in response to her request for clarification of the Permitted Encumbrances and that this somehow supports her theory that the Easement was not conveyed in perpetuity. At best, the meaning of the statement is unclear. In fact, when drafting his Declaration, and asked to explain the statement, Mr. Much had no idea what he was attempting to address—the entire process to him had been quite confusing. What he did say, and swore to in paragraph 39 in his Declaration was:

In summary, at the time of the execution of the Loan Agreement and Mortgage, Textron was aware that Lamington might enter into future conservation easements and the relevant documentation of their agreements provided that the Mortgage would be subject to any such future conservation easements. Lamington in fact entered into a conservation easement and recorded a Deed Restriction. Textron was aware of the Deed Restriction, and the fact that its rights as mortgagee were subject to Bedminster, as Textron received copies of the Deed Restriction when the Loan was modified and replaced with the Permanent Loan.

Taxpayer relies on the actual documents and the parties' interpretations of them. Exam relies on statements made by a then-unprepared Textron lawyer who did not understand the context of the IRS inquiries. Prior to each of Mr. Much's conversations with Ms. Ruggiano, Mr. Much had not reviewed the legal work file and did not have it at his disposal.<sup>146</sup> Once he did review the work file, it was in the context of responding to specific requests, e.g., to provide a mortgage subordination agreement, and not to explain the mechanics of various documents and their legal effect. As explained by Mr. Much in his Declaration, his sole “substantive” response to Ms. Ruggiano was to excerpt a paragraph from the Mortgage relating to the dispersal of

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<sup>144</sup> See Much Declaration at ¶ 42.

<sup>145</sup> Much E-mail.

<sup>146</sup> Much Declaration at ¶ 40.

condemnation proceeds.<sup>147</sup> Regardless, neither statement nor the Mortgage excerpt supports Exam's conclusions.

The Much Declaration, on the other hand, was executed after Mr. Much had reviewed the documents relating to the Textron Loan Agreement and Mortgage, understood the questions in context, and considered the legal effect of the documents. Mr. Much was unequivocal in his conclusion that the Easement was not subject to the Mortgage, and is entirely consistent with the Textron Loan Agreement, Mortgage, Title Report, and Termination Agreement.

#### **IV. Taxpayer's Deduction for a Qualified Conservation Contribution Was Based on a Proper Valuation by Robert Heffernan of the Value of the Conservation Easement**

The amount of a charitable contribution deduction under section 170(a) is the fair market value of the donated property at the time of the contribution.<sup>148</sup> "Fair market value" is defined as:

[T]he price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.<sup>149</sup>

The Code's definition of "fair market value" contemplates hypothetical buyers and sellers, and does not concern itself with the peculiar aspects of a particular individual's decisions to buy or sell property. "The willing buyer-willing seller test, applicable for both estate and gift tax purposes, is an objective test *to be applied without reference to a specific donor, decedent, or his or her beneficiaries.*"<sup>150</sup>

In the case of a qualified conservation contribution, the value of a conservation easement is the fair market value of the perpetual conservation restriction at the time of the contribution.<sup>151</sup> If a substantial number of record sales of comparable restrictions exist, the fair market value of the subject easement should be based on the sales price of those comparables.<sup>152</sup> On the other hand, when no established market for comparable easements exists, the regulations provide an alternative method for determining fair market value:

<sup>147</sup> See Much Declaration at ¶ 42.

<sup>148</sup> Treas. Reg. § 1.170A-1(c)(1).

<sup>149</sup> Treas. Reg. § 1.170A-1(c)(2).

<sup>150</sup> *Arbor Towers Assocs., Ltd. v. Comm'r*, 77 T.C.M. (CCH) 2348, 2351 (1999) ("The willing buyer and the willing seller are hypothetical persons . . . and the characteristics of these hypothetical persons are not always the same as the personal characteristics of the actual seller or a particular buyer."). See also *Reynolds v. Comm'r*, 55 T.C. 172, 195 (1970); Rev. Rul. 2008-35, 2008-29 I.R.B. 116; T.A.M. 1999-43-003 (June 7, 1999) (stating "the determination of the fair market value of an undivided interest in property for federal estate tax purposes is based on a hypothetical seller/hypothetical buyer analysis . . .").

<sup>151</sup> Treas. Reg. § 1.170A-14(h)(3)(i).

<sup>152</sup> *Id.*

If no substantial record of market-place sales is available to use as a meaningful or valid comparison, as a general rule (but not necessarily in all cases) the fair market value of a perpetual conservation restriction is equal to the difference between the fair market value of the property it encumbers before the granting of the restriction and the fair market value of the encumbered property after granting the restriction.<sup>153</sup>

This method, known as the “before and after” methodology, computes the value of a conservation easement as the difference between two values: the value of the property when put to its highest and best use *before* the donation was made (i.e., as if the easement did not restrict the property’s use) and the value of the property when put to its highest and best use *after* the donation was made (i.e., accounting for the restriction placed upon the property by the donation). The difference between the two values is the value of the easement itself.<sup>154</sup> The before-and-after method is a well-accepted method of determining the fair market value of a conservation easement.<sup>155</sup>

A property’s highest and best use is “[t]he reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible and that results in the highest value.”<sup>156</sup> Thus, a property’s highest and best use is evaluated using four factors: (1) legal permissibility; (2) physical possibility; (3) financial feasibility; and (4) maximum productivity.<sup>157</sup> The determination of a property’s highest and best use is based on the highest and best use of the property at the valuation date, taking into account potential development.<sup>158</sup> Regardless of whether an owner actually puts the property to its highest and best use, courts consider “[t]he highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future.”<sup>159</sup>

A determination of a property’s highest and best use is shaped by market behavior, and not by the property owner or particular market participant’s behavior. “Market forces create market value, so the interaction of market forces that identifies the highest and best use is of crucial importance.”<sup>160</sup> Value is not affected by whether an owner actually intends to put, or has put, the property to its highest and best use.<sup>161</sup> Thus, like determinations of fair market value,

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> See, e.g., *Stanley Works & Subs. v. Comm’r*, 87 T.C. 389, 399 (1986); *Browning v. Comm’r*, 109 T.C. 303, 315 (1997); *Strasburg v. Comm’r*, 79 T.C.M. (CCH) 1697, 1700 (2000).

<sup>156</sup> Appraisal Institute, *The Appraisal of Real Estate* (13th ed. 2008) [hereinafter “**Appraisal Institute**”] at 277-78.

<sup>157</sup> Appraisal Institute at 279.

<sup>158</sup> See e.g., *Strasburg*, 79 T.C.M. (CCH) at 1700; *Stanley Works*, 87 T.C. at 400; *Hilborn v. Comm’r*, 85 T.C. 677, 688 (1985); *Johnston v. Comm’r*, 74 T.C.M. (CCH) 986 (1997).

<sup>159</sup> *Olson v. United States*, 292 U.S. 246, 255 (1934); *Akers v. Comm’r*, 48 T.C.M. (CCH) 1113 (1984), *aff’d*, 799 F.2d 243 (6th Cir. 1986); *Johnston*, 74 T.C.M. (CCH) 986.

<sup>160</sup> Appraisal Institute at 277.

<sup>161</sup> *Johnston*, 74 T.C.M. (CCH) at 980 (stating highest and best use determinations are “not affected by whether the owner actually put the property to its highest and best use”); *Symington v. Comm’r*, 87 T.C. 892, 897 (1986) (same);



determinations of a property's highest and best use are made regardless of a particular person's behavior or characteristics.

Both Taxpayer and Exam rely on appraisals that value the Easement using the "before-and-after" approach, because there are no comparable sales of similar easements. To this end, each purports to determine the highest and best use of the Property before and after the donation of the Easement and to value the Easement as the difference. Both appraisals also purport to utilize similar valuation techniques, such as the Sales Comparison Method and the Subdivision Development Method, to determine the Easement's value.

Taxpayer's appraisal (the "**Heffernan Appraisal**" or "**Heffernan**") concludes (1) that the highest and best use of the Property prior to the donation was as a 33-lot residential subdivision with a value of \$49,500,000, (2) its highest and best use after the donation was a single estate with a single residence with a value of \$10,400,000, and (3) that the \$39,100,000 difference is the value of the Easement.

Exam's appraisal (the "**Izenberg Appraisal**" or "**Izenberg**") concludes that the highest and best use of the property before and after the Easement grant was as a 36-hole golf facility, that the before-and-after values are the same (\$27,500,000), and that the value of the Easement is zero.

It is common for contending appraisals to disagree about the significance of facts, the reasonableness of assumptions (e.g., discount rates) and projections (e.g., absorption rates), and the best application of appraisal methodology. These differences are usually at least plausible and serve to inform the arbiter or decision maker. Here, as we will explain in some detail, the Izenberg Appraisal upon which Exam relies is so laden with factual misstatements and omissions, absurd assumptions, and internal inconsistencies that it does not meet a minimum threshold of reliability. Indeed, a nationally recognized golf course appraiser retained by Taxpayer to review the Izenberg Appraisal has concluded that it is incompetent.

What follows is a summary of the Heffernan Appraisal that responds to and rebuts the criticisms leveled at it by the RAR. Following that discussion is a review and criticism of the Izenberg Appraisal.

#### **A. The Heffernan Appraisal**

Taxpayer's deduction was supported in real time by an appraisal performed by Robert F. Heffernan & Associates. At the time the Heffernan Appraisal was produced, Heffernan had 35 years of professional appraisal experience in the Bedminster area and maintained an office in Oldwick, New Jersey (less than 6.5 miles away). Since 1971, Heffernan had appraised all types of urban and suburban properties throughout New Jersey.<sup>162</sup> He was and is an Approved Instructor for the Appraisal Institute and had taught (and continues to teach) appraisal courses at Somerset County College.

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*Estate of Kolczynski v. Comm'r*, 90 T.C.M. (CCH) 290, 291-92 (2005) ("Fair market value is an objective test that relies on a hypothetical buyer and seller."); *Olson*, 292 U.S. at 255; *Strasburg*, 79 T.C.M. (CCH) 1697.

<sup>162</sup> Heffernan Appraisal, Qualifications at 2.

He has particular experience in valuing restricted property and conservation easements, having valued three notable easements granted in the local area prior to his work valuing the Property.<sup>163</sup> He currently specializes in realty appraisals of all types, property tax consulting, marketability and feasibility studies, as well as other related real estate advisory services. His firm, Robert F. Heffernan & Associates, is an approved appraiser for the New Jersey Department of Environmental Protection-Green Acres Program, the New Jersey State Agricultural Development Board, and the New Jersey Department of Transportation.

Heffernan also has extensive municipal experience relevant to his valuation of the Property. From 1990-2001, he was Chairman of the Zoning Board of Adjustment for Tewksbury Township.<sup>164</sup> From 2001-2004, he was a Tewksbury Township Committeeman. In 2004, Heffernan was elected mayor of Tewksbury. These positions all provided Heffernan with unique expertise in local land use requirements and township attitudes toward land use. Heffernan's knowledge of northern New Jersey, Somerset County, and Bedminster Township is unique, personal, and extensive. The Heffernan Appraisal relies on sound appraisal principles and reliable market data to support its determination that the fair market value of the Easement was \$39,100,000. It recites and analyzes documented market conditions in both Somerset County overall and Bedminster in particular, including specific population trends, employment statistics, income levels, proximity to economic growth areas, and personal habits and preferences of the area's residents. This analysis is bolstered by Heffernan's personal knowledge of the community developed over 35 years of experience in Somerset County. The Heffernan Appraisal also analyzes the specific characteristics of the Property itself, taking into account zoning restrictions, soil and topographical conditions, etc., and he builds to his value determination by analyzing individual parcels within the Property.

#### **1. Heffernan's Highest and Best Use Conclusion—Before Donation**

Recall that under appraisal methodology, the highest and best use of property is evaluated using four factors: (1) legal permissibility; (2) physical possibility; (3) financial feasibility; and (4) maximum productivity.<sup>165</sup> Here, the parties agree that of the legally permissible and physically possible uses of the Property before the donation, only two merit consideration: a residential subdivision or a golf facility.

Heffernan concludes that the highest and best use of the Property, prior to the donation, was as a 33-lot residential subdivision, Residential Concept B. Heffernan bases this determination on a robust and documented review of prevailing market conditions, including detailed analyses of population, income, and employment trends within Somerset County and Bedminster, as well as careful consideration of the housing and recreational golf markets. Heffernan also relies on the professional opinion of Gladstone, who performed soil testing and other relevant engineering and land surveying tests and concluded that the Property could

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<sup>163</sup> See Engagement Letter from Robert F. Heffernan to Edward R. Russo, Trump National Golf Course (Oct. 14, 2005). This letter was provided as part of Taxpayer's Response to IDR #1 on September 14, 2009.

<sup>164</sup> Tewksbury Township is a neighboring township to Bedminster.

<sup>165</sup> Appraisal Institute at 278.

support a 33-lot residential subdivision. Based on its analysis (which is described more fully below), Heffernan estimated the fair market value of Residential Concept B to be \$49,500,000.

Heffernan was aware that Taxpayer's own analysis, which was not produced for purposes of the appraisal, projected that the Property would not earn a profit as a golf course for a number of years. Because of Taxpayer's unique brand and marketing resources, he is hardly the hypothetical willing buyer postulated in appraisal methodology. The fact that Taxpayer did not think that golf course use was likely to be materially profitable when leveraged by Taxpayer's global brand and marketing expertise is strong corroboration of Heffernan's view that golf course use was not highest and best. To be sure, if Taxpayer had projected a robust profit from golf course use, Exam would have featured the point prominently.

**a. Residential Concept B Was Legally Permissible**

Residential Concept B was a legally permissible use of the Property prior to Taxpayer's donation.<sup>166</sup> The residential zoning permits single family residences to be built on minimum sized lots of 10 acres each. Residential Concept B met these zoning requirements. While golf course use was permitted, it was and is restricted. For example, only 350 members per 18 holes are permitted. Both of these restrictions reflect the community's rejection of high density, high volume uses of its land resources.

**b. Residential Concept B Was Physically Possible**

Heffernan considered all available information related to the physical characteristics of the Property, including its size, shape, access, topography, and soil characteristics in determining whether Residential Concept B was physically possible. Heffernan relied on the residential concept plan developed by Gladstone, which accounted for the Property's soil types, pre-existing easements, sloping topography, wetlands, and other environmental considerations. Gladstone's analysis confirmed that the Property had the physical potential to be subdivided into 33 residential building lots of ten acres or more.<sup>167</sup> Based on this engineering information, Heffernan concluded that the subject Property was conducive to residential development. The fact that 14-lots had already been approved for residential development at the time of the appraisal corroborated this conclusion.

In a letter to Taxpayer dated May 13, 2010, Gladstone affirmed its original opinion that the Property could support 33 residential lots based on:

- Soil testing performed in 2000 during the initial planning stages for the development of the 14-lot residential subdivision. These tests involved

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<sup>166</sup> Township of Bedminster Ordinance, R-10 Rural Residential Zoning, § 13-401A.1. Other permitted uses include golf courses, farms, public playgrounds, conservation areas, parks, public purpose uses, houses of worship, public and private day schools, open air clubs, and private boarding schools, among others. Though these uses were legally permissible, neither Taxpayer nor Exam argues that any of these uses could be the Property's highest and best use.

<sup>167</sup> As discussed below, Heffernan did consider pre-existing environmental constraints, such as wetlands, steep slopes, and easements in determining that a 33-lot residential subdivision was physically possible. Exam's contentions to the contrary are without merit.

excavating soil logs throughout the Property to determine the suitability of the soils to support subsurface disposal systems.

- Additional soil testing in which *each* of the 14 planned lots achieved a positive result. These results were submitted to the Township Engineer and the Bedminster Township Board of Health for review and approval. The Township Board of Health ultimately approved 14 primary and reserve disposal areas suitable for the residential lots.
- On-site soil testing as well as the Somerset County Soil Survey prepared for the U.S. Department of Agriculture to confirm that the soils found on the 14 approved residential lots were of the same soil series found across the remaining 19 conceptual lots of Residential Concept B. Based on these consistencies, Gladstone was able to form the opinion as to the suitability of residential development on the 19 conceptual lots based on the passing results achieved by the 14 pre-approved lots.
- Gladstone's opinion was further supported by its extensive experience with similar properties in the rural area of Bedminster Township where it had achieved positive test results for similar soils.

Citing no competent soil or other engineering tests, and ignoring Gladstone's analysis, Izenberg says that the assumption that the Property could yield even 14 buildable lots is "dubious" because of the "topography, soil, percolation, wetlands, water bodies, grasslands and existing site easements."<sup>168</sup> Any argument regarding the physical impossibility of a residential subdivision<sup>169</sup> is refuted by Gladstone's engineering reports cited by Heffernan, by the fact that 14 of the lots *had already been approved for residential development*, and by the fact that Residential Concept B accounts for all of the physical characteristics that are of concern to Exam's appraiser.

**c. Residential Concept B Was Financially Feasible But a Golf Facility Was Not**

A land use that is physically possible cannot be the highest and best use of property if that use is not financially feasible—that is, if the cost of the use is expected to exceed the economic benefit or profit that it is projected to produce. Financial feasibility requires consideration of both projected costs and market factors that may bear on the expected income stream from any potential use of the property. It exists "when the market value or gross sellout of a project upon achievement of a stabilized condition equals or exceeds all costs of production including profit."<sup>170</sup>

Heffernan's conclusion that residential use, as opposed to golf course use, was the only financially feasible use of the Property is supported by a thorough analysis of existing market

<sup>168</sup> See Izenberg Appraisal at 81.

<sup>169</sup> See Izenberg Appraisal at 61-62.

<sup>170</sup> Appraisal Institute at 185-86.

conditions that specifically accounted for the local characteristics of Somerset County and Bedminster Township.

**(i) Regional Data, Market Study, and Characteristics of the Property Demonstrate Residential Use Was Financially Feasible**

First, Heffernan provides a detailed analysis of relevant county and Township data. Heffernan identifies Somerset County as one of New Jersey's primary growth regions<sup>171</sup> whose population increased 23.8 percent between 1990 and 2000.<sup>172</sup> Moreover, Somerset County had enjoyed rapid expansion of commercial facilities, increasing employment, and strong demand for residential housing.<sup>173</sup> Bedminster Township's population increased by 17.2 percent from 1990 to 2000 and is home to some of New Jersey's wealthiest residents,<sup>174</sup> who on average spend between \$150,000 to over \$5,000,000 for housing.<sup>175</sup>

Second, Heffernan found that the continuing market recovery in the early 2000s led many investors to put a larger portion of their portfolio in real estate assets. As a result, homes and land in the Bedminster area were in demand causing an under-supply of residential estate sites and continued unfulfilled demand in the market.<sup>176</sup> In the years leading up to the donation, sales activity of raw land parcels and building lots in the area increased.

These factors supported Heffernan's conclusion that a 33-lot residential subdivision was financially feasible. Other factors demonstrating the demand for new housing in Bedminster include:

- Bedminster is an affluent and highly desirable residential community;<sup>177</sup>
- Despite strong demand, the supply of available residential units had declined since completion of the housing development "The Hills," resulting in an undersupply of available housing in the area; and
- Convenient access to interstate route 287 and route 78, providing access for Bedminster residents to large metropolitan employment centers such as New York City.

<sup>171</sup> Heffernan Appraisal at 21. Exam's appraisal agrees, labeling Somerset County as "one of the State's primary growth corridors." Izenberg Appraisal at 19.

<sup>172</sup> Heffernan Appraisal at 22. Exam's appraisal calculates a slightly lower, though robust, population increase of 19.2 percent over the same period. Izenberg Appraisal at 19.

<sup>173</sup> Heffernan Appraisal at 25.

<sup>174</sup> Heffernan Appraisal at 27-28.

<sup>175</sup> Heffernan Appraisal at 29.

<sup>176</sup> Heffernan Appraisal at 31.

<sup>177</sup> Heffernan Appraisal at 30.

Contrary to Izenberg’s assertions, the Property’s infrastructure was fully capable of supporting a residential subdivision at the time of the donation because Gladstone designed Residential Concept B accounting for the then-existing physical condition of the Property. Approvals from the Township Engineer and Bedminster Township Board of Health regarding conceptual disposal systems and soil suitability confirm the point. Other costly infrastructure items, such as driveways and road networks, were already in place. Izenberg’s contention that use as a residential subdivision would incur significant costs is incorrect.

**(ii) Oversupply and Declining Play Rates Made a 36-Hole Golf Course Financially Infeasible**

Heffernan contrasts the rising demand for residential housing in Somerset County and Bedminster Township with the burgeoning oversupply of newly constructed golf courses in the area. “The supply of new golf courses is outpacing the development of new golfers and increase in participation.”<sup>178</sup> Heffernan also cites the “wide availability of municipal daily fee courses” in the surrounding area, including five municipal courses in Somerset County within a 30 minute drive from the Property.<sup>179</sup> Additionally, the area already supported numerous private courses that were both established and set the market for dues. These included Baltostrol, Plainfield Country Club, Mendham Golf and Tennis Club, Roxiticus Country Club, Somerset Hills Country Club, Back Brook Country Club, Jasna Polana Country Club, Canoe Brook Country Club, Stanton Ridge Country Club, Beaver Brook Country Club, and Hamilton Farms Country Club, an exclusive club opened in Bedminster four years before the effective date of the Heffernan Appraisal. Thus, market demand for an additional golf course at the time of the appraisal was highly suspect.

In rejecting golf courses as the highest and best use of the Property, Heffernan also relied on contemporaneous, objective market data showing that “[t]he problem of over-development [of golf courses] is not going away.”<sup>180</sup> Oversupply causes price competition and competition for fee producing rounds. These factors, which led to a three-year decline in golf course prices and a substantial number of golf course failures resulting from financial problems, were specifically considered in the Heffernan analysis.<sup>181</sup> As a check, Heffernan considered the Taxpayer’s own financial projections, which projected losses for a number of years.<sup>182</sup>

	YE 12/31/2004	YE 12/31/2005	YE 12/31/2006	YE 12/31/2007	YE 12/31/2008	YE 12/31/2009
<b>Total Projected Revenue</b>	\$2,608,231	\$6,338,750	\$7,948,025	\$8,559,667	\$9,339,034	\$10,062,711
<b>Total Projected Expenses</b>	\$5,356,707	\$8,574,000	\$9,097,811	\$9,269,688	\$9,608,899	\$10,070,454
<b>Net Gain/(Loss) from Operations</b>	(\$2,748,476)	(\$2,235,250)	(\$1,149,786)	(\$710,021)	(\$269,865)	(\$7,743)

<sup>178</sup> Heffernan Appraisal at 46.

<sup>179</sup> Heffernan Appraisal at 46.

<sup>180</sup> Heffernan Appraisal at 46.

<sup>181</sup> Heffernan Appraisal at 46. Heffernan’s analysis of the then-existing golf market is consistent with that reviewed by Izenberg, who acknowledged a substantial decline in the number of rounds played nationally and in New Jersey specifically in his report. Izenberg Appraisal at 84-86. The difference is that Izenberg ignores the clearly negative implications of the data.

<sup>182</sup> Heffernan Appraisal, Addendum at LFC Pro Forma Income Statement.

Based on these market indicators, Heffernan concludes that “I would not perceive a point in the near future where the golf course operation would establish adequate operational income to substantiate a reasonable value to the underlying land that would exceed its alternate value as a residential subdivision of 33 individual buildings lots.”<sup>183</sup>

Heffernan’s conclusion regarding financial feasibility is also well-supported by the market survey performed by Exam’s own appraiser. That analysis showed:

- The existence of several, fully operational golf facilities in the immediate vicinity of the Property, including Fiddlers Elbow Country Club, New Jersey National Golf Club, Hamilton Farm Golf Club, and Green Knoll Golf Club,<sup>184</sup>
- A decline in golf rounds played from 518.4 million in 2000 to 499.6 million in 2005;<sup>185</sup>
- A 4.6 percent decrease in rounds played in New Jersey between 2004 and 2005;<sup>186</sup> and
- A below average golf participation rate by New Jersey residents.<sup>187</sup>

Exam’s own appraisal demonstrates that there was a sufficient supply (if not oversupply) of golf clubs in the area and that a 36-hole golf facility was not in demand by local residents. Thus, Heffernan’s conclusion that a 36-hole golf facility was not financially feasible is sound.

**d. Use of the Property as a Residential Subdivision Was Maximally Productive**

Having concluded that residential development and sale of 33 lots was financially feasible and that golf course use was not, it follows that of the two possible uses, the residential option was the “maximally productive” use and therefore the highest and best use of the Property at the time of the valuation.

**2. Heffernan’s “Before” Valuation Utilized a Reliable Methodology and Is Supported by Credible Data**

Heffernan concluded that the fair market value of Residential Concept B was \$49,500,000. To support this conclusion, he applied an appropriate valuation methodology,

<sup>183</sup> Heffernan Appraisal at 50. Heffernan’s conclusion was affirmed by the club’s actual operations, which failed to turn a profit in its first five years of operation.

<sup>184</sup> Izenberg Appraisal at 63.

<sup>185</sup> Izenberg Appraisal at 85.

<sup>186</sup> Izenberg Appraisal at 86.

<sup>187</sup> Izenberg Appraisal at 87.

relied on objective facts and data where available, made reasonable assumptions, and thoroughly analyzed the unique physical, legal, and aesthetic characteristics of the Property itself.

**a. The Subdivision Development Method**

Heffernan considers all valuation approaches in determining the value of the Property prior to the donation, but utilizes a combination of the Direct Sales Comparison Approach and the Subdivision Development Method, which is similar to the “Developmental Valuation Model” method that Izenberg uses in valuing the vacant portion of the Property for residential use, i.e., the 14-lot subdivision.<sup>188</sup> As explained by Heffernan, the Direct Sales Comparison Approach could not be used standing alone because there had been no recent sales of vacant parcels larger than 80 acres.<sup>189</sup>

The Subdivision Development Method values a large land parcel by hypothesizing that the parcel is subdivided into lots and inferring what the individual lots would sell for based on comparable lot price. From these inferred lot prices, it is possible to project cash flow from the sale of finished lots, subtract direct and indirect costs to develop and sell the lots, and discount the net cash flow over a reasonable estimate of the time necessary to complete the process. Heffernan’s application of the Subdivision Development Method is supported by credible data and resulted in a reliable valuation.

**b. Heffernan’s Application of the Subdivision Development Method to Determine Lot Prices**

In applying the Subdivision Development method, Heffernan carefully analyzes comparable sales of nine residential building lots in the surrounding area to determine an appropriate price per acre for the residential subdivision, and provides both a summary overview of the comparable analysis and (as an addendum) a detailed, sale-by-sale analysis of each comparable lot sale. Unadjusted for the timing or location of each sale, the average price per acre of the comparable lots ranged from \$76,973 to \$171,500.<sup>190</sup> Heffernan adjusts this raw data analysis by applying an appreciation rate of 12 percent per year to account for the differences in timing between the date of his appraisal and the earlier sales of the comparable lots. The use of a 12 percent appreciation rate was reasonable in light of the rising demand for, and contracting supply of, residential lots during this time period in the area. In fact, Heffernan’s appreciation rate was conservative: between 2001 and 2005 lot prices appreciated at an annual rate of between 11 percent and 15 percent.<sup>191</sup> Heffernan also made downward adjustments to the sale prices of three lots that were in a superior location compared to the Property. After applying adjustments

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<sup>188</sup> Izenberg Appraisal at 72.

<sup>189</sup> Heffernan Appraisal at 53. As explained further below, Heffernan did perform direct comparisons of nine sales of lots ranging from 9.91 to 28 acres to estimate an average price per acre for each residential lot in Residential Concept B. Exam’s appraiser applied a similar approach in his subdivision analysis.

<sup>190</sup> Heffernan Appraisal at 54.

<sup>191</sup> Fed’l Housing Fin. Agency, *Four-Quarter Percent Change in FHFA State-Level House Prices Indexes*, available at <http://www.fhfa.gov/Default.aspx?Page=215&Type=compare&Area1=NJ&Area2=&Area3=> (last visited July 25, 2011).



for time and location, Heffernan adjusted the range of average price per acre to \$112,365 to \$214,375.<sup>192</sup>

Next, Heffernan uses his derived average price per acre to estimate the value for each of the 33-lots. Heffernan's consideration of each lot's size, location, and environmental characteristics are set forth lot by lot in his report, to which he then assigns a unique value to each.<sup>193</sup> Based on his detailed and considered analysis, Heffernan concludes that the Property yielded an average price per acre ranging from \$110,000 to \$155,000 and a price per lot ranging from \$1,345,000 to \$3,325,000.<sup>194</sup>

Heffernan's conclusion is corroborated by actual contracts for the sale of lots *on the Property* before December 29, 2005, the date of Taxpayer's donation. Prior to Taxpayer's purchase of LFC, it entered into contingent contracts to sell two of the 14 pre-approved residential lots on the Property. Specifically, under the Contract for Sale of Real Estate between LFC and Scott Finlay, dated October 30, 2001, LFC agreed to sell proposed lot 3 for a purchase price of \$1,485,000. The contract was supported by an earnest money deposit. Also, in October 2001, LFC agreed to sell proposed lot 5 for a purchase price of \$1,500,000 to Ignazio Piedilato who also deposited earnest money.

When Taxpayer purchased LFC, it had a conditional right to cancel these contracts by returning the deposits. On June 5, 2003, LFC (then owned by Taxpayer) cancelled Finlay's contract and returned his deposit. Finlay objected and demanded that LFC enter into an agreement whereby LFC granted Finlay the right to buy proposed lot 3 for \$1,485,000 in the event LFC later contracted for its sale with a third party. Finlay thereby confirmed that he still wanted to buy lot 3 for a price of \$1,485,000. Similarly, Taxpayer terminated Piedilato's contract and returned his deposit. Like Finlay, Piedilato objected. After substantial negotiations, LFC persuaded Piedilato to accept Taxpayer's legal right to cancel the contract. On February 10, 2004, LFC returned Piedilato's deposit, but granted him an option to purchase proposed lot 5 for \$1,500,000 in the event LFC later contracted for its sale with a third party. These transactions are actual comparables: Finlay and Piedilato each agreed to purchase a lot for a substantial price even though the contract was contingent and closing would not occur for a substantial period.

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<sup>192</sup> Heffernan Appraisal at 54-56.

<sup>193</sup> Heffernan Appraisal 56-61. Exam's claim that "several of the potential lots were described as having exactly the same characteristics but were 'assigned' different values per acre" misses the point entirely. RAR at 24. While some lots have similar, or even identical, environmental characteristics, in fact, *no* two lots are ever identical. Differences in size and location affect the value of each lot. In fact, it is for this very reason that specific performance is typically granted in cases involving real estate assets. *See Pruitt v. Graziano*, 521 A.2d 1313 (N.J. Super. Ct. App. Div. 1987) ("Presumptively, real property is unique and damages at law are an inadequate remedy for breach of a contract to sell it. A factual resolution of uniqueness of the real property is immaterial.") As no two lots were identical in size or location, it is perfectly reasonable to assign different prices per acre to two lots that share similar environmental characteristics. Exam's criticism demonstrates its misunderstanding of the Heffernan Appraisal and simultaneously highlights the thought and precision with which Heffernan valued Residential Concept B.

<sup>194</sup> Heffernan Appraisal at 56-61.

Making reasonable time value adjustments to the sales prices in the Finlay and Piedilato contracts corroborates Heffernan's conclusion regarding the average lot price of \$1,852,500. The average contract price of the two lots is \$1,493,000. Using the same 5 percent appreciation rate applied by Izenberg yields a net value as of the Easement grant date of \$1,814,000, a mere \$38,500 difference from Heffernan's assumption. In fact, a 5 percent appreciation rate is conservative, because the valuation date occurred when residential real estate was appreciating at a rate much greater than 5 percent.

**c. Heffernan's Application of the Subdivision Development Method to Determine Costs and Net Present Value**

Heffernan's remaining assumptions are well-supported and mostly unchallenged. His estimate of sales and marketing expenses (4 percent) was identical to what was used by Izenberg.<sup>195</sup> Similarly, Heffernan and Izenberg both estimate entrepreneurial profit to be 10 percent.

Heffernan estimated a cost of \$75,000 to finalize zoning and other approvals.<sup>196</sup> This estimate takes into account the fact that much of the total cost to obtain necessary approvals had been incurred before the Easement grant date, so that relatively little remained to be done. Heffernan's absorption rate is supported by market demand for housing, research of similar sell-outs, actual discussions with local brokers, and his own experience with luxury subdivisions.<sup>197</sup> Finally, Exam has never questioned Heffernan's use of a 10 percent discount rate.

Based on all of the foregoing, the Heffernan determination that the value of the Property prior to the donation of \$49,500,000 is well supported. Exam's criticisms are off the mark.

**3. Heffernan's Highest and Best Use Conclusion—After Donation**

The granting of the Easement prevented the Property from being used as a residential subdivision with 33 developable lots.<sup>198</sup> It therefore changed the highest and best use of the property. Both before and after the Easement donation the Property could be used as a golf course. Therefore, Heffernan considered whether golf course use became the highest and best use.

As explained above,<sup>199</sup> Heffernan concludes that a golf facility located on the Property would likely operate at a loss for an extended period of time.<sup>200</sup> A use is not financially feasible if it is expected to lose money. Therefore, Heffernan rejects golf course use as the post-donation highest and best use of the Property.

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<sup>195</sup> Heffernan Appraisal at 62; Izenberg Appraisal at 77.

<sup>196</sup> Heffernan Appraisal at 62.

<sup>197</sup> Heffernan Appraisal at 45.

<sup>198</sup> Heffernan Appraisal at 77.

<sup>199</sup> See *supra* Section IV.A.1.

<sup>200</sup> Heffernan Appraisal at 51.

Instead, Heffernan concludes that the Property's highest and best use after donation was as a large estate residence. Exam challenges this conclusion as a "significant error" because the Easement itself does not allow residential use of the Property.<sup>201</sup> Exam is partly right. Heffernan does posit an unpermitted use as the highest and best use post-donation but the error is hardly significant since all other permitted uses would produce *lower* values than use as a large estate with a single residence.

More importantly, it was entirely reasonable to assume that the Township would permit such use, given the options. Heffernan's extensive municipal experience led him to conclude that, "[i]t would be unreasonable to assume that the Township would allow the land to lie fallow as this would tend to be an unreasonable maintenance, safety and insurance expense for the Township."<sup>202</sup> Accordingly, Heffernan assumes that the Township would readily agree to permit use of the Property as a single estate building lot, as a cheaper and more desirable alternative to letting the land lie fallow, while assuring that the conservation purposes of the Easement were vindicated.

In appraisal methodology, an assumption such as this is referred to as an extraordinary assumption and, according to protocol, should be specifically noted in the report. This, Heffernan did not do. But the assumption was sound, because it took into account the Township's obvious interest in avoiding unnecessary cost. Thus, Heffernan's error was failing to note an extraordinary assumption; it was not an error to make the assumption. Indeed, it would have been substantively wrong not to make the assumption.

According to Heffernan, "[p]roperties in this area have been similarly restricted to one estate residence utilization, and such use represents a reasonably acceptable alternative assuming that a 'for-profit' golf course and country club utilization is not financially feasible."<sup>203</sup> In fact, he continues, "it is my opinion that the appraisal would have been incorrect without this assumption."<sup>204</sup>

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<sup>201</sup> RAR at 25-26. In response to this and other criticisms of the Heffernan Appraisal raised in Exam's RAR, Heffernan issued a letter to Taxpayer dated July 7, 2011, clarifying the aspects of his report that Exam has apparently misinterpreted or misunderstood (the "**Heffernan Response**"). The Heffernan Response is attached at Exhibit 2.

<sup>202</sup> Heffernan Response at 2.

<sup>203</sup> Heffernan Response at 2.

<sup>204</sup> Heffernan Response at 2. It is also worth noting that Heffernan's conclusion that the Property could be restored to a large estate residence actually decreases the value of the conservation easement. As made clear by Heffernan's valuation, the 10 acres of "buildable" land post-donation were valued at \$145,000 per acre whereas the 495 acres of "unbuildable" land were valued at \$18,000 per acre. Heffernan Appraisal at 77. Acquiescing to Exam's argument would result in an "after" value \$1,270,000 less than that recorded by Heffernan and would therefore increase the value of the claimed deduction by that same amount. The fact that Heffernan took this conservative approach demonstrates his determination to find the Property's *fair* market value as opposed to a *predetermined* market value.

#### 4. Heffernan's Valuation — After Donation

Having determined that the Property would most likely revert to use as a large, single estate residence, Heffernan again applied appropriate valuation principles to determine the Property's fair market value after the imposition of the conservation restriction. Consistent with his highest and best use conclusion, Heffernan valued the Property after the donation by reference to two comparable sales of other, large estate lots that were restricted to a single dwelling unit.<sup>205</sup> These sales occurred within Bedminster in 2000 and 2002, respectively. Heffernan valued the undevelopable land at \$18,000 per acre. He then added in the previously-determined value of the developable lot to arrive at a final "after" value of \$10,400,000.<sup>206</sup>

#### 5. Reconciliation — Value of Conservation Easement

##### Reconciliation of Heffernan Appraisal Market Values

Market Value on December 30, 2005 (Pre-Easement)	\$49,500,000
Market Value on December 30, 2005 (Post-Easement)	\$10,400,000
Market Value of Conservation Easement	\$39,100,000

#### 6. Exam's Criticisms to the Heffernan Appraisal Are Either Incorrect or Irrelevant

Exam levels a variety of unfounded criticisms at the Heffernan Appraisal. As noted above, Heffernan issued a letter to Taxpayer in response to Exam's criticisms,<sup>207</sup> which is summarized below. Some of Exam's criticisms are simply wrong,<sup>208</sup> others are irrelevant. We sort them in that order.

<sup>205</sup> Heffernan Appraisal at 64.

<sup>206</sup> Heffernan Appraisal at 77.

<sup>207</sup> See Exhibit 2.

<sup>208</sup> In addition to Exam's criticisms discussed below, Exam also claims that Heffernan was inconsistent in his description of the valuation approach used. That is not true. Exam has taken various statements made throughout the Heffernan Appraisal and juxtaposed them so that they would appear inconsistent. Heffernan was quite clear that he used the Subdivision Development Method, which in turn, incorporated the Sales Comparison Method to derive prices for individual lots. Exam should have no complaint as that is the same method used by Izenberg in his valuation of the 14-lot subdivision.

**a. Exam's Incorrect Criticisms**

**(i) Heffernan Did Not Ignore Pre-Existing Environmental Conditions**

Exam alleges that Heffernan failed to consider the pre-existing Grassland Bird Habitat Conservation Easement as well as other pre-existing conservation easements on the Property. The 61 acres of pre-encumbered property, according to Exam, “cannot be included in the current conservation easement.”<sup>209</sup> In fact, Heffernan determined the value of the Property by summing the separately derived values of the 33 proposed lots into which the Property could be divided. To the extent that portions of these lots were burdened by pre-existing restrictions of any type, Heffernan took them into account.

In this regard, it is important to bear in mind that the minimum lot size was 10 acres and each lot was restricted to one dwelling. Therefore, even without pre-existing environmental restrictions, each lot would retain substantial acreage upon which structures could not be built. Given the minimum lot size, designing each lot to minimize the adverse value impact of pre-existing restrictions was not particularly difficult (and is part of the reason that lots range in size from 10 to 27 acres) and, in any event, Heffernan valued the lots as restricted.

For example, proposed lot 15 of Residential Concept B clearly labels pre-existing wetlands and a pre-existing conservation easement.<sup>210</sup> Heffernan incorporates these pre-existing restrictions into his valuation. “My valuation of the retail price for the proposed building lots necessarily incorporates those easements, as well as other limiting factors (wetlands and wetland transition buffers) in arriving at the value ‘before.’”<sup>211</sup>

Moreover, Heffernan specifically identifies these pre-existing easements and environmental restrictions in his lot-by-lot valuation of the Property. For example, in his description of lot 1, Heffernan refers to a “minor amount of wetlands at the rear of the lot;”<sup>212</sup> in his description of lot 10, Heffernan cites a “20 foot wide AT&T underground easement crossing the north side of the lot;”<sup>213</sup> and his description of lot 15 notes a “conservation easement that wrap[s] the north, east and southern side of the property.”<sup>214</sup> Exam is wrong in its allegation that Heffernan did not account for pre-existing environmental restrictions.

Finally, Exam’s allegation ignores Taxpayer’s Supplemental Response to IDR #3, submitted on April 6, 2010. There, Taxpayer provided a detailed description of all pre-existing restrictions on the Property, noting that they did not interfere with the residential concept design. Exam’s continued challenge on these facts is frivolous.

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<sup>209</sup> RAR at 23.

<sup>210</sup> See Residential Concept B.

<sup>211</sup> See Heffernan Response at 4.

<sup>212</sup> Heffernan Appraisal at 56.

<sup>213</sup> Heffernan Appraisal at 57.

<sup>214</sup> Heffernan Appraisal at 58.

**(ii) Heffernan Did Not Ignore the Property's Improvements**

Next, Exam claims that the Heffernan Appraisal ignores the improvements, personal property, and intangibles that existed at the time of the donation and that it fails to analyze the Property's highest and best use "as improved."<sup>215</sup> Once again, Exam ignores large portions (about 25 pages in this instance) of the Heffernan Appraisal.

Heffernan's analysis complied with the Uniform Standards of Professional Appraisal Practice ("USPAP") Standard 1-2(e), which states that an appraiser is to "identify the characteristics that are *relevant* to the type and definition of value and intended use of the appraisal." As discussed above, Heffernan determined that golf course usage was *not* the highest and best use of the Property. Accordingly, the pre-existing golf improvements were irrelevant. "The improvements that created the [18] golf holes would not increase or detract from the final value of each individual building lot, as it is likely that those features would be graded over in the course of the eventual residential construction of each individual lot (an expense borne by the purchaser)."<sup>216</sup>

On the other hand, Heffernan *did* consider the improvements that had some bearing on the value of his determined highest and best use of the Property, such as the Property's infrastructure (i.e., existing roads and drainage features). These features, which were included within Residential Concept B, eliminated the need for (and cost of) installing additional roads and drainage systems. Thus, the Heffernan Appraisal does not reduce its fair market value determination for such costs.<sup>217</sup>

**(iii) Heffernan Considered Zoning Restrictions, Economic Conditions, Neighborhood Trends, and Physical Adaptability of the Property**

Exam challenges the Heffernan Appraisal for failure to consider the effects of local zoning restrictions, economic conditions, neighborhood trends, and physical adaptability of the Property.<sup>218</sup> This challenge also blatantly disregards substantial portions of the Heffernan Appraisal.<sup>219</sup> It contains an extensive summary of economic conditions and neighborhood trends within Somerset County and Bedminster Township.<sup>220</sup> It analyzes population statistics, employment trends, transportation networks, and income levels.

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<sup>215</sup> RAR at 23.

<sup>216</sup> Heffernan Response at 2.

<sup>217</sup> Heffernan Response at 3. Indeed, it was *Exam's appraisal* that ignored the existing improvements on the Property by failing to account for improvements such as a pre-existing road network, Township approvals for residential development, and already-performed soil testing.

<sup>218</sup> RAR at 23.

<sup>219</sup> It is difficult to determine the sincerity of Exam's criticism, given its own appraiser's lack of any detailed market analysis. See *infra* Section IV.B.5.a.

<sup>220</sup> Heffernan Appraisal at 21-30.

In addition, the Heffernan Appraisal includes a meticulous site analysis to confirm the Property's physical adaptability to a residential subdivision.<sup>221</sup> It reviews soil suitability tests and analyzes property access. In this regard, as explained above, it relies on the independent opinion of Gladstone, a respected local engineering firm, and the fact that the tests were reviewed and approved by the Township Engineer and the Bedminster Township Board of Health.<sup>222</sup>

The Heffernan Appraisal also includes a detailed description of the Property's zoning restrictions<sup>223</sup> and an extensive market overview.<sup>224</sup> This section of the Heffernan Appraisal highlights the contrast between the growing demand for undersupplied housing and the oversupplied and weakening demand in the golf market.

**(iv) Heffernan Considered Soil Permeability and Residential Building Permit Trends**

The next criticism offered by Exam is Heffernan's failure to consider "poor soils and topographic limitations" as well as a decrease in residential building permits in Bedminster.<sup>225</sup> We have already explained that Heffernan relies on detailed soil tests and other engineering analyses performed by Gladstone and reviewed by local officials. We embellish on that explanation below.

It is true that low-density residential development predominates Bedminster Township, in part as a result of poor soils and topographic limitations. These limitations are specifically recognized by the Bedminster Township Master Plan and are a primary reason why these areas have been rezoned to provide for one residence every 10 acres. Because only one positive percolation test is necessary per lot, larger lot sizes increase the likelihood of successful percolation tests, despite the existence of "poor soils."<sup>226</sup> The lots in Residential Concept B were all at least 10 acres, and 14-lots had already achieved successful percolation tests and approval for residential development at the time of the valuation. The Heffernan Appraisal relies on the advice of Gladstone that adequate percolation would have been achieved on the remaining 19 lots to complete the 33-conceptual lot yield.<sup>227</sup> The Heffernan Appraisal reviews this evidence and concludes that the soil and topographic "limitations" were no barrier to implementation of Residential Concept B.

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<sup>221</sup> Heffernan Appraisal at 31-36.

<sup>222</sup> See Gladstone Opinion Letter.

<sup>223</sup> Heffernan Appraisal at 38-41. As noted in the Heffernan Appraisal, Heffernan also relied on the opinion of professional engineers to conclude the Property's physical adaptability to a residential subdivision. This opinion was provided to Exam over one year ago, and Exam has never questioned the merits of the opinion's conclusions.

<sup>224</sup> Heffernan Appraisal at 44-47.

<sup>225</sup> RAR at 23-24.

<sup>226</sup> Heffernan Response at 5.

<sup>227</sup> Heffernan Appraisal at 32.

Here again Exam has ignored information that Taxpayer provided in direct response to its inquiries. On May 17, 2010, Taxpayer provided (in its Supplemental Response to IDR #4) an opinion letter it received from Gladstone. This opinion specifically addresses the suitability of the soils for residential development and confirms “that adequate permeability for the installation of a subsurface disposal system for the proposed conceptual lots depicted on Residential Concept Plan ‘B’ can be achievable based upon the testing performed on the subject property.”<sup>228</sup> Notably, Exam posited no response to this opinion, nor did it submit follow-up questions regarding its substance. Instead, it chose to ignore facts.

Exam also misinterprets Heffernan Appraisal’s reference to a decrease of residential building permits. Exam’s inference that the decrease in residential building permits between 1995 and 2001 was the result of a lack in demand is contradicted *by the very next paragraph* in the Heffernan Appraisal, which states “[s]ince the completion of ‘The Hills’ residential activity has dropped substantially *due to a lack of available building lots*. Future growth will, likewise, be limited by the rate at which larger landholders are willing to release land for development.”<sup>229</sup> Thus, in direct contradiction of Exam’s claim, the drop in residential permits resulted from a shortage of supply, not demand.<sup>230</sup> These statistics support Heffernan’s conclusion that the 33 lots could be sold at predicted prices at a rate of six per year.

**(v) Heffernan Fully Analyzed Comparable Sales of Individual Lots**

Exam charges that the Heffernan Appraisal did not adequately analyze the comparable sales selected to determine an average price per lot in the subdivision analysis.<sup>231</sup> Based on this allegation, Exam calls into question the Heffernan Appraisal’s conclusion regarding the average per-acre value and average per-lot value of the residential subdivision. Again, these allegations carelessly and blatantly disregard the plain language of the Heffernan Appraisal.

First, the Heffernan Appraisal provides a detailed accounting of the nine comparable sales of residential building lots within Bedminster. It analyzes each of these sales on both a combined quantitative and qualitative basis, wherein it applies adjustments for market conditions and location. It then compares these results to the proposed 33 lots comprised by the Property to determine an appropriate value per acre.<sup>232</sup> Next, Heffernan evaluates each individual proposed lot in terms of its physical nature and assigns a particular price per acre based on that lot’s unique characteristics.<sup>233</sup> “This individual analysis is conducted for each of the lots so that the

<sup>228</sup> See Gladstone Opinion Letter.

<sup>229</sup> Heffernan Appraisal at 29 (emphasis added).

<sup>230</sup> Heffernan Response at 5.

<sup>231</sup> RAR at 23-24.

<sup>232</sup> Heffernan Response at 6.

<sup>233</sup> Heffernan Appraisal at 56-61. This approach is in stark contrast to the “one size fits all” approach employed in the Izenberg Appraisal, wherein Izenberg assigned a blanket value of \$95,000 per acre for the entire Property, regardless of size, location, or other physical attributes. See Izenberg Appraisal at 73.



comparable sale lot with the most analogous physical attributes to the subject lot are used to derive a custom price estimate for each proposed lot.”<sup>234</sup>

Heffernan’s per acre and per lot conclusions are further supported by actual sales of two lots *on the Property* that are reviewed at *supra* Section IV.A.2.b.

**(vi) The Heffernan Appraisal’s Development Cash Flow Model is Fully Supported**

Exam next challenges the assumptions underlying the Heffernan Appraisal’s development cash flow model, such as its projected absorption rate, and its failure to include additional costs such as reclamation expenses and costs to obtain approvals of additional lots.<sup>235</sup> Here again, Exam is simply wrong.

Heffernan projects an absorption rate of six lot sales per year, which is supported by a robust market analysis that demonstrates limited supply and growing demand for buildable residential lots in Bedminster.<sup>236</sup> Moreover, Heffernan’s analysis clearly includes the cost for obtaining additional approvals for the 19 conceptual residential lots.<sup>237</sup>

Finally, Heffernan correctly ignores reclamation expenses in his analysis. Typically, when selling large estate lots, these expenses are borne by the purchaser of the property and would not be deducted from a hypothetical seller’s anticipated gross income. Exam’s argument to the contrary is simply incorrect.

**b. Exam’s Irrelevant Criticisms**

Exam leads with two criticisms that are plainly irrelevant to the credibility and reliability of the Heffernan Appraisal. Specifically, Exam criticizes Heffernan for misstating the effective date of the appraisal as well as for stating two different “before” values in the “summary of salient facts” section of the Heffernan Appraisal.<sup>238</sup> These are clearly proofreading errors.

Exam fails to note that the Heffernan Appraisal correctly states the effective date of the appraisal on the cover letter accompanying the appraisal as well as on pages 19, 63, 77, and 79 of the report, further demonstrating that the error was ministerial. Moreover, the correct “before”

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<sup>234</sup> Heffernan Response at 6.

<sup>235</sup> RAR at 25.

<sup>236</sup> Heffernan Appraisal at 29, 62.

<sup>237</sup> Heffernan Appraisal at 62. Exam also alleges that the Heffernan Appraisal’s valuation of these 19 additional conceptual lots involve a “Hypothetical and Extraordinary Assumption,” because it assumed the future approval of these lots. As previously discussed, the Heffernan Appraisal reviews soil suitability tests, relies on the opinions of professional engineers, considers zoning requirements and building trends, and deducts costs for obtaining approvals for the 19 lots.

<sup>238</sup> RAR at 22.

value is found on pages 63 and 77 of the Heffernan Appraisal, as clarified by Taxpayer in March 2010.<sup>239</sup>

## B. The Izenberg Appraisal

Exam retained the services of Izenberg Appraisal Associates to value the conservation easement. Izenberg concludes that the highest and best use of the Property, prior to the donation, was as two 18-hole golf courses. He also concludes that the highest and best use of the Property, after the donation, is as two 18-hole golf courses. The fair market value of each use was identical—\$27,700,000—resulting in an easement value of \$0.

The Izenberg Appraisal is so riddled with omissions, mistakes, and inconsistencies that no court would credit it. That is not merely the view of Taxpayer and his advisers; it is the conclusion of the report of James Agner (“**Agner**”), one of the most respected and experienced golf course appraisers in the field, who questions “the reliability and conclusions of the overall market value of the subject property, but more importantly question Izenberg’s satisfaction of the [USPAP] Competency Provisions when it comes to golf course valuation. . . . [I]t’s apparent that the appraiser has not properly demonstrated the appropriate analysis and methodologies to value a private golf course facility.”<sup>240</sup>

That is a strong allegation that neither Agner, nor Taxpayer, make lightly, and would not make if the facts, as explained below, did not overwhelmingly support it.

### 1. Core Errors in Izenberg Appraisal: 135 Percent Increase in Rounds and Revenues Cannot Be Achieved and “Comparables” are Not Comparable

We first address the core errors and then deal with specific errors and omissions. Izenberg concludes that the highest and best use of the 18-hole golf course that existed at the time of the donation was to continue its existing use, and develop a second 18-hole course on the vacant parcel.<sup>241</sup>

In general, he purports to determine value by using an income capitalization approach (the “**Income Approach**”) and a comparable sales approach (the “**Sales Comparison Approach**”). In his Income Approach, he assumes that a willing buyer would (1) continue to use the Property as a high-end private facility, (2) instantly increase rounds played on the course by 135 percent to 35,000 rounds per year (97.7 percent of its maximum possible rounds before taking into account any play suspension due to inclement weather), and (3) thereby increase revenue by 135 percent. These assumptions are absurd. Jam-packed golf courses and high fees cannot co-exist.

<sup>239</sup> See Initial Response to IDR #3, Request 4 (Mar. 16, 2010).

<sup>240</sup> Desktop Appraisal Review of CB Richard Ellis at 24 (July 5, 2011) [hereinafter the “**CBRE Report**”]. The CBRE Report is attached as Exhibit 3.

<sup>241</sup> Izenberg Appraisal at 83.

Alternatively, Izenberg values the golf course by looking to sales of “comparable” golf courses. Because he assumes continued use as a golf course, he does not consider whether the highest and best use of the comparables is golf course use. This is particularly problematic with respect to two of his comparables because the buyers of those courses intended to convert them partially or wholly to residential use.

Further, Izenberg seems to recognize that when an operating golf course is sold *for continued use as a golf course*, the baseline price is determined primarily by the revenue produced by the subject course. Therefore, to determine the value of a subject course based on the sales of other operating golf courses, it is necessary to know both sales prices *and* financial data (revenues and sources of revenue) of the other courses. Other factors, for example, total acreage, are tertiary as long as there is enough space to operate an 18-hole course. Here, Izenberg knows the sales prices of his comparable courses and some other marginally relevant data, but he has no relevant revenue data or other financial data from two of his comparables which to infer revenue, or the potential for growing revenue. He has or infers limited financial data from one of his comparable courses, Bergen Hills, but this course was apparently purchased for residential development and, in any event, it is a daily fee course that produced high rounds and correspondingly low revenue per round.

Understanding Izenberg’s core error requires an acquaintance with golf basics. Every 18-hole golf course has exactly 18 holes and restricts play on each hole to no more than four players at a time. Each foursome starts with a tee time and progresses sequentially from hole to hole. Almost universally, golf courses schedule tee times no closer than 10 minutes apart. This reflects an aspirational assumption that foursomes will play each hole in ten minutes. But golfers and golf course owners alike know that a 4-hour round is difficult to achieve when a course is crowded, especially with less skilled golfers who slow play as they may take many strokes above par to complete each hole.

The maximum number of tee times on any course is a function of daylight. A round can not start in the dark and it can not be scheduled to end in the dark. Available tee teams are also limited by climate. Rain and snow tend to preclude all play. Some courses may permit play in weather that is merely cold, but courses universally prohibit play when the turf is frozen. And, in bad weather, even if play is theoretically possible, golfers stay indoors. For these reasons, courses in cold weather climates, such as Bedminster, shut down for three to four months during the winter, and are impacted by weather conditions throughout the season. In the case of Bedminster, the maximum possible number of tee times in its 7-month season is 36,000 per course.

Another factor that limits potential play is that tee times cannot be concentrated on high demand periods, such as weekends. Instead, tee times are available linearly—e.g., on Tuesday at 11:20 a.m., 11:30 a.m., 11:40 a.m., etc. Thus, a large number of available tee times are simply not accessible to a large portion of the golf playing public.<sup>242</sup>

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<sup>242</sup> Only rare courses are full on weekdays. The rare ones tend to be those located in vacation areas where players are available everyday, and true destination courses, such as Pebble Beach, which are so famous that golfers plan travel around available tee times. Bedminster is not a vacation destination and no hypothetical willing buyer would assume that it could create a true destination course in Bedminster.

Finally, competing courses and the local population also limit rounds played. If a golf course is not located in an area that is a vacation destination, a course must rely on players who live within a reasonable driving distance. For example, if a player has an hour commute to the course, then a four-hour round turns into a six-hour outing. Therefore, the number of rounds played on a course is affected by the population of golfers in the local area and the number and variety of competing courses located within reasonable driving range. For golfers, one of the reasons that Bedminster is a highly desirable residential community is because the local population density is low, and there are a number of high quality courses in the general area.

From an economic perspective, courses can be divided into two categories: public daily fee courses and private courses. Daily fee courses are those that are open to the general public and charge by the round. These courses seek to maximize revenue by maximizing rounds, but the cost per round is almost always quite modest in comparison to private clubs. Members of private clubs pay dues in lieu of paying by the round, and the dues paid by members divided by the number of rounds is generally much higher than the per round cost to play at a daily fee course. Further, maximizing the number of rounds inevitably *decreases* revenue *per round*.

First, except for courses in vacation destination areas, daily fee courses must appeal primarily to players who live relatively close by and are not members of a private club (either because they are unable or unwilling to pay the high dues). While a local golfer may pay a higher price once or twice to play on a truly superior local course, local golfers who play frequently are not likely to regularly pay green fees that are higher than those charged by other nearby daily fee courses. If a golfer plays regularly and is willing to pay high fees, he or she will join a membership club.

Second, for daily fee courses, filling the low demand tee times that occur on week days or late afternoons requires courses to price rounds to attract seniors, non-working spouses, students, and the unemployed. These players tend to be fee sensitive.

Finally, high volume play beats up a course physically. The damage is exacerbated because high volume courses tend to attract less skilled golfers whose inexperience translates into increased course damage, which increases maintenance costs, makes the course less attractive, and thereby puts further downward pressure on green fees.

Private courses are the antithesis of daily fee courses. Owners do not want to increase rounds; they want to increase dues paying members. Golfers who join high end clubs are willing to pay substantial dues to be able to reserve desirable tee times on a course that is not beaten up by high traffic and which accommodates rounds that can be completed in less than 4 hours. Therefore, there is a natural limit on the number of dues paying members that a private club can accommodate without depriving such members of their paid-for benefits. In any event, in the case of Bedminster, local zoning restrictions permit golf courses but limit membership to 350 members per 18 holes.

As importantly, there are limits to the dues that a private club can charge, especially when the club is located in a low population density area and its membership is concentrated in

geographic proximity to the club. While a willing buyer of the Bedminster course at the time of the donation would certainly be able to provide a fine golf facility to prospective members, there were a number of other fine private clubs in the geographic area. The willing buyer might reasonably expect to charge competitive dues, but could not reasonably expect to extract dues that were materially higher than those charged by other high quality clubs.

**a. The Existing 18-Hole Course Could Not Simultaneously Produce a 135 Percent Increase In Rounds and a 135 Percent Increase In Revenues per Round**

Against this background, the central contradictions in Izenberg's Income Approach become apparent. Izenberg determines that the highest and best use of the 18-hole course that existed at the time of the donation was its continued use as a private for-profit golf club, which was limited by law to 350 members. In making this determination, he posits two assumptions: a willing buyer would be able to (1) increase rounds played on the existing 18 hole course by 135 percent, from 14,808 to 35,000, (97 percent of the maximum number of possible tee times); and (2) increase all revenue items by 135 percent per round. Assumption (1) is irreconcilable with Izenberg's view that the highest and best use of the Property is as a high end private membership golf facility whose members would not tolerate over-crowding the course. Assumption (2) is even more absurd. There is no reasonable possibility that revenue could have been increased by 135 percent because the members were already paying market dues.<sup>243</sup> A willing buyer might expect to charge dues that are competitive with other high-end courses in the vicinity, but a 135 percent increase above the market is unthinkable.

Izenberg offers no data to support his arbitrary assumption that if rounds played increased by 135 percent, *every revenue item* would also correlatively increase by 135 percent. Finally, increasing rounds played and other revenue items by 135 percent necessarily increases expenses. Under Izenberg's approach, expenses should correlatively increase by 135 percent. Yet Izenberg only increases selected expenses, and in total, by only 53 percent.

These errors are compounded by the fact that Izenberg assumes that a willing buyer of the property could instantly increase rounds and revenue by 135 percent. He provides for no ramp up time.

In short, Izenberg's view that the highest and best use of the Property is as a high-end membership golf facility is irreconcilable with his assumptions of extraordinarily high total rounds and revenue increases of 135 percent, all without correlative increases in expenses.

**b. Izenberg's Comparables Sales Approach Fails To Establish Comparability**

For his comparable sales analysis, Izenberg chooses three operating golf courses that were sold in New Jersey between 2003 and 2005. He knows the sale price of each. And he knows some other facts, for example, the length of each course, its total acreage, and the

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<sup>243</sup> Even if the course were converted to a daily fee course, it is highly unlikely that 35,000 rounds a year could be obtained, but it is certain that revenue per round would drop to match fees charged by other near by public courses.

designers of the courses. He also knows something about course improvements, such as club houses. And he knows that each course was in service long enough to be beyond its start up stage. But, with respect to two of his courses, he has no data that indicates their “as is” revenue. This absent data is critical to determining comparability. Further, Izenberg assumes that the highest and best use of each comparable was continued golf course use, even though two of the courses were reportedly purchased for residential development. And, the one course for which he has limited financial data produced the high rounds he hypothesizes for the Property, but very low revenue per round.

When an operating golf course is sold for continued use as a golf course, the key factor that determines its baseline “as is” price is the revenue that it is producing. The relevance of other factors is a function of their effect on revenue production. For example, while the length of a course or the quality of its existing club house may contribute to its ability to produce revenue, those contributions should already be reflected in the revenue being produced. Acreage is a Delphic indicator of value. While course *length* may contribute to revenue production (longer courses can challenge a wider variety of skill levels), excess acreage does not produce golf revenue but adds to costs because it must be maintained. To be sure, a willing buyer takes into account operations he thinks he can change to enhance revenue production and decrease costs, but the starting point for assessing the potential for change is the “as is” revenue production. Therefore, in order to reliably value an existing course by reference to sales of other courses, it is necessary to know both the prices for which the other courses sold and the revenue that they were producing at the time of the sales, or at least the sources from which revenue can be inferred.

Izenberg has almost none of the necessary information regarding his comparable clubs, so he just invents numbers out of very thin air. With his invented numbers he concocts comparisons that defy logic.

In sum, the core errors in Izenberg’s comparable sales analysis are that it fails to consider whether the highest and best use of the comparables is golf course use (ignoring public information regarding the buyers’ intended use); and, in valuing the comparables *as golf courses*, it fails to establish comparability because there is insufficient financial data to establish comparability.

## **2. Detailed Summary of Izenberg’s Errors**

### **a. Izenberg’s “Before Easement” Highest and Best Use Analysis is Indefensible**

As explained above, Heffernan concludes that golf course use of the property was not financially feasible. Heffernan bases this conclusion on “macro” economic data reflecting (at the time of the donation) a significant decline in demand for golf and a trend of substantial golf course closures. Heffernan also relates the macro data to local data. Izenberg cites similar market data reflecting a decline in golf play nationally, and in New Jersey specifically, as well as noting that golf course participation in New Jersey is *below* the national average,<sup>244</sup> but

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<sup>244</sup> Izenberg Appraisal at 85-87.

nonetheless concludes both that golf course use was financially feasible, and that it was maximally productive as compared to any other alternative use of the Property, including residential development under Residential Concept B.

Since we have already explained the core errors in Izenberg's assumptions that serve as the foundation for his valuations, we now turn to detailing the more specific errors.

**(i) Izenberg Misinterprets and Disregards the Facts Relating to Township Approvals, Soils Testing, Residential Concept B, and Existing Infrastructure**

In his appraisal, Izenberg asserts that residential development of the Property, both as vacant and improved, would be difficult and uncertain.<sup>245</sup> He attempts to support his assertion by citing soil data,<sup>246</sup> pre-existing environmental restrictions,<sup>247</sup> and estimated expenses for necessary street improvements,<sup>248</sup> ultimately concluding that “it appears residential uses would encounter significantly more limitations, and encounter more mitigation expenses [than] a golf facility.”<sup>249</sup> Therefore, the Property's highest and best use, according to Izenberg, must be as a golf facility.<sup>250</sup> This analysis is rebutted by uncontradicted facts provided by Taxpayer during this audit, which Izenberg either ignores or distorts.

First, Izenberg contends that the Property's soils would limit residential development. “Additionally, it should be noted that the subject property owner provided Soil Log Summary Form 5-4-10 xls dated May 3, 2010, titled ‘Residential Lot Soil Testing Summary Form.’ This form, in regards to the 14 subdivided lots, shows that eight of the lots have negative basis flood test results.”<sup>251</sup> What Izenberg fails to mention is that each of the eight lots with negative basin flood test results also had either (i) a positive basin flood test result or (ii) a positive pit-bail passing result—each of which would be sufficient to support a residence on the lot. Moreover, as detailed in an opinion letter issued by Gladstone to Taxpayer (also provided to Exam but ignored by Izenberg), prior soil testing on the 14 pre-approved lots had been reviewed by the Bedminster Township Board of Health and the Township Engineer. “The Township's professional staff performed a detailed review of the data and a series of public hearings were held. The Township Board of Health ultimately approved fourteen (14) primary and reserve disposal areas suitable for the residential lots.”<sup>252</sup> The soils upon which the conceptual lots

<sup>245</sup> Izenberg Appraisal at 14 (stating that “[a]lthough approvals have been granted by the Township, it is uncertain that all 14-lots would be buildable lots, because additional requirements were necessary including soil testing, for septic use, engineering reports for suitability to build on steep slopes, and the impact of the proposed driveways of some of the lots traversing through the Grassland Bird Habitat easement.”).

<sup>246</sup> Izenberg Appraisal at 49-53, 61-62.

<sup>247</sup> Izenberg Appraisal at 45-46, 61-62.

<sup>248</sup> Izenberg Appraisal at 69.

<sup>249</sup> Izenberg Appraisal at 53.

<sup>250</sup> Izenberg Appraisal at 64.

<sup>251</sup> Izenberg Appraisal at 53.

<sup>252</sup> Gladstone Opinion Letter.

would have been built were similar to the soils underlying the approved lots (and the Township as a whole). Therefore, soil suitability would have presented no issue for residentially developing the 14 approved lots or the remaining 19 conceptual lots.<sup>253</sup> The unchallenged opinion of the site's professional engineers is in direct opposition to Izenberg's conclusions.

Second, the site maps (provided to Exam during the course of the audit) show that Residential Concept B was designed around and accounted for all pre-existing environmental restrictions (including wetlands, conservation, and slope restrictions). The Property is located in a rural area, where such limitations are common and any residential development must take them into account. Here, several of the lots are far larger than the 10-acre minimum, in part, to accommodate the limitations. Izenberg simply ignores this evidence.

Third, Izenberg estimates that obtaining necessary governmental approvals for residential development would cost approximately \$500,000.<sup>254</sup> In fact, approvals for residential development had already been received from the Township on 14 of the Property's lots, and despite Izenberg's assertion to the contrary, these approvals remained in place as of the date of the easement donation.<sup>255</sup> The assumption that an additional \$500,000 of costs would be incurred securing additional approvals is wrong.

Finally, Izenberg hypothesizes an additional \$1.1 to \$2.6 million in costs to construct streets and provide access to the 14 residential lots.<sup>256</sup> Izenberg ignores the established fact that Residential Concept B was designed and evaluated using "[t]he existing driveway and road network."<sup>257</sup> No additional costs for street improvements were necessary to convert the Property into a residential subdivision.

**(ii) Izenberg Improperly Considers the Unique Characteristics of Taxpayer in Determining Highest and Best Use**

The valuation process requires a determination of what a *hypothetical* willing buyer would pay to a willing seller, both being reasonably informed and neither being under a compulsion to buy or sell.<sup>258</sup> Here, Taxpayer already owned the Property. The question is what

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<sup>253</sup> Gladstone Opinion Letter.

<sup>254</sup> Izenberg Appraisal at 70, 76

<sup>255</sup> Izenberg Appraisal at 82. The approvals for the original 14-lot subdivision were not formally extinguished until either (i) all Conditions of Approval on the second golf course were fulfilled or (ii) construction began on the second golf course. Neither of these events had occurred prior to the donation. Thus, the approvals for the original 14-lot subdivision were not extinguished. It is ironic that Izenberg considers a mere resolution to possess such finality, yet questions the validity of the 14-lot subdivision because of a lack of complete approvals. See Izenberg Appraisal at 14.

<sup>256</sup> Izenberg Appraisal at 69.

<sup>257</sup> Gladstone Opinion Letter.

<sup>258</sup> See, e.g., *Stanley Works v. Comm'r*, 87 T.C. 389 (1986) (determining fair market value based on whether "hypothetical willing buyer . . . would have considered [the property] as the site for construction of a pumped storage plant"); *Whitehouse Hotel Ltd. P'ship*, 615 F.3d 321 (5th Cir. 2010) (same).



a hypothetical willing buyer would pay to purchase the property. The fair market value of the Property can not be greater than the amount that a hypothetical willing buyer would pay. Further, that buyer cannot be presumed to have Taxpayer's brand or marketing expertise.<sup>259</sup> Yet, Izenberg repeatedly attributes value to idiosyncratic characteristics of Taxpayer, not a hypothetical willing buyer:

- “In addition, an additional 18-hole golf course would better compliment the existing course and *brand*,”<sup>260</sup>
- “This suggests to the appraiser *that the developer agrees* that an additional 18 holes is a beneficial use of the greater real property,”<sup>261</sup>
- “Based on the aforementioned, it is the appraiser's opinion that to develop a luxury golf course and country club of the highest standards, *befitting of the Trump luxury brand*, an 18-hole course on 281 acres would not suffice. Creating a 36-hole golf course on 506 acres would enhance the overall value of the site and ensure the sense of luxury and exclusivity. . . . Hence, it *appears the owner determined* that the maximally productive use of the site was for an additional 18-hole golf course, not residential use.”<sup>262</sup>

Conspicuously absent from Izenberg's highest and best use discussion, however, is the information upon which his conclusion *should* be made— supporting market data. Indeed, market data cited by Izenberg shows a decline of the golf market industry at the time of the donation. Specifically, Izenberg observes that the number of rounds played in the United States declined by 18.8 million from 2000 to 2005,<sup>263</sup> the percentage of rounds played from 2004 to 2005 dropped by 0.6 percent on a national scale and by 4.6 percent in New Jersey,<sup>264</sup> and that the golf participation rate in New Jersey was lower than the national average.<sup>265</sup> Instead of confronting these trends that he acknowledges, Izenberg simply ignores them.

<sup>259</sup> See, e.g., *Holman v. Comm'r*, 601 F.3d 763 (8th Cir. 2010) *Arbor Towers Assocs., Ltd. v. Comm'r*, 77 T.C.M. (CCH) 2348, 2351 (1999) (“The willing buyer and the willing seller are hypothetical persons . . . and the characteristics of these hypothetical persons are not always the same as the personal characteristics of the actual seller or a particular buyer.”).

<sup>260</sup> Izenberg Appraisal at 70 (emphasis added).

<sup>261</sup> Izenberg Appraisal at 70-71 (emphasis added).

<sup>262</sup> Izenberg Appraisal at 71 (emphasis added).

<sup>263</sup> Izenberg Appraisal at 85.

<sup>264</sup> Izenberg Appraisal at 86.

<sup>265</sup> Izenberg Appraisal at 87.

**(iii) Izenberg States That Taxpayer Was Able To Increase Rounds By 26 Percent From 2004 To 2005, But Fails To Note That The Course Was Not Open In 2004 For A Full Year**

In support of his conclusion that operation of the Property as a golf course would have been financially feasible to a hypothetical willing buyer, Izenberg observes that Taxpayer was able to increase the number of rounds played from 2004 to 2005 by 26 percent. Thus, he says that the financial feasibility of golf operations “is evident in the market based upon the behavior of market participants.”<sup>266</sup>

Izenberg fails to mention that the golf course did not open until July 4, 2004. Thus, the initial season was five months, or 28 percent shorter, than the standard seven month season. It is unsurprising, therefore, that play increased by 24 percent in 2005 when a full season was played.

**(iv) Izenberg’s Own Residential Use Value Contradicts His Highest and Best Use Conclusion**

Izenberg concludes that the highest and best use of the undeveloped, vacant land is to construct a second 18-hole golf course. This conclusion is undermined by findings within the Izenberg Appraisal itself.

First, the Izenberg Appraisal states:

The cost to convert land into a single 18-hole golf course is not financially feasible. However, although the costs to develop the land into an additional 18-hole golf course are not feasible, you must take into account the enhancement to the overall property as one economic unit.<sup>267</sup>

While it is appropriate to consider the overall use of the Property and how the overall use affects its aggregate potential profitability, Izenberg fails to offer any objective support or data as to how a second course would enhance, in any financial way, the profitability of the Property as a whole to a hypothetical buyer. While he does argue that a second course would be important to developing a luxury golf course and country club “befitting of the Trump brand,” he neglects to provide any support to how a hypothetical buyer would benefit financially from a second course. As discussed above, highest and best use determinations must be based on market factors, not characteristics of individual property owners. Izenberg cannot hypothesize the creation of a 36-hole, luxury club bearing Taxpayer’s brand and carrying Taxpayer’s natural ability to increase market value.

Second, as a means to determine the maximally profitable use of the vacant land, Izenberg performs valuations as both a 14-lot subdivision as well as 225 acres of vacant land that could be converted into a golf course. He values the vacant land at \$2,700,000 (both before and

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<sup>266</sup> Izenberg Appraisal at 66.

<sup>267</sup> Izenberg Appraisal at 82.

after the restriction),<sup>268</sup> and the 14-lot residential development at \$7,860,000.<sup>269</sup> Yet Izenberg inexplicably concludes that converting the vacant land into a golf course is the highest and best use of the vacant land, despite the fact that he himself estimated that use as a 14-lot residential subdivision would produce \$5,160,000 more value than use as a second golf course. And, as noted above, he offers no support whatsoever as to how or how much a second golf course would increase the overall value of the Property. Based on his own valuation, Izenberg did not select the highest and best use that is maximally productive

### 3. Izenberg's Valuation of the Property as a Golf Course Lacks Credibility and Grossly Overstates Value

The Izenberg Appraisal valued the Property, both before and after the donation of the Easement, at \$27,700,000.<sup>270</sup> This value was determined by separately valuing the existing 18-hole golf course (which rested on 281 acres of the Property) and the remaining vacant land (approximately 225 acres of the Property).<sup>271</sup> Though Taxpayer challenges Izenberg's conclusion that the highest and best use of the then-vacant land was for development as a second 18-hole golf course, its primary challenge here is to the value assigned by Izenberg to the existing 18-hole course (\$25,000,000).<sup>272</sup>

As explained above, due to the unorthodox method by which Izenberg valued the Property as a golf course, Taxpayer engaged an independent consultant to review the Izenberg Appraisal, Mr. James Agner. Agner issued a report of his findings to Taxpayer.<sup>273</sup> As detailed in his report, Agner found profound deficiencies in Izenberg's Income Capitalization Approach and Sales Comparison Approach that call into question the overall competency of Izenberg to render such an opinion, concluding that "Izenberg has not demonstrated competency in the valuation and analysis of the golf valuation section of" his report,<sup>274</sup> and that "it's apparent that the appraiser has not properly demonstrated the appropriate analysis and methodologies to value a private golf course facility."<sup>275</sup> Further, Agner determined that Izenberg failed to satisfy two of the Uniform Standards of Professional Appraisers Practice ("USPAP") / Financial Institution Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") requirements. Namely, Agner found that the report set forth in the Izenberg Appraisal: (1) was misleading; and (2) that it did not contain sufficient information to be understood by the reader. Violation of these requirements demonstrates that the Izenberg Appraisal was not performed in compliance with

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<sup>268</sup> Izenberg Appraisal at 126, 135.

<sup>269</sup> Izenberg Appraisal at 81. Additionally, Taxpayer also challenges Izenberg's valuation of the 14-lot residential subdivision. *See* Appendix A.

<sup>270</sup> Izenberg Appraisal at 136.

<sup>271</sup> Izenberg Appraisal at 135.

<sup>272</sup> Izenberg Appraisal at 135.

<sup>273</sup> *See* Exhibit 3.

<sup>274</sup> CBRE Report at 6.

<sup>275</sup> CBRE Report at 24.

USPAP Standard 2 and FIRREA. As explained below, Agner's ultimate conclusion is that Izenberg's overall value conclusion is "not supported and is misleading."<sup>276</sup>

#### **4. Agner is a Well-Known and Highly Regarded Golf Facility Valuation Expert**

Agner has been the Managing Director of the Valuation and Advisory Services Department in the Miami office of CB Richard Ellis since 1995. He is a designated member (MAI) of the Appraisal Institute, a member of the Society of Golf Appraisers (SGA), and has over 26 years of real estate consulting service. CBRE is a global leader in real estate valuation and advisory services with domestic offices stretching across the country.

Agner offers unparalleled expertise in the field of golf course valuation. He serves as CB Richard Ellis's National Director of the Golf and Resort Valuation Group. CBRE's Golf Valuation Group is comprised of a specialty core of professionals with experience in the valuation of golf courses. The group combines national coverage with local or regional market expertise. In total, the group has performed valuation services for a variety of clients of over 365 golf courses across the country. These courses range in type and operation, from 18-hole private facilities to 63-hole resort facilities. Agner's unquestionable expertise was brought to bear in his review of the Izenberg Appraisal.

#### **5. Izenberg's Appraisal is Fundamentally Flawed by His Reliance on the Core Error of 35,000 Rounds**

As discussed above, a core error in the Izenberg Appraisal, which permeates the entire appraisal, as it is the cornerstone for his value conclusions, is his assumption that a hypothetical buyer of the Property would achieve an average of 35,000 rounds of play per season.<sup>277</sup> Izenberg's sole support for this assumption is a 1998 National Golf Foundation ("NGF") survey. As discussed below, 1998 data has no relevance to 2005 market conditions. Moreover, this 35,000 rounds of play assumption is contradicted by relevant 2005 market data negating such level of play for private courses, the physical inability of the Property's 18-hole golf course to support such volume, the adverse impact such increased play would have on the existing membership, and the decline in golf participation in New Jersey. In addition, Izenberg's estimate that the Property could support an average of 35,000 rounds is inconsistent with *his own* conclusion that the highest and best use of the Property is a continuation of its present use as an 18-hole *private and exclusive luxury* golf course facility.<sup>278</sup> Any of these factors, standing alone, would be sufficient to cast serious doubt on Izenberg's assumption. But Izenberg doesn't stop there—not only does he make the error of wrongly assuming 35,000 rounds of play, he compounds the error by assuming this rate of play would be achieved by the hypothetical buyer of the Property in its first year of operation. He neglects to perform a discounted cash flow analysis.

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<sup>276</sup> CBRE Report at 6.

<sup>277</sup> Izenberg Appraisal at 100, 107.

<sup>278</sup> Izenberg Appraisal at 9, 65, 83.

**a. Market Data Provides No Support, and In Fact Contradicts, Izenberg's Assumption of 35,000 Rounds of Play**

Izenberg relies on outdated market information to support his conclusion that the Property could sustain an average of 35,000 rounds played per year. Specifically, Izenberg cites an NGF study titled "NGF Operating & Financial Profiles of 18-Hole Golf Facilities in the U.S."<sup>279</sup> While not noted in his report,<sup>280</sup> the study was from 1998, seven years *before* the effective date of Izenberg's valuation. Such outdated market data is an unreliable indicator of 2005 market conditions.<sup>281</sup> Demonstrating this, Izenberg's own market analysis shows a steady decline in the golf industry from 2000-2005, which would not have been reflected in the 1998 data. In fact, the 2005 NGF study reports that the average rounds played for all private courses (including full-year as opposed to part-year courses like those in New Jersey) was only 21,170.<sup>282</sup> After adjusting for the partial year,<sup>283</sup> such average rounds reported would be approximately 14,000—a far cry from Izenberg's 35,000 rounds.

**b. 35,000 Rounds of Play is a Virtual Impossibility for the Property**

Izenberg's conclusion that the Property could support 35,000 rounds per year ignores facts that *were specifically requested by Izenberg*. Most importantly, Taxpayer informed Izenberg that the Property's then-existing 18-hole golf course had a total of 9,000 available tee times in 2005.<sup>284</sup> Because only four golfers are able to play per available tee time, the Property could support, *at a maximum*, 36,000 rounds per year. Thus, Izenberg's assumption of 35,000 rounds would result in a 97 percent utilization rate of available tee times, which is physically impossible.<sup>285</sup> Weather conditions alone would render 35,000 rounds unattainable.

<sup>279</sup> See Correspondence from Lisa R. Pastore to Sheri A. Dillon (July 1, 2011).

<sup>280</sup> Contrary to USPAP standards, Izenberg failed to fully identify the NGF study in the Izenberg Appraisal. Only upon inquiry from the Taxpayer did Izenberg concede that the data was from 1998.

<sup>281</sup> See *Boddie-Noell Enters., Inc. v. United States*, 36 Fed. Cl. 722, 741 (1996) ("Similarly, summary appraisals based on non-contemporaneous records . . . are unpersuasive when the value of the property cannot be reliably ascertained."). Even if the 1998 data were relevant, that data shows that very high rounds in the 35,000 range were achieved by only about 5 percent of golf courses. There is no data that suggests that high rounds produce high revenue per round. Indeed, the converse is true. Achieving high rounds inevitably requires discounted prices and always increases wear and tear and, therefore, maintenance costs.

<sup>282</sup> NGF Operating & Financial Profiles of 18-Hole Golf Facilities in the U.S., 2006 Edition, at 41 (reporting 2005 study results).

<sup>283</sup> "The golf season in the northeastern climate of New Jersey generally runs from April to November, resulting in a maximum of 240 potential golf days." See CBRE Report at 11.

<sup>284</sup> Response to IDR #6, Request 6 (Aug. 10, 2010).

<sup>285</sup> Reasonable estimates of lost play time due to factors such as inclement weather range from 10-20 percent. See CBRE Report at 11.

**c. Members of Private Golf Courses Will Not Tolerate 35,000 Rounds of Play**

At the time of the Izenberg Appraisal, annual membership dues amounted to \$13,000 annually.<sup>286</sup> It is inconceivable that a member would continue to pay such dues or join a club where 97 percent of the available tee times were filled. As explained by Agner:

It is well-recognized that private golf courses do not produce high round counts, and this is the main benefit for members who join private golf course and country club facilities. Members of private courses are willing to pay higher fees (as compared to public courses) so they do not have to wait for tee times and play 5-hour rounds, both of which often occur at public facilities.<sup>287</sup>

It is also notable that Izenberg bases his conclusion that the Property could achieve 35,000 rounds of play on his estimation that “a moderate, for-profit *public* facility could produce approximately 35,000 rounds of golf annually, on average, without overburdening the facilities and without becoming unattractive to existing membership.”<sup>288</sup> Izenberg does not value the Property as a public daily fee facility. He posits that its highest and best use is as a private club. Yet his valuation undertakes a flip/flop analysis relying on *public* or *private* analyses, as it suits his purpose.<sup>289</sup>

For example, as discussed below, Izenberg reconstructs the revenues of the Property in his income capitalization approach. In doing so, he retains the item of revenues for membership dues, demonstrating that the Property is valued as a private member club. The membership dues that Izenberg projects range from \$18,795 to \$30,884 per year (it is unclear whether Izenberg increases the number of members or the annual dues to derive his 135 percent increase in revenues from member dues).<sup>290</sup> Regardless of whether dues are \$18,795 or \$30,884 or somewhere in between, all are above market, and members would not pay above market fees to belong to a golf club and play on a crowded, overburdened, non-exclusive course. Therefore, while it may be possible that a moderate, for-profit public facility could achieve 35,000 rounds without overburdening the facilities and without becoming unattractive to its members, a private club, with dues at the level of the Property, would not be able to do so.

**d. Izenberg’s 35,000 Rounds Are Inconsistent with His Highest and Best Use Analysis**

The notion that the Property could support 35,000 rounds per year is inconsistent with Izenberg’s own conclusions regarding the Property’s highest and best use. Specifically, Izenberg opines that the addition of a second golf course would “ensure the sense of luxury and

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<sup>286</sup> Response to IDR #6, Request 11 (Aug. 10, 2010).

<sup>287</sup> CBRE Report at 15.

<sup>288</sup> Izenberg Appraisal at 107.

<sup>289</sup> Izenberg Appraisal at 107, 109.

<sup>290</sup> Izenberg Appraisal at 107, 109.

exclusivity . . .” and provide Taxpayer with the opportunity to “host major golfing events, such as PGA Tour events, which are only held at the most exclusive country clubs.”<sup>291</sup> This highest and best use conclusion is at odds with the primary assumption supporting Izenberg’s valuation. A course cannot be “exclusive” while operating at 97 percent capacity. At no point in the Izenberg Appraisal does Izenberg reconcile this fundamental inconsistency.

**e. Objectively, Local Demand Cannot Support 35,000 Rounds Per Year**

After Izenberg determines that 35,000 rounds of play could be achieved at moderate, for-profit public facilities, he concludes that 35,000 rounds of play could be achieved at the Property based on “local demand for playtime and the level of amenities offered by the facility.”<sup>292</sup> He offers no support for this view of local demand. To the contrary, Izenberg’s own market study shows a steady decline in golf participation from 2000 to 2005 (including a 4.6 percent drop in rounds played from 2004 to 2005 in New Jersey alone).<sup>293</sup> Moreover, in the years leading up to the donation there was a significant increase in the number of available golf facilities. As noted by Izenberg, “[s]everal golf related facilities are located nearby, such as Fiddlers Elbow Country Club, New Jersey National Golf Club, Hamilton Farm Golf Club, and Green Knoll Golf Club.”<sup>294</sup>

**f. The Izenberg Appraisal Itself Recognizes the Infirmities Associated With the 35,000 Rounds of Play Assumption**

Ironically, Izenberg, *within his own report*, recognizes the inadequacy of his 35,000 rounds of play assumption by placing “significantly less weight” on values indicated from his “per round” Sales Comparison Approach, which, like his income capitalization approach, relies on such assumption.<sup>295</sup> Izenberg cannot have it both ways—if his 35,000 rounds of play assumption is not credible for deriving value in his sales comparison “per round” approach, it is similarly not credible for deriving value under any other of his approaches. Courts are clear that they will reject values derived from approaches the expert himself has disparaged.<sup>296</sup>

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<sup>291</sup> Izenberg Appraisal at 71.

<sup>292</sup> Izenberg Appraisal at 107.

<sup>293</sup> Izenberg Appraisal at 86.

<sup>294</sup> Izenberg Appraisal at 63.

<sup>295</sup> Izenberg Appraisal at 101.

<sup>296</sup> Courts have found that when an expert disparages his own valuation approach, yet continues to utilize the approach to derive value, such valuations cannot be relied on. *See Schwab*, 67 T.C.M. (CCH) 3004, 3005-9 (“Evans disparaged his own valuation of a combination farming and conservation easement, but nevertheless utilized it in his applications of the sales abstraction method and the membership approach. As a result we have not relied on his computations by the sales abstraction or membership methods.”); *See also Estate of Kolczynski v. Comm’r*, 90 T.C.M. (CCH) 290 (2005) (declining to afford weight to appraiser’s testimony that contradicted written report).

**6. The Izenberg Appraisal's Income Approach Relies Entirely on His Clearly Incorrect Assumption that the Property Will Support 35,000 Rounds of Play**

The Izenberg Appraisal utilizes an Income Approach to determine that the value of the then-existing 18-hole golf course equaled \$27,500,000. Izenberg correctly says that “[a] golf facility is typically purchased for its income-producing capacity, and the income approach directly measures this important attribute.”<sup>297</sup> But his creation of the necessary income estimates is a work of pure fiction. He develops “a reconstructed income and expense statement for the subject property.”<sup>298</sup> He then applies a direct capitalization method to his reconstructed revenue and expense statements to determine the Property’s value.<sup>299</sup> The manner in which Izenberg applies the methodology is significantly flawed, and the key assumption it relies on, 35,000 rounds of play is untenable.

**a. Derived Revenues and Expenses Are Not Supported and Nonsensical**

First, Izenberg calculates the difference between the rounds actually played at the Property in 2005, 14,808, and his assumption that the Property could support 35,000 rounds.<sup>300</sup> This difference, 20,192 rounds, represents an increase of 135 percent of actual rounds played. Next, because Izenberg has assumed a 135 percent increase in rounds, he inexplicably applies an across-the-board 135 percent increase to every revenue item on the Property’s 2005 financial statements, more than doubling the actual revenue reported by the Property in its first year of operations, from \$6,425,156 to \$15,099,177.<sup>301</sup> Izenberg offers no support for utilizing such an approach—because there is none. As Agner confirms:

This procedure and analysis by Izenberg of using a 135% increase is completely without merit, unsupported and once again displays the deficiencies and lack of competency in his valuation and overall understanding of the operations of golf course facilities.<sup>302</sup>

Not only is such an approach devoid of any appraisal principles or even common sense, it is also unraveled by simple math.

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<sup>297</sup> Izenberg Appraisal at 104.

<sup>298</sup> Izenberg Appraisal at 104. As noted above, Izenberg’s assumption that the Property was operated as a not-for-profit public facility is incorrect.

<sup>299</sup> Izenberg Appraisal at 113-117.

<sup>300</sup> Izenberg Appraisal at 108.

<sup>301</sup> Izenberg applies a similar methodology in calculating the Property’s projected expenses. However, unlike for revenue items, Izenberg does not apply a 135 percent increase to every expense item (and, in fact, does not increase expenses at all for a majority of the pro forma’s expense items). See Izenberg Appraisal at 111. This methodology is similarly flawed and should not be considered. See CBRE Report at 18-19.

<sup>302</sup> CBRE Report at 17.



(i) Dues Revenues

Izenberg hypothesizes an increase in total membership dues from \$2,799,306 to \$6,578,369.<sup>303</sup> In 2005, as a factual matter, the Property had 213 members, and annual dues were \$13,000 a year, resulting in annual dues revenue of \$2,799,306.<sup>304</sup> To achieve Izenberg's 135 percent increase in revenues from dues, the number of members, the annual dues, or both must be dramatically increased. Izenberg offers no explanation for the increased dues revenues and appears to have not thought through the implications of such a 135 percent increase.

Because the Property is charging market dues, we first assume that Izenberg intended to keep dues level, and increase membership in order to achieve his 35,000 projected rounds of play. Here, the Property would need to increase membership to 506 members, or by 156 members *in excess of what was legally permitted* for an 18-hole golf course. As reflected in the Township's Golf Course/Club Regulations (included in the Izenberg Appraisal), the Property's membership is limited to 350 members.<sup>305</sup> Thus, increased membership cannot account for the increase in dues that Izenberg hypothesizes.

Perhaps Izenberg intended to hold members constant and increase dues by 135 percent. This 135 percent increase results in \$30,884 of annual dues, or more than twice the \$13,000 of dues members were paying in 2005.<sup>306</sup> Given that dues for comparable clubs in the area ranged from \$10,000 to \$16,000,<sup>307</sup> a projection of \$30,884 of annual dues is insupportable as a matter of basic economics.

Or, perhaps, Izenberg was projecting that the Property would increase membership to its maximum allowable members, 350, in Year 1 of operations, Izenberg's projected dues revenue would result in annual dues increasing to \$18,795, still well above market. As explained by Agner:

The 2005 membership dues at the subject property were approximately \$13,000 per member, and most comparable dues for private golf courses in the subject area range from \$10,000 to \$16,000. Yet Izenberg's report suggests a 45% increase of existing subject membership dues and a 15%-50% increase of membership dues over those of existing, competing private golf courses in the surrounding area is warranted and justifiable. No support is presented in the report for these above market dues.<sup>308</sup>

<sup>303</sup> Izenberg Appraisal at 109.

<sup>304</sup> Response to IDR #6, Request 15 (Aug. 10, 2010).

<sup>305</sup> Izenberg Appraisal at 29 (displaying Township of Bedminster Ordinance 13-524, Golf Course/Club Regulations, section a, paragraph 9 (membership shall not exceed 350 members)).

<sup>306</sup> See Response to IDR #6, Request 11 (Aug. 10, 2010).

<sup>307</sup> CBRE Report at 17.

<sup>308</sup> CBRE Report at 17.

In short, Izenberg's hypothesis that revenue from dues could be increased by 135 percent (which accounts for 55.91 percent of his total projected revenue<sup>309</sup>) is untenable.

**(ii) Expenses**

Izenberg also reconstructs the expenses of the Property, again based on his 135 percent increase of rounds played. However, instead of applying the 135 percent increase across the board, he takes a more targeted approach. Here, as keeping expenses down supports an inflated golf course valuation, he reviews each item, and again without providing any quantitative support, he simply makes a judgment and decides whether to apply a 0 percent increase, 35 percent increase, 70 percent increase, or for only one item, a 135 percent increase, resulting in an overall increase to expenses of only 53 percent.<sup>310</sup>

A review of Izenberg's expense projections exposes it as arbitrary. He hypothesizes that expenses related to marketing would remain constant. Similarly, he posits no adjustment to general administrative, pool, tennis or utility expenses, despite the increase in business the Property is otherwise enjoying. These assumptions are irreconcilable with the notion that the Property would increase its level of play by 135 percent. For example, any business would need to incur substantial marketing costs to attract more than twice its pre-existing clientele. Moreover, the increased level of play (as demonstrated above) necessarily includes an increase in club membership. Yet, Izenberg assumes that no additional costs would be incurred by the Property while serving more than double of its pre-existing membership.

**b. Izenberg's Lack of a Discounted Cash Flow Analysis Render's His Valuation Under the Income Approach Unreliable and Meaningless**

Finally, even if Izenberg's 35,000 rounds per year assumption were somehow feasible, he fails to allow any "build out" time to achieve the 35,000 rounds. Instead, he assumes that a hypothetical buyer would achieve this result instantly. The Property, as a new course, was not yet stabilized (as Izenberg fully recognizes on pages 104 and 107) and had only achieved 60 percent of full membership. As explained by Agner:

[T]he subject property is in its start-up phase. Nevertheless, Izenberg assumes that the subject property would achieve full capacity of 35,000 rounds in year 1, with no build-up of rounds over time. This led Izenberg to assume full membership and receipt of full membership dues day 1, year 1. Izenberg should have assumed some build-up of rounds over time and presented this in a discounted cash flow analysis. Moreover, since the subject property is a new golf course to the area and has not achieved full membership of 350 members, it would take time to attract members, and as such, operations may lose money for the first several years.<sup>311</sup>

<sup>309</sup> Izenberg Appraisal at 105.

<sup>310</sup> Izenberg Appraisal at 111.

<sup>311</sup> CBRE Report at 15-16.

Not only is Izenberg's assumption inconsistent with standard discounted cash flow methodology, but is also inconsistent with his own market study. As pointed out by Agner, "[t]he appraiser assumes the subject property in year 1 will achieve a stabilization pro forma of 35,000 rounds (apparently with full membership at an increased dues rate) yet cites to economic conditions and NGF reports that reflect a declining golf market."<sup>312</sup>

**c. Izenberg's Method for Deriving a Capitalization Rate Is Flawed**

Aside from his failure to discount value to allow for adequate build up time, Izenberg's capitalization rate analysis is flawed. As Agner explains:

While the band of investment method and investor survey are appropriate tools for the capitalization approach, further data such as actual capitalization rates from comparable sales of golf course facilities and interviews with market participants were not provided to lend additional support to the overall capitalization rate selected by Izenberg. Most appraisal reports rely on such actual capitalization rates from comparable properties as their primary support for determining what buyers/sellers are paying for properties. Additionally, market participants are surveyed as secondary support.

The use of capitalization rates from comparable golf course sales would have lent additional support and reliability in the overall rate selection and analysis.<sup>313</sup>

These errors again demonstrate Izenberg's overall lack of competence in valuing golf courses in general and the Property in particular.

**7. Izenberg's Sales Comparison Approach is Fundamentally Unsound**

Izenberg's use of the Sales Comparison Approach is similarly flawed. As discussed above, his core errors are: (1) he evaluates two of his comparables as golf courses even though the buyers intended to convert the courses into residential development; and (2) in valuing the comparables as golf courses, he lacks the financial data necessary to establish comparability. The price at which a golf course will trade depends on the revenues that it can produce. Without any of the revenue indicators, it is not possible to perform a reliable sales comparison analysis. Here, his Sales Comparison Approach develops no income data on the sales and the conclusion is completely unsupported.

This lack of financial data does not deter him. Instead, he somehow selects other golf courses that traded. The criteria he uses for selection appears to be that the selected property had been used as a golf course by the seller and was located somewhere in New Jersey. Otherwise, the similarities are either unknown (as discussed, the key criteria—sources of revenue—are not

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<sup>312</sup> CBRE Report at 23-24.

<sup>313</sup> CBRE Report at 20-21.

used) or unclear. One of his comparables is a public daily fee course. Another of his comparables is a 27-hole course. Both courses were purchased by developers with the intent to residentially develop the properties. Nevertheless, Izenberg assumes these courses were purchased for continued golf use and purports to perform a Sales Comparison Approach by simply taking the sales prices of the comparables, making substantial upwards adjustments to those sales, and then adjusting these derived prices by the number of holes or number of rounds.

Under his “per round” approach, he determines that the average value per round that would be achieved on the Property was \$550 a round, concluding that the resultant value of the then-existing 18-hole golf course would equal \$19,250,000.<sup>314</sup> Alternatively, Izenberg utilizes a “per hole” approach to determine that the then-existing golf course would be sold at \$19,800,000.<sup>315</sup> As discussed above, because Izenberg himself questions the validity of the 35,000 rounds assumption, he puts less “significantly less weight on the value indicated in that [per round] methodology,”<sup>316</sup> and reconciles these values to conclude that, under the Sales Comparison Approach, the then-existing 18-hole golf course would sell for \$19,750,000.<sup>317</sup>

Because Izenberg has no financial data, he relies on sales comparables that are in fact, not “comparable,” the misguided assumption that the Property could support 35,000 rounds per year,<sup>318</sup> unwarranted adjustments to sales prices, and inappropriate units of comparison. As a result, the sales prices derived for the comparables are no indication of the value of the existing course on the Property.

As Agner observed:

Overall, Mr. Izenberg derives two value estimates and places most emphasis on the per hole analysis and concludes to a value of \$19,750,000 via the Sales Comparison Approach.

Based on my analysis, the reliability of Mr. Izenberg’s conclusion via the Sales Comparison Approach is deficient and misleading. Because Mr. Izenberg utilizes incorrect and unsupported adjustments and the units of comparison [per round and per hole] relied on are not considered reliable in the valuation of golf courses, I find this valuation analysis not supported.<sup>319</sup>

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<sup>314</sup> Izenberg Appraisal at 130.

<sup>315</sup> Izenberg Appraisal at 131.

<sup>316</sup> Izenberg Appraisal at 101 (“Because it is our estimate of the number of rounds played that forms the basis of the estimate per round, we have put significantly less weight on the value indicated in that methodology.”).

<sup>317</sup> Izenberg Appraisal at 101.

<sup>318</sup> The lack of any support for this assumption has been discussed above, and will not be reconsidered in this section.

<sup>319</sup> CBRE Report at 13-14.

**a. Izenberg's "Comparables" Are Not Comparable**

Izenberg purports to analyze three sales of "similar" properties to derive a value for the existing golf course. Diligence of the properties reveal that they are anything but similar, and although Izenberg makes substantial upwards adjustments to the sales prices (ranging from 37 percent to 68 percent) in order to compensate for the "dissimilarities," he has no data to support such adjustments.

**(i) Description of the Selected "Comparables"**

His first comparable course, Bergen Hills Country Club, is a *public daily fee* course that was sold in 2003 for \$9,800,000<sup>320</sup> to a buyer who, according to local press reports, intended to turn it into a residential development. A public daily fee course is *not* comparable to a private course. As discussed previously, while the objective of a public daily fee course is to generate high rounds, the objective of a private course is to generate members who pay high dues. Moreover, with this comparable, Izenberg includes in his remarks that the course was producing gross income of \$2.4 million, for a gross income multiplier of 4.08. (He, however, does not analyze this data.) Presumably, based on public information, he posits that the course was producing approximately 33,000 rounds per year.<sup>321</sup> Earlier in Izenberg's report, he suggests that high rounds drives high revenue, yet this course, which he says was producing 33,000 rounds per year, clearly was not producing high revenue per round.

In his analysis of the Bergen Hills sale, Izenberg assumes that the property would continue to be used as a golf course. He ignores the possibility that the buyer might have intended another use, such as residential development. Local press reported that the buyer intended residential use. In fact, the property was resold in 2006 to a developer for \$22 million, affirming that the highest and best use of the property in 2005 was not golf use.

Izenberg's second comparable sale, Eagle Oaks Golf Club, involved a nearly 7,000 yard "18-hole championship course" that "includes a 22,600 square foot clubhouse" and was designed by Jack Nicklaus and Johnny Miller, two of the most revered golf course designers in the business.<sup>322</sup> This course operates as a private facility. It measures 6,923 and is located on 324 acres. In the absence of any financial data, Eagle Oaks appears to be the most similar, and thus the most comparable, of Izenberg's comparables. It was sold in early 2003 for \$9,000,000. Yet, Izenberg upwardly adjusts the sales price by 57 percent, to \$14,157,000, *without the benefit of any financial data* and with no support for such substantial adjustments to such a similar property.

Izenberg's third comparable sale is a *27-hole* private facility, Bamm Hollow Country Club, which sold in early 2005 for \$22,840,000.<sup>323</sup> Again, he has no relevant financial data to support any relevant comparison whatsoever. Similar to his analysis of Bergen Hills, Izenberg

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<sup>320</sup> Izenberg Appraisal at 94.

<sup>321</sup> Izenberg Appraisal at 94.

<sup>322</sup> Izenberg Appraisal at 95.

<sup>323</sup> Izenberg Appraisal at 96.

assumes the property would continue to be used as a golf course. Here, the course was purchased for the purpose of constructing 1,200 multi-family residential units on the property.<sup>324</sup> It appears that the price of this course was likely determined in reference to its intended use, which was to tear down the course and build apartments.

### (ii) Izenberg's Adjustments to the Selected Comparables

Izenberg claims that these so-called comparables required significant adjustments to bring them in line with the existing golf course and facilities on the Property, calling into question the validity of the comparison itself. In fact, Izenberg makes upwards adjustments to these sales resulting in an increase to their actual purchase prices ranging from 38 to 68 percent, including time adjustments. The need for such substantial adjustments further undermines the notion that these are truly comparable properties.

Moreover, these adjustments are not warranted or supported. For example, Izenberg applies a time adjustment based on a seven percent appreciation rate.<sup>325</sup> This rate is unsupported by market data, which showed a decline in golf rounds played from 518.4 million in 2000 to 499.6 million in 2005 and a 4.6 percent decline in New Jersey alone.<sup>326</sup> As pointed out by Agner:

Izenberg provided no quantitative support for this substantial upward appreciation adjustment in sales price. Rather, he made a judgment based on 'economic conditions over the period to the valuation date.' Yet, as noted in his appraisal, economic conditions and rounds played were declining . . . .<sup>327</sup>

Izenberg's adjustment for amenities is similarly unsupported and not warranted. For example, Izenberg makes a 30 percent upward adjustment to Eagle Oaks with no explanation other than the sale had "inferior amenities."<sup>328</sup> As a factual matter, based on information provided by Izenberg, the club had a 22,600 square foot clubhouse, so it appears that the amenities at Eagle Oaks are not only similar, but likely superior, to those at the Property, which at the time had a 13,000 square foot clubhouse.<sup>329</sup>

<sup>324</sup> The owners became embroiled in a dispute with the Township of Middletown over the density of the project, and development was delayed. The Township, the owners, and the city have recently reached agreement whereby the owners will instead be allowed to construct 190 single family homes with 1 acre minimum sized lots. In addition, the owners are also required to preserve 120 acres of open space through either a conservation easement or municipal dedication. Township of Middletown, County of Monmouth, Resolution No-11-169: Resolution Authorizing Settlement Agreement with Bamm Hollow, LLC. *See also* Elaine Van Develde, *Development Debate: Bamm Hollow Overview*, MiddletownPatch, May 18, 2011.

<sup>325</sup> Izenberg Appraisal at 97.

<sup>326</sup> Izenberg Appraisal at 85-86. In contrast, when valuing the 14-lot residential subdivision, Izenberg used a 5 percent appreciation rate, despite the fact that residential housing was appreciating at a rate of 11 to 15 percent.

<sup>327</sup> CBRE Report at 9.

<sup>328</sup> Izenberg Appraisal at 99.

<sup>329</sup> Moreover, as explained earlier, unless Izenberg can demonstrate a relationship between revenue production and amenities, they are of no relevance to the price at which a club will trade for. Hypothetical buyers do not purchase golf facilities for the amenities, they purchase them for their revenues.

Agner further confirms that Izenberg's adjustments for club amenities also lack quantitative support:

Izenberg adjusted the Comparable Sales 1, 2 and 3 upwards for inferior amenities by 40%, 30% and 25%, respectively, based on the subject having a clubhouse, pro shop, men's locker room, pool, tennis courts and driving range. There was no quantitative support or analysis for these large adjustments, but again, just a judgment estimate based on amenity characteristics of the subject as compared to Comparable Sales 1, 2, and 3. Izenberg's report fails to properly discuss what these comparables lack in comparison to the subject property.<sup>330</sup>

Finally, Izenberg also made incorrect adjustments for the size of the comparable properties, again demonstrating his lack of competency in valuing golf facilities and rendering his analysis unreliable. As Agner explains:

Izenberg also adjusted Comparable Sales 1 and 3 upwards for size (land acreage) by 5%, respectively, based on smaller acreage per hole than the subject property. This is an incorrect adjustment because both Sales 1 and 3 have less golf course acreage to maintain per 18 holes. As a result, the maintenance costs for these golf courses would be lower and their bottom line net operating income would be higher than that of the subject, which contains a larger acreage of golf land and requires higher maintenance costs. Thus, Izenberg incorrectly applied a positive adjustment for land size to Sales 1 and 3, respectively, when he should have applied a negative adjustment to each of these sales when comparing the subject property.<sup>331</sup>

These improper adjustments result in overall adjusted sale prices for Izenberg's comparables that are 37 percent to 68 percent higher than the actual sale prices of the so-called comparables. By making such adjustments, Izenberg is able to increase the sales prices as follows:

	<b>Bergen Hills</b>	<b>Eagle Oaks</b>	<b>Bamm Hollow</b>
<b>Actual Sales Price</b>	\$9,800,000	\$9,000,000	\$22,840,000
<b>Adjusted Sales Price</b>	\$16,483,600	\$14,157,000	\$31,473,520

Such unsupported adjustments would not be upheld by any trier of fact.

**b. Izenberg Utilizes Inappropriate "Units of Comparison" – Rounds and Holes are Not Indicative of Value**

Because Izenberg has no financial data to analyze, and he has one "comparable" course that has 27-holes, he attempts to apply approaches that will put the courses on the same 18-hole

<sup>330</sup> CBRE Report at 10.

<sup>331</sup> CBRE Report at 9.

playing field, and provide an indicator of value of the existing course on the Property. Specifically, Izenberg uses two units of comparison: price per round and price per hole,<sup>332</sup> neither of which, according to Agner, “is a sound or solid valuation technique.”<sup>333</sup> Both “are flawed and insufficient [because] they do not provide any explanation as to the reason one course would sell for more than another course.”<sup>334</sup> As discussed above, golf courses trade based on revenues, and putting the derived sales price in terms of rounds or holes does not cure the underlying deficiencies regarding a lack of any financial data. Agner confirms this point, and explains that factors that do bear on the price at which a golf facility would sell include:

[T]he number of club members, whether there is a waiting list to join the club, whether the club has a declining membership, cost of membership/initiation fees, cost of membership dues, gross revenue, amenities of the facilities (tennis courts, pool, fitness center, etc.), and/or the location of the course, e.g., whether it is in a high income demographic neighborhood with high barriers of entry or in a rural area with several other facilities that are competing for the same members.<sup>335</sup>

**(i) Revenues Per Round Approach Relies On Same Core 35,000 Round Error**

As an initial matter, as with his Income Approach, Izenberg begins his revenues per round analysis by relying on his assumption that the existing course on the Property would achieve 35,000 rounds of play. He compounds this error. Because neither Eagle Oaks nor Bamm Hallow report rounds played, he assumes the same 35,000 rounds per 18 holes. There is no support in his report for applying such an assumption to these two properties to derive a per round value. Here, Izenberg simply takes his derived sales price for each course, divides it by his assumed 35,000 rounds per 18 holes each for Eagle Oaks and Bamm Hallow and by 33,000 rounds per hole for Bergen Hills, to derive a price per round of \$404, \$599, and \$500, respectively. Without any explanation, he determines that this suggests that the price per round for the Property would be at the high end of that range, \$550, (rather than the derived price (\$404) for the course most similar, Eagle Oaks), and for the existing course on the Property, sets the price at \$19,250,000. Because this approach relies on both of his core errors, the 35,000 round assumption and the use of comparables without any financial data, as well as fantasy driven upward adjustments, this exercise serves as no indicator of value.

**(ii) Holes are Not an Appropriate Unit of Comparison**

Izenberg’s price per hole analysis is similarly flawed. As explained by Agner, “the price per hole unit of comparison is of no relevance because golf courses tend to have the same number of holes (18 holes) or a multiple of 9 (e.g., 27 or 36) and thus fail to provide a relevant

<sup>332</sup> Izenberg Appraisal at 100-01.

<sup>333</sup> CBRE Report at 8.

<sup>334</sup> CBRE Report at 8.

<sup>335</sup> CBRE Report at 8.



common denominator, in contrast to the income-related units of comparison . . . .<sup>336</sup>

Correlatively, while the mathematical exercise is simple, it is an unnecessary step and does nothing to determine value. Izenberg is attempting to make math a valuation approach. Because this approach simply takes his derived adjusted prices and divides by number of holes, no relevant information is gleaned from this exercise, other than to see how substantially his adjustments increased the “price per hole.”

	<b>Bergen Hills</b>	<b>Eagle Oaks</b>	<b>Bamm Hollow</b>
<b>Holes/Actual Sales Price</b>	\$544,444	\$500,000	\$845,926
<b>Holes/Adjusted Sales Price</b>	\$915,756	\$786,500	\$1,165,686

Nevertheless, Izenberg inexplicably determines that this suggests the per hole for the Property would be at the high end of that range, \$1,100,000 (rather than the derived price (\$786,500) for the course most similar, Eagle Oaks), and sets the value of the existing golf course on the Property at \$19,800,000.

## 8. Courts Have Long Rejected “Zero” Valuations

Even if the above-mentioned errors had not been made, a trier of fact would reject Izenberg’s conclusion at first glance. The cover letter accompanying the Izenberg Appraisal identifies the market value of the conservation easement as \$0, thus concluding that placing a permanent conservation restriction upon the Property had no economic effect. Not only is such a conclusion at odds with the facts as presented and sound appraisal practices, but it also flies in the face of decades of court decisions rejecting such conclusions.<sup>337</sup>

While Treasury Regulations raise the theoretical possibility that an easement may have no value,<sup>338</sup> courts have, in the absence of extraordinary circumstances, rejected this possibility as a practical matter. In *Akers v. Commissioner*, the taxpayer placed a conservation easement over 1,342.66 acres of property, restricting residential development to one dwelling every 200 acres.<sup>339</sup> The IRS disallowed the taxpayer’s deduction on the theory that the property’s highest and best use was not affected as a result of the conservation easement, and therefore, the easement did not diminish the value of the property. The court rejected the IRS’s valuation:

<sup>336</sup> CBRE Report at 8.

<sup>337</sup> See, e.g., *Akers v. Comm’r*, 48 T.C.M. (CCH) 1113 (1984), *aff’d*, 799 F.2d 243 (6th Cir. 1986); *Clemens v. Comm’r*, 64 T.C.M. (CCH) 651 (1992); *Strasburg v. Comm’r*, 79 T.C.M. (CCH) 1697 (2000); *Fannon v. Comm’r*, 52 T.C.M. (CCH) 1113 (1986); *Fannon v. Comm’r*, 56 T.C.M. (CCH) 1587 (1989); *Hughes v. Comm’r*, 97 T.C.M. (CCH) 1488 (2009); *Schwab v. Comm’r*, 67 T.C.M. (CCH) 3004 (1994); *Symington v. Comm’r*, 87 T.C. 892 (1986); *Whitehouse Hotel Ltd. P’ship, v. Comm’r*, 131 T.C. 112 (2008), *vacated*, 615 F.3d 321 (5th Cir. 2010).

<sup>338</sup> See Treas. Reg. § 1.170A-14(h)(3)(ii) (stating that “there may be instances where the grant of a conservation restriction may have no material effect on the value of the property”).

<sup>339</sup> 48 T.C.M. (CCH) at 1113.

Mr. Johnson reached this conclusion by confusing the post-easement value of the land to Mr. Akers with the fair market value of the land to a willing buyer and seller, both being knowledgeable. Mr. Akers frankly admitted that he had no intention of selling the land but intended to keep it for himself and his children. The value of the land to Mr. Akers is not necessarily its fair market value. Considering the testimony of the other two experts, we conclude from the record as a whole that a willing buyer of the land after the granting of the easement would pay less for it than he would have paid before the granting of the easement, and a willing seller would sell it for less after it was encumbered by the easement. The restrictions clearly affect any potential use of the land for subdivision into small lots in the event the area became appropriate for such subdivision before the expiration of the easement's 30-year life.<sup>340</sup>

*Akers* stands for two principles regarding the potential values of conservation easements. First, appraisers are prohibited from considering the actions of an individual property owner in determining the fair market value of the property. Instead, it is the hypothetical buyer and seller that must be considered. Second, an appraiser valuing a conservation restriction must account for all reasonable future uses of the property. Thus, even where a property's highest and best use is identical both before and after a conservation restriction is placed upon the property, assigning zero value to the easement is prohibited unless there is *no reasonable likelihood* that a hypothetical buyer would, at *any* future point, desire to alter that use.

Other case law discussing restrictions similar to those placed upon the Property by the Easement also dismisses the possibility that such restrictions have no economic value. In *Symington v. Commissioner*,<sup>341</sup> the taxpayer placed a conservation easement upon his property prohibiting all future subdivision and building construction. The Tax Court soundly dismissed the IRS's contention that the restriction was worthless:

[W]e are hard pressed to imagine a prospective purchaser of a 60-plus acre parcel of land who would not have considered the restrictions of such an open-space easement in determining his offering price. The fact that a purchaser of Friendship Farm would have been precluded from even giving away part of his land if he ever so desired, for example, to his children, or, along the same lines, precluded from ever building an additional home on his property, would certainly have affected the purchase price he would have been willing to pay.<sup>342</sup>

*Symington* rejected the proposition, posed by the Izenberg Appraisal here, that where a property's highest and best use before and after a conservation restriction is the same, the restriction itself has no impact on the value of the property.

The Tax Court's decision in *Symington* is not an anomaly. In *Schwab v. Commissioner*, the IRS again assigned zero value to an easement that prohibited future subdivision, construction

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<sup>340</sup> *Akers*, 48 T.C.M. (CCH) at 1120.

<sup>341</sup> 87 T.C. 892 (1986).

<sup>342</sup> *Id.* at 898.

of permanent establishments, and timber harvesting, alleging (as Izenberg does here) that the highest and best use of the land remained the same before and after the donation.<sup>343</sup> Again, the Tax Court rejected the IRS's attempt to place a zero value upon a conservation easement where the before and after highest and best use remained the same, finding it "hard to imagine" a prospective purchaser would not consider these restrictions in its offering price for the property:

[W]e conclude from the record as a whole that a willing buyer of the CP rights after the granting of the easement would pay less for such property than he would have paid before the granting of the easement, and a willing seller would sell the rights for less after encumbrance by the easement. The restrictions clearly affect potential use of the land and value of the remaining rights. Accordingly, we reject House's appraisal of the easement at zero.<sup>344</sup>

The rationale for rejecting zero valuations is simple—they are short-sighted. "Even if the highest and best use of the land before the easement was [the same as after the easement], the imposition of the easement was bound to reduce the value somewhat, unless we acknowledge that such use of the land will never change."<sup>345</sup> Thus, zero valuations ignore the potential for future changes in circumstances that would cause an increase in the value of the easement. The Tax Court itself reiterated this underlying principle in 2009, when, in rejecting another zero valuation put forth by the IRS on an easement which, among other things, prohibited future subdivision, it criticized its appraiser, stating:

Second, Mr. Packard has seemingly neglected the possibility that circumstances may change in the future. For example, although there was little demand for residential property at the time petitioner granted the easement, residential development may be a realistic possibility in the future. In that event, the conservation easement would nevertheless prevent petitioner or his successors in interest from taking advantage of potentially lucrative development opportunities.<sup>346</sup>

Izenberg's conclusion that the conservation easement has no value is similarly short-sighted and fails to consider the prospect of a future, hypothetical buyer considering such a restriction. It is undisputed that the Taxpayer's donation *permanently* restricted the Property from *any future* residential or commercial development. As acknowledged by the courts, these foregone development rights have (often substantial) value. Even accepting the conclusion that the highest and best use of the Property before and after the donation is as two 18-hole golf courses, a court would still reject the attempt to characterize the donation having no economic value because it assumes that the circumstances will never change and that a future, hypothetical buyer *would never* consider subdividing the Property and selling residential lots. As the courts have noted, such an assumption is not only unreasonable, but it is incorrect. Izenberg's zero

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<sup>343</sup> 67 T.C.M. (CCH) at 3005-07.

<sup>344</sup> *Id.* at 3005-08.

<sup>345</sup> *Fannon*, 56 T.C.M. (CCH) at 1590.

<sup>346</sup> *Hughes*, 97 T.C.M. (CCH) at 1498.

valuation undermines the credibility of his entire appraisal and instead illustrates the results-oriented approach by which the appraisal was performed.

# Faherty Affirmation

## Exhibit # 37

# BINGHAM

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December 21, 2012

**VIA FEDERAL EXPRESS & EMAIL**

Mr. Irwin Lieberman  
Internal Revenue Service  
Appeals Office  
290 Broadway -- 11th Floor  
New York, NY 10007

Dear Mr. Lieberman:

As a follow-up to our conference in September, Mr. Beck requested that we provide a comparable sales analysis for use in determining the "after-value" of the original 18-hole golf course and facilities (the "golf club") at Lamington Farm Club in Bedminster, New Jersey, as of December 29, 2005. The "after-value" of the golf club refers to the value of the golf club as restricted from any future residential or commercial use (except for use as a golf club) and otherwise subject to the terms of the conservation easement donated to the Township of Bedminster.

Enclosed herein is a Summary Appraisal Report prepared by Cushman & Wakefield, which provides the requested analysis. Consistent with our discussion, the appraisal determines the fair market value of the real property as opposed to valuing the golf club as a going concern.

We look forward to discussing this with you as part of our continued efforts to resolve this matter.

Sincerely,



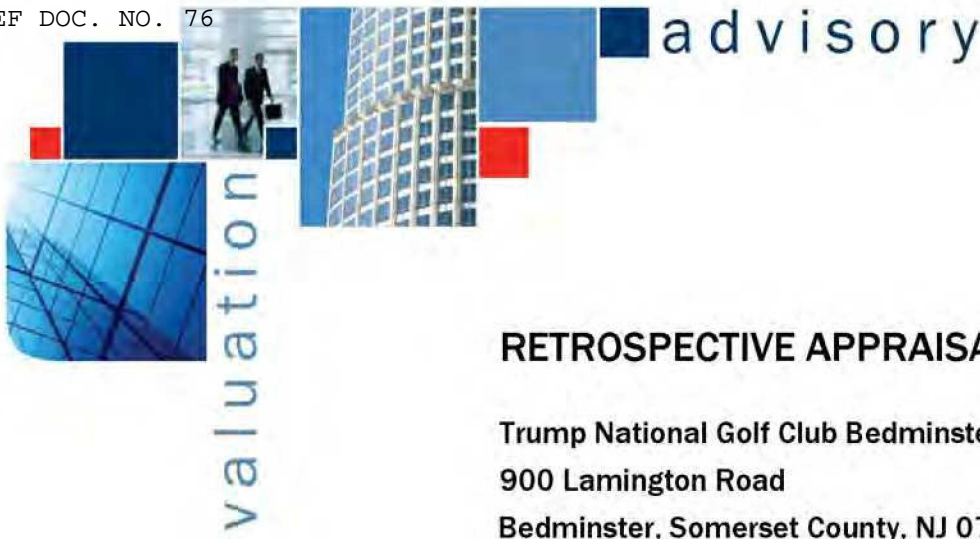
Sheri A. Dillon

Enclosure

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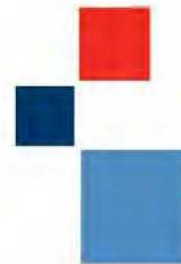


## **RETROSPECTIVE APPRAISAL OF REAL PROPERTY**

**Trump National Golf Club Bedminster  
900 Lamington Road  
Bedminster, Somerset County, NJ 07921**

**IN A SUMMARY APPRAISAL REPORT  
As of December 29, 2005**

**Prepared For:  
Bingham McCutchen LLP  
2020 K Street NW, Suite 1100  
Washington, DC 20006**



**Prepared By:  
Cushman & Wakefield, Inc.  
Valuation & Advisory  
1290 Avenue of the Americas, 9th Floor  
New York, NY 10104-6178  
C&W File ID: 12-12002-902890**



**CUSHMAN & WAKEFIELD, INC.**  
1290 AVENUE OF THE AMERICAS, 9TH FLOOR  
NEW YORK, NY 10104-6178



**Trump National Golf Club Bedminster**  
900 Lamington Road  
Bedminster, Somerset County, NJ 07921





CUSHMAN & WAKEFIELD, INC.  
VALUATION & ADVISORY  
1290 AVENUE OF THE AMERICAS, 9TH FLOOR  
NEW YORK, NY 10104-6178

December 20, 2012

Sheri A. Dillon  
Partner  
**Bingham McCutchen LLP**  
2020 K Street NW, Suite 1100  
Washington, DC 20006

Re: Retrospective Appraisal of Real Property  
In a Summary Report

**Trump National Golf Club Bedminster**  
900 Lamington Road  
Bedminster, Somerset County, NJ 07921

C&W File ID: 12-12002-902890

Dear Ms. Dillon:

In fulfillment of our agreement as outlined in the Letter of Engagement, we are pleased to transmit our appraisal of the above property in a Summary Report which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice (USPAP).

The report presents summarized discussions of the data, reasoning, and analyses used in the appraisal process to develop the appraiser's opinion of value. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated in the following pages.

Client:	Sheri A. Dillon Partner Bingham McCutchen LLP 2020 K Street NW, Suite 1100 Washington, DC 20006
Intended User:	In compliance with USPAP, the Client and Donald J. Trump are the only Intended Users.
Intended Use:	For use by Client in connection with an Internal Revenue Service examination to include providing the report to the Internal Revenue Service.



Identification of the Real Estate:	Trump National Golf Club Bedminster 900 Lamington Road Bedminster, NJ 07921
Assessor's Parcel Number:	Part of Block 38, Lots 9, 13 & 14; Block 39, Lots 8, 10, 11, 12.02 & 12.03
Current Ownership:	Lamington Farm Club, LLC.
Property Use and Description:	The subject property consists of one 18-hole golf course completed in 2004, and related buildings and site improvements that existed as of December 29, 2005. It is located along the south side of Lamington Road in a residential area of Bedminster, New Jersey. The property contains a total land area of 281 acres. Primary building improvements include a converted mansion being used as the clubhouse, a pro shop building, a men's locker room area and a pool and pool house with un-renovated guest suites, un-inhabitable two story former residence and a golf course maintenance building. We refer the reader to a chart in the addenda where a building dimensions chart is located as well as a site plan. To the best of our knowledge these primary building improvements total an aggregate of 57,252 square feet.
Type of Value:	Fair Market Value (defined later in this report and consistent with U.S. Treasury Department regulations)
Real Property Interest Valued:	Fee Simple
Sales History:	On August 30, 2002, certain lots on the property were acquired via the acquisition of 100% of the existing membership interests in Lamington Farm Club LLC. This purchase also included the options to purchase additional lots on the property. The first option was exercised on September 12, 2002, for the purchase of a single parcel. The second option was exercised on October 11, 2002, for the purchase of two additional parcels. Consideration for the purchases totaled approximately \$8,000,000 cash and assumption of contingent financial obligations to the existing membership base. The above described transfer relates to the sale and purchase of the entire 506 acre parcel and not the discrete 281 acre tract that is the subject of this report.
Date of Inspection:	November 15, 2012
Effective Date of Value:	December 29, 2005
Date of Report:	December 20, 2012
Extraordinary Assumptions:	This appraisal does not employ any extraordinary assumptions.



Hypothetical Conditions:	This appraisal does not employ any hypothetical conditions.
Opinion of Value:	\$10,000,000 to \$12,000,000 (Fair Market Value As-Is on December 29, 2005)
Exposure Time:	12 months

## FAIR MARKET VALUE DEFINITION

The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.

*Source: Federal Regulations (Treasury) Reg §1.170A-1, Charitable, etc., contributions and gifts ;allowance of deduction.*

## PROPERTY SUMMARY

As of the valuation date the subject property consisted of an 18-hole golf course with clubhouse and various outbuildings and related site improvements. It is located along the south side of Lamington Road in Bedminster, New Jersey. The golf course was completed in 2004 and designed by Tom Fazio. The course is a par 72 with the rear tees extending 7,565 yards. The course rating was 77.3 and the slope is 147. The property was a former residential estate with the clubhouse being converted from a former mansion. Other outbuildings included a detached pro shop, locker room building, an un-renovated pool house with un-renovated guest suites, non-habitable former single family residence and course maintenance building. The property was formerly a residential estate that was converted to golf use. The primary building improvements total 57,252 square feet.

## SCOPE OF WORK

We prepared this independent and impartial appraisal of the property in conformance with the requirements of USPAP. The level of detail and depth of the analysis is considered to be commensurate with the complexity of the property type and market conditions.

Cushman & Wakefield, Inc. has an internal Quality Control Oversight Program. This Program mandates a "second read" of all appraisals. Assignments prepared and signed solely by designated members (MAIs) are read by another MAI who is not participating in the assignment. Assignments prepared, in whole or in part, by non-designated appraisers require MAI participation, Quality Control Oversight, and signature.

As part of this appraisal, a number of independent investigations and analyses were required. The agreed upon Scope of Work included the following:

- Inspected the subject property
- Collected primary and secondary data related to the subject
- Investigated the general trends in the regional economy and local area
- Investigated sales in the subject's market
- Used generally accepted market-derived methods and procedures appropriate to the assignment
- Set forth all assumptions and limiting conditions that affect the analyses, opinion and conclusions, as stated in this report
- Provided a signed certification in accordance with Standards Rule 2-3 of USPAP



Sufficient data, due diligence, and analysis are combined in this valuation to produce a reliable fair market value conclusion that serves the needs of the client.

## NATIONAL GOLF MARKET ANALYSIS OVERVIEW

From 2000 through 2005 the golf industry continued to suffer from golf course oversupply. The majority of markets throughout the United States are oversupplied and demand has been relatively flat for over five years. Golf player retention and player growth continue to be the challenges for the business of golf. Over the last century, the golf market has experienced three boom periods; the 1920's, the 1970's and the 1990's. In the 1990's the majority of golf course development was connected to residential developments and the two sectors that experienced very significant increases in supply were the premium daily fee courses and the premium private courses.

With an oversupply of golf courses across the country, generally the only new courses being added are at residential projects where the golf courses are an amenity offered by developers as a means to sell homes. With low demand for added supply there are very few standalone golf courses being constructed that are void of on-site residential development. Consequently, new golf course construction slowed considerably in 2005. In 2005 the National Golf Foundation (NGF) reported that 125 new courses opened, which reflects a decrease from 146 new courses in 2004 and 171 new courses in 2003.

During the 1990's, approximately 35 to 40 percent of all golf course development in the U.S. was a part of a residential development. Since 2000, that figure has increased 50 to 60 percent. Additionally, of the 125 18-hole golf courses that opened in 2004, approximately sixty-one percent were built with accompanying residential communities.

The source of our national golf course market data is the National Golf Foundation ("NGF"). The NGF publishes annual reports on the supply and demand conditions for selected markets throughout the United States, with the most recent being the Golf Facilities in the U.S., 2006 Edition (incorporating data available through 2005). This specific NGF study also divides the national market into nine-submarkets. The subject property is located in the State of New Jersey, which is in the Middle Atlantic market. The Middle Atlantic market includes the states of New York, New Jersey and Pennsylvania. This market comprises 9.0% of the total national supply of golf facilities in the United States. At the year-end 2005, there were 294 golf courses (facilities) in the State of New Jersey. The most populated golf state is Florida with 1,075 golf courses, followed by California with 928.



Most recently, growth rates varied depending upon the type of course (facility). From 2004 to 2005, daily fee courses (facility) actually experienced a decline of 0.24 percent. Conversely, municipal and private courses have experienced a minimal growth of 0.50 and 0.11 percent. This suggests overall growth has been relatively flat.

While there has been slight decline in the number of courses, the characteristics of supply have also changed slightly. The nation's golf supply has become more oriented toward the public golfer. In 1987, 61 percent of the nation's supply was either daily fee or municipal courses. In 2005 public golf courses comprised 85 percent of the supply.

The National Golf Association (NGF) also tracks the development pipeline of courses that are in planning or under construction. They estimate that there are 308 courses currently under construction; 373 that are in the planning stages, and 251.5 that have been proposed (pre-planning stage). NGF estimates 120 to 140 of these 18-hole courses will open in 2006.

### GOLF PARTICIPATION

According to data from the National Golf Foundation (NGF), the number of rounds played has decreased substantially since 2000. The following table illustrates the performance of the golf industry in the U.S. since 2000. Since the beginning of the decade the total number has declined from 587.4 million rounds to 485.1 rounds. The report is based on information reported by a panel of nearly 2,600 golf facilities across the U.S. Response rates to monthly surveys vary from 60 to 70 percent.

Year	Rounds Played*	
	Total U.S.	
2000	587.4	-
2001	562.0	-4.32%
2002	502.4	-10.60%
2003	477.0	-5.06%
2004	480.3	0.69%
2005	485.1	1.00%

\*In millions



For their localized rounds study, NGF identified New Jersey as being in their Northeast region. This area of the country is experiencing a more rapid decline than national averages. The chart below displays these trends.

Year	Rounds Played Northeast*
2001-2002	-4.90%
2002-2003	-5.60%
2003-2004**	-
2004-2005	-0.10%

\*Includes NJ, NY, PA and all New England states  
\*\*2003-2004 data not available by NGF

### NATIONAL TRENDS CONCLUSION

Overall, the national golf market continues to suffer from oversupply and relatively flat demand and declining rounds played. Of relevance here, the Northeast and Middle Atlantic regions represented areas of the country where rounds were in more advanced decline. Over the past few years, golf course development has shifted toward public daily fee use as opposed to private country club development, a trend which can be expected to continue due to the most recent federal tax laws, which reduces the deductibility of private country club memberships.

### APPRAISAL METHODOLOGY

There are three generally accepted approaches to developing an opinion of value: Cost, Sales Comparison and Income Capitalization. In appraisal practice, an approach to value is included or eliminated based on its applicability to the property type being valued and the quality of information available. The reliability of each approach depends on the availability and comparability of market data as well as the motivation and thinking of purchasers.

This appraisal exclusively employs the Sales Comparison Approach. The appraisers and client mutually agreed that the scope of the assignment is limited to this singular approach due to the special purpose of this assignment. The purpose is to estimate the fair market value of the real property exclusive of the going concern value, thereby isolating the real property from the business value. The parties agreed that the Cost Approach and the Income Capitalization Approach are outside the scope of the engagement. The quantity and quality of comparable sales data was adequate to conclude a meaningful value conclusion for the purpose intended.



## SALES COMPARISON APPROACH

### METHODOLOGY

In the Sales Comparison Approach, we developed an opinion of value by comparing the subject property with similar, recently sold properties in the surrounding or competing area. Inherent in this approach is the principle of substitution, which states that when a property is replaceable in the market, its value tends to be set at the cost of acquiring an equally desirable substitute property, assuming that no costly delay is encountered in making the substitution.

By analyzing sales that qualify as arm's-length transactions between willing and knowledgeable buyers and sellers, we can identify value and price trends. The basic steps of this approach are:

- Research recent, relevant property sales and current offerings throughout the competitive area;
- Select and analyze properties that are similar to the property appraised, analyzing changes in economic conditions that may have occurred between the sale date and the date of value, and other physical, functional, or location factors;
- Identify sales that include favorable financing and calculate the cash equivalent price;
- Reduce the sale prices to a common unit of comparison such as price per hole;
- Make appropriate comparative adjustments to the prices of the comparable properties to relate them to the property being appraised; and
- Interpret the adjusted sales data and draw a logical value conclusion.

In this instance, the sale prices of the comparables were reduced to those common units of comparison used by purchasers, sellers, brokers and appraisers to analyze improved properties that are similar to the subject. Of the available units of comparison, the sales price per hole (used by buyers, sellers, and brokers), as well as the gross income multiplier (GIM) are most commonly used in the market. Under the scope of this assignment we have limited our analysis to only the sales price per hole and did not focus on income characteristics. On the following pages we present a summary of the improved properties that we compared to the subject property and the adjustment process.

The sales prices of the properties deemed most comparable to the subject property tend to set the range in which the value of the subject property will fall. Further consideration of the comparative data allows the appraiser to derive an amount representing the value of the appraised property, in keeping with the definition of value sought, as of the date of the appraisal.

We have included six golf course sales in the Middle Atlantic markets summarized in the chart below. The sales transferred between January 2003 and June 2007 and indicated an unadjusted range in sale prices from \$6,813,674 to \$11,300,000. On a per hole basis the sales ranged from \$378,537 to \$627,778 per hole. Our primary criteria for selecting these comparable sales were geographical similarities; property rights transferred; and quality of golf course and building improvements.

Sales 1 and 6 were selected for their similar private club status, modern designs and high quality conditioning. They had unrestricted property rights. Sales 2 and 4 were local New Jersey sales that sold



for future conservation purposes but sold at market oriented pricing, and therefore represent arms-length golf course sales. To the best of our knowledge the property rights transferred were unrestricted. Sales 3 and 5 were selected because they were sold with partially restricted property rights, as the lot yield was depleted when the perimeter housing was developed in conjunction with the courses.





SHERI A. DILLON  
 BINGHAM MCCUTCHEN LLP  
 DECEMBER 20, 2012  
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SUMMARY OF REGIONAL GOLF COURSE SALES								
No.	Name Location	Grantor Grantee	Sales Price Date	Holes Acres	Yr. Built Course Type	Yards Par-Rating-Slope	Price Per Hole	Comments
1	French Creek Golf Club 4500 Conestoga Road Everson, PA	Howard O. Guess Stoltzfus Enterprises LTD	\$7,000,000 6/07	18 206	2003 Private	6,725 72 - 73.6 - 141	\$388,889	Upscale private non-equity club with high end golf course designed by Gil Hanse. Course is in desirable Chester County. New clubhouse erected in 2005. Attractive private setting with spacious practice facilities. The property sold with unrestricted property rights.
2	Cream Ridge Golf Club 181 Route 539 Cream Ridge, NJ	Micoski Family NJ DEP	\$11,300,000 5/05	18 186	1958 Public	6,491 71 - 71.6 - 124	\$627,778	Golf club purchased by NJ DEP under NJ "Green Acres" program for continued use as a public golf club. The intention of the purchase is to eliminate all development potential at the site to conserve open space and protect groundwater. The property sold based on unrestricted property rights.
3	Great Rock Golf Club 141 Fairway Drive Wading River, NY	Great Rock Golf Inc. JBGR LLC et al	\$8,245,900 4/06	18 138	2001 Public	6,193 71 - 70.0 - 125	\$458,106	Long Island golf club purchased by golf investors and did not contain any redevelopment potential due to prior residential buildout on the perimeter of the golf course. This is viewed as a partial restriction of property rights.
4	Valley Brook Golf Club 15 River Vale Road River Vale, NJ	Valley Brook Country Club County of Bergen	\$9,750,000 3/06	18 136	1952 Public	6,211 70 - 70.9 - 125	\$541,667	Purchased by county for recreational and land preservation purposes. The county self manages the golf operation. The property sold based on unrestricted property rights.
5	Montgomery Country Club 6601 Olney Laytonsville Rd Laytonsville, MD	Montgomery Country Club LLC GIBG, LLC	\$6,813,674 2/05	18 158	1963 Private	6,713 72 - 72.7 - 129	\$378,537	Private non-equity club in the Gaithersburg area. Purchased by investor for continued country club use. We understand that the sale did not include redevelopment rights as the perimeter housing had depleted further golf course development. This is viewed as a partial restriction of property rights.
6	Eagle Oaks Golf Club 1 Cranberry Road Farmingdale, NJ	Cannon Golf Enterprises, LLC Eagle Golf Enterprises, LLC	\$9,000,000 1/03	18 324	1990 Private	7,091 71 - 74.3 - 139	\$500,000	Market oriented golf club sale affiliated with residential subdivision. To the best of our knowledge the course had unrestricted property rights available at the time of sale.

Subject Property		18	2004	7,565	
		281	Private	72-77.3-147	
Survey Minimum	\$6,813,674	18	1952	6,193	\$378,537
Survey Maximum	\$11,300,000	18	2003	7,091	\$627,778
Survey Average	\$8,684,929	18	1978	6,571	\$482,496
Survey Minimum	1/03	136			
Survey Maximum	6/07	324			
Survey Average	9/05	191			



The following adjustment factors were considered in the initial economic portion of the adjustment process.

### **PROPERTY RIGHTS CONVEYED**

This factor accounts for differences in the interest sold, between the sales and the subject. Partial interests are typically less valuable than fee interests, because fee interests are whole (not fractional), are easier to finance, etc. Covenants and restrictions within a sale may also require adjustment. The subject property clearly has operational restrictions as well as very significant redevelopment limitations. We have discussed these two distinct restrictions that fall under "property rights" in the two paragraphs below.

The conservation easement that encumbers the subject property requires perpetual scenic view sheds, equestrian rights including horse trail crossings and the preservation of significant acreage of wildlife habitat. These property constraints are regularly monitored by the Township of Bedminster. We view these easement characteristics as highly unusual for a private country club and a negative condition most golf clubs are not subject to. For example, while this club has a public road running through it, typically a club would find a way to screen or buffer with plantings, but due to the required scenic views sheds the subject road must remain unobstructed. As such, we have applied downward adjustments to all of the comparables since none to our knowledge have similar operational requirements.

Under the aforementioned conservation easement the subject property also has few alternative use options outside of the current private golf club use. Conversion to a public course is prohibited. There are no redevelopment rights to any alternate uses with the exception of public access open space. Golf course investors clearly view redevelopment rights in their long term planning as a possible exit strategy in the event golf course use is no longer the highest and best use. This flexibility offers investors long term land use options and reduces the risk of investment. When a course does not have these rights, it would be discounted at sale by the marketplace due to the use limitations. Investors appreciate the alternate use scenarios that golf courses typically offer, commonly in the form of "as-of-right" zoning. Although comparables 2 and 4 were purchased for recreational and land preservation purposes, we understand they were acquired at market oriented pricing and at the time of sale had redevelopment potential. This indicates that these comparables had superior redevelopment rights versus the subject and thus required a negative adjustment to each sale. To the best of our knowledge comparables 1 and 6 had redevelopment rights and therefore require negative adjustments as well. Since comparables 3 and 5 did not contain redevelopment rights much like the subject, no adjustment was necessary for this characteristic.

### **FINANCING TERMS**

This factor considers sites which sold with financing terms that are not judged to be cash equivalent. For example, the sale of a site which received advantageous financing would show a higher price than if it was purchased with all cash. It would, therefore, be superior to the subject in this respect.

### **CONDITIONS OF SALE**

The conditions of sale factor are used to account for unusual buyer and seller motivations. For example, if a seller must quickly dispose of a property, its price would typically be lower than if the seller was typically motivated.

### **MARKET CONDITIONS**

This factor considers the differences in market conditions between the time of the comparable sale and the subject's date of value. For example, a comparable property, which sold during a time of better market conditions, would be superior to the subject as of the date of value. Golf course prices were generally flat leading up to and subsequent to December 29, 2005 and thus no adjustments would be applied to those sales having occurred prior to or after the date of value.

The following adjustment factors were considered in the physical characteristics portion of the adjustment process.

### **LOCATION**

This adjustment category is self-explanatory and accounts for the differences in the location of the comparables relative to the subject. We view all of the comparable locations inferior to the affluent subject location of Bedminster New Jersey. As such, all comparables required an upward adjustment.

### **SIZE**

This factor considers the differences in land size. All of the courses and subject property were 18 holes. We recognize that a larger land area at a golf course often leads to higher costs to maintain and thus a negative condition, but we believe there are benefits to larger golf sites that outweigh the higher maintenance and a golf course investor would prefer a larger land mass versus a smaller one. Factors such as privacy, superior course routing, privacy and a generally a more serene golf experience are all factors that larger acreage promotes. Therefore, we have applied upward size adjustments to the five comparables that had smaller land areas than the subject's 281 acres. Comparable 6 had a larger land area that warranted a downward adjustment.

### **QUALITY AND CONDITION**

This characteristic relates to the quality and conditioning of the golf course and building improvements. The subject property offers a high quality course designed by renowned architect Tom Fazio. Its superior conditioning makes it an upper tier course. As of the valuation date the clubhouse and other primary structures were in various stages of conversion from the former residential use with additional capital needed for completion. On balance we view the overall quality of subject as superior to the comparables by varying levels. Accordingly, upward adjustments were applied to each of the comparables.

### **ECONOMICS**

We included this adjustment column but did not apply any adjustments to reinforce the fact that the scope of this assignment does not include any consideration for economic factors.

### **OTHER**

This category is maintained for various characteristics that may require adjustment but do not fit into the previous categories. We did not see the need for any "other" adjustments.

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<b>IMPROVED SALE ADJUSTMENT GRID</b>													
<b>ECONOMIC ADJUSTMENTS (CUMULATIVE)</b>							<b>PROPERTY CHARACTERISTIC ADJUSTMENTS (ADDITIVE)</b>						
No.	Price Per Hole & Date	Property Rights Conveyed	Conditions of Sale	Financing	Market Conditions	Subtotal	Location	Size	Quality & Condition	Economics	Other	Adj. Price Hole	Overall
1	\$388,889 6/07	Fee Simple - No Restrictions -15.0%	Arms-Length 0.0%	None 0.0%	Similar 0.0%	\$330,556 -15.0%	Inferior 10.0%	Smaller 10.0%	Inferior 10.0%	NA 0.0%	Similar 0.0%	\$429,722 30.0%	Inferior
2	\$627,778 5/06	Fee Simple - No Restrictions -15.0%	Arms-Length 0.0%	None 0.0%	Similar 0.0%	\$533,611 -15.0%	Inferior 5.0%	Smaller 10.0%	Inferior 20.0%	NA 0.0%	Similar 0.0%	\$720,375 35.0%	Inferior
3	\$458,106 4/06	Fee Simple - No Redevelopment -5.0%	Arms-Length 0.0%	None 0.0%	Similar 0.0%	\$435,200 -5.0%	Inferior 10.0%	Smaller 15.0%	Inferior 20.0%	NA 0.0%	Similar 0.0%	\$631,040 45.0%	Inferior
4	\$541,667 3/06	Fee Simple - No Restrictions -15.0%	Arms-Length 0.0%	None 0.0%	Similar 0.0%	\$460,417 -15.0%	Inferior 5.0%	Smaller 15.0%	Inferior 20.0%	NA 0.0%	Similar 0.0%	\$644,583 40.0%	Inferior
5	\$378,537 2/05	Fee Simple - No Redevelopment -5.0%	Arms-Length 0.0%	None 0.0%	Similar 0.0%	\$359,611 -5.0%	Inferior 10.0%	Smaller 15.0%	Inferior 15.0%	NA 0.0%	Similar 0.0%	\$503,455 40.0%	Inferior
6	\$500,000 1/03	Fee Simple - No Restrictions -15.0%	Arms-Length 0.0%	None 0.0%	Similar 0.0%	\$425,000 -15.0%	Inferior 5.0%	Larger -5.0%	Inferior 15.0%	NA 0.0%	Similar 0.0%	\$488,750 15.0%	Inferior
<b>STATISTICS</b>													
	\$378,537	- Low										Low -	\$429,722
	\$627,778	- High										High -	\$720,375
	\$482,496	- Average										Average -	\$569,654

Compiled by Cushman & Wakefield, Inc.



SHERI A. DILLON  
 BINGHAM MCCUTCHEN LLP  
 DECEMBER 20, 2012  
 PAGE 14

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**CONCLUSION BASED ON REGIONAL COMPARABLE SALES**

The adjusted comparable sales range from approximately \$430,000 to \$720,000 per hole with an average of \$570,000 per hole. We note that four of the adjusted sales (3, 4, 5 & 6) form a relatively narrow range from \$490,000 to \$630,000 per hole; while sales 1 and 2 are slight outliers at \$430,000 and \$720,000. We believe that the club would attract moderate interest from golf management companies and investors as buyers if made available for sale as of the date of value. Clearly, the conservation easement would suppress value but we recognize the upscale character of the subject property in an affluent location. Therefore we are selecting a range that represents the higher end of the adjusted comparable set. Applying this range to the subject's 18-holes, results in the rounded values noted below. Therefore we conclude that the retrospective fair market value of the fee simple estate of the property, subject to the conservation easement, and void of any economic considerations on December 29, 2005 would range from **\$10,000,000 to \$12,000,000**.

SALES PRICE PER HOLE VALUE ESTIMATE						
Price Per Hole		Number of Holes		Value	Rounded	
\$550,000	x	18	=	\$9,900,000	<b>\$10,000,000</b>	Low
\$675,000	x	18	=	\$12,150,000	<b>\$12,000,000</b>	High



## NATIONAL GOLF COURSE SALES

Due to the unique scope of this assignment with exclusive focus on the Sales Comparison Approach, we believe it is useful to understand comparable golf sales trends from a wider perspective throughout the entire United States. We have performed a national search of golf course occurring during the period of 2003 through 2007. This data set is particularly helpful in demonstrating the upper and lower limits to value. The comparable sales search was performed using data obtained from the well respected commercial real estate research company CoStar. The comparables represent 18-hole golf courses with land areas exceeding 100 acres but do not distinguish among any other specific criteria such as location, course type, underlying property rights. The following chart includes summarized survey results including the minimum, maximum and average sales price of the courses selling each year. In addition we included the number of sales per year (count) and the number of sales that sold for \$10,000,000 or more each year.

Comparable Sales of 18-Hole Golf Courses - National Search					
Year	Minimum	Maximum	Average	Count	# of Comps over +\$10 mil
2003	\$ 450,000	\$ 15,700,000	\$ 4,898,000	28	2
2004	\$ 987,600	\$ 14,300,000	\$ 5,215,000	29	1
2005	\$ 492,500	\$ 20,370,000	\$ 4,837,000	50	2
2006	\$ 1,200,000	\$ 13,999,000	\$ 5,217,000	41	2
2007	\$ 690,000	\$ 12,750,000	\$ 4,074,000	46	4

As can be seen, in 2005 the minimum golf course sale price was \$492,500 and the maximum sale price was \$20,370,000, with an average of \$4,837,000. We have identified this highest sale as being Emerald Dunes Golf Club in West Palm Beach, Florida. This was the sale of a high-end daily fee course that was purchased with the intent to convert the club to a private facility. We know in hindsight that the club ultimately experienced significant economic distress as a result of the inflated sales price. It also contained the economics associated with a 12-month playing season, very different than the northeast U.S. Among the other 10 courses selling for \$10,000,000 or more, 5 were located in the sun states of Arizona, California and Florida, having 12 month playing seasons and very different dynamics of a New Jersey course. Specifically, the highest priced sales in 2003 and 2004 were Sunbelt states and the highest sale in 2006 needs a downward adjustment for excess land.

Interestingly, the average sale price over the five year period displayed a relatively narrow range of \$4,074,000 to \$5,217,000. It is also interesting to note that among the 194 golf sales, only 11 courses had sales prices in excess of \$10,000,000. If one were to eliminate the above referenced Arizona, California and Florida outliers, there are only 5 other courses with pricing above \$10,000,000. In our view this wider survey establishes the upper limits to value which is very relevant to the subject club as an upper tier course.

While we acknowledge the national survey represents a very wide unrefined cross section of sales over a five year time horizon, it does prove useful in displaying national trends and parameters of golf course values. It is also very important to note that it was not possible to research the re-development potential of all 194 courses but

in our professional experience it is the norm for golf courses to contain inherent redevelopment rights and rare to see a course with limited alternate use options like the subject. Redevelopment potential always factors into an investor's decision to purchase and when a golf course is void of this flexible characteristic there is typically a downward adjustment to value. Therefore, in relation to the subject property which does not have any redevelopment potential due to the conservation easement, we believe that national data set provided would generally require a downward adjustment for the superior upside these course have for long term redevelopment.

Much like the set of local sales, we believe the physical characteristics of the subject property would generally be superior to the average golf course in the national survey. The subject's land area of 281 acres exceeds industry averages and therefore an upward adjustment would be required to the comparables. The subject course design by world famous Tom Fazio also requires a general upward adjustment. The fine course conditioning of the subject requires an upward adjustment. The primary building improvements at the subject clearly exceed industry standards and on average the comparables would require an upward adjustment. With respect to the location of the subject, the affluent town of Bedminster, New Jersey would also warrant an upward location adjustment.

### CONCLUSION BASED ON NATIONAL SURVEY

In conclusion, we believe the national selection of comparable golf course sales proves very useful in displaying the sales price parameters for 18-hole golf courses across the country during the timeframe of our date of value. The comments above generally point to the consideration of downward adjustments to value for the lack of development potential the subject has due to the conservation easement. Conversely we believe there is a need for upward adjustments to the national data set for superior location and superior physical characteristics of the subject golf course and building improvements.

Based on the information provided by the national data set, we believe that the retrospective fee simple market value of the property, subject to the conservation easement, and void of an economic considerations, on December 29, 2005 ranges from **\$10,000,000 to \$12,000,000**.

### SALES COMPARISON APPROACH CONCLUSION

Both comparable sale methodologies reasonably support the retrospective market value of the fee simple estate subject golf course, subject to the conservation easement, and void of any economic considerations, on December 29, 2005.

Therefore the value indications via the two methods in the Sales Comparison Approach are:

RECONCILED VALUE RANGE via SALES COMPARISON APPROACH			
Value			
Value Range of Local Sales	\$10,000,000	to	\$12,000,000
Value Range of National Sales	\$10,000,000	to	\$12,000,000

## ASSUMPTIONS AND LIMITING CONDITIONS

"Report" means the appraisal or consulting report and conclusions stated therein, to which these Assumptions and Limiting Conditions are annexed.

"Property" means the subject of the Report.

"C&W" means Cushman & Wakefield, Inc. or its subsidiary that issued the Report.

"Appraiser(s)" means the employee(s) of C&W who prepared and signed the Report.

The Report has been made subject to the following assumptions and limiting conditions:

- No opinion is intended to be expressed and no responsibility is assumed for the legal description or for any matters that are legal in nature or require legal expertise or specialized knowledge beyond that of a real estate appraiser. Title to the Property is assumed to be good and marketable and the Property is assumed to be free and clear of all liens unless otherwise stated. No survey of the Property was undertaken.
- The information contained in the Report or upon which the Report is based has been gathered from sources the Appraiser assumes to be reliable and accurate. The owner of the Property may have provided some of such information. Neither the Appraiser nor C&W shall be responsible for the accuracy or completeness of such information, including the correctness of estimates, opinions, dimensions, sketches, exhibits and factual matters. Any authorized user of the Report is obligated to bring to the attention of C&W any inaccuracies or errors that it believes are contained in the Report.
- The opinions are only as of the date stated in the Report. Changes since that date in external and market factors or in the Property itself can significantly affect the conclusions in the Report.
- The Report is to be used in whole and not in part. No part of the Report shall be used in conjunction with any other analyses. Publication of the Report or any portion thereof without the prior written consent of C&W is prohibited. Reference to the Appraisal Institute or to the MAI designation is prohibited. Except as may be otherwise stated in the letter of engagement, the Report may not be used by any person(s) other than the party(ies) to whom it is addressed or for purposes other than that for which it was prepared. No part of the Report shall be conveyed to the public through advertising, or used in any sales, promotion, offering or SEC material without C&W's prior written consent. Any authorized user(s) of this Report who provides a copy to, or permits reliance thereon by, any person or entity not authorized by C&W in writing to use or rely thereon, hereby agrees to indemnify and hold C&W, its affiliates and their respective shareholders, directors, officers and employees, harmless from and against all damages, expenses, claims and costs, including attorneys' fees, incurred in investigating and defending any claim arising from or in any way connected to the use of, or reliance upon, the Report by any such unauthorized person(s) or entity(ies).
- Except as may be otherwise stated in the letter of engagement, the Appraiser shall not be required to give testimony in any court or administrative proceeding relating to the Property or the Appraisal.
- The Report assumes (a) responsible ownership and competent management of the Property; (b) there are no hidden or unapparent conditions of the Property, subsoil or structures that render the Property more or less valuable (no responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them); (c) full compliance with all applicable federal, state and local zoning and environmental regulations and laws, unless noncompliance is stated, defined and considered in the Report; and (d) all required licenses, certificates of occupancy and other governmental consents have been or can be obtained and renewed for any use on which the value opinion contained in the Report is based.
- The physical condition of the improvements considered by the Report is based on visual inspection by the Appraiser or other person identified in the Report. C&W assumes no responsibility for the soundness of structural components or for the condition of mechanical equipment, plumbing or electrical components.
- Unless otherwise stated in the Report, the existence of potentially hazardous or toxic materials that may have been used in the construction or maintenance of the improvements or may be located at or about the Property was not considered in arriving at the opinion of value. These materials (such as formaldehyde foam insulation, asbestos insulation and other potentially hazardous materials) may adversely affect the value of the Property. The Appraisers are not qualified to detect such substances. C&W recommends that an environmental expert be employed to determine the impact of these matters on the opinion of value.

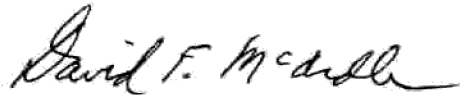


- Unless otherwise stated in the Report, compliance with the requirements of the Americans with Disabilities Act of 1990 (ADA) has not been considered in arriving at the opinion of value. Failure to comply with the requirements of the ADA may adversely affect the value of the Property. C&W recommends that an expert in this field be employed to determine the compliance of the Property with the requirements of the ADA and the impact of these matters on the opinion of value.
- If the Report is submitted to a lender or investor with the prior approval of C&W, such party should consider this Report as only one factor, together with its independent investment considerations and underwriting criteria, in its overall investment decision. Such lender or investor is specifically cautioned to understand all Extraordinary Assumptions and Hypothetical Conditions and the Assumptions and Limiting Conditions incorporated in this Report.
- In the event of a claim against C&W or its affiliates or their respective officers or employees or the Appraisers in connection with or in any way relating to this Report or this engagement, the maximum damages recoverable shall be the amount of the monies actually collected by C&W or its affiliates for this Report and under no circumstances shall any claim for consequential damages be made.
- If the Report is referred to or included in any offering material or prospectus, the Report shall be deemed referred to or included for informational purposes only and C&W, its employees and the Appraiser have no liability to such recipients. C&W disclaims any and all liability to any party other than the party that retained C&W to prepare the Report.
- By use of this Report each party that uses this Report agrees to be bound by all of the Assumptions and Limiting Conditions, Hypothetical Conditions and Extraordinary Assumptions stated herein.

## CERTIFICATION OF APPRAISAL

We certify that, to the best of our knowledge and belief:

- 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 are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- We 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.
- We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- Our 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.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- David F. McArdle, MAI made a personal inspection of the subject property on November 15, 2012.
- The signatories have not performed a previous appraisal of the subject property within the three years prior to this assignment.
- As of the date of this report, David F. McArdle, MAI has completed the continuing education program of the Appraisal Institute.



---

David F. McArdle, MAI  
Senior Managing Director  
NJ Certified General Appraiser  
License No. 42RG00229500  
david.mcardle@cushwake.com  
212-841-7789 Office Direct  
212-479-1863 Fax

## **ADDENDA CONTENTS**

- ADDENDUM A: BUILDING DATA**
- ADDENDUM B: SUBJECT PHOTOGRAPHS**
- ADDENDUM C: SITE PLAN**
- ADDENDUM D: QUALIFICATIONS OF THE APPRAISERS**
- ADDENDUM E: STATE CERTIFICATION**

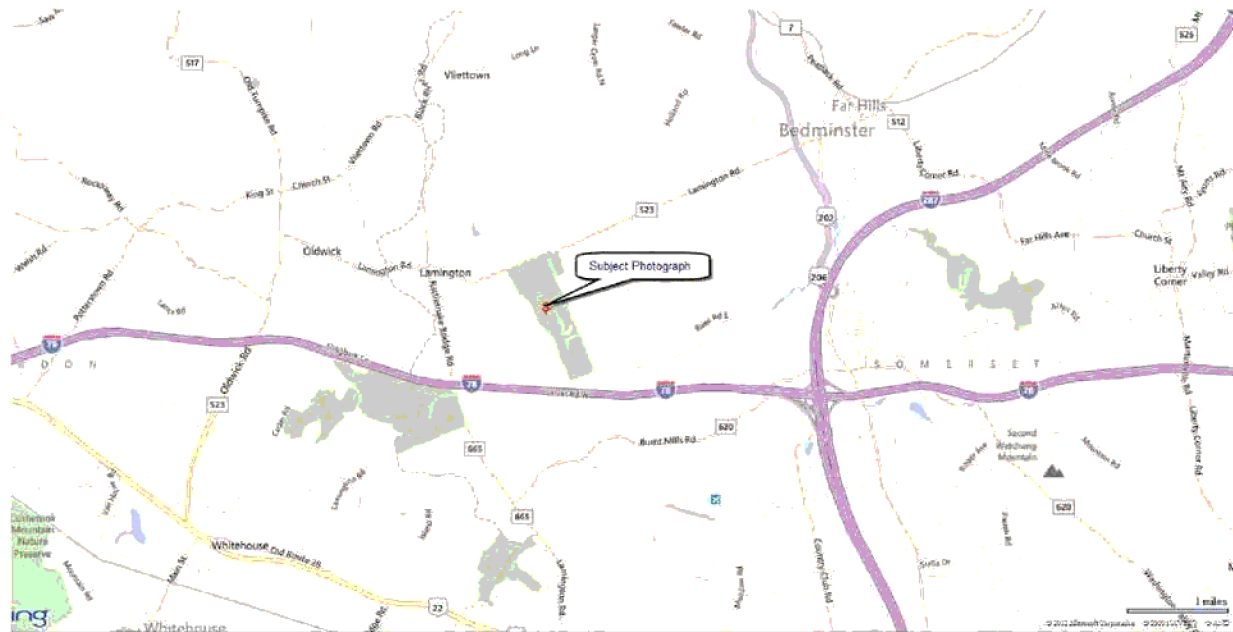
# ADDENDUM A: BUILDING DATA

LAMINGTON FARM CLUB BUILDING DIMENSION SURVEY				
Township of Bedminster				
BUILDING IDENTIFICATION LETTER	BUILDING NAME	BUILDING USE	LENGTH (in feet)	WIDTH (in feet)
A	MANOR HOUSE	CLUB HOUSE	133	61
B	MEN'S LOCKER ROOM	MENS LOCKER ROOM	72	54
C	CART STORAGE	CART STORAGE	140	54
D	PRO SHOP	PRO SHOP	63	24
E	STARTER SHACK	STARTER SHACK	52	44
F	DUTCH HOUSE	OFFICES	40	39
G	EXISTING GUEST SUITES	EXISTING GUEST SUITES	43	34
G	EXISTING GUEST SUITES	EXISTING GUEST SUITES	84	20
G	EXISTING GUEST SUITES	EXISTING GUEST SUITES	55	29
G	EXISTING GUEST SUITES	EXISTING GUEST SUITES	212	29
H	MAINTENANCE BUILDING	MAINTENANCE BUILDING	203	41
I	SEWER TREATMENT FACILITY	SEWER TREATMENT FACILITY	30	30
J	PUMP HOUSE	PUMP HOUSE	30	30
K	GATE HOUSE	GATE HOUSE	22	14
P	PURDY HOUSE	ABANDONED RESIDENCE	40	23
Y	ROAD HOUSE	CONSTRUCTION HOUSE	35	24

**NOTES:**

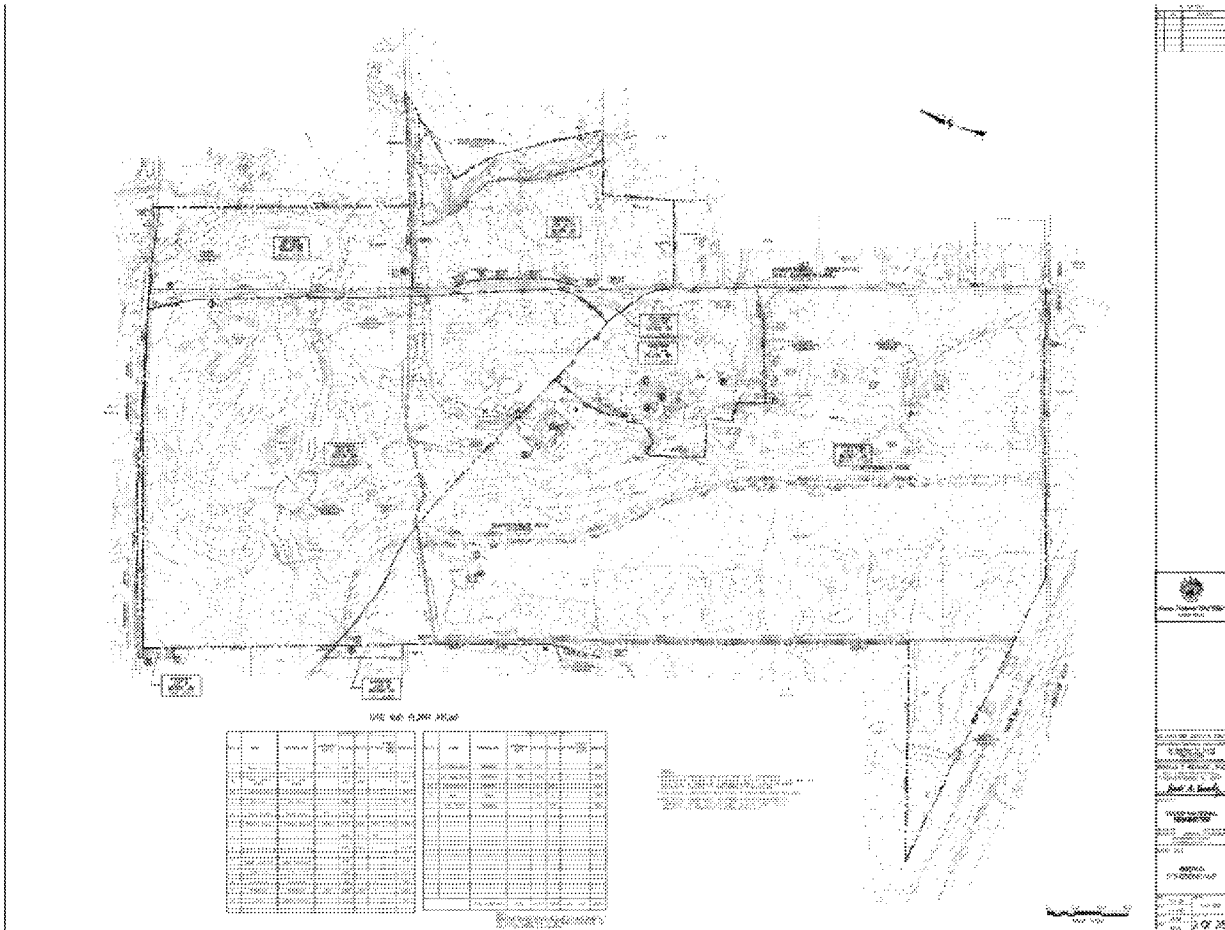
- DIMENSIONS OF 2005 BUILDINGS BASED UPON PLAN ENTITLED "TRUMP NATIONAL BEDMINSTER - EXISTING CONDITIONS MAP," DATED 7-8-05.
- THE PURDY HOUSE WAS REMOVED FROM THE PROPERTY SOMETIME IN LATE 2005 OR EARLY 2006.

# **ADDENDUM B: SUBJECT PHOTOGRAPHS**



# ADDENDUM C: SITE PLAN





# **ADDENDUM D: QUALIFICATIONS OF THE APPRAISERS**

## PROFESSIONAL QUALIFICATIONS

### David F. McArdle, MAI

Senior Managing Director  
Valuation & Advisory

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David F. McArdle is a Senior Managing Director and National Practice Leader of the Gas Stations/Convenience Stores and Restaurant Groups of Cushman & Wakefield's Valuation & Advisory division. The Gas Station/Convenience Store Group and Restaurant Group consist of approximately 35 senior valuation professionals dedicated to both industries. The groups are responsible for valuations of virtually every gas station, convenience store and restaurant property type.

#### General Experience

From 1987 to 1991 he was affiliated with Breslin Appraisal Company of Huntington, New York as a fee appraiser.

From July 1991 to March 1993 he was employed with Ray Brower Associates in Seaford, New York as a staff appraiser.

Since joining the division in 1993 Mr. McArdle has performed appraisal and consulting assignments in over 25 states across the country which have included office buildings, shopping centers, hotels, industrial buildings, apartment buildings and various special use properties such as auto dealerships, golf courses, gas stations, restaurants and parking garages. He specializes in the portfolio valuation of single tenant net leased properties.

#### Education

Fairfield University 1974-1975

University of South Florida 1976-1978

Degree: Bachelor of Science in Business Administration

#### Memberships, Licenses and Professional Affiliations

- Designated Member of the Appraisal Institute – MAI (Certificate No. 11980)
- State of New York Certified General Real Estate Appraiser -No. 46000009231
- State of New Jersey Certified General Real Estate Appraiser -No. 42RG00229500
- Commonwealth of Pennsylvania Certified General Real Estate Appraiser -No. GA003820

#### Special Awards

In 2001, Mr. McArdle was the recipient of the James F. Ryan Humanitarian of the Year award from Cushman & Wakefield's New York office of Valuation & Advisory.

In 2002, Mr. McArdle was the recipient of the Leo L. Majzels Award from Cushman & Wakefield's national Valuation & Advisory. It represented outstanding achievement in the pursuit of business performance excellence and total client satisfaction.

In 2004, Mr. McArdle was the recipient of the "Q" Service Excellence Award in recognition of the highest quality work within Cushman & Wakefield's New York office of Valuation & Advisory.



**ADDENDUM E:  
STATE CERTIFICATION**

NYSCEF DOC. NO. 76

RECEIVED NYSCEF: 10/13/2022

State Of New Jersey  
New Jersey Office of the Attorney General  
Division of Consumer Affairs

THIS IS TO CERTIFY THAT THE  
Real Estate Appraisers Board

HAS CERTIFIED

David McArdle  
Cushman & Wakefield  
1290 Avenue of the Americas  
New York NY 10104

FOR PRACTICE IN NEW JERSEY AS A(N): Certified General Appraiser

New Jersey Office of the Attorney General  
Division of Consumer Affairs  
THIS IS TO CERTIFY THAT THE  
Real Estate Appraisers Board  
HAS CERTIFIED  
David McArdle  
Certified General Appraiser



SIGNATURE  
DIRECTOR

10/30/2011 TO 12/31/2013  
VALID  
42RG00229500  
License/Registration/Certificate #

10/30/2011 TO 12/31/2013  
VALID

42RG00229500  
LICENSE/REGISTRATION/CERTIFICATION #

PLEASE DETACH HERE  
IF YOUR LICENSE/REGISTRATION/  
CERTIFICATE ID CARD IS LOST  
PLEASE NOTIFY:

Real Estate Appraisers Board  
P.O. Box 45032  
Newark, NJ 07101

Signature of Licensee/Registrant/Certificate Holder

*David McArdle*  
DIRECTOR

PLEASE DETACH HERE

David McArdle

EXPIRATION DATE 2013

YOUR LICENSE/REGISTRATION/CERTIFICATE NUMBER IS 42RG 00229500 . PLEASE USE IT IN ALL  
CORRESPONDENCE TO THE DIVISION OF CONSUMER AFFAIRS USE THIS SECTION TO REPORT ADDRESS  
CHANGES. YOU ARE REQUIRED TO REPORT ANY ADDRESS CHANGES IMMEDIATELY TO THE ADDRESS NOTED  
BELOW

Real Estate Appraisers Board  
P.O. Box 45032  
Newark, NJ 07101

PRINT YOUR NEW ADDRESS OF RECORD BELOW  
YOUR ADDRESS OF RECORD IS THE ADDRESS THAT WILL PRINT ON  
YOUR LICENSE/REGISTRATION/CERTIFICATE AND IT MAY BE MADE  
AVAILABLE TO THE PUBLIC.

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BUSINESS

PRINT YOUR NEW MAILING ADDRESS BELOW  
YOUR MAILING ADDRESS IS THE ADDRESS THAT WILL BE USED BY THE  
DIVISION OF CONSUMER AFFAIRS TO SEND YOU ALL CORRESPONDENCE.

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TELEPHONE  
INCLUDE AREA CODE

TELEPHONE  
INCLUDE AREA CODE

# Faherty Affirmation

## Exhibit # 38

## **EXHIBIT 2 - Heffernan Response**



ROBERT F.  
HEFFERNAN  
&  
ASSOCIATES

REAL ESTATE APPRAISERS AND CONSULTANTS  
P.O. BOX 611, OLDWICK, NEW JERSEY 08858-0611  
PHONE: (908) 236-7098 - FAX: (908) 236-7613

July 7, 2011

Mr. Donald Trump  
Lamington Farm Club, LLC  
Trump National Golf Club  
P.O. Box 175  
Bedminster, New Jersey 07921

Re: Appraisal of Property  
Block 38, Lots 9, 13 & 14  
Block 39, Lots 8, 10, 11, 12.02 & 12.03  
567 Lamington Road, Township of Bedminster  
Somerset County, New Jersey  
AKA Trump National Golf Course

Dear Mr. Trump:

I am in receipt of, and have reviewed, the IRS document 886-A which deals with "Issue 2, Valuation: Review of Appraisal Report Prepared by Robert F. Heffernan, SCGRE, SRA (Exhibit #4)". This response is provided to clarify and supplement my appraisal report prepared on December 31, 2005 and the criticisms raised by the IRS reviewer on a point by point basis.

1. "Most significantly, in his After valuation, Mr. Heffernan valued the property as a residential estate. The easement deed does not permit a residential use of the property; consequently, Mr. Heffernan's valuation of the subject property after the placement of the easement is incorrect. The value of a single residential estate has no meaning or relevance to the subject easement as the property is basically limited to golf course and country club use. The conservation easement does not permit a residential use of the property."

Response: The IRS is correct that the easement limits the commercial use of the property to golf course use. However, since the market and financial data led me to conclude that the golf course use was not feasible, I made the "extraordinary assumption" that the township would permit use as a single "estate" building lot. This assumption should have been explicitly noted in my report. My broad search of the market revealed no land sales



of properties that could only be used for golf course or country club use. Therefore, I concluded that the most reasonable minimalist use of the restricted parcel that would support the conservation purposes cited in the easement document would be for single family "estate" utilization. Importantly, it would be unreasonable to assume that the Township would allow the land to lie fallow as this would tend to be an unreasonable maintenance, safety and insurance expense for the Township. Properties in this area have been similarly restricted to one estate residence utilization, and such use represents a reasonably acceptable alternative assuming that a "for profit" golf course and country club utilization is not financially feasible. Had I taken the position that there was no residential potential for even one estate residence on this site, my "after" value would have been less and the easement value would have been substantially higher. My municipal experience as a member and chairman of a land use board, as well as a former Mayor of the neighboring municipality led me to believe that the Township would have welcomed the alternative use as a single estate lot as that would have furthered its conservation purposes. While my analysis increased the "after" value of the property, it is my opinion that the appraisal would have been incorrect without this assumption - the only fault was not explicitly explaining the assumption in the report.

2. "The existing improvements, personal property and intangibles were not adequately identified."

Response: In my "General Market Overview" I discussed the inability of the existing golf course facility to show positive cash flow and the projections that expected this condition to exist for some period of time. I also discussed the state of the golf course market which had experienced a substantial "over-building" of golf courses in the region, the state and the country. The property consisted of an eighteen-hole golf course and an approved fourteen lot residential subdivision laid out along existing interior roads. The residential subdivision plan prepared by Gladstone Design, Inc., Residential Concept "B" (the "Residential Concept B Plan") indicated that the area presently allocated to the eighteen hole golf course and country club facilities would provide for 19 lots in addition to the 14 lots previously approved by Bedminster Township. The individual sale of these lots would result in a higher value to the property than the current and projected golf course operation. The claim that the improvements were not adequately identified is not valid. USPAP Standard 1-2 (e) states that the appraiser is to "identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal." Since the highest and best use was determined to be a residential subdivision, the golf course improvements were irrelevant. The improvements that created the eighteen golf holes would not increase or detract from the final value of each individual building lot, as it is likely that those features would be graded over in the course of the eventual residential construction of each individual lot (an expense borne by the purchaser). The majority of the existing physical structures that existed as of the date of the easement were segregated on individual conceptual lots in the design by the engineers. Improvements such as the original "Cowperthwaite Family" mansion and surrounding structures were considered to be value neutral. This structure, which was

converted to a clubhouse use for the golf operation, could be reconverted to a residence in my "after" valuation. The cost of conversion would indicate little or no value to the improvements. It was my opinion that any structures that created additional value to these lots would be offset by those that would detract from the eventual value of the residential lots. It should be noted that it is quite typical in Bedminster for newly subdivided residential lots, once part of a larger estate, to be marketed to buyers with existing structures that are eventually razed or re-utilized in the course of the overall residential development of the subdivided parcel. Therefore, the existing improvements that would not be of value to an existing purchaser of a lot could be demolished at the purchaser's expense and those that would be contributory to value would remain to the purchaser's benefit. It was our opinion that the net value gain/loss of these improvements would be neutral in term of value contribution in the marketing of the lots.

The portion of the improvements that do contribute to the value are the existing internal roads and drainage features (property infrastructure) that the engineer used within the subdivision concept plan and which eliminated the need for the installation of additional roads and drainage. Since there is no municipal water or sewer within this area of the municipality, each lot would require its own well and its own septic facility. This is always the responsibility of the lot purchaser and not the responsibility of the seller. This benefit of the existing infrastructure was acknowledged in my analysis by not having to make a deduction when preparing the Subdivision Development Method of valuation.

3. "Mr. Heffernan stated, 'All approaches to value have been considered herein, although the Sales Comparison Approach is the only appropriate method, in this case.' On the following page Mr. Heffernan contradicted the above statement. He stated, 'The Method of the Appraisal is a Subdivision Development Method, a corollary to the Direct Sales Comparison Approach'. The Subdivision Development Method is an Income Approach, not a corollary to the Sales Comparison Approach. In addition Mr. Heffernan stated 'Properties similar to the subject are not purchased for rental income purposes and the Income Approach is not applicable'. However, Mr. Heffernan did use an Income Approach and did not utilize the Sales Comparison Approach as his peers would have done."

Response: While I did say that all approaches to value have been considered herein, only those regarded as appropriate for valuation were utilized. In my extensive work of preparing appraisals of proposed residential subdivisions I always attempt to utilize a Direct Sales Comparison Approach, which would include sales of residential properties similar to the subject that were sold with, subject-to, or prior to filing for major subdivision approvals. The appraisal report that I used as a template for this appraisal was the valuation of a proposed residential subdivision that relied on a Sales Comparison Analysis with the utilization of a Subdivision Development Analysis as a check approach. On page 15 of my report, I mentioned that "The subject parcel is unique in size and there have been no recent sales of similar sized vacant land parcels recently in Bedminster, nor in the surrounding competitive communities." In my twenty seven plus

years of teaching appraisal courses for the Appraisal Institute I have always stressed that the "Appraisal of Real Estate," published by the Appraisal Institute, states "The technique (Subdivision Development Analysis) is most useful for reporting the bulk sale value of a proposed subdivision, and the value indication is most persuasive when the sales comparison method (Direct Sales Comparison Approach) provides additional support." When I state that this approach is a corollary to the Sales Comparison Approach, it is this specific relationship between the Sales Comparison Approach and the Subdivision Development Analysis that I am addressing. They are meant to be used together when possible. I did not state that the Subdivision Development Method was not considered an Income Approach nor did I state that it was a Sales Comparison Approach. However, in my appraisal practice I utilize both the Direct Sales Comparison Approach and the Subdivision Development Method together when I prepare the Direct Sales Comparison Approach. I consider this to be more easily understood by the reader of the report and less confusing, especially when the Subdivision Development Method is typically used as a check on the results of the Direct Sales Comparison Approach. It is preferable to utilize both a Direct Sales Comparison Approach and a Subdivision Development Analysis together when analyzing the value of a proposed residential subdivision. However, since I was lacking the sales of comparable residential land in this community and relevant surrounding communities, the only reasonable method of valuing the property in question in its highest and best use was to utilize the Subdivision Development Method solely. Since it has been my habit, for greater clarity, to combine the use of this valuation method with the Sales Comparison Approach, as recommended by the Appraisal Institute, it was located in the Sales Comparison Approach section of my report.

4. "Mr. Heffernan appears to have not considered the Grassland Bird Habitat Conservation Easement and Conservation Easements with the Upper Raritan Watershed Association that were in existence on the subject property prior to the date of valuation. In total, approximately 61 acres of the subject's 506 acres were previously encumbered with restrictions and, therefore, cannot be included in the current conservation easement."

Response: The IRS is incorrect in their assertion that I did not consider these easements in my report because they were clearly indicated and highlighted on the Residential Concept B Plan, which was included in my report. These previous easements constituted only a small portion of some of the proposed lots and would not have hindered their desirability or marketability. Thus, those prior easements are, in fact, fully incorporated into the concept plan that demonstrates the ability to subdivide the 506 acres into 33 building lots "before." My valuation of the retail price for the proposed building lots necessarily incorporates those easements, as well as other limiting factors (wetlands and wetland transition buffers) in arriving at the value "before." The current easement further limits the property owner's rights in this parcel and that is what is valued in my appraisal.

5. "Mr. Heffernan stated, 'General indicators are that areas west of Routes 202/206 will not change radically. Poor soils and topographic limitations within this area do not lend themselves to intensive residential development.' 'The majority of the Township's land

is located west of Route 202/206 where low density residential is predominant due to the nature of the soils. This area is the 'estate' section of the Township were (sic) homes on 20+ acres predominate.' I note that the subject is located west of Routes 202/206 and that Mr. Heffernan's appraisal shows that residential building permits decreased from 174 in 1995 to 7 in 2001. However, it appears that he does not consider this information in his subdivision development analysis and conclusion of a sellout period of six lots per year."

Response: The Bedminster Township Master Plan for many years has acknowledged, and continues to acknowledge, that soil and topographic conditions are a relevant factor for properties located west of US Route 206. Recognizing the soil conditions, the township re-zoned this area to provide one residence for every ten acres instead of one residence for every three to five acres. The lots contemplated in the Residential Concept B Plan are all at least ten acres, and many are in excess of 16 to 20 acres. Moreover, successful percolation tests have been achieved and residential development had been approved for fourteen of the residential lots in the Residential Concept B Plan, demonstrating that the soils and topographic conditions were not a barrier to development.

In regard to the residential housing permits, I would redirect the IRS's attention to page 29 of my report where I explain that the high amount of residential activity in building permits in Bedminster in the mid to late 90's was attributable to a large property lying east of US Route 202/206. This planned unit development subdivision known as "The Hills" was a court ordered "Mount Laurel" housing approval. Generally, "Mount Laurel" housing approvals occur when, following litigation, a court orders a township (or other government authority) to approve the subdivision development and to provide a "fair share" of the approved units for low and moderate income buyers. The development of The Hills project was finishing in the mid to late 1990's. Once completed, Bedminster Township went back to its relatively slow pace of subdivision and building permit approval. This slow pace of development, as indicated in this paragraph, is not the result of a lack of demand for residential building lots in the Township but rather a lack of supply. The majority of property owners in this area of Bedminster, west of US Route 206, are wealthy individuals who have no desire or financial need to subdivide and sell-off building lots that tend to reduce or impact upon their privacy. To a certain extent it maximizes the exclusivity of their community, a characteristic much more desirable to the nature of the inhabitants. This results in a lack of supply and hence building permits ranging between five to eight per year. The IRS incorrectly assumes this drop in the number of building permits is a result of a lack of demand for residential building lots. Since Bedminster and the surrounding communities have not recently experienced the absorption of a large residential subdivision there are no absorption examples to be cited that are reliable. However, other residential subdivisions studied in communities nearby prior to 2006 demonstrate an ability to market product at rates that average approximately one unit every one to three months.

This is further illuminated in my comments on the top of page 22 of my report, which states: "In recent decades, Somerset (County) has experienced strong growth in population, housing and industry. As the cost of living and working in New Jersey's highly developed urban and suburban areas escalated, large numbers of businesses and their employees relocated to the more rural counties of Somerset, Hunterdon and Monmouth, which provided an affordable and attractive alternative. High and low density residential development has spread throughout most of the County, although many communities still retain a rural ambiance, particularly those in the western most and southernmost portions of the County where agriculture is still common."

Accordingly, the IRS's conclusion that "poor" soils and a lack of demand for residential lots caused a decline in building permits is incorrect. As explained above, fourteen lots in the Residential Concept B Plan achieved successful percolation and were approved for residential development. Additionally, it was a lack of supply, not a lack of demand that caused the drop in residential building permits. This was confirmed by the fact that two lots were sold prior to final approval.

6. "He [Mr. Heffernan] did not support his opinion that 'on average' the lots would have a value of \$1,852,500 before the easement."

Response: I provided a detailed accounting, in the addendum of my appraisal, of nine sales of residential building lots within Bedminster and the two surrounding communities considered to be competitive with Bedminster. These sales were identified in a chart on page 56 of my report. They ranged in date from February of 2002 to February of 2004. These sales were analyzed on both a combined quantitative and qualitative basis. Quantitatively, I applied adjustments for market conditions and location; and qualitatively I compared the resulting unit prices to the subject lots to arrive at an appropriate unit value per acre to apply to each proposed conceptual lot. The comparable sales were listed from the lowest amount of acreage to the highest amount of acreage, not only to demonstrate how price is influenced by size but also because the subject property's conceptual lots varied in size from ten to thirty plus acres. On pages 56 through 61, each individual proposed lot was discussed in terms of its physical nature and on that basis a particular price per acre was deemed most appropriate. For instance, on page 56 I discussed the valuation of Lot 1. I mentioned that it contained fourteen acres; it was not a flag lot; there were minor wetlands at the rear of the site and that it was located closer to the southerly end of the site closer to Interstate Route 78 than Lamington Road. Unit sale prices adjusted for *Market Conditions* and *Location*, for lots between 10 and 15 acres on the chart at the top of that page suggested unit values ranging from \$118,999 to \$182,218 per acre. From a qualitative standpoint, considering the features of this lot, a unit value at the lower end of the range of value was estimated, i.e. \$120,000 per acre. This individual analysis was conducted for each of the lots so that the sales with the most appropriate physical attributes to the subject were utilized in arriving at a unit price per acre for each proposed lot. The chart on page 61 of my report simply itemizes what those estimated individual conceptual lot values are and sums to a total of

the retail values. Since my intent is to use the individual retail lot values within a Subdivision Development Analysis, without knowing in what order they will sell, it is common practice to utilize a mean sale price of the proposed residential lots within the cash flow procedure.

My analysis was confirmed when I recently became aware of two contracts for the sale of residential lots on the property that were executed in 2001, the Finlay contract and the Piedilato contract. The Finlay contract was for the sale of lot 3 for a price of \$1,485,000 and the Piedilato contract was for the sale of lot 5 for a price of \$1,500,000. The purchase prices reflected in these contracts, once adjusted for appreciation to December 2005, are consistent with my average retail price estimated to each of the 33 conceptual lots, as well as with the specific values derived for lots 3 and 5.

7. "In his Summary of Salient Facts, Mr. Heffernan stated the effective date of the appraisal was December 31, 2005 - the date of the donation was December 29, 2005." "He (Mr. Heffernan) stated two different Before values in his Summary of Salient Facts."

Response: The error in the effective date utilized in the "Summary of Salient Facts" is a scrivener's error that unfortunately was not picked up in the final review of the report before printing. However, I note that the correct effective date was recorded in my cover letter accompanying my appraisal, as well as on pages 19, 63, 77 and 79 of my report.

This is also true of the error on page two of the "Summary of Salient Facts" where the value was incorrectly typed as "Fifty One Million Three Hundred Thousand Dollars" but listed the figure correctly underneath as \$49,500,000. I note, however, that the correct "before" value was listed on pages 63 and 77 of my report.

I trust that this information provides some clarification as to the challenges raised by the IRS to my appraisal of the subject property.

Sincerely:



Robert F. Heffernan, SRA, SCGRE  
NJ Cert, 42RG#00030300

# Faherty Affirmation

## Exhibit # 39



Cushman & Wakefield, Inc.  
1313 East Main Street  
Richmond, VA 23219  
212-841-7789 Tel  
212-841-7849 fax

December 8, 2006

Mr. John P. Tyrrell, MAI  
Commercial Appraiser  
Chevy Chase Bank  
7501 Wisconsin Avenue, 11th Floor  
Bethesda, Maryland 20814

Re: Appraisal of Real Property  
In a Self-Contained Report

**Lowe's Island Golf Club**  
20391 Lowe's Island Boulevard  
Potomac Falls, Loudoun County, Virginia 20165

C&W File ID: 06-26006-9169

Dear Mr. Tyrrell:

In fulfillment of our agreement as outlined in the Letter of Engagement, we are pleased to transmit our complete appraisal report on the property referenced above.

The value opinion reported below is qualified by certain assumptions, limiting conditions, certifications, and definitions, which are set forth in the report. We particularly call your attention to the following extraordinary assumptions and hypothetical conditions:

Extraordinary Assumptions: This appraisal contains no extraordinary assumptions.

Hypothetical Conditions: This appraisal contains no hypothetical conditions.

This report was prepared for Chevy Chase Bank and is intended only for their specified use. It may not be distributed to or relied upon by other persons or entities without written permission of Cushman & Wakefield, Inc.

This appraisal report has been prepared in accordance with our interpretation of your institution's guidelines, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and the Uniform Standards of Professional Appraisal Practice (USPAP), including the Competency Provision.

The property was inspected by Richard A. Zbranek, MAI and Brian M. Johnson. The report was prepared by Richard A. Zbranek, MAI, and Brian M. Johnson.

This appraisal employs the Sales Comparison Approach and the Income Capitalization Approach. Based on our analysis and knowledge of the subject property type and relevant

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VALUATION SERVICES

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MR. JOHN P. TYRRELL, MAI  
Chevy Chase Bank  
December 15, 2005  
Page 2

investor profiles, it is our opinion that these approaches would be considered applicable and/or necessary for market participants. The subject's age makes it difficult to accurately form an opinion of depreciation and tends to make the Cost Approach unreliable. Investors do not typically rely on the Cost Approach when purchasing a property such as the subject of this report. Therefore, we have not utilized the Cost Approach to develop an opinion of market value.

Based on our Complete Appraisal as defined by the *Uniform Standards of Professional Appraisal Practice*, we have developed an opinion that the market value of the fee simple estate of the referenced property, subject to the assumptions and limiting conditions, certifications, extraordinary and hypothetical conditions, if any, and definitions, "as-is" on November 9, 2006 is:

**THIRTEEN MILLION DOLLARS**

**\$13,000,000**

\*Inclusive in the value indications is that value which is attributable to the existing furniture, fixtures and equipment (\$1,000,000).

Based upon transactions that have occurred in the marketplace as well as discussions with knowledgeable market participants, exposure time would have required approximately twelve (12) months. Furthermore, a marketing period of approximately twelve (12) months will be reasonable for properties such as the subject.

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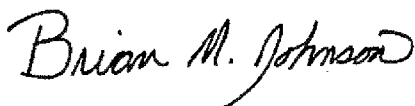
MR. JOHN P. TYRRELL, MAI  
Chevy Chase Bank  
December 15, 2005  
Page 3

The real and personal property components of the subject property are valued in this appraisal and any business component has been accounted for through the deduction of a market rate management fee. By making this deduction, we believe that there is no business value included in our conclusion of market value.

This letter is invalid as an opinion of value if detached from the report, which contains the text, exhibits, and Addenda.

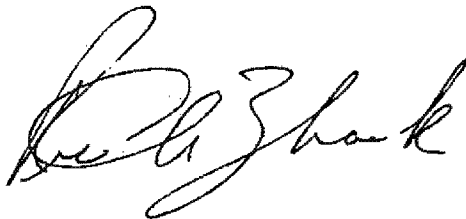
Respectfully submitted,

CUSHMAN & WAKEFIELD of WASHINGTON, D.C., INC.



---

Brian M. Johnson  
Director  
Virginia Certified General Appraiser  
Number 4001-010521  
Brian.m.johnson@cushwake.com



---

Richard A. Zbranek, MAI  
Senior Director  
Texas Certified General Appraiser License  
Number TX-1321984-G  
richard.zbranek@cushwake.com

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**SUMMARY OF SALIENT FACTS**

Common Property Name: Lowe's Island Golf Club

Location: 20391 Lowe's Island Boulevard  
Potomac Falls, Loudoun County, Virginia 20165

The site is located along the Potomac River within the Cascades Planned Development community, just south of the state of Maryland and just west of Fairfax County. This is a suburban location within the Washington, D.C. area and includes a significant amount of residential and commercial development in the area.

Lowe's Island Golf Club – A private 36-hole country club development. There is a two-story clubhouse including a total of 33,088 square feet plus a basement level. The main clubhouse includes a pro shop, main dining room, private dining room, bar/grill area, administrative offices, and locker rooms. There is golf cart storage on the lower level of the clubhouse. The club also includes a swim club building with 3,100 square feet, a maintenance building with 8,800 square feet, a tennis club with 3,100 square feet and a maintenance shop with 15,532 square feet. The subject includes two golf courses. The original course, referenced as the Island Course, was designed by Tom Fazio in 1993. The main clubhouse building was added in 1995. The second 18-hole golf course was added in 1998. This course, known as the River Course, was designed by Arthur Hills. Other amenities include a driving range and practice greens.

Assessor's Parcel Number: Tax Map 65, Parcel 4P

Interest Appraised: Fee Simple Estate

Date of Value : November 9, 2006

Date of Inspection: November 9, 2006

Ownership: Bondy Way Development Corporation

Current Property Taxes

Total Assessment:	\$18,310,100
6/27/1905 Property Taxes:	\$162,960

Highest and Best Use

If Vacant:	Development of two, 18-hole golf courses
As Improved:	As it is currently developed

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## SUMMARY OF SALIENT FACTS

### Site & Improvements

Zoning: PDH-4

Land Area: 487.2200 acres

Clubhouse:

Year Course Built: 1993 – Island Course designed by Tom Fazio  
1998 – River Course designed by Arthur Hills Design  
1995 – Clubhouse was built

Type of Construction: Wood frame clubhouse. Maintenance buildings are prefabricated steel. Tennis and swim club building are wood frame construction.

Gross Building Area: The main clubhouse building includes 33,088 square feet of building area. The swim club building includes 3,100 square feet, the maintenance building includes 15,532 square feet. The tennis club includes 1,492 square feet. There is an additional golf storage barn that includes 8,800 square feet. The clubhouse and other various structures are in very good condition.

### Value Indicators

#### Sales Comparison Approach:

Indicated Value: \$13,000,000 to \$14,000,000

Per Hole \$361,111 to \$388,889

#### Income Capitalization Approach:

##### DCF Method

IRR: 11.50%

Terminal Rate: 9.50%

Indicated Value: \$13,000,000

**FINAL VALUE \$13,000,000 (\$361,111 per hole)**

Exposure Time: 12 months

Marketing Time: 12 months

### Extraordinary Assumptions and Hypothetical Conditions

#### Extraordinary Assumptions

An extraordinary assumption is defined by the *Uniform Standards of Professional Appraisal Practice* as "an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact

VALUATION SERVICES

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**SUMMARY OF SALIENT FACTS**

otherwise uncertain information about physical, legal or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.”

This appraisal contains no extraordinary assumptions.

Hypothetical Conditions

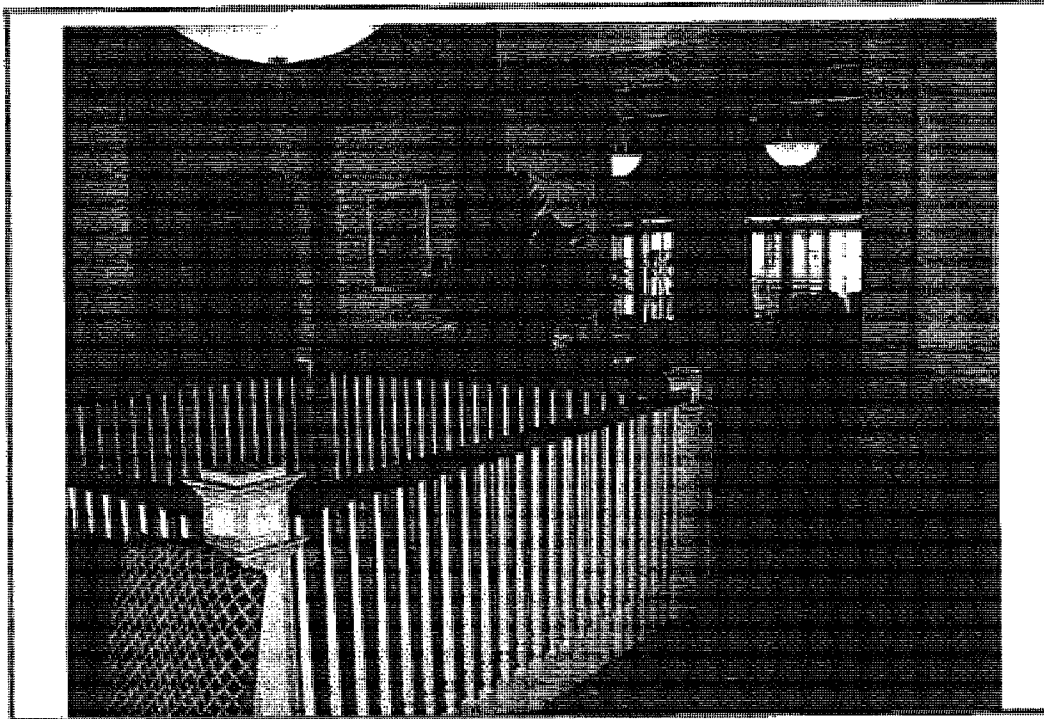
A hypothetical condition is defined by the *Uniform Standards of Professional Appraisal Practice* as “that which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.”

This appraisal contains no hypothetical conditions.

**SUBJECT PHOTOGRAPHS**



View of the Main Clubhouse Building



View of clubhouse building.

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**SUBJECT PHOTOGRAPHS**



View of Pool Area



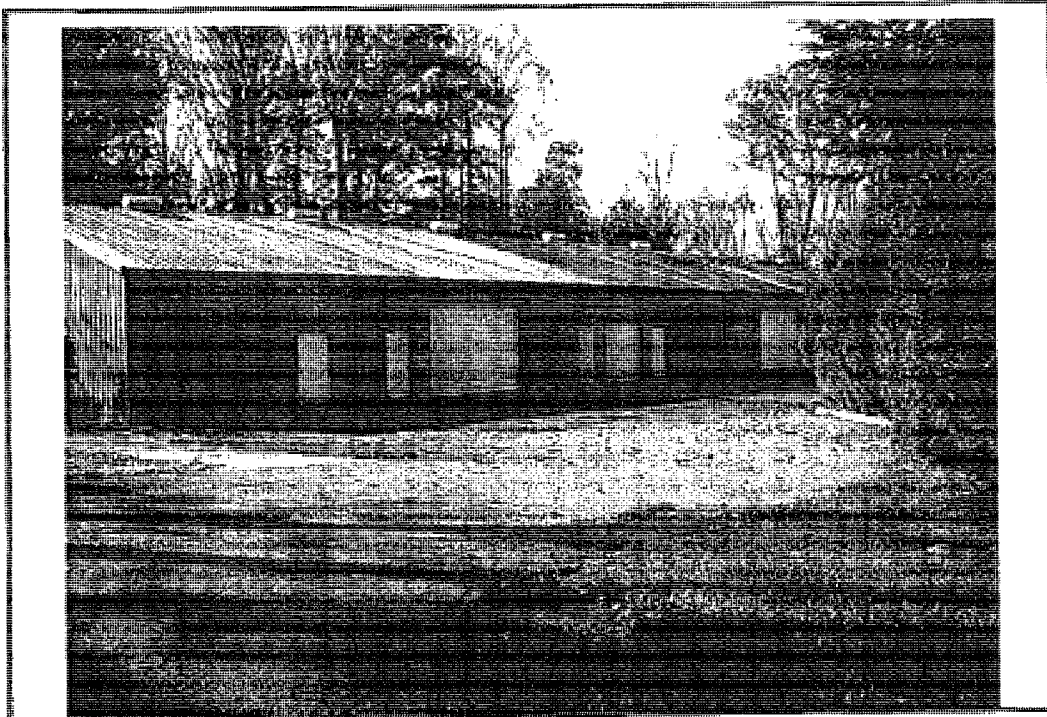
View of Golf Course – 1<sup>st</sup> Hole on River Course

VALUATION SERVICES

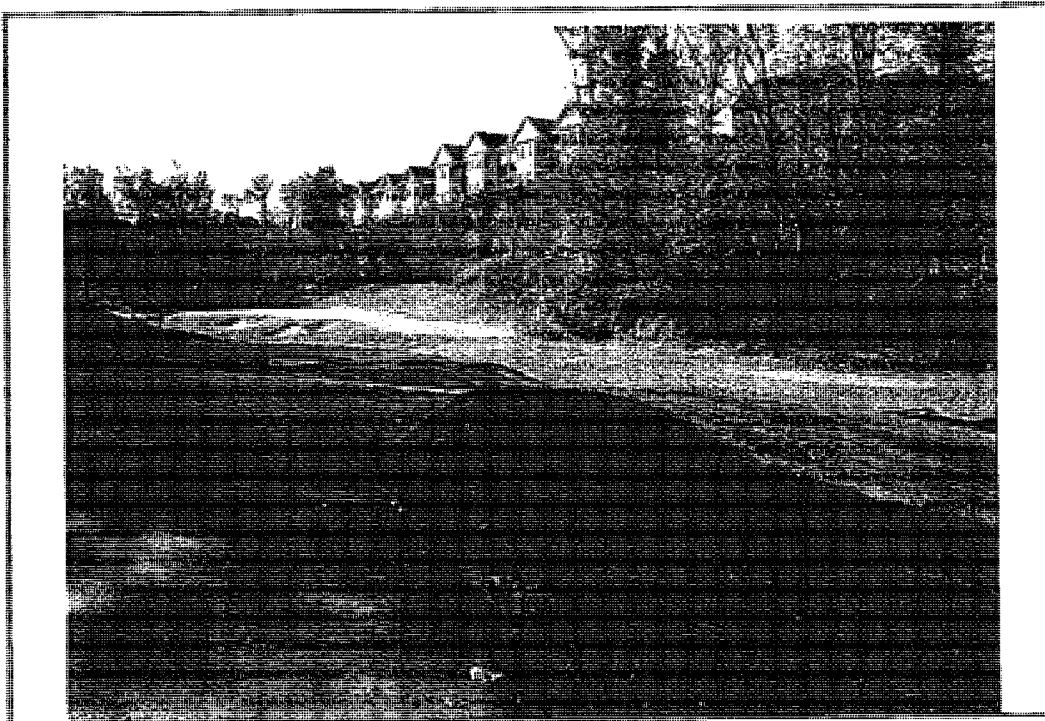
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**SUBJECT PHOTOGRAPHS**



View of Cart Storage Building / Maintenance



View of Par 3 Hole

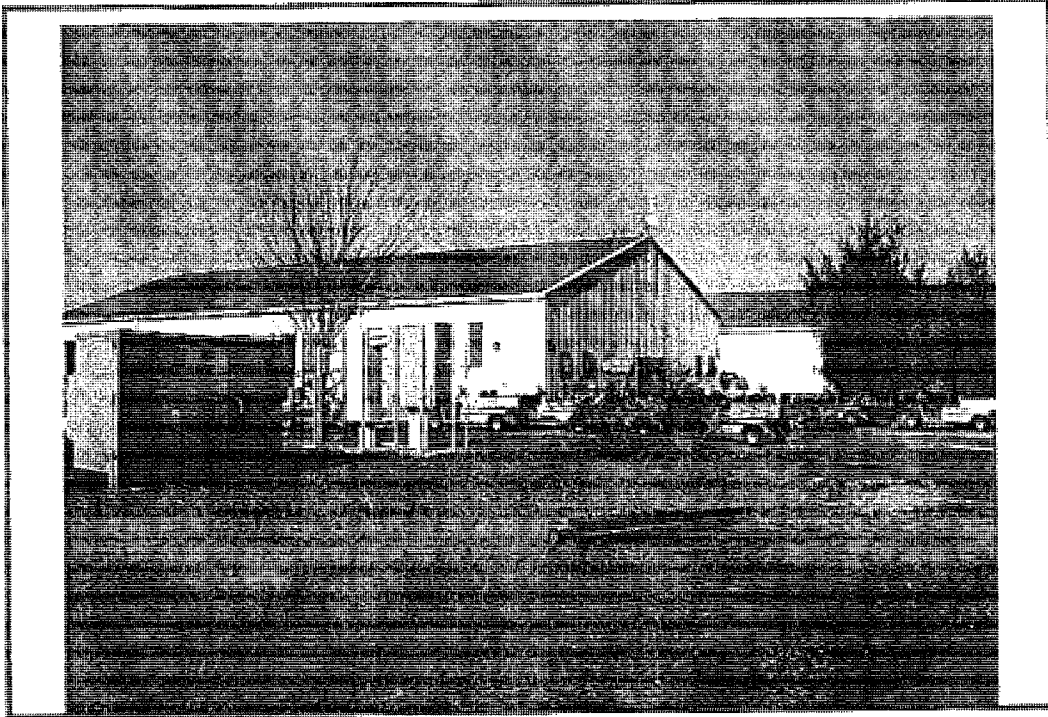
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**SUBJECT PHOTOGRAPHS**



View of Maintenance Shop Buildings



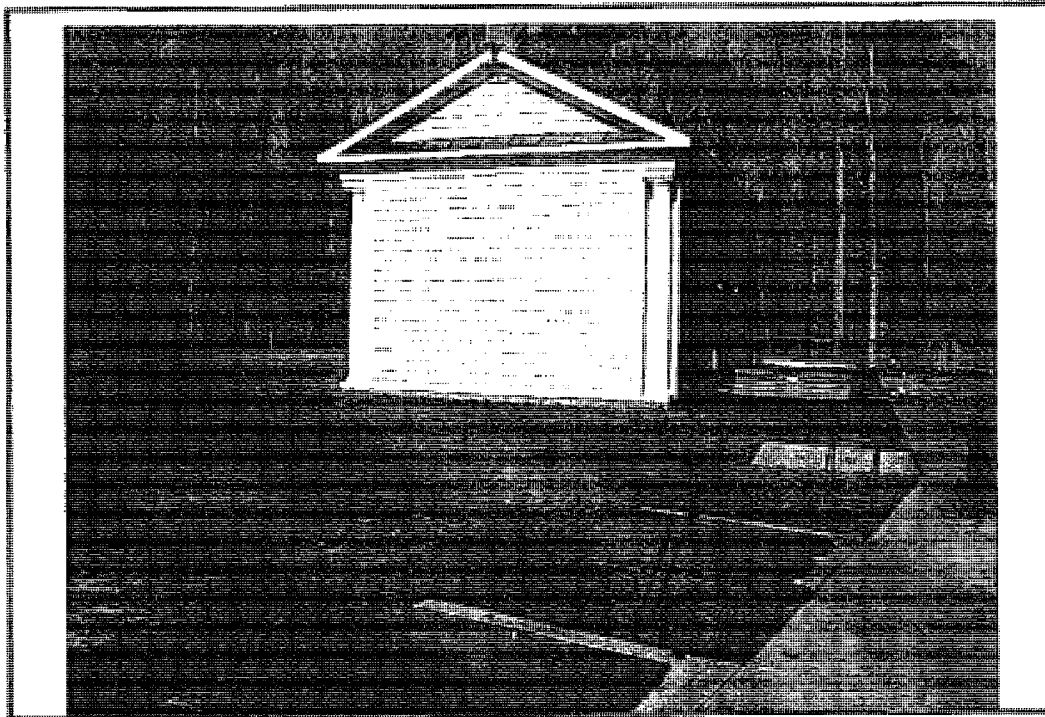
View of Dining Area

VALUATION SERVICES

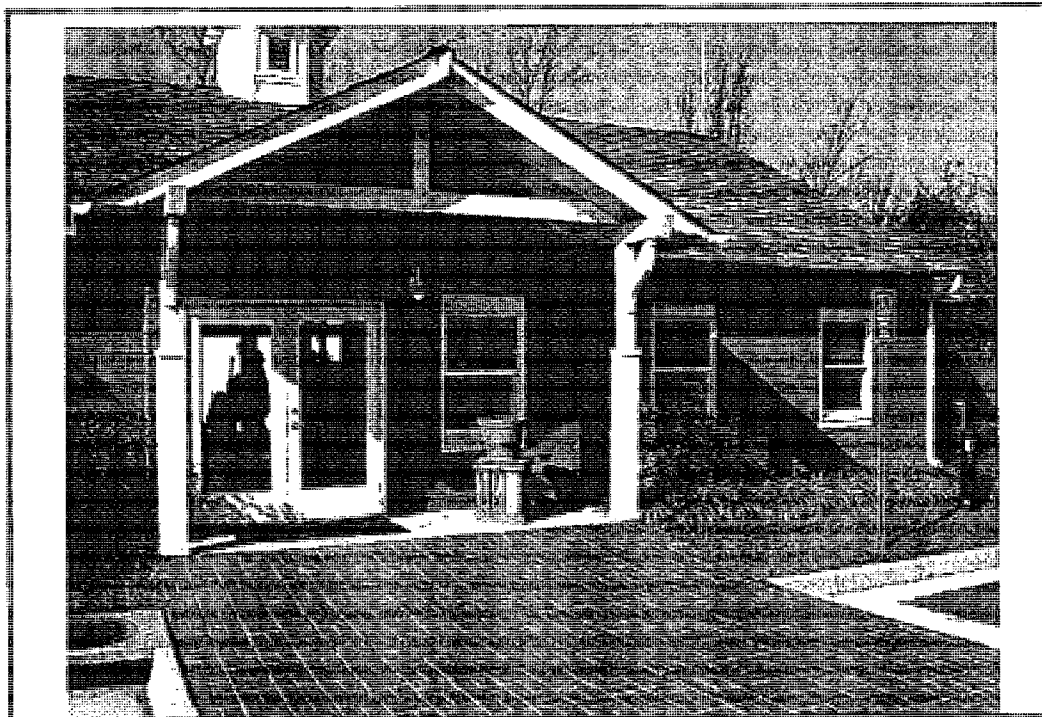
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**SUBJECT PHOTOGRAPHS**



View of Practice Facility and Driving Range



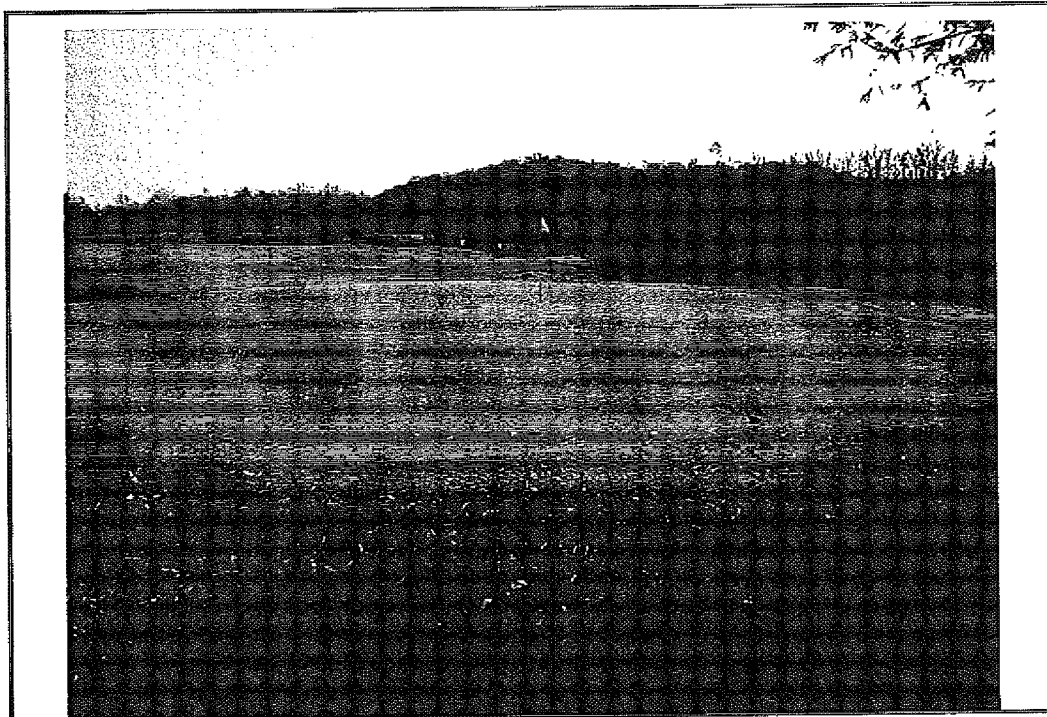
View of Tennis Building

VALUATION SERVICES

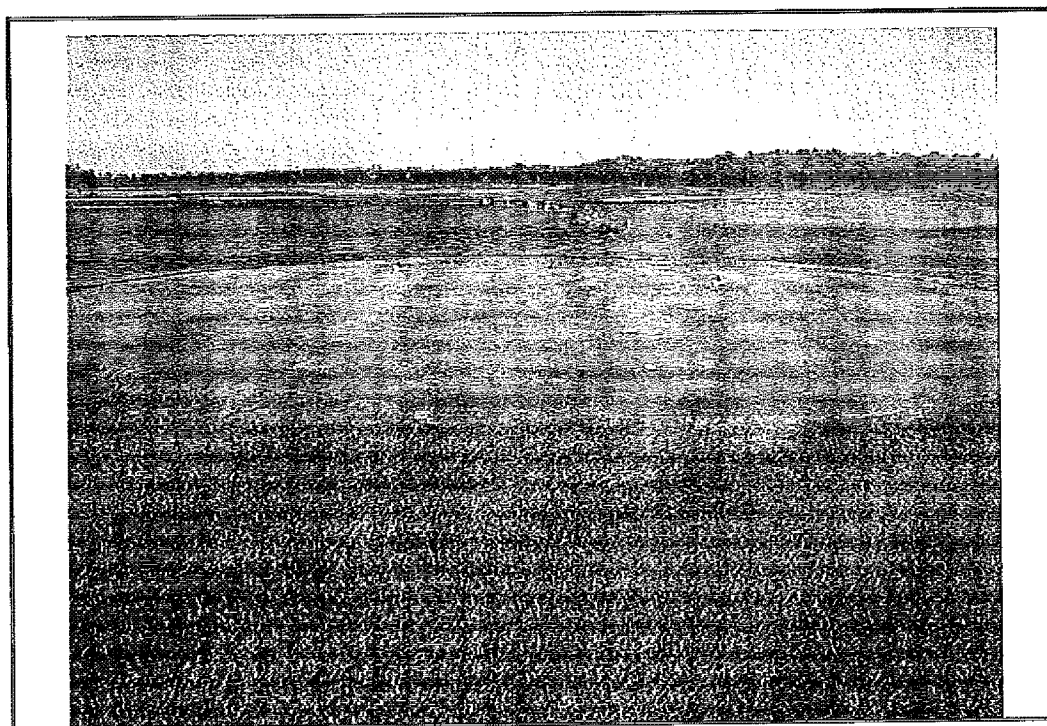
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**SUBJECT PHOTOGRAPHS**



View of typical green area.



Additional view of Tee Box / Fairway

VALUATION SERVICES

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**VALUATION SERVICES**

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**INTRODUCTION**

**Identification of Property**

Common Property Name: Lowe's Island Golf Club

Location: 20391 Lowe's Island Boulevard  
Potomac Falls, Loudoun County, Virginia 20165

The site is located along the Potomac River within the Cascades Planned Development community, just south of the state of Maryland and just west of Fairfax County. This is a suburban location within the Washington, D.C. area and includes a significant amount of residential and commercial development in the area.

Property Description: Lowe's Island Golf Club – A private 36-hole country club development. There is a two-story clubhouse including a total of 33,088 square feet plus a basement level. The main clubhouse includes a pro shop, main dining room, private dining room, bar/grill area, administrative offices, and locker rooms. There is golf cart storage on the lower level of the clubhouse. The club also includes a swim club building with 3,100 square feet, a maintenance building with 8,800 square feet, a tennis club with 3,100 square feet and a maintenance shop with 15,532 square feet. The subject includes two golf courses. The original course, referenced as the Island Course, was designed by Tom Fazio in 1993. The main clubhouse building was added in 1995. The second 18-hole golf course was added in 1998. This course, known as the River Course, was designed by Arthur Hills. Other amenities include a driving range and practice greens.

Assessor's Parcel Number: Tax Map 65, Parcel 4P

**Property Ownership and Recent History**

Current Ownership: Bondy Way Development Corporation

Sale History: To the best of our knowledge, the subject property has not sold within the past three years.

Current Disposition: To the best of our knowledge, the property is not under contract of sale nor is it being marketed for sale.

**Intended Use and Users of the Appraisal**

This appraisal is intended to provide an opinion of the market value of the fee simple interest in the property for the exclusive use of Chevy Chase Bank. All other uses and users are unintended, unless specifically stated in the letter of transmittal. It is our understanding that the appraisal is intended for use as an aid in proper underwriting for mortgage financing of the asset.

## INTRODUCTION

### Dates of Inspection and Valuation

The "as is" value conclusion reported herein is as of November 9, 2006. The property was inspected on November 9, 2006 by Richard A. Zbranek, MAI. The report was also prepared by Richard A. Zbranek, MAI and Brian M. Johnson.

### Property Rights Appraised

Fee Simple interest.

### Scope of the Appraisal

This is an appraisal presented in a self-contained report, intended to comply with the reporting requirements set forth under the *Uniform Standards of Professional Appraisal Practice* (USPAP) for a Self-Contained Appraisal Report.

In addition, the report was also prepared to conform to the requirements of the Code of Professional Ethics of the Appraisal Institute and the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Title XI Regulations.

In the process of preparing this appraisal, the appraisal assignment involved the research and analysis of the current market conditions to estimate the current value of the existing 18-hole golf course and club. The subject is structured as a daily fee (public), as compared to a private (equity) club, semi-private or private (non-equity) type course. Our analysis consists of quantifying initiation fees, membership dues, greens fees, and a number of other factors from the market in relation to the subject golf course. This analysis is made with current, as well as future or projected, financial and market factors or influences taken into consideration.

This appraisal employs the Sales Comparison Approach and the Income Capitalization Approach. Based on our analysis and knowledge of the subject property type and relevant investor profiles, it is our opinion that these approaches would be considered applicable and/or necessary for market participants. The subject's age makes it difficult to accurately form an opinion of depreciation and tends to make the Cost Approach unreliable. Investors do not typically rely on the Cost Approach when purchasing a property such as the subject of this report. Therefore, we have not utilized the Cost Approach to develop an opinion of market value.

### Definitions of Value, Interest Appraised and Other Terms

The following definitions of pertinent terms are taken from the *Dictionary of Real Estate Appraisal*, Third Edition (1993), published by the Appraisal Institute, as well as other sources.

#### Market Value

Market value is one of the central concepts of the appraisal practice. Market value is differentiated from other types of value in that it is created by the collective patterns of the market. A current economic definition agreed upon by agencies that regulate federal financial institutions in the United States of America follows, taken from the glossary of the *Uniform Standards of Professional Appraisal Practice* of The Appraisal Foundation:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting

## INTRODUCTION

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prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are 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;
2. Both parties are well informed or well advised, and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in US dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

### Fee Simple Estate

Absolute ownership unencumbered by any other interest or estate, subject to the limitations imposed by the governmental 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 stated term under certain conditions.

### Market Rent

The rental income that a property would most probably command on the open market, indicated by the current rents paid and asked for comparable space as of the date of appraisal.

### Cash Equivalent

A price expressed in terms of cash, as distinguished from a price expressed totally or partly in terms of the face amounts of notes or other securities that cannot be sold at their face amounts.

### Market Value As Is on Appraisal Date

The value of specific ownership rights of an identified parcel of real estate as of the effective date of the appraisal; related to what physically exists and excludes all assumptions concerning hypothetical conditions.

## INTRODUCTION

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### Prospective Value Upon Completion of Construction

The value of a property on the date that construction is completed, based on market conditions projected to exist as of that completion date. This value is not the market value as of a specified future date, but rather is a projected value based on assumptions that may or may not occur. This value factors in all costs associated to lease-up the property to stabilized occupancy.

### Prospective Value Upon Stabilized Occupancy

The value of a property at a point in time when all improvements have been physically constructed and the property has been leased to its optimum level of long term occupancy. At such point, all capital outlays for tenant improvements, leasing commissions, marketing costs, and other carrying charges are assumed to have been incurred.

### **Exposure Time and Marketing Time**

#### Exposure Time

Under Paragraph 3 of the Definition of Market Value, the value opinion presumes that "A reasonable time is allowed for exposure in the open market". Exposure time is defined as the length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at the market value on the effective date of the appraisal. Exposure time is presumed to precede the effective date of the appraisal.

The reasonable exposure period is a function of price, time and use. It is not an isolated opinion of time alone. Exposure time is different for various types of real estate and under various market conditions. As noted above, exposure time is always presumed to precede the effective date of appraisal. It is the length of time the property would have been offered prior to a hypothetical market value sale on the effective date of appraisal. It is a retrospective opinion based on an analysis of recent past events, assuming a competitive and open market. It assumes not only adequate, sufficient and reasonable time but adequate, sufficient and a reasonable marketing effort. Exposure time and conclusion of value are therefore interrelated.

Based on our review of national investor surveys, discussions with market participants and information gathered during the sales verification process, a reasonable exposure time for the subject property at the value concluded within this report would have been approximately twelve (12) months. This assumes an active and professional marketing plan would have been employed by the current owner.

#### Marketing Time

Marketing time is an opinion of the time that might be required to sell a real property interest at the appraised value. Marketing time is presumed to start on the effective date of the appraisal and take place subsequent to the effective date of the appraisal. The opinion of marketing time uses some of the same data analyzed in the process of estimating reasonable exposure time and it is not intended to be a prediction of a date of sale.



**INTRODUCTION**

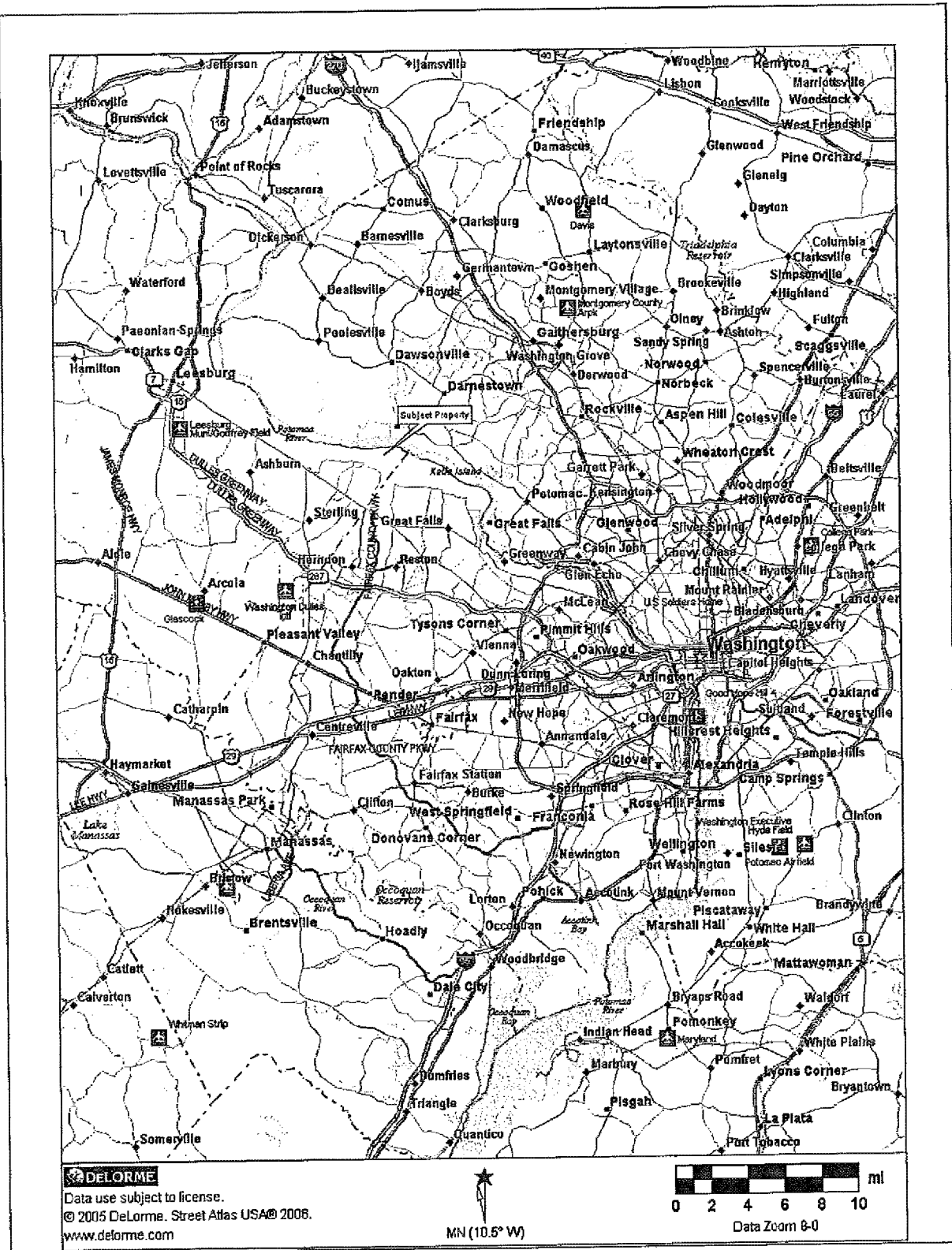
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We believe, based on the assumptions employed in our analysis, as well as our selection of investment parameters for the subject, that our value conclusion represents a price achievable within twelve (12) months.

**Legal Description**

The subject site is identified by Loudoun County as tax map number Tax Map 65, Parcel 4P.

### REGIONAL AREA MAP



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## REGIONAL ANALYSIS

The intent of the Regional Analysis is to review all relevant historical and projected economic and demographic data to determine whether the subject market area and region are likely to experience economic growth, stability or decline in the future. These trends are correlated based on their propensity to reflect property demand variations.

### Market Outlook

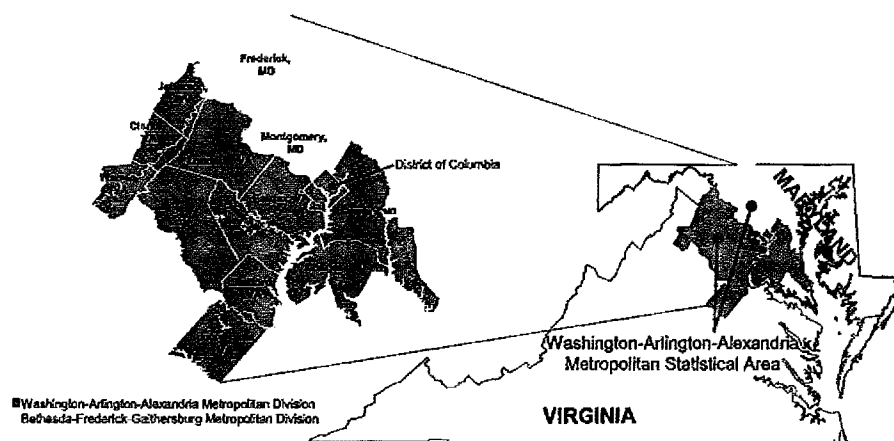
The Washington DC metro area was one of the fastest growing metro areas in 2005 and is expected to continue to grow at above average rates compared to the top 100 metropolitan areas (Top 100).

- Growth in the economy is expected to be broad based. Outside of manufacturing, all sectors of employment are forecast to show year-over-year gains through 2010.
- Federal IT outsourcing will boost the tech sectors, increasingly important drivers of the local economy in addition to the traditional sectors, legal and government.
- In spite of signs of some cooling in the residential market, overall conditions in Washington's real estate market are among the strongest in the nation. Washington's overall vacancy rate was the lowest of the nation's large CBDs in 2005 and demand for commercial real estate in the area is expected to continue to be very robust.
- Solid population growth, combined with a highly skilled workforce, support the area's continued positive long-term outlook.

### Market Definition

Centrally located along the nation's mid-Atlantic coast – equidistant between Norfolk, Virginia and New York City – and bisected by the Potomac River is the Washington-Arlington-Alexandria Metropolitan Statistical Area (MSA). The core of this area is the nation's capital, the District of Columbia (the District), which is located along the Potomac, and totals 68.2 square miles. In addition to the District, the area encompasses 21 counties and independent cities located in three states – Maryland, Virginia, and West Virginia – and covers a total of 5,627 square miles.

### WASHINGTON-ARLINGTON-ALEXANDRIA METROPOLITAN STATISTICAL AREA (WASHINGTON, DC MSA)



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## REGIONAL ANALYSIS

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Source: Cushman & Wakefield Analytics

### Current Trends

Washington's economy has been growing rapidly since 2003 unlike many of the Top 100 MSAs, where strong growth only began to occur in late 2004. Overall employment grew by 2.3 percent in 2005, significantly higher than the rate of the Top 100 and the third consecutive year of growth in excess of two percent. All sectors of the economy experienced positive job gains in 2005 with the exception of the manufacturing and information sectors.

Professional and business services, leisure and hospitality, and construction sectors grew in the 3.5 to 5.0 percent range. Professional and business services, the largest sector of the economy, have averaged an impressive 4.7 percent annual growth rate since 2003. Growth in this sector, though moderating, is expected to maintain a very healthy annual clip, in the 2.0 to 3.0 percent range through 2010.

Fueled by the strength in the local economy, Washington's real estate market remains one of the tightest in the nation. Real estate investment sales in the Washington metro area totaled almost \$18 billion in 2005, third behind only New York and Los Angeles but ahead of other top markets such as Chicago and Boston.

In spite of overall federal budget cutbacks, the local high tech sectors stand to benefit from the increased outsourcing of Federal IT expenditures which are projected to grow by 8 percent per year over the next five years.

### Economics

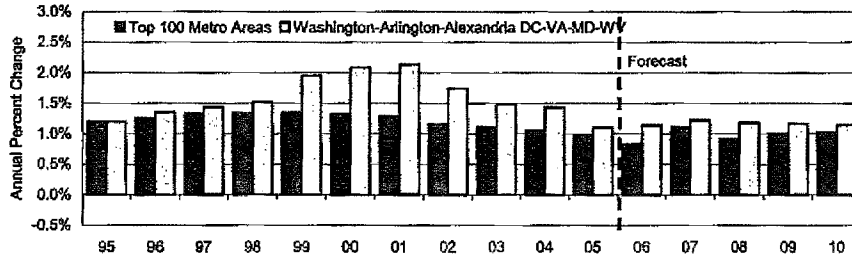
Washington's Gross Metro Product (GMP) growth has kept pace with the fastest growing metro areas. While growth in other Top 100 metro areas contracted sharply in 2001 through 2003, Washington's growth remained on a solid track.

- From 1995 to 2005, Washington's GMP grew at an average annual rate of 4.5 percent, far exceeding the Top 100's annualized average of 3.0 percent.
- Washington's GMP, on average, is forecasted to grow 3.2 percent per annum through 2010, compared to the Top 100's projected growth rate of 3.0 percent.

In the following exhibit and all subsequent time-series graphs, the shaded bars indicate the periods of a U.S. economic recession. The referenced Top 100 Metro Areas (Top 100) are the 100 largest Metropolitan Statistical Areas (MSAs) in terms of total employment as of year-end 2005.

REGIONAL ANALYSIS

REAL GROSS PRODUCT GROWTH BY YEAR  
Washington DC MSA vs. Top 100\*



Source: Economy.com, Cushman & Wakefield Analytics

## REGIONAL ANALYSIS

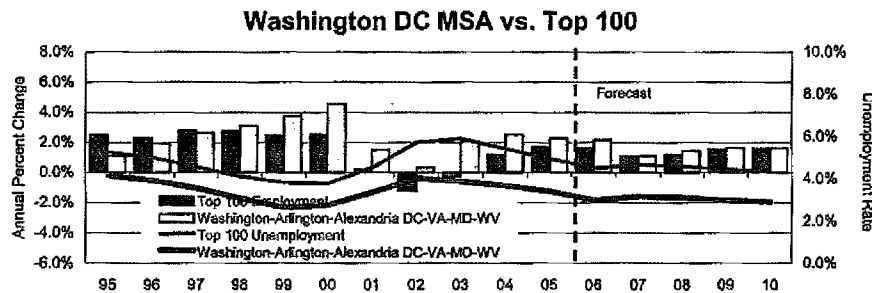
Employment growth in the Washington metro area, which has been outpacing the nation by almost two to one since 2001, is expected to cool off from its torrid pace but still average healthy gains.

- Total employment increased at a 2.5 percent average annual rate from 1995 through 2005, compared to 1.4 percent for the Top 100.
- Employment growth is expected to maintain close to that level in 2006 but then slow to an average of 1.5 percent annually through 2010, on par with the Top 100 average.

Washington's unemployment rate of 3.4 percent in 2005 was 150 basis points lower than the Top 100's average rate of 4.9 percent.

- Washington's unemployment rate has consistently discounted the Top 100 by an average of 130 basis points per annum over the past decade.
- Washington's already low unemployment rate is expected to further decline to a five year low of 3.0 percent in 2006 and then hold relatively stable through 2010.

### TOTAL EMPLOYMENT GROWTH AND UNEMPLOYMENT RATE BY YEAR



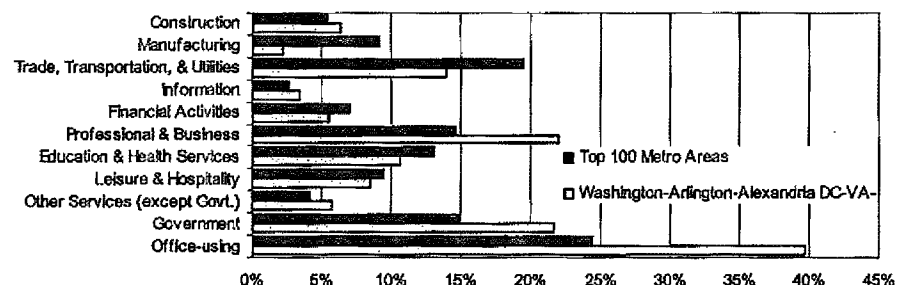
Source: *Economy.com, Cushman & Wakefield Analytics*

Given that Washington is the seat of the Federal Government, its employment is significantly more weighted in the Government and Services sectors relative to the Top 100.

- The information and professional and business services industries have expanded significantly and are becoming a major presence within the local economy, in fact this sector surpassed the government sector for the first time in 2005.
- Industry sectors with less of a service orientation, such as Manufacturing, and Transportation, are significantly under-weighted in this economy when compared to the Top 100. Not surprisingly, an extremely large (40 percent) share of the metro area's employment is office using.

REGIONAL ANALYSIS

EMPLOYMENT BY SECTOR  
Washington DC MSA vs. Top 100  
2005 Estimates



Source: Economy.com, Cushman & Wakefield Analytics

Nineteen *Fortune 500* (2005) companies are headquartered in the greater Washington metro area, the highest ranked being Fannie Mae (ranked 20<sup>th</sup>) but also including two within the District itself - Pepco Holdings (ranked 270<sup>th</sup>) and Danaher (ranked 338<sup>th</sup>).

Demographics

Washington has one of the best-educated and well-paid populations in the nation. Over 41 percent of the population has a four-year degree or better, compared to just 28 percent for the Top 100 and 24 percent for the U.S. overall. The median household income is more than 34 percent higher than the Top 100 and 49 percent greater than the U.S. median. In addition, 47 percent of households earn \$75,000 or greater, compared to 33 percent within the Top 100 and only 28 percent for the U.S. overall.

## REGIONAL ANALYSIS

**DEMOGRAPHIC CHARACTERISTICS**  
**Washington DC MSA vs. Top 100 and U.S.**  
**2005 Estimates**

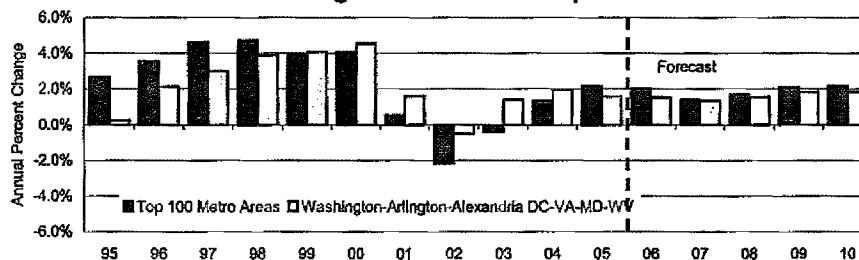
Characteristic	Washington, DC MSA	Top 100 Metro Areas	U.S.
Median Age (years)	36.2	35.9	36.2
Average Annual Household Income	\$91,700	\$71,400	\$64,800
Median Annual Household Income	\$71,150	\$52,900	\$47,800
<i>Households by Annual Income Level:</i>			
<\$25,000	13.1%	22.1%	24.9%
\$25,000 to \$49,999	20.4%	25.6%	27.4%
\$50,000 to \$74,999	19.5%	19.4%	19.3%
\$75,000 to \$99,999	15.2%	12.5%	11.5%
\$100,000 plus	31.8%	20.4%	16.9%
<i>Education Breakdown:</i>			
< High School	13.3%	18.5%	19.5%
High School Graduate	21.2%	26.0%	28.4%
College < Bachelor Degree	24.5%	27.6%	27.5%
Bachelor Degree	22.9%	17.8%	15.7%
Advanced Degree	18.2%	10.2%	8.9%

Source: Claritas, Inc., Cushman & Wakefield Analytics

The Washington Metro Area's population of 5.2 million in 2005 has been growing at a faster rate than the Top 100 and the national average and is expected to continue this trend finishing 2006 40 basis points ahead of the Top 100.

- From 1995 through 2005, Washington's population grew at an average annual rate of 1.6 percent compared to 1.2 percent rate for the Top 100.
- Washington's annual population growth through 2010, though slowing somewhat at a 1.2 percent average rate, is still expected to exceed the Top 100's 1.0 percent rate.

**POPULATION GROWTH BY YEAR**  
**Washington DC MSA vs. Top 100**



Source: Economy.com, Cushman & Wakefield Analytics

Of the metropolitan area's total population of 5.2 million, only 551,000, or 10.6 percent, reside within the District. Residents of Fairfax County/Fairfax City/Falls Church make up over 20.0 percent of the population with over one million residents. Within Virginia, Prince William County/Manassas is a distant second with a population of 398,000 as of year-end 2005.



## REGIONAL ANALYSIS

Montgomery County, with 928,000 residents, comprises the largest portion of Maryland's population within the metro area, followed closely by Prince George's County, with 846,000 residents.

The District is the only jurisdiction in the metro area that experienced a population decline over the past decade. Looking forward to 2010, the District's population is expected to remain flat while Loudoun County's population, which grew by an impressive annual rate of 8.1 percent from 1995 through 2005, is forecast to remain the metro area's fastest growing area through 2010, with an expected average annual rate of 5.2 percent. Aside from The District, the laggard this time around is Arlington County whose population is expected to experience an average annual increase of only 0.1 percent through 2010.

### ANNUALIZED POPULATION GROWTH BY COUNTY Washington DC MSA 1995-2010

Population (000's)	1995	2005	2010 Forecast	Annual Growth 95-05	Annual Growth 05-10
United States	266,664	296,744	310,184	1.1%	0.9%
Top 100 MSAs	170,350	192,297	201,891	1.2%	1.0%
<b>Washington DC MSA</b>	<b>4,438</b>	<b>5,215</b>	<b>5,528</b>	<b>1.6%</b>	<b>1.2%</b>
Fairfax/Fairfax City/Falls Church	922	1,039	1,052	1.2%	0.2%
Montgomery County	815	928	976	1.3%	1.0%
Prince George's County	766	846	864	1.0%	0.4%
District of Columbia	581	551	548	-0.5%	-0.1%
Prince William/Manassas/Manassas Park	284	398	453	3.4%	2.6%
Loudoun County	117	256	329	8.1%	5.2%
Frederick County	176	221	244	2.3%	2.0%
Arlington County	182	196	196	0.8%	0.1%
Other	596	781	866	2.6%	2.0%

Source: *Economy.com, Cushman & Wakefield Analytics*

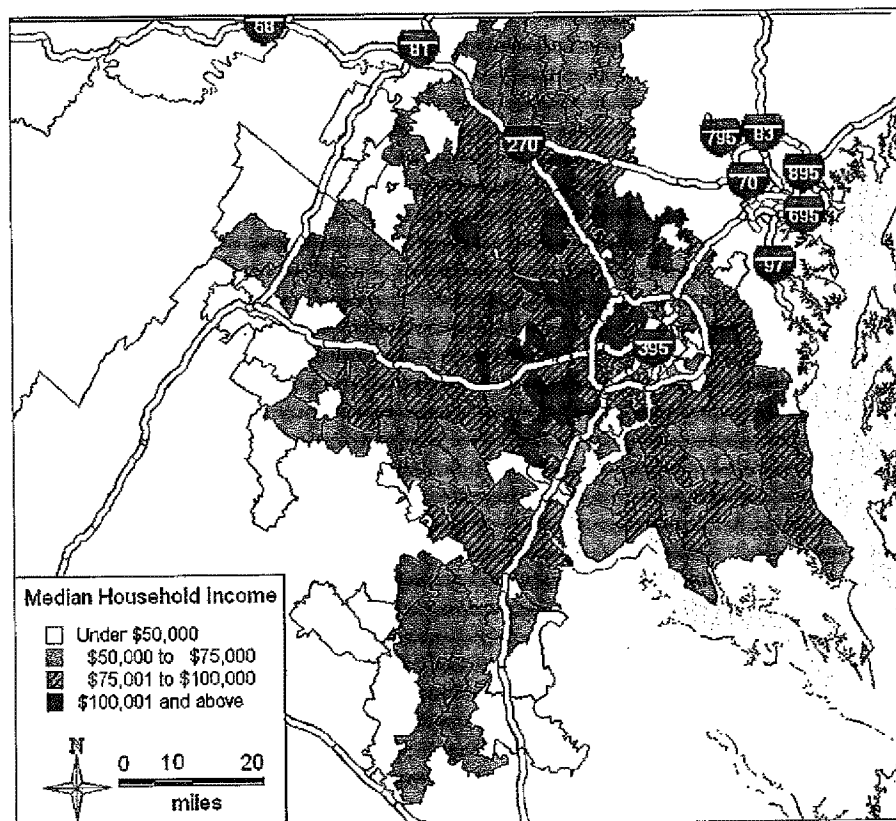
In 2005, Washington's median household income \$71,150, was 34.5 percent higher than the Top 100 and an astounding 48.8 percent above the national median.

- Between 1995 and 2005, Washington's 3.6 percent average annual growth in median household income was higher than the Top 100's average of 3.0 percent.
- Reversing this trend, Washington's median household income growth rate is expected to slow to 2.8 percent annually through 2010, while the Top 100's projected annual growth rate is expected to increase to 3.2 percent.

The metro area's most affluent counties are primarily west and north of the District. Fairfax County is Washington's most affluent area, and is expected to remain so through the foreseeable future.

## REGIONAL ANALYSIS

**MEDIAN HOUSEHOLD INCOME DISTRIBUTION BY ZIP CODE**  
**Washington DC MSA**  
**2005 Estimates**



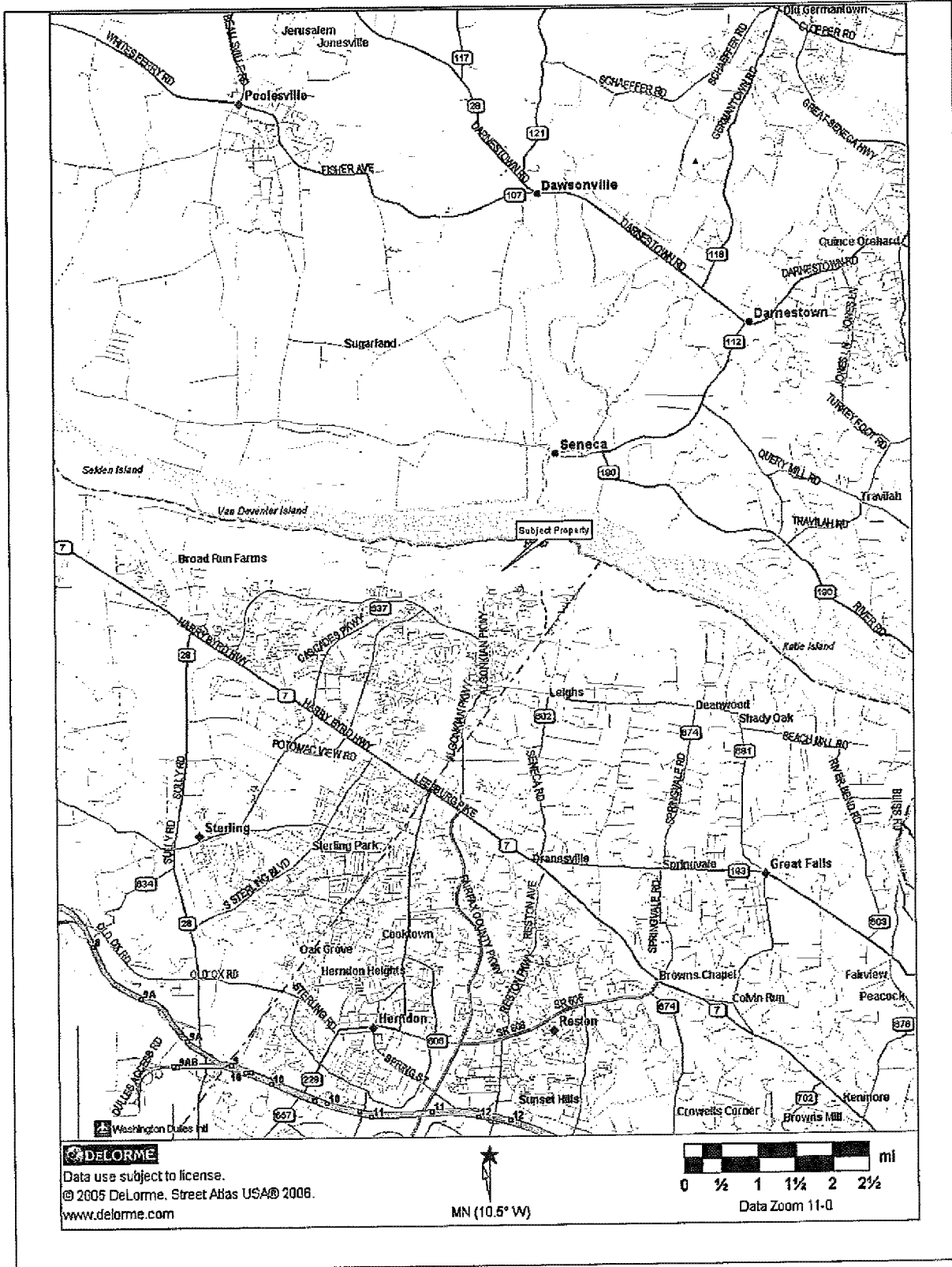
Source: Claritas, Inc., Cushman & Wakefield Analytics

### Market Competitiveness

Washington's superior economic performance derives from its skilled and expanding labor force that have allowed for economic growth in high paying and vibrant industries.

- As the center of government, Washington can also rely on a stable employment base, which has resulted in low economic volatility.
- On the downside, an over-burdened transportation infrastructure and Washington's high cost of living could act as a drag on future growth.
- The long-term outlook could also be affected as the stimulus from federal government outlays recedes in order to reduce the deficit.

LOCAL AREA MAP



VALUATION SERVICES

15

ADVISORY GROUP



## LOCAL AREA ANALYSIS

The subject property is located in the Sterling Planning Sub-area. The western border of the Sterling Planning Sub-area is the Ashburn Planning Sub-area and the northern border is the Potomac Planning Sub-area. All three of these planning sub-areas are very similar to one another and represent the most heavily developed planning districts within Loudoun County, Virginia. Therefore, for the purposes of defining and analyzing the subject's neighborhood we have combined all three planning sub-areas.

The subject neighborhood boundaries are generally defined as the Potomac River to the north, the Fairfax County border to the east, the Greenway Toll Road to the south, and Route 659 to the west. The neighborhood is irregular in shape.

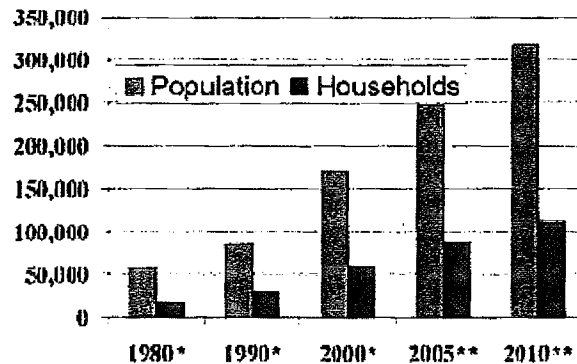
Land use in the neighborhood is a well-planned mix of residential, industrial and commercial uses, the majority of which is planned for development. The significant number of projects in the planning stages is attributed to the fact that there is a large amount of vacant land within this neighborhood. According to the comprehensive plan, the subject neighborhood Planning Sub-areas are designated to be within the "Suburban Policy Area."

### Recent Growth History

Growth in the neighborhood had been very slow up until the past two decades. However, significant growth has occurred since that time. The primary factors fueling this growth include "spill-over development" from western Fairfax County, increased air traffic and commerce generated by Washington Dulles International Airport, and ongoing road improvements which enhance access to the area. The following table summarizes recent growth in Loudoun County.

## Population and Household Trends

The 2006 estimated population for Loudoun, one of the fastest-growing counties in the nation since the late 1990s, is 257,706.



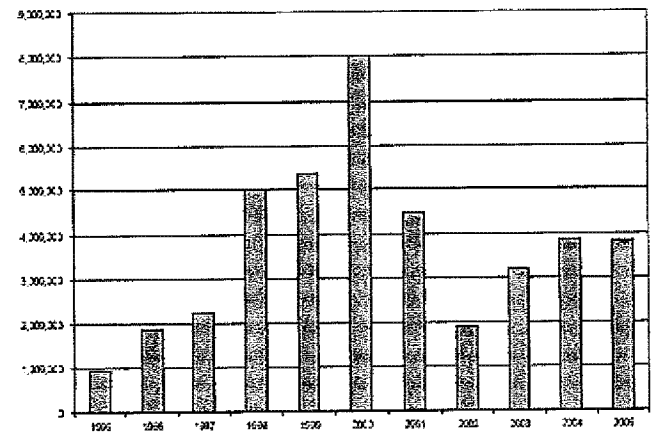
Sources: \*U.S. Census Bureau, \*\*Loudoun County Fiscal Impact Committee

Similar to residential development, nonresidential development has been significant in recent years.

LOCAL MARKET ANALYSIS

Nonresidential Development Trends

The nonresidential square footage permitted averaged 3.6 million a year over the past decade.

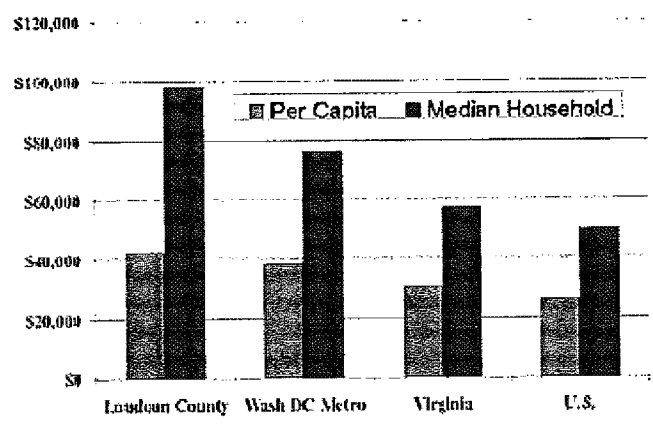


Source: Loudoun Building & Development. Compiled by: Loudoun Economic Development

Income levels continue to increase in Loudoun County, and compare favorably to the region and nation.

Income Comparison

The median household income in Loudoun, \$97,830, is nearly double the national median of \$49,747.



Sources: U.S. Bureau of the Census; ESRI Business Information Solutions forecasts for 2005.

## LOCAL MARKET ANALYSIS

### Existing Development

The existing zoning in the neighborhood is mixed, with the majority of the industrially-zoned land located along the Route 28 corridor, the majority of the commercially-zoned land located along the Route 7 corridor, and the majority of the residentially-zoned land located both north and south of Route 7. Most of the new and ongoing residential projects are being developed as large-scale planned developments which offer many amenities and community facilities. As noted, the subject golf club is part of the Lowe's Island housing development, within the Cascades Planned Development Community. The community includes nearly 6,500 homes, with values from \$300,000 to over \$1.0 million. When homes were originally sold in the early 1990s, the average price was near \$200,000 to \$300,000. There was significant home value appreciation in the area from the late 1990s through 2005. In 2006, there has been some regression in home prices, as the housing bubble effect has impacted Loudoun County. This is evidenced in the chart below, which shows the number of homes sold and average price in 2006 compared to 2005 in Loudoun County is down significantly.

Residential Development									
	Single-family Detached		Single-family Attached		Multi-Family		Total		
	Units	Annual Chg*	Units	Annual Chg*	Units	Annual Chg*	Units	Annual Chg*	
Inventory (2006)	48,844	8.9%	24,412	5.7%	17,448	3.6%	90,704	5.9%	
Bldg Pmts Issued(Oct06)	106	-46%	35	59%	19	-59%	160	-40%	
Homes Sold (Aug 06)	342	-50%	234	-51%	71	-58%	647	-51%	
Avg Sale Price (Aug 06)	\$729,060	0%	\$437,230	-8%	\$306,070	-8%	\$577,096	-2%	

*Sources: Loudoun County Dept of Building & Development, Dept of Management & Financial Services*

One primary development corridor in the subject neighborhood is along Route 28. Dulles Route 28 Center is being developed with a mix of retail uses and automotive sales centers. Prominent retailers located in the Dulles Route 28 Center include Wegmans Grocery (former Wal-Mart store), Burger King, Nissan, Car Max, Volvo and Ferrari. There is a 70-acre site, formerly known as the Nattak property, that has been developed with the AOL Corporate Campus. In total, the project is approved for over one million square feet of office hotel, retail and restaurant space. AOL is the largest employer in Loudoun County, with over 5,000 employees.

Internet-related companies, such as AOL and WorldCom/MCI have located corporate campuses along Route 625, south of the subject property. Broad Run Business Center is home to America On Line's headquarters and consists of 1,803,513 square feet of existing office and data center space with another 1,500,000 square feet approved for development. Proceeding west along Waxpool Road are the Beaumeade Corporate Park and the MCI Campus. Beaumeade contains 1,814,583 square feet of office, R&D and industrial space and is approved for an additional 3,400,000 square feet. The MCI Campus is home of the 2,000,000 square foot MCI headquarters and is planned for an additional 4,560,000 square feet of office space.

Land use to the east of Route 28 consists of predominantly of older strip retail and industrial businesses along Church Road (Route 625) and Shaw Road. A neighborhood shopping center has been planned for the site north of Church Road and east of Route 28, however, this site remains vacant and undeveloped.

A 1,400,000 square foot regional mall was recently completed at the intersection of Routes 7 and 28 on an 80-acre parcel that is part of the 534-acre Dulles Town Center project. The Town Center is planned to contain over four million square feet of office and industrial space at build out.

## LOCAL MARKET ANALYSIS

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The Route 28 corridor contains significant parcels of vacant land, which are zoned for industrial and commercial development. There are also several major planned unit residential developments located in the Ashburn planning area which include 14,036 existing dwelling units with approvals in place for a total of 30,902 units.

### Roadway Access

Vehicular access to this neighborhood from the east and west is primarily by way of Route 7 (Harry Byrd Highway) and the Washington Dulles Toll Road (Route 267). Route 7 is a paved six-lane divided road to the east of the Route 28 interchange, and has recently been upgraded to a six-lane divided road to the west of the Route 28 interchange. The Dulles Toll Road is a four-lane paved divided right-of-way with a four-lane limited access highway located as the divider. The limited access highway provides access directly to the airport. The Dulles Toll Road has been upgraded to six-lanes (toll lanes portion). Waxpool Road (Route 625) is a divided 4-lane road that provides access from Route 28 west into the heart of Ashburn.

Vehicular access to the neighborhood from the north and south is primarily by way of Route 28 (Sully Road). Route 28 has recently been upgraded to a six-lane divided roadway, with the Route 7/Route 28 interchange completed. As mentioned earlier, the improvements to Route 28 were financed largely by the surrounding landowners through the formation of an innovative taxing district. All of these roads are identified as being the major arterial roadways within Loudoun County.

The Toll Road Corporation of Virginia has extended the Dulles Toll road for 15 miles to Leesburg. The privately funded highway parallels Route 7 and has improved the regional access to the subject neighborhood. Other planned road improvements are considered somewhat speculative at this point since these improvements are linked primarily to development proffers and revenues derived through the tax levy from the Route 28 special tax district. Both sources of revenue are contingent upon continued development in the area.

Public safety in the planning area is provided by the Sterling Park volunteer fire and rescue services, and police protection is provided by the Loudoun County Sheriff's Department located in the Town of Leesburg.

All public utilities are located within the subject neighborhood and are relatively available to serve most parcels. The county does require, however, that utility line extensions be the responsibility of the private sector.

### **Summary**

In conclusion, the interplay of the basic forces influencing property values in the subject neighborhood are relatively self-evident. Development in the area is actively promoted by the county and is fueled by (1) "spill-over development" from western Fairfax County, (2) increased air traffic and commerce generated by Washington Dulles International Airport, and (3) ongoing road improvements which enhance access to the area. Accordingly, the subject neighborhood is in a period of growth and is gaining increased public favor and acceptance.

Due to the large amount of planned development, this area will be a major growth corridor in Loudoun County for the next ten to fifteen years. The completion of the Dulles Toll Road extension has spurred additional development. Projects in the area that are experiencing the greatest market acceptance are those that possess high visibility and exposure from major arterials.

In conclusion, the interplay of the basic forces influencing property values in the subject neighborhood is relatively self-evident. Accordingly, the subject neighborhood is in a period of growth which is a period during which the market area gains in public favor and acceptance.

## LOCAL MARKET ANALYSIS

DEMOGRAPHIC PROFILE  
20391 LOWES ISLAND BOULEVARD  
STERLING, VIRGINIA

	1.0 MILE	3.0 MILES	5.0 MILES	LOUDOUN COUNTY, VA
<b>Population</b>				
2000 Population	5,134	36,386	94,168	169,599
2005 Population	7,259	47,405	113,044	246,754
2010 Population	9,585	59,815	134,738	328,122
% Change 2000 to 2005	7.17%	5.43%	3.72%	7.79%
% Change 2005 to 2010	5.72%	4.76%	3.57%	5.87%
<b>Per Capita Personal Income</b>				
2000 Per Capita Personal Income	\$45,797	\$40,730	\$41,877	\$33,530
2005 Per Capita Personal Income	\$54,835	\$45,913	\$45,428	\$38,102
2010 Per Capita Personal Income	\$64,199	\$51,408	\$49,705	\$43,091
% Change 2000 to 2005	3.67%	2.42%	1.84%	2.59%
% Change 2005 to 2010	3.20%	2.29%	1.82%	2.49%
<b>Households</b>				
2000 No. Households	1,728	12,377	31,836	59,900
2005 No. Households	2,498	16,319	38,884	87,159
2010 No. Households	3,368	20,781	47,003	115,892
% Change 2000 to 2005	7.85%	5.68%	4.07%	7.79%
% Change 2005 to 2010	6.16%	4.95%	3.88%	5.88%
<b>Persons Per Household</b>				
2000 Persons Per Household	2.97	2.93	2.95	2.82
2005 Persons Per Household	2.91	2.9	2.9	2.82
2010 Persons Per Household	2.85	2.87	2.86	2.82
% Change 2000 to 2005	-0.44%	-0.23%	-0.33%	0.03%
% Change 2005 to 2010	-0.42%	-0.18%	-0.29%	0.02%
<b>Average Household Income</b>				
2000 Avg Household Income	\$137,539	\$119,845	\$123,119	\$94,849
2005 Avg Household Income	\$159,348	\$133,331	\$132,071	\$107,760
2010 Avg Household Income	\$182,712	\$147,935	\$142,424	\$121,919
% Change 2000 to 2005	2.99%	2.16%	1.41%	2.59%
% Change 2005 to 2010	2.77%	2.10%	1.52%	2.50%
<b>Income Ranges</b>				
Median Income	\$133,748	\$110,134	\$103,304	\$90,989
\$150,000 or more	39.28%	26.82%	26.23%	18.08%
\$100,000 to \$149,999	32.93%	29.07%	25.44%	25.26%
\$75,000 to \$99,999	14.25%	16.98%	17.10%	18.42%
\$50,000 to \$74,999	7.84%	14.23%	15.47%	17.63%
\$35,000 to \$49,999	3.21%	6.90%	8.07%	9.50%
\$25,000 to \$34,999	1.16%	2.98%	3.38%	4.75%
\$15,000 to \$24,999	0.67%	1.87%	2.23%	3.34%
Under \$15,000	0.67%	1.15%	2.07%	3%
2000 Median Income	\$120,267	\$98,215	\$96,018	\$81,346
2010 Median Income	\$148,989	\$120,997	\$110,987	\$100,542
<b>Occupancy</b>				
2000 Occupied Housing Units	1,762	12,648	32,523	62,160
Owner Occupied	92.91%	82.05%	82.26%	76.48%
Renter Occupied	5.17%	15.81%	15.64%	19.89%
<b>Education</b>				
2000 Population 25+ by Education Level	3,317	23,342	60,264	109,567
Bachelors Degree Only	41.75%	34.40%	33.18%	31.95%
Graduate Degree	25.78%	20.89%	21.77%	15.24%
<b>Retail Trade Potential</b>				
Total Retail Potential	\$90,518,883	\$489,425,956	\$1,904,389,578	\$4,664,603,460
Apparel Accessory	\$301,020	\$18,368,034	\$88,339,816	\$151,132,000
Automotive Dealers	\$676,010	\$78,042,659	\$213,893,731	\$655,489,995
Automotive & Home Supply Stores	\$0	\$3,856,410	\$20,262,722	\$47,465,994
Drug & Proprietary Stores	\$2,729,571	\$8,472,312	\$29,828,620	\$126,837,003
Eating & Drinking Places	\$5,162,405	\$49,407,905	\$151,305,235	\$323,308,006
Food Stores	\$11,124,833	\$34,784,255	\$160,837,445	\$424,052,994
Furniture Home Furnishing Stores	\$0	\$22,100,757	\$81,089,518	\$209,735,001
Home Appliance, Radio, & T.V. Stores	\$90,407	\$13,414,618	\$102,003,694	\$160,836,018
Gasoline Service Stations	\$0	\$10,808	\$33,337,681	\$173,990,999
General Merchandise	\$0	\$100,303,263	\$640,008,893	\$1,133,726,996
Department Store	\$0	\$63,782,345	\$310,801,737	\$466,634,995
Hardware, Lumber & Garden Stores	\$61,279,106	\$100,787,545	\$179,538,546	\$699,328,453
Total Retail Sales - Including Food Services 2005	NA	NA	NA	NA
Total Retail Sales - Not Including Food Services 2005	NA	NA	NA	NA
Total Retail Sales - Including Food Services 2010	NA	NA	NA	NA
Total Retail Sales - Not Including Food Services 2010	NA	NA	NA	NA



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## GOLF MARKET ANALYSIS

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### National Golf Market Analysis Overview

For the last five years, the golf industry has continued to suffer from golf course oversupply. The majority of markets throughout the United States are oversupplied and demand has been relatively flat for over five years. Golf player retention and player growth continue to be the challenges for the business of golf. Over the last century, the golf market has experienced three boom periods; the 1920's, the 1970's and the 1990's. In the 1990's the majority of golf course development was connected to residential developments and the two sectors that experienced very significant increases in supply were the premium daily fee and the premium private courses.

Despite the oversupply of golf courses many developers continue to add courses as a means to sell homes. However, new golf course construction slowed considerably in 2005 and thus far in 2006 from the previous four years. In 2005 the National Golf Foundation (NGF) reported that 125 new courses opened, which reflects a decrease from 146 new courses in 2004 and 171 new courses in 2003. NGF estimates that 120-140 new courses will open in 2006.

The source of our national golf course market data is the National Golf Foundation ("NGF"). The NGF publishes annual reports on the supply and demand conditions for selected markets throughout the United States, with the most recent being the Golf Facilities in the U.S., 2006 Edition (incorporating data available through 2005). The NGF also divides the national market into nine-submarkets. The subject property is located in the State of New York, which is in the Middle Atlantic market. The Middle Atlantic market includes the states of New York, New Jersey and Pennsylvania. This market comprises 9.0% of the total national supply of golf facilities in the United States. At the year end 2005, there were 824 golf courses (facilities) in the State of New York. The most populated golf state is Florida with 1,075 golf courses, followed by California with 928.

In the 1990-2000 decade, most of the golf club sales and investment activity was attributed to sales to owner operators or club membership upon sellout of the residential component of the overall project. Also, there were numerous sales of clubs due to financial distress related to failed residential lot sales and financial institution sales after foreclosure from the failed residential projects. There still remains a significant presence of private golf clubs located primarily in gated residential communities.

Golf club financing is typically available from golf oriented lenders with strict guidelines including Textron Financial Corp., Pacific Life Insurance, CitiCapital, Bank One, GMAC, GE Capital, Wells Fargo and to a some extent, regional and local commercial banks. These banks include First Union National Bank and First National Bank of America. Bank of America had been a major lender in the 1990's but closed its financing unit in the fall of 2000. As a result of the current lack of golf club lenders, it will likely be harder to obtain financing for all but the best performing properties. Financing for new projects will likely be even more difficult in the near term.

The character of the overall golf club market in the mid-2000's likely will depend on professional operators due to the following factors:

1. Demographics are growing for golfing population with 78 million "baby boomers" moving into prime golfing age;
2. Number of golfers is growing (women and youth);
3. Golf course owners and managers are becoming more sophisticated and courses are becoming more profit oriented;

**GOLF MARKET ANALYSIS**

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- 4. Economics and realistic operation projections have reentered the scene as requirements for investment.

**Golf Course (Facility) Inventory 1990 - 2005**

The "U.S. Golf Facilities by State" on the table below, identifies the types of courses and total number of courses in each area.

**GOLF MARKET ANALYSIS**

Table 5 State/Regional Total Facility Supply - 2005

STATE AND REGION	REGULATION		EXECUTIVE		PAR-3		HOLES					Total Facilities
	Only*	All	Only	All	Only	All	9	18	27	36	45 or more	
Connecticut	155	159	3	12	13	10	49	115	9	4	7	176
Maine	129	130	3	3	4	5	72	61	2	1	0	137
Massachusetts	229	232	19	20	25	28	133	224	12	7	0	376
New Hampshire	92	95	7	3	11	12	45	67	5	2	0	113
Rhode Island	51	52	1	1	5	6	21	32	1	0	0	56
Vermont	65	65	4	4	4	4	19	42	2	1	0	64
<b>New England</b>	<b>812</b>	<b>824</b>	<b>43</b>	<b>48</b>	<b>59</b>	<b>66</b>	<b>339</b>	<b>539</b>	<b>32</b>	<b>15</b>	<b>7</b>	<b>826</b>
New Jersey	255	263	15	17	14	14	49	212	12	13	0	234
New York	714	734	55	65	34	45	227	527	40	22	5	624
Pennsylvania	533	544	21	31	32	35	165	492	32	13	2	722
<b>Mid-Atlantic</b>	<b>1,603</b>	<b>1,641</b>	<b>98</b>	<b>118</b>	<b>80</b>	<b>103</b>	<b>431</b>	<b>1,231</b>	<b>94</b>	<b>54</b>	<b>10</b>	<b>1,820</b>
Illinois	295	311	41	45	27	35	217	415	25	15	5	679
Indiana	295	407	22	29	22	32	105	312	25	8	0	453
Michigan	769	754	25	33	22	37	179	555	65	34	13	843
Ohio	562	702	35	43	25	35	167	532	43	15	3	757
Wisconsin	432	442	27	32	23	35	165	273	35	14	4	436
<b>East North Central</b>	<b>2,875</b>	<b>2,858</b>	<b>154</b>	<b>195</b>	<b>125</b>	<b>175</b>	<b>834</b>	<b>2,096</b>	<b>195</b>	<b>91</b>	<b>24</b>	<b>3,240</b>
Iowa	272	287	14	15	5	5	27	122	12	2	0	410
Kansas	235	233	11	11	4	5	145	103	4	1	0	253
Minnesota	393	415	45	62	22	23	193	242	32	5	0	423
Missouri	309	319	10	14	14	23	130	197	15	5	1	345
Nebraska	192	203	3	12	13	14	133	62	7	0	0	228
North Dakota	101	102	2	2	2	4	69	24	1	0	0	114
South Dakota	112	114	5	7	1	2	65	32	3	1	0	121
<b>West North Central</b>	<b>1,728</b>	<b>1,776</b>	<b>104</b>	<b>132</b>	<b>64</b>	<b>91</b>	<b>1,051</b>	<b>803</b>	<b>71</b>	<b>16</b>	<b>4</b>	<b>1,847</b>
Delaware	29	32	0	0	2	2	22	2	2	1	1	27
District of Columbia	3	4	0	1	0	1	1	2	0	0	0	4
Florida	560	595	123	142	51	67	114	763	78	91	22	1,076
Georgia	273	365	13	12	11	17	71	293	23	5	5	427
Maryland	172	175	3	12	5	12	23	543	12	12	7	124
North Carolina	514	520	13	13	23	25	69	435	25	21	7	652
South Carolina	335	339	5	5	15	23	53	255	25	17	12	351
Virginia	265	310	8	10	19	22	74	230	15	14	4	337
West Virginia	110	113	4	5	2	5	52	62	1	3	2	121
<b>South Atlantic</b>	<b>2,707</b>	<b>2,773</b>	<b>181</b>	<b>214</b>	<b>192</b>	<b>179</b>	<b>468</b>	<b>2,212</b>	<b>163</b>	<b>168</b>	<b>53</b>	<b>3,088</b>
Alabama	233	244	4	5	5	15	67	165	12	5	5	255
Kentucky	262	265	7	3	2	3	67	187	5	2	1	252
Mississippi	161	162	4	4	2	3	64	99	4	2	3	166
Tennessee	274	277	6	5	12	11	71	205	5	5	1	233
<b>East South Central</b>	<b>938</b>	<b>949</b>	<b>21</b>	<b>25</b>	<b>26</b>	<b>41</b>	<b>279</b>	<b>862</b>	<b>30</b>	<b>18</b>	<b>7</b>	<b>986</b>
Arkansas	173	177	7	12	5	11	75	107	5	4	1	193
Louisiana	159	160	5	5	3	4	62	95	4	3	1	156
Oklahoma	201	202	5	5	7	7	83	115	2	1	0	214
Texas	793	901	11	14	35	45	264	487	49	42	9	646
<b>West South Central</b>	<b>1,323</b>	<b>1,340</b>	<b>28</b>	<b>34</b>	<b>55</b>	<b>68</b>	<b>485</b>	<b>810</b>	<b>60</b>	<b>58</b>	<b>10</b>	<b>1,423</b>
Arizona	242	253	53	62	12	15	45	222	13	31	2	315
Colorado	204	216	14	15	3	23	52	159	21	5	1	225
Idaho	95	98	7	3	4	5	43	62	4	2	2	125
Montana	64	67	5	5	5	5	62	32	5	2	2	98
Nevada	91	94	3	4	3	3	15	67	7	5	2	120
New Mexico	72	77	0	2	2	2	51	45	11	3	1	79
Utah	93	101	5	11	2	4	25	73	5	3	3	111
Wyoming	53	54	2	2	1	1	29	24	4	0	0	57
<b>Mountain</b>	<b>942</b>	<b>955</b>	<b>88</b>	<b>109</b>	<b>36</b>	<b>64</b>	<b>292</b>	<b>695</b>	<b>75</b>	<b>53</b>	<b>5</b>	<b>1,111</b>
Alaska	14	14	2	2	0	0	3	7	0	0	0	21
Alaska	715	740	114	122	71	67	225	505	51	55	5	925
California	74	75	2	2	1	2	11	64	5	3	3	79
Hawaii	184	152	24	27	3	11	74	102	5	7	2	151
Oregon	233	241	24	25	17	22	109	164	14	2	1	232
Washington	1,191	1,230	165	188	102	126	423	914	77	75	12	1,591
Pacific	1,191	1,230	165	188	102	126	423	914	77	75	12	1,591
<b>U.S. Totals</b>	<b>14,111</b>	<b>14,474</b>	<b>863</b>	<b>1,053</b>	<b>673</b>	<b>806</b>	<b>4,530</b>	<b>9,363</b>	<b>817</b>	<b>550</b>	<b>132</b>	<b>16,052</b>

\* "ONLY" refers to facilities which have one or more courses in the featured length category only; "ALL" refers to facilities that have one or more courses of differing length categories but at least one course in the featured category.



## GOLF MARKET ANALYSIS

The table below presents the number of facilities and courses by type every 2-years from 1996-2000 and for each year from 2000-2005, the most recent available data. It is important to note that the NGF has changed its methodology and the categorization methods over the last four years. In the year 2000, the NGF tracked the par-three and executive courses and included these courses in the total supply number. Most importantly in the year 2000, the NGF changed from tracking each individual golf course to tracking facilities. A facility is defined as a complex containing at least one golf course. It is important to note that the actual supply of golf courses did not decrease, the methodology changed. In addition, in 2001, the category was only public and private, not daily fee, municipal, and private. It is important to note that from 2004 to 2005 the net number of golf courses decreased by 5 facilities.

**TYPES OF GOLF COURSES 1990 – 2004**

Type	1996	1998	2000	2001*	2002*	2003*	2004*	2005*	Annual Compound Growth 2004-2005
Daily Fee	8,416	9,012	9,637	N/A	9,113	9,156	9,284	9,262	-0.24%
Municipal	2,541	2,645	2,698	N/A	2,388	2,390	2,406	2,418	0.50%
Private	4,746	4,708	4,773	N/A	4,326	4,353	4,367	4,372	0.11%
<b>Total</b>	<b>15,703</b>	<b>16,365</b>	<b>17,108</b>	<b>15,772</b>	<b>15,827</b>	<b>15,899</b>	<b>16,057</b>	<b>16,052</b>	<b>-0.03%</b>

\* Methodology change/ 2001 changes to the number of facilities not individual courses.

Source: National Golf Foundation

Since 2004, growth rates varied depending upon the type of course (facility). From 2004 to 2005, daily fee courses (facility) actually experienced a decline of 0.24 percent. Conversely, municipal and private courses have experienced a minimal growth of 0.50 and 0.11 percent.

During the 1990's, approximately 35 to 40 percent of all golf course development in the U.S. was a part of a residential development. Since 2000, that figure has increased to 50 to 60 percent. Additionally, of the 125 18-hole golf courses that opened last year, approximately sixty-one percent were built with accompanying residential communities.

While there has been slight decline in the number of courses, the characteristics of supply have also changed slightly. The nation's golf supply has become more oriented toward the public golfer. In 1987, 61 percent of the nation's supply were either daily fee or municipal courses. In 2005 public golf courses comprised 85 percent of the supply.

The National Golf Association (NGA) also tracks the development pipeline of courses that are in planning or under construction. They estimate that there are 308 courses currently under construction; 373 that are in the planning stages, and 251.5 that have been proposed (pre-planning stage). NGA estimates 120 to 140 of these 18-hole courses will open in 2006.

## GOLF MARKET ANALYSIS

### Golf Participation

According to data from the National Golf Foundation (NGF), the number of golfers has increased substantially since 1986 (6.3 million) while the participation levels have ranged tightly from about 10 to 12 percent. The following table illustrates the performance of the golf industry in the U.S. over the past 18 years, from 1986 to 2005.

NATIONAL GOLF TRENDS				
Year	No. of Golfers* (thousands)	Participation Rate	Average Rounds	Total Rounds (millions)
1986	19,897	10.2%	20.2	401.9
1987	21,316	10.7%	19.6	431.0
1988	22,951	11.4%	21.1	484.4
1989	24,191	12.0%	19.4	469.0
1990	27,761	13.5%	18.1	501.6
1991	24,796	11.9%	19.3	478.6
1992	24,775	11.9%	20.4	505.4
1993	24,563	11.6%	20.3	498.6
1994	24,338	11.4%	19.1	464.8
1995	25,012	11.6%	19.6	490.2
1996	24,737	11.3%	19.3	477.4
1997	26,474	12.0%	20.7	547.2
1998	26,427	11.9%	20.0	528.5
1999	26,446	11.7%	21.3	564.1
2000	25,400	12.1%	23.1	587.4
2001	25,800	12.3%	21.4	552.0
2002	26,200	12.6%	19.2	502.4
2003	28,400	12.9%	16.8	477.0
2004	27,300	12.4%	17.6	480.3
2005	28,000	12.7% (est)	17.3 (est)	485.1 (est)
Net Change	8,103 (40.73%)	2.7 (points)	-2.6 (points)	78.4 (+19.5%)
CAGR**	2.14%	N/A	N/A	0.99%
* Age 18 and above				
** Compound Annual Growth Rate				
Source: National Golf Foundation - <i>Trends in the Golf Industry 2005</i>				

The total number of golfers in the U.S. has been relatively consistent from 1997 through 2001, ranging from 26.2 million to 25.8 million in 2001. The number of golfers in 2003 rose to 28.4 million in 2003, then dropped again in 2004 to 27.3 million, and rose again to 28 million in 2005. The participation percentage and total rounds data was unavailable so the appraisers estimated the participation percentage by using the 2004 population and the total rounds by applying the CAGR to the 2004 total rounds.

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## GOLF MARKET ANALYSIS

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The report is based on information reported by a panel of nearly 2,600 golf facilities across the U.S. Response rates to monthly surveys vary from 60 to 70 percent.

In summary, golf continues its popularity in the United States and there is little indication that this popularity will experience a decline. The demographics of the U.S. population indicate that public access golf facilities will be in strong demand for at least the next 20 years, while the national and regional economies will determine the economic success of high end daily play and private membership clubs.

### National Trends Conclusion

Overall, the national golf market continues to suffer from oversupply and relatively flat demand. The western markets of California, Arizona, and Nevada have experienced improved conditions over the last two years. The period from 1990 to 2004 experienced continuous growth in the golf industry despite the recessionary economy the early 1990's. On a positive note, the improving economy and the decrease in new courses developed (a low of 125 in 2005) are combining to bring slow improvement to the golf course market. Over the past few years, golf course development has shifted toward public daily fee use as opposed to private country club development, a trend which can be expected to continue due to the most recent federal tax laws, which reduces the deductibility of private country club memberships.

All the figures presented are indicators of trends in the golf industry on a national basis. Consequently, local market conditions may differ from these national trends significantly. Some markets have experienced growth at even higher rates while others may have exhibited no growth or possibly some decline.

## LOCAL AREA GOLF MARKET ANALYSIS

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An overview of local market conditions is a necessary aspect of the appraisal process. The market analysis forms a basis for assessing market area boundaries, supply and demand factors, and indications of financial feasibility. Loudoun County and the surrounding areas contain a strong supply of private golf clubs. There are a number of higher-end public courses in the area as well. We have outlined the competitive facilities on a following chart. This competitive set was limited to private country clubs that were chosen for their locational and economic similarities. Due to the location of the subject property along the Potomac River, there is no competition to the north, which is actually in the state of Maryland. Competition is primarily west of the subject along the Route 7 corridor.

### Competitive Facilities

To determine the golf facilities which were most competitive with the subject, we selected comparable courses in the Loudoun County area, as this is considered by most studies the primary capture area. To verify and support this methodology, we also interviewed the club manager or head pro at each of the selected courses to determine what other courses they competed with. The facilities found to be most competitive with the subject are summarized on the chart on the following page.



ADVISORY GROUP

VALUATION SERVICES

Name:		Location		City	
Subject Property		Belmont County Club Russel Branch Parkway Ashburn, VA			
River Creek 43800 Olympic Boulevard Leesburg, VA		44050 Woodridge Parkway Leesburg, VA			
Type Club	Private	Private	Private	Private	Private
Proximity to Subject (miles):	0.0	5.0	8.0	4.0	
Number of Holes	36	18	18	36	
Year Built	1993	2001	1997	1991	
Clubhouse SF	33,088	37,000	30,000	45,000	
Yardage (rear tees)	6,902	7,212	7,036	7,057	
Per Course/Slope	72	71	72	72	
Rating	73.5	70.6	74.3	74.6	
Greens Fees - Weekday/Weekend	\$100/\$100	\$95/\$75	\$80/\$100	\$115/\$145	
Initiation Fee	\$63,500	\$43,000	\$40,000	\$62,000	
Annual Dues	\$4,680	\$4,440	\$4,798	\$5,094	
Golf Rounds	36,008	26,370	32,000	34,500	
Home Units in Community	6,500	2,158	1,128	2,155	
Homes Per Hole	167	120	62	60	
Comments	Subject property includes 36 holes along the Potomac River.	Private club in a residential community with 2,158 housing units. Currently have 431 golf members with a 530 member cap. Club is owned by Toll Brothers.	Private club with available memberships - Located on the Potomac River west of the subject. Currently have 445 golf members with 500 member cap.	Private club with new 18-hole Greg Norman Golf Course. Currently have 260 golf members with a 700 member cap. Original course designed by Robert Trent Jones.	

COMPETITIVE GOLF COURSES

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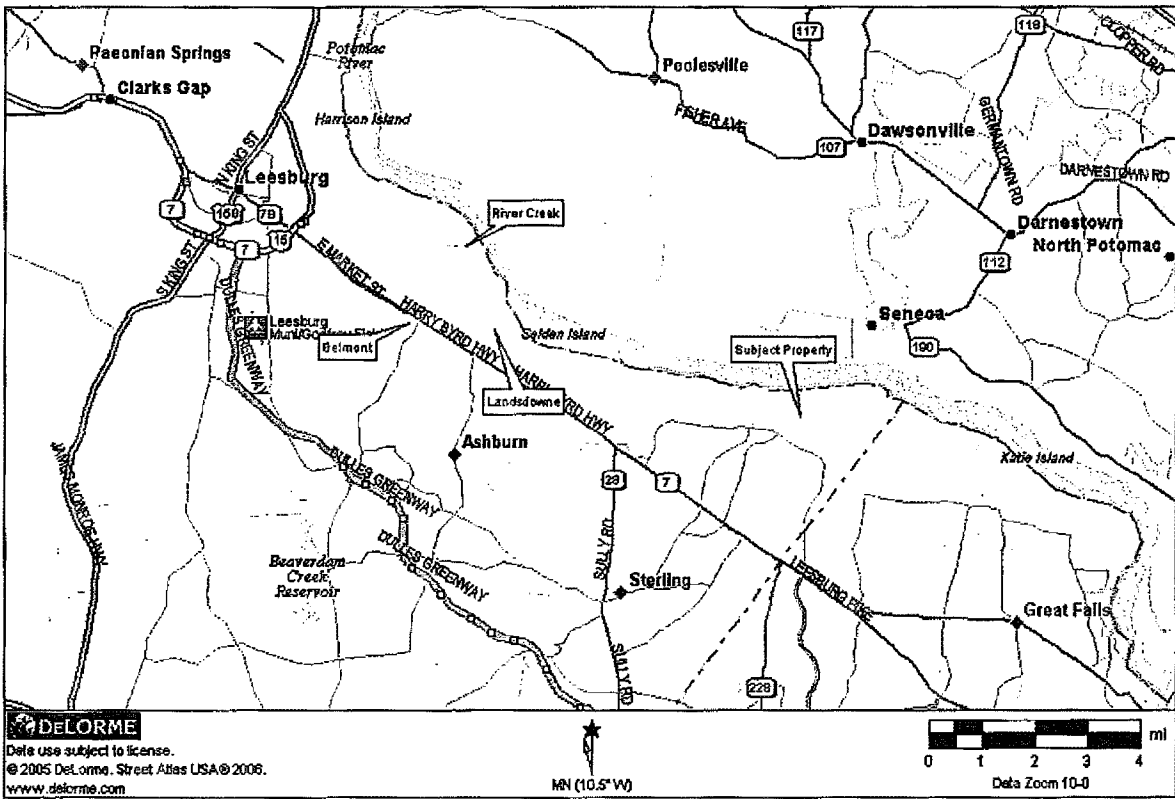
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**Existing Competition**

Each of the competitive properties are located in the Loudoun County area and are private clubs. The subject is at the upper end of the comparables in terms of initiation fee, currently at \$63,500 for a full golf membership. The Lansdowne golf club, located west of the subject along Route 7, is currently near \$62,000. Lansdowne has a higher annual dues as compared to the subject property. For a 36-hole facility, the subject includes annual rounds near 36,000. This is similar to Lansdowne (also 36 hole facility), with just over 34,000 rounds. Lansdowne is a resort property that includes superior amenities to the subject, including a new clubhouse and spa, near 18-hole course designed by Greg Norman, and significant dining and conference facilities.

Both Belmont and River Creek are located west of the subject along Route 7. Both properties include more recent construction, and are located within gated residential communities. Each requires each home owner within the development to be a member of the club (at least the social level member). This is not required at the subject's Lowe's Island development or Cascades. Both properties include initiation fees well below the subject property and Lansdowne, between \$40,000 and \$43,000 annually. Rivercreek includes a similar location to the subject, in that it is located along the Potomac River. The final four holes of the 18 hole course run along the banks of the Potomac River. Both Belmont and River Creek are considered inferior in quality to the subject property, while Lansdowne, given its superior amenities, is considered superior. A map depicting the location of each facility is included below.



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**LOCAL AREA GOLF MARKET ANALYSIS**

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**Subject Position**

On balance we can see that the subject property is maintaining a strong place in the market at competitive rates and has the potential to increase rounds played, as well as increase membership. However, the current initiation fee of \$63,500 appears to be at the upper end of the market for amenities provided at the facility. While the golf courses are excellent, the subject lacks the spa and food and beverage facilities of Lansdowne. We understand that Lansdowne is now a formidable competitor that recently moved from an upscale daily fee course to private club.

**New Competition**

We are not aware of any other direct potential competition entering the market within the near term.

**Conclusions**

Primary demand generators for the subject consist of a large population base of year round residents in the Loudoun County area, and the significant and growing corporate presence. The number of rounds played at the subject has remained near 36,000 to 37,000 over the past three years. The Lansdowne golf course and clubhouse facilities/amenities are superior to the subject property. Both Belmont and River Creek are considered inferior. With its above average quality golf course and clubhouse, we expect the subject to remain very competitive and maintain its fair share of the local private golf market.

**SITE DESCRIPTION**

**Location:** 20391 Lowe's Island Boulevard  
Potomac Falls, Loudoun County, Virginia 20165

The site is located along the Potomac River within the Cascades Planned Development community, just south of the state of Maryland and just west of Fairfax County. This is a suburban location within the Washington, D.C. area and includes a significant amount of residential and commercial development in the area.

**Shape:** The golf course property is irregular in shape, which is typical for a golf course. The two 18-hole courses have a parkland with returning nines which border the Potomac River and residentially zoned properties.

**Topography and Drainage:** The topography of the subject property is generally flat given the low lying land area fronting along the Potomac River. The course has natural contours that were worked into the course design to develop elevated playing areas and nice vistas and water hazards and some modest grade changes. Drainage appears adequate through natural percolation and runoff into one large retention lake on the golf course.

**Land Area:** 487.2200 acres

**Frontage, Access, Visibility:** Access and visibility is considered to be average. The site is directly accessed via the north side of Lowes Island Boulevard. It is situated north of Route 7, bordering the Potomac River. The property contains extensive frontage along several of the new luxury residential subdivisions created within the Lowes Island area of Cascades.

**Soil Conditions:** We did not receive nor review a soil report. However, we assume that the soil's load-bearing capacity is sufficient to support existing and/or proposed structure(s). We did not observe any evidence to the contrary during our physical inspection of the property. Drainage appears to be adequate.

**Utilities** All utilities, including electricity, water, gas and telephone, are currently available to the site.

**Site Improvements:** The subject is improved with two 18-hole regulation length golf courses that extend to a championship length of 6,902 yards (Island Course) and 7,006 yards (River Course). Other site improvements that currently exist are a modern wood frame clubhouse and various supporting buildings for tennis, swimming and maintenance. The golf club also has a driving range with teaching facility, and two practice putting and chipping greens. Other ground improvements include an asphalt paved parking area which is of adequate size and in excellent condition. All cart paths are paved with cement.

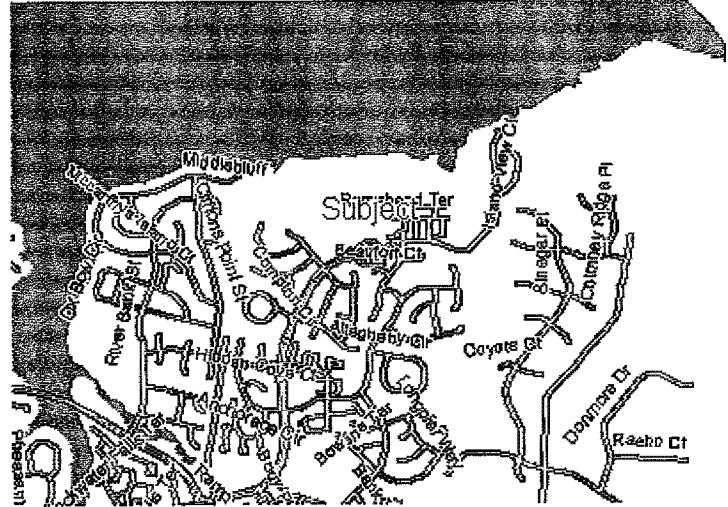
**SITE DESCRIPTION**

**Land Use Restrictions:**

We were not given a title report to review. We do not know of any easements, encroachments, or restrictions that would adversely affect the site's use. However, we recommend a title search to determine whether any adverse conditions exist.

**Flood Risk:**

The property's location along the Potomac River creates a flood risk for the property. The subject has had flood damage in past years, and is located within a designated flood plain. The subject is identified on FEMA Map Number 510090 0286D, dated July 5, 2001 as being within a designated flood plain area. The purple shaded area in the map below are the subject courses.



**FloodMap Legend**

**Flood Zones**

- Areas inundated by 500-year flooding
- Areas outside of the 100- and 500-year floodplains
- Areas inundated by 100-year flooding
- Areas inundated by 100-year flooding with velocity hazard
- Floodway areas
- Floodway areas with velocity hazard
- Areas of undetermined but possible flood hazards
- Areas not mapped on any published FIRMs

**Wetlands:**

We were not given a Wetlands survey. If subsequent engineering data reveal the presence of regulated wetlands, it could materially affect property value. We recommend a wetlands survey by a competent engineering firm.



**SITE DESCRIPTION**

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**Hazardous Substances:** We observed no evidence of toxic or hazardous substances during our inspection of the site. However, we are not trained to perform technical environmental inspections and recommend the services of a professional engineer for this purpose.

**Overall Functionality:** The subject site is functional for its current use.

**Architects:** The golf course architect during its original construction were Tom Fazio for the Island Course and Arthur Hills Design for the River Course.

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**IMPROVEMENTS DESCRIPTION**

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**Description of the Improvements**Lowe's Island Golf Course

The Lowe's Island Golf Club includes two, 18-hole, private golf courses. The Island Course, designed by Tom Fazio, was the first course developed in 1993. The Clubhouse was added in 1995. The second course, or the River Course, designed by Arthur Hills, was completed in 1998. The courses are traditional layout highlighted by water hazards. The total property encompasses approximately 487 acres. The golf courses contain mostly flat land with some areas of rolling topography that enhance the golf design. The fairways appear to have adequate width and the tees and greens have ample build up in elevation and are generally regulation in size. The sand bunkers are adequate with built up edges with slight depressions in the sand areas. The greens are slightly elevated greens and are about average in size. Each hole generally has separate tee boxes for men and women that play from 4 different distances.

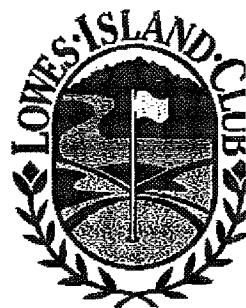
The golf course irrigation system consists of a modern modified single-row Toro system and has an electronically operated water management system. The golf course is irrigated through the Potomac River. There are pump stations utilized to remove water from the river to on-site lakes for irrigation purposes. The golf course irrigation system is assumed to be in good condition and adequate. It is described as a modified single row system. The course features well groomed "bent" turfgrass on fairways, tees and greens. The rough areas are bluegrass. Based on our inspection and interviews with on-site personnel, drainage is considered to be adequate throughout the course. The course features asphalt cart paths around most tees, fairways and greens that were observed to be in average to good condition.

The following page contains a scorecard of the Lowe's Island Golf Club depicting layout and the yardage and par for each of the holes.

IMPROVEMENTS DESCRIPTION

Scorecard

ISLAND COURSE										ISLAND COURSE														
Hole Number	1	2	3	4	5	6	7	8	9	Out	P	10	11	12	13	14	15	16	17	18	In	Total	Hcp	Net
Blue Tee	390	408	375	453	404	420	409	502	376	3353	PL	152	308	412	531	290	189	404	526	373	3183	6536	71.8	137
White Tee	370	417	345	427	445	407	465	475	358	3153	AYE	139	273	358	513	265	170	389	507	350	2563	6122	70.0	131
Men's Handicap	13	7	15	5	9	1	17	3	11	Out	R	14	16	6	8	12	18	2	4	10	In	Total	Hcp	Net
Par	4	5	4	4	3	4	3	5	4	36		3	4	4	5	4	3	4	5	4	36	72	Hcp	Net
Ladies Handicap	7	5	9	1	17	11	15	13	3	Out		18	12	10	2	14	16	8	4	6	In	Total	Hcp	Net
Red Tee	226	235	307	377	405	394	402	401	346	2892		77	159	327	412	218	134	322	423	299	2416	5308	68.7	116
Gold Tee	335	421	338	412	435	385	437	432	333	2929		120	237	335	456	241	160	353	479	325	2746	5675	72.5	126
White Tee	370	447	365	427	445	407	465	475	358	3153		139	273	358	513	265	170	389	507	350	2563	6122	75.3	135



River Course Arthur Hills Design  
Island C Tom Fazio

RIVER COURSE										RIVER COURSE														
Hole Number	1	2	3	4	5	6	7	8	9	Out	P	10	11	12	13	14	15	16	17	18	In	Total	Hcp	Net
Blue Tee	376	293	440	442	427	353	491	491	355	3271	PL	374	516	313	166	193	401	409	174	381	3231	6502	72.9	137
White Tee	334	268	428	429	414	523	481	473	342	3072	AYE	383	304	283	157	182	367	381	157	369	3082	6134	70.4	131
Men's Handicap	13	7	15	5	9	1	17	3	11	Out	R	14	16	6	8	12	14	8	16	10	In	Total	Hcp	Net
Par	4	4	3	4	4	5	3	5	4	36		4	5	4	3	5	4	4	3	4	36	72	Hcp	Net
Ladies Handicap	13	7	17	9	11	15	3	5	3	Out		8	2	4	16	6	12	4	16	10	In	Total	Hcp	Net
Red Tee	310	222	401	354	391	398	411	315	237	2677		97	149	265	191	424	316	324	102	325	2522	5099	66.6	116
Gold Tee	334	268	428	429	414	523	481	473	342	3072		317	449	283	131	424	316	324	153	369	2764	5627	72.4	128
White Tee	334	268	428	429	414	523	481	473	342	3072		383	304	283	155	182	367	384	155	369	3082	6134	75.1	135

- USGA rules govern all play.
- Distance on sprinkler heads are measured to the center of the green.
- Yellow stakes or lines denote regular water hazards.
- Red stakes or lines denote lateral water hazards.
- White stakes denote out of bounds.
- Please repair ball marks and replace divots.
- If a ball comes to rest on a cart path, paved road, or gravel road, the player will be allowed a one drop one club length from the nearest point of relief, no closer to the hole.

- Local Rules - Island Course**
- Hole #11 Lateral hazard on right side of hole is to alternate.
  - Hole #15 The inside edges of red on right defines lateral hazard.
  - Hole #26 IMMEDIATELY right of the cart path on this hole is a lateral hazard. A player taking relief from the hazard may drop a ball on the left side of the cart path within ONE CLUB LENGTH of the nearest point of relief, no closer to the hole, and take one penalty stroke.
- Local Rules - River Course**
- Hole #5, 7, 8 IMMEDIATELY left of the cart path on these holes is a lateral hazard. A player taking relief from the hazard may drop a ball on the right side of the cart path within ONE CLUB LENGTH of the nearest point of relief, no closer to the hole, and take one penalty stroke.
  - Hole #15 IMMEDIATELY right of the cart path on this hole is a lateral hazard. A player taking relief from the hazard may drop a ball on the left side of the cart path within ONE CLUB LENGTH of the nearest point of relief, no closer to the hole, and take one penalty stroke.

Byron Lash  
Golf Course Superintendent

Bob Fliac  
Director of Golf

20091 Lowes Island Blvd  
Potomac Falls, Virginia 20165  
(703) 441-8802



## IMPROVEMENTS DESCRIPTION

The subject Lowe's Island Golf Club consists of two, 18-hole courses, with a core design, situated on approximately 487± acres, which includes a driving range, practice greens, clubhouse, maintenance buildings, swimming pools, tennis facilities and other associated site improvements. Golf facilities in the subject's market area are generally in balance. Overall, the subject is considered to be excellent in design in light of competitive properties, due to its excellent golf course quality. The clubhouse will be described as good with respect to condition and style. However, it is noted that management for the club has indicated that the building is somewhat dysfunctional for a current clubhouse, lacking a main ballroom to host larger food and beverage functions. The clubhouse also lacks the amount of seating needed for informal dining. The property includes a 600 square foot fitness center, which is inferior to the competition, particularly Lansdowne. The club also lacks a spa facility, which has become a trendy addition to many clubs, including Lansdowne. The subject golf courses are excellent, and regarded as some of the top courses in the area by the local golf community. Recent upgrades to the property include the construction of a new pool, as well as the addition of a golf training facility.

The Lowe's Island Golf Club is considered to be excellent with respect to design for this type of golf course and the target market as a private club. The River Course has a course rating of 74.4 and a slope rating of 143 from the back tees. The course rating method generally indicates the length of the course. For example, shorter courses with Par 72 may have a course rating of 69 or 70 and be 5,000 to 6,200 yards in length, while longer courses, also par 72, may be 7,000 to 7,400 yards in length and have a course rating of 74 to 77. The subject is considered to represent a longer length course with a length from the back tees of 7,006 yards. The Island Course includes a course rating of 73.5 and a slope rating of 140 from the back tees. The length of the course from the back tees is 6,902 yards.

The slope rating is used as an adjustment factor between golfers who may have the same handicap, yet don't play the same courses on a regular basis. Therefore, if both players regularly shoot in the 85 to 90 range on their respective courses, the player whose home course has a lower slope rating is generally entitled to more strokes when playing a course with a higher slope rating.

Driving Range and Putting Green – As noted, there is a driving range and a secondary putting green with chipping area. There is a primary putting green located just off the clubhouse near the first tee is average in size and adequate for the intended use. There is an additional putting green and practice area near the 1<sup>st</sup> hole of the Island Course.

### Clubhouse Improvements and Support Facilities

General Description of Clubhouse: The clubhouse building is a wood frame structure that has a brick and block exterior. The facility was constructed in 1995. It is a multi-purpose facility that contains a pro shop and offices, along with dining facilities. Specifically, the clubhouse includes a main dining room (300 seats), private dining room (24 seats), bar/grill (100 seats indoor and outdoor), 19<sup>th</sup> hole lounge (50 seats), commercial kitchen, administrative offices, locker rooms and storage areas. The lower level of the facility includes storage area for golf carts.



## IMPROVEMENTS DESCRIPTION

Maintenance Building:	The golf course maintenance building is located north of the clubhouse, near the Island Course. The building reportedly includes approximately 15,532 square feet with a steel frame and steel siding. The building is divided into several sections for storage of equipment and materials. The building was completed in 1995 and appears to be in good condition. There is an additional maintenance/golf cart storage building just south of the tennis court area that includes 8,800 square feet.
Year Built:	Course opened in 1995. Nearly all of the buildings were developed in 1995. The second course was added in 1998.
Size:	The clubhouse building area is approximately 33,088 square feet. Additional improvements are as follows: Swim Club Building: 3,100 SF Maintenance Building: 15,532 SF Cart Storage: 8,800 SF Tennis Club Building: 3,100 SF
Number of Stories:	The main clubhouse building includes two stories, plus a lower level. Each of the remaining building is 3 story, one-level completely above grade, all built on concrete slabs.
<b>Construction Detail of Buildings</b>	
Foundation:	Concrete
Exterior Walls:	Wood frame with commercial dry-vit siding for clubhouse and banquet hall. Maintenance barn and golf storage shed has aluminum skin.
Roof Structure/Cover:	Wood truss system with gable design for clubhouse and tennis building. Steel truss with aluminum cover for maintenance barn and golf storage building.
Windows:	Fixed glass in aluminum frame for clubhouse and tennis building. Maintenance building has no windows.
<b>Mechanical Detail</b>	
Heating and Cooling:	Central HVAC system throughout. Minimal heat in barn.
Plumbing:	Assume adequate. There is one set of men's and women's restrooms in clubhouse and banquet buildings. Barn has only one restroom.

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**IMPROVEMENTS DESCRIPTION**

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**Interior Detail****Floor Covering:**

Combination of carpet over pad and ceramic and vinyl tile in clubhouse and tennis building. Barn and storage building floors are unfinished concrete.

**Walls:**

Painted and textured gypsum board and vinyl wall coverings. Barn is unfinished metal and insulation.

**Ceilings:**

Painted and textured gypsum board and vaulted ceiling. Barn is unfinished metal and insulation.

**Lighting:**

Fluorescent and/or incandescent.

**Americans With Disabilities Act:**

The Americans With Disabilities Act (ADA) became effective January 26, 1992. We have not made, nor are we qualified by training to make, a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey and a detailed analysis of the requirements of the ADA could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since we have not been provided with the results of a survey, we did not consider possible non-compliance with the requirements of ADA in estimating the value of the property.

**Hazardous Substances**

We are not aware of any potentially hazardous materials (such as formaldehyde foam insulation, asbestos insulation, radon gas emitting materials, or other potentially hazardous materials) which may be used in the construction of the improvements. However, we are not qualified to detect such materials and urge the client to employ an expert in the field to determine if such hazardous materials are thought to exist.

**Golf Cart Storage**

The golf cart storage is located just north of the tennis facility. There is additional golf cart storage for approximately 60 carts on the lower level of the clubhouse.

**IMPROVEMENTS DESCRIPTION**

Condition: The site and building improvements appear to be in good overall condition.

Based on our conversations with the golf course superintendent and club manager, there are no apparent items of structural damage nor was any observed during our inspection of the improvements.

**Site Improvements**

On-Site Parking: One adequate open-surface asphalt parking lots servicing the clubhouse.

Landscaping: The grounds are attractively landscaped with trees, bushes, shrubs, sod and underground irrigation.

Personal Property (FF&E) Personal property included in the operation of the subject consists of furniture, various fixtures, golf course maintenance equipment, office equipment and related items. The subject's personal property is estimated at approximately \$1,200,000. We were not provided any specific information to support this. We based the estimate on a market oriented average and our general observations at inspection. The subject's personal property assessment by Loudoun County is \$1,003,353.

Comments on Overall Condition And Functionality: Based upon our physical inspection of the property, we are of the opinion that the golf courses have a good design considering and are of excellent quality. The golf course was in excellent condition, with no significant functional or physical problems.

The clubhouse, pool and tennis buildings were considered to be in excellent overall condition with no evidence of deferred maintenance and are considered highly functional for its intended use.

The maintenance buildings were considered to be in good condition and functional for their current use.

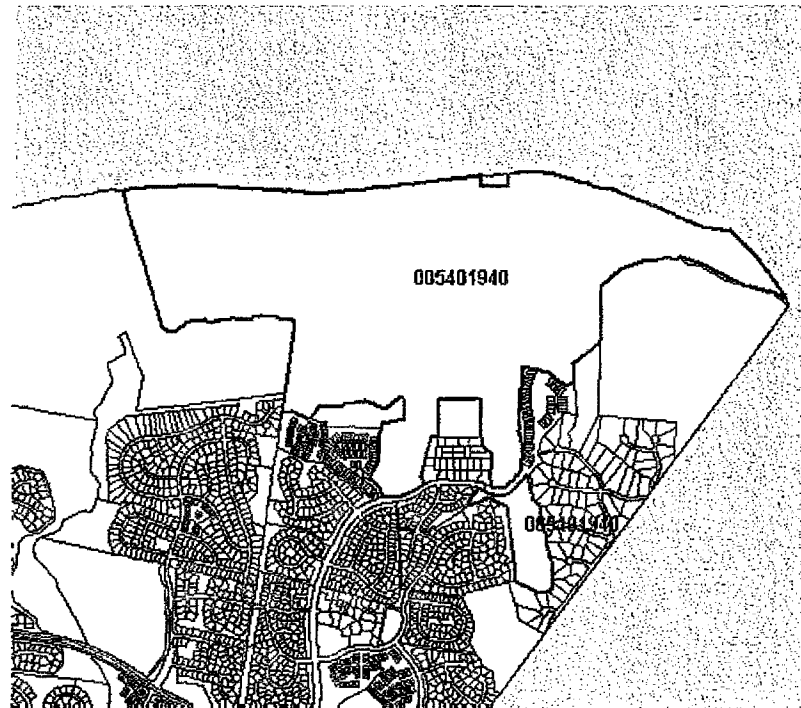
Overall, the golf club is highly functional and well adapted for continued use as a private golf club.

Tax Map: Tax Map 65, Parcel 4P  
PIN [REDACTED]

**REAL PROPERTY TAXES AND ASSESSMENTS**

**Current Property Taxes**

The property is subject to the taxing jurisdiction of Loudoun County. The assessors' parcel identification number is Tax Map 69, Parcel 4P. The subject is also identified as PIN # [REDACTED] [REDACTED]. A tax map illustrating the layout of the subject site is presented below.



The assessment and taxes for the property are presented below:

**PROPERTY TAX DATA**

	2006
Assessed Value	
Land:	\$4,872,200
Building:	\$13,437,900
Total Real Property:	\$18,310,100
Intangible Property:	0
Total:	\$18,310,100
Total Property Taxes	\$162,960

**REAL PROPERTY TAXES AND ASSESSMENTS**

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Total real property taxes for the property are \$162,960. The subject assessment has decreased from \$20,671,600 in 2004, along with a decrease in the tax rate from \$1.10 per \$100 of assessed value. This is below the value estimate contained in this report but should not be of concern as this trend is fairly common with commercial assessments.

In addition to real property taxes, the subject is assessed for personal property. In 2006, the total personal property assessment was \$1,003,353. The tax rate for personal property in Loudoun County for 2006 is \$4.20 per \$100 of assessed value. Total personal property taxes are \$42,141. Therefore, total taxes for the subject are \$205,101.

**ZONING**

The property is located in the "PDH-4" – Planned Development Housing Zone by Loudoun County. This zone is designed for primarily residential housing and associated recreational uses. The zone also allows for golf courses and country clubs.

Requirements in the zone are as follows:

Minimum Lot Area: 10 acres

Maximum Building Height: 35 feet

Yard Requirements:

Front 25 feet

Size 12 feet

Rear 12 feet

Maximum Lot Coverage: 0.40x

Minimum Landscape Required: 20 percent

We are not experts in the interpretation of complex zoning ordinances but the property appears to be a legal conforming use based on our review of public information. The determination of compliance is beyond the scope of a real estate appraisal.

We know of no deed restrictions, private or public, that further limit the subject property's use. The research required to determine whether or not such restrictions exist, however, is beyond the scope of this appraisal assignment. Deed restrictions are a legal matter and only a title examination by an attorney or title company can usually uncover such restrictive covenants. Thus, we recommend a title search to determine if any such restrictions do exist.

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## HIGHEST AND BEST USE

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### Definition Of Highest And Best Use

According to *The Dictionary of Real Estate Appraisal*, Third Edition (1993), a publication of the Appraisal Institute, the highest and best use is defined as:

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability.

### Highest And Best Use Criteria

We have evaluated the site's highest and best use both as currently improved and as if vacant. In both cases, the property's highest and best use must meet four criteria. That use must be (1), legally permissible (2) physically possible, (3) financially feasible, and (4) maximally productive.

### Highest and Best Use of Site As Though Vacant

The subject property has an irregular configuration, contains approximately 487 acres of land area, and is located in a heavily developed residential area of eastern Loudoun County. The general topography of the subject property is generally flat with some rolling ground and pockets of wooded areas and other vegetation. The property also benefits from various manmade lakes and several streams and creeks running throughout the property. Adequate public utilities are available on-site and in sufficient quantity to serve most developments which would be physically possible and legally permissible. A significant portion of the subject, primarily the golf courses, lie within a designated flood plain area, and could not be developed with any other use. Overall, considering its size, access and topography, the subject site would appear capable of supporting any development which could be constructed within its confines.

The second test concerns permitted uses. The site is zoned PDH-4. As such, residential development is permitted in this zone. Golf courses are also permitted.

The third and fourth tests are, respectively, what is feasible and what will produce the highest net return to the land. These items will be addressed in tandem. Of primary significance to financially feasible uses of the property is its specific location, which influences the possible alternative uses for future development. The subject property is located in an area with residential homes. Golf courses enhance the lifestyle of the residents as a social and recreational option. The subject course is a high end private golf club facility. It has strong appeal in the marketplace. No other private recreational use is considered more economically feasible than a private golf club. The cost of constructing a course sometimes exceeds its market value. However, developers usually realize the difference over time. Private golf clubs, if operated efficiently, can generate substantial income to be viewed as an economic venture.

Therefore, it is our conclusion that, **as vacant**, the highest and best use of the subject property is development of two, 18-hole golf courses. A golf course serves this purpose and can be a significant profit center. As the population base of eastern Loudoun County continues to expand and income levels continue to increase, the subject's area has become an attractive location for those residents who seek suburban housing and recreational amenities. The highway network within reasonable proximity to the location of the subject provides access to Fairfax County to the east and more distant areas.

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**HIGHEST AND BEST USE**

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**Highest and Best Use of Property As Improved**

According to the Dictionary of Real Estate Appraisal, highest and best use of the property as improved is defined as:

The use that should be made of a property as it exists. An existing property should be renovated or retained "as is" so long as it continues to contribute to the total market value of the property, or until the return from a new improvement would more than offset the cost of demolishing the existing building and constructing a new one.

The site is currently improved with the Lowe's Island Golf Club, an 18-hole, private golf club. The site improvements consist of two golf courses and other miscellaneous building improvements used in conjunction with a golf club use. A clubhouse building was constructed in 1995, and is in very good condition. The existing golf course and supporting building improvements are functional for their existing use and are well-placed on the site. Therefore, the physical characteristics which influence the highest and best use, as currently improved, indicate continued use of the existing improvements as a golf course and club.

The existing improvements are a legally conforming use with the existing zoning. Therefore, the legal characteristics of the site, as currently improved, indicate continued use.

The golf course has been since 1993-1998. Based on data provided, the golf course has been averaging about 36,000 rounds per golf per year in recent years. Based on the historical figures, it is evident that the subject property has been adequately received by the market over the past several years with stabilization and the potential for growth anticipated. We expect annual golf rounds to stabilize at a level of about 37,500 rounds on average. Therefore, as improved, the highest and best use indication economically would be continued operation of the subject 36-hole private golf club.

**Conclusion**

We have considered the physical, legal, and economic factors which influence the highest and best use of the subject property "as currently improved." Based on the foregoing discussion, it is our opinion that the Highest and Best Use of the subject property as improved is as it is currently developed.



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## VALUATION PROCESS

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### Methodology

There are three generally accepted approaches available in developing an opinion of value: the Cost, Sales Comparison and Income Capitalization approaches. We have considered each in this appraisal to develop an opinion of the market value of the subject property. In appraisal practice, an approach to value is included or eliminated based on its applicability to the property type being valued and the quality of information available. The reliability of each approach is dependent upon the availability and comparability of the market data uncovered as well as the motivation and thinking of purchasers in the market for a property such as the subject. Each approach is discussed below, and applicability to the subject property is briefly addressed in the following summary.

### Land Value

Developing an opinion of land value is typically accomplished via the Sales Comparison Approach by analyzing recent sales transactions of sites of comparable zoning and utility adjusted for differences which exist between the comparables and the subject. Valuation is typically accomplished using a unit of comparison such as price per square foot of land or potential building area or acre. Adjustments are applied to the unit of comparison from an analysis of comparable sales, and the adjusted unit of comparison is then used to derive a value for the subject site.

### Cost Approach

The Cost Approach is based upon the proposition that an informed purchaser would pay no more for the subject than the cost to produce a substitute property with equivalent utility. This approach is particularly applicable when the property being appraised involves relatively new improvements which represent the highest and best use of the land; or when relatively unique or specialized improvements are located on the site, for which there exist few improved sales or leases of comparable properties.

In the Cost Approach, the appraiser forms an opinion of the cost of all improvements, depreciating them to reflect any value loss from physical, functional and external causes. Land value, entrepreneurial profit and depreciated improvement costs are then added resulting in a value estimate for the subject property.

### Sales Comparison Approach

The Sales Comparison Approach utilizes sales of comparable properties, adjusted for differences, to indicate a value for the subject property. Valuation is typically accomplished using a unit of comparison such as price per square foot of building area, effective gross income multiplier or net income multiplier. Adjustments are applied to the unit of comparison from an analysis of comparable sales, and the adjusted unit of comparison is then used to derive a value for the subject property.

### Income Capitalization Approach

This approach first determines the income-producing capacity of a property by utilizing contract rents on leases in place and by estimating market rent from rental activity at competing properties for the vacant space. Deductions then are made for vacancy and collection loss and operating expenses. The resulting net operating income is divided by an overall capitalization rate to derive an opinion of value for the subject property. The capitalization rate represents the

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**VALUATION PROCESS**

relationship between net operating income and value. This method is referred to as Direct Capitalization.

Related to the Direct Capitalization Method is the Discounted Cash Flow Method. In this method, periodic cash flows (which consist of net operating income less capital costs) and a reversionary value are developed and discounted to a present value using an internal rate of return that is determined by analyzing current investor yield requirements for similar investments.

**Summary**

This appraisal employs the Sales Comparison Approach and the Income Capitalization Approach. Based on our analysis and knowledge of the subject property type and relevant investor profiles, it is our opinion that these approaches would be considered applicable and/or necessary for market participants. The subject's age makes it difficult to accurately form an opinion of depreciation and tends to make the Cost Approach unreliable. Investors do not typically rely on the Cost Approach when purchasing a property such as the subject of this report. Therefore, we have not utilized the Cost Approach to develop an opinion of market value.

The valuation process is concluded by analyzing each approach to value used in the appraisal. When more than one approach is used, each approach is judged based on its applicability, reliability, and the quantity and quality of its data. A final value opinion is chosen that either corresponds to one of the approaches to value, or is a correlation of all the approaches used in the appraisal.

## SALES COMPARISON APPROACH

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### Methodology

In the Sales Comparison Approach, we developed an opinion of value by comparing the subject property with similar, recently sold properties in the surrounding or competing area. Inherent in this approach is the principle of substitution, which states that when a property is replaceable in the market, its value tends to be set at the cost of acquiring an equally desirable substitute property, assuming that no costly delay is encountered in making the substitution.

By analyzing sales that qualify as arm's-length transactions between willing and knowledgeable buyers and sellers, we can identify value and price trends. The basic steps of this approach are:

1. Research recent, relevant property sales and current offerings throughout the competitive area;
2. Select and analyze properties that are similar to the property appraised, analyzing changes in economic conditions that may have occurred between the sale date and the date of value, and other physical, functional, or locational factors;
3. Identify sales that include favorable financing and calculate the cash equivalent price;
4. Reduce the sale prices to a common unit of comparison such as price per hole and net income;
5. Make appropriate comparative adjustments to the prices of the comparable properties to relate them to the property being appraised; and
6. Interpret the adjusted sales data and draw a logical value conclusion.

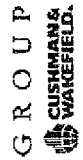
In this instance, the sale prices of the comparables were reduced to those common units of comparison used by purchasers, sellers, brokers and appraisers to analyze improved properties that are similar to the subject. Of the available units of comparison, the sales price per hole (used by buyers, sellers, and brokers), as well as the gross income multiplier (GIM) and the net income multiplier (NIM), are most commonly used in the market.

On the following pages we present a summary of the improved properties that we compared to the subject property and the adjustment process.

SALES COMPARISON APPROACH

SALE NO.	COURSE NAME	LOCATION	SALE DATE	SALE PRICE	NO. HOLES	CLUBHOUSE SF	PAR	YARDAGE	ACRES	REVENUE/ HOLE	NOV/ HOLE	PRICE/ HOLE	QAR	EXPENSE RATIO	GIM	
1	IMPROVED GOLF COURSE SALES CLUBCORP PORTFOLIO	VALENCIA, CA	CC 9/06	\$39,500,000	18	45,000	72	7,076	170.80	\$507,391	\$201,649	\$2,194,444	9.19%	60.26%	4.32	
2	TALEGA GOLF CLUB	SAN CLEMENTE, CA	CC 9/06	\$17,500,000	18	9,400	72	6,951	184.00	\$317,468	\$90,840	\$972,222	9.34%	71.39%	3.06	
3	MEADOW LAKE CC	ESCONDIDO, CA	CC 9/06	\$7,500,000	18	14,000	72	0	136.31	\$155,556	\$38,889	\$416,667	9.33%	75.00%	2.68	
4	SILVERHORN GOLF CLUB	SAN ANTONIO, TX	CC 8/06	\$6,715,000	18	12,664	72	6,922	225.18	\$153,144	\$35,180	\$373,056	9.43%	77.03%	2.44	
5	ANTHEM GOLF CLUB	ANTHEM, AZ	Sep-06	\$8,350,000	36	12,664	72	7,219/7,247	0.00	na	na	\$231,944	na	na	na	
6	CARMEL MOUNTAIN RANCH	SAN DIEGO, CA	Aug-06	\$7,600,000	18	NA	72	6,529	175.15	\$172,222	\$43,056	\$422,222	10.20%	75.00%	2.45	
7	TANACUAN GOLF CLUB	LAKE MARY, FL	Jun-06	\$3,900,000	18	14,320	72	6,915	235.00	\$155,556	\$22,222	\$216,667	10.26%	85.71%	1.39	
8	DOMINION COUNTRY CLUB	SAN ANTONIO, TX	Jun-06	\$12,000,000	18	54,000	72	6,827	261.18	\$334,278	\$54,303	\$666,667	8.15%	83.76%	1.99	
9	NORTH SHORE GOLF CLUB	ORLANDO, FL	May-06	\$4,170,000	18	5,040	72	6,898	192.60	\$94,212	\$26,323	\$231,667	11.36%	72.06%	2.46	
10	SILVERHORN GOLF CLUB	OKLAHOMA CITY, OK	Apr-06	\$5,250,000	18	4,500	72	6,768	169.46	\$64,296	\$25,291	\$291,667	8.67%	60.67%	4.54	
11	INVERARRY COUNTRY CLUB	LAUDERHILL, FL	Mar-06	\$11,000,000	18	27,600	72	7,040/6,621	368.00	\$202,555	\$58,179	\$611,111	9.52%	71.28%	3.02	
12	LINKS AT VICTORIA	CARSON, CA	Feb-06	\$8,200,000	18	8,540	72	6,804	170.57	\$178,274	\$61,531	\$455,556	13.51%	65.47%	2.56	
13	STONEBROOK EAST/WEST	ORLANDO, FL	Feb-06	\$7,500,000	18	13,186	72	7,000	374.00	\$255,556	\$38,333	\$416,667	9.20%	85.00%	1.63	
14	COPPER CREEK GOLF CLUB	PLEASANT HILL, IA	Jan-06	\$1,923,890	18	4,716	72	6,008	194.00	na	na	\$106,883	na	na	na	
										Averages	\$215,876	\$57,985	\$543,388	9.85%	73.55%	2.71

Source: Cushman & Wakefield of Texas, Inc



ADVISORY GROUP

VALUATION SERVICES

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**SALES COMPARISON APPROACH**

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**Improved Sales Analysis**

In the analysis of golf course sales, several comparative factors can be extracted. These include relationships to income that are utilized in the income approach, and relationships to physical characteristics that can be analyzed and adjusted for dissimilar qualities.

The Sales Comparison Approach to value is based upon the principle of substitution. In theory, the purchaser of a property will pay no more than the cost of acquiring an equally desirable substitute property without undue delay. To estimate the degree of comparability between two golf courses, many judgment decisions are required. An extensive search was made throughout the Colorado and western U.S. market to obtain golf course sales that were comparable to the subject property. Geographically comparable sales were not found; therefore, we have utilized the most recent sales that would be considered comparable in terms of income relationships.

In choosing comparable golf course or country club sales, it should be noted that unlike other real estate investments, intangible qualities contribute to the financial capabilities of a golf course. Because golf demand is an emotional and discretionary activity, demand for play at certain facilities may be based on the course architect, such as a Jack Nicklaus, Pete Dye, Donald Ross or Robert Trent Jones. This can be true on a regional level, such as hosting a U.S. Open qualifier or PGA sectional event. The subject is somewhat affected by emotional characteristics such as these. It may be due to the course's items that cannot be adjusted for in a purely physical sense. They can only be measured through market acceptance in the form of revenue and net operating income. The subject courses were designed by well-known architects Tom Fazio and the Arthur Hills Group. The subject has some characteristics that are memorable, scenic and enjoyable, including frontage along the Potomac River. Therefore, the sales comparison analysis for golf courses is heavily weighted to income and revenue comparisons.

In the preceding comparable sales, several potential relationships have been presented. Methods of comparison include the relationship of revenue sources to total revenue utilized in the Income Approach (Capitalization Rate); between sale price and revenue (Gross Income Multiplier or GIM); and price per hole and price per acre. The final two, while physical comparisons, are only meaningful when compared with income per hole or acre. Given the variances in physical characteristics and the difficulty in making adjustments, emphasis is placed on the income related characteristics of the property.

**Price per Hole**

The sales available represent transactions in the southern U.S. market that are considered to be similarly effected by economic conditions of the market. The sales range in date of sale from April 2001 to September 2006, and are considered to represent current market conditions for properties of this type. Green fees and revenues in general have declined throughout the U.S. over the past two years after increasing for the previous five. Interest rates have declined, but risk has increased. Overall, the relationship of income to price is considered to have remained stable. Therefore, movement in market price is reflected in the net operating income estimate of the subject. Sales prices range from \$106,883 to \$2,194,444 per hole, while the sales show a range of \$22,222 to \$201,649 per hole in net operating income. The subject will have an inflated NOI in Year 1 of \$36,548 per hole. It is our opinion that the subject would have a stabilized price in the middle of the range of these sales, or about \$350,000 to \$400,000 per hole. The value range on a price per hole basis would be \$12,600,000 to \$14,400,000.

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**SALES COMPARISON APPROACH**

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**Gross Income Multiplier Analysis:**

The GIM's of the sales ranges from 1.39 to 4.32 with an average of 2.71. Expense ratios range from 60.26% to 85.71%, with an average of 73.55%. The subject includes a projected expense ratio of includes an expense ratio of near 90.0%, including reserves. With an expense ratio toward the upper end of the comparable sales range, the subject GIM should be near the lower to middle of the range. It is our opinion that the appropriate GIM range for the subject, using a Gross Revenue of \$11,000,840 is in a range of 1.25 to 1.50, shown as follows:

$$\$10,800,840 \times 1.25 = \$13,501,050$$

$$\$10,800,840 \times 1.50 = \$16,201,260$$

Based on this analysis, the market value range at stabilization for the subject via the GIM method is \$14,000,000.

Each of the methods is considered equally reliable, given the comparability of the sales. Based on the comparable sales data, the subject is estimated to have a market value range via the Sales Comparison Approach of \$13,000,000 to \$14,000,000.

## INCOME CAPITALIZATION APPROACH

### Methodology

The Income Capitalization Approach reflects the subject's income-producing capabilities. This approach is based on the assumption that value is created by the expectation of benefits to be derived in the future. Specifically estimated is the amount an investor would be willing to pay to receive an income stream plus reversion value from a property over period of time. The two common valuation techniques associated with the Income Capitalization Approach are direct capitalization and the discounted cash flow (DCF) analysis.

Market value of income producing real estate is typically determined by the amount of net income the property can be expected to generate over a projected investment holding period, as well as the rates of return available to potential buyers on alternative investments. An analysis of the income generating characteristics of the property and how they impact the net income available for providing a return on, and a return of, the original investment is typically considered paramount to a potential buyer. Since the Income Approach technique is that appraisal procedure and analysis which converts anticipated benefits, in terms of dollar income to be derived from the ownership of a property, into a value estimate, this procedure has been utilized as the primary analysis for purposes of this report. The steps utilized in the Income Approach are as follows:

- Determination of the projected investment holding period and appropriate growth rate for income and expenses;
- Estimation of annual operating income and expenses during the holding period;
- Valuation analysis, and selection of capitalization method and rates;
- Conversion of projected income benefits into value.

### Appropriate Valuation Method

In this case, we have utilized the Discounted Cash Flow analysis. We believe that the marketplace would want to project the performance of the property over a 5-year holding period, followed by a hypothetical sale (reversion) at the end of this term. Thus, a discounted cash flow analysis will be presented.

The subject is a private facility that offers various membership packages. The club has been established with two golf courses since 1998. Therefore we have a good operating history indicating a stabilized operation. Given the stable financial history of the club we have modeled our analysis using a 5-year holding period showing our forecast of operations. The competitive golf marketplace displayed earlier in this appraisal suggests there is adequate demand to support the subject golf club. In order to present an effective Income Capitalization Approach, the appraisers had to forecast that the club operations would continue on the same "for-profit" basis, but show improved net income commensurate with a maturing course, complimented with an excellent clubhouse facility contributing to maximum net operating income. This assumes that an investor would purchase the club, and would offer competitive membership packages (much like the existing club). We believe investors would analyze the property using both valuation techniques; namely the discounted cash flow analysis. The economics of the club will contain a revenue forecast that contains the membership fees and dues. Other income related to membership dues and normal golf and club related revenue would occur on a normal or stabilized basis. We forecast that the club will continue to operate on a stabilized basis with 37,000 to 38,000 rounds played. Therefore years 1 through 5 will be stabilized and year 6 will be projected for the purpose of the reversion (or sale). The revenue forecast is stable over the

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**INCOME CAPITALIZATION APPROACH**

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entire holding period and consistent with the existing performance of Lowe's Island Golf Club. We believe that the marketplace would want to project the performance of the property over a 5-year holding period, followed by a hypothetical sale (reversion) at the end of this term. This projection and reversion can be effectively captured by employing the discounted cash flow analysis.

**Potential Gross Income**

Income to the golf course is generated from many sources. These sources include membership dues, greens and cart fees, as well as income from the pro shop, food and beverage, tennis and various other smaller income sources. Income sources vary depending on the type of operation such as daily fee or public course, semi-private or private. The daily fee or public facility generally derives the majority of its income from the greens fees, cart fees and food and beverage. Semi-private facilities generate income from membership fees, annual dues, as well as the daily green fees, while private facilities generate the majority of their income from membership fees and annual dues, as well as guest green fees and food and beverage income. Since the subject property is a private club, annual membership dues, membership fees and food and beverage revenues are most applicable.

The appraisers have been provided with operating and expense figures for the subject property for fiscal years 2004, 2005, 2006 and a budget for 2007. The subject includes a fiscal year ending September. We have presented the available income/expense information to conform with the owners accounting format. For consistency, our projections were made on the same basis. The owner's historical income and expense information appears to generally conform to golf accounting standards and is summarized in the chart on the following page.



## INCOME CAPITALIZATION APPROACH

REVENUE AND EXPENSE ANALYSIS						
Fiscal Year Ending September	2004		2005		2006	
	Total	Per Round	Total	Per Round	Total	Per Round
<b>POTENTIAL GROSS REVENUE</b>						
Total Golf Rounds	36,918		35,743		36,008	
Membership Fees	1,264,830	\$34.26	1,582,306	\$43.71	1,772,466	\$49.22
Membership Dues	3,080,239	\$83.43	3,236,984	\$90.56	3,390,463	\$94.16
Guest Fees	447,899	\$12.13	431,625	\$12.08	462,813	\$12.85
Golf Cart Income	508,143	\$13.76	499,246	\$13.97	532,539	\$14.79
Golf Shop Income	702,470	\$19.03	655,189	\$18.33	908,951	\$25.24
Activity Fees	371,681	\$10.07	364,831	\$10.21	387,134	\$10.20
Outing Income	253,480	\$6.87	276,380	\$7.73	305,200	\$8.54
Other Golf Income	92,858	\$2.52	93,082	\$2.60	94,080	\$2.61
Food and Beverage Sales	1,672,671	\$45.31	1,900,857	\$53.18	2,000,245	\$55.55
Childrens Activity Center	85,065	\$2.30	87,222	\$2.36	75,719	\$2.05
Locker Income	139,707	\$1.52	129,395	\$1.62	130,546	\$2.24
Tennis Income	267,002	\$0.00	269,970	\$0.00	279,969	\$0.00
Other Income	56,110	\$242.22	59,938	\$267.66	82,570	\$288.90
<b>TOTAL POTENTIAL GROSS REVENUE</b>	<b>\$8,942,135</b>	<b>\$242.22</b>	<b>\$9,587,025</b>	<b>\$267.66</b>	<b>\$10,402,695</b>	<b>\$288.90</b>
<b>DEPARTMENTAL EXPENSES</b>						
<b>LESS: COST OF GOODS SOLD</b>						
Food & Beverage	\$652,705	\$17.68	\$760,773	\$21.28	\$819,956	\$22.77
% of Sales	39.02%		40.02%		40.99%	
Pro Shop Merchandise	\$477,991	\$12.95	\$428,589	\$11.99	\$614,659	\$17.07
% of Sales	68.04%		65.41%		67.62%	
<b>TOTAL COST OF GOODS SOLD</b>	<b>\$1,130,696</b>	<b>\$30.63</b>	<b>\$1,189,362</b>	<b>\$33.28</b>	<b>\$1,434,615</b>	<b>\$39.84</b>
<b>NET REVENUE</b>	<b>\$7,811,439</b>	<b>\$211.59</b>	<b>\$8,377,663</b>	<b>\$234.39</b>	<b>\$8,968,080</b>	<b>\$249.06</b>
<b>DEPARTMENTAL EXPENSES</b>						
Golf Expense	\$785,002	\$21.26	\$766,741	\$21.45	\$820,495	\$22.79
Club House Food and Beverage	1,338,738	\$36.26	1,455,617	\$40.72	1,534,625	\$42.62
Golf Course Maintenance	2,234,780	\$60.53	2,207,543	\$61.76	2,345,518	\$65.14
Pool	92,854	\$2.52	80,744	\$2.26	116,432	\$3.23
Clubhouse Facilities	768,562	\$20.82	724,148	\$19.82	832,073	\$23.11
Locker Room	122,118	\$3.31	119,646	\$3.35	121,578	\$3.38
Childrens Activity Center	134,910	\$3.65	146,513	\$4.10	153,494	\$4.26
Tennis	348,506	\$20.39	373,197	\$21.63	428,569	\$25.68
G&A - Expenses	752,931	\$0.00	773,097	\$0.00	918,040	\$0.00
<b>TOTAL DISTRIBUTED EXPENSES</b>	<b>\$6,578,401</b>	<b>\$178.19</b>	<b>\$6,647,246</b>	<b>\$185.97</b>	<b>\$7,270,824</b>	<b>\$201.92</b>
<b>UNDISTRIBUTED EXPENSES</b>						
Membership Marketing	354,882	\$9.61	421,148	\$11.78	336,925	\$9.36
Real Estate Tax	\$257,622		\$282,577		\$236,796	
Management	0		0		0	
<b>TOTAL EXPENSES</b>	<b>\$7,190,905</b>	<b>\$194.78</b>	<b>\$7,350,971</b>	<b>\$205.66</b>	<b>\$7,844,545</b>	<b>\$217.86</b>
<b>NET OPERATING INCOME</b>	<b>\$620,534</b>	<b>\$16.81</b>	<b>\$1,026,692</b>	<b>\$28.72</b>	<b>\$1,123,535</b>	<b>\$31.20</b>
NOI AS % OF GROSS INCOME	7.94%		12.26%		12.53%	

(1)Fiscal Year Beginning: 12/1/2006  
Ending: 11/30/2007

## INCOME CAPITALIZATION APPROACH

### Investment Holding Period

The first step in the Income Approach is to project an investment holding period. In our analysis, we projected income and expenses for the subject property for a period of five years, with the reversion based on the sixth year net income. This projection is based on an analysis of market conditions for the subject property and the fact that buyers of golf properties typically base purchase decisions and investment analysis on either a 5 or 7-year time frame.

### Growth Rates - Income and Expenses

While we cannot be certain about future inflationary trends, we have utilized a growth rate assumption for certain income categories at 3.0 percent, although many of the income items are based on number of golf rounds. For expenses, we utilized a 3.0 percent growth rate for all expenses, except costs of goods sold, which was based on a fixed percentage of sales. This is generally consistent with investors assumptions. The inflation rate reflects national economic trends and is based on long term projections by several sources, including GVI Consulting, Data Resources, Inc., Wharton Econometric Forecasting Associates, and several leading national banks. Our growth rate assumptions have taken into account forecasted increases in utilization for all revenues and expenses for the club over the projection period.

### Estimated Departmental Income and Expenses

The next step in this approach is to estimate departmental revenues and expenses generated by the club. For private clubs, revenue and expense departments typically include the following.

Revenues	Expenses
Membership Dues	Golf Operation – Payroll
Initiation Fees	Golf Operation – Expense
Greens Fees	Golf Course Maintenance - Payroll
Cart Fees	Golf Course Maintenance – Expense
Driving Range	Food and Beverage – Payroll
Other Pro Shop Income	Food and Beverage – Expense
Other Income	G & A - Payroll
Other Food and Beverage Income	G & A - Expenses
Food and Beverage Income	
Merchandise Sales	

The income departments noted above relate to the private club operation with memberships available. Other income comes from the pro shop, various fees and food and beverage. The expense categories above generally include payroll for all employees as well as other expenses that fall within the same category. This occurs in the first four expense categories noted above. Each income and expense area has been discussed below and assumes prudent management for the subject in the future.

**INCOME CAPITALIZATION APPROACH**

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Based on comparable property operations and operations from the area courses surveyed, we have formed an opinion of the appropriate income and expenses for the subject club.

**Membership Assumptions**

The subject is operated as a private golf club facility with various classes of memberships. The most common form of membership plans include the full golf and corporate membership. The subject course currently includes an initiation fee of \$63,500 for full golf. Membership payments can be deferred over several years. We have presented the following chart that summarizes the various membership types for the subject club and our projections for future membership.

## INCOME CAPITALIZATION APPROACH

MEMBERSHIP REVENUE							
Lowe's Island Golf Club							
Membership Categories	Current	1	2	3	4	5	6
Full Golf and Corporate	676	682	688	693	697	699	699
Non-Resident	105	120	135	145	150	152	152
Social	76	77	78	79	80	80	80
Sport	19	19	19	19	19	19	19
Clubhouse	6	7	8	9	10	10	10
Junior Associate	4	5	6	7	8	8	8
Net Additions							
Full Golf and Corporate		6	6	5	4	2	0
Non-Resident		15	15	10	5	2	0
Social		1	1	1	1	0	0
Sport		0	0	0	0	0	0
Clubhouse		1	1	1	1	0	0
Junior Associate		1	1	1	1	0	0
Monthly Dues							
Full Golf and Corporate	\$420	\$420	\$424	\$437	\$450	\$464	\$477
Non-Resident	\$33	\$33	\$33	\$34	\$35	\$36	\$38
Social	\$250	\$250	\$253	\$260	\$268	\$276	\$284
Sport	\$250	\$250	\$253	\$260	\$268	\$276	\$284
Clubhouse	\$60	\$60	\$61	\$62	\$64	\$66	\$68
Junior Associate	\$50	\$50	\$51	\$52	\$54	\$55	\$57
Dues Growth Rate		0.0%	1.0%	3.0%	3.0%	3.0%	3.0%
Dues Revenue							
Full Golf and Corporate	\$3,437,280	\$3,502,195	\$3,633,477	\$3,764,083	\$3,888,130	\$4,004,774	
Non-Resident	47,520	53,995	59,734	63,648	66,431	68,424	
Social	231,000	236,340	246,551	257,162	264,877	272,823	
Sport	57,000	57,570	59,297	61,076	62,908	64,796	
Clubhouse	5,040	5,818	6,741	7,715	7,946	8,185	
Junior Associate	3,000	3,636	4,369	5,143	5,298	5,456	
Total Dues Revenue	\$3,780,840	\$3,859,553	\$4,010,169	\$4,158,826	\$4,295,590	\$4,424,458	

As indicated, there are a total of 676 full golf and corporate members, with a capacity of 1,000 members. Historically, the subject has experienced net growth of (10) members in 2004, (2) members in 2005 and 6 members in 2006 for the full golf membership. In total membership growth for the subject has included (4) members in 2004, 3 members in 2005 and 13 net members in 2006. Memberships can be canceled, with a 50% refundable deposit rate. Cancellations are available on a 4:1 ratio, meaning that four new members are required for every one membership cancellation. The membership dues are based upon the new rates as of January 1007 at the subject club. Full golf membership dues have increased from \$390 monthly

## INCOME CAPITALIZATION APPROACH

in 2006 to \$420 monthly in 2007. Our revenue forecast is similar to the recent trend of increasing membership dues at the subject. We have estimated revenue at \$3,780,840 in the first year. The revenue has ranged from \$3,080,239 in 2004 to \$3,390,463 in 2006. The 2007 budget includes a projection of \$3,670,165.

### Projected Golf Rounds

Before making other revenues and expense projections, a primary unit of comparison and analysis for golf courses is the revenue/expense per round. Therefore, the projected round counts are important to the overall analysis. The 18-hole rounds played at the subject property has been reported for 2004 through 2006 (end-September of each year). The annual rounds are summarized below.

<b>Lowe's Island Golf Rounds</b>				
Rounds	FY	2006	2005	2004
Golf and Corp.		26,136	25,757	27,635
Sport Membership		81	159	122
Guest		5,254	4,972	5,174
Marketing and Comp		2,193	2,068	1,494
Comp - Other Event		0	545	422
Outings		2,344	2,242	2,071
<b>Total Rounds</b>		<b>36,008</b>	<b>35,743</b>	<b>36,918</b>
<b>Cart Rounds</b>				
Members and Guest		27,910	25,665	26,338
Outings		2,344	2,242	2,071
<b>Total Cart Rounds</b>		<b>30,254</b>	<b>27,907</b>	<b>28,409</b>
<b>Rounds per Member</b>		<b>38.7</b>	<b>38.2</b>	<b>41.2</b>

Our projection for rounds is presented in the following table.

Member Rounds	26,217	26,520	26,637	26,754	26,832	26,832	26,832
Rounds/Member	38.8	39	39	39	39	39	39
Guest/Outside Rounds	9,791	9,905	9,949	9,993	10,022	10,022	10,022
Percent to Member	37.35%	37.4%	37.4%	37.4%	37.4%	37.4%	37.4%
<b>Total Rounds</b>	<b>36,008</b>	<b>36,425</b>	<b>36,586</b>	<b>36,747</b>	<b>36,854</b>	<b>36,854</b>	<b>36,854</b>

## INCOME CAPITALIZATION APPROACH

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We expect the subject to attract enough play to maintain the current estimate that is supported by the survey data. Other clubs in the area, including Lansdowne, are attempting to build membership, and will be competition for the subject facility going forward. This is considered very reasonable given the ongoing stable population in the area and that the subject property is an attractive modern golf facility operating on a stabilized basis. While our annual rounds projection is low for a 36-hole facility, it is considered attainable given the rounds played at the property in recent years.

### Membership Fees

The subject's membership fees relate to the initiation fee at the subject. As noted, the current initiation fee is \$63,500 for full golf membership, and increases to \$65,000 if the fee is deferred. Historically, the initiation fee for full golf membership has increased from \$57,500 in 2000 to the current level. The historical revenue from membership fees was \$1,264,830 for 2004, \$1,562,306 in 2005 and \$1,772,466 in 2006. This revenue is net figure based upon membership fees, less deferred fees and refunds/resignations. Based on the historical and surveyed data, we have estimated greens fees at \$1,775,000 in year one of the pro-forma.

### Guest Fees

The subject's guest fees relate to golf fees paid by visitors to the subject courses. In 2007 the fee for guest for non-peak periods will be \$800.00, increasing to \$100.00 for peak periods. The historical revenue from guest fees was \$447,889 for 2004, \$431,625 in 2005 and \$462,813 in 2006 and a projected \$469,600 in 2006. Based on the historical and surveyed data, we have estimated guest fees at \$470,000 in year one of the pro-forma. Over the projection period, we forecast fees to rise by a 3 percent growth factor per annum.

### Golf Cart Rentals

Private clubs have golf cart fees. At the subject, the fees are \$19.00 for 18 holes and \$15.00 for 9 holes. The historical revenue from golf carts was \$508,143 for 2004, \$499,246 in 2005 and \$532,539 in 2006 and a projected \$550,600 in 2007. Based on the historical and budgeted data, we have projected the 2007 golf cart revenue at \$550,000.

### Activity Fees and Outing Income

The subject property includes an activity fee that allows membership use of the pool and other various facilities. The current fee is \$636 for family membership. Activity Fee income was \$371,681 in 2004, \$364,831 in 2005 and \$367,134 in 2006. We have projected activity fee income at \$380,000. The Outing income is related to special golf outings held at the club. This income has increased from \$253,460 in 2004 to \$305,200 in 2006. We have estimated Outing Income at \$310,000. Other golf income includes items such as lessons and club repair. This income has increased from \$92,858 in 2004 to \$94,080 in 2006. We have estimated this income at \$95,000.

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**INCOME CAPITALIZATION APPROACH**

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**Pro Shop Income**

This category covers the income from the operation of the pro shop, within the main clubhouse building of the subject property. Income has been \$702,470 in 2004, \$655,189 in 2005 and \$908,951 in 2006. It is noted that, in 2006, the subject included a one-time outing from the Democratic National Convention, which significantly increased this revenue source for 2006. Going forward, we expect the income level to return toward historical levels. We have projected this income to be \$750,000 in the first year of our analysis.

**Food and Beverage Income**

These figures differ considerably based on the different types of courses (private, semi-private and municipal) and their locations. The following historic data was observed. For the subject, combined food and beverage income ranged between \$1,672,671 in 2004, \$1,900,857 in 2005 and \$2,000,245 in 2006. We have forecasted food income at \$2,100,000 in year one.

**Other Revenue Sources**

The subject includes revenue from several other sources, including locker room income, tennis income and other miscellaneous income. Our projections for Locker room income are in line with the historical levels, which have ranged from \$129,395 to \$139,707. We have projected this income at \$135,000. Tennis income is projected at \$290,000, with the historical level from \$267,002 to \$279,969. Other income is projected at \$80,000.

**Total Revenues**

Overall total revenue at the subject has been trending upward since 2004 when it was at \$8,942,135. In 2005 total revenue increased to \$9,567,025, increasing further in 2006 to \$10,402,695, or nearly 5.0 percent per annum. These upward trends seem reasonable given our understanding of the marketplace and the steady number of historic rounds. Total Year 1 potential gross revenue for the subject was estimated at \$10,800,840.

**Cost of Sales**

Most clubs account for the cost of food and beverage sales as a separate line item under a cost of goods sold category. In keeping with market standards, Lowe's Island has developed a similar cost of goods sold deduction for food and beverage sales, and also merchandise sales. Between 2004 and 2006 Lowe's Island experienced a food and beverage cost of goods sold ranging from 39.0 percent to 41.00 percent. The cost percentage used in our forecast will be a similar 41 percent, representing a 59 percent margin.

Golf pro shop merchandise is also treated as a cost of good sold. As such, we have observed a ratio range of 65.0 percent to 68.0. Our forecast projects a similar cost ratio of 65 percent.

**INCOME CAPITALIZATION APPROACH**

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**Expenses**

We have relied on the historical expenses of the subject property along with referencing confidential operating statements of other similar private golf clubs, and statistical expense information obtained from National Golf Foundation. Although all of the comparable expenses represent different ownership and management, and are unique, the data lends support to the subject's income and expense projections, primarily the net operating income to gross income ratio. On balance the subject has been operating on a stabilized basis for several years and one would expect much of the same into the foreseeable future.



## INCOME CAPITALIZATION APPROACH

Expense	C&W Yr 1 Forecast	Analysis
Golf Expense	\$800,000	This category covers the payroll for all operations that are non-maintenance related. Our estimate is based on the historical and budgeted expenses, plus expense levels at competing properties. Between 2004 and 2006, this line item ranged between \$766,741 and \$820,495
Club House Food and Beverage	\$1,600,000	This broad golf expense includes primarily payroll for the food and beverage operations. Our estimate is based on the historical and budgeted expenses, plus expense levels at competing properties. Between 2004 and 2006 this category ranged between \$1,388,738 and 1,534,625.
Golf Course Maintenance	\$2,200,000	This category covers the payroll for all operations that are maintenance related. Our estimate is based on the historical and budgeted expenses, plus expense levels at competing properties. Between 2004 and 2006, this line item ranged between \$2,207,543 and \$2,345,518, or \$61,321 and \$65,153 per hole. Expense comparables 1 and 2, both private clubs in the immediate area, include golf course maintenance expenses near \$47,000 to \$48,000 per hole. The subject's expense appears high based upon the comparables. We have estimated a slightly lower amount going forward.
Pool	\$105,000	This expense involves all maintenance related costs including materials, chemicals, equipment and supplies for the pool. Between 2004 and 2006 expense ranged between \$80,744 and \$116,432.
Membership Marketing	\$400,000	This category covers the marketing expense for the club, including sales staff and related expenses. Our estimate is based on the historical and budgeted expenses, plus expense levels at competing properties. Between 2004 and 2006 this category ranged between \$336,925 and \$421,148.
Clubhouse Facilities	\$900,000	This is the expenses related to the clubhouse, including utilities, insurance and some repairs. Utilities accounted for \$204,469 in 2006. Between 2004 and 2006 the expenses ranged between \$724,148 and \$832,073.
Locker Room	\$125,000	The historical expense has ranged from \$119,646 to \$121,578 from 2004 to 2006.
Childrens Activity Center	\$150,000	The subject includes the operation of a children's activity center near the swimming pool. The expense has ranged from \$134,910 to \$153,494 in 2006.
G&A - Expenses	\$900,000	This represents a rather broad category developed by ownership that includes administrative payroll, computer maintenance, newsletter, major events, and other expenses. The primary expense is for administrative payroll. Between 2004 and 2006 this expense ranged between \$752,931 and \$918,040. There were some one-time legal expenses in 2006. We have also included a separate line item for management fee, which will likely reduce some payroll within this category.
Real Estate Tax	\$205,101	We have previously presented a discussion of real estate taxes. The real estate assessment has decreased for the subject property in recent years.
Management (3.0% of PGI)	\$324,025	Historically the club did not carry a management line item as it was self managed. Going forward we have included a management expense that is forecasted to equate to 3.0% of gross income.

## INCOME CAPITALIZATION APPROACH

The following expense comparables were considered in our analysis.

Expense Comparables									
	Comp 1			Comp 2			Comp 3		
	Total	% Rev	Per Rd	Total	% Rev	Per Rd	Total	% Rev	Per Rd
<b>POTENTIAL GROSS REVENUE</b>									
Member Rounds	15,403			20,975			30,981		
Other Rounds	5,543			6,500			6,547		
<b>Total Golf Rounds</b>	<b>20,946</b>			<b>27,475</b>			<b>37,528</b>		
Membership Dues	1,791,642	35.1%	\$85.54	2,888,868	37.0%	\$97.87	1,834,929	58.2%	\$48.89
Initiation Fees	1,396,458	27.3%	\$66.87	1,437,918	19.8%	\$52.34	178,234	5.7%	\$4.75
Greens Fees	258,406	5.1%	\$12.34	485,475	6.7%	\$17.87	156,559	5.0%	\$4.17
Cart Fees	247,723	4.8%	\$11.83	379,989	5.2%	\$13.83	235,185	7.5%	\$9.27
Other Golf Income	157,198	3.1%	\$7.50	58,513	0.8%	\$2.13	57,156	1.8%	\$1.52
Food and Beverage Sales	968,571	19.0%	\$46.24	1,997,395	27.5%	\$72.70	544,741	17.3%	\$14.62
Merchandise Sales	287,717	5.6%	\$13.74	212,254	2.9%	\$7.73	145,220	4.6%	\$3.67
<b>TOTAL POTENTIAL GROSS REVENUE</b>	<b>\$5,107,712</b>	<b>100.0%</b>	<b>\$243.85</b>	<b>\$7,260,410</b>	<b>100.0%</b>	<b>\$264.28</b>	<b>\$3,152,024</b>	<b>100.0%</b>	<b>\$83.99</b>
<b>DEPARTMENTAL EXPENSES</b>									
<b>LESS: COST OF GOODS SOLD</b>									
Food & Beverage	312,183	32.2%	\$14.90	626,025	31.3%	\$22.79	151,538	27.8%	\$4.04
Pro Shop Merchandise	223,737	77.8%	\$10.68	158,223	73.6%	\$5.69	128,097	88.2%	\$3.41
<b>TOTAL COST OF GOODS SOLD</b>	<b>535,920</b>		<b>\$25.59</b>	<b>784,248</b>		<b>\$28.47</b>	<b>279,635</b>		<b>\$7.45</b>
<b>NET REVENUE</b>	<b>\$4,571,792</b>		<b>\$218.27</b>	<b>\$6,478,162</b>		<b>\$235.78</b>	<b>\$2,872,389</b>		<b>\$78.54</b>
<b>DEPARTMENTAL EXPENSES</b>									
Golf Operations - Payroll	331,762	8.5%	\$15.84	\$338,620	4.7%	\$12.32	\$160,014	5.1%	\$4.28
Golf Operations - Expense	115,322	2.3%	\$5.51	106,459	1.5%	\$3.87	33,829	1.1%	\$0.90
Course Maintenance - Payroll	478,368	9.4%	\$22.84	479,712	6.6%	\$17.46	287,065	9.4%	\$7.92
Course Maintenance - Expense	379,459	7.4%	\$18.12	387,889	5.3%	\$14.12	174,788	5.5%	\$4.88
Food & Beverage - Payroll	641,320	10.6%	\$25.84	949,833	13.1%	\$34.56	281,565	8.9%	\$7.50
Food & Beverage - Expenses	157,917	3.1%	\$7.54	284,933	3.9%	\$10.37	47,077	1.5%	\$1.25
Other Amenities (Net)	(6,998)	-0.1%	(\$0.33)	104,998	1.4%	\$3.82	74,778	2.4%	\$1.99
<b>TOTAL DISTRIBUTED EXPENSES</b>	<b>\$1,997,148</b>	<b>39.1%</b>	<b>\$95.35</b>	<b>\$2,652,234</b>	<b>38.6%</b>	<b>\$96.53</b>	<b>\$1,069,116</b>	<b>33.9%</b>	<b>\$28.49</b>
<b>UNDISTRIBUTED EXPENSES</b>									
G&A Payroll	358,824	7.0%	\$17.13	635,723	10.6%	\$19.50	254,929	8.1%	\$6.79
G&A Other	297,068	5.8%	\$14.18	225,872	3.1%	\$8.21	171,745	5.4%	\$4.58
Taxes/Insurance	101,335	2.0%	\$4.84	124,772	1.7%	\$4.54	71,346	2.3%	\$1.90
Management		0.0%	\$0.00	0	0.0%	\$0.00	0	0.0%	\$0.00
Building Occupancy	215,177	4.2%	\$10.27	387,369	5.3%	\$14.10	144,397	4.6%	\$3.85
<b>TOTAL UNDISTRIBUTED EXPENSES</b>	<b>\$972,404</b>	<b>19.0%</b>	<b>\$46.42</b>	<b>\$1,273,536</b>	<b>17.5%</b>	<b>\$46.35</b>	<b>\$842,417</b>	<b>20.4%</b>	<b>\$17.12</b>
<b>TOTAL EXPENSES</b>	<b>\$2,969,551</b>	<b>58.1%</b>	<b>\$141.77</b>	<b>\$3,925,770</b>	<b>54.1%</b>	<b>\$142.89</b>	<b>\$1,711,533</b>	<b>54.3%</b>	<b>\$45.61</b>
<b>NET OPERATING INCOME</b>	<b>\$1,602,241</b>	<b>31.37%</b>	<b>\$78.49</b>	<b>\$2,552,392</b>	<b>35.2%</b>	<b>\$92.90</b>	<b>\$1,160,856</b>	<b>16.0%</b>	<b>\$30.93</b>

### Total Expenses

The Year 1 pro forma reflects total expenses of \$8,139,126 or 86.1 percent of net revenue. This results in a net operating income of \$1,315,714. Considering the specifics of the subject operation and based on the historical expenses, we considered the projected expenses to be reasonable for the subject property. We feel that the historical expenses, particularly maintenance of the golf course has been above market, and could be reduced toward comparable levels.

On the following chart is the owner's historical income and expense information along with their three year forecast.

## INCOME CAPITALIZATION APPROACH

REVENUE AND EXPENSE ANALYSIS										
Fiscal Year Ending September	2004		2005		2006		2007 Budget		C&W Forecast	2007
	Total	Per Round	Total	Per Round	Total	Per Round				
<b>POTENTIAL GROSS REVENUE</b>										
Total Golf Rounds	38,918		35,743		38,008		37,000		38,532	
Membership Fees	1,264,830	\$34.26	1,562,358	\$43.71	1,772,488	\$46.22	1,748,668	\$47.26	1,775,000	\$47.97
Membership Dues	3,080,239	\$83.43	3,238,994	\$90.56	3,380,463	\$89.16	3,670,185	\$99.19	3,780,840	\$102.18
Guest Fees	447,869	\$12.13	431,625	\$12.08	462,813	\$12.85	468,800	\$12.69	470,000	\$12.70
Golf Cart Income	508,143	\$13.76	499,248	\$13.97	532,639	\$14.79	550,600	\$15.29	550,000	\$15.27
Golf Shop Income	702,470	\$18.03	655,189	\$18.33	908,951	\$25.24	725,000	\$19.59	760,000	\$20.27
Activity Fees	371,681	\$10.07	384,831	\$10.21	367,134	\$10.20	378,480	\$10.54	380,000	\$10.55
Outing Income	253,460	\$6.87	276,380	\$7.73	305,200	\$8.54	351,300	\$9.50	310,000	\$8.38
Other Golf Income	92,858	\$2.52	93,082	\$2.60	94,080	\$2.61	114,600	\$3.10	95,000	\$2.67
Food and Beverage Sales	1,872,671	\$48.31	1,900,857	\$53.18	2,000,245	\$55.55	2,105,000	\$56.88	2,100,000	\$58.76
Childrens Activity Center	85,065	\$2.30	87,222	\$2.36	75,719	\$2.05	109,195	\$2.85	85,000	\$2.30
Locker Income	139,707	\$3.76	128,385	\$3.60	130,646	\$3.54	139,391	\$3.77	135,000	\$3.65
Tennis Income	287,002	\$7.23	269,970	\$7.31	279,969	\$7.58	288,799	\$7.81	290,000	\$7.81
Other Income	58,110	\$1.52	59,938	\$1.62	82,670	\$2.24	81,000	\$1.65	80,000	\$2.18
<b>TOTAL POTENTIAL GROSS REVENUE</b>	<b>\$8,942,135</b>	<b>\$242.22</b>	<b>\$9,587,025</b>	<b>\$267.89</b>	<b>\$10,402,695</b>	<b>\$288.80</b>	<b>\$10,712,838</b>	<b>\$297.51</b>	<b>\$10,800,840</b>	<b>\$299.98</b>
<b>DEPARTMENTAL EXPENSES</b>										
LESS: COST OF GOODS SOLD										
Food & Beverage	\$652,705	\$17.68	\$700,773	\$21.28	\$819,936	\$22.77	\$713,698	\$19.23	\$661,000	\$23.27
% of Sales	39.02%		40.02%		40.89%		33.80%		41.00%	
Pro Shop Merchandise	\$477,991	\$12.95	\$428,589	\$11.99	\$614,589	\$17.07	\$448,070	\$12.11	\$485,000	\$13.11
% of Sales	68.04%		65.41%		67.82%		61.89%		64.67%	
<b>TOTAL COST OF GOODS SOLD</b>	<b>\$1,130,696</b>	<b>\$30.63</b>	<b>\$1,189,362</b>	<b>\$33.28</b>	<b>\$1,434,616</b>	<b>\$39.84</b>	<b>\$1,161,688</b>	<b>\$31.40</b>	<b>\$1,346,000</b>	<b>\$36.38</b>
<b>NET REVENUE</b>	<b>\$7,811,439</b>	<b>\$211.59</b>	<b>\$8,377,663</b>	<b>\$234.38</b>	<b>\$8,968,080</b>	<b>\$249.08</b>	<b>\$9,551,168</b>	<b>\$265.26</b>	<b>\$9,454,840</b>	<b>\$262.58</b>
<b>DEPARTMENTAL EXPENSES</b>										
Golf Expense	\$785,002	\$21.28	\$766,741	\$21.45	\$820,495	\$22.78	\$880,643	\$23.80	\$800,000	\$21.62
Club House Food and Beverage	1,338,738	\$38.26	1,455,017	\$40.72	1,634,826	\$42.62	1,644,345	\$44.44	1,600,000	\$43.24
Golf Course Maintenance	2,234,780	\$60.53	2,207,543	\$61.78	2,345,518	\$65.14	2,454,891	\$66.35	2,200,000	\$59.46
Pool	92,854	\$2.52	80,744	\$2.26	116,432	\$3.23	103,350	\$2.79	105,000	\$2.84
Clubhouse Facilities	768,582	\$20.82	724,148	\$19.82	832,073	\$23.11	1,083,745	\$29.56	900,000	\$24.32
Locker Room	122,118	\$3.31	119,616	\$3.35	121,578	\$3.38	128,409	\$3.42	125,000	\$3.38
Childrens Activity Center	134,910	\$3.65	148,913	\$4.10	163,484	\$4.28	148,125	\$4.00	150,000	\$4.06
Tennis	348,606	\$9.44	373,197	\$10.44	428,569	\$11.80	428,569	\$11.58	430,000	\$11.62
GSA - Expenses	752,931	\$20.39	773,097	\$21.83	918,040	\$25.68	929,849	\$25.13	900,000	\$24.32
<b>TOTAL DISTRIBUTED EXPENSES</b>	<b>\$6,578,401</b>	<b>\$178.19</b>	<b>\$6,847,248</b>	<b>\$185.97</b>	<b>\$7,270,824</b>	<b>\$201.92</b>	<b>\$7,809,728</b>	<b>\$216.89</b>	<b>\$7,210,000</b>	<b>\$200.28</b>
Membership Marketing	354,882	\$9.61	421,146	\$11.78	338,926	\$9.38	\$40,386	\$12.23	\$400,000	\$11.11
Real Estate Tax	\$257,622		\$282,677		\$236,796		\$0		\$205,101	
Management (3.0% of PGI)	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	\$24,025	\$9.00
<b>TOTAL EXPENSES</b>	<b>\$7,190,905</b>	<b>\$191.78</b>	<b>\$7,350,971</b>	<b>\$205.66</b>	<b>\$7,844,545</b>	<b>\$217.66</b>	<b>\$8,260,111</b>	<b>\$228.12</b>	<b>\$8,139,128</b>	<b>\$228.04</b>
<b>NET OPERATING INCOME</b>	<b>\$620,534</b>	<b>\$16.81</b>	<b>\$1,026,692</b>	<b>\$28.72</b>	<b>\$1,123,635</b>	<b>\$31.20</b>	<b>\$1,301,057</b>	<b>\$36.13</b>	<b>\$1,315,714</b>	<b>\$36.54</b>
NOI AS % OF GROSS INCOME	7.91%		12.26%		12.83%		13.62%		13.92%	

<sup>1)</sup>Fiscal Year Beginning: 11/1/2006  
Ending: 11/30/2007

**INCOME CAPITALIZATION APPROACH**

**DISCOUNTED CASH FLOW ANALYSIS**

The Discounted Cash Flow Analysis utilizes a discounting procedure to convert future benefits to present value based upon required rates of return on investor capital and upon specific characteristics of the subject property. This method of valuation has wide acceptance among buyers and sellers of investment quality income producing property. Based upon the assumptions utilized in the Cash Flow Analysis, a resulting net cash flow was developed which includes the sale of the property at the end of the holding period, in this case five years. The value of the property is obtained by discounting the net cash flows at a discount rate which is obtained through an analysis of and review of investor requirements as published by several reliable sources. Rates to be estimated include a discount rate (cash flows) and a terminal capitalization rate (resale).

The following table illustrates the assumptions used in the discounted cash flow analysis followed by the Discounted Cash Flow Analysis summary page for the subject value via the Income Capitalization Approach.

Discounted Cash Flow Assumptions

<b>DISCOUNTED CASH FLOW MODELING ASSUMPTIONS "AS IS"</b>	
Holding Period:	5 Years
Projection Period:	6 Years
Start Date:	12/1/2006
Reserves for Replacement	4.00%
<b>GROWTH RATES</b>	
Market Rent:	3.00%
Expenses:	3.00%
Real Estate Taxes:	3.00%
<b>RATES OF RETURN</b>	
Internal Rate of Return:	11.50%
Terminal Capitalization Rate:	9.50%
Reversionary Sales Cost:	2.50%

**Reconciliation within the Income Capitalization Approach**

**SUMMARY OF INCOME CAPITALIZATION METHOD**

	<b>Value</b>	<b>Per Hole</b>
Final Value - Discounted Cash Flow Method:	\$13,000,000	\$361,111

**INCOME CAPITALIZATION APPROACH**

DISCOUNTED CASH FLOW ANALYSIS							
Fiscal Year	2007	2008	2009	2010	2011	2012	
YEAR	1	2	3	4	5	6	
Member Rounds	26,598	26,832	27,027	27,183	27,261	27,261	
Guest Rounds	9,934	10,022	10,095	10,153	10,182	10,182	
<b>TOTAL GOLF ROUNDS</b>	<b>36,532</b>	<b>36,854</b>	<b>37,122</b>	<b>37,336</b>	<b>37,443</b>	<b>37,443</b>	
<b>INCOME</b>	<b>3%</b>						
Membership Fees	\$1,775,000	\$1,828,250	\$1,883,098	\$1,939,590	\$1,997,778	\$2,057,711	
Membership Dues	\$3,780,840	\$3,859,553	\$4,010,169	\$4,158,826	\$4,295,500	\$4,424,458	
Guest Fees	\$470,000	\$484,100	\$498,623	\$513,582	\$528,989	\$544,859	
Golf Cart Income	\$550,000	\$566,500	\$583,495	\$601,000	\$619,030	\$637,601	
Golf Shop Income	\$750,000	\$772,500	\$795,675	\$819,545	\$844,132	\$869,456	
Activity Fees	\$380,000	\$391,400	\$403,142	\$415,236	\$427,693	\$440,524	
Outing Income	\$310,000	\$319,300	\$328,879	\$338,745	\$348,908	\$359,375	
Other Golf Income	\$95,000	\$97,850	\$100,786	\$103,809	\$106,923	\$110,131	
Food and Beverage Sales	\$2,100,000	\$2,163,000	\$2,227,890	\$2,294,727	\$2,363,569	\$2,434,476	
Childrens Activity Center	\$85,000	\$87,550	\$90,177	\$92,882	\$95,668	\$98,538	
Locker Income	\$135,000	\$139,050	\$143,222	\$147,518	\$151,944	\$156,502	
Tennis Income	\$280,000	\$298,700	\$307,661	\$316,891	\$326,398	\$336,189	
Other Income	\$60,000	\$82,400	\$84,872	\$87,418	\$90,041	\$92,742	
<b>TOTAL POTENTIAL GROSS REVENUE</b>	<b>\$10,800,840</b>	<b>\$11,090,153</b>	<b>\$11,457,687</b>	<b>\$11,829,770</b>	<b>\$12,196,662</b>	<b>\$12,562,662</b>	
<b>LESS: COST OF GOODS SOLD</b>							
Food & Beverage	\$861,000	\$886,830	\$913,435	\$940,838	\$969,063	\$998,135	
% of Sales	41.00%	41.00%	41.00%	41.00%	41.00%	41.00%	
Golf Merchandise	\$485,000	\$499,550	\$514,537	\$529,973	\$545,872	\$562,248	
% of Sales	64.87%	64.87%	64.87%	64.87%	64.87%	64.87%	
<b>TOTAL COST OF GOODS SOLD</b>	<b>\$1,346,000</b>	<b>\$1,386,380</b>	<b>\$1,427,971</b>	<b>\$1,470,811</b>	<b>\$1,514,935</b>	<b>\$1,560,383</b>	
<b>NET REVENUE</b>	<b>\$ 8,454,840</b>	<b>\$ 9,703,773</b>	<b>\$ 10,029,716</b>	<b>\$ 10,358,959</b>	<b>\$ 10,681,727</b>	<b>\$ 11,002,279</b>	
<b>LESS EXPENSES</b>							
Golf Expense	\$800,000	\$824,000	\$848,720	\$874,182	\$900,407	\$927,419	
Club House Food and Beverage	\$1,600,000	\$1,648,000	\$1,697,440	\$1,748,363	\$1,800,814	\$1,854,839	
Golf Course Maintenance	\$2,200,000	\$2,266,000	\$2,333,960	\$2,403,999	\$2,476,119	\$2,550,403	
Pool	\$105,000	\$108,160	\$111,395	\$114,736	\$118,178	\$121,724	
Clubhouse Facilities	\$900,000	\$927,000	\$954,810	\$983,454	\$1,012,958	\$1,043,347	
Locker Room	\$125,000	\$128,750	\$132,613	\$136,591	\$140,689	\$144,909	
Childrens Activity Center	\$150,000	\$154,500	\$159,135	\$163,909	\$168,826	\$173,891	
Tennis	\$430,000	\$442,900	\$456,187	\$469,873	\$483,969	\$498,488	
G&A - Expenses	\$900,000	\$927,000	\$954,810	\$983,454	\$1,012,958	\$1,043,347	
Membership Marketing	\$400,000	\$412,000	\$424,360	\$437,091	\$450,204	\$463,710	
Real Estate Tax	\$205,101	\$211,264	\$217,692	\$224,119	\$230,843	\$237,768	
Management (3.0% of PGI)	\$324,025	\$333,746	\$343,758	\$354,071	\$364,693	\$375,634	
<b>TOTAL EXPENSES</b>	<b>\$8,139,126</b>	<b>\$8,383,300</b>	<b>\$8,634,799</b>	<b>\$8,893,843</b>	<b>\$9,160,658</b>	<b>\$9,435,478</b>	
<b>NET OPERATING INCOME</b>	<b>\$ 1,315,714</b>	<b>\$ 1,320,473</b>	<b>\$ 1,394,917</b>	<b>\$ 1,465,116</b>	<b>\$ 1,521,069</b>	<b>\$ 1,568,701</b>	
<b>LESS: STRUCTURAL RESERVES</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	
<b>LESS: REPLACEMENT RESERVES</b>	<b>\$378,194</b>	<b>\$388,161</b>	<b>\$401,189</b>	<b>\$414,358</b>	<b>\$427,289</b>	<b>\$440,219</b>	
<b>LESS: CAPITAL COSTS</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	
<b>NET CASH FLOW</b>	<b>\$937,520</b>	<b>\$932,312</b>	<b>\$993,728</b>	<b>\$1,050,758</b>	<b>\$1,093,800</b>	<b>\$1,128,482</b>	
<b>REVERSION ANALYSIS</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	
<b>NOI % OF TOTAL INCOME</b>	<b>12.18%</b>	<b>11.91%</b>	<b>12.17%</b>	<b>12.36%</b>	<b>12.47%</b>	<b>12.61%</b>	
<b>DISCOUNT</b>	<b>0.896881</b>	<b>0.804360</b>	<b>0.721399</b>	<b>0.648994</b>	<b>0.580264</b>	<b>0.520264</b>	
<b>DISCOUNTED CASH FLOWS</b>	<b>\$840,825</b>	<b>\$749,923</b>	<b>\$716,874</b>	<b>\$679,835</b>	<b>\$634,693</b>	<b>\$592,215</b>	
<b>CUMULATIVE CASH FLOWS</b>	<b>\$840,825</b>	<b>\$1,590,748</b>	<b>\$2,307,622</b>	<b>\$2,987,457</b>	<b>\$3,622,150</b>	<b>\$4,214,365</b>	
<b>REVERSION ANALYSIS</b>							
<b>YEAR 6 NOI/OAR=REVERSION</b>	<b>9.50%</b>		<b>\$18,491,589</b>				
<b>LESS COSTS OF SALE</b>	<b>2.50%</b>		<b>(\$412,290)</b>				
<b>NET REVERSION</b>			<b>\$18,079,300</b>				
<b>DISCOUNT FACTOR</b>	<b>11.50%</b>		<b>0.580264</b>				
<b>PRESENT VALUE OF REVERSION</b>			<b>\$9,330,239</b>				
<b>PLUS SUM OF DISCOUNTED CASH FLOWS</b>			<b>\$3,622,150</b>				
<b>INDICATED VALUE</b>			<b>\$12,952,389</b>				
<b>ROUNDED</b>			<b>\$13,000,000</b>		<b>\$361,111</b>	<b>per hole</b>	

## INCOME CAPITALIZATION APPROACH

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### Rate Selection

A discount rate is a rate of return on capital utilized to discount future payments or receipts to present value and is based on the time value of money. For appraisal purposes, the rate used to convert income to property value should represent the annual rate of return necessary to attract investment capital. The rate is influenced by many considerations, including the degree of apparent risk, market attitudes with respect to future inflation, the prospective rates of return for alternative investment opportunities, historical rates of return earned by comparable properties, supply of and demand for mortgage funds, and the availability of tax shelter. Because rates of return used in income capitalization represent prospective rates, as distinguished from historical rates, special consideration is given to market perceptions of risk and changes in purchasing power.

Although it is not possible to prove conclusively the suitability of a particular rate of return on the basis of market evidence, the chosen rate should be consistent with the available evidence. Rate selection requires appraisal judgment and knowledge concerning prevailing market attitudes and economic indicators.

PriceWaterhouseCoopers Investor Survey (most recent available from Spring 2005) reflected a range of discount rates was from 9.0 to 21.0 percent, with an average of about 14.0 percent. After discussing investment requirements with market participants as well as other investors in the market, and after considering the analysis of the survey, we determined that a discount rate of 11.5 percent is appropriate for the subject property.

To estimate the appropriate terminal capitalization rate, we considered the going in rates reflected by the comparable sales (where available) and the investment criteria outlined above for both going in and terminal capitalization. Typically, the terminal capitalization will be greater than the going in rate to reflect the risk associated with the holding period. The investment criteria reflects a minimum acceptable terminal rate of 8.9 percent and a maximum of 13.25 percent for a terminal rate, with an average of 11.0 percent. Based upon the above analysis, it is our opinion that a terminal capitalization rate of 9.50 percent would be appropriate for the subject. A 2.5 percent deduction for costs of sale has then been utilized to reflect the net reversionary value. The annual cash flows and the net reversion have then been discounted to a present value estimate.

We have considered primarily PriceWaterhouseCoopers Investor Survey, Spring 2005 (most recent available). The following is a review of internal rates of return, overall rates, and income and expense growth rates considered acceptable by respondents.

Golf courses and hotels are often linked in terms of estimating return rates, as both represent going concern. We have reviewed investment rates for hotels, as presented in the following table. Full service hotels include an average discount rate of 11.4 percent and a terminal capitalization rate of 9.1 percent.

## INCOME CAPITALIZATION APPROACH

INVESTOR SURVEYS						
	Discount Rate		Going-in Cap. Rate		Terminal Cap. Rate	
	Range	Avg.	Range	Avg.	Range	Avg.
<b>Korpacz Real Estate Investor Survey - 3rd Quarter 2006</b>						
Luxury	8.0% - 13.0%	10.9%	4.0%-10.0%	7.9%	4.0% - 10.5%	8.7%
Full Service	9.5% - 14.0%	11.4%	6.0%-10.5%	8.8%	6.0% - 11.0%	9.1%
Limited Service	10.0% - 18.0%	12.5%	6.5%-14.0%	9.8%	7.0% - 15.0%	10.2%
Extended Stay	11.0% - 16.0%	13.3%	9.5%-13.0%	10.8%	8.5% - 13.5%	10.6%
<b>PFK Consulting - 2006</b>						
Full Service	11.5% - 15.0%	12.8%	6.5%-10.0%	8.0%	8.0% - 11.0%	9.3%
Limited Service	11.0% - 16.0%	13.8%	7.0%-10.0%	8.6%	6.5% - 12.0%	10.0%
<b>US Realty Consultants - Winter 2006</b>						
Full Service	7.0% - 15.0%	11.1%	5.0%-11.0%	7.7%	6.0% - 11.0%	8.6%
Limited Service	8.0% - 18.0%	12.1%	8.0%-13.0%	9.7%	8.0% - 12.0%	10.0%
<b>RERC - Fall 2006</b>						
All Hotels / Average	9.0% - 11.5%	10.6%	6.5%-10.0%	8.6	7.0% - 10.5%	9.3

### Implied Capitalization Rate

Although a formal direct capitalization was not performed it is easy to abstract the implied capitalization rate from the previous income analysis. By dividing the net operating income by the reconciled value via the discounted cash flow we can see that it results in a rate of 10.1 percent. This is very reasonable by market standards for a stabilized golf operation and further supports our value conclusion throughout.

## INCOME CAPITALIZATION APPROACH

Category	Investor Survey Results <sup>1</sup>	
	Spring 2005	Spring 2004
<b>Overall Capitalization Rate</b>		
Range:	5.0% to 17.1%	4.9% to 21.2%
Average:	10.77%	10.98%
<b>Terminal Capitalization Rate</b>		
Range:	9.0% to 13.3%	8.9% to 13.25%
Average:	11.0%	11.0%
<b>Net Income Multiplier</b>		
Range:	5.1 to 19.1	4.3 to 18.2
Average:	9.34	9.29
<b>Discount Rate (IRR)<sup>2</sup></b>		
Range:	9.0% to 18.0%	9.0% to 21.0%
Average:	13.78%	14.0%
<b>Annual Income Growth<sup>3</sup></b>		
Range:	0.5% to 5.0%	1.0% to 4.0%
Average:	2.9%	2.8%
<b>Annual Expense Growth</b>		
Range:	1.5% to 5.0%	1.0% to 4.0%
Average:	2.8%	2.8%
<b>Selling Expense<sup>4</sup></b>		
Range:	1.5% to 5.0%	0.5% to 6.5%
Average:	3.4%	3.4%
<b>Marketing Period (Months)</b>		
Range:		2.0 to 18.0
Average:		8.4
<b>Capital Reserve<sup>5</sup></b>		
Range:		1.0% to 11.0%
Average:		3.4%
<b>Management Fee</b>		
Base Fee		\$38,900 to \$434,000
Range:		\$88,150
Average:		
Incentive (% of NOI) <sup>6</sup>		1.0% to 50.0%
Range:		11.12%
Average:		
Incentive (% of Gross, Inc.)		2.0% to 7.0%
Range:		4.16%
Average:		

\* Source -- PriceWaterhouseCoopers, Spring 2005.

1 Includes both daily fee and private golf courses as defined (rates include actual & proforma).

2 Discount rates reported herein reflect total property rates that assume no leverage. Equity rates that reflect leveraging reportedly range from 13.5% to 39%.

3 Some respondents reported initial year growth rates between 5.0% and 15.0%.

4 Some respondents reported a flat fee. Selling expenses are generally inversely related to the price of the golf course.

5 Upper end of the range typical of private clubs that own the majority of their equipment. Courses that lease equipment have lower reserves.

6 Upper end reflective of a facility with multiple courses.

7 Some respondents reported a base management fee as a percentage of gross income plus an incentive fee based on a percentage of net income as contractually defined.



## RECONCILIATION AND FINAL VALUE OPINION

### Valuation Methodology Review and Reconciliation

This appraisal employs the Sales Comparison Approach and the Income Capitalization Approach. Based on our analysis and knowledge of the subject property type and relevant investor profiles, it is our opinion that these approaches would be considered applicable and/or necessary for market participants. The subject's age makes it difficult to accurately form an opinion of depreciation and tends to make the Cost Approach unreliable. Investors do not typically rely on the Cost Approach when purchasing a property such as the subject of this report. Therefore, we have not utilized the Cost Approach to develop an opinion of market value.

The approaches indicated the following "As Is" values:

<b>Cost Approach:</b>	<b>Not Applicable</b>
<b>Sales Comparison Approach:</b>	<b>\$13,000,000 to \$14,000,000</b>
<b>Income Capitalization Approach:</b>	<b>\$13,000,000</b>

The Cost Approach has not been utilized in this report. The Cost Approach requires an estimation of the cost to reproduce or replace the existing improvements of the property. From this cost new of improvements accrued depreciation from physical, functional and economic sources is deducted to arrive at a cost less depreciation. The estimated land value is then added to arrive at total value. The subjectivity of estimating accrued depreciation of aged existing improvements limits the reliability of this approach. In addition, we know of few investors who utilize replacement cost as the basis for their investment decisions.

The Sales Comparison Approach consists of the collection and analysis of data relevant to actual sales of properties deemed comparable to the subject property. Properties which have been sold are compared to the property under appraisal and adjustments to the sale prices are made based on differences between the subject property and the comparable sales.

The Income Capitalization Approach converts anticipated future cash flows into a present value estimate. This method is based on the premise that the motivation for a property purchase is a function of the anticipation of future benefits to be gained from the investment. The potential purchaser, in essence, will trade the purchase price of the property for a projected income stream to be received in the future. Conversion of the anticipated cash flow into a value indication commonly occurs in the form of discounted cash flow analysis or application of a single capitalization rate to a stabilized income estimate. Because the subject property is unstabilized, we have applied the discounted cash flow analysis.

These three traditional methods of estimating the market value of commercial real estate are not mutually exclusive approaches to deriving an estimate of most probable selling price, but are inter-dependent methodologies, each relying on components from at least one of the other approaches. Hence, the Cost Approach requires extensive market data to derive estimates of depreciation and to determine the value of land as if vacant. This approach may also require income data in order to make adjustments for functional and economic obsolescence. The Sales Comparison Approach requires application of methods from the Income Capitalization Approach in order to make adjustments for differences in income that have influenced the sale price. Consideration of market data is also required for the Income Capitalization Approach in the selection and application of equity, capitalization and discount rates, and estimation of income and expenses. Consequently, it is our opinion that the purchasers and sellers, at least

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**RECONCILIATION AND FINAL VALUE OPINION**

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intuitively, consider components of all three approaches in the process of negotiating an acceptable price for a particular property.

It is the Income Capitalization Approach, however, that is logically considered the most appropriate technique for estimating the value of income-producing property. Not only does this approach represent the most direct and accurate simulation of market behavior, it is the method explicitly employed by buyers and sellers in acquisition and disposition decisions. In our final analysis, we have reconciled within the range of value estimated by the Sales Comparison Approach and Income Capitalization Approach.

Based on our Complete Appraisal as defined by the *Uniform Standards of Professional Appraisal Practice*, we have developed an opinion that the market value of the fee simple estate of the referenced property, subject to the assumptions and limiting conditions, certifications, extraordinary and hypothetical conditions, if any, and definitions, "as-is" on November 9, 2006 was:

**THIRTEEN MILLION DOLLARS**

**\$13,000,000**

\*Inclusive in the value indications is that value which is attributable to the existing furniture, fixtures and equipment (\$1,000,000).

## ASSUMPTIONS AND LIMITING CONDITIONS

"Appraisal" means the appraisal report and opinion of value stated therein, to which these Assumptions and Limiting Conditions are annexed.

"Property" means the subject of the Appraisal.

"C&W" means Cushman & Wakefield, Inc. or its subsidiary which issued the Appraisal.

"Appraiser" or "Appraisers" means the employee(s) of C&W who prepared and signed the Appraisal.

### General Assumptions

This appraisal is made subject to the following assumptions and limiting conditions:

1. No opinion is intended to be expressed and no responsibility is assumed for the legal description or for any matters which are legal in nature or require legal expertise or specialized knowledge beyond that of a real estate appraiser. Title to the Property is assumed to be good and marketable and the Property is assumed to be free and clear of all liens unless otherwise stated. No survey of the Property was undertaken.
2. The information contained in the Appraisal or upon which the Appraisal is based has been gathered from sources the Appraiser assumes to be reliable and accurate. Some of such information may have been provided by the owner of the Property. Neither the Appraiser nor C&W shall be responsible for the accuracy or completeness of such information, including the correctness of opinions, dimensions, sketches, exhibits and factual matters.
3. The opinion of value is only as of the date stated in the Appraisal. Changes since that date in external and market factors or in the Property itself can significantly affect property value.
4. The Appraisal is to be used in whole and not in part. No part of the Appraisal shall be used in conjunction with any other appraisal. Publication of the Appraisal or any portion thereof without the prior written consent of C&W is prohibited. Except as may be otherwise stated in the letter of engagement, the Appraisal may not be used by any person other than the party to whom it is addressed or for purposes other than that for which it was prepared. No part of the Appraisal shall be conveyed to the public through advertising, or used in any sales or promotional material without C&W's prior written consent. Reference to the Appraisal Institute or to the MAI designation is prohibited, except as it relates to the collaboration between C&W and the Appraisal Institute relative to the *Real Estate Outlook* publication.
5. Except as may be otherwise stated in the letter of engagement, the Appraiser shall not be required to give testimony in any court or administrative proceeding relating to the Property or the Appraisal.
6. The Appraisal assumes (a) responsible ownership and competent management of the Property; (b) there are no hidden or unapparent conditions of the Property, subsoil or structures that render the Property more or less valuable (no responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them); (c) full compliance with all applicable federal, state and local zoning and environmental regulations and laws, unless noncompliance is stated, defined and analyzed in the Appraisal; and (d) all required licenses, certificates of occupancy and other governmental consents have been or can be obtained and renewed for any use on which the value opinion contained in the Appraisal is based.
7. The physical condition of the improvements analyzed within the Appraisal is based on visual inspection by the Appraiser or other person identified in the Appraisal. C&W assumes no

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**ASSUMPTIONS AND LIMITING CONDITIONS**

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- responsibility for the soundness of structural members nor for the condition of mechanical equipment, plumbing or electrical components.
8. The projected potential gross income referred to in the Appraisal may be based on lease summaries provided by the owner or third parties. The Appraiser has not reviewed lease documents and assumes no responsibility for the authenticity or completeness of lease information provided by others. C&W recommends that legal advice be obtained regarding the interpretation of lease provisions and the contractual rights of parties.
  9. The projections of income and expenses are not predictions of the future. Rather, they are the Appraiser's opinion of current market thinking on future income and expenses. The Appraiser and C&W make no warranty or representation that these projections will materialize. The real estate market is constantly fluctuating and changing. It is not the Appraiser's task to predict or in any way warrant the conditions of a future real estate market; the Appraiser can only reflect what the investment community, as of the date of the Appraisal, envisages for the future in terms of rental rates, expenses, supply and demand.
  10. Unless otherwise stated in the Appraisal, the existence of potentially hazardous or toxic materials which may have been used in the construction or maintenance of the improvements or may be located at or about the Property was not analyzed in arriving at the opinion of value. These materials (such as formaldehyde foam insulation, asbestos insulation and other potentially hazardous materials) may adversely affect the value of the Property. The Appraisers are not qualified to detect such substances. C&W recommends that an environmental expert be employed to determine the impact of these matters on the opinion of value.
  11. Unless otherwise stated in the Appraisal, compliance with the requirements of the Americans With Disabilities Act of 1990 (ADA) has not been analyzed in arriving at the opinion of value. Failure to comply with the requirements of the ADA may adversely affect the value of the property. C&W recommends that an expert in this field be employed.
  12. Additional work requested by the client beyond the scope of this assignment will be billed at our prevailing hourly rate. Preparation for court testimony, update valuations, additional research, depositions, travel or other proceedings will be billed at our prevailing hourly rate, plus reimbursement of expenses.
  13. The reader acknowledges that Cushman & Wakefield has been retained hereunder as an independent contractor to perform the services described herein and nothing in this agreement shall be deemed to create any other relationship between us. This assignment shall be deemed concluded and the services hereunder completed upon delivery to you of the appraisal report discussed herein.
  14. This study has not been prepared for use in connection with litigation and this document is not suitable for use in a litigation action. Accordingly, no rights to expert testimony, pretrial or other conferences, deposition, or related services are included with this appraisal. If, as a result of this undertaking, C&W or any of its principals, its appraisers or consultants are requested or required to provide any litigation services, such shall be subject to the provisions of the C&W engagement letter or, if not specified therein, subject to the reasonable availability of C&W and/or said principals or appraisers at the time and shall further be subject to the party or parties requesting or requiring such services paying the then-applicable professional fees and expenses of C&W either in accordance with the provisions of the engagement letter or arrangements at the time, as the case may be.

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**ASSUMPTIONS AND LIMITING CONDITIONS**

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**Extraordinary Assumptions**

An extraordinary assumption is defined as "an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal or economic characteristics of the subject property or about conditions external to the property, such as market conditions or trends, or the integrity of data used in an analysis" (*USPAP*).

This appraisal contains no extraordinary assumptions.

**Hypothetical Conditions**

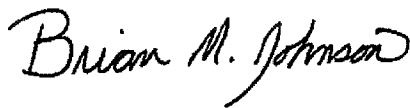
A hypothetical condition is defined as "that which is contrary to what exists, but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property or about conditions external to the property, such as market conditions or trends, or the integrity of data used in an analysis" (*USPAP*).

This appraisal contains no hypothetical conditions.

**CERTIFICATION OF APPRAISAL**

We certify that, to the best of our knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our 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 bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
5. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
6. Our 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. Our 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 Appraisal Practice of the Appraisal Institute.
8. Richard A. Zbranek, MAI made a personal inspection of the subject property and prepared the report.
9. No one provided significant real property appraisal assistance to the persons signing this report.
10. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
11. As of the date of this report, Appraisal Institute continuing education for Richard A. Zbranek, MAI is current.




Brian M. Johnson  
Director  
Virginia General Certified License  
4001-010521

Richard A. Zbranek, MAI  
Senior Director  
Texas Certified General Appraiser License  
Number TX-1321984-G

**ADDENDA**

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**Addenda Contents**

ADDENDUM A: QUALIFICATIONS OF THE APPRAISERS

**QUALIFICATIONS OF THE APPRAISERS**



## PROFESSIONAL QUALIFICATIONS

### **Richard A. Zbranek, MAI**

*Managing Director – Industry Leader Affordable Housing / Golf  
Valuation Services, Capital Markets Group*

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#### **Background**

Mr. Zbranek attended The University of Texas at Austin, graduating in 1981, with a Bachelor of Business Administration in Real Estate and Urban Land Development. He has been involved in the appraisal of real estate since 1981. He began his career in the real estate industry as a licensed real estate salesman in 1979.

#### **Real Estate Experience**

Mr. Zbranek led his own real estate appraisal and consulting firm, The Richard A. Zbranek Company, from 1994 to 2006, before joining Cushman & Wakefield to head the Specialty Practices of Affordable Housing and Golf Course Valuation. In the course of his practice, Mr. Zbranek has appraised all property types, including office, industrial, multifamily, hospitality, land development and recreational properties, establishing specialty practices in affordable housing and golf. Prior to establishing The Richard A. Zbranek Company, he was a Manager with Price Waterhouse from 1991 to 1994 and a Manager with Laventhol and Horwath from 1988 to 1991. His appraisal career began in 1981 with Robert B. Jones and Company in Houston. He received the MAI designation in February 1987. Mr. Zbranek has also developed and led a seminar on golf course valuation for the local chapter of the Appraisal Institute.

Mr. Zbranek's responsibilities include marketing and development of new business for the affordable housing and golf groups, establishment of standard due diligence and reporting formats, as well as review and quality control functions for those groups. Work scope includes appraisals, feasibility studies, market studies, market surveys and investment analysis.

#### **Professional Affiliations**

Member, Appraisal Institute - MAI, (Certificate No. 7281)

Certified General Real Estate Appraiser-State of Texas (License No. TX-1321984-G)

#### **Education:**

University of Texas at Austin

BBA in Real Estate and Urban Land Development

August, 1981



**PROFESSIONAL QUALIFICATIONS****Brian M. Johnson***Appraiser, Washington D.C. Valuation Services, Advisory Group*


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Senior Appraiser, Cushman & Wakefield of Washington, D.C., Inc., Valuation Advisory Services, a full service real estate organization specializing in real estate appraisal and consultation.

Senior Associate, Director of Hospitality Division, Joseph J. Blake and Associates, Inc. a national real estate appraisal and consultation firm, 1992-2003

Associate, Pannell Kerr Forster Consulting Washington, D.C. Performed hotel valuations and feasibility studies throughout the Washington metropolitan area, 1990-1992

Assistant Manager, Marriott Hotel, Blacksburg, Virginia. 1986-1989

Experience includes appraisal of the following types of property:

Industrial Buildings	Apartment Complexes
Golf Courses	Hotels and Motels
Retail Properties	Condominium Conversions
Office Facilities	Vacant Land
Proposed Subdivisions	Assisted Living Facilities
Medical Office Condominiums	Regional Malls

**Experience**

Bachelor of Science in Hotel/Institutional Management, 1989  
Virginia Tech, Blacksburg, Virginia

Real Estate Portfolio Asset Management, 1994  
Johns Hopkins University, Baltimore, Maryland

**Appraisal Courses:**

Real Estate Appraisal Principles  
Capitalization Theory and Techniques  
Standards of Professional Practice  
Appraising Nonconforming Properties  
Virginia State Law Course  
Advanced Appraisal Concepts  
Valuation of Detrimental  
Conditions in Real Estate

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