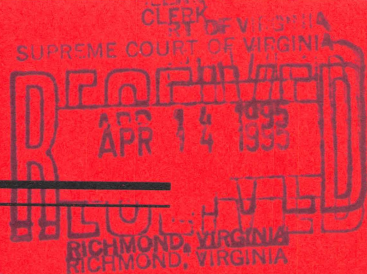


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IN THE
Supreme Court of Virginia

AT RICHMOND

RECORD NO. 941971

NOV - 9 1995

RICHARD F. DAVIS
and
AMELIA D. DAVIS,

Appellants,

v.

JOHN T. HENNING,
and
DAVID J. CROSS,

Appellees.

JOINT APPENDIX

Joseph R. Mayes
Richard E. Slaney
WOLCOTT, RIVERS,
WHEARY, BASNIGHT &
KELLY, P.C.
1100 One Columbus Center
Virginia Beach, VA 23462
(804) 497-6633

Carl W. Isbrandtsen
ISBRANDTSEN, FANCHER &
JEFFORDS, P.C.
307 Lynnhaven Parkway
Suite 101
Virginia Beach, VA 23452
(804) 463-5800

Counsel for Appellants

Counsel for Appellees

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VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

JOHN T. HENNING and
DAVID J. CROSS,

Plaintiffs,

vs.

CHANCERY NO.:

6193-3039

RICHARD F. DAVIS and
AMELIA D. DAVIS,

Defendants.

Please serve: Richard F. Davis
451 Turf Drive
Virginia Beach, VA 23452

Amelia D. Davis
451 Turf Drive
Virginia Beach, VA 23452

BILL OF COMPLAINT

NOW COME John T. Henning (Henning) and David J. Cross (Cross),
by their counsel, and respectfully represent as follows:

1. They are the owners of certain real property located in
the City of Virginia Beach, Virginia and identified by the legal
description attached hereto and incorporated herein as Exhibit "A".

2. The defendants Richard F. Davis and Amelia D. Davis claim
an interest in certain real property located to the east of the
Exhibit "A" real property, by a document recorded in Clerk's Office
of the City of Virginia Beach, Virginia, on June 20, 1985, a copy
of which is attached hereto and incorporated herein as Exhibit "B".

3. The defendants, Richard F. Davis and Amelia D. Davis,
also claim an interest in a purported easement allegedly running
along the northerly property line of the Exhibit "A" real property.
They are using same adverse to Henning and Cross. Said purported
easement is described in a certain document recorded in the Circuit
Court of the City of Virginia Beach, Virginia on July 15, 1980, in

Deed Book 2026 at page 231. A copy of said document is attached hereto as Exhibit "C".

4. The existence, use and/or extent of the aforesaid easement is the subject of dispute, which dispute is affecting the title and use of the Exhibit "A" real property and, therefore, its existence, use and/or extent should be determined by this Court.

5. Henning and Cross will suffer irreparable injury if the defendants, Richard F. Davis and Amelia D. Davis continue to use said purported easement adverse to Henning and Cross.

6. Henning and Cross have no adequate remedy at law.

WHEREFORE, John T. Henning and David J. Cross respectfully pray that this Court shall provide them the following relief:

A. A determination that the defendants Richard F. Davis and Amelia D. Davis have no legal or beneficial interest in the Exhibit "A" real property.

B. An injunction against the use of said Exhibit "A" real property by Richard F. Davis and/or Amelia D. Davis or their successors in interest.

C. Such other and further equitable relief as may be appropriate in this cause, including an award of costs.

JOHN T. HENNING
DAVID J. CROSS

BY 
OF COUNSEL

Carl W. Isbrandtsen, Esq.
Carl W. Isbrandtsen, P.C.
307 Lynnhaven Parkway
Virginia Beach, VA 23452
(804) 463-5800

EXHIBIT "A"

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, designated as 7.103 acres and outlined in red, on that certain plat entitled "Composite Plat of Property of George J. Parker et. al. Location Near London Bridge, Virginia Beach, Virginia, Lynnhaven Borough, Scale: 1'=100', May 16 1966, Rev. 6-1-73, Wilfred B. Large, Certified Land Surveyor, Norfolk, Virginia." said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 98, at page 44, and further described as follows:

Beginning at a point on the East side of Parker Lane 260.40' South from a pin at southeastern corner of Virginia Beach Boulevard and Parker Lane; thence from said point of beginning N 87°-10' E 170.0' to a point; thence S 76°-05'43" E 621.25'; thence N 16°-09'-16" E 155.38' to a point; thence S 49°-19'-18" E 69.24' to a point; thence S 72°-51'-36" E 109.11 to a point; thence S 29°-08' E 55.80' to a point; thence S 12°-22' W 187.26' to a point on the northern right of way line of U. S. Route #44; thence turning and running along the northern right of U. S. Route #44 in a southwesterly direction S 71°-56'-10" W 316.00' to a point; thence N 75°-01'-28" W 119.27' to a point; thence S 71°-56'-10" W 390.85' to a point; thence turning and running in a northwesterly direction N 18°-03'-50" W 380.49' to a point; thence turning and running S 87°-10' W 55.74' to a point on the East side of Parker Lane; thence turning and running along a curve to the left with an arc distance of 130.90' and a radius of 50' to a point of reverse curve; thence along a curve to the right with an arc distance of 52.36' and a radius of 50' to the point of beginning.

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\$ 112.50

THIS CONTRACT, made and executed in triplicate this 28th day of May, 1981, between George J. Parker, party of the first part, and Richard F. Davis and Amelia D. Davis, parties of the second part.

WITNESSETH:

That for and in consideration of the sum of Ten Thousand and no/100 Dollars (\$10,000.00) cash in hand paid, receipt whereof is hereby acknowledged, and in consideration of the promises and agreements hereinafter set forth, the party of the first part does promise and agree to sell to the said parties of the second part, and the said parties of the second part do promise and agree to buy from the said party of the first part, the following described property, to-wit:

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, described on that site plan entitled "Site Plan of Part of 7.013 Acre Parcel Shown on Plat Entitled Composite Plat of Property of George J. Parker et al. Location Near London Bridge, Recorded in M. B. 98, pg. 44, in the Clerk's Office of the Circuit Court, Va. Beach, Va., Lynnhaven Borough, Virginia Beach, Virginia, for George J. Parker, et al, Scale: 1"=40', May 31, 1978", made by Wilfred P. Large, Certified Land Surveyor, Norfolk, Virginia, more particularly described as follows:

Beginning at a point being S. 0°35'12" W. 260.40 feet, N. 87°10'00" E. 170.00 feet, and S. 76°05'43" E. 521.25 feet from the southeastern intersection of Parker Lane and Virginia Beach Boulevard; thence proceeding from said point of beginning N. 16°09'16" E. 155.38 feet to a point; thence turning and proceeding S. 42°19'18" E. 69.24 feet to a point; thence S. 72°51'36" E. 109.11 feet to a point; thence S. 29°08'00" E. 55.80 feet to a point; thence turning and proceeding S. 12°22'00" W. 187.26 feet to a point on the northern right of way line of U. S. Route 44; thence turning and proceeding N. 60°57'05" W. 229.91 feet to a point; thence turning and proceeding N. 16°09'16" E. 50.04 feet to a point being the said point of beginning

It being the same property conveyed to George J. Parker by deed of Parco Building Corporation, a Virginia corporation, dated August 10, 1978, and duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Deed Book 1896 at Page 345.

UPON THE FOLLOWING TERMS AND CONDITIONS, to-wit:

1. The said parties of the second part promise and agree to pay to the said party of the first part the sum of Seventy-Five Thousand (\$75,000.00) Dollars in the following manner:

(a) Ten Thousand (\$10,000.00) Dollars acknowledged above.

(b) The said parties of the second part agree to execute a promissory note in the amount of Sixty-Five Thousand (\$65,000.00) Dollars, payable in monthly installments of Five Hundred Ninety and 66/100 (\$590.66) Dollars, said installment to be principal and interest at the rate of Ten (10%) per centum per annum, with the first payment due on July 1, 1981, and a payment on the 1st day of each month thereafter until paid in full.

(c) The parties of the second part promise and agree to assume payment of the taxes and insurance on the aforesaid property.

2. It is further agreed by and between the parties hereto that upon the payment in full of the aforesaid amounts owed in paragraph (b), then the party of the first part, his heirs or assigns, will execute and deliver unto the said parties of the second part a good and marketable title to the above described property with general warranty of title.

3. The said parties of the second part agree to make the aforesaid payment of \$590.66 to George J. Parker at 290 S. Great Neck Road, Virginia Beach, Virginia, no later than the 1st day of each month, and further to make the aforesaid payment of 1/12 the annual taxes and insurance to said office no later than the 1st day of each month. If any payment is not received within 5 days of its due date a penalty of 10% of such payment will become due and payable for such delinquent payment.

4. The said parties of the second part agree to keep the buildings on said property in good repair during the term of this contract at the expense of the parties of the second part.

5. It is mutually agreed by and between the parties to this contract that in the event that the said parties of the second part fail to make the above set forth monthly payments when due and owing and such default continues for a period of thirty days or more, and/or should said parties of the second part fail to keep said property in good repair during the term of this contract for a period of sixty days, then, in any or all such events, this contract and all rights hereunder shall cease and determine, and all monies paid shall be retained by the said party of the first part and considered as liquidated damages for nonperformance of this contract; and in the event of default the said party of the first part shall be entitled to possession of the said property and said parties of the second part shall vacate said property forthwith upon five (5) days notice, given by the said party of the first part, his heirs or assigns, to the parties of the second part; said notice to be given by registered or certified mail to the address of the building situated on said property or to the last known address of said parties of the second part.

6. It is mutually agreed by and between the parties to this contract that time is of the essence of the performance of all the promises and agreements herein contained.

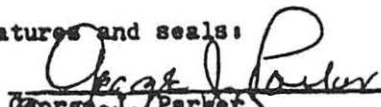
7. The parties of the second part may not convey their interest or assign this contract in this property without prior written consent of the party of the first part, but shall have the right with the consent of the party of the first part to assign their interest herein to an assignee of adequate financial capability.

8. The parties of the second part shall keep the building and land hereby sold insured against loss by fire and other hazards in an amount of not less than \$60,000.00 for the benefit

of the party of the first part, as its interest may appear, but the parties of the second part agree that in case of loss covered by such insurance, the amount paid for such loss may be applied to accomplish the replacement of the loss and in such event, after such replacement, insurance shall be effective and continued the same as before the loss. In addition, the parties of the second part at their own expense shall maintain a policy of public liability insurance protecting both parties against claims for personal injury and property damage in connection with the premises for an amount of not less than \$100,000.00 and will indemnify and hold the party of the first part free from any and all claims, demands, expense and liability arising out of any injury or loss to any person or persons while upon said premises and will not remove any personal property and fixtures from said premises without the written consent of the party of the first part.

9. It is further understood and agreed by and between the parties hereto that the Seller shall not be liable for street improvements, sewage, water and other utilities and the Buyer will save the Seller harmless from any and all claims, causes or actions arising therefrom, and specifically, claims arising out of subdivision requirements under subdivision ordinances of the City of Virginia Beach.

WITNESS the following signatures and seals:


George J. Parker


Richard F. Davis


Amelia D. Davis

STATE OF VIRGINIA

CITY OF VIRGINIA, to-wit:

I, Lois M. Nichols, a Notary Public in and for the City of Virginia Beach, in the State of Virginia, whose commission expires on 6th day of June, 1986, do hereby certify that George J. Parker,

EX-21-70 FEB 19 1934

Richard F. Davis and Amelia D. Davis, whose names as such are
signed to the foregoing writing bearing date of 28th day of
May, 1931, have acknowledged the same before me in my said City.
Given under my hand this day 14th of June, 1932

Louis M. Neff
Notary Public

VIRGINIA, June 19 32 at Richmond, the Clerk's Office of the Circuit Court of Virginia Beach, 20 day
of June, 19 32, this instrument was received and upon the
certificate of acknowledgment therein annexed, admitted to record. "The tax imposed by § 54.1-302 of the Code
has been paid in the amount of \$."

TESTE: I, CLARENCE W. FRUIT, Clerk.
By W. C. Stewart

THIS DEED OF EASEMENT, Made this 11th day of July, 1980, by and between PARCO BUILDING CORPORATION, a Nevada corporation, party of the first part, and GEORGE J. PARKER, party of the second part.

WITNESSETH: That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, the receipt of which is hereby acknowledged, the said party of the first part doth grant, bargain, sell and convey with SPECIAL WARRANTY unto the said party of the second part, his heir successors and assigns, an easement for ingress and egress to Parker Lane and for construction, installation and maintenance of utilities over and under the said thirty feet, and purposes incidental thereto the following described property, to-wit:

(5c) All that certain piece or parcel of land thirty feet in width situate, lying and being in the City of Virginia Beach, Virginia and being the northermost ~~half~~ FIFTY (30) feet along the northern property line of the property designated as 7.013 acres and described on that certain site plan entitled "Site plan of Part of 7.013 Acre Parcel Shown on Plat entitled Composite Plat of Property of George J. Parker et al, Location Near London Bridge recorded in M. B. 98, pg. 44 in the Clerk's Office of the Circuit Court, Va. Beach, Va. Lynnhaven Borough, Virginia Beach, Virginia for George J. Parker et al., Scale: 1"=40', May 31, 1978."

IN WITNESS WHEREOF, the party of the first part has caused these presents to be executed in the corporate name by its officers duly authorized and its corporate seal to be hereunto affixed and attested by its secretary all on the day, month and year first above written.

PARCO BUILDING CORPORATION

By Warren S. Parkhurst
President

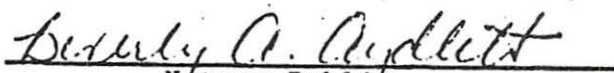
Attest:

BOOK 2026 PAGE 232

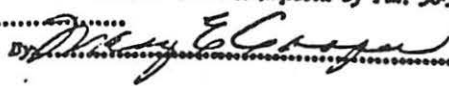

Secretary

STATE OF VIRGINIA
City of Virginia Beach, to-wit:

The foregoing instrument was acknowledged before me on this 15th day of July, 1980, by Warren E. Parkhurst and Robert T. Amory, president and secretary, respectively, of Parco Building Corporation, a Nevada corporation, on behalf of the corporation.


Notary Public

My commission expires: April 30, 1984.

VIRGINIA In the Clerk's Office of the Circuit Court of Virginia Beach 15th day of July 1980 at 12:10, this instrument was received and upon the cert. file of acknowledgment therein entered, returned to record. The tax imposed by Par. 58-54.1 of the Code, has been paid, in the amount of \$.....
TESTE: J. CURTIS FRUIT, Clerk By  D.C.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

JOHN T. HENNING

and

DAVID J. CROSS,

Plaintiffs,

v.

CHANCERY NO. CH93-3039

RICHARD F. DAVIS

and

AMELIA D. DAVIS,

Defendants.

ANSWER


Richard F. Davis and Amelia D. Davis (the "Davises"), for their answer to the Bill of Complaint filed against them, state as follows:

1. Admitted.
2. Admitted, except that Exhibit "B" is not a complete document.
3. Admitted, with the exception that the Davises' use of the easement is not "adverse" to Henning and Cross.
4. The Davises admit the Plaintiffs now dispute the validity of the easement. All other allegations of paragraph 4 of the Bill of Complaint are admitted. The Davises affirmatively state the easement is valid and existing and this Court should determine the validity of the easement because of the dispute.
5. Denied.
6. Denied.

7. All allegations of the Bill of Complaint not specifically admitted are denied.

WHEREFORE, Richard F. Davis and Amelia D. Davis, having fully answered all allegations of the Bill of Complaint filed against them, respectfully ask that this Court determine that the easement, which is the subject of this Bill of Complaint be determined to be valid, binding and enforceable; that the Bill of Complaint be dismissed; that they be awarded their costs, expenses and reasonable attorney's fees in defense of this action and other equitable relief as may be appropriate.

RICHARD F. DAVIS and AMELIA D. DAVIS

By: 
Of Counsel

Stephen G. Test, Esquire
VSB #18870
CLARK & STANT, P.C.
Suite 900
One Columbus Center
Virginia Beach, Virginia 23462
(804) 499-8800

CERTIFICATE OF SERVICE

A copy of this Answer was mailed to Carl W. Isbrandtsen, Esquire, 307 Lynnhaven Parkway, Virginia Beach, Virginia 23452, October 15, 1993.



Stephen G. Test

90192001
ans-dav.sgt

CLARK & STANT, P.C.
ATTORNEYS
VIRGINIA BEACH, VIRGINIA

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

JOHN T. HENNING

AND

DAVID J. CROSS,

Plaintiffs,

v.

CHANCERY NO. CH93-3039

RICHARD F. DAVIS

AND

AMELIA D. DAVIS,

Defendants.

MOTION FOR RECONSIDERATION

Richard F. Davis and Amelia D. Davis (the "Davises"), for their Motion for Reconsideration of the rulings of the Trial Court on July 7, 1994, state as follows:

1. This matter was tried before the Court sitting without a jury on July 7, 1994. After considering the evidence, memorandum of law, and argument of counsel, the Court set forth its findings in fact and rulings of law.

2. On July 7, 1994, the Court ruled that there is no express easement and also ruled that there is no implied easement based on the particular facts and circumstances of this case.

3. The Davises lease this property to William R. Shepherd under a written Lease Agreement introduced as evidence during trial. That Lease sets forth the option of Mr. Shepherd to purchase the property in the future.

4. In the event Mr. Shepherd does not exercise that option, the Davises would then have the right to re-enter and use the land. At that time, if the permanent injunction continued to operate against the Davises, they would own a parcel of real estate to which they had no access from any public road.

5. This Court should reconsider the "permanent" aspect of its injunction ruling in that any injunction prohibiting the use of this easement by Mr. and Mrs. Davis should only remain in effect so long as the Lease remains in effect as it did on the date of trial.

WHEREFORE, the Davises, by counsel, move this Court to reconsider its ruling of July 7, 1994 to permanently enjoin them from any use of the easement, and that this Court rule that they are enjoined from any use of the easement so long as the Lease remains in force and effect.

RICHARD F. DAVIS AND AMELIA D. DAVIS

By: 
Of Counsel

Stephen G. Test, Esquire
VSB #18870
CLARK & STANT, P.C.
Suite 900
One Columbus Center
Virginia Beach, Virginia 23462
(804) 499-8800

N O T I C E

TAKE NOTICE that on Friday, August 12, 1994 at 9:30 a.m., or as soon thereafter as counsel may be heard, I will move the Court to reconsider its ruling at the trial of this matter, in accordance with the foregoing Motion.

RICHARD F. DAVIS AND AMELIA D. DAVIS

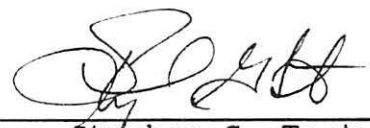
By: 

of Counsel

Stephen G. Test, Esquire
VSB #18870
CLARK & STANT, P.C.
Suite 900
One Columbus Center
Virginia Beach, Virginia 23462
(804) 499-8800

CERTIFICATE OF SERVICE

A copy of this Notice and Motion for Reconsideration was mailed to Carl W. Isbrandtsen, Esquire, Isbrandtsen, Fancher & Jeffords, P.C., 307 Lynnhaven Parkway, Suite 101, Virginia Beach, Virginia 23452 this 28th day of July, 1994.



Stephen G. Test

24199001
mot-not.sgt

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

JOHN T. HENNING and
DAVID J. CROSS,

Plaintiffs,

v.

Chancery No.: CH93-3039

RICHARD F. DAVIS and
AMELIA D. DAVIS,

Defendants.

ORDER

THIS MATTER came to be heard upon the Bill of Complaint and the Answer filed, upon trial of this matter before the Court, sitting without a jury, on July 7, 1994, and upon the Motion for Reconsideration. After considering the evidence, the memoranda submitted by counsel, and argument of counsel, the Court finds and holds as follows:

1. John T. Henning and David J. Cross are the current owners of the real property identified in Exhibit A attached to the Bill of Complaint.

2. The existence, use and/or extent of the easement identified in the July 11, 1980 Deed of Easement recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach in Deed Book 2026, at page 231, is the subject of a dispute as Richard F. Davis and Amelia D. Davis have claimed an interest in same and have used same adversely to John T. Henning and David J. Cross.

3. John T. Henning and David J. Cross have no adequate remedy at law.

4. The Deed of Easement dated July 11, 1980, was extinguished by the doctrine of merger upon delivery and recording of the deed dated July 22, 1980, recorded in the aforesaid Clerk's Office in Deed Book 2028, at page 956.

5. The "subject to" language in the deed dated April 13, 1984, recorded in the Clerk's Office in Deed Book 2326, at page 0838, is insufficient to create or reserve an easement.

6. There is no implied easement, either on the theory of necessity or by pre-existing use, because Richard F. Davis and Amelia D. Davis have no rights to access and use of PARCEL 1 (as identified in that certain LEASE AND OPTION TO PURCHASE AGREEMENT dated July 28, 1993), other than the right reserved to them for inspection, which right can be accomplished over and through the adjoining property of their tenant, Mr. Shepherd.

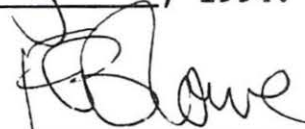
For good cause, therefore, it is ORDERED THAT:

1. Richard F. Davis and Amelia D. Davis are permanently enjoined from using in any way, directly or indirectly, any of the real property identified as Exhibit A attached to the Bill of Complaint, including, but not limited to, the fifty foot wide claimed easement (as identified in the aforesaid July 11, 1980 Deed of Easement).

2. The Motion for Reconsideration is denied.

3. This Order shall be recorded by the Clerk of the Circuit Court, upon payment of the appropriate fees, and indexed appropriately.

ENTER this 19th day of Aug, 1994.

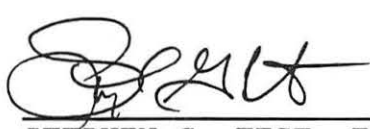

FREDERICK B. LOWE, Judge

I ASK FOR THIS:



p.q.
CARL W. ISBRANDTSEN, ESQ.

SEEN AND OBJECTED TO FOR THE
REASONS AS SET FORTH IN THE
ARGUMENT BEFORE THE COURT AT
TRIAL OF THIS MATTER, IN THE
ARGUMENT BEFORE THE COURT ON
AUGUST 16, 1994, AND IN
THE MEMORANDA TO THE COURT:



p.d.
STEPHEN G. TEST, ESQ.

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KLBWP1

Assignments Of Error

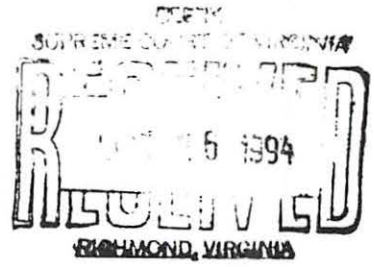
- I. The Trial Court erred in finding that the deed from George Parker to Parker Road Associates was insufficient to expressly reserve an easement of ingress and egress.
- II. The Trial Court erred in finding that no implied easement by preexisting use or quasi-easement exists in favor of the Davis Parcel over the Servient Parcel.
- III. The Trial Court erred in finding that no implied easement of necessity exists in favor of the Davis Parcel over the Servient Parcel.

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VIRGINIA:
IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

JOHN T. HENNING
and
DAVID J. CROSS,

Plaintiffs,



v.

CHANCERY #: CH93-3039

RICHARD F. DAVIS
and
AMELIA D. DAVIS,

Defendants.

TRANSCRIPT OF PROCEEDINGS

TAKEN: July 7, 1994

BEFORE: The Honorable Frederick B. Lowe, Judge

REPORTED BY:

WANDA S. RUTLEDGE

FILED
JUL 15 1994
CLERK OF COURT
JUL 15 1994
JUL 15 1994

1 A P P E A R A N C E S :

2
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1 THE COURT: The matter of John T.
2 Henning and David Cross versus Richard
3 Davis and Amelia Davis.

4 Is the plaintiff ready?

5 MR. ISBRANDTSEN: The plaintiff is
6 ready.

7 THE COURT: Is the defendant ready?

8 MR. TEST: The defendant is ready.

9 THE COURT: I notice in the file
10 there was a motion at some point to add
11 additional defendants, which was
12 apparently never acted on.

13 MR. ISBRANDTSEN: I think that's
14 correct. It was not acted on.

15 THE COURT: Is that an issue
16 anymore?

17 MR. ISBRANDTSEN: I don't think so.

18 THE COURT: Everyone who intends to
19 testify, please stand and raise your right
20 hands.

21
22 (Whereupon, the witnesses were
23 duly sworn).

24
25 THE COURT: Any motions with regard

1 to witnesses?

2 MR. ISBRANDTSEN: No.

3 MR. TEST: No, Judge, I don't have a
4 motion. One of my witnesses, Mr. Davis,
5 has stepped out of the courtroom and he
6 will be back momentarily, and when he
7 comes in I will have you swear him in.
8 There he is.

9 THE COURT: I have read through the
10 file and familiarized myself with what the
11 issue is in this case. It seems to be
12 fairly straightforward. So with that, Mr.
13 Isbrandtsen, are you ready to call your
14 first witness?

15 MR. ISBRANDTSEN: Judge, I would
16 like to tell you it's straightforward and
17 I think that it would be nice if we could
18 do that. I think it would be of some help
19 to tell you what we have agreed upon. I
20 think that ultimately you have a very
21 narrow legal issue, but since we may have
22 some disagreement as to who has what
23 burdens in this case, it may be of some
24 assistance to you to give you a brief
25 opening.

1 THE COURT: Why don't you tell me
2 what you have agreed on?

3 MR. ISBRANDTSEN: Well, we have
4 agreed that by the doctrine of merger an
5 easement which was recorded in 1980 --
6 well, we agree that the doctrine of merger
7 applies with respect to the easement that
8 was recorded in 1980; in essence, that
9 there was an easement recorded, that Mr.
10 Parker foreclosed, took title to the
11 property back, and we do have a
12 disagreement as to the effect. Well, we
13 had a disagreement. In any case, the
14 doctrine of merger does apply. So we have
15 agreed on that.

16 The area of disagreement arises in
17 1984, when there is a deed into my
18 client's predecessor in title, Parker Road
19 Associates, which references by saying you
20 are taking title subject to the easement
21 to which the merger doctrine is applied.
22 So that's the disagreement there. It is
23 our position, and we can provide the Court
24 the law in support, that once the merger
25 doctrine applies and there is no easement

1 recorded as of record which applies to
2 this property, that the burden would be on
3 Mr. Davis to prove the existence of an
4 easement or a right to use our property.
5 I think we may have an agreement on that,
6 but that needs to be clear before I go
7 forward with my case, because my case, in
8 essence, would then be in response to Mr.
9 Test's case to show that there is such a
10 right to use our property, so I think
11 that's important for us to know going into
12 this.

13 THE COURT: Well, I would suspect
14 that since you are the plaintiff in this
15 case and knowing, as you do, the benefit
16 of using witnesses in rebuttal, that you
17 would probably simply want to establish
18 your title as it currently exists and go
19 from there.

20 MR. ISBRANDTSEN: Yeah, I agree, and
21 if that's satisfactory, I won't have a
22 motion to strike after I do that.

23 We have agreed upon a number of
24 exhibits which will establish title, and I
25 have asked that exhibit stickers be marked

1 so we can go ahead and place them on the
2 exhibits. There is only one in the packet
3 that there is a dispute on and we will
4 mark that for identification at this
5 point, so if I can give this to your clerk
6 and she can put the stickers on.

7 MR. TEST: While we are waiting, do
8 you have a large black magic marker?

9 THE COURT: Sure, forty-five cents
10 an hour.

11 Mr. Test, while he is doing that, do
12 you want to give me a thumbnail sketch of
13 what your position is?

14 MR. TEST: Yes, sir. I don't know
15 what documents the Court has had to
16 review, but I really think that the only
17 issue for the Court to determine is
18 whether or not, when Mr. Parker conveyed
19 the parcel that is now owned by Mr.
20 Henning and Cross, when he conveyed it to
21 their predecessor in title and reserved to
22 himself use of an easement, whether that
23 is sufficient to create an easement. That
24 is really all you have to determine.

25 THE COURT: It sounds that way. It

1 almost sounds as if there were no facts in
2 issue in dispute.

3 MR. TEST: We contend, and I
4 represent Mr. and Mrs. Davis, who are not
5 the legal owners of what we have been
6 referring to, the dominant parcel; it is
7 still owned by the Parker estate. They
8 have a contract to buy it which is not
9 completed yet.

10 We contend that there were three
11 ways we have an easement. The first is
12 it's an express easement in that deed.
13 But the reason it may be important to take
14 a little bit of testimony here, even if
15 the Court found there is not an express
16 easement, we still believe we have an
17 easement by preexisting or implied
18 easement in necessity. On those issues,
19 preexisting use or necessity, it may be
20 necessary to take some testimony.

21 THE COURT: Let me interrupt you, if
22 you don't mind. I assume the nature of
23 this proceeding, and I can't tell from
24 reviewing the documents in the file, which
25 are fairly sparce, I take it that this is

1 a situation involving an easement that is
2 of some concern as opposed to simply three
3 feet on the back property line that
4 amounts to essentially nothing; is that
5 correct?

6 MR. TEST: Judge, I will take two
7 seconds and then we can get into the
8 evidence. I'm sure Mr. Isbrandtsen will
9 use this, just like I do for my
10 presentation, but all this is intended to
11 do is to track for you who the owners of
12 these parcels have been, beginning in '73
13 and coming forward to now. The drawings
14 are all the same. This is Virginia Beach
15 Boulevard. This is the area of Great Neck
16 Road coming off of it. There's a
17 Lynnhaven Lincoln Mercury dealer on the
18 corner of Virginia Beach Boulevard.
19 There's a small road back here called
20 Parker Lane. Off of that, what I have got
21 in orange, is the property that is now
22 owned by Messrs. Henning and Cross.

23 THE COURT: Is that the Parker Lane,
24 is that the street that Stanley Phillips's
25 office is on?

1 MR. ISBRANDTSEN: No, he is on the
2 extension of London Bridge.

3 MR. HENNING: It's London Bridge
4 there.

5 MR. ISBRANDTSEN: He is on Great
6 Neck Road. The other side of Great Neck
7 Road, you go to the toll road. You know
8 where the old Post Office was, there's a
9 Post Office right off of Virginia Beach
10 Boulevard; go east. That's what we are
11 talking about.

12 MR. TEST: Little cul-de-sac. What
13 I'm showing you on the orange is Mr.
14 Henning and Cross. The green parcel is
15 what the Parker estate owns; that is under
16 contract to Mr. and Mrs. Davis. There is
17 a gravel road, like a dirt road running
18 through this lot all the way along the
19 northern boundary of the lot about 30 to 50
20 feet wide. It is the ingress or egress to
21 this parcel. That's the easement that's
22 in dispute, or it's the use of that property
23 that is in dispute, and it's a substantial
24 use for both the Davis parcel and it's a
25 substantial problem for both Mr. Henning

1 and Mr. Cross, so it's a substantial
2 issue. We will get into that later, but
3 that's really where the problem lies.

4 MR. ISBRANDTSEN: Judge, I have
5 handed you a packet of documents which
6 have been premarked. The only one in
7 which there is objection is, I believe
8 it's 15, which is a plat, which we would
9 like at this point just to mark for
10 identification.

11 THE COURT: This one here?

12 MR. ISBRANDTSEN: Yes, 13. So if
13 you could mark all but 13 offered and
14 admitted, 13 being just marked for
15 identification.

16 THE COURT: All right.

17 MR. ISBRANDTSEN: Your Honor, in my
18 Bill of Complaint, paragraph one has been
19 admitted, which is that my clients are the
20 owners of the property. Paragraph two,
21 the document by which Mr. Davis claims an
22 interest in the property has been offered
23 and admitted as Exhibit 11.

24 THE COURT: Okay.

25 MR. ISBRANDTSEN: Paragraph three,

1 if we can just stipulate that Mr. Davis
2 does make a claim to the purported
3 easement, then that is going to resolve
4 paragraph three. Is that okay, Steve? I
5 just want to make sure you are comfortable.
6 You denied that he was using it adverse to
7 Henning and Cross.

8 I would like to stipulate the fact
9 that he claims the use of it and has been
10 using it, it's adverse to my clients. Can
11 we agree that he is using it adversely to
12 my clients? If so, we can go on past that.

13 MR. TEST: No, our position it's a
14 valid easement so the use isn't adverse.

15 MR. ISBRANDTSEN: If that is the
16 position, then we can simply stipulate
17 that there is an actual use, you have to
18 ultimately determine whether it's adverse,
19 but I don't need to put on evidence on
20 that point.

21 THE COURT: Okay.

22 MR. ISBRANDTSEN: Number four, it's
23 the subject of dispute, and I think number
24 five --

25 MR. TEST: I admitted it's the

1 subject of dispute.

2 MR. ISBRANDTSEN: Number five,
3 irreparable injury. Our evidence would be
4 we intend to develop the property. Mr.
5 Davis is aware of that. His testimony in
6 deposition explains he was aware of that.
7 We can't develop the property with this
8 easement running in front. That would be
9 our evidence.

10 THE COURT: Number six is really of
11 no consequence.

12 MR. ISBRANDTSEN: So we think we
13 have established our prima facie case
14 based on our discussions at this point.
15 If the Court is in agreement and Mr. Test
16 is in agreement on the prima facie issue,
17 then we will sit down and respond.

18 THE COURT: Mr. Test?

19 MR. TEST: No, sir, I'm not. They
20 are the plaintiff, they have the burden of
21 proving that no easement exists. I have
22 told Mr. Isbrandtsen before he can put on
23 whatever evidence at this point he thinks
24 is appropriate; I wouldn't move to strike
25 it. I'm going to put on my evidence as

1 well. He will have full opportunity for
2 anything he thinks is lacking, but I can't
3 sit here and say he has met his burden of
4 proof.

5 THE COURT: I'm going to admit into
6 evidence exhibits as offered by the
7 plaintiffs, Exhibits 1 through, I think
8 it's --

9 MR. ISBRANDTSEN: Sixteen.

10 THE COURT: One through 16, with the
11 exception of No. 13.

12
13 (Whereupon, the documents
14 referred to were admitted into
15 evidence as Plaintiffs' Exhibit
16 Nos. 1 through 16; Exhibit 13 was
17 marked for identification.)

18
19 MR. ISBRANDTSEN: Your Honor, on the
20 issue that Mr. Test raises, he says that
21 we have the burden of proofing no easement.
22 We have, I think, agreed --

23 THE COURT: Let me interrupt you. I
24 understand where he is coming from as far
25 as his not being willing, shall we say, to

1 concede. I think with these documents now
2 in evidence and the stipulations that have
3 been entered into and the admissions that
4 have been made as far as the answer and
5 grounds of defense is concerned, it now
6 becomes incumbent upon you to either go
7 forward or rest as you feel comfortable at
8 this point.

9 MR. ISBRANDTSEN: As part of that
10 stipulation, we have the merger doctrine
11 that is agreed to.

12 THE COURT: That's correct. I heard
13 that. So the question at this point is,
14 what do you want to do?

15 MR. ISBRANDTSEN: I will call Mr.
16 Henning.

17
18 JOHN T. HENNING
19 having been first duly sworn, was
20 examined and testified as follows:

21
22 DIRECT EXAMINATION

23
24 BY MR. ISBRANDTSEN:

25 Q State your full name and address,

1 please.

2 A John T. Henning, 904 Winwood Drive,
3 Virginia Beach, Virginia.

4 Q You and Mr. Cross own the property
5 which was acquired back in 1984 as Parker Road
6 Associates; is that correct?

7 A Yes.

8 Q And Parker Road Associates acquired
9 the property from Mr. Parker in that year?

10 A Yes.

11 Q Now, immediately prior to acquiring
12 the property in 1984, did you and Mr. Cross have
13 conversations with Mr. Parker concerning the property
14 to be conveyed, the ownership of the property and so
15 on?

16 A Yes.

17 Q And over what period of time did your
18 discussions go?

19 A A three- or four-month period until
20 the final documents were concluded.

21 Q Now, do you own a company?

22 A Yes.

23 Q What is that company?

24 A DACS, Incorporated. It manufactures
25 metal roofing and flooring.

1 Q At the time of the acquisition of this
2 property, was the company called DACS?

3 A No, it was called Southeast Metal
4 Deck.

5 Q Where was the company located?

6 A 120 Parker Lane, same location.

7 Q But at the time immediately prior to
8 acquiring this property, where were you located?

9 A 1400 Cavalier Boulevard in Chesapeake.

10 Q How did you come to know that the
11 Parker property was available?

12 A We saw an auction of equipment for a
13 bankruptcy and we went to look at the equipment that
14 was for sale and at that particular time we met Mr.
15 Parker.

16 Q Okay. Now, I assume you had some
17 negotiations which then led up to the agreement. Were
18 there discussions with Mr. Parker concerning a fellow
19 named Dick Davis or an access to another parcel Mr.
20 Parker owned?

21 A Not at that time.

22 Q Now, prior to closing, were there
23 discussions with Mr. Parker concerning Mr. Davis and
24 access?

25 A I'm cloudy whether they occurred

1 before or after the documents were signed. I believe
2 they occurred after but I'm not sure.

3 Q Now, who represented your side on the
4 acquisition of this property?

5 A I believe it was Kaufman and Canoles.

6 Q And there was an industrial
7 development bond --

8 A Yes, there was.

9 Q -- for the financing?

10 A Yes.

11 Q And that industrial development bond
12 was to be owned and funded by Mr. Parker?

13 A Yeah, he bought the bond back.

14 Q And you went to this law firm and paid
15 them some money and they represented you on the
16 closing; is that right?

17 A Yes.

18 Q Did you actually appear at a closing?

19 A I don't specifically remember that,
20 but I would think I would have to.

21 Q You have this fancy blue bound volume
22 which you got from the closing, is that right, with
23 all of the industrial development bond documents and
24 deed and so on? Was it sent to you substantially
25 after the closing?

1 A Yes.

2 Q At the closing, if you recall, did you
3 ever go through a draft deed or a deed to this
4 property being conveyed from Parker to Parker Road
5 Associates?

6 A Not to my recollection.

7 Q When was the first time that you ever
8 heard from any source that a fellow named Davis
9 claimed an easement on this property, on your
10 property?

11 A I would say early in the '90's,
12 '91-'92.

13 Q Shortly after the closing, did you
14 have conversations with Mr. Parker about Mr. Davis and
15 about this access?

16 A Yes, we saw Dick.

17 MR. TEST: I'm going to have to
18 object. I don't think anything that he
19 discussed with Mr. Parker is admissible.
20 Mr. Parker is deceased.

21 MR. ISBRANDTSEN: There are
22 exceptions to the hearsay rule.

23 THE COURT: Overrule the objection.
24
25

1 BY MR. ISBRANDTSEN:

2 Q Go ahead.

3 A He said he owned a small building and
4 Mr. Davis would go up the road, as he put up,
5 periodically, but --

6 THE COURT: Who owned this? Who are
7 you talking about, he?

8

9 BY MR. ISBRANDTSEN:

10 Q What did Mr. Parker say about the
11 ownership of the small building?

12 A Mr. Davis owned the small building in
13 the back of the land and that periodically he went
14 back and forth, and as long as he didn't bother us it
15 was fine.

16 Q Now, this is what Mr. Parker says to
17 you; is that right?

18 A Yes.

19 Q What, if anything, did Mr. Parker say
20 about whether Mr. Davis had an easement or any legal
21 right to go up to that property?

22 A No mention whatsoever.

23 Q What, if anything, did Mr. Parker say
24 about whether Mr. Davis had actually closed and
25 purchased the property or was buying the property?

1 A He didn't say anything about that.

2 MR. TEST: I thought he just said
3 that Mr. Parker told him Mr. Davis owned
4 the building?

5
6 BY MR. ISBRANDTSEN:

7 Q All right. Now, you have taken --
8 have you had some aerial photographs done recently?

9 A Yes.

10 Q Can you identify that photograph as an
11 aerial photograph that covers your property and the
12 Davis property?

13 A Yes, it does.

14 MR. ISBRANDTSEN: Your Honor, I
15 would like to offer that as the next
16 exhibit.

17 THE COURT: That will be 17. Are
18 you going to put both of them in?

19 MR. ISBRANDTSEN: They are pretty
20 much the same. I will put one of them in.

21
22 (Whereupon, the document
23 referred to was marked as
24 Plaintiffs' Exhibit No. 17.)
25

1 MR. ISBRANDTSEN: Judge, on the back
2 it says the date it was taken, which was
3 June 22 of 1994. Can I ask him, Judge, to
4 circle on the exhibit where Mr. Davis'
5 building is so you can get a picture of
6 it?

7
8 BY MR. ISBRANDTSEN:

9 Q If you want to stand up and show the
10 Judge what you are talking about here. Point out for
11 the Judge but don't mark on this document.

12 THE COURT: He can mark on it.

13
14 BY MR. ISBRANDTSEN:

15 Q Point out where your property is.

16 A All of this is our property here. It
17 comes down to there and that's Mr. Davis' building,
18 this land.

19 MR. ISBRANDTSEN: Will that mark on
20 this?

21 THE COURT: Yes, I think it will.

22
23 BY MR. ISBRANDTSEN:

24 Q Put in yellow highlighter, fill in Mr.
25 Davis' building.

1 A (Witness complies).

2 THE COURT: That's good enough to
3 see.

4
5 BY MR. ISBRANDTSEN:

6 Q Show the Judge the dirt road, where
7 the dirt road is on this picture?

8 A (Indicating).

9 Q Now, when you acquired the property
10 back in 1984 --

11 MR. ISBRANDTSEN: Judge, just so you
12 are clear on this, there have been four or
13 five conveyances from '84, but the
14 conveyances have been in and out of
15 various corporations which my clients have
16 had an interest in.

17 THE COURT: It has nothing to do
18 with the issue?

19 MR. ISBRANDTSEN: No, no.

20
21 BY MR. ISBRANDTSEN:

22 Q Back in 1984 when you all bought the
23 property, what was the condition of that dirt access?
24 Describe it for us.

25 A It was pretty much grown over. It was

1 grass. There were ruts maybe. Pretty much unused
2 except for maybe the first couple of hundred yards.

3 Q Now, you all closed on the property,
4 purchased the property; did you then occupy the
5 property and use it for your business?

6 A Yes, we did.

7 Q Working your way forward in time from
8 1984, let me ask whether or not there was a time in
9 which you got to know Dick Davis?

10 A Yeah, we met him almost immediately.
11 He came by and said he had trucks for hire. He saw us
12 hauling materials, offered his services and we
13 developed a rapport.

14 Q At that time, did he indicate to you
15 that he claimed any interest in an easement which we
16 have identified previously?

17 A No.

18 Q Now, did you see him use the road?

19 A Periodically.

20 Q And did he discuss with you the use of
21 that road?

22 A Not until much later when we had a
23 disagreement about the use.

24 Q Now, let me direct your attention to
25 1987 and ask if you recall in 1987 having a

1 disagreement with Mr. Davis concerning parking
2 vehicles and so on on the property, your property?

3 A Our property is sort of divided down
4 the middle by a tree-lined drainage that comes off of
5 the expressway, and sometimes, particularly in the
6 summer when the growth grows up, you can't even
7 clearly see back there, but if you ride in the road
8 and you look back every once in awhile, you can look
9 in that area. We did that at one time and there were
10 several pieces of equipment and tanks and various --

11 Q What kind of tanks?

12 A Empty, they looked like empty fuel
13 tanks.

14 Q Okay. And on whose property were
15 they? The property that Mr. Davis claimed he had an
16 interest in or on your property?

17 A On our property.

18 Q Did you have conversation with Mr.
19 Davis about that?

20 A Yes.

21 Q And what did you tell him and what did
22 he tell you?

23 A We asked him if he knew what these
24 things were, where they came from, and he said that
25 they had something to do with Mr. Parker but he didn't

1 specifically know what.

2 Q Now, were those items on your property
3 at the time you acquired it from Mr. Parker?

4 A Not to my knowledge.

5 Q Now, did you later -- did you talk
6 with Mr. Parker about who owned some of those items
7 and did the name Mr. Lassiter come up?

8 A A period of time later, because Mr.
9 Parker spent the bulk of the year in Mexico and he
10 would make one visit a year back to the area. We
11 asked him could he tell us who owned that so we could
12 have it removed and he said, "I don't know anything
13 about that, those are deals that Dick made with
14 different people," and he mentioned the name Rocco
15 Lassiter as owning the equipment.

16 Q Did you then talk with Mr. Davis about
17 any relationship he had with Rocco Lassiter and that
18 equipment?

19 A Yes, and he sheepishly said yeah. I
20 told him he could park it there for awhile, but he has
21 left it there much longer than I thought he would.

22 Q As we move forward in time, let me
23 direct your attention to 1988, and ask if in 1988
24 there was a time when you and Mr. Cross, in the fall
25 of 1988, were acquiring this property from a

1 foreclosure sale?

2 A Yeah, we had an environmental study
3 done in order to finance the acquisition.

4 Q And did you also have a survey
5 prepared by Mr. Gallup?

6 A Yeah, we had to have a survey done.

7 MR. ISBRANDTSEN: Your Honor, these
8 are Exhibit 13 objected to, which has been
9 objected to.

10
11 BY MR. ISBRANDTSEN:

12 Q But you had these prepared in
13 connection with that closing; is that correct?

14 A Yes.

15 Q And you had a lender involved at that
16 time?

17 A Yes.

18 Q And were those documents required by
19 the lender in connection with the transaction?

20 A Yes.

21 Q And did you pay for them?

22 A Yes.

23 Q And were they delivered to you?

24 A Yes.

25 MR. ISBRANDTSEN: We would offer at

1 this point the survey, which is the one
2 that has not been agreed to at this point.

3 THE COURT: Mr. Test?

4 MR. TEST: Objection. That is not a
5 proper foundation for the admission of the
6 document.

7 THE COURT: Overrule the objection.
8 Exhibit 13 will admitted into evidence as
9 Plaintiffs' Exhibit 13.

10
11 (Whereupon, the document
12 referred to was marked as
13 Plaintiffs' Exhibit No. 13.)

14
15 MR. ISBRANDTSEN: Now, let's look at
16 Exhibit 14, Your Honor. You have it in
17 your book, and if I may approach the
18 witness, which is the ATEC.

19
20 BY MR. ISBRANDTSEN:

21 Q ATEC is an environmental company that
22 did a level one environmental analysis; is that right?

23 A That's right.

24 Q On this ATEC document there are shown
25 some leaking diesel tanks, some trailers and so on and

1 so forth. Do you see it up in the area which would
2 approach but not reach Mr. Davis' property?

3 A Yes, I see that.

4 Q Now, are the trailers and leaking
5 diesel tanks yours?

6 A No.

7 Q Did you all place them on the
8 property?

9 A No.

10 Q Did you have conversations with Mr.
11 Davis about those trailers and leaking diesel tanks?

12 A Yes.

13 Q And what did he say?

14 A He had a right to park them there.

15 Q Now, but that's right next to what is
16 shown as a dirt road, is it not?

17 A Yes.

18 Q And what did you tell him?

19 A You don't have a right to park it
20 there, it's our land and move them.

21 Q Now, was there a requirement that you
22 clean up these leaking diesel tanks as part of your
23 loan process?

24 A Yes.

25 Q And did you all do that? You caused

1 them to get taken away?

2 A Yes.

3 Q That takes us to September of '88.

4 Moving forward to the '88-'89 time frame, was there a
5 time when you had a run-in or disagreement with Mr.
6 Davis concerning junked automobiles parked on your
7 property with respect to a renter he had?

8 A Yes. He had somebody that did repair
9 work and little by little it looked -- the guy started
10 putting things on our property. We went back and
11 stopped Dick and said, "Your renter now has abandoned
12 vehicles on our property; please have them moved."
13 And he said, "It's not my problem." We went down and
14 talked to his renter.

15 Q Don't tell us what his renter said,
16 but as a result of those conversations, what did you
17 do?

18 A We put stakes up to clearly define
19 where the limits of our property were.

20 Q Now, did those stakes remain up?

21 A No.

22 Q How long were those stakes up before
23 they were removed?

24 A Well, the first time maybe days.

25 Q Did you show Dick that these -- Mr.

1 Davis that these stakes were up?

2 A Yeah, because that was right after or
3 shortly after we had Gallup do the survey, and we
4 showed him where the pin markers were and we showed
5 him that we had placed these aluminum or steel angles
6 inside of what was our property line so he clearly
7 understood, here is the boundary of what you own, that
8 is yours, you can do whatever you want with it, the
9 rest of it is ours.

10 Q Up to this time, which would have been
11 the fall of '88, early '89, did Mr. Davis give you any
12 idea that he claimed an easement or the right to use
13 that dirt road?

14 A No.

15 Q Let me direct your attention to early
16 1990, and ask if there was a widening of Virginia
17 Beach Boulevard around that time period?

18 A Yes.

19 Q And were you approached by a company
20 called Dorey Electric to park some of its trailers and
21 equipment on your property while they were doing work
22 on the widening?

23 A Yes, we were.

24 Q Did there come a time when Dorey
25 wanted to use more of your property than you wanted to

1 let them use?

2 A Well, actually they started to do that
3 and I confronted them about it and I said, "If you
4 want to use more land, you have to pay more rent," and
5 they said, "Oh, we can't do that, we will move."

6 Q Now, within a few days of that, did
7 you find them relocated?

8 A Yes.

9 Q Where were they relocated?

10 A The opposite -- well, they had a
11 trailer that was alongside Dick's building and their
12 equipment was parked on our land.

13 Q And did you speak with Mr. Davis about
14 that?

15 A Yes. I said --

16 Q What did Mr. Davis say?

17 A It wasn't his problem. I should go to
18 Dorey and tell them it's on our property and have them
19 move it.

20 Q And where were the metal stakes that
21 you had put up at that time?

22 A Gone again.

23 Q And what did you do? Did you replace
24 the metal stakes?

25 A We replaced them again.

1 Q Let me direct your attention to
2 1990-1991 time frame, and ask if you all had a
3 confrontation, meaning you and Davis, Cross and Dick
4 Davis had a confrontation concerning the access up
5 this dirt road with Mr. Davis?

6 A Yes, we did. We saw Dick driving in
7 the road and we walked out of our office and signaled
8 to him. He stopped and got out of the car and we said,
9 "We don't want you going across our property
10 anymore."

11 Q What, if anything, did Dick Davis say
12 about any right or claim he had to go across the
13 property?

14 A He basically said, "I've been going up
15 and down this road and I'm going to continue to go up
16 and down this road, you can't stop me."

17 Q And what did you say to him?

18 A We said, "Legally we have the right to
19 stop you and we intend to stop you."

20 Q What, if anything, did he say about
21 whether he had any legal right to use that road?

22 A He never said anything about legal
23 rights at that point in time.

24 Q Was there an occasion when he
25 mentioned to you that he had a contract which gave him

1 certain rights?

2 A Yes.

3 MR. ISBRANDTSEN: Your Honor, this
4 is Exhibit 11 in the file and I would like
5 you, Your Honor, if you could, to look at
6 paragraph nine of Exhibit 11. I intend to
7 ask some questions about that. Just for
8 your own help, Your Honor, this is an
9 agreement -- did I give you the right
10 number -- here it is, is that the
11 indenture?

12 THE COURT: That's 12.

13 MR. ISBRANDTSEN: It would be the
14 one right before it. There are two stuck
15 together.

16 THE COURT: Okay.

17 MR. ISBRANDTSEN: Just to tell you
18 what you are looking at, Judge, that is an
19 agreement between Mr. Davis and his wife
20 and Mr. Parker by which Mr. Davis agrees
21 to buy the parcel on which the building is
22 located on, after he pays for it; in other
23 words, a contract for deed. I ask you to
24 look at the ninth paragraph.

25 THE COURT: All right.

1 BY MR. ISBRANDTSEN:

2 Q Now, is this the document that was
3 provided to you by Mr. Davis by which he claimed he
4 had an interest in this access?

5 A Yes.

6 MR. ISBRANDTSEN: I think we can
7 stipulate, Your Honor, that there is no
8 mention in that document of an easement or
9 anything like that.

10 THE COURT: Okay.

11
12 BY MR. ISBRANDTSEN:

13 Q Mr. Henning, after you were given that
14 document, did you read it over?

15 A Yes.

16 Q Did you have a further conversation
17 with Mr. Davis about that document and whatever rights
18 he claimed?

19 A He had stopped back by a couple of
20 days later and he said, "What did you see?"

21 Q What did you tell him?

22 A I said, "I think you were hoodwinked.
23 I think you bought a piece of landlocked property and
24 the only way you could make it legal under the Code is
25 to pave a road coming from Parker Lane and put sewer

1 in or go out the other way towards Virginia Beach
2 Boulevard, which was much closer," and he said, "Well,
3 obviously I can't pave a road by the lane; that's
4 silly; that's worth more than the land and building."
5 I said, "I agree with you. That's why I think you
6 were hoodwinked."

7 Q Is that statement you made based on
8 your knowledge of the subdivision ordinances in the
9 City of Virginia Beach?

10 A Yes.

11 MR. TEST: I'm sorry, I didn't hear.

12 MR. ISBRANDTSEN: I asked whether
13 that information he provided to Mr. Davis
14 was based on his knowledge of the
15 subdivision ordinances in the City of
16 Virginia Beach.

17 MR. TEST: I think it's admissible
18 that he can say what he told him.

19 THE COURT: It's what he told him
20 and it's basically his opinion. Whether
21 or not it's true --

22 MR. ISBRANDTSEN: Right. I have
23 them here, Your Honor.
24
25

1 BY MR. ISBRANDTSEN:

2 Q What did Mr. Davis then say after you
3 had that discussion with him whether or not he had the
4 legal right to use that access?

5 A Well, the long and the short of it is
6 he said to me, "When you decide to sell, would you add
7 my property on and sell it for the same value that you
8 sell your property," and I said yes.

9 Q Okay. Now, what, if anything, did you
10 tell Mr. Davis at that time about going to see a
11 lawyer to determine what rights he had?

12 A Well, first of all, I'm not a lawyer.
13 I read it over and this is my opinion, but I said,
14 "You could go to your own lawyer, get his opinion of
15 what the document says and then, you know, follow his
16 advice."

17 Q What, if anything, did Mr. Davis tell
18 you after that about having gone to see a lawyer
19 concerning this issue?

20 A He said he went to see a lawyer and
21 then he reaffirmed that when we sold our property he
22 wanted to add his property on to it.

23 Q And what, if anything, did he say to
24 you about whether or not, after seeing the lawyer, he
25 felt he had access?

1 A He didn't really make any statement
2 about that.

3 Q Now, did your partner, to your
4 knowledge, Dave Cross, also speak to Mr. Davis about
5 this specific access issue?

6 A On several occasions.

7 Q Now, let's go to the '91-'92 time
8 frame and ask if at that point you had a confrontation
9 with Mr. Davis concerning a gentleman with firewood?

10 A The same issue, he was renting his
11 building to someone who was repairing automobiles and
12 he was further subletting part of this property to a
13 person who was splitting and chopping firewood.

14 Q And what was the rub from your point
15 of view?

16 A Once again, the guy was burning scrub
17 lumber and some of the chopped firewood, again, was on
18 our property.

19 Q Did you talk with Mr. Davis about
20 that?

21 A Yes.

22 Q What did he say?

23 A It wasn't his problem.

24 Q Where were the metal stakes at this
25 time?

1 A Gone again.

2 Q Did you return the metal stakes?

3 A Yes.

4 Q From that point forward, did you
5 continue to have run-ins with Mr. Davis over the
6 access on the property and his use of your property?

7 A Pretty consistently.

8 Q Was there a time in 1991 or 1992 where
9 Mr. Davis indicated to you that he had again gone to a
10 lawyer?

11 A Yes. He said he went to another
12 lawyer and he advised him that he did have a right of
13 way and it was 50 feet wide and he was going to park
14 his trailers there and it was nothing we could do
15 about it.

16 Q Is that the first time that you became
17 aware of his claim that there was a right of way or
18 easement on his property?

19 A Yes.

20 Q Did he begin to park his trailers
21 along that right of way?

22 A Yes, he did.

23 Q And what did you do?

24 A I told him to go back to his lawyer,
25 recheck his facts, because he couldn't park the

1 trailers there.

2 Q And he continued?

3 A He continued for awhile, then he
4 removed them.

5 Q Did you put some signs out?

6 A We put a fence up.

7 Q But before you put the fence up, did
8 you put signs on these parked trailers?

9 A We wrote a letter basically saying
10 that we were going to have them removed. We called
11 the sheriff's office and said what do we do about
12 that.

13 Q Don't tell us what the sheriff said,
14 but what did you do?

15 A We put letters on each vehicle that
16 was parked on our property saying that it was parked
17 illegally and we were going to have them removed if
18 they weren't removed.

19 Q What happened?

20 A We saw Dick and told him about it and
21 he took the letter off of the vehicle and tore it up
22 and threw it on the ground and said, "Here, that is
23 what I think about that."

24 Q What did you do next?

25 A The vehicles then were removed. Then

1 we put a fence up.

2 Q How long did the fence remain up?

3 A The first weekend that we locked the
4 gate, when we came back Monday morning, one side of
5 the gate had been torn loose and was gone.

6 Q Now, where did you put up this fence?
7 If you can show the Judge on the photograph that's
8 been introduced.

9 A There's a little cul-de-sac here and
10 our property, it curves the fence around through there
11 and the gate across there.

12 THE COURT: Okay, got it. I got it,
13 Mr. Isbrandtsen. I know exactly where he
14 is talking about.

15
16 BY MR. ISBRANDTSEN:

17 Q Before you put up your fence, did Mr.
18 Davis put up a gate?

19 A Yes.

20 Q Where did he put up a gate? Show the
21 Judge where that is.

22 A It would have been right there.

23 Q Go ahead and speak up.

24 A It would have been right about
25 bisecting our property.

1 MR. TEST: Judge, I need to see
2 where he pointed.

3 THE COURT: Halfway down the road,
4 past the building where the trees start.

5
6 BY MR. ISBRANDTSEN:

7 Q When he put up the fence, what did you
8 do?

9 A Asked him why he did it. He said his
10 vehicles that he had parked on his property were being
11 vandalized and he needed to protect them.

12 Q With that fence placed where it was,
13 did you have access to the rear part of your property?

14 A No.

15 Q And as a result of that, what did you
16 do?

17 A Removed it.

18 Q And then you put up your own fence?

19 A Yes.

20 Q Which was at the entrance to the DACS
21 property?

22 A Yes.

23 Q Was that fence, gate open during the
24 day, closed at night and closed on weekends?

25 A Closed at night but not locked, locked

1 on the weekends.

2 Q And shortly after you put that fence
3 up, was the gate removed?

4 A Yeah, it was torn off.

5 Q Did you later find that gate?

6 A Well, we had a call from a neighbor
7 that said he found one half of our gate in his
8 backyard.

9 Q As a result of that call, did you find
10 the gate?

11 A Yes.

12 Q Where did you find the gate?

13 A It was on the edge of our property but
14 on someone else's property.

15 Q Okay. Now, let me direct your
16 attention to August of 1992, and ask if you had an
17 occasion on a weekend to see a big dust cloud in the
18 back of your property and inspect?

19 A On Sunday morning I was driving to HQ
20 to get something, I don't remember specifically what
21 it was, but some hardware items to do some work around
22 the house, and as I rode west on Virginia Beach
23 Boulevard I saw a dust cloud. As I got closer to it,
24 I said that looks like it's on the back piece of my
25 property, so I turned off of Virginia Beach Boulevard

1 and pulled onto my property and drove back to the back
2 portion of my property.

3 Q What did you see?

4 A Dick Davis and a front end loader
5 moving trash onto our property.

6 Q From where?

7 A The direction was from his property.

8 Q Did you take photographs?

9 A Yes, I did.

10 Q Did you also take a videotape?

11 A Well, not a video of that.

12 Q You took a photograph?

13 A Yeah, I took photographs.

14 Q Let me show you these three
15 photographs and ask if you can identify those as the
16 photographs you took?

17 A Yes.

18 Q Can you date those, please, August of
19 1992?

20 A Yes. I can't remember the exact date,
21 but I know it was August.

22 THE COURT: Any objection, Mr.

23 Test?

24 MR. TEST: No, sir. Only to the
25 relevance of this. There's no claim.

1 THE COURT: I'm not sure really what
2 the relevance is.

3 MR. TEST: I think the relevance is
4 use is adverse.

5 THE COURT: It appears to me.

6 MR. ISBRANDTSEN: It also goes to
7 their implied easement theory.

8 THE COURT: I understand. It's sort
9 of appearing at this point it would be a
10 recitation of facts which leads me to
11 believe that if there hadn't of been all
12 of this problem on the use of the property
13 that didn't belong to Mr. Davis, we
14 probably wouldn't be here today, but
15 anyway, go ahead.

16 MR. ISBRANDTSEN: That would be then
17 18, Your Honor; is that right?

18 THE COURT: Exhibit 18.

19
20 (Whereupon, the document
21 referred to was marked as
22 Plaintiffs' Exhibit No. 18.)
23

24 BY MR. ISBRANDTSEN:

25 Q As a result of that, you had a

1 conversation with Mr. Davis, and did you again tell
2 him you didn't want him to use the access to the
3 property? What did you tell him with respect to using
4 the access to the property?

5 A At that time I didn't say anything
6 about access to the property, but I said, "What are
7 you going to do about this junk that you just moved on
8 this property," and he said, "I will have it off in a
9 day or two."

10 Q Did that happen?

11 A About a month.

12 Q Now, let me direct your attention from
13 that point, August of '92 through 1993, did you
14 continue to have disagreements with Mr. Davis
15 concerning both access to the property and use of your
16 property?

17 A Yes.

18 Q And let me direct your attention to
19 the fall of 1993, and ask if you made an attempt at
20 that point to block the access to stop him from going
21 in and out?

22 A Yes, we did.

23 Q And did you do that by placing a truck
24 across the access?

25 A Yes, we did.

1 Q Let me show you these two photographs
2 and ask if you can identify those as a photograph of a
3 truck that you all had placed in front of the access
4 and Mr. Davis' pickup truck next to it?

5 A Yes, that's what they are.

6 Q Is that the fall of 1993?

7 A Yes, it is.

8 THE COURT: It will be Plaintiffs'

9 19.

10
11 (Whereupon, the documents
12 referred to were marked as
13 Plaintiffs' Exhibit No. 19.)
14

15 BY MR. ISBRANDTSEN:

16 Q Now, what happened to that truck after
17 you placed it there?

18 A On a Saturday morning, Dick drove up
19 with a couple other people, put a chain around the
20 bumper of the truck, drug it away and put it in front
21 of our front door.

22 Q Did you have a conversation with him
23 about that?

24 A Yeah, I told him he was on private
25 property and what he was doing was illegal.

1 Q Did you call the police?

2 A Yes.

3 Q The police arrived after the fact?

4 A Yes.

5 Q Now, directing your attention now to
6 February of 1994, and ask if you again attempted to
7 block off the access?

8 A Yes.

9 Q And how did you do it that time?

10 A With a flatbed trailer.

11 Q And these are photographs of the
12 flatbed trailer, February of '94?

13 A Yes, they are.

14 THE COURT: Have you seen it, Mr.

15 Test?

16 MR. TEST: Yes, I have.

17 THE COURT: Plaintiffs' 20.

18

19 (Whereupon, the documents
20 referred to were marked as
21 Plaintiffs' Exhibit No. 20.)

22

23 BY MR. ISBRANDTSEN:

24 Q What happened to the flatbed?

25 A It was on a weekday morning because I

1 was coming to work about 8:30. Dick pulled up
2 followed by a flatbed with a front end loader. The
3 front end loader pulled off and plowed the flatbed
4 into the ditch along the side of the road, reloaded
5 the flatbed loader and took off.

6 Q And what was the effect on the
7 trailer?

8 A Twisted the frame of the trailer.

9 Q Were police called on that occasion?

10 A Yes.

11 Q Did you have discussions with Mr.
12 Davis at that time about not using the access?

13 A Yes.

14 Q From that point on, did you then put
15 more barriers up?

16 A Yes, we continued, we put the flatbed
17 back, we put a concrete plate.

18 THE COURT: Let me interrupt you.
19 All of this apparently is after this suit
20 was filed; is that not correct?

21 MR. ISBRANDTSEN: This part is.
22 This part is.

23 THE COURT: Let's leave it out.
24
25

1 BY MR. ISBRANDTSEN:

2 Q And then it stopped because of the
3 help of Mr. Test?

4 A Then what stopped?

5 Q Then there came a time --

6 THE COURT: That's fine.
7

8 BY MR. ISBRANDTSEN:

9 Q There was no more moving away the
10 barricades?

11 A No, there wasn't.

12 Q Now, let me go back to the time frame,
13 let's say 1990 forward, were you and Mr. Cross
14 planning to develop your property and acquire property
15 surrounding your property for development?

16 A We had been approached by different
17 developers with schemes, plans for developing the
18 property.

19 Q Is that all you all planned to do?

20 A Yes.

21 Q Did you share that with Mr. Davis back
22 then?

23 A Yes.

24 THE COURT: Back then, back when?
25

1 BY MR. ISBRANDTSEN:

2 Q Back in the 1990 time frame forward?

3 A Yes.

4 Q Is that when you had the discussion
5 with Mr. Davis about, "When you sell your property,
6 will you sell mine along with it?"

7 A Several discussions, yes.

8 Q But is that when that started?

9 A Yes.

10 Q As you had interest in your property,
11 did you discuss that with Mr. Davis and say yeah, we
12 have interest in the property, so on and so forth?

13 A Yes.

14 Q What problems, if any, do you have in
15 marketing your property with Mr. Davis' claimed use
16 across the front?

17 A Well, I mean, it taints the property.
18 You can't develop -- you can't buy adjacent pieces,
19 put it together into a larger parcel with it
20 potentially being bisected by a road.

21 Q You have surrounding your property
22 other property that the Parker estate owns, I guess
23 that comes out from Virginia Beach Boulevard from
24 yours; is that right?

25 A Yes.

1 Q And then to the west of your property
2 there's some Parker Road -- or Parker family property,
3 is there not?

4 A Not to the west.

5 Q So to the Virginia Beach Boulevard
6 side there's some Parker property and then between the
7 Parker property and the Lincoln Mercury dealer there
8 are also some other parcels?

9 A Five or six other parcels.

10 Q Have you been in contact with those
11 people and attempting through an agent to try to put
12 together an entire package?

13 A Yes.

14 Q Was there a time when you were
15 approached by an agent and a company called HQ --

16 A Yes.

17 Q -- talking about acquiring the overall
18 property?

19 A Through an agent, yes.

20 Q Now, was there a time when you became
21 aware that Mr. Parker -- I mean Mr. Davis had entered
22 into a written agreement with a Mr. Shepherd, who owns
23 the Lincoln Mercury dealer?

24 A I believe that information came back
25 to us through Divaris Real Estate.

1 Q You became aware of it?

2 MR. ISBRANDTSEN: Your Honor, I'm
3 looking at two exhibits, one of them is
4 called lease option.

5 THE COURT: Okay.

6 MR. ISBRANDTSEN: If we can stop and
7 stipulate that there is an agreement, it's
8 dated July 28, 1993, it's a lease option
9 by which Mr. Davis has agreed to lease for
10 five years to Mr. Shepherd, who owns the
11 Lincoln Mercury dealership --

12 THE COURT: Okay.

13 MR. ISBRANDTSEN: -- his property --

14 THE COURT: I understand.

15 MR. ISBRANDTSEN: -- and to give him
16 the option to buy it.

17
18 BY MR. ISBRANDTSEN:

19 Q You became aware of that. Did you go
20 and have a conversation with Mr. Shepherd, who is here
21 subpoenaed as a witness in this case?

22 A I called him on the phone.

23 Q And what was your concern at the time
24 you called him and what did you express to him as a
25 concern?

1 A That he had actually been approached --

2 Q Mr. Shepherd had been approached?

3 A Mr. Shepherd had been approached by
4 Divaris Real Estate to find out if he had any property
5 that he wanted to sell, that's what I was actually
6 calling him about, and what he advised me is that he
7 was actually in the process of acquiring Mr. Davis'
8 property.

9 Q Did he tell you what he wanted to use
10 it for?

11 A I think he said a paint and body shop.

12 Q Now, did you all talk about the
13 easement issue at that point?

14 A Several different times.

15 Q And what did you all talk about as to
16 what he wanted to use that property for?

17 A The first discussion was he said, "I
18 want to be a good neighbor, I don't want any problems,
19 I understand you have had problems in the past and you
20 won't have any problems with me."

21 Q What did he ask you to do with respect
22 to the easement issue, or what did he tell you he was
23 going to do?

24 A He said, "Access from across your
25 property is of no interest to me," and I said, "Do you

1 mind if I call my lawyer and have him contact your
2 lawyer to resolve this," and he said, "No, not a
3 problem," and he gave me the lawyer's name which I
4 gave to you.

5 Q That was Mr. Eric Hauser with Clark
6 and Stant?

7 A If you say so. I don't remember.

8 Q I don't want to say that. As a result
9 of all of that, it came to naught; right?

10 A Yeah. The end result, I believe I
11 contacted you a week later to find out what was going
12 on and you said you thought --

13 Q Don't say what we talked about, but it
14 didn't work?

15 A It didn't work.

16 Q Now, take the aerial photograph, if
17 you would, that you have in front of you, and show the
18 Judge where the Lincoln Mercury dealership is.

19 MR. ISBRANDTSEN: And Judge, what's
20 important is --

21 THE COURT: I know where it is.
22 Unless you want it marked for some other
23 issue, I know exactly where it is.
24
25

1 BY MR. ISBRANDTSEN:

2 Q Point out on that photograph and
3 explain to the Judge the condition of the foliage and
4 the trees in the area between the Lincoln Mercury
5 dealership at the time back in 1993?

6 A There was no access back here from
7 this property this way. They essentially plowed down
8 and removed any and all foliage and subsequently --

9 THE COURT: To get in there from the
10 used car lot.
11

12 BY MR. ISBRANDTSEN:

13 Q That photograph that the Judge is
14 looking at is dated June 22 of this year. What is
15 currently going on with respect to Mr. Davis'
16 building? Is Mr. Davis using it anymore?

17 A Not to my knowledge.

18 Q What is going on back there?

19 A I think they are working on cars,
20 paint and body shop. They have been doing a lot of
21 levelling and grading again. I understand that the
22 Lincoln Mercury dealer is about to expand his building
23 somehow.

24 Q Now, the leveling and grading that is
25 shown in that photograph has occurred within the last

1 month, has it not?

2 A Yes.

3 Q And prior to that, back in July of
4 '93, there was no access --

5 A No, there wasn't.

6 Q -- from the Lincoln Mercury dealer?

7 A No, there wasn't.

8 Q Do you see any indication on Mr.
9 Davis' property that he is using that property at all
10 for himself now, other than leasing it out?

11 A No.

12 Q If the Court does not issue an
13 injunction stopping Mr. Davis from using this access
14 on your property, what problems will you face in terms
15 of marketing and use of your property?

16 MR. TEST: Judge, I think that just
17 calls for speculation.

18 THE COURT: Is that an objection?

19 MR. TEST: It's an objection.

20 THE COURT: Sustained.

21 Any further questions, Mr.

22 Isbrandtsen?

23 MR. ISBRANDTSEN: I don't of this
24 witness.

25 THE COURT: All right, Mr. Test?

1 MR. TEST: Judge, if I could see the
2 plaintiffs' exhibit book. Judge, I direct
3 you to Plaintiffs' Exhibit 10.

4 MR. ISBRANDTSEN: Ten, you say?

5 MR. TEST: Yes.

6 Do you have a copy of that for the
7 witness, Mr. Isbrandtsen?

8 MR. ISBRANDTSEN: Yes, I do.

9
10 CROSS-EXAMINATION

11
12 BY MR. TEST:

13 Q Mr. Henning, you are familiar with
14 Plaintiffs' Exhibit 10 as the deed by which the
15 partnership, Parker Road Associates, acquired the
16 tract which you and Mr. Cross now own; is that right?

17 A Yes.

18 Q Okay. And on this board I've got up
19 here, which is different copies of the survey, what is
20 consistently in orange -- well, let's say what is in
21 orange as of the date of that deed, April 13, 1984, is
22 the tract that Parker Road Associates acquired?

23 MR. ISBRANDTSEN: Objection. The
24 document speaks for itself. It is the
25 entire orange area and this hash marked

1 area.

2 MR. TEST: Yes, it is.

3 THE COURT: That's clear.

4
5 BY MR. TEST:

6 Q We are talking act this 7.103 acres of
7 land, excluding that parcel that we have been talking
8 about Mr. Davis was using in the back; right?

9 A Yes.

10 Q Now, Parker Road Associates was a
11 Virginia general partnership and you were a general
12 partner?

13 A Yes.

14 Q And Mr. Cross was a general partner?

15 A Yes..

16 Q So prior to this time in 1984, you and
17 Mr. Cross really didn't have anything to do with this
18 property; your business was in Chesapeake?

19 A Yes.

20 Q But from 1984, when you acquired the
21 deed or when Parker Road Associates acquired the deed,
22 from April 1984 to the present, you and Mr. Cross had
23 been continuously involved with the ownership of this
24 parcel; is that right?

25 A Yes.

1 Q Is it correct that in April 1984
2 -- that property was then conveyed to another
3 company, Southeast Metal Deck, Incorporated in
4 December of '85, two years later?

5 A Yes.

6 Q And you were the president of
7 Southeast Metal Deck; right?

8 A Yes.

9 MR. TEST: Judge, as Defendants'
10 Exhibit 1, which will just follow along
11 with the chain of title of these
12 documents, I would like to introduce the
13 deed from --

14 MR. ISBRANDTSEN: We will stipulate
15 to all of the deeds.

16 THE COURT: Wait a minute. Are you
17 going to issue a series of deeds showing
18 the chain of title?

19 MR. TEST: Just from the last one
20 showing the chain of title to Parker Road.

21 THE COURT: Do you have them all?

22 MR. TEST: Yes.

23 THE COURT: We will make them
24 Defendants' Exhibit 1.

25 MR. TEST: For purposes of the

1 record, I would like to mark them
2 separately, Defendants' 1 through 4, I
3 think.

4 THE COURT: All right. Give them to
5 me.

6 MR. TEST: The first is Parker Road
7 Associates to Southeast Metal Deck.

8 THE COURT: Defendants' 1.

9
10 (Whereupon, the document
11 referred to was marked as
12 Defendants' Exhibit No. 1.)
13

14 MR. TEST: The second is a deed from
15 Frank Santoro, Trustee, to Messrs. Henning
16 and Cross.

17 THE COURT: Defendants' 2.

18
19 (Whereupon, the document
20 referred to was marked as
21 Defendants' Exhibit No. 2.)
22

23 MR. TEST: The third is the deed
24 from Mr. Henning and Mr. and Mrs. Cross to
25 Design Assistance Construction Systems

1 Corporation, which we have referred to as
2 DACS, and the fourth is the deed from Mr.
3 Henning and Cross.

4 THE COURT: Defendants' 4, all the
5 same property; correct? Do you stipulate?

6 MR. ISBRANDTSEN: Yes, if I could
7 just make this clear, the deed from
8 Santoro to Henning and Cross is totally
9 wrong, there's a deed of correction
10 recorded. Maybe it just wasn't picked up.

11 THE COURT: Did it have to do with
12 the description?

13 MR. ISBRANDTSEN: Yes. He conveyed
14 the wrong property.

15 THE COURT: It had to do with the
16 description, but you are stipulating it
17 was all the same property?

18 MR. ISBRANDTSEN: Right. There was
19 a mistake in that.

20 THE COURT: Okay.

21
22 (Whereupon, the documents
23 referred to were marked as
24 Defendants' Exhibit Nos. 3 and 4.)
25

1 BY MR. TEST:

2 Q From '84, Mr. Henning, until the
3 present time, or until August of '93 or September of
4 '93, when the suit was filed, we have talked a lot
5 about the problems you and your businesses have had
6 with Mr. Davis' use of the dirt road going across your
7 land. Is it correct that from April of 1984 to the
8 time suit was filed you knew that Mr. Davis was
9 regularly using the dirt road that goes across your
10 land?

11 A Yes.

12 Q And while you and Mr. Davis may have
13 different opinions after how often the use was, it is
14 correct that he used it fairly regularly?

15 A Yes.

16 Q Is it correct that he maintained it,
17 that he added gravel to it and fixed potholes on it?

18 A Yes.

19 Q Now, I believe your testimony, in
20 summary, over the past hour or so, has been that you
21 have been having problems with Mr. Davis' use of this
22 property since as early as 1986?

23 A Yes.

24 Q Do you recall your answers to
25 interrogatories that Mr. Davis' use of this road did

1 not become adverse to you until 1991 or 1992?

2 A Yes.

3 Q Is there some difference between your
4 answer that it wasn't adverse to you until the past
5 three years versus what you have told us about over
6 the past eight?

7 A Yes.

8 Q What is it?

9 A When at one point in time Mr. Davis
10 came back and said there is an easement in existence,
11 we went back and had our documents examined, and in
12 fact under the title insurance there was a clause in
13 there that said something about an easement.

14 Q Okay. So am I understanding right
15 that when you say his use was adverse beginning in '91
16 or '92, that was when you understood he was claiming
17 that he was using it because he had an easement as
18 compared to his use before by just being permission
19 from Mr. Parker?

20 MR. ISBRANDTSEN: Object. There's
21 no testimony that Mr. Parker gave him
22 permission and that is not the fact in
23 this case. He has not testified to that
24 and your client testified that he was
25 never given permission to use it.

1 MR. TEST: I'm talking about your
2 client's testimony.

3 THE COURT: Overrule the objection.
4

5 BY MR. TEST:

6 Q Didn't you testify earlier that you
7 talked with Mr. Parker and Mr. Parker told you I've
8 sold this building back here, which is what we are
9 talking about where Mr. Davis has been using the
10 property, I have sold the building to Mr. Davis and he
11 is going to use the property as long as he doesn't
12 interfere with you, isn't that what you said Parker
13 told you?

14 A Yes.

15 Q Are you saying there is some
16 distinction between the use Mr. Davis made from 1984
17 to 1991, that five or six years, as compared to his
18 adverse use since '91? Is there something different
19 in his use of it?

20 A Not in the adverse manner that he used
21 the property, no.

22 Q So then is it your position really
23 that Mr. Davis' use of this road over your property
24 since 1984 has been adverse to you?

25 A Yes.

1 MR. ISBRANDTSEN: Are we talking
2 about a legal perspective?

3 MR. TEST: I'm not asking a legal
4 question. I'm not asking you to define
5 adverse.

6 MR. ISBRANDTSEN: Okay.

7
8 BY MR. TEST:

9 Q All of these problems you talked about
10 having to do with Mr. Davis, the dumping of things on
11 your property, moving the barriers after you put them
12 up, is it correct that none of these things resulted
13 in you making any claim for damages against Mr.
14 Davis? You have no claim for damages against Mr.
15 Davis?

16 A No.

17 MR. ISBRANDTSEN: Object, Your
18 Honor. We have made no claim for damages
19 in this lawsuit.

20 MR. TEST: I will restrict it to
21 this lawsuit.

22
23 BY MR. TEST:

24 Q From whatever period of time to today,
25 July 7, 1994, you have made no claim for damages?

1 A No.

2 Q Is it correct that all you want the
3 Court to decide is if there is an easement on this
4 land and, if it is, what is it?

5 MR. ISBRANDTSEN: Objection, Your
6 Honor. Our pleading says what we are
7 asking for.

8 THE COURT: Go ahead. The pleadings
9 speak for themselves.

10
11 BY MR. TEST:

12 Q When you took the deed from George
13 Parker to your land, did you read it?

14 A No.

15 Q Did you know that there is some
16 language in there that reserves to the owner of this
17 parcel, Mr. Parker --

18 MR. ISBRANDTSEN: That is on
19 outrageous mistake. It says subject to
20 the old easement. The only language used
21 is you are taking subject to an easement
22 recorded in deed book such and such.

23 THE COURT: Overrule the objection.

24 MR. ISBRANDTSEN: He is saying
25 reserved and it doesn't say that. That's

1 the legal issue.

2 THE COURT: He can answer it.

3 MR. ISBRANDTSEN: He can look at the
4 document then.

5

6 BY MR. TEST:

7 Q You didn't read the deed when you took
8 it in? Have you read it since?

9 A Yes.

10 Q Do you know it contains language
11 concerning an easement over your land?

12 A Yes.

13 Q I take it back in 1984 -- who was your
14 attorney for Parker Road Associates in '84, George
15 Heilig?

16 A No, no, no, it was Kaufman & Canoles,
17 but I don't remember the specific attorney.

18 Q Do you know if your attorney had
19 reviewed the deed for you?

20 A I assumed they did.

21 MR. TEST: Let me mark this as a
22 defendants' exhibit for identification at
23 this point.

24 THE COURT: What is it?

25 MR. TEST: It's a title insurance

1 statement.

2 MR. ISBRANDTSEN: To make it clear,
3 there will be a series of title binders
4 and title documents that counsel would
5 offer which purport to show from a title
6 examiner's point of view the existence of
7 a recorded easement. It is the 1980
8 easement. They say that, and they have no
9 relevance and I object to the admission.

10 THE COURT: How is it relevant?

11 MR. TEST: This is a document
12 prepared by Lawyer's Title. A
13 representative of the company is here to
14 testify. It's in their file.

15 THE COURT: I understand.

16 MR. TEST: It shows that the title
17 examination performed advises Parker Road
18 Associates, as owners, of the existence of
19 an easement and takes an exception to it
20 for the insurance purposes.

21 THE COURT: I think it might be of
22 some relevance as far as notice is
23 concerned, but as far as the documents
24 themselves are concerned, they really
25 don't show me anything. The title

1 insurance company was right or it made a
2 mistake.

3 MR. TEST: I'm not putting it in for
4 whether they were right or wrong. They
5 were putting Parker Road Associates on
6 notice.

7 THE COURT: I will admit them all
8 into evidence only for the purpose of
9 showing that Parker Road Associates was on
10 some kind of notice that there was
11 possibly an easement in existence.

12 MR. TEST: That's what it was
13 offered for.

14 THE COURT: Do you have others?

15 MR. ISBRANDTSEN: He has a whole
16 series of them.

17 MR. TEST: I was putting that one in
18 because Parker Road Associates -- I have
19 another one.

20 THE COURT: Why don't you give me
21 all of those that you want admitted into
22 evidence for that purpose and I will mark
23 them as a series at this point.

24 MR. TEST: All right, Judge.

25 THE COURT: The one you have given

1 me --

2 MR. TEST: Judge, the second one,
3 which would now be --

4 THE COURT: This will be five, the
5 next one is six.

6 MR. TEST: TICOR policy dated
7 December 1985 for Southeast Metal Deck.

8 THE COURT: Defendants' 5 and 6.

9
10 (Whereupon, the documents
11 referred to were marked as
12 Defendants' Exhibit Nos. 5 and 6.)

13
14 THE COURT: Any further title
15 insurance?

16 MR. TEST: No.

17 THE COURT: Defendants' 5 and 6,
18 title insurance, I think one is a binder,
19 and title insurance policy, Defendants' 6,
20 will both be admitted into evidence as
21 Defendants' 5 and 6.

22
23 BY MR. TEST:

24 Q Mr. Henning, I think I recall your
25 testimony that the time you learned Mr. Davis

1 contended he had an easement was sometime in the early
2 '90's?

3 A Yes.

4 Q In your conversations with Mr. Davis,
5 is it correct that he always indicated to you that he
6 insisted he had the right to use the road but he
7 didn't use the word legal and he didn't use the word
8 easement?

9 A Yes.

10 Q Is it correct that as early as 1984 or
11 '85 when you first talked to Mr. Parker and Mr. Parker
12 made the statement to you that you have told us about
13 today about what use Mr. Davis could make of the road,
14 is it correct that from that date forward you have
15 always understood that Mr. Davis owned or had some
16 ownership rights that he was claiming to the parcel
17 back behind your land?

18 A Yes.

19 Q So it wasn't that he just owned the
20 building, you knew that he owned or was going to buy
21 the land?

22 A Vaguely. I never knew specifically
23 what the definition was.

24 Q Okay. In your testimony about when
25 Virginia Beach Boulevard was being widened and Dorey

1 Electric was parking some vehicles on your land, you
2 had a rent dispute with them and they moved their
3 vehicles off your land? Apparently they moved them
4 onto Mr. Davis' land or what?

5 A They occupied a trailer that was on
6 Mr. Davis' land, but Mr. Davis didn't have sufficient
7 land for them to store their equipment, so their
8 equipment was just moved to the back parcel of our
9 land just adjacent to Mr. Davis' land.

10 Q And eventually you got with Dorey
11 Electric and had them move that off, too; right?

12 A It was a long, slow process.

13 Q You told Mr. Isbrandtsen there came a
14 point in time when Mr. Davis gave you a copy of his
15 contract with Mr. Parker to buy the land that is now
16 -- we have been referring to as the Davis tract, it's
17 the parcel shaded in green back here that is behind
18 your parcel in orange?

19 A I understand.

20 Q Do you remember when he gave you that
21 contract? I didn't hear you testify about the dates.

22 A I would say '89, '90, maybe as early
23 as '88.

24 Q And in your discussions with Mr. Davis
25 when he would tell you well, look, when you decide to

1 sell your land, would you include my parcel in that
2 sale or get me an offer for that land, none of that
3 was ever in writing, was it?

4 A No.

5 Q And apparently later on he changed his
6 mind, didn't he?

7 A Yes. I mean, additionally, we told
8 him there were other options; he didn't have to sell
9 to us, he could go in the other direction.

10 Q And you related to the Court a
11 conversation you had with Mr. Shepherd sometime in
12 1993. Now, following the chain of title of the
13 documents we have introduced to the Court, you and Mr.
14 Cross have acquired it again in your own names being
15 men that are married; so your wives have an interest
16 in it?

17 A Only Mr. Cross is married.

18 Q Mr. Cross is married, you are not?

19 A I am married but my wife doesn't have
20 an interest in it.

21 Q I understand. That was in April of
22 '93; is that correct? I'm suggesting to you that's
23 the date on the deed.

24 A Okay, if that's the date.

25 Q Since April 1 of 1993, the date of

1 that deed, that's the way the ownership of this parcel
2 is today?

3 A Yes.

4 Q And it was since that time that you
5 had your conversation with Mr. Shepherd about what he
6 intended to do with the road across your land and so
7 forth?

8 MR. ISBRANDTSEN: Which conversation
9 are you talking about?

10 THE WITNESS: I'm a little lost.

11
12 BY MR. TEST:

13 Q The conversation I want to know about,
14 you testified about the conversation with Mr.
15 Shepherd, that he came to you, told you he was going
16 to enter into an agreement with Mr. Davis to lease
17 this property for five years and then have an option
18 to buy it, and that you didn't have to worry about his
19 use of the road over your land; when was that?

20 A They were different conversations.
21 The first conversation, I would say, was in the spring
22 of '93, when I first found out through Divaris Real
23 Estate that he had an interest in acquiring the
24 property and had a discussion with them. Subsequently
25 he came back to me and he asked could he have a copy

1 of our environmental report to use, preparing for
2 acquisition of the Davis property, and I gave it to
3 him to use to help him do whatever he was doing. That
4 was the time frame that we had the conversation about
5 he has no interest in crossing the land for any reason
6 and --

7 Q That's the conversation I want to
8 know. When did that take place, do you know?

9 A I would say it was the spring of '93.

10 Q And that was not in writing, was it?

11 A No, but I subsequently called Mr.
12 Isbrandtsen and told him that I had the conversation
13 with Mr. Shepherd and Mr. Shepherd had given me the
14 name of an attorney at Clark and Stant to contact who
15 was handling this matter, and I asked Carl to call
16 that particular attorney and have that verbal
17 agreement put in writing.

18 Q It's not in writing, is it? Mr.
19 Shepherd has never signed anything memorializing what
20 you say that agreement is; correct?

21 A No. After verbally agreeing and his
22 attorney agreeing, he recanted.

23 MR. TEST: Your Honor, I move to
24 strike the testimony about his attorney
25 agreeing. That was slipped in.

1 MR. ISBRANDTSEN: That was in answer
2 to his question.

3 THE COURT: We don't have a jury,
4 let's not worry about it. I don't pay a
5 whole lot of attention.

6 MR. TEST: One moment, Your Honor.
7 I think that concludes my questions. I
8 don't have any other questions of this
9 witness.

10
11 REDIRECT EXAMINATION

12
13 BY MR. ISBRANDTSEN:

14 Q Mr. Henning, when was the first time
15 that you ever saw any document at all relating to the
16 question of an easement, this particular easement?

17 A '91-'92, when the issue was raised by
18 Mr. Davis that there was an easement that existed. I
19 went back in detail through the documents and found
20 it. In fact, the title insurance said save and
21 except. I subsequently brought it to you and --

22 Q So that would be the '91 time frame?

23 A Yes.

24 Q Now, look at the Davis contract, and
25 what I want to ask you if you can just tell us looking

1 at this contract, which is Exhibit 11, which purports
2 to bear the date of the 28th of May of '81, and ask
3 when Mr. Davis actually signed it?

4 MR. TEST: Judge, it speaks for
5 itself.

6 MR. ISBRANDTSEN: I want to point it
7 out for the Judge.

8 THE COURT: Just point it out.

9 THE WITNESS: 14th of June '82.

10

11 BY MR. ISBRANDTSEN:

12 Q When was it recorded?

13 MR. TEST: Judge, it speaks for
14 itself.

15

16 BY MR. ISBRANDTSEN:

17 Q Was it recorded in 1985, a year after
18 you bought your property?

19 A It says June of '85, 20 June of '85.

20 Q So roughly a year after you bought
21 your property.

22 MR. ISBRANDTSEN: No other
23 questions.

24 THE COURT: All right.

25 MR. TEST: I do have a follow up.

RECROSS-EXAMINATION

BY MR. TEST:

Q I think you told us the first you ever knew of an easement was '91 or -- '90 or '91?

A Yes.

Q So Lawyers Title reported the easement to you at that time?

A No, no.

MR. ISBRANDTSEN: I call Dave Cross.

THE COURT: Mr. Isbrandtsen and Mr. Test, let me see you up here for a minute.

(Whereupon, there was a side bar
conférence out of the hearing of the
reporter).

ROBERT E. RICKETS

having been first duly sworn, was
examined and testified as follows:

DIRECT EXAMINATION

BY MR. ISBRANDTSEN:

Q Would you state your name?

1 A Robert E. Ricketts.

2 Q You are a police officer in the City
3 of Virginia Beach and you were so employed throughout
4 1994?

5 A Yes, I was.

6 Q Were you called to the subject
7 property in this case?

8 A Yes, I was.

9 Q Tell the Judge when you were called,
10 what you saw and what you did.

11 A It was approximately early spring
12 1994. I was called in reference to property that was
13 being discarded, trash that was being discarded on Mr.
14 Henning's property off of Parker Lane.

15 MR. TEST: I'm objecting to the
16 relevance at this point.
17

18 BY MR. ISBRANDTSEN:

19 Q What did you do? Who did you talk to?

20 A I went right to the property, spoke to
21 Mr. Henning. He explained the situation to me. I
22 went over and spoke to another gentleman who Mr.
23 Henning had pointed out to me.

24 Q This was the person Henning said was
25 doing the dumping?

1 A That's correct.

2 Q Did you have conversation with that
3 person as to who authorized him to do what he was
4 doing?

5 MR. TEST: I object; it's hearsay.

6 MR. ISBRANDTSEN: It's a statement
7 by Mr. Davis to this gentleman.

8 THE COURT: Overrule.

9 THE WITNESS: He stated that Mr.
10 Davis had told him to dump the property.

11
12 CROSS-EXAMINATION

13
14 BY MR. TEST:

15 Q Who was the person that you spoke to,
16 Officer?

17 A I don't have his name.

18 Q And he was the person that Mr. Henning
19 directed you to go speak to?

20 A He was the gentleman that was at the
21 back of the property he had observed.

22 Q Did you do any further investigation
23 to determine which Mr. Davis he meant?

24 A No, I did not.

25 MR. TEST: I don't have any further

1 questions. Thank you very much.

2 THE COURT: Thank you.

3 MR. ISBRANDTSEN: We rest at this
4 time, Your Honor.

5 THE COURT: Let's take a short
6 recess and we will come back and we will
7 be ready to go, Mr. Test.

8
9 (Whereupon, there was a recess).

10
11 MR. TEST: I call Mr. William
12 Shepherd, Your Honor.

13
14 WILLIAM R. SHEPHERD, JR.,
15 having been first duly sworn, was
16 examined and testified as follows:

17
18 DIRECT EXAMINATION

19
20 BY MR. TEST:

21 Q State your name for the record,
22 please.

23 A William R. Shepherd, Jr.

24 Q And Mr. Shepherd, what is your
25 position in relation to the Ford Motor Company,

1 Lincoln Mercury dealership on Virginia Beach Boulevard
2 located near the parcels that we have been talking
3 about?

4 A I own the property itself and I'm the
5 president and majority owner of the corporation.

6 Q And the corporation is named what?

7 A Lynnhaven Lincoln Mercury.

8 Q When did you acquire in your name
9 title to the real estate that the Lynnhaven Lincoln
10 Mercury sits on? Has it just been recent?

11 A Yeah, the last 30 or 45 days.

12 Q Prior to that time who owned the
13 property?

14 A It was owned by Ford Leasing and
15 Development, which is Ford Motor Company's sales
16 division.

17 Q How long has your company been
18 involved in operating the dealership on that site?

19 A I purchased the dealership in December
20 of '88.

21 Q Prior to December of '88, was there an
22 existing automobile dealership there?

23 A There's been one there for 20 years.

24 Q Are you a resident of Virginia Beach?

25 A Yes, I am.

1 Q How long have you been a resident of
2 Virginia Beach?

3 A Thirty years.

4 Q Is it your recollection that for the
5 20 years prior to 1988 there was a car dealership at
6 that location?

7 A Yes, there was.

8 Q I would like to call your attention to
9 the time frame of winter or spring of 1993, and ask
10 you to tell the Court when you first recall entering
11 into any discussions with Mr. Richard Davis about
12 ownership or use or lease or whatever of the property
13 Mr. Davis had use of or owned or had the rights to
14 that's located behind your dealership property, and
15 this is the Davis parcel we have been talking about.

16 A Mr. Davis approached me sometime in
17 the spring of '93 about, you know, whether I was
18 interested in the property or not.

19 Q Can you speak up a little bit?

20 A Mr. Davis approached me in the spring
21 of '93, I believe it was, as to whether I had interest
22 in getting the front from him, using the property.

23 Q Does this photograph accurately depict
24 the building that sits on the Davis parcel that's
25 located behind the edge of the real estate that you

1 now state that you own?

2 A Yes, it does.

3 Q Does this photograph also show the
4 real estate that you own?

5 A Yes, it does.

6 MR. ISBRANDTSEN: Could we establish
7 that that's a current photograph and not
8 the condition as it was in July of '93?
9 Because it has the access there, Steve.

10 MR. TEST: I understand.

11 MR. ISBRANDTSEN: We can stipulate
12 that there was no access back in '93 and
13 Mr. Davis cut the access.

14 MR. TEST: I'm going to represent to
15 him this is a photograph my paralegal took
16 sometime in the winter months of '94,
17 February or March of '94.

18 MR. ISBRANDTSEN: If we can
19 stipulate there was no access back in July
20 of '93 and Mr. Davis cut the access, that
21 will be fine.

22 MR. TEST: I don't want to stipulate
23 that. I will stipulate the photograph was
24 taken sometime in the winter of '94.

25 This will be the next defendants'

1 exhibit, Your Honor.

2 THE COURT: Defendants' 7.

3
4 (Whereupon, the document
5 referred to was marked as
6 Defendants' Exhibit No. 7.)

7
8 MR. TEST: Do you have the
9 plaintiffs' aerial photograph there,
10 Judge?

11
12 BY MR. TEST:

13 Q Now, Mr. Shepherd, Mr. Henning has
14 marked in yellow the building that is Mr. Davis'
15 building back there that you have just been shown in
16 that photograph. The photograph indicates your
17 parking lot. Would you mark for me with this pen so
18 the record differentiates that from -- tell me where
19 the back edge of your parking lot is adjoining that
20 property.

21 A The back edge of the Lynnhaven Mercury
22 Lincoln property?

23 Q Just approximately.

24 A I think that's it right there.

25 THE COURT: Is it the back of the

1 parking lot or the property line?

2 THE WITNESS: It would be the
3 property line, Your Honor.

4 MR. ISBRANDTSEN: So that would be
5 the difference between the dark and the
6 light color?

7 MR. TEST: Yes, the dark is asphalt.

8 THE WITNESS: I think that's exactly
9 what it is.

10 MR. ISBRANDTSEN: Shouldn't it be
11 marked all the way around? You just put a
12 short part there. See, he has just marked
13 it a little bit. Doesn't it run all the
14 way around?

15 THE WITNESS: Yes.

16 MR. TEST: Thank you, Judge. I ask
17 that the record reflect the black ink on
18 that photograph --

19 THE COURT: Do you agree it's
20 contiguous?

21 MR. ISBRANDTSEN: Yes.

22 MR. TEST: It's right here.

23 THE COURT: Right.
24
25

1 BY MR. TEST:

2 Q Now, at the time that you first spoke
3 to Mr. Davis when he approached you about whether you
4 had an interest in the property, tell the Court the
5 condition of that property line at that time.

6 A The property line had weeds and bushes
7 growing in between them. There was an old trash truck
8 up on one corner. I mean, you could not get through
9 the two pieces of property.

10 Q In fact, was there any travel between
11 the two pieces of property whatsoever?

12 A No.

13 Q At all to your knowledge?

14 A No, there was not.

15 Q After your first conversations with
16 Mr. Davis, what happened next?

17 A I told Mr. Davis that I was interested
18 in the property, yes, and at the same time I was in
19 the middle of buying the Ford Motor Company property
20 from them. That was most interesting dealing with
21 Ford Motor Company. But anyway, I was going through
22 that whole program at that point in time, too, so both
23 of these purchase options were going on at the same
24 time.

25 Q Okay. Did you subsequently enter into

1 the lease and option to purchase agreement which is
2 Defendants' Exhibit 15, I believe, introduced into
3 evidence?

4 THE COURT: Plaintiffs' 15.

5 MR. TEST: Plaintiffs' 15, I
6 apologize, Your Honor.
7

8 BY MR. TEST:

9 Q Mr. Shepherd, did you subsequently
10 sign that document?

11 A Yes, I did.

12 Q That was approximately July of '93?

13 A Yes, it was.

14 Q And is it your recollection that the
15 term of that lease runs for five years?

16 A It does.

17 Q And you have an option during that
18 lease term or at the end of it to purchase the
19 property from Mr. Davis?

20 A I do.

21 Q Now, from July of '93 to the present
22 time, tell the Court what use you have made of the
23 Davis property under the terms of that lease? What
24 have you done out there?

25 A Well, Mr. Davis made an access in

1 between the two pieces of property for us.

2 Q Which is the line that you have drawn
3 on the photograph?

4 A No, he did not do the whole access
5 line there. He opened up a place that we could go
6 through the two pieces of property.

7 Q But the place that Mr. Davis opened up
8 for you to go through is somewhere on that line?

9 A It's on that access line, yes, it is.

10 Q Tell us how he did that.

11 A I don't even know. I wasn't there.
12 We told him we had to have some access through there
13 if the property was going to be any good because the
14 road was blocked, and he said he would get it cleaned
15 up and put some rocks in there, so that's what he
16 did. I wasn't there when he did it.

17 Q Is there now access between the back
18 parking lot of your dealership and the Davis parcel?

19 A There is since then access through
20 there because I have operated it as a body shop so I
21 have opened it up as a body shop. We did body work
22 there for a few months and now we are doing paint and
23 body work. We just installed a paint booth in there.
24 We installed crush and run on there, so it was a
25 little neater, and took the trash away and tore all

1 the stumps out and had somebody haul that off. The
2 contractor that is building the building for me, we
3 are redoing the whole Lincoln dealership, the
4 contractor did that for me.

5 Q Since July of '93, what has been your
6 arrangement with whether or not Mr. Davis individually
7 continues to have any right to use any part of the
8 Davis property?

9 A Mr. Davis --

10 Q Differentiate for me, if you would,
11 between the building and the land.

12 MR. ISBRANDTSEN: Excuse me, are you
13 talking about an agreement separate from
14 the lease option agreement which controls
15 their rights, or over and above that, or
16 are you asking him to read what is in
17 there?

18 MR. TEST: I don't know.

19 MR. ISBRANDTSEN: I would like to
20 know if it's something separate from this
21 document. This sets forth their rights.

22 THE COURT: You can ask him that.
23 Go ahead.

24 THE WITNESS: Mr. Davis has the
25 right to store his trailers and keep his

1 equipment where he works on his trucks on
2 the left side up on the fence, up against
3 the interstate, and we in fact moved all
4 the trailers there and put them in a nice
5 neat line, and I think he has 50 feet and
6 he can put his tractor trailer that he
7 drives for a living there.

8
9 BY MR. TEST:

10 Q And has Mr. Davis been doing that
11 since July of '93?

12 A He has been storing his -- obviously
13 his three trailers are there, but he has not had his
14 tractor trailer there because it's really almost
15 impossible to get it on the lot without tearing up
16 Lincolns, because it would be expensive, so his
17 tractor has not been there.

18 Q Since July of '93, have you or your
19 Lincoln Lynnhaven Mercury dealership made any use or
20 made any attempt to use the dirt road that goes across
21 the lane crossing this property into the back of the
22 Davis property?

23 A No, it has been blocked.

24 Q Now, would you please discuss for the
25 Court any conversations you had with either Mr.

1 Henning or Mr. Cross about the following things: Your
2 agreement with Mr. Davis that we have just talked
3 about, your lease of the Davis property; or number
4 two, your use, if any, of the dirt road that runs
5 across this property in 1993.

6 A One of the two gentlemen, I wasn't
7 really sure who it was, as I told Carl earlier, it was
8 Mr. Henning I think, called me early in the process
9 and said that he had -- you know, he was concerned
10 about this dirt road thing and the access and the
11 easement through it. I told him at that point in
12 time, because I was still dealing with Ford Motor
13 Company then and I did not know what restrictions Ford
14 Motor Company would have on the property, that I would
15 deal with him at some point in time. I said, "Let's
16 talk about that at some point in time." At that time
17 I did not even have a written agreement with Mr.
18 Davis. I was in this process of trying to get some
19 survey work and environmental work done so that I knew
20 what I was buying or renting with an option to buy
21 when that took place, and he was kind enough to give
22 me the surveys that they had done. That was really
23 the extent of the conversation.

24 Q Did you have a conversation with them
25 more than one time?

1 A A couple of times. I saw him one time
2 in person because I picked up some plans at his office
3 and once or twice on the phone. He called me many
4 times but I just didn't return his calls.

5 Q And is it your recollection that these
6 conversations, telephone conversations or the personal
7 meeting took place sometime before the date of the
8 lease option purchase agreement, July of '93?

9 A Yes, I think they did.

10 Q To your knowledge, were they in the
11 spring or early summer of '93, leading up to that time
12 frame?

13 A Yes, I think they were.

14 Q You heard Mr. Henning testify earlier
15 about what he states that you said to him, that you
16 would make no use of the easement or you had no plans
17 to use it whatsoever?

18 A Right.

19 Q Did you make any statement like that
20 whatsoever?

21 A No, I did not.

22 Q Under the agreement that you have with
23 Mr. Davis, Plaintiffs' Exhibit 15, to your knowledge
24 is there a utility bill for the Davis parcel that
25 comes in on a regular basis?

1 A Yes, there's a bill for 130 Parker
2 Lane that comes to Lynnhaven Lincoln Mercury every
3 month.

4 Q Does your company pay that utility
5 bill?

6 A Lynnhaven Lincoln Mercury pays that.

7 MR. TEST: I just need to introduce
8 that and I think I'm done.

9 MR. ISBRANDTSEN: He has established
10 it. I don't see the relevance of paying
11 the utility bill to the City of Virginia
12 Beach.

13 MR. TEST: That there's a separate
14 utility bill for 130 Parker Lane.

15 MR. ISBRANDTSEN: That is not
16 relevant to the issues in this case. He
17 said he pays it.

18 THE COURT: Show him the bill.

19 MR. TEST: One second, Judge, there
20 is another document that he brought me
21 today. That will suffice.

22
23 BY MR. TEST:

24 Q Mr. Shepherd, do you recognize that
25 document?

1 A Yes.

2 Q Is that a copy of the utility bill for
3 130 Parker Lane you have received for June of 1994?

4 A Yes.

5 Q Does it show a photocopy of the check
6 showing that the dealership paid the bill?

7 A Yes.

8 MR. TEST: The next exhibit, Your
9 Honor.

10 MR. ISBRANDTSEN: My objection is
11 relevance. It doesn't show anything to
12 any issues in the case.

13 THE COURT: It's probably not real
14 relevant but I suppose to an extent it
15 is. Defendants' 8.

16
17 (Whereupon, the document
18 referred to was marked as
19 Defendants' Exhibit No. 8.)
20

21 CROSS-EXAMINATION

22
23 BY MR. ISBRANDTSEN:

24 Q Mr. Shepherd, there's no city water to
25 this property, that is the Davis property?

1 A There's a well there, I believe.

2 Q But no city water?

3 A There's no city water.

4 Q There's no city sewer or even a septic
5 tank on this property?

6 A No, sir, not at this point in time.

7 Q In fact, when you took over the
8 property and started doing the renovations, you
9 removed a semi-nonfunctioning toilet, did you not?

10 A We removed a toilet, yes.

11 Q And there are no toilet facilities on
12 this property?

13 A No, sir.

14 Q The property has never been, to your
15 knowledge, subdivided, that is the Davis property?

16 A I don't know.

17 Q There's no paved road or graded
18 surface of access to the property now other than
19 through your property?

20 A There's a gravel road to it. I walk
21 every month and there's a gravel road to people's
22 houses that I walk down the street.

23 Q That's the gravel road out to Virginia
24 Beach Boulevard to the parcel next door, isn't it?

25 A Yeah, but the gravel road is out to

1 Little Neck Road, the one I walk on.

2 Q Now, let's look at this photograph
3 right here, next to the yellow highlighted; right
4 behind it is a repair shop for automobiles, is it
5 not? Little Jaguar repair shop?

6 A There's a shop there. I'm not sure
7 what it is.

8 Q That has an access that goes all the
9 way out to Virginia Beach Boulevard, it goes all the
10 way out here, a gravel road?

11 A I'm not sure. I can't tell from the
12 trees here.

13 Q You have walked it, haven't you?

14 A No, I have not. I never have.

15 Q Has there ever been a subdivision plat
16 recorded, as far as you know, with respect to the
17 Davis property?

18 A I'm not sure what plats have ever been
19 recorded, sir.

20 Q You said you entered into an agreement
21 with Mr. Davis which has been marked as an exhibit in
22 this case?

23 A Uh-huh.

24 Q You are familiar with that document?

25 A Yes, I am.

1 Q Would you agree with me that nowhere
2 in that document do you make any mention of leasing or
3 having the option to buy an easement?

4 A My impression is that the easement was
5 a part of the property.

6 Q Well, would you agree that the word
7 "easement" isn't mentioned anywhere in this
8 document?

9 MR. ISBRANDTSEN: If counsel can
10 stipulate.

11 MR. TEST: I don't know if it is or
12 not.

13 THE COURT: What is it, Exhibit 15?

14 MR. ISBRANDTSEN: Yes, sir.

15 THE COURT: Take your time.

16
17 BY MR. ISBRANDTSEN:

18 Q The only recitation is to an exhibit
19 A, which is a legal description which does not include
20 any mention of an easement?

21 MR. TEST: It does have a reference
22 on paragraph three, use of the property.

23 THE COURT: Let him look and see
24 what he can find.

25 MR. ISBRANDTSEN: Not in my

1 paragraph three, so I want to make sure we
2 are on the same thing.

3
4 BY MR. ISBRANDTSEN:

5 Q Do you see any reference in paragraph
6 three about the word "easement?"

7 A It talks about utility easement.

8 Q Paragraph three?

9 A No, six.

10 Q Look at paragraph three, that's where
11 your counsel says there's some mention of it.

12 A It talks about quiet enjoyment.

13 Q Does the word "easement" appear
14 anywhere, to your knowledge?

15 A I'm on page one, so I mean --

16 MR. ISBRANDTSEN: I will stipulate,
17 if you will, there's no mention anywhere
18 of the word "easement."

19 MR. TEST: Judge, the document
20 speaks for itself. The word "easement" is
21 in paragraph six. If what he is asking is
22 there a specific reference to the easement
23 in the point of this litigation, I don't
24 know. If he says it's not.

25 MR. ISBRANDTSEN: I don't want to

1 make 20 minutes out of this thing.

2 THE COURT: I understand.

3
4 BY MR. ISBRANDTSEN:

5 Q You knew before you signed this
6 document from your discussions with my clients and
7 your discussions with Mr. Davis that there was a
8 dispute as to whether or not Mr. Davis had any rights
9 at all to access to the Davis property?

10 A Well, I knew that both parties were
11 disagreeing on whether there was an easement, yes,
12 sir.

13 Q And yet you signed this document after
14 that fact. And assuming that I'm correct, there was
15 no mention of an easement; you didn't ask that there
16 be a specific requirement put in this document that
17 Mr. Davis give you an easement?

18 A Yes, because I have an option to get
19 out of this in 60 days notice.

20 Q Have you exercised that option?

21 A No.

22 Q In fact, in the last 60 days you spent
23 substantial improvements?

24 A I put a paint booth in to comply with
25 the government regulations, but that can be moved.

1 Q How much money have you spent in the
2 last 45 days or agreed to spend in the last 45 days to
3 improve the property?

4 A I really have not spent a lot of money
5 on the property.

6 Q More or less than 25 thousand dollars?

7 A More than 25.

8 Q More or less than 50?

9 A More than 50.

10 Q Between 50 and 75?

11 A That's a good number.

12 Q And your agreement to buy the contract
13 is a hundred and 50 thousand?

14 A But the bulk of that money, 65
15 thousand was for a paint booth that can be moved at
16 any time.

17 Q You don't have room for a paint booth
18 on your property?

19 A Yes, I do.

20 Q But your plan and your current use of
21 the Davis property is to do body work, paint work for
22 the benefit of the Lincoln Mercury dealership;
23 correct?

24 A That is the current use that I have
25 for the property. That may not be the long-term use

1 for the property under the lease with Ford Motor
2 Company.

3 Q What will that long-term use be?

4 A If I sold the dealership to my
5 partners, Ford Motor Company takes back the land and
6 then the partners would have to rent the body shop if
7 they wanted to from me.

8 Q Okay.

9 A It could not have access through the
10 Ford property then.

11 Q But you do agree that at the time you
12 were negotiating with Mr. Davis there was no access
13 between the Davis property and your property but today
14 there is?

15 A Today there is.

16 Q And Mr. Davis, to the extent he feels
17 the need, is using that access from your property to
18 get to his?

19 A He is today because he doesn't have
20 the access from the access road.

21 Q Okay. Now, it is -- you had mentioned
22 that you had some discussions with Mr. Henning or Mr.
23 Cross --

24 A Right.

25 Q -- prior to the time the agreement was

1 signed. Tell me again the words you remember using to
2 them about the access.

3 A As I told you at that point in
4 depositions, I told them that, you know, I would work
5 this road thing out with them, we would talk about
6 this afterwards. I didn't have an agreement with Mr.
7 Davis at that point in time and I had not signed the
8 Ford agreement, so I did not know what the
9 restrictions on the Ford property were going to be.

10 Q As I understand, then Mr. Henning or
11 Mr. Cross come to you and said, I understand you have
12 an interest in buying this property, and you were
13 aware at the time they came to you that they had an
14 interest in developing their property and selling it
15 off to HQ, were you not?

16 A I'm not sure if I knew at that point
17 in time that they were trying to sell the property. I
18 knew at some point in time that they were trying to
19 sell the DACS property, the DACS property, to HQ,
20 because I had a real estate agent call me and I had
21 lunch with him; not for the purpose of the Davis
22 property, I never mentioned the Davis property with
23 him. As a matter of fact, I think I told you they got
24 upset with me because I didn't tell them about the
25 Davis property.

1 Q But the agent told you that Henning
2 and Cross --

3 A He was trying to buy my Lincoln
4 Mercury property. He wanted to put the Lincoln
5 Mercury property with the DACS property to sell to HQ,
6 is what he told me, and he had another parcel down at
7 Laskin Road that he could move the Lincoln dealership
8 to. I told him the Lincoln property couldn't be
9 moved; Ford Motor Company owned the property.

10 Q I understand all of that.

11 A Although I was buying it, they would
12 not move it.

13 Q At the time you had discussions with
14 Henning and/or Cross, you had two of them, you were
15 aware that they wanted to develop their property and
16 that the Davis claim to an access was an impediment?

17 A That's correct.

18 Q And you were aware that their position
19 was that Davis didn't have an access, a legal access?
20 That's what they told you; right?

21 A I'm not sure they did tell me that.
22 I'm not sure what they said on that.

23 Q Didn't they tell you that it was an
24 impediment that they wanted to resolve?

25 A I think they might have said that it

1 was something that they were trying to resolve with
2 him, yes.

3 Q And didn't you say to him at a
4 minimum, I will work this thing out with you down the
5 road at some point in time, I'm sure?

6 A Absolutely.

7 Q That's what you said?

8 A That's what I said.

9 Q At that time you never told them what
10 you meant by that?

11 A No, I did not.

12 Q And that in the back of your mind you
13 were thinking that you wanted them to pay you a
14 hundred and 50 thousand dollars for that, which was
15 equal to the value of the property that you were
16 buying from Mr. Davis so you could get the Davis
17 property for free; isn't that true?

18 MR. TEST: Irrelevant. It's
19 completely irrelevant if he didn't tell
20 them.

21 MR. ISBRANDTSEN: No, it's not.

22 THE COURT: Overrule.

23

24 BY MR. ISBRANDTSEN:

25 Q Isn't that what you said?

1 A At one point in time everybody seemed
2 so excited about this property I thought maybe this
3 thing is worth a lot of money. I thought I may get
4 this property for free.

5 Q As a result of that, you called your
6 lawyer, Eric Hauser, and told him no, don't draft an
7 agreement which conveys the easement back to my
8 client; isn't that true?

9 MR. TEST: That's attorney-client
10 confidential information.

11 THE COURT: Overrule the objection.
12

13 BY MR. ISBRANDTSEN:

14 Q Isn't that true?

15 A I'm not sure if I told Eric or Eric
16 told me.

17 Q That's the upshot?

18 A Not to talk about the easement until
19 we get the easement signed.

20 Q Because you had them over a barrel;
21 isn't that true?

22 A I don't know.

23 Q You are nodding your head. Didn't you
24 feel you did?

25 A No, I don't think I did because I

1 thought the HQ property was -- they needed the Lincoln
2 property, they told me, to make it happen.

3 Q So you were in essence holding up the
4 easement issue so they would come buy the Lincoln
5 property?

6 A The Lincoln property, I told everybody
7 from day one, could never be sold to anybody. It took
8 me five years to buy the Lincoln property and only did
9 I get to buy the Lincoln property because I was on the
10 national dealer council for Ford and Red Polling, when
11 he was chairman, told leasing to sell it to me.

12 Q Aren't you funding this litigation?

13 MR. TEST: It's not relevant.

14 MR. ISBRANDTSEN: It is relevant to
15 the issue. This defendant, Mr. Davis, has
16 nothing to do with this business, has
17 nothing to do with it.

18 THE COURT: What do you mean by
19 funding?

20

21 BY MR. ISBRANDTSEN:

22 Q Aren't you paying the attorney's fees?

23 MR. TEST: Same objection.

24 THE COURT: Sustain the objection.

25 MR. ISBRANDTSEN: I would like to

1 proffer.

2
3 BY MR. ISBRANDTSEN:

4 Q Aren't you paying the attorney's fees
5 in this case?

6 MR. TEST: Same objection.

7 THE COURT: I sustained your
8 objection. He is merely vouching the
9 record at this point.

10
11 BY MR. ISBRANDTSEN:

12 Q Isn't that true?

13 A I told Mr. Davis we would work it out.

14 Q Just like you told this gentleman you
15 would work it out, Mr. Henning?

16 A That's what I told Mr. Davis.

17 Q Have you been paying for the
18 litigation?

19 A I'm not sure I have paid any bills
20 yet.

21 Q Is it not your intention now that,
22 when you buy this property or continue to use the
23 property, that is the Davis property, you want to use
24 the access across the Henning and Cross property for
25 the purpose of bringing in new cars for the

1 dealership?

2 A Well --

3 Q Can you answer it yes or no and then
4 explain your answer?

5 A Primary, or I mean --

6 Q Isn't that a purpose? I'm going to
7 give you three. That's the first one. Isn't that one
8 purpose?

9 A Yes, that's a purpose. That's not the
10 primary purpose. The primary purpose would bring
11 wreckers in for the body shop, bring cars in to the
12 body shop, because they are tough to move around.

13 Q One purpose is you want to bring in
14 New Car Carriers bringing in new cars to unload them
15 on the Davis property to bring them into the
16 dealership?

17 A That is a by-product benefit, that is
18 not the primary purpose.

19 Q I understand that. That's one
20 purpose?

21 A Yes.

22 Q Another purpose is that you want to
23 bring in wrecked cars across the Henning and Cross
24 property for the purpose of taking them to the body
25 shop so they can be repaired and repainted?

1 A That's the primary purpose, yes.

2 Q And a third purpose is that you want
3 to bring in new auto parts across the Henning and
4 Cross easement for the purpose of transporting them to
5 the car dealership?

6 A To the body shop and the car
7 dealership.

8 Q Both? In other words, you want to use
9 the access to benefit not only the Davis property but
10 the Lincoln Mercury dealer?

11 A Obviously if I could use it to benefit
12 the Lincoln Mercury dealership I would, but the
13 primary purpose is to bring the wrecked cars and get
14 the wrecked cars off the new car display so when
15 somebody is looking at a new car they are not looking
16 at a car that is beat up like the one they are
17 buying. It makes it hard to sell.

18 Q And the money for the repairs goes to
19 the Lincoln dealership?

20 A Yes.

21 Q And the cars, once it is fixed up,
22 will be right out the driveway to the Lincoln Mercury
23 dealership and that's where the folks will pick up
24 their car?

25 A They will pick it up at the body shop.

1 Q Have you paved around the area yet?

2 A No.

3 Q When will you pave that?

4 A It depends on how the construction
5 goes.

6 Q Your plan is to pave it and pave the
7 entire parking area?

8 A No, we will not pave the entire
9 parking area.

10 Q You are sprucing up the entire
11 dealership?

12 A Yes.

13 Q But you don't intend to repave that
14 road?

15 A Not the whole block. There will be
16 some areas repaved.

17 Q You're saying that you have given Mr.
18 Davis the right to store his trucks or trailers in the
19 area, the 50-foot area claimed to be an easement?

20 A Yes.

21 Q And he has in fact been doing that?

22 A He has his trailers there but I don't
23 think he has had his truck there.

24 Q Has he had something there stored,
25 parked in the middle of the area claimed as an

1 easement?

2 A There might be a trailer that when we
3 were cleaning up he moved over to there.

4 Q And it's been there for months?

5 A No, sir.

6 Q For how long?

7 A We just cleaned it up in the last week
8 or ten days.

9 Q And before that, was he not storing
10 vehicles on that 50-foot area?

11 A On what 50-foot area?

12 Q The 50-foot area that he claims or you
13 claim to be an easement?

14 A How far before that, Carl?

15 Q You have only been involved from
16 Spring of '93, from that point forward.

17 A He has had tractor trailers there
18 sometimes and he has had his pickup truck there and of
19 course he has his three trailers there that he stores.
20 I mean, these trailers don't leave, they are always
21 there.

22 Q So he has been using the property with
23 your permission as a lessee; in other words, you have
24 the sole right to the property, he has been using it
25 for storage purposes?

1 A That's right. We gave him that right.

2 Q Have you ever read the easement, the
3 actual recorded document in this case?

4 A I don't think so, no.

5 Q How often is Mr. Davis on that
6 property nowadays?

7 A Carl, I really can't tell you
8 honestly. I am at that dealership one day a week,
9 maybe two days a week for a few hours in the morning
10 after I leave my house. I do not have an office at
11 that dealership.

12 Q You haven't seen him there in a long
13 time, have you?

14 A I have seen him there a few times,
15 yes, sir.

16 Q Is he doing any business there?

17 A What do you mean by business?

18 Q Any business.

19 A I seen him opening up his trailers
20 there a few times and getting some things out.

21 Q But he is not using the building for
22 any purpose?

23 A No, he is not using the body shop.

24 Q And there is only one building on the
25 Davis property?

1 A Right, but he has storage trailers
2 there that open up and slide up, container trailers.
3 They are big trailers you walk into.

4 MR. ISBRANDTSEN: Nothing further.

5 THE COURT: Any redirect?
6

7 REDIRECT EXAMINATION
8

9 BY MR. TEST:

10 Q Mr. Shepherd, in discussing with Mr.
11 Isbrandtsen your planned uses of the easement in the
12 future, should the future come around that you do
13 that, since July of '93 to today, is it correct that
14 you have made absolutely no use of that easement for
15 any purpose?

16 A I have not used that easement at all,
17 no, sir.

18 MR. TEST: That's all the questions
19 I have.
20

21 RECROSS-EXAMINATION
22

23 BY MR. ISBRANDTSEN:

24 Q Isn't it true that you have used that
25 property when Mr. Davis removed the barriers, you

1 brought wreckers in and out; isn't that true?

2 A No, I can't say that that's true and I
3 don't know that it is or it is not true because I'm
4 there for an hour or so in the morning.

5 Q So you can't say --

6 A I can say that I have never used the
7 easement or that the dealership has never used the
8 easement on a continuous basis, no, because it's been
9 locked.

10 MR. ISBRANDTSEN: Thank you.

11 MR. TEST: I don't have any other
12 questions.

13 THE COURT: Thank you. Is Mr.
14 Shepherd needed any further for anything?

15 MR. TEST: No, sir.

16
17 (Whereupon, the witness was excused).
18

19 THE COURT: Who do you have next?

20 MR. TEST: Mr. David Nelson, Your
21 Honor.

22

23

24

25

1 DAVID P. NELSON

2 having been first duly sworn, was
3 examined and testified as follows:

4
5 DIRECT EXAMINATION

6
7 BY MR. TEST:

8 Q State your name for the Court, please.

9 A David P. Nelson.

10 Q Mr. Nelson, what is your occupation?

11 A I am commercial transactions counsel
12 for the Southeastern Virginia office of Lawyer's Title
13 Insurance Corporation.

14 Q How long have you had that position?

15 A For about a year.

16 Q Tell me, please, about your
17 educational background, beginning with your college
18 degree.

19 A My undergraduate degree --

20 MR. ISBRANDTSEN: If they are going
21 to offer him as an attorney title
22 insurance expert, we will be glad to
23 accept him for that purpose.

24 MR. TEST: That's what he is offered
25 for, Judge.

1 MR. ISBRANDTSEN: Otherwise, I won't
2 have any business anymore.

3
4 BY MR. TEST:

5 Q Mr. Nelson, did your company, Lawyers
6 Title Insurance Corporation, provide a written opinion
7 as to the status of the title to the parcel we have
8 talked about as the Davis parcel in 1993?

9 A Yes, we did.

10 Q And do you have a copy of that with
11 you?

12 A Yes, I do.

13 Q Relating specifically to the fact that
14 your company did the title run up, from the point in
15 time, I think it was September of '93, September of
16 '93 when you issued that opinion, going back, how far
17 back did your company search the title records?

18 A The title records were searched
19 initially for a purpose of the title examination back
20 to an owner's policy issued to Parker Road Associates
21 when they acquired the property in 1984. Later, at
22 the request to find some additional information about
23 the easement, we did do additional title work back
24 until 1973.

25 Q The owner's policy you are talking

1 about in 1984 to Parker Road Associates is Defendants'
2 Exhibit 5?

3 A Yes, it is.

4 Q Then going back to 1973, have you
5 performed an examination of the land records in the
6 Circuit Court of the City of Virginia Beach to
7 ascertain who the owners were of the Henning and Cross
8 parcel and the Davis parcel from 1973 to today?

9 A Yes.

10 Q Let's just briefly go through this
11 chart I've got up here, if I may. All of these
12 documents you have in front of you, is it correct in
13 August of '73 it was entirely one parcel as I have
14 shaded here in orange and the title was held by J. K.
15 Parker, Inc.?

16 A That is correct.

17 Q And at that time was the legal
18 description of the parcel 7.103 acres, the metes and
19 bounds description?

20 A Yes.

21 MR. ISBRANDTSEN: I don't mind if he
22 leads him straight through this.

23
24 BY MR. TEST:

25 Q Did you find on November 18, 1976,

1 there was a deed from J. K. to a company called Parkco
2 Building of the entire 7.103 acres?

3 A Yes.

4 Q Did you find that on August 10, 1978,
5 was the first appearance in the title documents of a
6 description of this separate parcel we have called the
7 Davis parcel and that Parkco Building Corporation,
8 owning the whole 7.103 acres, deeded a small portion
9 at the northeastern corner into George J. Parker?

10 A Yes.

11 Q Is it correct that the legal
12 description of the small parcel that Parkco Building
13 Corporation deeded in was a description of the entire
14 7.103 acres with the words "less and except" a metes
15 and bounds description of the small George Parker
16 parcel?

17 A The deed into Parker?

18 Q Yes, sir. I'm trying to get to a
19 discussion by you of how was --

20 MR. ISBRANDTSEN: Can we stipulate
21 that's not what it was? It's not less and
22 except. It's just the metes and bounds
23 description of the small parcel.
24
25

1 BY MR. TEST:

2 Q Is that how Parkco Building
3 Corporation conveyed it?

4 A Yes.

5 Q At that time, from your review of the
6 land records, August 10, 1978, was there an existing
7 easement recorded in anyway to Mr. George J. Parker
8 for the small green parcel we have now called the
9 Davis tract?

10 A No, the act of conveying the separate
11 parcel created a landlocked parcel.

12 Q What do you mean landlocked? Did the
13 parcel have any access to any public road?

14 A There was no recorded access at that
15 time.

16 Q Now, come forward in time from August
17 10, 1978 to July 11, 1980. Did you find recorded the
18 deed of easement from Parkco Building Corporation to
19 George J. Parker?

20 A Yes, we did.

21 Q And there's a description of that
22 easement, a 50-foot width along the north boundary
23 line from Parker Lane to the Davis tract?

24 A Generally, it would require some
25 interpretation because there is a discrepancy in the

1 description, but in the actual granting of the
2 easement it's described as both a 30 foot and a
3 50-foot easement, but the recitations of 30-foot
4 easements were stricken through, changed to 50 feet in
5 both the printed and numeric characterizations in the
6 description, and it appears that the parties initialed
7 the change.

8 MR. TEST: Is there any question in
9 this litigation, Mr. Isbrandtsen, whether
10 or not if there is an easement, if it's 30
11 or 50 feet?

12 MR. ISBRANDTSEN: In this litigation
13 there is not any question on that issue.
14 We have not asked for an interpretation of
15 the easement. We simply say it doesn't
16 exist.

17
18 BY MR. TEST:

19 Q Mr. Nelson, have you formed an
20 opinion, subject to a ruling of this Court, as to
21 whether or not an easement exists?

22 MR. ISBRANDTSEN: Object. An expert
23 is not permitted to give an opinion on a
24 legal issue.

25 MR. TEST: I'm not asking him that.

1 Subject to the Court ruling.

2 THE COURT: Sustain the objection.

3 It is the ultimate fact in issue.

4 MR. ISBRANDTSEN: There's been a
5 change to the statute and the changed
6 statute says you can get to some ultimate
7 facts now but you cannot get to legal
8 issues, and that's just a brand new
9 change.

10 THE COURT: I understand.

11
12 BY MR. TEST:

13 Q Do you have an opinion as to how wide
14 the easement is, based on your review of the July 11,
15 1980 document?

16 MR. ISBRANDTSEN: He cannot testify
17 and it's not a fact in this case.

18 THE COURT: How wide it is? I
19 thought he stipulated it has nothing to do
20 with this case.

21 MR. ISBRANDTSEN: It either exists
22 or doesn't exist.

23
24 BY MR. TEST:

25 Q Now, Mr. Nelson, as of July 11th,

1 1980, the deed of easement is recorded. Which of the
2 two parcels, being the Parkco Building Corporation
3 parcel or the George J. Parker parcel, is the dominant
4 estate on July 11, 1980?

5 A The dominant estate would be the
6 George J. Parker and the subservient would be the
7 Parkco Building.

8 Q Are there different ways to create a
9 record easement?

10 A Yes, there were different ways of
11 doing so.

12 Q What are the ways of doing so?

13 A You can create an easement in the --

14 MR. ISBRANDTSEN: Object. There is
15 law that tells us how you do it. You
16 grant and convey an easement, that is an
17 express easement, or you may reserve an
18 easement, that is an easement by
19 reservation, but he can't tell us what
20 those ways are. That is giving an
21 interpretation to a document, which he
22 can't do.

23 THE COURT: Sustain the objection.
24
25

1 BY MR. TEST:

2 Q Mr. Nelson, do you have an opinion
3 whether the deed of easement dated July 11, 1980 was
4 the proper form of document to create the easement
5 that --

6 MR. ISBRANDTSEN: Object, Your
7 Honor.

8 THE COURT: Overruled.

9 THE WITNESS: Yes.

10
11 BY MR. TEST:

12 Q Now, do you have an opinion as to
13 whether or not the easement existed as of July 11th,
14 1980?

15 A Yes, I have an opinion.

16 Q What is that opinion?

17 A It did exist as of July 11, 1980 as of
18 record. It actually existed prior to that at the --

19 MR. ISBRANDTSEN: Object, Your
20 Honor. He is asking about the July 1980
21 document.

22 THE COURT: Sustain the objection.

23
24 BY MR. TEST:

25 Q Do you have an opinion as from August

1 10, 1978 to July 11, 1980, there was an easement for
2 the George J. Parker parcel?

3 A Yes.

4 Q In spite of the fact that no deed of
5 easement was recorded before July 11, 1980?

6 MR. ISBRANDTSEN: Object. He cannot
7 give an opinion as to whether or not there
8 was a preexisting easement. That is an
9 ultimate fact in issue that calls for a
10 legal conclusion. Counsel has said there
11 may be an existing easement by necessity
12 or preexisting use. He cannot give you an
13 opinion as to whether or not those two
14 situations existed.

15 THE COURT: Sustain the objection.
16

17 BY MR. TEST:

18 Q Let's come forward in time now, Mr.
19 Nelson, to May 28, 1981. Did you find a document
20 recorded on that date that indicated that Mr. George
21 J. Parker had done something with the ownership
22 interest he had in the Parker property, which is the
23 green property here?

24 A It was not recorded on that date but
25 it was dated that day.

1 Q That's the contract between Mr. Parker
2 and Mr. and Mrs. Davis?

3 A Yes.

4 Q And you found that that document was
5 recorded sometime in 1985, I think; correct?

6 A June 20th, 1985.

7 Q Now, let's go to July 22nd, 1980. Did
8 you find a document that in some way impacted the
9 title to the two parcels, the Parkco Building
10 Corporation parcel and the George J. Parker parcel as
11 of July 22, 1980? What took place?

12 A There was a deed of trustee under a
13 deed of trust. They had been originally taken out by
14 J. K. Parker, Incorporated and that subsequently the
15 property had been conveyed into other owners subject
16 to the lien on this deed of trust, and the trustees's
17 deed was dated that date and acted to vest title to
18 both the benefited and burdened parcel in George J.
19 Parker.

20 Q So as of July 22, 1980, George J.
21 Parker owns the entire parcel in its entirety, the
22 same way the parcel existed in full ownership to
23 Parkco Building Corporation back in '76; is that
24 right?

25 A That's correct.

1 Q As of July 22, 1980, what has happened
2 to the easement that was recorded July 11, 1980?

3 A At the time of vesting title in a
4 common owner, there would be what's called a merger of
5 title, in that the benefited and burdened estate have
6 come under a commonality of ownership, and there being
7 no express intention to maintain the easement, it
8 ceased to exist at that time.

9 Q Okay. Now, is that doctrine of merger
10 something that you are familiar with in your expertise
11 as a lawyer who does title searches and in your
12 professional occupation?

13 A Yes.

14 Q To your knowledge, do you apply the
15 doctrine of merger under any circumstances other than
16 unity of title?

17 A Yes.

18 Q You do? When?

19 A Well, as far as easements are
20 concerned, that's one way. The other way would be in
21 a situation where a lender may agree to take back
22 property in a means other than a foreclosure, such as
23 a deed in lieu of foreclosure, and the lien itself,
24 once the estate merged, the ownership merged with the
25 party that holds the lien, absent an express intention

1 to maintain the easement, the lien merges and
2 therefore it is extinguished.

3 MR. ISBRANDTSEN: Your Honor, I
4 would object and move to strike. It has
5 - nothing to do with the facts of this case.

6 THE COURT: Sustain the objection.
7

8 BY MR. TEST:

9 Q Mr. Nelson, did you find anything at
10 all of record as of July 22, 1980, that indicated to
11 you that Mr. Parker was in anyway attempting to
12 maintain or reserve or keep the easement of July 11th,
13 1980?

14 A At that time, no.

15 Q Now, let's come forward to April 13th,
16 1984, at which time the entire 7.103 acres is again
17 divided in terms of ownership, and tell the Court what
18 you found by document on that date?

19 A On that date, George Parker and
20 Patricia L. Parker, his wife, conveyed the property,
21 the orange colored property there, to Parker Road
22 Associates, a general partnership consisting of David
23 J. Cross, John T. Henning, Harold Scattergood and P.
24 Arthur someone, Peregoff or something it looks like.
25 It conveyed the property with reference to the orange

1 plat saying saving and excepting the small piece in
2 the back that we will call the Davis, call the Davis.

3 MR. ISBRANDTSEN: I just ask that
4 you read the paragraph. He is paraphrasing
5 it.

6 THE COURT: I have read it.

7 THE WITNESS: It says subject to the
8 easement. It makes a general exception to
9 the easement and specific one to the one
10 in question.
11

12 BY MR. TEST:

13 Q Mr. Nelson, did you determine as of
14 April 13th, 1984, whether this Parker parcel that was
15 not conveyed out at that time had any access to any
16 public road other than across the area which was
17 previously described in the July 11 easement?

18 A No, that was still the only means of
19 access.

20 Q Go from that point, April 13, 1984, to
21 current. Is it correct that you found on December
22 6th, 1985, Parker Road Associates conveyed the same
23 property it owned to Southeast Metal Deck, Incorporated

24 A Yes.

25 Q And on May 21, 1988 Southeast Metal

1 Deck, Incorporated conveyed that same property to Mr.
2 Henning and Mr. and Mrs. Cross?

3 A Actually there was a foreclosure of
4 another deed of trust and the trustee under that -- or
5 actually the substitute trustee under the deed of
6 trust conveyed it to Mr. Henning and Mr. and Mrs.
7 Cross.

8 Q So is it correct that the day before
9 that conveyance the property was still completely
10 owned by Southeast Metal Deck, Incorporated?

11 A Depending on the date the foreclosure
12 was, but let's say yes.

13 Q As of May 21, 1988, was this the same
14 parcel that is then owned by Mr. Henning and Mr. and
15 Mrs. Cross?

16 A Yes.

17 Q And has that same property gone
18 through two more title changes, the first September
19 23, '88 to the corporation known as Design Assistance
20 Construction Systems?

21 A Correct.

22 Q And that was from Mr. Henning and Mr.
23 and Mrs. Cross?

24 A Yes.

25 Q And then that corporation, referred to

1 as DACS, conveyed that same property back to Mr.
2 Henning and Mr. and Mrs. Cross on April 12, 1993?

3 A Yes.

4 Q Is that the current status of that
5 property today?

6 A Yes.

7 Q From April 13, 1984, when Mr. Parker
8 conveyed that property that Mr. Henning and Cross now
9 owned and kept to himself the parcel we have talked
10 about as the Davis tract, is the ownership of that
11 parcel unchanged to today, July 7, 1994?

12 A Subject to the contract that was
13 recorded in favor of Mr. and Mrs. Davis, yes.

14 Q And that's the contract that was
15 recorded in 1985 you found dated May 28, 1981?

16 A Yes.

17 Q Now, after your review of all of those
18 title documents, did you prepare a title commitment
19 for Mr. and Mrs. Richard Davis dated September 21,
20 1993, and follow that up with your letter of December
21 8, 1993 to my law firm --

22 A Yes.

23 Q -- regarding the existence of the
24 title on this property?

25 A Yes.

1 MR. ISBRANDTSEN: I would object to
2 anything to do to these title opinions
3 given to Mr. Davis. It has nothing to do
4 with the facts you have to determine. You
5 allowed the previous documents in on the
6 question of notice, but title commitment
7 to Mr. Davis is irrelevant to the facts
8 before us.

9 MR. TEST: Judge, I don't think it
10 is.

11 THE COURT: What's the relevance?

12 MR. TEST: The relevance is that
13 this expert in the field of title
14 examination has performed a title
15 examination of this property for my
16 client, Mr. Davis, and issued him a
17 written opinion about that, which we want
18 to put into evidence.

19 THE COURT: The issue is not whether
20 Mr. Davis thought he had an easement. The
21 issue is whether he has an easement.

22 MR. ISBRANDTSEN: Judge, to make it
23 clear --

24 THE COURT: Wait, Mr. Isbrandtsen.

25 MR. TEST: And to aid the trier of

1 fact in a determination as to whether or
2 not there has been an easement of record
3 from any point since July 11th, 1980 on.
4 We know Mr. Nelson's opinion.

5 THE COURT: We pretty much zeroed in
6 on the issue at this point. The key is
7 April 13th, 1984, that's the key.

8 MR. ISBRANDTSEN: That's right.

9 THE COURT: In '84 it either came
10 back or it didn't. That's the whole
11 thing.

12 MR. TEST: That's what we are here
13 about, to summarize in a nutshell, and I
14 think this witness' testimony on that in
15 the form of expert testimony --

16 THE COURT: I'm going to allow it
17 and I'll just say it goes to the weight
18 and not to the admissibility, Mr.
19 Isbrandtsen.

20 MR. TEST: That should be the next
21 Defendants' exhibit.

22 THE COURT: Are there two of them?

23 MR. ISBRANDTSEN: Can you give me a
24 copy? I have not been provided that one.

25 MR. TEST: I sent them both to you.

1 MR. ISBRANDTSEN: Not the Davis one.

2 MR. TEST: I sent them both to you
3 on March 28th.

4 MR. ISBRANDTSEN: I'm just looking
5 for the Davis opinion. This is not an
6 opinion on the Davis property. This is an
7 opinion on all the properties that you are
8 showing me now. That one you have given
9 to me.

10 THE COURT: Which one you are
11 looking for?

12 MR. ISBRANDTSEN: You haven't given
13 me this one, September 21, 1993.

14 THE COURT: Do you know what it
15 says, Mr. Isbrandtsen? Let's put them
16 both together and make them Defendants'
17 Exhibit No. 9, it will be.

18 MR. ISBRANDTSEN: Lawyer's Title
19 opinions.

20 THE COURT: It's a binder apparently
21 dated September 21, '93, and a letter
22 dated December 8, '93 from LTIC to Clark
23 and Stant, subject, the Davis property
24 that we are referring to here.
25

1 (Whereupon, the documents
2 referred to were marked as
3 Defendants' Exhibit No. 9.)
4

5 MR. ISBRANDTSEN: That's over my
6 objection.

7 THE COURT: I understand. Go
8 ahead.
9

10 BY MR. TEST:

11 Q Mr. Nelson, can you discuss with us,
12 please, the concept of implied easement by prior use?

13 MR. ISBRANDTSEN: Judge, that's what
14 you have to do.

15 THE COURT: Sustain the objection.

16 MR. TEST: I don't have any other
17 questions of the witness.
18

19 CROSS-EXAMINATION
20

21 BY MR. ISBRANDTSEN:

22 Q Let me see if I can put this in a
23 nutshell. Don't we all agree, and the one opinion I
24 didn't object to, was that the easement was gone by
25 the doctrine of merger; correct?

1 A Correct.

2 Q Let's see if we also agree to this:

3 The easement was also wiped out, if it existed,
4 because there was a previously recorded deed of trust
5 back in 1976, right here, on the whole piece of parcel
6 before the easement was conveyed by Parkco to Mr.
7 Parker, do you agree on that?

8 A Not in the sense --

9 THE COURT: Excuse me, it doesn't
10 matter, Mr. Isbrandtsen. It doesn't
11 matter. It's from '80 on that I've got to
12 worry about.

13 MR. ISBRANDTSEN: I just want to
14 make sure we are clear. It's not just on
15 the doctrine of merger.

16 THE COURT: I understand.

17
18 BY MR. ISBRANDTSEN:

19 Q Now, you said, and I wrote this down,
20 that the deed of easement in 1980 was in proper form,
21 it was a proper form to create an easement?

22 A Yes.

23 Q And that's because it includes a grant
24 that says this is a deed of easement and I'm granting
25 an easement, not I'm, Parkco is granting an easement

1 to Mr. Parker?

2 A Correct, and they were the property
3 owner at that time and would have the power to do so.

4 Q Okay. And you agree that looking in
5 the 1984 deed from Parker to Parker Road Associates,
6 there is no grant language at all with respect to an
7 easement, is there?

8 A There wouldn't be any need to be.

9 Q Can you agree with me there is no
10 grant language anywhere in that document that relates
11 to an easement?

12 A There is no granting of an easement,
13 no.

14 Q Your theory, as I understand, was that
15 the old easement which had been extinguished by merger
16 has come alive again by mentioning and saying that you
17 are taking title subject to?

18 A Yes.

19 Q That is your theory?

20 A Yes.

21 Q Are you familiar with the case of
22 Read? Let me pull it out for you here.

23 MR. TEST: Judge, if I may, this
24 line of questions I couldn't get into.
25 Why is it Mr. Isbrandtsen can ask him?

1 THE COURT: I would sit down, Mr.
2 Test, and let him go ahead and try again
3 or leave it alone.
4

5 BY MR. ISBRANDTSEN:

6 Q Read versus Jones, that explains the
7 right is not merely so as to survive on severance of
8 the properties, it goes on to explain that you can't
9 revive a previously extinguished property except by
10 grant; are you familiar with that concept?

11 A I am familiar with that concept but I
12 would add that the facts in the cases are very
13 different.

14 Q You agree with the concept and that's
15 what the Supreme Court ruled, you just said the Read
16 case is inapplicable?

17 A In this situation, yes.

18 Q Is it in determining that the 1980
19 easement was a proper form of easement and comparing
20 that to the 1984 "subject to" language, would you
21 agree with me that when the "subject to" language was
22 put in the deed, the purpose was to comply with the
23 notice requirements and put the buyer on notice that
24 there was this easement out there so go look and
25 check?

1 A No, I don't agree with that.

2 Q You are familiar with the recording
3 statutes and the notice and so on in Virginia?

4 A Yes.

5 Q And are you aware that a reference in
6 documents to all easements, restrictions and so on and
7 so forth as of record puts a buyer on notice?

8 A The buyer is on notice of anything in
9 its chain of title regardless of whether the
10 instrument conveying title to him makes reference or
11 not.

12 Q So if the reference was subject to a
13 lis pendens in this 1984 deed, the purpose of putting
14 that in there would be to check out the validity of
15 the lis pendens to see if it effects your property?

16 A I don't know if that would be the
17 purpose or not. It could be a purpose.

18 Q You are a title lawyer?

19 A Uh-huh.

20 Q As part of your job, you search titles
21 and determine chains of title and write title
22 insurance policies to disclose the existence of liens
23 and encumbrances and things that effect titles?

24 A Correct.

25 Q In this particular case, in 1988, or

1 excuse me, 1984 when there was a disclosure in a title
2 binder that there was an easement, your company took
3 the position that at that moment in time the easement
4 was valid; correct?

5 A We took it as an exception to title.

6 Q Because you believed that it might be
7 valid?

8 A Right.

9 Q And now you are telling us that your
10 opinion as of the moment before, that is the status of
11 title as of a moment before my clients took title back
12 in 1984 was that the easement was not valid because it
13 had been extinguished at that moment?

14 A Correct.

15 Q So your company made a mistake, did it
16 not --

17 A No.

18 Q -- in excepting from that?

19 A No.

20 Q So your company puts in exceptions
21 even though a careful examination of the record would
22 have shown that the easement was not an appropriate
23 exception?

24 A The policy in 1984 showed the old
25 easement as an exception because the deed which vested

1 title in our insured conveyed the property subject to
2 general easements, just the general language that
3 would usually appear in deeds, but it conveyed
4 specifically subject to the easement recorded in deed
5 book whatever. And I apologize, I don't have the deed
6 in front of me. Here it is.

7 Q You are putting the cart before the
8 horse, aren't you? You didn't see that deed before it
9 was prepared? You prepared the binder first, you sent
10 it to the lawyers, the lawyers prepared the deed from
11 the binder, didn't they?

12 A I can't answer that question because I
13 don't have a copy of the documents.

14 Q Don't your documents reflect you do
15 not have an unsigned deed in your file?

16 A I don't have any part of that file.
17 All I have is the policy. No one asked me to retrieve
18 it.

19 Q So you can't tell us whether or not --
20 well, you can tell us whether or not the moment before
21 the deed in any clients in '84 that there was no
22 easement, you are telling us that?

23 A Right.

24 Q And you are telling us if the title
25 policy disclosed an easement, that would have been

1 incorrect at that moment?

2 A If the policy had been issued prior to
3 recordation, it would have insured Mr. Parker and
4 there would have been no easement, that's correct.

5 Q So if there was no easement at the
6 time my clients take title, you're trying to tell us
7 that there's some way subject to an old easement that
8 doesn't exist somehow recreates it?

9 A Yes. There are other ways to do it,
10 too, but that is certainly one way.

11 THE COURT: Any further questions,
12 Mr. Isbrandtsen?

13 MR. ISBRANDTSEN: No, sir.

14 THE COURT: Mr. Test?

15 MR. TEST: I have nothing further.

16 THE COURT: You may be excused.

17
18 (Whereupon, the witness was
19 excused.)
20

21 THE COURT: Who do you have next,
22 Mr. Test?

23 MR. TEST: Mr. Davis. He is
24 probably going on half an hour or 45
25 minutes on direct.

1 THE COURT: Let's see how it goes.
2 If we get to a good stopping point and we
3 get hungry, we will stop.
4

5 RICHARD F. DAVIS
6 having been first duly sworn, was
7 examined and testified as follows:
8

9 DIRECT EXAMINATION
10

11 BY MR. TEST:

12 Q State your full name.

13 A Richard F. Davis.

14 Q Mr. Davis, would you please tell the
15 Court your involvement with two things: The use of
16 this parcel of land back here behind the Lynnhaven
17 Lincoln Mercury dealership that you and your wife are
18 under contract to buy from the Parker Estate or Mr.
19 Parker. Tell the Court beginning in the early 1970's
20 your involvement with that land and your involvement
21 with the road that runs across Mr. Henning and Mr.
22 Cross' property, beginning in 1972.

23 MR. ISBRANDTSEN: Your Honor, let me
24 just note an objection. If counsel will
25 clear this up, I think we have agreed that

1 there is no easement by prescription.

2 THE COURT: I thought we did, too.

3 MR. ISBRANDTSEN: I want to make
4 sure we are not allowing evidence in for
5 that purpose.

6 MR. TEST: No, there is no adverse
7 position argument.

8 THE COURT: Let's kick it up into
9 '78 then.

10
11 BY MR. TEST:

12 Q Sometime in 1972, Mr. Parker
13 approached you, Mr. Davis, and said you could use the
14 building back here on his land rent free if you would
15 give some work to him as a trade-off; is that correct?

16 A He approached me after he gave me
17 permission to park under the tree that's on the
18 property now; let's not forget that. Then one day he
19 approached me some few months later to follow him, to
20 go with him up this lane that I had never been up
21 before.

22 Q Is it up the dirt road that was on the
23 property there?

24 A The dirt road to show me the building.

25 Q What year was that that you walked up

1 the dirt road with him?

2 A That had to be somewhere in '72.
3 Whether it be -- probably the spring of 1972.

4 Q Okay. Now, from 1972, that point,
5 until 1993, how often did you use that dirt road?

6 A Ten thousand nine hundred and 86
7 times. I mean, I don't want to be smart, but daily,
8 weekly, seven days a week, three hundred and 65 days a
9 year.

10 Q What kind of things did you drive up
11 and down at that time?

12 A Tractor trailers, pickup trucks,
13 buses.

14 Q Heavy equipment?

15 A Heavy equipment.

16 Q On flatbeds?

17 A On lowboys.

18 Q Were you taking them from Parker Lane
19 to the property back here that you now have under
20 contract with Mr. Parker?

21 A Yes.

22 Q Were you working on those pieces of
23 equipment in the metal shed building that's there?

24 A Yes, sir.

25 Q Were you also storing some of those

1 pieces of equipment on the land that you have under
2 contract?

3 A While it was being rejuvenated, yes.

4 Q Until you first talked to Mr. Shepherd
5 in the spring of 1993, did you ever have any other
6 access to this parcel other than down that dirt road?

7 A It was impassable from that property
8 to mine.

9 Q Okay. What did you do, if anything,
10 to maintain this dirt gravel road from 1972 to '73 on?

11 A I was told by the two gentlemen here
12 many times and by Mr. Parker himself that one thing I
13 must do, maintain that road.

14 Q What did you do to maintain it?

15 A I owned motor graders at different
16 times and would grade it myself many times. I would
17 go over to the plant and get gravel from Dick Brewer;
18 they have a scrap pile.

19 Q Is the gravel plant somewhere near the
20 end of Parker lane?

21 A The cement plant at the end of Parker
22 Lane.

23 Q Would you do that maintenance with the
24 gravel on a yearly basis?

25 A More likely on a monthly basis,

1 particularly the winter time.

2 Q Now, is it correct that you leased the
3 property first under a verbal agreement with no rent
4 to Mr. Parker and later under an agreement to pay rent
5 from 1973 until you signed your contract dated May '81
6 which you signed in June of '82, you were leasing that
7 property from Mr. Parker?

8 MR. ISBRANDTSEN: Object. Counsel
9 knows for three years in there there was
10 no lease or discussion. He used it for
11 fixing up the guy's recreational vehicle.
12

13 BY MR. TEST:

14 Q Is it correct, Mr. Davis, for 1972 or
15 '73, for a period of two or three years, you used the
16 road and the building and land back there under an
17 agreement with Mr. Parker where you didn't have to pay
18 him anything?

19 A That's true.

20 Q There came a time when he said you
21 have to pay him something to rent it?

22 A January 1977. '75, '75.

23 Q You're not certain what year it was?

24 A Three years later come January I
25 started paying rent.

1 Q January of some year, '75 or '77, you
2 began paying rent. Did you pay rent continuously
3 every month to Mr. Parker until you signed your
4 contact which is dated May 28, '81?

5 A That's true.

6 Q Thereafter, having made the contract
7 payments to Mr. Parker, every month and every year
8 since you signed the document, June of '82, to today?

9 A That's true.

10 Q Are you still paying the contract to
11 Mr. Parker?

12 A Yes.

13 MR. ISBRANDTSEN: Parker estate.
14

15 BY MR. TEST:

16 Q Are you paying the contract payments
17 to the Parker estate? Mr. Parker is dead.

18 A My wife does that, but I assume that's
19 true.

20 Q From June of '82 when you signed your
21 contract with Mr. Parker to buy the land, from that
22 date until the spring of '93, did your use of the road
23 or the property change in anyway or was it the same?

24 A It didn't change any.

25 Q Did it increase or decrease?

1 A What didn't increase or decrease?

2 Q Your use of the road.

3 A If anything it increased because I was
4 busier.

5 Q Did there come a time in the spring of
6 1994 when you came to know Mr. Henning and Mr. Cross?

7 THE COURT: '84?

8 MR. TEST: '84.

9 THE COURT: You said '94.

10

11 BY MR. TEST:

12 Q I apologize. Did there come a time in
13 the spring of '84 when you came to know Mr. Henning
14 and Mr. Cross?

15 A Yes.

16 Q Did you know them before that?

17 A I knew them before they signed the
18 contract on the building.

19 Q But you knew them briefly?

20 A No, I knew them pretty well.

21 Q I want to focus your attention on when
22 they first started using the property over which the
23 road runs, which was sometime in 1984.

24 A In '84, that's when they bought the
25 property, right.

1 Q Yes.

2 A I knew them before that.

3 Q Focus on '84 when they bought the
4 property.

5 A I made an appointment with those two
6 gentlemen and Mr. George Parker to meet, that I knew
7 of a building that they could buy, that I thought they
8 could buy, so we met there, if I remember, and they
9 discussed this, this and that. So I left, I didn't
10 want to get involved in that. I had told them that
11 Mr. Parker had finally -- it's my property and they
12 would probably do the same thing for these gentlemen.
13 As I understand it, they first initially took over
14 with some sort of a financial setup whereby Mr. Parker
15 did help them financially.

16 MR. ISBRANDTSEN: I think what is
17 the question is what did he talk about
18 with them.

19 THE COURT: Let him finish. I think
20 he will finish.

21 THE WITNESS: I'm trying to do the
22 best I can. I made the appointment, I
23 found the building. The financial part
24 I'm not so sure, but I think Mr. Parker
25 did help them financially, I think so, and

1 that's that. What else?

2

3 BY MR. TEST:

4 Q Mr. Henning and Mr. Cross moved into
5 the property?

6 A Right away, right away.

7 Q During the time they next moved in,
8 were you using the road?

9 A Oh, gosh.

10 Q Yes or no?

11 A Many, many, times.

12 Q Did you in fact continue to use the
13 road while they were there?

14 A Oh, yes.

15 Q Did you use the road to haul some of
16 their equipment?

17 A Many, many, many, many times, namely
18 15 loads to Beulah, North Dakota from that plant.

19 Q From spring of '84 to the spring of
20 '93, when you first started talking to Mr. Bill
21 Shepherd, in that ten-year period, '84 to '93, did you
22 use the road regularly?

23 A Daily.

24 Q Did Mr. Henning and Mr. Cross see you
25 using it?

1 A Absolutely.

2 Q What type of things were you driving
3 up and down the road?

4 A I had two truck tractors, several
5 trailers. I used to work for them and other people,
6 lowboys. I would haul equipment in, rejuvenate it. I
7 was the only lowboy operator other than the general
8 contractors in Tidewater who had lowboys. All
9 contractors have their own lowboys, but if John Doe
10 wanted to haul something to Charlotte, North Carolina,
11 it was me that done it.

12 Q Since you talked to Mr. Shepherd and
13 entered into your agreements with Mr. Shepherd where
14 Mr. Shepherd now leases the property from you, you
15 have had some run-ins with Mr. Henning and Cross over
16 the use of the road?

17 A It all started over the use of the
18 road, yes, sir, over the road.

19 Q Since about February of 1994, the past
20 four or five months, you stopped trying to use the
21 road?

22 A Yes.

23 Q Is it blocked?

24 A Yes.

25 Q Was there a series of time it was

1 blocked and you moved it?

2 A I must admit I did.

3 Q When you moved the barriers and tried
4 to get in and out, what is it you were driving in and
5 out?

6 A Tractor trailers, pickup trucks.

7 Q If you don't drive a tractor trailer
8 or pickup truck down that road across Mr. Henning and
9 Cross' property and you need to drive a tractor
10 trailer on your property that you are buying from Mr.
11 Parker, how else can you get it on there?

12 A Through the back Ford Motor Company
13 lot.

14 Q Through Mr. Shepherd's property?

15 A (Witness nodding affirmatively).

16 Q Have you attempted to do that?

17 A I have done it a few times, but when
18 you see two blocks of 40 thousand dollar Lincolns, you
19 hold your breath when you do it.

20 Q Do you continue to have a need to
21 bring your tractor trailers onto the parcel that you
22 are buying from Mr. Parker today?

23 A Yes, I was on there yesterday with a
24 tractor trailer.

25 Q You were on your parcel but you

1 weren't coming down the road?

2 A I weren't coming down Parker Lane, no.

3 Q Do you still have a need to bring
4 tractor trailers onto your property today?

5 A Yes, sir.

6 MR. TEST: One moment, Your Honor.

7 I think I may be finished. That's all the
8 questions I have, Judge. Oh, I'm sorry, I
9 do have a couple more. One second.

10
11 BY MR. TEST:

12 Q Until, I think it was a month or two
13 ago, Mr. Shepherd testified that you created an
14 opening between your parcel and the back of the
15 Lynnhaven Lincoln dealership; is that correct?

16 A I made a road, yes, sir.

17 Q When did you do that?

18 A Oh, gosh, it was some two or three
19 weeks after we had a verbal agreement on he would move
20 over, whenever that was.

21 Q Okay. So sometime within the last
22 year?

23 A Yes.

24 MR. ISBRANDTSEN: Object, he said
25 two or three weeks after the verbal

1 contract. That's a whole lot closer to
2 May of 1993 than last year and it is
3 important.

4 THE WITNESS: That's possible.
5 That's very possible.
6

7 BY MR. TEST:

8 Q Prior to that point in time, did you
9 have any other way of getting into your parcel other
10 than the road through Henning and Cross?

11 A There was no other way.

12 MR. TEST: No other questions.

13 THE COURT: I'm going to go ahead and
14 take a break and then you can cross-examine.
15

16 EXAMINATION
17

18 BY THE COURT:

19 Q Let me ask a question while I'm
20 thinking about it, Mr. Davis. You leased the whole
21 piece of property?

22 A Talk up.

23 Q You leased the whole piece of property
24 to Mr. Shepherd?

25 A Leased it to him? Lease purchase.

1 Q Right, lease purchase?

2 A Yes, sir.

3 Q The whole thing?

4 A What I own. What little piece that I
5 own.

6 Q I understand. Now, you said you still
7 bring equipment on there?

8 A Yes, sir.

9 Q What kind of deal have you got with
10 Mr. Shepherd at this point about your using the
11 property that he is paying you for?

12 A Well, there's no other way in there,
13 and I had an agreement, I said if I want to sell you
14 this, I need a place to park. I'm down at the cement
15 plant with three trailers and that's all the room they
16 have. The cement plant and Post Office and Parker
17 Lane, it's all right there in the package. Just
18 yesterday I had to drop a flatbed; I have a flatbed
19 and I dropped that. A lot of times I use the flatbed
20 and a lot of times I use the other one. I was in
21 yesterday and swapped trailers.

22 Q You apparently are getting along
23 pretty well with Mr. Shepherd at this point?

24 A Very close.

25 Q Suppose Mr. Shepherd were to say, Mr.

1 Davis, I'm going to use the whole thing, you are going
2 to have to get your stuff out of there, what would you
3 do at that point?

4 A I don't have to, it's in my contract.

5 Q Okay. All right.

6 MR. ISBRANDTSEN: Judge, I would --
7 it ain't in here.

8 THE COURT: I understand. I
9 understand exactly that it's not in there,
10 that's why I asked the question.

11 THE WITNESS: Are ya'll saying it's
12 not in my contact? Is that what you said?

13 THE COURT: That's what we are saying.

14 MR. ISBRANDTSEN: It never has been.

15 THE WITNESS: No, wait a minute.
16 No, wait a minute. This was the meeting
17 with the lawyers that I could hold a
18 50-foot piece guaranteed, it was mentioned.

19 MR. TEST: Judge, the documents
20 speak for themselves. I can bring Mr.
21 Shepherd back to discuss what verbal
22 agreements they have.

23
24 BY THE COURT:

25 Q I understand that and I understand

1 ya'll have an agreement between the two of you and
2 maybe a handshake, but these fellows are right, Mr.
3 Davis, it's not in there in writing.

4 A I would have swore it was.

5 Q Without going too far, your thought is
6 that you had a right to keep your equipment there?

7 A Yes, sir, 50 foot right of way, yes,
8 sir. I just knew it was, so I'm sorry.

9 THE COURT: I understand what you
10 are saying at this point. I just wanted
11 to get something cleared up. Ya'll can
12 chat about that at lunch time. We will
13 take a break until 2:00.

14
15 (Whereupon, there was a recess).

16
17 THE COURT: Mr. Isbrandtsen, are you
18 ready?

19 MR. ISBRANDTSEN: I understand Mr.
20 Test has some more questions.

21
22 FURTHER DIRECT EXAMINATION

23
24 BY MR. TEST:

25 Q Mr. Davis, you were talking about the

1 fact that you have driven a tractor trailer in the
2 last year or so to your parcel back here behind the
3 Lynnhaven Lincoln Mercury dealership going through the
4 dealership parking lot. I want to orient a little bit
5 and introduce these pictures. Can you identify what
6 this picture shows?

7 A That's leading in off Virginia Beach
8 Boulevard to the Post Office, cement plat.

9 Q Does that show Parker Lane?

10 A It shows Parker Lane.

11 MR. TEST: Next defendants' exhibit.

12 THE COURT: Are they essentially the
13 same thing?

14 MR. TEST: No, I want to show you
15 how the access goes into this road.

16 THE COURT: All right, Defendants'
17 10.

18
19 (Whereupon, the document
20 referred to was marked as
21 Defendants' Exhibit No. 10.)
22

23 BY MR. TEST:

24 Q Does this show Parker Lane access to
25 the Henning and Cross parking lot and their chain link

1 fence?

2 A It does.

3 MR. TEST: Defendants' 11, Judge.

4 THE COURT: All right.

5
6 (Whereupon, the document
7 referred to was marked as
8 Defendants' Exhibit No. 11.)
9

10 BY MR. TEST:

11 Q And is this a photograph, Mr. Davis,
12 of the gravel dirt road on Mr. Henning and Cross' land
13 looking down toward your parcel?

14 A It does.

15 MR. TEST: Exhibit 12, Judge.

16 THE COURT: All right.

17
18 (Whereupon, the document
19 referred to was marked as
20 Defendants' Exhibit No. 12.)
21

22 BY MR. TEST:

23 Q Mr. Davis, is this a photograph of the
24 Lynnhaven Mercury dealership parking lot showing your
25 land on the back?

1 A Yes.

2 Q Is that how it appears today?

3 A Yes, sir.

4 MR. ISBRANDTSEN: Didn't we agree
5 those were taken in the spring of this
6 year?

7 MR. TEST: That was taken sometime
8 in the spring of 1994, Judge.

9 MR. ISBRANDTSEN: Before the major
10 work was done to his parcel.

11 MR. TEST: To Mr. Davis' parcel.

12 THE COURT: You can't even tell in
13 this picture.

14 THE WITNESS: It wouldn't even show
15 it anyway. It's pointing in the wrong
16 direction.

17 THE COURT: The cars are blocking
18 the view.

19
20 (Whereupon, the document
21 referred to was marked as
22 Defendants' Exhibit No. 13.)
23

24 BY MR. TEST:

25 Q Is this also a photograph of the

1 Lynnhaven Lincoln parking lot?

2 A Right.

3 THE COURT: That would be 14.

4
5 (Whereupon, the document
6 referred to was marked as
7 Defendants' Exhibit No. 14.)
8

9 BY MR. TEST:

10 Q The last two pictures I introduced
11 showing the Lynnhaven Mercury dealership parking lot,
12 is that the area of the parking lot that you have to
13 drive your tractor trailer through today?

14 A Yes.

15 Q Would you, just for the sake of the
16 Judge and counsel, show me the method by which you
17 come off of Virginia Beach Boulevard to get a tractor
18 trailer to your site today as compared to how you did
19 that before?

20 MR. ISBRANDTSEN: Object based on
21 relevance.

22 THE COURT: Overrule the objection.
23 Go ahead.
24
25

1 BY MR. TEST:

2 Q I want you to trace for me on this
3 photograph and use this pen coming -- how do you come
4 down the boulevard with your tractor trailer, from
5 which direction?

6 A Assuming I come off the interstate and
7 take Lynnhaven North, at R. K. Chevrolet make a right,
8 stay in the inside lane, come on down to --

9 Q You are coming down Virginia Beach
10 Boulevard?

11 A Great Neck Road. You have to pass the
12 Lincoln Mercury dealer.

13 Q Why? Explain why.

14 A You can't make a right in there, there
15 isn't enough room. There isn't enough room if you
16 took all four lanes to get in there, so to play it
17 safe and not hurt anybody, you come on down to Great
18 Neck Road, you come by this Seay building, S-E-A-Y
19 people, you come out and make a left turn and get in
20 the left lane, there's a cut-off road, you make a
21 left.

22 Q Okay. Now, use the pen and draw the
23 line. I want to show counsel where you have drawn.

24 MR. ISBRANDTSEN: Let me come up
25 there, if you don't mind.

1 BY MR. TEST:

2 Q Is the black mark where you have
3 indicated you have to turn your tractor trailer left
4 off of Virginia Beach Boulevard into the Lynnhaven
5 Mercury dealership parking lot?

6 A That's true.

7 Q And is that area of the parking lot
8 the same as is shown in the two photographs --

9 A Same.

10 Q -- that I just showed you?

11 A Same.

12 MR. TEST: That's all I have, Judge.

13 THE COURT: All right.

14
15 CROSS-EXAMINATION

16
17 BY MR. ISBRANDTSEN:

18 Q But you don't have any rights under
19 your agreement to bring in any tractor trailers on the
20 property you have leased to Mr. Shepherd, do you?

21 A The property that I lease?

22 Q You don't have any right to bring
23 anything on that property?

24 A Well, I could have swore it was in the
25 contract, but yes, sir, we discussed it at our meeting

1 that I could use 50 feet.

2 Q Do you agree with me, you have had
3 lunch to look through this document, that there is no
4 mention in this document any right you, as a landlord,
5 you have to use any of the property to Mr. Shepherd
6 other than to inspect it?

7 A To inspect it? You lost me. To
8 inspect what?

9 THE COURT: I think the document
10 speaks for itself.

11

12 BY MR. ISBRANDTSEN:

13 Q So, Mr. Davis, assuming that you have
14 no right to be on that property except to inspect, why
15 do you need to go on there or why do you want to go on
16 there with tractor trailers?

17 A Well, we did have a discussion and he
18 said I could park there, and since I can't come up
19 Parker Lane I have no other choice.

20 Q Now, you agree with me, don't you,
21 that your cut-through that you put, the first
22 cut-through that you put between the Davis property
23 and the Lincoln Mercury dealer was before you signed
24 the July 1993 agreement with Mr. Shepherd? It was
25 after you started talking and before you signed the

1 agreement?

2 A I believe that would be correct.

3 Q You also agree with me?

4 A I believe that would be.

5 Q You also agree with me, don't you,
6 that nobody had blocked the access road before the
7 agreement with Shepherd was signed? You agree with
8 me, don't you?

9 A You are talking about my road that
10 goes down to my shop?

11 Q Yes.

12 A Absolutely blocked before, absolutely
13 blocked before, months before.

14 Q Any photographs that you have taken to
15 show that?

16 A I took some photographs of a bent
17 trailer that they had on our yard, it had a 1976
18 inspection sticker and I took some pictures of that.

19 Q But you didn't produce them to your
20 lawyer who didn't produce them to me and have them in
21 court today?

22 A No, but I surely did take them.

23 Q You also told the Judge that you paid
24 rent to Mr. Parker from 1975 forward until you signed
25 your contract to purchase; correct?

1 A Well, I still pay rent on it. I still
2 pay rent on it.

3 Q Are you telling us that you paid rent
4 to Mr. Parker when he didn't even own this property?
5 Are you telling us that you paid rent to Mr. Parker
6 from 1975, through 1976, through 1977? Is that what
7 you are telling us?

8 A I didn't exactly say that. I think it
9 might have been '77, and I remember in January, he
10 said, "Dick, it's high time you are paying rent."

11 Q Wouldn't you agree with me that you
12 did not pay any rent to Mr. Parker until after 1978,
13 which is when he bought from Parkco this little biddy
14 parcel?

15 A Sir, we have canceled checks and I
16 told my wife to bring them, from January of 1977 or
17 January 1975, we have canceled checks.

18 Q So you were paying rent to Mr. Parker
19 and he didn't even own the property, Parkco did?

20 A We paid it to Mr. Parker.

21 Q Do you agree and would you explain to
22 the Judge that Parkco is a company owned by Mr.
23 Parkhurst, who is in no way related to Mr. Parker?

24 A The day we started paying rent, I can
25 assure you we paid George J. Parker rent.

1 Q Listen to me.

2 A I'm listening.

3 Q Parker is a different human being than
4 Mr. Parkhurst; right?

5 A I knew them both well.

6 Q They are two different people?

7 A I knew them both well.

8 Q You knew them well. I am saying they
9 are two people, do you agree with me?

10 A Absolutely.

11 Q Do you also agree with me that
12 Parkhurst owned Parkco, the corporation that owned the
13 property up until 1978?

14 A I can't say who owned it. I didn't
15 know that he even owned it.

16 Q But you want us to believe that you
17 were paying rent to Mr. Parker, who didn't own the
18 property?

19 A I can assure you we paid rent to Mr.
20 J. K. Parker.

21 Q Don't you finally acknowledge that you
22 got snookered by Mr. Parker?

23 A I heard that discussed but I would
24 rather not believe that.

25 Q Let's try to understand it. Here it

1 is, there's a time period when these two gentlemen
2 tell you we don't want you using the access, they
3 start having disputes with you, they don't want you
4 using the access and you don't have any rights?

5 A Who said that?

6 Q These two guys.

7 A They never said that.

8 Q So they made that up?

9 A Yes, more or less.

10 Q Do you agree that there came a time
11 when they said to you, if you think you have the right
12 to use this property, get us some documents that show
13 us, and you went and got for them the contracts? Do
14 you remember that happening?

15 A Nobody ever told me --

16 Q Mr. Davis --

17 A Let me say what I got to say so that
18 way I don't get the horse before the cart.

19 Q Don't let my questions get in the way.

20 A Nobody ever approached me about using
21 the road until these gentlemen had the big idea about
22 patching their land, never. The only thing I did hear
23 was to keep the road up.

24 Q Can you answer my question?

25 A I tried to.

1 Q Did you, at their request, provide
2 them a copy of the contract you signed with Mr.
3 Parker?

4 A I did give them a folder.

5 Q Did you?

6 A Yes, I did.

7 Q After that, didn't they come back to
8 you and say look, we think you got snookered, look at
9 paragraph nine on this contract that says you have to
10 hold Mr. Parker harmless from any subdivision
11 requirements, road improvements?

12 A It came about in the '90's when they
13 had other ideas with the property.

14 Q Didn't they tell you they thought you
15 got snookered and point you to that paragraph?

16 A I believe they might have said that
17 about Mr. Parker.

18 Q Didn't they point you to article nine
19 in the contract?

20 A Well, it wouldn't have mattered if
21 they did or didn't, I wouldn't have known what it
22 meant.

23 Q Whether it mattered or not, didn't
24 they do it?

25 A I'm not sure if they did or didn't.

1 We discussed Mr. Parker might have pulled one over on
2 me but I really didn't care.

3 Q Of course not.

4 A I saved the shop. I'm glad you asked
5 me that. They come down one day and he bought 30
6 acres in Tucson, Arizona; you have two choices, buy it
7 or get out. I liked to have had a heart attack.

8 Q Because Mr. Parker had been letting
9 you use this property and renting to you and said sign
10 a contract to buy it or get out. What happened was he
11 sent you down to Stanley Phillips and gave you a
12 document and said sign it; right?

13 A He didn't do that at all. He said you
14 have to get out or buy it. I said Mr. Parker --

15 Q I can't afford it?

16 A Exactly.

17 Q And he said have you got ten thousand
18 dollars?

19 A You're a little ahead of me. Let me
20 do it my way and that way I can be honest. He said,
21 "Maybe you can buy it." So I went home and didn't
22 sleep for two weeks. I said what does he mean, maybe
23 I can buy it, I've got 40 dollars in my pocket. I
24 stopped by the office, when I finally got up nerve to
25 stop by there, he had papers wrote up, "Have you got

1 ten thousand dollars." Would you believe I made an 11
2 thousand dollar sale the day before? I said yes. We
3 started talking. I gave him the ten thousand
4 dollars. I saved the shop because I'm now making a
5 hundred thousand dollars a year.

6 Q You are making plenty of money?

7 A More than I ever made.

8 Q And you are doubling the price on your
9 property by agreeing to sell it to Mr. Shepherd?

10 A We are talking about two different
11 time frames.

12 Q And I'm talking about right now, you
13 make plenty of money?

14 A I don't see where what I make on my
15 property is neither here nor there.

16 Q You are asking this Judge in this case
17 to imply that there is some easement in your favor by
18 saying that it's impossible for me to use this
19 property if you don't imply this easement; isn't that
20 what you are saying?

21 A I never thought for one second that I
22 couldn't use that road in my entire life until these
23 gentlemen had better ideas.

24 Q Until you signed a contract with Mr.
25 Shepherd by which you said Mr. Shepherd, you have a

1 hundred percent use of that property? You don't need
2 any access, do you?

3 A Oh, I didn't tell him that.

4 Q But that's what your agreement says?

5 A No, because I'm still on the
6 impression that I can use the road and to this very
7 second use that road again.

8 Q But you didn't include in the contract
9 the road?

10 A Contracts don't mean much to me.

11 Q I guess not.

12 A I thought my name, you know, I thought
13 this mess was on the contract, I could have swore to
14 it, but it weren't. Contracts don't mean nothing to
15 me. I work and pay my bills and I want to save the
16 shop and use the road.

17 Q You remember these gentlemen telling
18 you to go get a lawyer's opinion after they looked at
19 your contract and said you got snookered and they said
20 go talk to a lawyer, do you remember that?

21 A Seems to me like I do.

22 Q And you went to a lawyer and reported
23 back to Mr. Cross you had seen the lawyer and
24 basically he agreed with them, the first time?

25 A Mr. Stanley Phillips, he is more

1 senile than I am, and I didn't get very far, you
2 know. That poor old fellow.

3 Q But you went to see a lawyer and Mr.
4 Phillips told you they were right and you weren't, the
5 first time? I'm talking about the first time you went
6 back to them and said guys, it looks like you are
7 right, I don't have this access, so will you agree
8 with me that if you sell your property, sell mine too
9 and get me the same price per acre?

10 A Mr. Phillips --

11 MR. TEST: Hold it. He is asking
12 him to divulge what Mr. Phillips may have
13 told him. He can certainly tell what he
14 told them.

15
16 BY MR. ISBRANDTSEN:

17 Q You told them that basically?

18 A Do you want to know what Mr. Phillips
19 really told me?

20 Q Answer my question, didn't you tell
21 them that?

22 THE COURT: Wait a minute.

23 MR. TEST: Mr. Isbrandtsen is now
24 trying to get him to agree to the
25 characterization which included what he

1 said Mr. Phillips told him.

2 THE COURT: I think we need to move
3 one step further and ask him as a result
4 of his conversation with Mr. Phillips,
5 what did he do.

6
7 BY MR. ISBRANDTSEN:

8 Q As a result of your conversation with
9 Mr. Phillips, did you go back and talk to these guys?

10 A Oh, yes, I did, full speed ahead.

11 Q Okay.

12 A But see, you don't want me to tell you
13 what Mr. Phillips really told me.

14 Q The first time after you talked to Mr.
15 Phillips and went back and talked to these guys, did
16 you tell them --

17 A These two gentlemen here.

18 Q -- words to the effect that you're
19 right, I don't have this easement, the first time?

20 A You know, I want to laugh.

21 Q I don't want you to laugh.

22 A You want to know really what
23 happened? I went to see Mr. Phillips, he dug in a
24 box.

25 Q Your lawyer is trying to help you with

1 this. Don't tell us what Mr. Phillips said. Did you
2 go back to these two gentlemen after talking with Mr.
3 Phillips and tell them in essence that Mr. Phillips
4 said there is no easement in this document?

5 A I told them that I did have an
6 easement. Mr. Phillips went in the box and got a copy
7 and showed me the ingress and egress on these things.
8 There was three things. He said that --

9 MR. ISBRANDTSEN: Judge, I wasn't
10 allowed to go into this stuff.

11 MR. TEST: Judge, I'm trying to get
12 him not to answer.

13 THE COURT: Just let him go ahead.

14 THE WITNESS: The successor --

15 THE COURT: I understand, go ahead.

16 THE WITNESS: Give me three words,
17 successor, heirs, and give me one more.
18

19 BY MR. ISBRANDTSEN:

20 Q Assigns?

21 A Assigns, and Mr. Phillips says don't
22 even discuss it, don't go see nobody, that is your
23 road because me and Mr. Parker wrote it up in the
24 beginning.

25 Q Because you had an easement that was

1 created back in 1980 that we have all agreed that was
2 extinguished the following year?

3 A I can't help you with that.

4 Q That's right.

5 A I can't help you with that, what
6 happened in 1980. I'm out there driving a truck to
7 Florida and I wouldn't have known what you were
8 talking about anyway.

9 Q Now, isn't it true that Mr. Parker
10 never said to you words to the effect, you have
11 permission to use this access?

12 A Now --

13 Q Never once in the entire time you used
14 this property did Mr. Parker ever tell you that you
15 have the right to use this access?

16 A He never once told me that I could use
17 it or anyone else, nobody else in my entire life.

18 Q Never told you you could use it, never
19 told you you couldn't use it, just let you use it and
20 said to you, "I want you to maintain it," that's all?

21 A These two gentlemen --

22 Q I'm talking about Mr. Parker now.

23 A Maintain was the word, including --

24 Q In your discussions with him, you knew
25 that that agreement you had with him was for his

1 lifetime; isn't that true?

2 A Whose?

3 Q Mr. Parker's lifetime, that's the
4 agreement you had with him, for his lifetime?

5 A I don't care so much about Mr.
6 Parker's lifetime; mine, not Mr. Parker's.

7 Q Isn't that what you told us in
8 depositions a week ago?

9 A But I meant for my lifetime. I might
10 have said that but I meant for my lifetime.

11 Q That agreement was personal to you?
12 Isn't the agreement you had with Mr. Parker for your
13 personal benefit?

14 A I would have to say that yes,
15 personally, yes. The road was sort of like breathing,
16 it was sort of automatic.

17 Q You agree that Mr. Shepherd's use of
18 the property now for a paint and body shop is a
19 different use than you used it for?

20 A Yes, entirely. Heavy equipment and
21 cars are two different categories.

22 Q And you agree that you are not using
23 that property for the same use you made of it before?

24 A I'm using it today as I always did,
25 for equipment, parking trucks and trailers.

1 Q But you are not even using the
2 building which is what you used to repair --

3 A No, that's true, I don't use the
4 building.

5 Q So you are not using it for the same
6 use you used it before the agreement with Shepherd?

7 A That would be the truth.

8 Q And you did know from at least 1990
9 forward that my clients wanted to develop their
10 property and said to you we have got a problem with
11 this access?

12 A I didn't know what they were going to
13 do with the property. I have since found out.

14 Q But you knew --

15 A I knew they got upset with me
16 overnight for something and I was trying to figure it
17 out and, you know.

18 Q You don't deny, sir, that you told
19 them that when they sold their property, "Would you
20 please try to sell mine with it?"

21 A Years ago, Virginia Beach was
22 interested in building a building, this was like four
23 or five years ago, would they include my building if
24 the Virginia Beach City wanted to buy some property.
25 I knew nothing about H and Q. Virginia Beach

1 approached them and they were going to -- they said
2 "Hey, Dick, what do you want for yours," ba-ba-ba,
3 and they were going to get me a hundred grand, you
4 know, that was fine, ba-ba-ba. From then on, things
5 kind of changed. They didn't discuss the road with
6 me, they didn't discuss how much land. Mr. Cross one
7 time asked me why didn't I go see the Ford people, and
8 I have never forgotten that.

9 Q Wasn't that at the same time they had
10 the discussion with you about your contract with Mr.
11 Parker in which they told you from their view of
12 reading that contract you didn't have any rights to
13 the property?

14 A That might have been in the realm of
15 time. That could have been, yes, sir.

16 Q Currently the only use that I
17 understand you're making of your own property, other
18 than leasing it out, is to store your vehicles in that
19 50-foot access?

20 A Storage would be a wrong word.

21 Q You are parking them there for more
22 than a couple of days?

23 A Yeah. When you use one trailer one
24 day and one the next, you don't store them, you park
25 them.

1 MR. ISBRANDTSEN: I don't have
2 anything further, Your Honor.

3 THE COURT: Any redirect?

4 MR. TEST: Just a couple of things.
5

6 REDIRECT EXAMINATION
7

8 BY MR. TEST:

9 Q Mr. Davis, do you recall Mr. Shepherd
10 testifying about the utility bill?

11 MR. ISBRANDTSEN: Judge, that has
12 nothing to do with the direct or the
13 cross.

14 THE COURT: Overrule the objection.
15 Take a look at them.

16 THE WITNESS: What is it we need to
17 know?
18

19 BY MR. TEST:

20 Q The question I have for you is: From
21 sometime in 1981 or '82, when you signed your contract
22 with Mr. Parker, until 1993 when you entered into your
23 agreement with Mr. Shepherd, were you getting a
24 utility bill for your property here, the Davis parcel
25 from Vepco every month?

1 A A Vepco bill.

2 Q And was it addressed for 130 Parker
3 Lane?

4 A 130 Parker lane.

5 Q And Parker Lane is this little road
6 right here where we talked about the road across Mr.
7 Henning's and Mr. Cross' property starts?

8 A Yes.

9 Q Do you know what the address is for
10 Mr. Henning's and Cross' property is?

11 A 120 Parker Lane, mine is 130, or was
12 rather.

13 MR. TEST: That's all the questions
14 I have.

15
16 RECROSS-EXAMINATION

17
18 BY MR. ISBRANDTSEN:

19 Q May I just follow-up very briefly on
20 that? He asked about your utilities, you have got no
21 sewer on the property; right?

22 A When I moved in --

23 Q Can you answer that? Is there no
24 sewer on the property?

25 A When I got the property there was

1 sewer.

2 Q There was not sewer from the street?

3 THE COURT: He is confused. Not
4 city sewer, you had a septic tank?

5 THE WITNESS: Septic tank.
6

7 BY MR. ISBRANDTSEN:

8 Q Since you got the property that has
9 gone into a state of disrepair?

10 A I think Mr. Shepherd has filled it in,
11 yes.

12 Q And you have never made any effort to
13 use the access to bring in utilities from Virginia
14 Beach Boulevard, never tried to install any utilities
15 from Virginia Beach Boulevard?

16 A Utilities, I guess we called Vepco to
17 put current in, if that's what you mean.

18 Q That doesn't come from Virginia Beach
19 Boulevard off your road, does it?

20 A I think it comes down Parker Lane, I
21 believe.

22 Q And you have never tried to pave that
23 access?

24 A No, sir.

25 Q And Mr. Henning and Mr. Cross told you

1 that when you took title you would have to do all of
2 those things to get a legal subdivision?

3 A I never took title because I wanted to
4 void that hundred thousand dollar road, you're right.

5 MR. ISBRANDTSEN: Nothing further.

6 MR. TEST: No further questions.

7 THE COURT: You may step down.

8 THE WITNESS: Is that all?

9 THE COURT: Yes, sir.

10 MR. TEST: That's all the evidence I
11 have.

12 THE COURT: Anything in rebuttal,
13 Mr. Isbrandtsen? I'm not begging, you
14 understand.

15 MR. ISBRANDTSEN: I understand. Mr.
16 Cross, just briefly, Your Honor.

17
18 DAVID JOSEPH CROSS
19 having been first duly sworn, was
20 examined and testified as follows:

21
22 DIRECT EXAMINATION

23
24 BY MR. ISBRANDTSEN:

25 Q State your full name, please.

1 A David Joseph Cross.

2 Q Mr. Cross, you are one of the owners
3 of this property?

4 A That's correct.

5 Q Do you know Mr. Davis?

6 A Yes.

7 Q Did you or Mr. Henning or anybody in
8 your employ ever block off the access road prior to
9 July, the end of July of 1993?

10 A No.

11 Q You are sure about that?

12 A Yes. As a matter of fact, we
13 contacted you to talk about it.

14 Q Mr. Davis says you did, he said you
15 did it lots of times:

16 A We did it lots of times after that
17 because each blockade we would put up he would do away
18 with it.

19 Q Was there ever any blockade before he
20 signed that contract with Mr. Shepherd and this
21 lawsuit started?

22 A No.

23 MR. ISBRANDTSEN: Nothing further.

24 MR. TEST: I have a couple of
25 questions, Judge. They don't cover that,

1 so I will make him my witness.

2 MR. ISBRANDTSEN: He can't make him
3 his witness, that is my rebuttal.

4 THE COURT: That's true, Mr. Test.

5 MR. TEST: It's not necessary. No
6 questions, Judge.

7 THE COURT: Thank you. Anything
8 further, Mr. Isbrandtsen?

9 MR. ISBRANDTSEN: I have no further
10 evidence, Your Honor.

11 MR. TEST: Nothing, Judge.

12 THE COURT: All right. Mr.
13 Isbrandtsen?

14 MR. ISBRANDTSEN: Your Honor, for
15 purposes of closing, we have law which
16 will explain that the burden to prove an
17 easement which is not of record is on the
18 defendant in this case because they are
19 the ones that maintain they have a right
20 to access. We have shown that there is
21 nothing as a record other than the
22 possibility of the "subject to," so it's
23 their burden on that issue. We think we
24 have established an adverse use, I don't
25 think there's any doubt about that,

1 irreparable harm and all the things that
2 we need to establish our injunction, but
3 for the question of whether or not there's
4 an easement, so I think that the
5 appropriate thing to do would be to have
6 me respond.

7 THE COURT: Well, you are certainly
8 welcome to do that if you want to. You
9 can do that even without that preamble; if
10 you simply respond.

11 MR. ISBRANDTSEN: I will just
12 respond then.

13 THE COURT: All right. Mr. Test?

14 MR. TEST: Judge, I assume Mr.
15 Isbrandtsen has, but I have a memorandum
16 of law for you which I would like you to
17 read before you rule, but I can certainly
18 take you through my argument now.

19 One of the cases I cite is from
20 another jurisdiction so I have a copy for
21 you.

22 I think that what the evidence shows
23 is that Mr. and Mrs. Davis have an
24 existing easement across the property of
25 Mr. Henning and Mr. and Mrs. Cross for

1 either of three reasons, but the most
2 valid reason is obviously there is a
3 recorded easement. Our position, like the
4 opinion of Mr. Nelson, is that if the
5 easement ceased to exist by doctrine of
6 merger when George Parker took title to
7 the entire tract on July 22, 1980, he
8 recreated a new easement by the
9 reservation in the deed into Parker Road
10 Associates. Now, it's clear that Parker
11 Road Associates that took title in 1984
12 -- you have somewhat of an entirety of
13 ownership through different corporations
14 to today because Mr. Henning and Cross
15 were partners in Parker Road Associates.
16 We know that Mr. Parker and Mr. Henning
17 was in Southeast Metal Deck or in their
18 company DACS.

19 The first question is whether
20 there's an express reservation, was the
21 language that Mr. Parker put in the deed,
22 sufficient. Now, our position on that
23 issue is this: The law in Virginia is
24 that you can create an easement by, as I
25 understand it, one of two ways: A deed of

1 easement which he did in '91 -- I mean
2 '81, which is the method he has to do it
3 when he is the grantee. The grantor gives
4 him property and grants him a deed of
5 easement. But when you have a reverse,
6 when he is grantor and he is giving away
7 property, he has to reserve back to
8 himself some use of it, so rather than a
9 deed of easement, the proper way is to
10 create a reservation.

11 We think that the reservation in the
12 deed of April 13th, 1984 to Parker Road
13 Associates is sufficient to create that
14 easement for a couple of reasons. The
15 first and most important one is it states
16 right in the deed that it's being conveyed
17 to these gentlemen or this company,
18 partnership, Parker Road Associates,
19 subject to something, so it's subject to
20 whatever language follows, and then it
21 says those covenants, restrictions,
22 easements or whatever that exist of
23 record, but it goes on to say specifically
24 subject to that easement which was
25 recorded in May of '81. So I think the

1 question you have to decide, is that
2 language sufficient to create a new
3 easement.

4 What we have is an easement existed
5 in '81, ceased to exist when Mr. Parker
6 took -- I'm sorry, the easement existed
7 July 11 of '80 when it was first created.
8 The easement ceased to exist when Mr.
9 Parker took title to the whole property
10 through the doctrine of merger on July 22,
11 1980. The deed to Parker Road Associates
12 is a creation of a new easement and simply
13 says that the new one, by reference, is
14 the same as the old one. My understanding
15 of the law in Virginia is that you can
16 create a new right through a reservation,
17 and when you do that and the reservation
18 is clear, it's the creation of a new
19 right.

20 So it's our position that a new
21 right was created in the Parker Road deed
22 and that has continued to exist through
23 the chain of title up to today, and I
24 think that's the clearest one and that's
25 the pivotal issue. My memorandum cites

1 the law that is appropriate on that
2 point.

3 But irrespective of that, even if
4 you find there was no reservation there, I
5 don't know how you could because it's
6 clear that they took it on notice that
7 it's there, I think there may have been a
8 problem if Mr. Parker in that deed had
9 said subject to all existing easements,
10 covenants, restrictions, but he made a
11 specific attempt to tell them this is the
12 easement I'm holding back and reserving to
13 myself, and it specifically defined right
14 there in that document; and you can do
15 that in Virginia by a prior instrument,
16 they can go find out exactly what it is.
17 The public is on notice.

18 Even if he hadn't done that, the law
19 in Virginia is that Mr. Parker himself,
20 when he held back this tract of land that
21 is now claimed by Davis on April 13th,
22 1984, even if he hadn't put any language
23 in there, he reserved to himself an
24 implied easement called a quasi easement
25 because he had the elements necessary.

1 And it's not just because the property was
2 landlocked.

3 In order to have an implied easement
4 or quasi easement you have to have three
5 things: You have to have a common
6 grantor; well, we have a common grantor of
7 both parcels; that is the Henning and
8 Cross parcel and the one Davis claims, and
9 that is George Parker through the July
10 1980 ownership. In fact, Mr. Parker today
11 or his estate still owns the one. We have
12 the common grantor.

13 Second, you have to have a continuous
14 and reasonably apparent necessary use. I
15 really think that there's been a continuous
16 use and that it's been reasonably apparent
17 since 1984 when Mr. Henning and Cross first
18 came to the site as Parker Road Associates.
19 Mr. Davis has clearly testified he has been
20 using it since '72, repairing it every
21 year, so I think we have continuous and
22 apparent. There may be some argument as
23 to whether it's reasonably necessary, so
24 I'll hold that open.

25 The final one is that the use of the

1 easement has to be in existence at the
2 time of the severance, and the severance
3 is when the Parker Road Associates gets
4 their property. Mr. Davis has testified
5 and these gentlemen have testified the
6 road was in use right then, so it was in
7 existence then. Not only all of that, but
8 that easement having been -- I'm sorry,
9 the use of the road having been in
10 existence more than 12 years was necessary
11 to support the use of the property.
12 There's never been another way in since
13 July of 1993, or just before that when it
14 was opened up by Mr. Shepherd and Mr.
15 Davis' use of it on their property line,
16 so we have a quasi easement.

17 The third argument we have is an
18 easement by necessity. That is not
19 clearly as strong an argument as my second
20 one because the elements are a little
21 different. The elements are, there again,
22 common ownership, which we have. The
23 severance must have given rise to the need
24 for the easement. I think the severance
25 did give rise to it because when Mr.

1 Parker conveyed this out to Parker Road
2 Associates, he had to have an easement to
3 get in and out; in other words, he
4 couldn't use it. He has a building that
5 is landlocked, so the severance gave need
6 for it, even if he gave rise for it, even
7 if he created it.

8 This is a little different from the
9 quasi easement, and that is there has to
10 be a reasonable need shown by clear and
11 convincing evidence. Now, possibly the
12 evidence we have shown you about the need
13 for use of this road for tractor trailers
14 to this parcel isn't clear and convincing
15 to the level under that standard, which is
16 a pretty high burden, but I think the
17 argument which is to be made and it's
18 pretty clear is this: The metal shed
19 building that's on the Davis land is a
20 light industrial building. It's been used
21 by Mr. Davis for years for repair and
22 maintenance of equipment.

23 It's still used for light industrial,
24 for repair of cars and paint and body shop
25 work, and there's not a real significant

1 difference in that use because it's light
2 industrial use. It's the only building on
3 the land. The rest of the land is used
4 for ingress and egress and parking or
5 leaving tractor trailers or trucks or
6 cars, etc. There is a need, in order for
7 either Mr. Davis or the Parker estate or
8 Mr. Shepherd to use that land, to be able
9 to get a tractor trailer on that site.
10 The equipment has to come up and down
11 there.

12 For Mr. Shepherd's need there's a
13 need to bring tow trucks to use it as a
14 paint and body shop, so I don't think
15 anything of that use of that easement is
16 anything different today than it's been
17 over the past 20 years, but there is a
18 real need for it because you don't
19 normally bring that kind of equipment
20 through a new dealership car lot. We have
21 shown you clearly that's the only way
22 you can get in there right now, and you
23 don't bring a tractor trailer with
24 equipment on it through a new dealership
25 parking lot. You clearly don't normally

1 bring your tow trucks for cars through
2 your new dealership. That was not Mr.
3 Shepherd's intent when he got it.
4 Clearly, he obviously has the intent, if
5 the easement is confirmed by the use, to
6 have other uses. Whether or not that is
7 permissible use of this easement doesn't
8 seem to be a question for you today. It
9 may come up at another time.

10 Clearly, from Mr. Davis'
11 perspective, he still has an existing
12 contract to this land. He sold it to Mr.
13 Shepherd under -- or he has given a lease
14 to Mr. Shepherd which can be terminated,
15 and we don't know what is going to happen
16 to that, but as of now that parcel still
17 needs that access and that access has been
18 cut off by Mr. Henning and Cross since the
19 time or right before this litigation
20 started. I know there was some who struck
21 John about what happened since then, but
22 clearly the use of it has stopped, but
23 this parcel still needs that.

24 We don't know what is going to
25 happen in the future with Mr. Shepherd and

1 the car dealership. The contract may be
2 fulfilled and it may not be, but in any
3 event, this is a separate parcel.

4 All of this issue and testimony
5 about whether or not Mr. Parker snookered
6 Mr. Davis or whether or not this can ever
7 be subdivided is really irrelevant. This
8 parcel can be deeded and that's all that
9 is required under the contract that Mr.
10 Davis has with Mr. Parker. And once
11 deeded, Mr. Davis will own it with
12 whatever rights run with that easement.
13 Whether or not he can ever subdivide it is
14 a totally separate issue and has nothing
15 to do with whether the easement is there.

16 Going back to my first point, which
17 I think is the point we really win, is
18 reservation of an easement. They are
19 clearly on notice; two title policies, one
20 to Parker Road Associates and another to
21 Southeast Metal Deck, clearly advised them
22 the title company was finding the
23 easements and putting them on notice that
24 it was there. In order for them to
25 prevail they have to say not only did we

1 disregard the language in the deed and
2 thought it meant nothing, not only do we
3 disregard our two title policies, but we
4 totally disregard the continuous use that
5 Mr. Davis made of this parcel from '84
6 until '92 when we first started to claim.
7 And if all of this since '92 means
8 anything, it means that everybody has
9 decided that this easement is worth some
10 money and everybody has decided they are
11 going to jack up the price for it by
12 playing their hand.

13 I really don't think anything that
14 has happened since April 13, 1984, has any
15 relevance to your decision on that unless
16 you have fall back to whether we have a
17 quasi easement, and if you do, Mr. Davis
18 has easily proved that he has continued to
19 use that easement since '84 and it's
20 apparent and it has been reasonably
21 necessary. The use of land to bring a
22 tractor trailer down a dirt road is
23 entirely different than what you do to get
24 access to a metal shed building with cars
25 that you drive up and down, and that's the

1 use of the easement he is entitled to
2 because it described ingress and egress to
3 that land.

4 That's our position, Your Honor.

5 THE COURT: All right.

6 MR. ISBRANDTSEN: May it please the
7 Court, on the two, the three arguments
8 here: One, the easement has been created
9 by reservation in the 1984 deed; two, that
10 there's an easement by necessity, and
11 that's, counsel says, that's sort of a
12 fall-back position; and three, there's an
13 implied easement by preexisting use, so we
14 are talking about all three of those.

15 First, counsel cites in his memo the
16 only case in Virginia that's very clear on
17 this point that explains what happens and
18 how you are supposed to create an easement
19 where the merger doctrine has applied, and
20 that's Corbett and Rubin. And it explains
21 that you can't bring new life into an old
22 easement, that's the Read and Jones case,
23 so what you have to do is have granting
24 language.

25 In the Corbett case, a lawyer named

1 Bernie Corbett from Northern Virginia was
2 the principal in that case, made some
3 great arguments and lost because the court
4 says that language was sufficient to grant
5 a new easement, and the language that they
6 cite says create and establish an
7 easement. Now, what counsel wants you to
8 rule is that when Mr. Parker, who
9 obviously, as a lawyer, as the cases say,
10 that the agreement was drawn by a learned
11 hand, when Mr. Parker drafted this
12 document that he intended the words
13 "subject to" to mean grant and convey.
14 Mr. Nelson was very clear to you as to why
15 he believed the original grant was
16 sufficient because it used the words
17 "grant and convey." It clearly, within
18 its four corners, and that's where you
19 have to stay, within its four corners, it
20 explained the purpose of the grantor,
21 which was to create something, to give
22 rights to somebody.

23 We have looked all through Virginia
24 law and there's lots of law in Virginia
25 which explains what "subject to" means,

1 and these are words of qualification; they
2 are not words of grant. They do not imply
3 a contract. They say that you are taking
4 subject to. You have no personal
5 obligation. You are taking subject to
6 something that already exists.

7 Now, what's the bottom line? Well,
8 we know how title searchers work. I don't
9 think this was a mistake. What they did
10 in 1984 was they searched the title on one
11 parcel. That's why they didn't pick up
12 merger, because they didn't search the
13 title on the adjoining parcel. Had they
14 done that, they would have recognized what
15 Mr. Nelson says he now knows, is that the
16 merger doctrine extinguishes the
17 easement. They simply reported what they
18 saw on one parcel, that there was a
19 conveyance out of an easement by a
20 document in 19 -- I'm not sure how this
21 one got in here -- but by a document --
22 whenever it was, the conveyance was July
23 11 of 1980.

24 THE COURT: It was the one there on
25 the end.

1 MR. ISBRANDTSEN: Okay. Mr. Parker,
2 however he handled, managed to do this,
3 got Parkhurst to give him an easement 11
4 days before he had Parker give him the
5 entire parcel. Why, how, we don't know,
6 and it doesn't really matter. The point
7 is the title searchers never picked up the
8 fact that the merger doctrine kicked in.

9 The purpose of saying "subject to"
10 is absolutely clear in the law. To give
11 you an example, difference between an
12 assumption deed and subject to deed,
13 assumption deed I take on the
14 responsibility of the note secured by a
15 deed of trust; subject to deed I simply
16 know it's there and I'm not responsible
17 for it. We are a notice state, you go
18 down and you search records and what do
19 you find when you search the records, that
20 there is an easement which doesn't exist
21 because it's been extinguished by merger.
22 Now, if that easement truly had been
23 extinguished, then the document in 1984
24 saying it's subject to merely means
25 subject to an easement that is

1 extinguished. That's why I used the
2 example in talking with Mr. Nelson about
3 the lis pendens. It's to give you
4 notice.

5 About the Corbett and Rubin case,
6 which we both cite, you have to create it,
7 and counsel tells you the way in 1984 that
8 Mr. Parker intended to create was by
9 mentioning the old easement and saying you
10 took it subject to. That is not a way
11 which is sufficient to create or reserve
12 an easement. We have a whole line of
13 cases which I can give Your Honor which
14 explains how you do it, and every one of
15 them says "I reserve," because in Virginia
16 when you want to reserve an easement you
17 reserve it to yourself. Okay.

18 So what happened in this case is
19 maybe he even thought, maybe Mr. Parker
20 even thought there was an easement; we
21 don't know that. But the law says you
22 have to look within the four corners. You
23 have to interpret the agreement against
24 the drafter. The law is absolutely clear
25 about that. If there's any ambiguity, it

1 is to favor the grantee and against the
2 drafter of the document.

3 Easements are not favored in the
4 law; in fact, Virginia law tells us that
5 in Virginia and elsewhere generally it
6 might be said the law is jealous of a
7 claim in an easement and the burden is on
8 the party proving the easement. And when
9 you have an easement of record, the proof
10 is by preponderance of the evidence.
11 Implied easements have to be proven by
12 clear and convincing evidence. An
13 easement by necessity, which we will go
14 to, and implied easement by preexisting
15 use are both implied easements. They come
16 from the idea that normally when somebody
17 grants somebody a piece of property, they
18 grant them access, normally that's the
19 case.

20 But you have to look at this case.
21 What happened? In 1982, and I say '82
22 because it wasn't '81, the document is '81
23 and not signed until '82 and recorded in
24 '85, in that document it's absolutely
25 clear that you have not read an easement

1 in that document; in fact, you read the
2 opposite when you read paragraph nine.
3 Mr. Parker, for whatever his motives, made
4 it clear that Mr. Davis was buying a pig
5 in a poke, because whenever he was going
6 to take title, Mr. Davis acknowledged
7 this, I have to pay that ten thousand
8 dollars, it's a long road, you have to
9 pave it before you can take title to that
10 property under the subdivision ordinance
11 adopted in 1907 in Virginia Beach, and I
12 have it here for Your Honor, you have to
13 pave the road, grade the road, put in
14 utilities and you have to record a
15 subdivision plat, and all of that must
16 occur before the deed can be recorded.
17 They won't even let you record without a
18 GPIN number and you can't get a GPIN
19 number unless you have a properly created
20 subdivision.

21 So poor old Mr. Davis is in a
22 situation where he bought something where
23 he didn't read, didn't understand or
24 didn't care about, and the reality is what
25 he told you, it was personal to him, the

1 right that Mr. Parker gave was personal to
2 Mr. Davis. He admitted that. That's the
3 only evidence you have on that point. And
4 if there was an easement, it was an
5 easement in gross.

6 Now, the distinction between an
7 easement in gross and easement appurtenant
8 is one passes with the land and the other
9 one dies on the death of the grantor or
10 death of the grantee, but it is an
11 easement personal to this gentleman.

12 Now, for an easement personal to
13 him, what happened when he conveyed the
14 property or agreed to give the property to
15 Mr. Shepherd? Shepherd can't get any
16 benefit of that, only if there was an
17 easement appurtenant, and it's not that,
18 according to Mr. Davis' own testimony.

19 Let's go back to easements by
20 necessity. Counsel says that is a
21 fall-back position. Easements by
22 necessity is that there's a lack of other
23 means. It comes from the 221 VA decided
24 in 1981, there is another means -- the
25 Middleton and Johnston case, I think.

1 There was a means of access before
2 the road was blocked off, before the
3 agreement was signed by Mr. Shepherd.
4 They had a verbal agreement and he cut
5 through an access, and you have seen that
6 is for more convenient access to get to
7 the property that is being used by Mr.
8 Shepherd, so easement by necessity fails.

9 An implied easement by a preexisting
10 use also fails because one of the
11 requirements is that there be -- that it's
12 apparent, continuous and reasonably
13 necessary for the enjoyment of the
14 dominant tract. The dominant tract is the
15 green tract. Is this access necessary,
16 reasonably necessary for the enjoyment of
17 the dominant tract? The case of
18 Robertson, 1973, 214 VA case explains that
19 you cannot say that there is a reasonably
20 necessary use when the purpose of this is
21 to benefit Mr. Shepherd's property.

22 THE COURT: Let me take a short
23 recess. I will be right back.

24
25 (Whereupon, there was a recess).

1 THE COURT: All right, Mr.
2 Isbrandtsen.

3 MR. ISBRANDTSEN: The thought I was
4 saving, Your Honor, was that -- let me
5 explain it in a different way. Easements
6 by reservation are express easements. You
7 find one exists. Then you jump over and
8 say, if we can't find one, we will imply
9 an easement. That's the easement by
10 necessity or easement by preexisting use.
11 So to find one of those you must say there
12 is no easement, so we jump over there and
13 we are talking about an easement by
14 preexisting use, which requires the use to
15 be apparent, continuous and reasonably
16 necessary. There is no continuous need
17 for access when Mr. Davis, in 1993, in
18 July, backed out of the use of his
19 property and gave the use of his property
20 by an agreement to Mr. Shepherd.

21 Additionally, the law says you
22 cannot imply an easement by preexisting
23 use if the use of the easement is not for
24 the benefit of this parcel, the dominant
25 estate, but for the benefit of Mr.

1 Shepherd's parcel over here.

2 Now, I asked Mr. Shepherd about that
3 in-depth. It wasn't my primary reason,
4 but there were three, and only three
5 reasons that he wanted the easement: He
6 wanted to bring on new cars, which are for
7 the benefit of this parcel over here, his
8 parcel; he wanted to bring on wrecked cars
9 to repair on this parcel, and then to
10 transport them out on his parcel; he
11 wanted to bring on new parts which would
12 go to his parcel which adjoins the Davis
13 parcel.

14 It's clear, it seems to me, that
15 what is happening here is Mr. Shepherd has
16 come up with a use for an easement, and I
17 think it's clear from what Mr. Test said
18 and I think we all understand, because the
19 stronger the position he takes on that the
20 more money he is going to get from my
21 clients if he tries to sell it to them.
22 He has no need for that easement and I
23 don't think you could find from clear and
24 convincing evidence that there should be
25 an easement implied to benefit his

1 adjoining parcel. I think the Robertson
2 versus Robertson case makes clear that you
3 cannot do that.

4 Additionally, every easement by
5 implication by preexisting use case in
6 Virginia, every one is a waterfront
7 property case. And the biggest one, the
8 clearest one was when the guy says I'll
9 sell you this property right here and you
10 will have access to this water, which is
11 supposed to come up to a certain elevation
12 and it comes five foot short, and then the
13 seller says they don't have the right to
14 use it, I'm going to block it off and put
15 a fence, and the Supreme Court says
16 there's no express easement there but we
17 are going to imply an easement because the
18 whole basis of your bargain was to buy
19 waterfront property. That's not the kind
20 of set of facts that we have in this
21 case.

22 If you look back, every one of these
23 cases we have read, every one counsel has
24 read, every one, they are all the same,
25 and they even cite a case from another

1 jurisdiction, which is the same contour,
2 height and so forth.

3 We can't have an easement by
4 necessity because one of the requirements
5 is that the means of ingress and egress is
6 still continuing, so, Your Honor, we think
7 that the burden was on Mr. Davis to show
8 that he has the right to use our property.
9 We believe that he has not shown that he
10 has the right to use our property. We
11 have shown that no easement exists as of
12 record. He has not shown that there is an
13 easement to be implied either by necessity
14 or preexisting use. We have shown that we
15 will be irreparably harmed if he continues
16 to use our property.

17 The bottom line is the balancing of
18 equities. Look at the situation. My
19 clients want to develop their property.
20 That's fine, let them develop their
21 property. Mr. Davis has agreed to sell
22 the property he hasn't even purchased yet
23 for more than twice what he paid for it.
24 He is getting a substantial benefit and he
25 is getting lease payments for the next

1 five years. Mr. Shepherd doesn't need the
2 easement for what he wants to do, so he is
3 happy because he has the body shop and the
4 paint shop. Mr. Davis is happy because he
5 has sold his property for twice what he
6 paid for it or more than that, and we sent
7 him down there. My clients ought to be
8 happy because they can develop their
9 property.

10 Look at the overall picture. How in
11 the world is it equitable not to grant an
12 injunction barring Mr. Davis from using
13 our property when he has already given up
14 the right to use his property?

15 THE COURT: Let me ask you a couple
16 of questions, Mr. Isbrandtsen, and I'm
17 sure you will have an answer for them.
18 Would you agree with me that but for the
19 agreement between Mr. Davis and Mr.
20 Shepherd, that your easement by necessity
21 argument, that is your argument against
22 it, would be much weaker?

23 MR. ISBRANDTSEN: Yes. But can I
24 also tell you --

25 THE COURT: No, no.

1 MR. ISBRANDTSEN: I'll stop.

2 THE COURT: Now, let's assume for a
3 moment that a ruling is made by this Court
4 favorable to your position, do you take
5 the position that then that is dispositive
6 of this issue from now on forever more?

7 MR. ISBRANDTSEN: Your ruling would
8 be to enjoin Mr. Davis from using the
9 easement.

10 THE COURT: Exactly. Now, let's
11 suppose that -- how much time is left?

12 MR. ISBRANDTSEN: Three and a half,
13 four years.

14 THE COURT: In another four years,
15 let's suppose at the end of four years,
16 for whatever reason Mr. Shepherd says --

17 MR. ISBRANDTSEN: Forget it.

18 THE COURT: -- forget it, I'm out of
19 here, and oh, by the way, forget about
20 driving across my car lot, it's over.

21 MR. ISBRANDTSEN: Right.

22 THE COURT: He can put up a 16-foot
23 cyclone fence behind the property. And
24 let's suppose that also during that
25 interim period of time that Mr. Henning

1 and Mr. Cross have sold their property to
2 somebody who wants to develop it, they are
3 out of the picture. And let's suppose
4 during that interim period of time that
5 Mr. Davis has paid off whatever he now
6 owes the Parker estate and he owns the
7 property free and clear. How does he get
8 to it?

9 MR. ISBRANDTSEN: He doesn't get to
10 it and he could not have gotten to it,
11 unfortunately, and this is a problem in
12 this case that doesn't have anything to do
13 with us, he couldn't have gotten to it and
14 never could have gotten to it because of
15 article nine in his contract.

16 THE COURT: I understand that. But
17 do you think that anybody in the world is
18 going to let somebody own a piece of
19 property and can't get to it? Sooner or
20 later something has to be worked out.

21 MR. ISBRANDTSEN: But the problem is
22 that the Virginia Beach City Ordinance
23 says he cannot get a title to that
24 property recorded by a subdivision. He
25 cannot do it. It's against the law and it

1 was a misdemeanor for Mr. Parker in 1970
2 or '80 when he did it, when he sold it, to
3 even convey it to him. I have got the
4 Code section for you. Mr. Parker entered
5 into an illegal agreement with this
6 gentleman to try to subdivide something
7 and now you are in the situation of being
8 asked to enforce the agreement.

9 THE COURT: So the smart move for
10 Mr. Shepherd would be to sit back and do
11 nothing, if you prevail, until your
12 five-year option period is up and then two
13 days later, Mr. Davis, you got nothing to
14 sell, sir. I will give you ten dollars.

15 MR. ISBRANDTSEN: Absolutely. We
16 talked about it in depositions and that is
17 exactly what is going to happen in this case.
18 While we feel sorry for this gentleman, Mr.
19 Davis, there's a limit to how far. The law
20 deals with the issue. For Mr. Davis to
21 prevail on an easement by necessity, the
22 Rhoton and Rollins case says he has to show
23 not only the original necessity existed at
24 the time of severance --

25 THE COURT: I know that.

1 MR. ISBRANDTSEN: -- but that it
2 continues to exist. And whose choice was
3 it to enter into that agreement?

4 THE COURT: I understand. Ya'll
5 have been dealing with this for months.
6 I've been dealing with it for three or
7 four hours.

8 MR. ISBRANDTSEN: But the problem is
9 there are some rules.

10 THE COURT: I understand.

11 MR. ISBRANDTSEN: I'm not going to
12 tell you that he didn't get snookered, but
13 I am going to tell you we didn't snooker
14 him. And I've got to tell you one other
15 thing, Judge, that I think is very, very
16 important. Mr. Davis' contract was not
17 recorded until a year after our contract
18 to buy this property. We had no notice or
19 knowledge that it existed until Mr. Davis
20 brought it to us, which I think the
21 testimony was around 1990 time frame or
22 '91, that time frame.

23 THE COURT: Of course what I could
24 do is I could take this under advisement
25 until July 29, 1998 and see what happens.

1 MR. ISBRANDTSEN: You could, and you
2 could issue a temporary injunction until
3 that time period but, you see, we have
4 just asked you -- we have not asked you to
5 rule that the easement does not exist or
6 exists. We have asked you only to rule
7 that Mr. Davis does not have the right to
8 use that easement. That's all we have
9 asked. We have not joined the Parker
10 estate, we have not done that, and we
11 could have. Counsel filed a motion to
12 require us to do that and then for
13 whatever reason decided not to do that.

14 We have simply said he doesn't have
15 the right to be on our property because he
16 is not using the -- if you want to take
17 their argument, because he is not using
18 the easement the way it was used before.
19 We had nothing to do with that. You can't
20 make the argument that we cut off our
21 access. He bought a pig in the poke and
22 sold it for twice the money. What Mr.
23 Shepherd is going to do to Mr. Shepherd
24 later is unfortunate and I think it's
25 obvious what he is going to do.

1 THE COURT: I think it's obvious
2 too.

3 MR. ISBRANDTSEN: Again, Judge, I
4 think I understand the kind of things you
5 look at as you look at these cases. As
6 between Davis and my clients, there is a
7 way that the law says to resolve these
8 things. As between Davis and Shepherd,
9 that's another issue. Mr. Davis told you
10 I have an agreement with Mr. Shepherd that
11 I can use that property, but it's not in
12 his agreements which were all drafted by
13 the same team, same law firm, same show.

14 THE COURT: You are talking
15 equities, Mr. Isbrandtsen.

16 MR. ISBRANDTSEN: I'm talking
17 equities. Equity follows the law when
18 there are legal requirements and the legal
19 requirement here is there is no easement
20 by necessity that you can imply, and the
21 only cases where they have ever implied an
22 easement by preexisting use were these
23 cases dealing with waterfront property and
24 so on and so forth.

25 You would have to go an outrageous

1 distance and say that this gentleman, Mr.
2 Davis, should have an easement implied in
3 his favor when Mr. Davis has given up the
4 right to use his own property. What you
5 are in essence saying, that is going to
6 benefit Mr. Shepherd. That's what the
7 evidence is in this case. It's not going
8 to benefit Mr. Davis, it's going to
9 benefit Mr. Shepherd.

10 THE COURT: Mr. Test, theoretically
11 you are not entitled to argue again but I
12 will let you. He waived opening argument,
13 you argued and he responded in rebuttal to
14 you, but in view of the questions that I
15 have asked, I wouldn't mind hearing from
16 you, if you would address your remarks to
17 the facts and circumstances surrounding
18 those questions.

19 MR. TEST: Judge, Mr. Isbrandtsen
20 raised the issue in his remarks of whether
21 or not an easement in Parkco Building
22 Company to George Parker of July 11, 1980
23 was gross or appurtenant, because the
24 language of that easement, if there is an
25 express easement, is the same language in

1 the easement to Parker Road Associates, so
2 perhaps he has raised the question whether
3 it's gross or appurtenant here, but it's
4 -- whether it's there, too.

5 THE COURT: I understand.

6 MR. TEST: He raised it in light of
7 the question and answer that he elicited
8 from Mr. Davis. As I recall his question
9 and answer, it was in light of his use of
10 the road. Clearly the witness' answer
11 should not bind him to what the legal
12 documents say. The legal documents
13 relating to those easements clearly show
14 it's an appurtenant easement because the
15 document itself shows it's binding on the
16 heirs, executors and assigns of Mr.
17 Parker. So the original easement granted
18 by Parkco to Mr. Parker and his heirs and
19 assigns --

20 THE COURT: Let me just say this,
21 Mr. Test, for whatever it's worth, and
22 then you can go onto something else, but I
23 am convinced, at least this Court is
24 convinced at this level that the deed
25 dated April 13th, 1984, containing the

1 language subject to the easement
2 originally granted on July 11, 1980, is
3 not sufficient to overcome the merger
4 which occurred in 1980.

5 MR. TEST: Judge, while you are on
6 that point, I've given you a memorandum.
7 I don't know if you have had an
8 opportunity to read it, but included in
9 that memorandum is the State of Oregon,
10 and I have a copy here to give you, and
11 it's directly on point. In that case
12 there was an easement created by a deed
13 and subsequent to the merger of that
14 easement. That easement was revived
15 simply by reference to the former
16 easement, and it's the exact issue we have
17 here. While the Virginia Supreme Court
18 may not have addressed this particular
19 issue in a case before you regarding an
20 express easement, I think the application
21 and principles of law --

22 THE COURT: Well, I have a feeling
23 that the Virginia Supreme Court is
24 probably going to ultimately address this
25 issue.

1 MR. TEST: Judge, in my response to
2 the Bill of Complaint, Mr. Isbrandtsen may
3 have drafted his complaint in that he was
4 only asking for a determination of what
5 right Mr. Davis had. Mr. Davis has prayed
6 for a determination by this Court of
7 whether or not the easement exists, so if
8 it's a ruling by this Court that the
9 easement as of April 13th, 1984 is not an
10 express easement, I need that to be a
11 ruling that the Court is going to make so
12 I will know where we are going.

13 THE COURT: I will tell you that it
14 is going to be a ruling that the Court is
15 going to make ultimately in this case and
16 then you can move on to the other issues
17 that were raised by virtue of my
18 questions.

19 MR. TEST: My argument now goes to
20 the issue of easements by implication,
21 which is the quasi easement, not the
22 easements by necessity. I think I have
23 borne the burden of proof on the three
24 elements I need there. Mr. Isbrandtsen
25 argues that I have not because of the

1 issue of the continuous use, that it
2 hasn't been continuous.

3 Mr. Davis has attempted to continue
4 to use that easement and stopped under
5 protest when it's been blocked. It has
6 nothing to do with Mr. Davis' contract
7 with Mr. Shepherd regarding the parcel and
8 the fact that Mr. Shepherd now has access
9 for use of that building. That's a lease,
10 and as the contract party to Mr. Parker
11 for this parcel in possession of the
12 parcel, he has right to make use of it by
13 leasing it out. But even after he leased
14 it out to Mr. Shepherd he has continued,
15 since the filing of the suit and they have
16 testified in the photos, to try to use
17 that easement indicating he feels it is
18 his, and the use has been continuous until
19 they blocked it.

20 So I don't think it is fair to say
21 the use was continuous from April of '84
22 until '93 when they blocked it and since
23 the use wasn't continuous from '93 we
24 haven't met our burden. It was continuous
25 up until we were interfered.

1 The issue on whether we have a quasi
2 easement, was this: Was there a common
3 grantor, and there was. Was the easement
4 there -- I have to refer back to my notes,
5 Judge, because I forget what the
6 requirements of it were -- was the use
7 continuous and apparent and reasonably
8 necessary; it was clearly continuous and
9 apparent in '84 when Parker Road
10 Associates took it and it's remained
11 continuous and apparent and still is
12 reasonably necessary to today. And was
13 the use of the easement in existence at
14 the time of the severance, which was April
15 13th, '84, and it has been. The cases
16 that I cite you on that, Russakoff
17 -- Russakoff is this water case. I don't
18 see the distinction in the water case, why
19 can't there be on land when the facts are
20 almost identical here. Let's assume --

21 THE COURT: Well, that may be the
22 case if you take Mr. Shepherd out of the
23 equation.

24 MR. TEST: What Mr. Shepherd and Mr.
25 Davis are doing is totally irrelevant to

1 whether the easement was created in 1984.

2 THE COURT: No, if you're my
3 next-door neighbor and you watch me walk
4 my dog across your property for 15 years
5 and then I sell the front to Isbrandtsen
6 and he let's his son go out and ride his
7 four wheel dirt bike across the same
8 property that I walk my dog across, you
9 might say it was okay to walk his dog but
10 I don't want Isbrandtsen's kid out there
11 riding the dirt bike.

12 MR. TEST: Mr. Shepherd has never
13 attempted to make any use of this
14 easement. Mr. Davis has used this
15 easement since 1984.

16 THE COURT: Shepherd says he has
17 been hauling new cars through there,
18 wreckers through there.

19 MR. TEST: No, sir.

20 THE COURT: Isn't that what he
21 said?

22 MR. TEST: No, that is what he would
23 like to do.

24 THE COURT: He hasn't done it yet
25 but --

1 MR. ISBRANDTSEN: That's his plan,
2 that's what he testified, that was his
3 plan.

4 MR. TEST: Shepherd has made no use
5 of the easement, hasn't even attempted to,
6 but even with the litigation Mr. Davis has
7 attempted to. So whether there was an
8 implied easement in 1984, what Shepherd
9 has done has nothing to do with it.

10 Mr. Davis has met the burden of
11 showing there was a common grantor. The
12 easement was in use at the time, and Mr.
13 Davis' use since then has been continuous
14 and open and is reasonably necessary.

15 THE COURT: Suppose I tell you that
16 Mr. Davis could use it and Shepherd can't.

17 MR. TEST: Judge, Mr. Shepherd is
18 not a party to the litigation. What I
19 think you need to rule on is what rights
20 Davis has, if any. Because if, in fact,
21 the Parker estate ever conveys to Davis
22 and Davis ever conveys to Shepherd, anyone
23 down that chain can only get whatever
24 Parker has to give them.

25 THE COURT: Yeah, I know.

1 MR. TEST: So right now whatever you
2 rule Davis has is whatever Parker had to
3 give, and Davis can't give Mr. Shepherd
4 anything else, so you are ruling on the
5 same thing, so I think the issue you have
6 to address on implied issue is what was
7 going on on April 13, 1984.

8 THE COURT: As an aside, and I'm
9 sure you know the answer to this, does the
10 Parker Road own the rest of that property
11 east of there to Great Neck Road?

12 MR. ISBRANDTSEN: I don't think so.

13 MR. TEST: Over here.

14 MR. HENNING: That is the Lincoln
15 Mercury.

16 MR. ISBRANDTSEN: They own the front
17 to Virginia Beach Boulevard but they don't
18 own this side.

19 THE COURT: That property east goes
20 all the way to Great Neck Road and where
21 George Parker's office used to be?

22 MR. CROSS: It's a block up.

23 THE COURT: It has nothing to do
24 with this. It was of interest to me.

25 MR. ISBRANDTSEN: The one thing on

1 this implied easement that is so important
2 is that you do that when you have got no
3 other hope. That's really what happens in
4 all the other cases when there's no other
5 way to do it, you do it there and then the
6 rules, this is a brand new case, 1991
7 case, Russakoff, it explains this idea
8 that the use we are talking about, Mr.
9 Davis' use of that easement is reasonably
10 necessary for his enjoyment.

11 THE COURT: I know it.

12 MR. ISBRANDTSEN: That's where we
13 are stuck, because of the Robertson case;
14 it says it can't be for Shepherd's
15 enjoyment, so Davis gave this away when he
16 signed this contract. We had nothing to
17 do with that, maybe that's fortuitous, but
18 that's what he did.

19 THE COURT: Anything else, Mr.
20 Test?

21 MR. TEST: Only regardless of
22 whatever Mr. Davis signed with Mr.
23 Shepherd, he has still got today whatever
24 rights he got from Mr. Parker under this
25 contract, so regardless of his contract

1 with Mr. Shepherd, he still has those
2 rights until he sells that land, whether
3 he exercises them or not, and his
4 testimony has been he still needs
5 occasionally to get tractor trailers in
6 and out of there, and it's pretty clear
7 from the evidence that's not something you
8 do through a new dealer car lot.

9 MR. ISBRANDTSEN: That's what every
10 other car dealer does in the country.

11 THE COURT: He can do it through
12 there as long as Shepherd continues to let
13 him park there.

14 MR. ISBRANDTSEN: Judge, we also
15 have a memo to give you if you feel --

16 THE COURT: Yeah, yeah, let me have
17 it.

18 MR. ISBRANDTSEN: I'll get a copy
19 for you in just a second. We didn't know
20 exactly the issues as they came out, but I
21 think we are all hitting the same areas.

22 MR. TEST: Judge, did you want
23 copies of the other cases I have here,
24 Virginia cases?

25 MR. ISBRANDTSEN: Steve, I have a

1 copy for you. I have buried it. I will
2 get it in just a minute.

3 THE COURT: I'll take a recess and
4 read through your memos and I'll let you
5 know something in a few minutes.
6

7 (Whereupon, there was a recess).
8

9 THE COURT: First of all, let me say
10 that I appreciate counsel's very concise
11 presentation of the facts in this case and
12 also the legal memoranda that have been
13 filed by counsel for both sides. I will
14 preface this further by saying that
15 sometimes the world of dealing in real
16 estate, especially, it seems, in
17 commercial real estate, can get, to use a
18 nonjudicial phrase, downright nasty.

19 This case turns on what the Court
20 sees to be a very peculiar set of facts.
21 Whether or not these facts were brought
22 about by the actions of certain
23 individuals on purpose or whether or not
24 it just happened that way, I suppose,
25 remains to be seen, and I suspect we will

1 find out somewhere down the road.

2 The Court, as indicated to some
3 extent earlier, is going to find that
4 there does not exist an express easement
5 over and through the property of the
6 plaintiffs in this case, the Court being
7 of the opinion that the easement which did
8 exist prior to April -- well, actually
9 prior to July the 22nd.

10 MR. ISBRANDTSEN: That's the
11 foreclosure deed.

12 THE COURT: -- was extinguished by
13 the doctrine of merger. The attempt to
14 revive that express easement by the
15 language in the deed dated April 13, 1984,
16 is, in the Court's opinion, insufficient
17 to accomplish what appeared to be its
18 intended purpose.

19 Moving on to the area of implied
20 easement, and this, quite frankly, is
21 where we get in the peculiar set of
22 facts. The Court is going to rule that no
23 implied easement exists on either of the
24 two theories cited by the defendants in
25 this case, because in accordance with

1 Plaintiffs' Exhibit No. 15 which is before
2 the Court, the defendants in this case
3 have no rights to the property in
4 question, that being the property owned as
5 contract purchasers by the defendants,
6 other than that of inspection, and that
7 that purpose can be accomplished over and
8 through the property of the tenant in this
9 case, who is in fact a party to the
10 agreement dated July 28th of 1993, that
11 being Mr. Shepherd.

12 That being the circumstance and
13 those being the peculiar facts in this
14 case, the Court is going to rule that the
15 defendants in this suit are enjoined from
16 using the 50-foot wide strip passing
17 through and over the property of the
18 plaintiffs, which said 50-foot strip is
19 the subject matter of this suit and of the
20 claimed easement before the Court.

21 The Court will, of course, Mr. Test,
22 note your objection and exceptions to the
23 Court's ruling for the record and request
24 that you, Mr. Isbrandtsen, draft an order
25 reflective of that ruling.

1 MR. ISBRANDTSEN: Thank you, Your
2 Honor.

3 MR. TEST: Is there a requirement
4 for purposes of the injunction, that it
5 set forth a time frame, whether it's
6 permanent?

7 THE COURT: I anticipated that you
8 might ask that question and I thought that
9 perhaps that the two of you could reach
10 some kind of agreement on that. There's
11 probably enough animosity and bad blood
12 floating around at this point anyway, it
13 seems if you could at least come up with
14 an agreement on that, something
15 reasonable; if you can't, I would be happy
16 to set it anyway.

17 MR. ISBRANDTSEN: I would be happy
18 to talk to Mr. Test about that. I can't
19 think --

20 THE COURT: What he is saying, he
21 probably wants the opportunity to get his
22 stuff out. He has testified he can't
23 bring it out through --

24 MR. ISBRANDTSEN: We don't have a
25 problem with that. This is a permanent

1 injunction. He is asking that it expire.

2 MR. TEST: No, if it's a permanent
3 injunction, you need to say that.

4 MR. ISBRANDTSEN: I think what the
5 judge is talking about, we are not in a
6 hurry for him to get the stuff out
7 tomorrow. I think it is a permanent
8 injunction and I think Mr. Test is
9 correct, I think we have to say that in
10 the order.

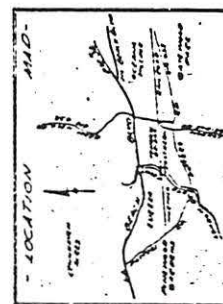
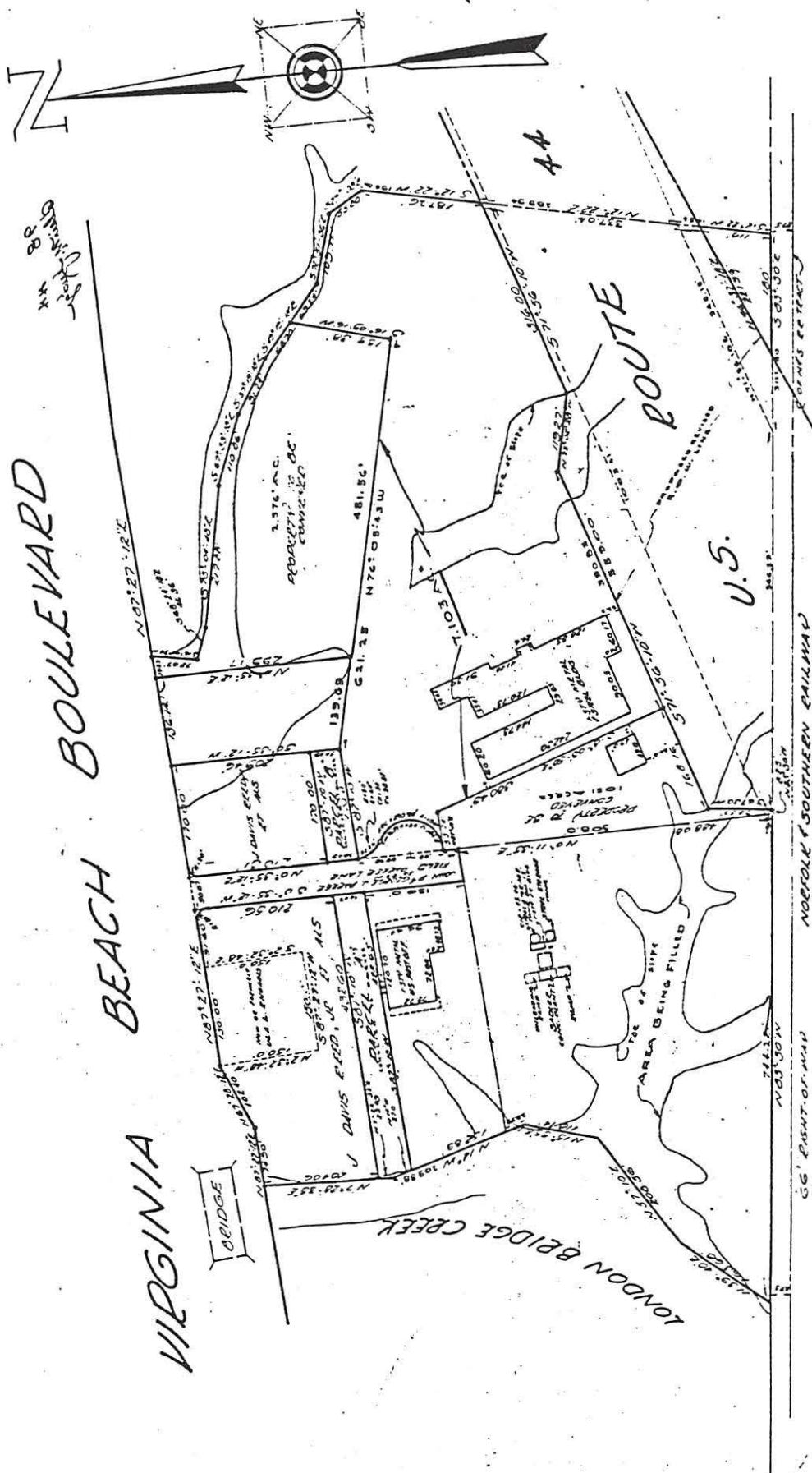
11 THE COURT: Yeah, that's correct.

12 MR. ISBRANDTSEN: Steve and I will
13 work out the issue of removal of things.

14 THE COURT: That is right.

15 MR. ISBRANDTSEN: Thank you, Your
16 Honor.

17
18
19 (Whereupon, the proceedings were
20 adjourned).



COMPOSITE PLAT
OF PROPERTY OF
GEORGE J. PARKER et al.

LOCATION NEAR LONDON BRIDGE,
VIRGINIA BEACH, VIRGINIA
SCALE: 1" = 100'
MADE 10, 1933
FILED IN LARGE REV. 6-1-33
NORFOLK, VIRGINIA

1708 August 73
D.E. 17540 P. 505
J. Davis



13746

800-1370 PAGE 355

\$360.00

THIS DEED, Made this 15th day of August, 1973, by and between
GEORGE J. PARKER and PATRICIA L. PARKER, his wife, and GEORGE J.
PARKER, Executor of the Estate of John P. Parker, deceased, and
GEORGE J. PARKER and ROXANNE C. PARKER, Co-Trustees under the
Will of John P. Parker, parties of the first part; and J. K. PARKER,
INCORPORATED, a Virginia corporation, party of the second part;

WITNESSETH:

That for and in consideration of mutual covenants contained herein and
other good and valuable consideration, including the mutual exchange of
property, the receipt of which is hereby acknowledged, the said parties of
the first part do hereby Grant, Bargain, Sell, Assign and Convey with
General Warranty, unto the party of the second part, the following described
property, to-wit:

All that certain lot, piece or parcel of land, with the buildings and
improvements thereon, situate in the City of Virginia Beach, State
of Virginia, designated as 7.103 acres and outlined in red, on that
certain plat entitled "Composite Plat of Property of George J. Parker
et. al. Location Near London Bridge, Virginia Beach, Virginia,
Lynnhaven Borough, Scale: 1"=100', May 16, 1966, Rev. 6-1-73,
Wilfred B. Large, Certified Land Surveyor, Norfolk, Virginia,"
said plat being attached hereto and made a part hereof, and further
described as follows:

Beginning at a point on the East side of Parkers Lane 260.40' South
from a pin at southeastern corner of Virginia Beach Boulevard and
Parker Lane; thence from said point of beginning N 87°-10' E 170.0'
to a point; thence S 76°-05'-43" E 621.25'; thence N 16°-09'-16" E
155.38' to a point; thence S 49°-19'-18" E 69.24' to a point; thence
S 72°-51'-36" E 109.11' to a point; thence S 29°-08'- E 55.80' to a
point; thence S 12°-22' W 187.26' to a point on the northern right of
way line of U. S. Route #44; thence turning and running along the
northern right of way line of U. S. Route #44 in a southwesterly
direction S 71°-56'-10" W 316.00' to a point; thence N 75°-02'-28"
W 119.27' to a point; thence S 71°-56'-10" W 390.85' to a point;
thence turning and running in a northwesterly direction N 18°-03'-50"
W 380.49' to a point; thence turning and running S 87°-10' W 55.74'
to a point on the East side of Parkers Lane; thence turning and running
along a curve to the left with an arc distance of 130.90' and a radius
of 50' to a point of reverse curve; thence along a curve to the right
with an arc distance of 52.36' and a radius of 50' to the point of
beginning.

It being a part of the same property conveyed to John P. and George J. Parker by deed of J. Davis Reed, Jr., et al, dated September 3, 1964, and recorded in the office of the Clerk of the Circuit Court, City of Virginia Beach, Virginia, in Deed Book 879, at page 495, and said John P. Parker departed this life on August 9, 1967, and by his Will dated January 5, 1965, recorded in Will Book 31, at page 394, devised his property in trust and granted his Trustees the power to sell, assign and exchange.

That for and in consideration of the mutual covenants contained herein and in consideration of conveying the above described property by the parties of the first part, the party of the second part, J. K. Parker, Incorporated, a Virginia corporation, does hereby Grant, Bargain, Sell, Assign and Convey with General Warranty, unto the parties of the first part, the following described property, to-wit:

All that certain tract, piece or parcel of land, with the buildings and improvements thereon and the appurtenances thereunto belonging, situate, lying and being in the Lynnhaven Borough, City of Virginia Beach, as shown on a plat entitled "Survey of Tract of land for J. K. Parker, Incorporated, in the Vicinity of Virginia Beach Airport, Lynnhaven Magisterial District, Princess Anne County, Virginia, by Alonzo Cherry, Certified Land Surveyor" which said plat is recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 27, at page 54, and more particularly described as follows:

Beginning at a point on the southern line of the right of way of the Virginia Beach Boulevard (Route 58) which point is marked by a pin in the center line of a ditch in the extreme eastern line of the property acquired by Fred A. Haycox by deed of the Will-Cooke Corporation, recorded in Deed Book 217, page 218; and from said point extending along the center line of said ditch, South 14 degrees 34 minutes 23 seconds East 626.77 feet to the northern line of the right of way of the Norfolk and Southern Railway Company; thence westerly along the northern line of the right of way of the Railway Company, the same being North 82 degrees 19 minutes 21 seconds West 371.44 feet to a point in the eastern line of the property conveyed to Gordon E. Campbell by Fred A. Haycox and Grace Haycox, his wife, by deed dated October 30, 1946, and recorded in aforesaid Clerk's Office; thence along said line, North 03 degrees 40 minutes 00 seconds West 542.30 feet to the southern line of the right of way of the Virginia Beach Boulevard; thence North 86 degrees 20 minutes 00 seconds East 245.65 feet to the point of beginning.

It being the same property conveyed to J. K. Parker, Incorporated, by deed of Louis J. Albano and Ruby W. Albano, husband and wife, dated June 10, 1951, and recorded in the aforesaid Clerk's Office in Deed Book 289, at page 554.

This conveyance is made expressly subject to the conditions, restrictions and easements, if any of record, constituting constructive notice.

The parties of the first and second parts covenant that they are seized in fee simple of the said lands; that they have the right to convey the said properties to the grantees herein named; that the said grantees shall have quiet and peaceful possession of said property, free from any encumbrances; that the parties of the first and second parts have done no act to encumber the said properties; that they, the said parties of the first and second parts, will execute such further assurances of said property as may be requisite.

IN WITNESS WHEREOF, the said parties of the first part have affixed their signatures and seals, and the party of the second part has caused these presents to be executed in the corporate name by its officers duly authorized and its corporate seal to be hereunto duly affixed and attested by its Secretary, the day, month and year first above written.

George J. Parker (SEAL)
George J. Parker

Patricia L. Parker (SEAL)
Patricia L. Parker

George J. Parker (SEAL)
George J. Parker, Executor of the Estate of
John P. Parker, deceased

George J. Parker (SEAL)
George J. Parker, Co-Trustee under the Will of
John P. Parker, deceased

Roxanne C. Parker (SEAL)
Roxanne C. Parker, Co-Trustee under the Will of
John P. Parker, deceased

J. K. PARKER, INCORPORATED

By George J. Parker
George J. Parker, President

Attest:
R. T. Butler
R. T. Butler, Secretary

STATE OF VIRGINIA

City of Virginia Beach, to-wit:

I, Louis M. Nichols, a Notary Public in and for

the City aforesaid, in the State of Virginia, whose commission expires August 6, 1974, do hereby certify that George J. Parker, Patricia L. Parker, George J. Parker, Executor of the Estate of John P. Parker, deceased, and George J. Parker, Co-Trustee under the Will of John P. Parker, and Roxanne C. Parker, Co-Trustee under the Will of John P. Parker, deceased, whose names are signed to the foregoing writing, bearing date on the 15th day of August, 1973, have each acknowledged the same before me in my City and State aforesaid.

Given under my hand this 15th day of August, 1973.

Louis M. Nichols
Notary Public

STATE OF VIRGINIA

City of Virginia Beach, to-wit:

I, Louis M. Nichols, a Notary Public in and

for the City aforesaid, in the State of Virginia, whose commission expires August 6, 1974, do hereby certify that George J. Parker and R. T. Butler, President and Secretary respectively of J. K. Parker, Incorporated, whose names are signed to the foregoing writing, bearing date the 15th day of August, 1973, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 15th day of August, 1973.

Louis M. Nichols
Notary Public

-4-

Parker & Phillips
8/24/73

In the Clerk's Office of the Circuit Court of Virginia Beach, 15 day of August, 19 73 at 12:45 PM. This instrument was received and upon the certificate of acknowledgment thereto annexed, admitted to record. The tax imposed by Par. 58.54.1 of 200 Code has been paid in the amount of \$.
TESTE: JOHN V. FENTRESS, Clerk Wm. E. Carter



7338

12746

360

THIS DEED, Made this 15th day of August, 1973, by and between
GEORGE J. PARKER and PATRICIA L. PARKER, his wife, and GEORGE J.
PARKER, Executor of the Estate of John P. Parker, deceased, and
GEORGE J. PARKER and ROXANNE C. PARKER, Co-Trustees under the
Will of John P. Parker, ^{Roxanne Parker, widow,} parties of the first part; and J. K. PARKER,
INCORPORATED, a Virginia corporation, party of the second part;

W I T N E S S E T H:

That for and in consideration of mutual covenants contained herein and
other good and valuable consideration, including the mutual exchange of
property, the receipt of which is hereby acknowledged, the said parties of
the first part do hereby Grant, Bargain, Sell, Assign and Convey with
General Warranty, unto the party of the second part, the following described
property, to-wit:

All that certain lot, piece or parcel of land, with the buildings and
improvements thereon, situate in the City of Virginia Beach, State
of Virginia, designated as 7.103 acres and outlined in red, on that
certain plat entitled "Composite Plat of Property of George J. Parker
et. al. Location Near London Bridge, Virginia Beach, Virginia,
Lynnhaven Borough, Scale: 1"=100', May 16, 1966, Rev. 6-1-73,
Wilfred B. Large, Certified Land Surveyor, Norfolk, Virginia,"
said plat being attached hereto and made a part hereof, and further
described as follows:

Beginning at a point on the East side of Parkers Lane 260.40' South
from a pin at southeastern corner of Virginia Beach Boulevard and
Parker Lane; thence from said point of beginning N 87°-10' E 170.0'
to a point; thence S 76°-05'-43" E 621.25'; thence N 16°-09'-16" E
155.38' to a point; thence S 49°-19'-18" E 69.24' to a point; thence
S 72°-51'-36" E 109.11' to a point; thence S 29°-08'- E 55.80' to a
point; thence S 12°-22' W 187.26' to a point on the northern right of
way line of U. S. Route #44; thence turning and running along the
northern right of way line of U. S. Route #44 in a southwesterly
direction S 71°-56'-10" W 316.00' to a point; thence N 75°-02'-28"
W 119.27' to a point; thence S 71°-56'-10" W 390.85' to a point;
thence turning and running in a northwesterly direction N 18°-03'-50"
W 380.49' to a point; thence turning and running S 87°-10' W 55.74'
to a point on the East side of Parkers Lane; thence turning and running
along a curve to the left with an arc distance of 130.90' and a radius
of 50' to a point of reverse curve; thence along a curve to the right
with an arc distance of 52.36' and a radius of 50' to the point of
beginning.

It being a part of the same property conveyed to John P. and George J. Parker by deed of J. Davis Reed, Jr., et al, dated September 3, 1964, and recorded in the office of the Clerk of the Circuit Court, City of Virginia Beach, Virginia, in Deed Book 879, at page 495, and said John P. Parker departed this life on August 9, 1967, and by his Will dated January 5, 1965, recorded in Will Book 31, at page 394, devised his property in trust and granted his Trustees the power to sell, assign and exchange.

That for and in consideration of the mutual covenants contained herein and in consideration of conveying the above described property by the parties of the first part, the party of the second part, J. K. Parker, Incorporated, a Virginia corporation, does hereby Grant, Bargain, Sell, Assign and Convey with General Warranty, unto the parties of the first part, the following described property, to-wit:

All that certain tract, piece or parcel of land, with the buildings and improvements thereon and the appurtenances thereunto belonging, situate, lying and being in the Lynnhaven Borough, City of Virginia Beach, as shown on a plat entitled "Survey of Tract of land for J. K. Parker, Incorporated, in the Vicinity of Virginia Beach Airport, Lynnhaven Magisterial District, Princess Anne County, Virginia, by Alonzo Cherry, Certified Land Surveyor" which said plat is recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 27, at page 54, and more particularly described as follows:

Beginning at a point on the southern line of the right of way of the Virginia Beach Boulevard (Route 58) which point is marked by a pin in the center line of a ditch in the extreme eastern line of the property acquired by Fred A. Haycox by deed of the Will-Cooke Corporation, recorded in Deed Book 217, page 218; and from said point extending along the center line of said ditch, South 14 degrees 34 minutes 23 seconds East 626.77 feet to the northern line of the right of way of the Norfolk and Southern Railway Company; thence westerly along the northern line of the right of way of the Railway Company, the same being North 82 degrees 19 minutes 21 seconds West 371.44 feet to a point in the eastern line of the property conveyed to Gordon E. Campbell by Fred A. Haycox and Grace Haycox, his wife, by deed dated October 30, 1946, and recorded in aforesaid Clerk's Office; thence along said line, North 03 degrees 40 minutes 00 seconds West 542.30 feet to the southern line of the right of way of the Virginia Beach Boulevard; thence North 86 degrees 20 minutes 00 seconds East 245.65 feet to the point of beginning.

It being the same property conveyed to J. K. Parker, Incorporated, by deed of Louis J. Albano and Ruby W. Albano, husband and wife, dated June 10, 1951, and recorded in the aforesaid Clerk's Office in Deed Book 289, at page 554.

This conveyance is made expressly subject to the conditions, restrictions and easements, if any of record, constituting constructive notice.

The parties of the first and second parts covenant that they are seized in fee simple of the said lands; that they have the right to convey the said properties to the grantees herein named; that the said grantees shall have quiet and peaceful possession of said property, free from any encumbrances; that the parties of the first and second parts have done no act to encumber the said properties; that they, the said parties of the first and second parts, will execute such further assurances of said property as may be requisite.

IN WITNESS WHEREOF, the said parties of the first part have affixed their signatures and seals, and the party of the second part has caused these presents to be executed in the corporate name by its officers duly authorized and its corporate seal to be hereunto duly affixed and attested by its Secretary, the day, month and year first above written.

George J. Parker (SEAL)
George J. Parker

Patricia L. Parker (SEAL)
Patricia L. Parker

George J. Parker (SEAL)
George J. Parker, Executor of the Estate of
John P. Parker, deceased

George J. Parker (SEAL)
George J. Parker, Co-Trustee under the Will of
John P. Parker, deceased

Roxanne C. Parker (SEAL)
Roxanne C. Parker, Co-Trustee under the Will of
John P. Parker, deceased

J. K. PARKER, INCORPORATED

By George J. Parker
George J. Parker, President

Attest:

R. T. Butler
R. T. Butler, Secretary

Roxanne Parker
Roxanne Parker, widow

STATE OF VIRGINIA

City of Virginia Beach, to-wit:

I, Louis M. Nichols

, a Notary Public in and for

the City aforesaid, in the State of Virginia, whose commission expires

August 6, 1974, do hereby certify that George J. Parker,

Patricia L. Parker, George J. Parker, Executor of the Estate of John P.

Parker, deceased, and George J. Parker, Co-Trustee under the Will of

John P. Parker, and Roxanne C. Parker, Co-Trustee under the Will of

John P. Parker, deceased, whose names are signed to the foregoing writing,

bearing date on the 15th day of August, 1973, have each acknowledged the

same before me in my City and State aforesaid.

Given under my hand this 15th day of August, 1973.Louis M. Nichols
Notary Public

STATE OF VIRGINIA

City of Virginia Beach, to-wit:

I, Louis M. Nichols

, a Notary Public in and

for the City aforesaid, in the State of Virginia, whose commission expires

August 6, 1974, do hereby certify that George J. Parker and

R. T. Butler, President and Secretary respectively of J. K. Parker, Incor-

porated, whose names are signed to the foregoing writing, bearing date the

15th day of August, 1973, have acknowledged the same before me in my

City and State aforesaid.

Given under my hand this 15th day of August, 1973.Louis M. Nichols
Notary Public

-4-

In the Clerk's Office of the Circuit Court of Virginia Beach, August 15, 1973, this instrument was filed and the fee of \$1.00 was paid. The tax imposed by P.L. 85-541 of the Code has been paid in the amount of \$ 1.00.

TEST: JOHN V. FENNER, Clerk

William E. ...

STATE OF VIRGINIA
City of Virginia Beach, to-wit:

I, Margaret P. Oberlin, a Notary Public in and for the City
aforesaid, in the State of Virginia, whose commission expires, March 22, 1978
do hereby certify that Roxanne Parker, widow, whose name is signed to the
foregoing writing, bearing date on the 15th day of August, 1973, has
acknowledged the same before me in my City and State aforesaid.

Given under my hand this 21st day of May, 1974.
~~August, 1973.~~

Margaret P. Oberlin
Notary Public

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of my office, this 22nd day
of May, 19 74, at 11:27 A.M. this instrument was received and upon the
certificate of acknowledgment it was approved, submitted to record. The tax imposed by Par. 58-54.1 of the Code
has been paid, in the amount of \$.
TESTE: JOHN V. FENTRESS, Clerk By: Mary E. Cooper D.E.



BOOK 1578 PAGE 180

#1,17150

12031

THIS DEED, Made this *30th* day of *June*, 1976, between
J. K. PARKER, INCORPORATED, a Virginia corporation, party of the first part,
and STANLEY A. PHILLIPS, of the City of Virginia Beach, Virginia, Trustee,
party of the second part.

WITNESSETH:

That the said party of the first part does GRANT and CONVEY with
General Warranty unto the said Trustee, the following property, and the rents,
issues and profits therefrom, to-wit:

All that certain lot, piece or parcel of land, with the buildings and
improvements thereon, situate in the City of Virginia Beach, State
of Virginia, designated as 7.103 acres and outlined in red, on that
certain plat entitled "Composite Plat of Property of George J. Parker
et. al. Location Near London Bridge, Virginia Beach, Virginia,
Lynnhaven Borough, Scale: 1"=100', May 16, 1966, Rev. 6-1-73,
Wilfred B. Large, Certified Land Surveyor, Norfolk, Virginia,"
said plat being duly recorded in the Clerk's Office of the Circuit
Court of the City of Virginia Beach, Virginia, in Map Book 98,
at page 44, and further described as follows:

Beginning at a point on the East side of Parker Lane 260.40' South
from a pin at southeastern corner of Virginia Beach Boulevard and
Parker Lane; thence from said point of beginning N 87°-10' E 170.0'
to a point; thence S 76°-05'-43" E 621.25'; thence N 16°-09'-16" E
155.38' to a point; thence S 49°-19'-18" E 69.24' to a point; thence
S 72°-51'-36" E 109.11' to a point; thence S 29°-08' E 55.80' to a
point; thence S 12°-22' W 187.26' to a point on the northern right of
way line of U. S. Route #44; thence turning and running along the
northern right of way line of U. S. Route #44 in a southwesterly
direction S 71°-56'-10" W 316.00' to a point; thence N 75°-02'-28"
W 119.27' to a point; thence S 71°-56'-10" W 390.85' to a point;
thence turning and running in a northwesterly direction N 18°-03'50"
W 380.49' to a point; thence turning and running S 87°-10' W 55.74'
to a point on the East side of Parker Lane; thence turning and running
along a curve to the left with an arc distance of 130.90' and a radius
of 50' to a point of reverse curve; thence along a curve to the right
with an arc distance of 52.36' and a radius of 50' to the point of
beginning.

It being the same property conveyed to J. K. Parker, Incorporated,
a Virginia corporation, by deed of George J. Parker, et ux, et als,
dated August 1, 1973, and duly recorded in the aforesaid Clerk's
Office in Deed Book 1421, at page 663.

This deed of trust is subject to that certain deed of trust from
J. K. Parker, Incorporated, to Edward L. Breeden, Jr., Trustee,
dated August 15, 1973, recorded in the aforesaid Clerk's Office
in Deed Book 1370, at page 359, in the principal sum of
\$120,000.00.

See Subord. Agmt. O.B. 1759-259

IN TRUST, to secure the holder or holders thereof, without preference, the payment of the principal sum of Seven Hundred Eighty-one Thousand and 00/100ths Dollars (\$781,000.00), with interest thereon at the rate of one percent (1%) over prime (per Agreement June 30, 1976, Paragraph C), evidenced by ten (10) certain negotiable promissory notes of even date herewith made by the Grantor and payable to BEARER or order, and are numbered and mature as follows:

| <u>Note Number</u> | <u>Amount</u> | <u>Maturity of Note</u> |
|--------------------|---------------|-------------------------|
| 1 | \$78,100.00 | August 30, 1977 |
| 2 | \$78,100.00 | August 30, 1978 |
| 3 | \$78,100.00 | August 30, 1979 |
| 4 | \$78,100.00 | August 30, 1980 |
| 5 | \$78,100.00 | August 30, 1981 |
| 6 | \$78,100.00 | August 30, 1982 |
| 7 | \$78,100.00 | August 30, 1983 |
| 8 | \$78,100.00 | August 30, 1984 |
| 9 | \$78,100.00 | August 30, 1985 |
| 10 | \$78,100.00 | August 30, 1986 |

Said payments shall be applied first to the payment of interest and the balance in payment of principal at the offices of Parker & Phillips, Attorneys, 3001 Virginia Beach Boulevard, Virginia Beach, Virginia 23452, or such place as the holder may designate in writing, and also to secure the payment of any note or notes, bond or bonds, given and received in curtail or renewal, in whole or in part of the above described debt. The said notes bear the marginal signature of the Trustee for the purpose of identification only.

The deed of trust is given to secure a debt in accordance with the provisions of Section 55-59 and 55-60 of the Code of Virginia, 1950, as amended and effective on the date hereof, and as therein provided, shall be construed to impose and confer upon the parties hereto, and the beneficiaries hereunder the duties, rights and obligations therein set forth. As authorized and permitted by said Sections the following additional provisions are herein incorporated in short form and to be construed as therein provided:

ADVERTISEMENT REQUIRED: Advertisement of the time, place and terms of sale for five days in a newspaper published in the City of Norfolk, Va.
 BIDDER'S DEPOSIT: Of not more than 10% may be required.
 IDENTIFICATION BY TRUSTEE'S SIGNATURE.
 DEFERRED PURCHASE MONEY.
 EXEMPTIONS WAIVED.
 SUBJECT TO ALL UPON DEFAULT./except as provided in Paragraph 9 of Sales
 RENEWAL OR EXTENSION PERMITTED. Agreement June 30, 1976.
 RIGHT OF ANTICIPATION RESERVED: Without penalty.
 INSURANCE REQUIRED: For value of improvements.
 SUBSTITUTION OF TRUSTEE PERMITTED.

except as provided in Paragraph 9
of Sales Agreement June 30, 1976

In the event of any default hereunder, and for the duration thereof, the

Trustee or Trustees hereunder, in addition to all other remedies, shall be entitled to take possession of the property herein conveyed and above described, to dispossess the owner or owners thereof or any tenant of said owner or owners; and to collect any and all rents, issues and profits of said property for the use and occupancy thereof; and may apply said rentals for the following purposes: To the cost and expense of the Trustee or Trustees in and about the administration of the trust; to the cost and expense of any repairs to said property deemed necessary or desirable by said Trustee or Trustees; to the payment of taxes and premiums of insurance on said property; and on account of the indebtedness hereby secured; and to that end the Trustee or Trustees are empowered to lease the said property for such time and upon such terms and conditions as they may deem advisable; to distrain for rent or take any other legal action to enforce the collection thereof, or to repossess the property.

The said Grantor covenants that it will pay the debt hereby secured and further covenants that it will warrant generally the property hereby conveyed.

IN WITNESS WHEREOF, Grantor has caused this Deed of Trust to be executed by its duly authorized officers and its seal to be hereunto affixed and attested, the day and year first above written.

J. K. PARKER, INCORPORATED

By Warren E. Parker
President



R. T. Butler
Secretary

STATE OF VIRGINIA

City/County of Virginia Beach, to-wit:

I, P. F. Hicks, a Notary Public in and for the City/County aforesaid, in the State of Virginia, do hereby certify that Warren E. Parkhurst, President, and R. T. Butler, Secretary, of J. K. Parker, Incorporated, whose names are signed to the foregoing writing, bearing date on the 30th day of June, 1976, have acknowledged the same before me in the City/County aforesaid.

GIVEN under my hand this 30th day of June, 1976.

My commission expires: Jan 26 - 1980

[Signature]
Notary Public

VIRGINIA

In the Clerk's Office of the Circuit Court of Virginia Beach 30th day of June, 1976 at 3:43, this instrument was received and upon the certificate of acknowledgment thereto annexed, admitted to record. The tax imposed by Par. 58-34.1 of the Code, was been paid, in the amount of \$.

TESTE: JOHN V. FENTRESS, Clerk

[Signature] D. C.

Parker & Phillips, Atty



BOOK 1025 PAGE 550

4635.55

25663

THIS DEED, made this 18th day of November, 1976, between J. K. PARKER, INCORPORATED, a Virginia corporation, party of the first part, and PARCO BUILDING CORPORATION (formerly O.S.C.O., INC.), a Nevada corporation, party of the second part,

WHEREAS, PARCO BUILDING CORPORATION (formerly O.S.C.O., INC.), is the sole stockholder of J. K. PARKER, INCORPORATED; and

WHEREAS, an Agreement and Plan of Liquidation of J. K. PARKER, INCORPORATED, was adopted on the 1st day of July, 1976, whereby J. K. PARKER, INCORPORATED, would be voluntarily dissolved in accordance with the general corporation law of the State of Virginia, pursuant to the following plan, to-wit: There shall be a complete liquidation of the corporation, J. K. PARKER, INCORPORATED, on or prior to December 31, 1976, and all the assets and property of J. K. PARKER, INCORPORATED, subject to its liabilities, shall be assigned and conveyed to O.S.C.O., INC., a Nevada corporation, which name of O.S.C.O., INC., has been now changed to PARCO BUILDING CORPORATION, the sole stockholder of J. K. PARKER, INCORPORATED.

NOW, THEREFORE, WITNESSETH: That for and in consideration of the sum of \$10.00 and in consideration of the premises hereinabove stated, the party of the first part does grant and convey with General Warranty of Title unto the said party of the second part, all the following property and the rents, issues, and profits therefrom, to-wit:

All that certain lot, piece, or parcel of land with buildings and improvements thereon situate in the City of Virginia Beach, State of Virginia, designated as 7.103 acres and outlined in red on that certain plat entitled, "Composite Plat of Property of George J. Parker, et al, Location Near London Bridge, Virginia Beach, Virginia, Lynnhaven Borough, Scale: 1"=100', May 16, 1966, Rev. 6-1-73, Wilfred B. Large, Certified Land Surveyor, Norfolk, Virginia," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 98, at page 44, and further described as follows:

Beginning at a point on the East side of Parker Lane 260.40' South from a pin at southeastern corner of Virginia Beach Boulevard and Parker Lane; thence from said point of beginning N 87°-10' E 170.0' to a point; thence S 76°-05'-43" E 621.25'; thence N 16°-09'-16" E 155.38' to a point; thence S 49°-19'-18" E 69.24' to a point; thence S 72°-51'-36" E 109.11' to a point; thence S 29°-08' E 55.80' to a point; thence S 12°-22' W 187.26' to a point on the northern right of way line of U. S. Route #44; thence

MARTIN, HICKS & INGLES, L.L.C.
ATTORNEYS AT LAW
GLOUCESTER, VIRGINIA 23061

See C.B. 1759-259

turning and running along the northern right of way line of U. S. Route #44 in a southwesterly direction S 71°-56'-10" W 316.00' to a point; thence N 75°-02'-28" W 119.27' to a point; thence S 71°-56'-10" W 390.85' to a point; thence turning and running in a northwesterly direction N 18°-03'-50" W 380.49' to a point; thence turning and running S 87°-10' W 55.74' to a point on the East side of Parker Lane; thence turning and running along a curve to the left with an arc distance of 130.90' and a radius of 50' to a point of reverse curve; thence along a curve to the right with an arc distance of 52.36' and a radius of 50' to the point of beginning.

It being the same property conveyed to J. K. Parker, Incorporated, a Virginia corporation, by deed of George J. Parker, et ux, et als, dated August 1, 1973, and duly recorded in the aforesaid Clerk's Office in Deed Book 1421, at page 663.

THIS CONVEYANCE IS MADE subject to the following deeds of trust:

1. That certain deed of trust from J. K. Parker, Incorporated, to Edward L. Breeden, Jr., Trustee, dated August 15, 1973, recorded in the aforesaid Clerk's Office in Deed Book 1370, at page 359, in the principal sum of \$120,000.00.

2. That certain deed of trust from J. K. Parker, Incorporated, to Stanley A. Phillips, Trustee, dated June 30, 1976, recorded in the aforesaid Clerk's Office in Deed Book 1578, at page 180, in the principal sum of \$781,000.00.

THE PARTY OF THE SECOND PART, by its joining in this deed, hereby assumes said above-described deeds of trust and covenants that it will pay the debts thereby secured.

IN WITNESS WHEREOF, the said J. K. PARKER, INCORPORATED, has caused this deed to be signed and acknowledged in its corporate name by WARREN E. PARKHURST, its President, and its corporate seal to be hereunto affixed and attested by ROBERT T. AMORY, its Secretary, under authority of its Board of Directors; and the said PARCO BUILDING CORPORATION has caused this deed to be signed and acknowledged in its corporate name by WARREN E. PARKHURST, its President, and its corporate seal to be hereunto affixed and attested by ROBERT T. AMORY, its Secretary, under authority of its Board of Directors; on the day, month, and year first above written.

J. K. PARKER, INCORPORATED

By Warren E. Parkhurst (SEAL)
President

MARTIN, HICKS & INGLES, L.M.
ATTORNEYS AT LAW
GLOUCESTER, VIRGINIA 23061

Attest:

1949

Robert J. Amory, Secretary.

PARCO BUILDING CORPORATION

By Warren E. Parkhurst (SEAL)
President

Attest:

Robert J. Amory, Secretary.

STATE OF VIRGINIA,

CITY OF VIRGINIA BEACH, To-Wit:

The foregoing instrument was acknowledged before me this 22nd day of December, 1976, by WARREN E. PARKHURST and ROBERT T. AMORY, President and Secretary, respectively, of J. K. PARKER, INCORPORATED; and I further certify that ROBERT T. AMORY acknowledged the seal hereto affixed and attested by him to be the corporate seal of the said corporation, and that the seal was so affixed and attested under authority of its Board of Directors.

Lucie M. Nicholas
Notary Public
My Commission Expires: July 11, 1978.

STATE OF VIRGINIA,

CITY OF VIRGINIA BEACH, To-Wit:

The foregoing instrument was acknowledged before me this 22nd day of December 22, 1976, by WARREN E. PARKHURST and ROBERT T. AMORY, President and Secretary, respectively, of PARCO BUILDING CORPORATION; and I further certify that ROBERT T. AMORY acknowledged the seal hereto affixed and attested by him to be the corporate seal of the said corporation, and that the seal was so affixed and attested under authority of its Board of Directors.

Lucie M. Nicholas
Notary Public
My Commission Expires: July 11, 1978.

273

MARTIN, HICKS & INGLES, L.W.
ATTORNEYS AT LAW
BLOUDESTON, VIRGINIA 22001

FORM NO. C.C. 21

VIRGINIA: In the Clerk's Office of the Circuit Court of Virginia Beach 22nd day of December, 1976 at 11:13, this instrument was received and upon the certificate of acknowledgment thereto annexed, admitted to record. "The tax imposed by §58-54.1 of the Code, has been paid, in the amount of \$....."

TESTE: JOHN V. FENTRESS, Clerk

By Lucie M. Nicholas D. C.

PLAINTIFF'S
EXHIBIT
#6
H933039 7/17/81

11936

BOOK 1896 PAGE 345

① \$ 90.00

THIS DEED, made this 10th day of August, 1978, by and between PARCO BUILDING CORPORATION, a Nevada corporation, party of the first part, and GEORGE J. PARKER, married, party of the second part.

WITNESSETH:

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable considerations, the receipt of which is hereby acknowledged, the said party of the first part does hereby grant and convey with GENERAL WARRANTY and English covenants of title, unto the said party of the second part, the following described property, to-wit:

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, described on that site plan entitled "Site Plan of Part of 7.013 Acre Parcel Shown on Plat Entitled Composite Plat of Property of George J. Parker et. al. Location Near London Bridge, recorded in M.B. 98, pg. 44, in the Clerk's Office of the Circuit Court, Va. Beach, VA. Lynnhaven Borough, Virginia Beach, Virginia for George J. Parker et. al., Scale: 1"=40', May 31, 1978", made by Wilfred P. Large, Certified Land Surveyor, Norfolk, Virginia, more particularly described as follows:

Beginning at a point being S. 0°35'12" W. 260.40 feet, N. 87°10'00" E. 170.00 feet, and S. 76°05'43" E. 621.25 feet from the southeastern intersection of Parker Lane and Virginia Beach Boulevard; thence proceeding from said point of beginning N. 16°09'16" E. 155.38 feet to a point; thence turning and proceeding S. 49°19'18" E. 69.24 feet to a point; thence S. 72°51'36" E. 109.11 feet to a point; thence S. 29°08'00" E. 55.80 feet to a point; thence turning and proceeding S. 12°22'00" W. 187.26 feet to a point on the northern right of way line of U. S. Route 44; thence turning and proceeding N. 60°57'05" W. 229.91 feet to a point; thence turning and proceeding N. 16°09'16" E. 50.04 feet to a point being the said point of beginning.

It being the property conveyed to Parco Building Corporation, a Nevada corporation, by deed of J. K. Parker, Incorporated, a Virginia corporation, dated November 18, 1976, and duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Deed Book 1625, at page 550.

This conveyance is made expressly subject to the conditions, restrictions and easements of record, if any, affecting the aforesaid property

Parker, Phillips, catty, 5-18-79

BOOK 1896 PAGE 346

IN WITNESS WHEREOF, the party of the first part has caused these presents to be executed in the corporate name by its officers duly authorized and its corporate seal to be hereunto affixed and attested by its secretary all on the day, month and year first above written.

PARCO BUILDING CORPORATION

By Warren E. Parkhurst
President

Attest:

Robert J. Amory
Secretary

STATE OF VIRGINIA
City of Virginia Beach, to-wit:

The foregoing instrument was acknowledged before me this 10th day of AUGUST, 1978, by WARREN E. PARKHURST and ROBERT J. AMORY, president and secretary, respectively, of Parco Building Corporation, a Nevada corporation, on behalf of the corporation.

Charles R. Phillips
Notary Public

My commission expires:

January 5, 1980

VIRGINIA In the Clerk's Office of the Circuit Court of Virginia Beach 8 a Day
of January, 1979 at 11:27 this instrument was received and upon the
certificate of acknowledgment thereto annexed, admitted to record. The tax imposed by Par. 38-54.1 of the Code,
has been paid, in the amount of \$ 15.00
TESTE: JOHN V. FENTRESS, Clerk By John V. Fentress CC



(2)

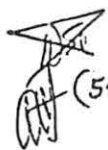

15338

BOOK 2026 PAGE 231

15

THIS DEED OF EASEMENT, Made this 11th day of July, 1980, by and between PARCO BUILDING CORPORATION, a Nevada corporation, party of the first part, and GEORGE J. PARKER, party of the second part.

WITNESSETH: That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, the receipt of which is hereby acknowledged, the said party of the first part doth grant, bargain, sell and convey with SPECIAL WARRANTY unto the said party of the second part, his heir successors and assigns, an easement for ingress and egress to Parker Lane and for construction, installation and maintenance of utilities over and under the said thirty feet, and purposes incidental thereto the following described property, to-wit:

 (5c)  All that certain piece or parcel of land thirty feet in width situate, lying and being in the City of Virginia Beach, Virginia and being the northernmost ~~line~~ FIFTY feet of the property designated as 7.013 acres and described on that certain site plan entitled "Site plan of Part of 7.013 Acre Parcel Shown on Plat entitled Composite Plat of Property of George J. Parker et al, Location Near London Bridge recorded in M. B. 98, pg. 44 in the Clerk's Office of the Circuit Court, Va. Beach, Va. Lynnhaven Borough, Virginia Beach, Virginia for George J. Parker et al., Scale: 1"=40', May 31, 1978."


IN WITNESS WHEREOF, the party of the first part has caused these presents to be executed in the corporate name by its officers duly authorized and its corporate seal to be hereunto affixed and attested by its secretary all on the day, month and year first above written.

PARCO BUILDING CORPORATION

By Warren E. Parkhurst
President

Attest:

BOOK 2026 PAGE 232

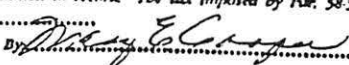

Secretary

STATE OF VIRGINIA
City of Virginia Beach, to-wit:

The foregoing instrument was acknowledged before me on this 15th day of July, 1980, by Warren E. Parkhurst and Robert T. Amory, president and secretary, respectively, of Parco Building Corporation, a Nevada corporation, on behalf of the corporation.


Notary Public

My commission expires: April 30, 1984

VIRGINIA: In the Clerk's Office of the Circuit Court of Virginia Beach 15th day of July, 1980, this instrument was received and upon the full date of acknowledgment therein contained, amount to record. The tax imposed by Par. 58-54.1 of the Code has been paid, in the amount of \$.....
TESTE J. CURTIS FRUIT, Clerk By  DC

7-23-80
J. Curtis Fruit



16096

BOOK 2028 PAGE 596

750.00

THIS DEED made this 17th day of *July*, 1980, by and between STANLEY A. PHILLIPS, Trustee, party of the first part, and GEORGE J. PARKER, party of the second part;

W I T N E S S E T H:

THAT WHEREAS, by deed of trust dated June 30, 1976, of record in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Deed Book 1578, at page 180, J. K. Parker, Incorporated, a Virginia corporation, conveyed to Stanley A. Phillips, Trustee, in trust to secure the payment of the debt therein described; and

WHEREAS, the aforesaid deed of trust provides that the rights, duties and obligations imposed thereby upon the Trustee; and

WHEREAS, default having been made in the payment of the debt secured by said deed of trust, the creditor of the debt thereby secured requested that the said Stanley A. Phillips, Trustee, party of the first part, execute the said deed of trust; and

WHEREAS, the said Stanley A. Phillips, Trustee, as aforesaid, pursuant to and in accordance with the terms and the directions of said deed of trust did, on the 15th day of July, 1980, at 12:00 noon Eastern Daylight Saving Time at the front entrance of Parco Building Corporation, 120 Parker Lane, Virginia Beach, Virginia, after first advertising the time, place and terms of said five (5) times in The Virginian-Pilot/Ledger-Star, a newspaper of general circulation in the City of Virginia Beach, Virginia, offer for sale the hereinafter described real estate at public auction to the highest bidder for cash; and

WHEREAS, at said sale, the said George J. Parker, party of the second part, became the purchaser of said real estate for the sum of \$500,000.00, he being the highest bidder; and

WHEREAS, the purchase price has been paid and the said George J. Parker, party of the second part, is now entitled to a

Address 129 South West Neck Road
Virginia Beach, Va. 23454

deed;

NOW, THEREFORE, for and in consideration of the sum of \$500,000.00, receipt of which is hereby acknowledged, the said Stanley A. Phillips, Trustee, does hereby grant, bargain, sell and convey, with Special Warranty, unto the said George J. Parker, party of the second part, the following described real estate, to-wit:

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, designated as 7.103 acres and outlined in red, on that certain plat entitled "Composite Plat of Property of George J. Parker et. al. Location Near London Bridge, Virginia Beach, Virginia, Lynnhaven Borough, Scale: 1"=100', May 16, 1966, Rev. 6-1-73, Wilfred B. Large, Certified Land Surveyor, Norfolk, Virginia," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 98, at page 44, and further described as follows:

Beginning at a point on the East side of Parker Lane 260.40' South from a pin at southeastern corner of Virginia Beach Boulevard and Parker Lane; thence from said point of beginning N 87°-10' E 170.0' to a point; thence S 76°-05'-43" E 621.25'; thence N 16°-09'-16" E 155.38' to a point; thence S 49°-19'-18" E 69.24' to a point; thence S 72°-51'-36" E 109.11' to a point; thence S 29°-08' E 55.80' to a point; thence S 12°-22' W 187.26' to a point on the northern right of way line of U. S. Route #44; thence turning and running along the northern right of U. S. Route #44 in a southwesterly direction S 71°-56'-10" W 316.00' to a point; thence N 75°-02'-28" W 119.27' to a point; thence S 71°-56'-10" W 390.85' to a point; thence turning and running in a northwesterly direction N 18°-03'-50" W 380.49' to a point; thence turning and running S 87°-10' W 55.74' to a point on the East side of Parker Lane; thence turning and running along a curve to the left with an arc distance of 130.90' and a radius of 50' to a point of reverse curve; thence along a curve to the right with an arc distance of 52.36' and a radius of 50' to the point of beginning.

Save and except:

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, described on the site plan entitled "Site Plan of Part

Stanley A. Phillips, Trustee, 8-1-80


of 7.013 Acre Parcel Shown on Plat Entitled Composite Plat of Property of George J. Parker et. al. Location Near London Bridge, recorded in M.B. 98, pg 44, in the Clerk's Office of the Circuit Court, Va. Beach, VA, Lynnhaven Borough, Virginia Beach, Virginia for George J. Parker et. al., Scale 1"=40', May 31, 1978", made by Wilfred P. Large, Certified Land Surveyor, Norfolk, Virginia, more particularly described as follows:

Beginning at a point being S. 0°35'12" W. 260.40 feet N. 87°10'00" E 170.00 feet, and S. 76°05'43" E. 621.25 feet from the southeastern intersection of Parker Lane and Virginia Beach Boulevard; thence proceeding from said point of the beginning N. 16°09'16" E. 155.38 feet to a point; thence turning and proceeding S. 49°19'18" E. 69.24 feet to a point; thence S. 72°51'36" E. 109.11 feet to a point; thence S. 29°08'00" E. 55.80 feet to a point; thence turning and proceeding S. 12°22'00" W. 187.26 feet to a point on the northern right of way line of U. S. Route 44; thence turning and proceeding N. 60°57'05" W. 229.91 feet to a point; thence turning and proceeding N. 16°09'16" E. 50.04 feet to a point being the said point of beginning.

This conveyance is made subject to the conditions, restrictions, easements and reservations of record, if any, affecting the aforesaid property and constituting constructive notice.


The said party of the first part hereby covenants that he has done no act to encumber the said property; that he shall warrant and forever defend the title to the said land to the said party of the second part, his successors and assigns, against the lawful claims of all persons claiming by, through and under the said party of the first party, but not otherwise.

WITNESS the following signature and seal of Stanley A. Phillips, Trustee:

 (SEAL)
Stanley A. Phillips, Trustee

STATE OF VIRGINIA,
City of Virginia Beach, to-wit:

The foregoing instrument was acknowledged before me this 23 day of July, 1980, by Stanley A. Phillips, Trustee.


Notary Public

My commission expires: 8-7-81

FORM NO. C.C.-21

VIRGINIA: In the Clerk's Office of the Circuit Court of Virginia Beach 23rd day of July, 1980 at 12:11, this instrument was received and upon the certificate of acknowledgment thereto annexed, admitted to record. "The tax imposed by §58-54.1 of the Code, has been paid, in the amount of \$ 500.00."

TESTE: J. CURTIS FRUIT, Clerk

 D. C.

PLAT
100-1000



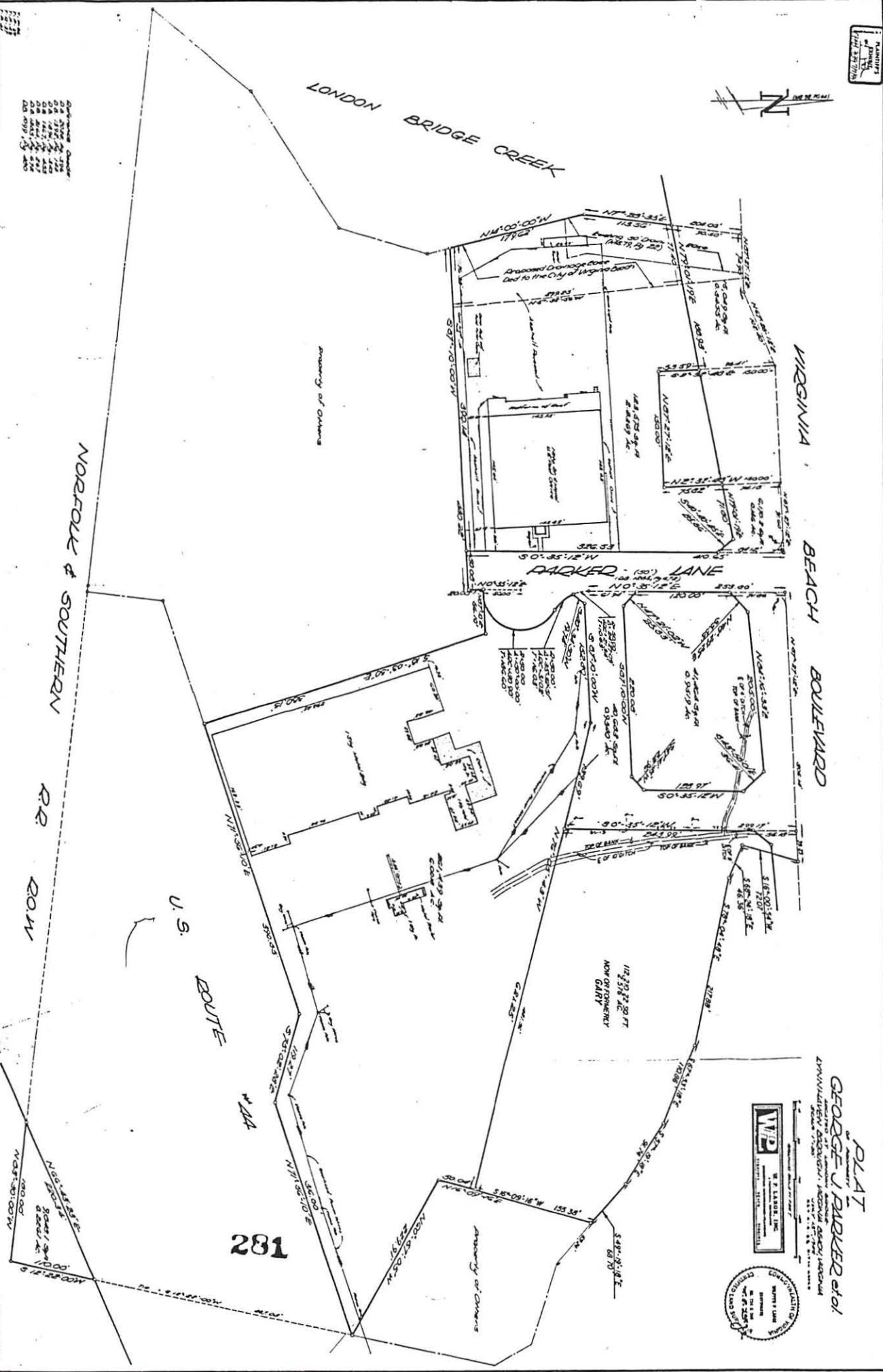
LONDON BRIDGE CREEK

VIRGINIA BEACH BOULEVARD

NORFOLK & SOUTHERN R.R. ROW

U.S. ROUTE 281

PARKED LANE



PLAT
GEORGE J. PARKER et al.
LUNEVILLE DESIGN, VIRGINIA BEACH, VIRGINIA
2008-10-08



PLAINTIFF'S
EXHIBIT
#10
43-3037/1/1

\$900.00

THIS DEED, Made this 1st day of April, 1984, by and between GEORGE J. PARKER and PATRICIA L. PARKER, his wife, parties of the first part, and PARKER ROAD ASSOCIATES, a general Partnership consisting of DAVID J. CROSS, JOHN T. HENNING, HAROLD F. SCATTERGOOD, and P. ARTHUR PEREGOFF, whose address is 6003 Oceanfront Avenue, Virginia Beach, VA 23451, party of the second part.

W I T N E S S E T H:

THAT FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) cash and other good valuable consideration, the receipt of which is hereby acknowledged, the said party of the first part does hereby grant and convey with GENERAL WARRANTY and ENGLISH COVENANTS OF TITLE unto PARKER ROAD ASSOCIATES, party of the second part, the following described property to-wit:

- All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, designated as 7.103 acres and outlined in red, on that certain plat entitled "Composite Plat of Property of George J. Parker et. al. Location Near London Bridge, Virginia Beach, Virginia, Lynnhaven Borough, Scale: 1"=100', May 16 1966, Rev. 6-1-73, Wilfred B. Large, Certified Land Surveyor, Norfolk, Virginia," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 98, at page 44, and further described as follows:

Beginning at a point on the East side of Parker Lane 260.40' South from a pin at southeastern corner of Virginia Beach Boulevard and Parker Lane; thence from said point of beginning N 87°-10' E 170.0' to a point; thence S 76°-05'43" E 621.25'; thence N 16°-09'-16" E 155.38' to a point; thence S 49°-19'-18" E 69.24' to a point; thence S 72°-51'-36" E 109.11' to a point; thence S 29°-08' E 55.80' to a point; thence S 12°-22' W 187.26' to a point on the northern right of way line of U. S. Route #44; thence turning and running along the northern right of U. S. Route #44 in a southwesterly direction S 71°-56'-10" W 316.00' to a point; thence N 75°-02'-28" W 119.27' to a point; thence S 71°-56'-10" W 390.85' to a point; thence turning and running in a northwesterly direction N 18°-03'-50" W 380.49' to a point; thence turning and running S 87°-10' W 55.74' to a point on the East side of Parker Lane; thence turning and running along a curve to the left with an arc distance of 130.90' and a radius of 50' to a point of reverse curve; thence along a curve to the right with an arc distance of 52.36' and a radius of 50' to the point of beginning.

SAVE AND EXCEPT:

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, described on the site plan entitled "Site Plan of Part

of 7.013 Acre Parcel Shown on Plat entitled Composite Plat of Property of George J. Parker et al. Location Near London Bridge, recorded in M.B. 98 pg 44, in the Clerk's Office of the Circuit Court, Va. Beach, VA, Lynnhaven Borough, Virginia Beach, Virginia for George J. Parker et. al., Scale 1"=40', May 31, 1978", made by Wilfred P. Large, Certified Land Surveyor, Norfolk, Virginia, more particularly described as follows:

Beginning at a point being S. 0° 35' 12" W. 260.40 feet from the southeastern intersection of Parker Lane and Virginia Beach Boulevard; thence running N. 87° 10' 00" E. 170.00 feet, thence running S. 76° 05' 43" E. 621.25 feet to the true point of beginning; thence proceeding from said point of the beginning N. 16° 09' 16" E. 155.38 feet to a point; thence turning and proceeding S. 49° 19' 18" E. 69.24 feet to a point; thence S. 72° 51' 36" E. 109.11 feet to a point; thence S 29° 08' 00" E. 55.80 feet to a point; thence turning and proceeding S. 12° 22' 00" W. 187.26 feet to a point on the northern right of way line of U. S. Route 44; thence turning and proceeding N. 60° 57' 05" W. 229.91 feet to a point; thence turning and proceeding N. 16° 09' 16" E. 50.04 feet to a point being the said point of beginning.

IT BEING the same property conveyed to the parties of the first part herein by deed of Stanley A. Phillips, Trustee, dated July 22, 1980, and duly recorded in the Clerk's Office aforesaid in Deed Book 2028, at Page 596.

This deed is made subject to all conditions, restrictions, reservations of record, including without limitation, that certain easement of right of way granted to George J. Parker by deed of Parco Building Corporation, a Nevada Corporation, dated July 11, 1980 and duly of record in the Clerk's Office above mentioned in Deed Book 2026, at page 231.

WITNESS the following signatures and seals:

George J. Parker (SEAL)

Patricia L. Parker (SEAL)

STATE OF VIRGINIA
City of Virginia Beach, to wit:

The foregoing instrument dated April ,1984, was acknowledged before me this day of April, 1984, by George J. Parker and Patricia L. Parker.

Notary Public

My Commission expires:

In the Clerk's Office of the Circuit Court of Virginia Beach, this instrument was received and upon the date of acknowledgment and thereby annexed, admitted to record. The tax imposed by §§58-54.1 of the Code, as amended, to the amount of \$...
1984 J. CLARK FRITH Clerk

A. PHILLIPS
AT LAW
H. VIRGINIA



28020

BK 2420 PG 0194

\$ 112.50

THIS CONTRACT, made and executed in triplicate this 28th day of May, 1981, between George J. Parker, party of the first part, and Richard F. Davis and Amelia D. Davis, parties of the second part.

WITNESSETH:

That for and in consideration of the sum of Ten Thousand and no/100 Dollars (\$10,000.00) cash in hand paid, receipt whereof is hereby acknowledged, and in consideration of the promises and agreements hereinafter set forth, the party of the first part does promise and agree to sell to the said parties of the second part, and the said parties of the second part do promise and agree to buy from the said party of the first part, the following described property, to-wit:

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, described on that site plan entitled "Site Plan of Part of 7.013 Acre Parcel Shown on Plat Entitled Composite Plat of Property of George J. Parker, et al. Location Near London Bridge, Recorded in M. B. 98, pg. 44, in the Clerk's Office of the Circuit Court, Va. Beach, Va., Lynnhaven Borough, Virginia Beach, Virginia, for George J. Parker, et al, Scale: 1"=40', May 31, 1978", made by Wilfred P. Large, Certified Land Surveyor, Norfolk, Virginia, more particularly described as follows:

Beginning at a point being S. 0°35'12" W. 260.40 feet, N. 87°10'00" E. 170.00 feet, and S. 76°05'43" E. 621.25 feet from the southeastern intersection of Parker Lane and Virginia Beach Boulevard; thence proceeding from said point of beginning N. 16°09'16" E. 155.38 feet to a point; thence turning and proceeding S. 49°19'18" E. 69.24 feet to a point; thence S. 72°51'36" E. 109.11 feet to a point; thence S. 29°08'00" E. 55.80 feet to a point; thence turning and proceeding S. 12°22'00" W. 187.26 feet to a point on the northern right of way line of U. S. Route 44; thence turning and proceeding N. 60°57'05" W. 229.91 feet to a point; thence turning and proceeding N. 16°09'16" E. 50.04 feet to a point being the said point of beginning

It being the same property conveyed to George J. Parker by deed of Parco Building Corporation, a Virginia corporation, dated August 10, 1978, and duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Deed Book 1896 at Page 345.

UPON THE FOLLOWING TERMS AND CONDITIONS, to-wit:

1. The said parties of the second part promise and agree to pay to the said party of the first part the sum of Seventy-Five Thousand (\$75,000.00) Dollars in the following manner:

- (a) Ten Thousand (\$10,000.00) Dollars acknowledged above.
- (b) The said parties of the second part agree to execute a promissory note in the amount of Sixty-Five Thousand (\$65,000.00) Dollars, payable in monthly installments of Five Hundred Ninety and 66/100 (\$590.66) Dollars, said installment to be principal and interest at the rate of Ten (10%) per centum per annum with the first payment due on July 1, 1981, and a payment on the 1st day of each month thereafter until paid in full.
- (c) The parties of the second part promise and agree to assume payment of the taxes and insurance on the aforesaid property.

2. It is further agreed by and between the parties hereto that upon the payment in full of the aforesaid amounts owed in paragraph (b), then the party of the first part, his heirs or assigns, will execute and deliver unto the said parties of the second part a good and marketable title to the above described property with general warranty of title.

3. The said parties of the second part agree to make the aforesaid payment of \$590.66 to George J. Parker at 290 S. Great Neck Road, Virginia Beach, Virginia, no later than the 1st day of each month, and further to make the aforesaid payment of 1/12 the annual taxes and insurance to said office no later than the 1st day of each month. If any payment is not received within 5 days of its due date a penalty of 10% of such payment will become due and payable for such delinquent payment.

4. The said parties of the second part agree to keep the buildings on said property in good repair during the term of this contract at the expense of the parties of the second part.

5. It is mutually agreed by and between the parties to this contract that in the event that the said parties of the second part fail to make the above set forth monthly payments when due and owing and such default continues for a period of thirty days or more, and/or should said parties of the second part fail to keep said property in good repair during the term of this contract for a period of sixty days, then, in any or all such events, this contract and all rights hereunder shall cease and determine, and all monies paid shall be retained by the said party of the first part and considered as liquidated damages for nonperformance of this contract; and in the event of default the said party of the first part shall be entitled to possession of the said property and said parties of the second part shall vacate said property forthwith upon five (5) days notice, given by the said party of the first part, his heirs or assigns, to the parties of the second part; said notice to be given by registered or certified mail to the address of the building situated on said property or to the last known address of said parties of the second part.

6. It is mutually agreed by and between the parties to this contract that time is of the essence of the performance of all the promises and agreements herein contained.

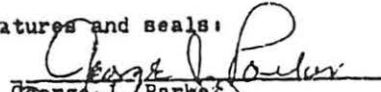

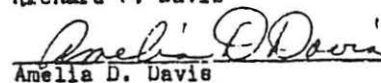
7. The parties of the second part may not convey their interest or assign this contract in this property without prior written consent of the party of the first part, but shall have the right with the consent of the party of the first part to assign their interest herein to an assignee of adequate financial capability.

8. The parties of the second part shall keep the building and land hereby sold insured against loss by fire and other hazards in an amount of not less than \$60,000.00 for the benefit

of the party of the first part, as its interest may appear, but the parties of the second part agree that in case of loss covered by such insurance, the amount paid for such loss may be applied to accomplish the replacement of the loss and in such event, after such replacement, insurance shall be effective and continued the same as before the loss. In addition, the parties of the second part at their own expense shall maintain a policy of public liability insurance protecting both parties against claims for personal injury and property damage in connection with the premises for an amount of not less than \$100,000.00 and will indemnify and hold the party of the first part free from any and all claims, demands, expense and liability arising out of any injury or loss to any person or persons while upon said premises and will not remove any personal property and fixtures from said premises without the written consent of the party of the first part.

9. It is further understood and agreed by and between the parties hereto that the Seller shall not be liable for street improvements, sewage, water and other utilities and the Buyer will save the Seller harmless from any and all claims, causes or actions arising therefrom, and specifically, claims arising out of subdivision requirements under subdivision ordinances of the City of Virginia Beach.

WITNESS the following signatures and seals:


George J. Parker

Richard P. Davis

Amelia D. Davis

STATE OF VIRGINIA

CITY OF VIRGINIA, to-wit:

I, Lois M. Nichols, a Notary Public in and for the City of Virginia Beach, in the State of Virginia, whose commission expires on 6th day of June, 1986, do hereby certify that George J. Parker,

Richard F. Davis and Azelia D. Davis, whose names as such are signed to the foregoing writing bearing date of 28th day of May, 1981, have acknowledged the same before me in my said City.

Given under my hand this day 14th of June 1982

Louis M. Nichols
Notary Public

C.C. 21 REV. 3/85

VIRGINIA: In the Clerk's Office of the Circuit Court of Virginia Beach 20 day of June 1985 at 11:12, this instrument was received and upon the certificate of acknowledgment thereto annexed, admitted to record. "The tax imposed by §56.1-202 of the Code, has been paid, in the amount of \$....."

TESTE: J. CURTIS FRUIT, Clerk

By: W. Stewart

PLAINTIFF'S
EXHIBIT

#12

CH93-3039 7/7/94

28021

BK 2420 PG 0199

C93-0226-N

INDENTURE, Made this 28th day of May, 1981, between

George J. Parker, party of the first part, and Richard P. Davis and Amelia D. Davis, parties of the second part;

WHEREAS, by a certain agreement bearing date the 28th day of May, 1981, between George J. Parker and Richard P. Davis and Amelia D. Davis, the said party of the first part agreed to sell and convey to the said parties of the second part, for the price and upon the terms therein mentioned, that certain parcel of land described as follows:

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, described on that site plan entitled "Site Plan of Part of 7.013 Acre Parcel Shown on Plat Entitled Composite Plat of Property of George J. Parker, et al. Location Near London Bridge, Recorded in M. B. 98, pg. 44, in the Clerk's Office of the Circuit Court, Va. Beach, Va., Lynnhaven Borough, Virginia Beach, Virginia, for George J. Parker, et al, Scale: 1"=40', May 31, 1978", made by Wilfred P. Large, Certified Land Surveyor, Norfolk, Virginia, more particularly described as follows:

Beginning at a point being S. 0°35'12" W. 260.40 feet, N. 87°10'00" E. 170.00 feet, and S. 76°05'43" E. 621.25 feet from the southeastern intersection of Parker Lane and Virginia Beach Boulevard; thence proceeding from said point of beginning N. 16°09'16" E. 155.38 feet to a point; thence turning and proceeding S. 49°19'18" E. 69.24 feet to a point; thence S. 72°51'36" E. 109.11 feet to a point; thence S. 29°08'00" E. 55.80 feet to a point; thence turning and proceeding S. 12°22'00" W. 187.26 feet to a point on the northern right of way line of U. S. Route 44; thence turning and proceeding N. 60°57'05" W. 229.91 feet to a point; thence turning and proceeding N. 16°09'16" E. 50.04 feet to a point being the said point of beginning

It being the same property conveyed to George J. Parker by deed of Parco Building Corporation, a Virginia corporation, dated August 10, 1978, and duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Deed Book 1896 at Page 345.

WITNESSETH:

That the said party of the first part, in consideration of the sum of \$10.00 and other valuable consideration to him paid by the said parties of the second part, the receipt whereof is hereby acknowledged, does hereby assign, transfer, and set over unto the said parties of the second part the above recited agreement and

all the right, title, and interest of the said party of the first part in and to the said parcel of land and the improvements therein described, to have and to hold the same unto the said parties of the second part, their heirs, executors, administrators, and assigns forever, subject, nevertheless, to the terms, conditions and stipulations in the said agreement contained.

The said parties of the second part hereby covenant and agree to and with the said party of the first part that the said parties of the second part will pay the said purchase price and will observe and perform all the terms, conditions and stipulations in the said agreement mentioned which are thereunder by the said party of the first part to be observed and performed, and will save harmless and keep indemnified the said party of the first part against all claims, demands and actions by reason of the failure of the said parties of the second part to observe and perform the said agreement.

WITNESS the following signatures and seals:

George J. Parker
George J. Parker
Richard F. Davis
Richard F. Davis
Amelia D. Davis
Amelia D. Davis

STATE OF VIRGINIA

CITY OF VIRGINIA BEACH, to-wit:

I, Lois M. Nichols, a Notary Public, in and for the City of Virginia Beach, in the State of Virginia, whose commission expires on 6th day of June, 1986, do hereby certify that George J. Parker and Richard F. Davis and Amelia D. Davis, whose names as such are signed to the foregoing writing bearing date of 28th day of May, 1981, have acknowledged the same before me in my City and State.

Given under my hand this 14th day of June 1982

Lois M. Nichols
Notary Public

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IN WITNESS WHEREOF, I have hereunto set my hand and the seal of my office this 14th day of June 1982. Lois M. Nichols
Notary Public
This instrument was recorded and upon the certificate of acknowledgment of the same, submitted to record. The tax imposed by §§ 5-11 of the Code has been paid in the amount of \$
LESTER J. CLARKS, JR., Clerk

THE PROPERTY SHOWN HEREON APPEARS TO FALL INSIDE ZONE C AS SHOWN ON THE F.E.M.A. FLOOD INSURANCE RATE MAP FOR THE CITY OF VIRGINIA BEACH COMMUNITY PANEL # 515531-0024C.

PLAINTIFFS
EXHIBIT
#13
11/13/2017

THIS IS TO CERTIFY THAT I, ON 23 AUGUST 1988 SURVEYED THE PROPERTY SHOWN ON THIS PLAT, AND THAT THE TITLE LINES AND THE WALLS OF THE BUILDINGS ARE AS SHOWN ON THIS PLAT.
THE BUILDINGS STAND STRICTLY WITHIN THE TITLE LINES AND THERE ARE NO ENCROACHMENTS OF OTHER BUILDINGS ON THE PROPERTY, EXCEPT AS SHOWN.

Surveyor's Seal

N/E
JERRY R. COCHRAN
DB 2329 P 1353
DB 1572 P 450

N/E
SOUTH LINKHORN
BAY TRUST
WB F P 482

VARIABLE WIDTH UTILITY
EASEMENT
ROUTE 44 - PROJECT - 0044-134-
101, C502 P17,17A
(ST-TUS UNKNOWN)

U.S. PROJECT
ROUTE
#44
C502
P17,17A

N 75° 38' 39" W (F) 98.74' (F)
N 75° 02' 28" W (P) 119.27' (P)

F.C.L.F. (TYP)



N/E
ROXANNE C. VALDEZ,
ET ALS
DB 1667 P 455
MB 98 P 44

GEORGE J. PARKER
PATRICIA PARKER
DB 1694 P 132
DB 1759 P 251

PARKER LANE
(O'R/W)

N/E
PARKER INDUSTRIES
DB 1694 P 132
DB 1759 P 251

PHYSICAL SURVEY
6.125 ACRE PARCEL
PROPERTY OF
GEORGE J. PARKER, ET AL
MB 98 P 44

LYNNHAVEN BOROUGH
VIRGINIA BEACH, VA.
SCALE 1"=50' 25 AUGUST 1988
MADE FOR
D. J. B. JOHN - HENNING & C. CROSS

REFERENCE
DB 1694 P 132
DB 1759 P 251
DB 2326 P 838
MB 64 P 25
SHEETS # 105, 105B

1"=50'
50 0 50 100
feet

Gallup Surveyors & Engineers, Ltd.
315 First Colonial Road
VIRGINIA BEACH, VIRGINIA 23454
Phone 428-8132

291

PLAINTIFF'S
EXHIBIT
#14
193-339 7/7/94



VIRGINIA BEACH BLVD.

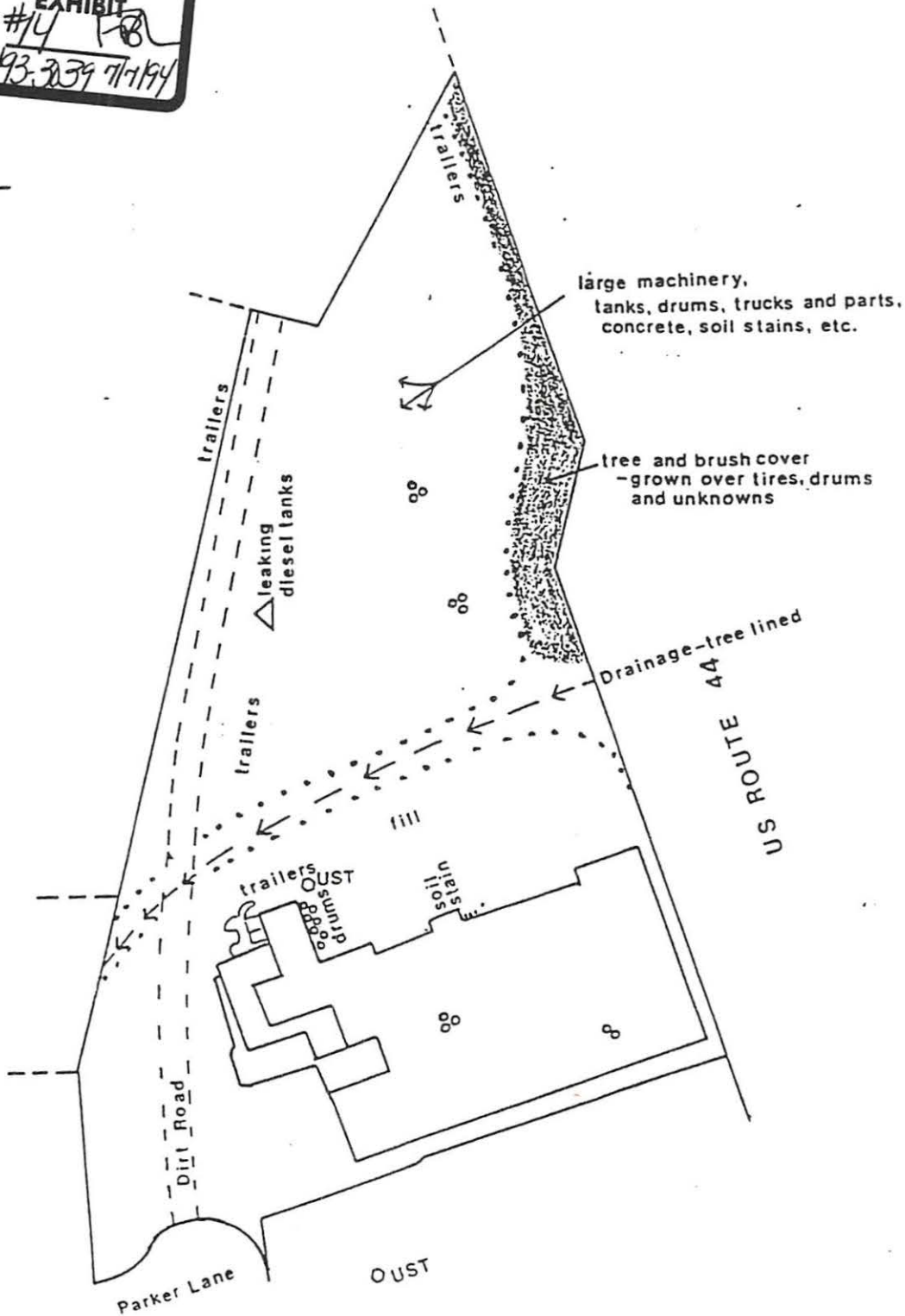


FIGURE 1



LEASE AND OPTION TO PURCHASE AGREEMENT

THIS LEASE AND OPTION TO PURCHASE AGREEMENT ("Agreement"), dated as of the 28th day of July, 1993, by and between RICHARD F. DAVIS and AMELIA D. DAVIS, whose address is 451 Turf Drive, Virginia Beach, Virginia 23452 (collectively "Landlord") and WILLIAM R. SHEPHERD, JR., OR ASSIGNS, whose address is c/o Greenbrier of Virginia, Inc., 1414 South Military Highway, Chesapeake, Virginia 23320 ("Tenant").

R E C I T A L S:

Landlord is the owner of certain real estate located in the City of Virginia Beach, Virginia, and more particularly described as Parcel 1 on Exhibit A and is or will be the owner of Parcel 2 on Exhibit A (collectively "Property") attached as part of this Agreement. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord Parcel 1, and the parties desire that Tenant be granted an option to purchase ("Option") Parcels 1 and 2 being the Property.

In consideration of the Recitals, which are incorporated into this Agreement, and the mutual promises in this Agreement and other good and valuable consideration, the parties agree as follows:

1. LEASE AND LEASE TERM.

1.1. Lease. Landlord leases to Tenant and Tenant leases from Landlord Parcel 1 along with all of the buildings and improvements located on, and any rights appurtenant to, Parcel 1 and any other real property in which Landlord has rights, which are adjacent or contiguous to Parcel 1 (collectively "Premises"), except for the underground storage tanks ("USTs") and related piping used in connection with the USTs located on the Premises. Landlord shall retain control and dominion of the USTs and the related piping previously described.

1.2. Initial Term. The initial lease term ("Lease Term") will be five (5) years. The lease will commence on, and Tenant's duty to pay rent will commence on, the date of this Agreement ("Commencement Date").

2. RENT. During the Initial Term and each subsequent term, Tenant will pay as rent ("Rent") the sum of SIXTEEN THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (\$16,800.00) per annum. All such Rent will be payable in equal monthly installments of ONE THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$1,400.00), due and payable on the first day of each month. If the Commencement Date, as defined above, does not fall on the first day of the month, Rent will be prorated for the first month of the Initial Term.

3. QUIET ENJOYMENT. On payment by Tenant of all rents and the observance of all covenants, Tenant will have the quiet use of the Premises and all rights belonging or granted for the term of this Agreement without interruption by Landlord, subject to the terms and conditions of this Agreement and to any mortgage to which this Agreement is subordinate.

4. USE OF PREMISES. Tenant will operate and use the Premises for its car and truck sales, lease, repair, maintenance and dealership business and for no other purpose. Tenant will not permit any objectionable activity, noise, vibration or odor, and will permit or commit no nuisance of any kind on the Premises.

5. TAXES. Tenant shall, during the term of the Agreement, pay, when due, all real estate taxes, personal property taxes and other governmental charges and impositions and charges of every kind levied or assessed against the Premises or any part or any buildings, appurtenances or equipment owned by Landlord located on the Premises. Landlord shall pay all real estate taxes due prior to the Commencement Date. Real estate taxes should be prorated for the period up to the Commencement Date.

6. UTILITY CHARGES AND EASEMENTS.

6.1. Utility Charges. Tenant will apply for and obtain in its own name, all required utility services. Tenant will also pay, when due, all charges for water, sewer, gas, electricity, and all other utility services furnished to the Premises.

6.2. Utility Easements. Subject to Landlord's prior approval, which will not be unreasonably withheld, Tenant will have the right to enter into reasonable agreements with utility companies creating easements in favor of such companies required to service Tenant's contemplated business on the Premises. Landlord will consent to any such reasonable agreements and execute any documents and take all actions to effectuate this paragraph at Tenant's sole cost and expense.

7. DEPRECIATION. Until the expiration or termination of this Lease, title to any building, equipment or other installed items and any alteration, change or addition will remain solely in Landlord, who alone will be entitled to deduct any depreciation on its income tax return for any such building or buildings, equipment and other items, improvements, changes or alterations.

8. IMPROVEMENTS, REPAIRS, ADDITIONS OR REPLACEMENTS.

8.1. Construction Alterations. Subject to Landlord's prior approval, which will not be unreasonably withheld, Tenant will have the right, at its own cost and expense to

Change in use

construct on any part or all of the Premises at any time, and from time to time, such buildings, parking areas, driveways, walks and other similar and dissimilar improvements as Tenant from time to time determines, provided that they are done in compliance with all applicable building codes and ordinances. Subject to Landlord's prior approval, which will not be unreasonably withheld, Tenant may, at its option, and at its own cost at any time make any alterations, changes, replacements or additions to the Premises and its buildings and improvements.

8.2. Maintenance. Tenant will, during the Lease, and at its own costs, keep, maintain and repair in good condition (ordinary wear and tear excepted) all buildings and improvements erected on the Premises. Except as otherwise provided in this Lease, Landlord will not be required to furnish any service or facilities or make any improvements or repairs or alterations to the Premises during the lease.

9. SIGNS. Tenant will have the right to install, maintain and replace in, on, over and in front of the Premises or any part such signs and such advertising matter as Tenant may desire. Tenant will comply with any applicable requirements or governmental authorities and obtain any necessary permits.

10. LIENS. Tenant will pay promptly when due the entire cost of any work on the Premises undertaken by or for Tenant so that the Premises will, at all times, be free of liens for labor and materials. All Tenant's work will be done in accordance with insurance requirements and in a good and workmanlike manner, reasonably acceptable to Landlord. Tenant will ensure that any lien, mechanics' or otherwise, which may, at any time, be filed against the Premises or any part arising out of work done by or for Tenant is discharged of record by payment, bond, court order, etc., within ten (10) days of any filing.

11. INSURANCE.

11.1. Insurance Requirements. Tenant will, at its sole cost and expense maintain with responsible companies, licenses by the Commonwealth of Virginia, insurance policies naming Landlord, Tenant and any mortgagee, as their respective interests may appear, as follows:

11.1.1. Comprehensive public liability insurance in the following amounts: (i) \$1,000,000 with respect to personal injury or death of any one person; (ii) \$1,000,000 with respect to personal injury or death of any number of persons arising out of any one occurrence; and (iii) \$500,000 per occurrence with respect to any instance of property damage, or such other insurance coverage as may otherwise be required by any mortgagee now or hereafter holding financing on the Premises.

11.1.2. Insurance against loss or damage by fire or other casualty now or afterwards defined by "extended coverage" in an amount at least equal to eighty-five percent (85%) replacement cost of the buildings and improvements located on the Premises.

11.1.3. If the nature of Tenant's business places any or all of its employees under the coverage of local workmen's compensation statutes, such insurance affording statutory coverage and containing statutory limits will be carried by Tenant.

11.2. Cancellation. All insurance carried by Tenant will be in a form reasonably satisfactory to Landlord and will provide that the policy or policies will not be subject to cancellation, termination or change except after thirty (30) days' prior written notice to Landlord. If Tenant fails to maintain required insurance, Landlord may, but will not be obligated, to obtain insurance and Tenant will pay Landlord the premium on demand.

11.3. Deliverance of Policies. Tenant will procure all required insurance and deliver to Landlord policies of insurance (or certificates of insurance, with copies of such policies of insurance) with proof of payment of premiums, at or before the Commencement Date, and renewal policies (or certificates at least thirty (30) days before expiration of any policy.

12. WAIVER OF SUBROGATION. Neither party will be liable (by way of subrogation or otherwise) to any other party (or to any insurance companies insuring the other party) for any loss or damage to any of the first party's property covered by loss or damage occasioned by the negligence of the first party or of such party's permittee.

13. DESTRUCTION. If the buildings and improvements on the Premises are damaged or destroyed in whole or in part by fire or other cause within the extended coverage of the fire insurance policy carried by Tenant in accordance with this Agreement, then, Tenant will, at its own cost and expense, cause the buildings and improvements to be repaired, replaced or rebuilt to substantially the same degree within a period of time, which, under all circumstances, is reasonable.

If such damage is to the extent that Tenant is unable to transact its business or such destruction occurs within the last six (6) months of any term of this Agreement, Tenant will have the right, but not the obligation to elect not to repair, replace or rebuild and to terminate this Agreement by giving written notice of the termination to Landlord on or before the expiration of thirty (30) days after the occurrence of such damage or

destruction, and on the giving of such notice, the term of this Agreement will expire and come to an end on the last day of the calendar month in which such notice is given. In such event, Tenant, at Tenant's sole option, may elect to purchase the Property in its then current condition for an amount to be adjusted equitably based on the condition of the Property. If Tenant terminates this Agreement because of such damage and does not elect to purchase the Property, Tenant shall pay to Landlord from the insurance proceeds obtained by Tenant an amount equal to the replacement value of the buildings and improvements at the time of such damage, but not to exceed, in any case, the proceeds from any such insurance in effect.

At any time during the term of this Agreement, if such damage or destruction occurs, then the Rent reserved above and other charges, if any, or a proportionate share of them, according to the nature and extent to which the Premises have been rendered unfit for use and occupancy will be suspended and abated until the Premises have been repaired by Landlord substantially to the same condition as before the damage or destruction, with reasonable dispatch.

14. DEFAULT.

14.1. Events of Default; Remedies. If, during the term of this Agreement, Tenant defaults in the performance of any of the covenants or conditions (other than the payment of Rent), and should Tenant fail to remedy the default within thirty (30) days of the date of written notice by Landlord to Tenant specifying the failure or default; or if Tenant fails to pay any Rent due under this Agreement within fifteen (15) days of the date of written notice of Landlord to Tenant; then, in either case, Landlord will have the right, but not the obligation to exercise any one or more of the following options:

14.1.1. To re-enter the Premises by reasonable force, with or without legal process, or otherwise, and terminate this Agreement by giving written notice of such termination in the manner provided below for all notices.

14.1.2. Without terminating this Agreement, to re-enter the Premises by reasonable force, with or without legal process, or otherwise, and remove all persons and contents, and relet, from time to time, the Premises or any part, for the account of the Tenant, for such term or terms and at such rental or rentals as Landlord in its sole discretion deems advisable.

14.1.3. To pursue any other remedy now or hereafter permitted at law or in equity.

14.1.3. To pursue any other remedy now or hereafter permitted at law or in equity.

Similarly, if Tenant at any time abandons the Premises or Tenant's interest in the Premises is offered for sale or sold under execution of the legal process, any such sale, offer or abandonment will also constitute a default.

14.2. Notice. On any default, Landlord will serve notice on Tenant specifying the default, and if such default is not cured in a timely manner, Landlord may elect at its option, one or more of the remedies described in paragraphs 14.1.1, 14.1.2 and 14.1.3, above. The notice shall be given in the manner provided for the giving of notices.

14.3. No Waiver. No waiver, express or implied, by Landlord to any breach of a covenant, condition or duty of Tenant will be construed as a consent or waiver to take any action on account of such default if the default persists or is repeated. No expressed waiver will affect any default other than the specified default. The receipt and acceptance by Landlord of any rent with knowledge of any breach by Tenant will not be deemed a waiver of such breach. One or more waivers of any breach by Landlord of any covenant, term, or condition of this Agreement by Tenant will not be construed as a waiver of any subsequent breach of the same covenant, term or condition. Consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval will not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent or similar action by Tenant.

15. LANDLORD'S RIGHT TO CURE DEFAULT. Landlord, at any time, and without notice, may, but will not be obligated to, cure any default by Tenant including, without limitation, Tenant's failure to abide by the covenants of this Agreement, and whenever Landlord so elects, all costs and expenses incurred in curing a default, including, without limitation, reasonably attorneys' fees, together with interest at the legal rate on the amount of cost and expenses, will be paid by Tenant to Landlord on demand and will be recoverable as Rent.

16. CONDEMNATION.

16.1. Taking. If, at any time during the term of this Agreement, title to the whole of the Premises, or such portion of the Premises that Tenant cannot reasonably transact its business as it was transacted before the taking of the Premises, be taken by condemnation or by agreement between Landlord and the condemnor, this Agreement, at Tenant's option, will terminate on the date of taking and the net Rent and any other such items will be prorated

the Premises, the rights of Landlord and Tenant to share in the net proceeds of any taking are as follows:

16.1.1. So much of the net award (that is, after deducting all expenses and costs, including attorneys' fees incurred) will be divided between Landlord and Tenant as follows: (i) Tenant will be entitled to receive, with interest, that portion of the award representing compensation for the discounted value of its leasehold interest and the damage to its equipment or other installed items; (ii) Landlord will be entitled to receive, with interest, the balance of the award representing compensation for the land value of the Premises and its buildings and improvements.

16.1.2. If, during the term, title to a portion of the Premises be taken in condemnation and a part remains that allows Tenant to transact its business in substantially the same manner as before the taking, all of the net award collected will be divided between Landlord and Tenant as follows: (i) Tenant will be entitled to receive, with interest, that portion of the award representing compensation for its equipment and other installed items; (ii) Landlord will be entitled to receive, with interest, the balance of the award representing compensation for the land value of the Premises and its buildings and improvements.

16.2. Lease Continuation. If title to a portion of the Premises as described in paragraph 16.1.2. of this Agreement be taken in condemnation, this Agreement will continue, but the net rent from and after the vesting of title in the condemnor will be equitably reduced in the portion that the rental area of the part taken or condemned bears to the total rental area of the Premises before condemnation.

16.3. Tenant Reimbursement. Any other provision in this Lease notwithstanding, the Tenant will receive the award, if any, for any personal property and trade fixtures belonging to Tenant taken in condemnation.

17. INDEMNIFICATION.

17.1. Tenant's Indemnification. Tenant indemnifies and holds harmless Landlord, its agents, successors and assigns from all injury, loss, claims or damage (including attorneys' fees and disbursements) to any person or persons arising from the use and occupancy of the premises, or construction, alterations, changes, replacements, improvements or additions thereto or thereon undertaken by or for Tenant. All property of Tenant and Tenant's permittees on the Premises will be kept and stored at Tenant's sole risk and Tenant will hold Landlord harmless from any claims arising out of damage.

17.2. Landlord's Indemnification. Landlord indemnifies and holds harmless Tenant, its agents, successors and assigns from all injury, loss, claims or damage (including attorneys' fees and disbursements) arising directly or indirectly from, or in connection with, the use, storage, handling, leaking, discharging or releasing of any hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including, but not limited to, substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "pollutants," "contaminous," "radioactive materials," or other similar designations in, or otherwise subject to regulations under, any applicable federal, state or local law, regulation or ordinance now or previously in effect and any release or threatened release of any such materials into the environment, any storm drain, sewer, septic system, publicly owned treatment works, and any noncompliance with federal, state or local requirements intended to protect public health, welfare and the environment and the failure to have obtained permits, variances or other authorizations necessary for the legal operation of any equipment, process, facility or any other activity with respect to the Property.

18. INSPECTION OF PREMISES. Tenant will permit the Landlord to enter the Premises during normal business hours to inspect the Premises.

19. TERMINATION; SURRENDER OF PREMISES.

19.1. Termination. This Agreement shall terminate at the end of the then current term in accordance with Section 1.3 of this Agreement if Tenant elects not to extend this Agreement, as provided therein. In addition, this Agreement shall terminate, at Tenant's option, upon either of the following:

19.1.1. At any time after Tenant provides at least sixty (60) days' prior written notice to Landlord of Tenant's intention to terminate so long as such termination date is on or after the first anniversary of the Commencement Date; or

19.1.2. At any time during the Initial Term or any subsequent term on thirty (30) days written notice to Landlord if Tenant shall have conducted a Phase I environmental audit ("Audit") of the Property or a physical survey ("Survey") of the Property, and based on the Audit or the Survey, Tenant determines that the Property is not suitable for Tenant's use.

19.2. Surrender of Premises. On any termination of this Agreement, Tenant will surrender to Landlord the Premises in good order and condition, ordinary wear and tear and damage by fire or any casualty expected. Tenant will remove at its own expense all trade fixtures, inventory, stock and trade and other

personal property installed by Tenant (which will remain the property of the Tenant so long as Tenant is not in default at termination), and will repair all the damage to the Premises caused by their removal. Any property not removed will be deemed abandoned by Tenant and may be retained by or disposed of by Landlord free of Tenant's claims.

On termination of this Agreement, all buildings and any other improvements located on the Premises shall remain the property of Landlord.

20. LANDLORD WARRANTIES AND CONDITIONS PRECEDENT.

20.1. Mortgages or Contracts. Landlord represents and warrants that during the term of this Agreement it will comply with the terms of any mortgages and deeds of trust or installment land sales contracts, make all payments required to be paid and suffer no default thereunder and Landlord will place no liens on the Property without Tenant's prior written consent, in Tenant's sole discretion.

20.2. Survival. Landlord's warranties will survive the execution and delivery of this Agreement.

21. ESTOPPEL CERTIFICATES. Each party will, from time to time, not less than ten (10) days following notice to the other, certify in recordable form that: (a) this Agreement is in full force and effect, and if modified, the substance of modification; (b) the dates to which Rent has been paid in advance; (c) neither party is in default, and if there is a default, its reason. The failure of either party to execute and deliver to the other the certificate will constitute an acknowledgment by the party failing to respond to such notice, which may be relied on by any other person (except in the case of a negative response), that the Agreement is unmodified and in full force and effect and that the Rent has been fully paid up to and including the due date immediately preceding the date of the notice and that the party requesting certificate is not in default. Such failure will constitute, for any person (other than Landlord or Tenant) entitled to rely on the certificate, a waiver of any defaults existing before the date of the notice.

22. ASSIGNMENT AND SUBLETTING. Tenant may freely sublet the Premises or assign, mortgage, sublease or otherwise encumber this Agreement, without Landlord's written consent.

23. OPTION TO PURCHASE AND RIGHT OF FIRST REFUSAL.

23.1. Option. Upon compliance with the provisions of this Section 23, Tenant shall have the sole and exclusive Option to purchase the Property pursuant to the terms of this Agreement

23.1. Option. Upon compliance with the provisions of this Section 23, Tenant shall have the sole and exclusive Option to purchase the Property pursuant to the terms of this Agreement for the continuous period of time commencing on the Commencement Date and ending on the date the lease terminates. If the Option is properly and timely exercised, as provided in this Agreement, a contract shall then exist between Landlord and Tenant pursuant to which Landlord agrees to sell and Tenant agrees to buy the Property upon the terms and conditions specified in this Section 23.

23.2. Exercise of Option. The Option may be exercised, subject to the terms of paragraph 23.8, by Tenant at any time prior to the expiration of the Lease, which shall be midnight of the last day this lease is in effect. Tenant shall exercise the Option by sending written notice to Landlord prior to the expiration date of the Option specifying Tenant's desire to exercise the Option.

23.3. Purchase Price. The purchase price ("Purchase Price") to be paid by Tenant to Landlord for the Property shall be ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00), which shall be payable as follows:

(a) SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00) shall be paid to Landlord in immediately usable funds, at the Closing, as hereafter defined; and

(b) The balance of the Purchase Price will be evidenced by a promissory note (the "Note"), made by Tenant, payable to Landlord and dated as of Closing. The Note shall be personally guaranteed by William R. Shepherd, Jr. The Note will be prepared by Landlord's attorney and executed originals will be delivered to Landlord at Closing. The Note shall bear interest on the unpaid principal at six percent (6%) per annum from the date of Closing and shall be amortized with equal monthly payments of \$1,000.00 until paid beginning thirty (30) days after Closing and continuing until paid. The Note shall contain such other provisions as are customary for such documents in the Hampton Roads, Virginia area.

(c) The Note will be secured by a deed of trust ("Deed of Trust") on the Property recorded simultaneously with closing. The Deed of Trust will contain provisions as are customary for such documents in the Hampton Roads, Virginia area including provisions making the Deed of Trust subject to any future deeds of trust placed against the Property by Tenant and provisions require Landlord to sign subordination documents if required by a lender.

23.4. Title. Landlord shall convey to Tenant, at Closing, good, indefeasible and marketable title to the Property, free and clear of all liens, encumbrances and easements, other than those to which Tenant fails to object, as provided in this paragraph. In addition, such title shall be insurable under an ALTA Owner's Policy by any reputable title insurance company, as selected by Tenant, at regular rates.

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Within thirty (30) days of the date which Tenant exercises the Option, Tenant shall deliver to Landlord a written

removed by the payment of money, which shall be paid at Closing, to correct any such title objections within thirty (30) days after receipt of Tenant's notice. If Landlord is unwilling or unable to correct such objections within such thirty (30) day period, Tenant shall have the option of taking such title as Landlord can give without abatement of the Purchase Price, or terminating this Agreement, in which event this Agreement shall become null and void, and neither party shall have any further obligations under it.

23.5. Landlord's Representations and Warranties.

To induce Tenant to enter into this Agreement and to purchase the Property from Landlord, Landlord makes the following warranties and representations, all of which Landlord represents to be true and accurate as of the date of this Agreement and which Landlord will warrant shall be true as of the Closing Date:

23.5.1. Landlord has good and marketable title to and owns of record the Property;

23.5.2. Landlord has received no notice from any state or local taxing authority that all or any portion of the Property is subject to any special taxes or assessments;

23.5.3. There are no judgments, orders or decrees of any kind against Landlord, unpaid or unsatisfied, of record in any court of the Commonwealth of Virginia or of the United States, or any pending litigation that would adversely affect the Property or its intended use by Tenant. Landlord is not in bankruptcy and there are no actions or administrative proceedings, pending or threatened, relating to Landlord and the Property, nor is Landlord aware of any state of facts which might result in any such action or proceedings;

23.5.4. There are no pending or, to the best of Landlord's knowledge, threatened assessment, condemnation, eminent domain, zoning or historic landmark or historic district proceedings that might affect the Property or any part of it;

23.5.5. To the best of Landlord's knowledge, the Property is in full compliance with all laws, regulations, requirements, directives and orders issued by any governmental body or entity having jurisdiction over the Property including, but not limited to, local, state and/or federal environmental and hazardous waste laws and regulations; Landlord has received no citation or notice of violation of any law, ordinances, orders, rules, regulations or requirements or of restrictive covenants against or affecting the Property, or any part of it, and Landlord is not aware of any facts that might result in such a violation. The execution by Landlord of this Agreement and the consummation of the transaction described in this Agreement does not and will not, in

the reasonable belief of Landlord, cause Landlord to be in violation of any such law, ordinance, order or requirement of any agreement or contract to which Landlord is a party;

23.5.6. Except for the storage and handling of gasoline in the existing USTs and related pipes located on the Property, the Property has not been used at any time during or to the best of Landlord's knowledge, prior to Landlord's ownership of it for the disposal of refuse or waste, or for the generation, processing, manufacture, storage, handling, treatment or disposal of any hazardous or toxic waste, substance, material (as such or similar terms are used under applicable federal, state or local laws or ordinances, rules or regulations) or oil or other petroleum product or derivative. No (i) asbestos-containing materials or (ii) machinery, equipment or fixtures containing polychlorinated biphenyls (PCB's) have been installed, used, stored, handled or located on the Property at any time during, or to the best of Landlord's knowledge, prior to Landlord's ownership of the Property. No toxic or hazardous wastes, substances or materials have been installed, used, stored, handled or located on the Property at any time during, or, to the best of Landlord's knowledge, prior to Landlord's ownership of the Property, which wastes, substances or materials, if found on the Property, or improperly disposed of off of the Property, would subject the owner or occupant of the Property to damages, penalties, liabilities or an obligation to remove or clean up such substances or materials under any applicable federal, state or local law, regulation, ordinance or order. No notice of any governmental body has ever been served upon Landlord, its agents or employees, or to the best of Landlord's knowledge, any tenant or prior owner of the Property, claiming any violation of any federal, state or local law, regulation or ordinance concerning the environmental state, condition, or quality of the Property, or requiring or calling attention to the need for any work, repairs, construction, alterations, demolition, renovation or installment on or in connection with the Property to comply with any law, regulation or ordinance concerning the environmental state, condition or quality of the Property. Neither Landlord, its agents or employees, or, to the best of Landlord's knowledge, any tenant or prior owner of the Property, has ever been informed of any threatened or proposed serving of any such violation of corrective work order;

23.5.7. The Property does not constitute a Chesapeake Bay Preservation Area as defined by the Chesapeake Bay Preservation Act or regulations enacted pursuant to it, and the Premises do not constitute tidal or nontidal wetlands as those terms are defined by the Clean Water Act and regulations enacted pursuant to it or the Virginia Wetlands Act and regulations enacted pursuant to it; and

23.5.8. The delivery of a Deed conveying the Property to Tenant shall be deemed to be a reaffirmation, as of the Closing Date, of all of the warranties and representations contained in this Section 23, as to the Property.

23.6. Documents Required. Landlord shall execute and deliver, or cause to be executed and delivered, to Tenant the following in form and substance reasonably acceptable to Tenant on the Closing Date:

23.6.1. General warranty deed ("Deed") with English covenants of title conveying to Tenant good, indefeasible and marketable title to the Property in accordance with paragraph 23.4 of this Agreement;

23.6.2. A duly executed certification by Landlord as of the Closing Date that there have been no changes in the items warranted or represented to Tenant since the date of this Agreement and that the representations and warranties set forth in paragraph 23.5 of this Agreement are true, correct and complete on the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date and that such representations and warranties shall survive Closing;

23.6.3. Such affidavits as Tenant's title insurance company shall reasonably require to omit from its title insurance policy exceptions for unfiled mechanics' or materialmen's liens, parties in possession or judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to the name of Landlord;

23.6.4. Original or certified copy of certificates of occupancy, licenses, permits, authorizations and approvals required by law and issued by all governmental authorities having jurisdiction over the Property, to the extent that such documents are presently in the possession or control of Landlord, or its agents, attorneys, accountants or other representatives; and

23.6.5. Such other documents or certificates as counsel to Tenant shall reasonably require in connection with the transactions under this Agreement.

23.7. Obligations Pending Closing. Between the date Tenant exercises the Option and the Closing Date, Landlord shall:

23.7.1. Comply with all governmental laws, ordinances, regulations and orders relating to the Property;

23.7.2. Comply with all the terms, conditions and provisions of all liens, mortgages, deeds of trust, notes, agreements and other contractual arrangements, make all payments required to be paid and suffer no default and maintain in full force and effect until the Closing Date those insurance policies in effect on the date of execution of this Agreement;

23.7.3. Promptly give notice to Tenant of the occurrence of any event that materially modifies the substance of any of Landlord's warranties and representations contained in paragraph 23.4;

23.7.4. Not consent to the execution, placement, creation or amendment of easements, restrictions, rights of way or other matters affecting title to the Property without Tenant's written consent, nor consent to any rezoning or designation of historical status without Tenant's written consent and not withdraw, settle or otherwise compromise any protest or reduction proceeding or action affecting real estate taxes assessed against the Premises; and

23.7.5. Not enter into or renew agreement which might become the obligation of Tenant without Tenant's written consent.

23.8. Closing. Transfer of title to the Property (the "Closing") shall take place on or before the sixtieth (60th) day following Landlord's receipt of written notice from Tenant stating Tenant's intention to exercise the Option as specified in Section 23 of this Agreement (the "Closing Date"), but in no event prior to January 1, 1994, in the offices of Tenant's attorney in Virginia Beach Virginia, unless extended by mutual agreement of Tenant and Landlord or by any provision of this Agreement. Possession of the Property shall be delivered to Tenant on the Closing Date.

Real or personal property taxes assessed with respect to the Property shall be apportioned at Closing as of midnight on the day prior to Closing.

23.9. Closing Costs. At Closing, Landlord will pay any transfer or grantor's tax, the cost of preparing the Deed and any other documents required of Landlord pursuant to paragraph 23.6 of this Agreement, attorneys' fees of Landlord, and all other costs and expenses incurred by Landlord.

At Closing, Tenant will pay all recording costs of the Deed other than the grantor's tax, title examination and title insurance costs, attorneys' fees of Tenant and all other costs and expenses incurred by Tenant.

23.10. Commission or Brokerage. Each party represents to the other party that the representing party has not entered into any agreement, arrangement or understanding that will result in the obligation of the parties hereto to pay any finder's fee, broker's commission or similar payment in connection with the transaction contemplated by this Agreement. Each party will indemnify the other for the violation of this representation.

23.11. Right of First Refusal. Notwithstanding anything contained in this Agreement to the contrary, if Landlord shall receive from a third party ("Offeror") a bona fide written offer to purchase the Property, or any part of it, Landlord shall send to Tenant a copy of the proposed offer ("Offer"), with notification that Landlord intends to accept the Offer. Tenant shall have the right within ten (10) days thereafter to exercise the Option to purchase the Property, or such part of it described in the Offer, pursuant to the terms and conditions contained in the Offer. If Tenant does not elect to purchase the Property or such part of it described in the Offer, within such five (5) day period, Landlord may sell the Property or the part described in the Offer to the Offeror. If Landlord does not sell the Property or any part of it, according to the Offer, then Tenant's right of first refusal shall remain in full force.

24. NOTICES. Any required notice or other communication will be in writing and deemed given when forwarded by certified mail, or its equivalent, postage prepaid, return receipt requested, addressed to the address of the Tenant or Landlord, as the case may be, or to any other address designated by notice in writing. Until written notice of any change of address is given, the addresses set forth below will be binding on the particular party to whom notice is given. Notices will be deemed to have been received three (3) days after mailed or on actual delivery, whichever occurs first.

For notice purposes the addresses of the parties will be:

LANDLORD: Richard F. Davis
451 Turf Drive
Virginia Beach, Virginia 23452

TENANT: William R. Shepherd, Jr.
c/o Greenbrier of Virginia, Inc.
1414 South Military Highway
Chesapeake, Virginia 23320

With a copy
to:

Stephen W. Burke, Esquire
CLARK & STANT, P.C.
Suite 900
One Columbus Center
Virginia Beach, VA 23462

25. NO PARTNERSHIP. Nothing in this Agreement will be construed by the parties or by any third parties, as constituting the parties as principal and agent, partners, or joint venturers, nor will anything make either party liable for the debts and obligations of the other party, the only relationship between Landlord and Tenant being Landlord and Tenant.

26. SHORT FORM LEASE. The parties will, at any time, at the request of the other, properly execute a short form memorandum of this Agreement in recordable form, which will constitute a short form lease, setting forth a description of the Premises, the term, and any other portions, except for rental provisions, as either party may request.

27. FORCE MAJEURE. Each party will be excused from forming any obligation or undertaking provided for in this Agreement (other than the obligation of Tenant to pay Rent when due) as long as performance is prevented or delayed by an act of God, fire, action of elements, war, civil violence, inability to procure or general shortage of labor, equipment, facilities or materials and supplies in the open market, failure of transportation, labor problems, condemnation, orders of government or any such other cause, similar or dissimilar, not within the responsible control of the party prevented. In the event of any inconsistency with the paragraph entitled "Insurance," that paragraph will prevail.

28. MODIFICATIONS. This Agreement contains the entire agreement and understanding of the parties, supersedes all negotiations, agreements, or understandings and any provision of this Agreement may be modified, waived, or discharged only by instrument in writing, signed by the party to be charged.

29. APPLICABLE LAW AND CONSTRUCTION. The laws of Virginia will govern the validity, performance and law enforcement of this Agreement. The invalidity or enforceability of any provision of this Agreement will not effect or impair any other provision.

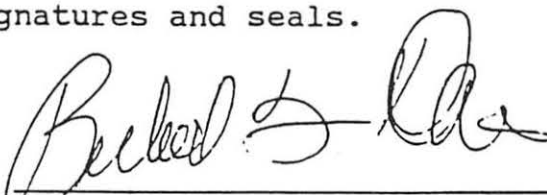
30. BINDING EFFECT OF AGREEMENT. All provisions of this Agreement will be binding on and inure to the benefit of all the parties and their respective personal representatives, heirs,

successor and permitted assigns. Each covenant or other provision of this Agreement will be deemed as a separate and independent covenant of the party bound and not dependent on any other provision unless expressly provided.

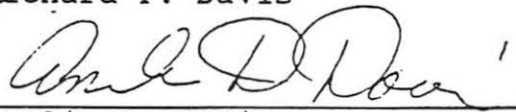
31. RECORDATION. The parties hereto agree to execute a memorandum of this Lease and Option upon the request of the other. This memorandum shall be prepared and recorded at the expense of the party requesting the recordation and may be recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach.

WITNESS the following signatures and seals.

LANDLORD:

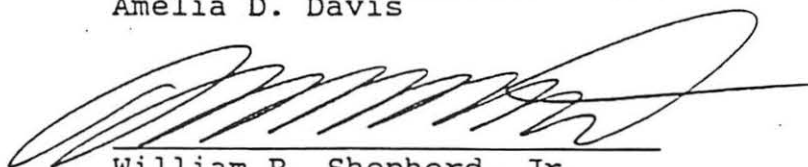


Richard F. Davis



Amelia D. Davis

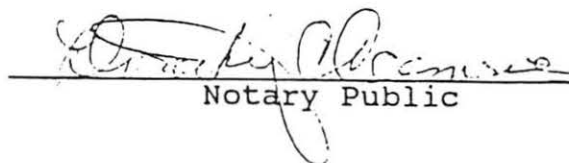
TENANT:



William R. Shepherd, Jr.

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH


Before me, a notary public, personally appeared RICHARD F. DAVIS, whose signature was acknowledged before me this 21 day of July, 1993.


Notary Public

My commission expires: 11-30-93

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH

Before me, a notary public, personally appeared AMELIA D. DAVIS, whose signature was acknowledged before me this 21 day of July, 1993.

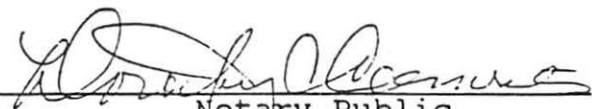


Notary Public

My commission expires: 11-30-93

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH

Before me, a notary public, personally appeared WILLIAM R. SHEPHERD, JR., whose signature was acknowledged before me this 21 day of July, 1993.



Notary Public

My commission expires: 11-30-93

62050000/
loa.smk

Exhibit A
to Lease and Option to Purchase Agreement
dated July 28, 1993

PARCEL 1

ALL that certain lot or parcel of land described in that Indenture made the 28th day of May, 1981 between George J. Parker and Richard F. Davis and Amelia D. Davis recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach in Deed Book 2420 at Page 199, being more particularly described as follows:

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, described on that site plan entitled "Site Plan of Part of 7.013 Acre Parcel Shown on Plat Entitled Composite Plat of Property of George J. Parker, et al. Location Near London Bridge, Recorded in M. B. 98, pg. 44, in the Clerk's Office of the Circuit Court, Va. Beach, Va., Lynnhaven Borough, Virginia Beach, Virginia, for George J. Parker, et al., Scale: 1'-40', May 31, 1978", made by Wilfred P. Large, Certified Land Surveyor, Norfolk, Virginia, more particularly described as follows:

Beginning at a point being S. 0°35'12" W. 260.40 feet, N. 87°10'00" E. 170.00 feet, and S. 76°05'43" E. 621.25 feet from the southeastern intersection of Parker Lane and Virginia Beach Boulevard; thence proceeding from said point of beginning N. 16°09'16" E. 155.38 feet to a point; thence turning and proceeding S. 49°19'18" E. 69.24 feet to a point; thence S. 72°51'36" E. 109.11 feet to a point; thence S. 29°08'00" E. 55.80 feet to a point; thence turning and proceeding S. 12°22'00" W. 187.26 feet to a point on the northern right of way line of U.S. Route 44; thence turning and proceeding N. 60°57'05" W. 229.91 feet to a point; thence turning and proceeding N. 16°09'16" E. 50.04 feet to a point being the said point of beginning.

It being the same property conveyed to George J. Parker by deed of Parco Building Corporation, a Virginia corporation, dated August 10, 1978, and duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Deed Book 1896 at Page 345.

TOGETHER with any rights of ingress and egress of Landl~~311~~o and from the Property over the property of third parties.

Exhibit A
to Lease and Option to Purchase Agreement
dated July 28, 1993

PARCEL 2

ALL that certain lot or parcel of land, being adjacent to Parcel 1, and conveyed to James P. Coates Enterprises, Inc. by Deed dated January 7, 1966, recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach in Deed Book 967 at Page 718.

BK 3274 FG 1061

MEMORANDUM OF OPTION

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\$ 225⁰⁰

THIS MEMORANDUM OF OPTION ("Memorandum") of that unrecorded Lease and Option to Purchase Agreement ("Agreement") dated as of July 28, 1993, by and between RICHARD F. DAVIS and AMELIA D. DAVIS (collectively "Seller"), Grantor, and WILLIAM R. SHEPHERD, JR. ("Buyer"), Grantee.

W I T N E S S E T H:

A. By terms of the Agreement Seller has granted an option to purchase to Buyer the following described real property with all improvements thereon (collectively the "Lots", or individually the "Lot"):

PARCEL 1

ALL that certain lot or parcel of land described in that Indenture made the 28th day of May, 1981 between George J. Parker and Richard F. Davis and Amelia D. Davis recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach in Deed Book 2420 at Page 199, being more particularly described as follows:

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, described on that site plan entitled "Site Plan of Part of 7.013 Acre Parcel Shown on Plat Entitled Composite Plat of Property of George J. Parker, et al. Location Near London Bridge, Recorded in M. B. 98, pg. 44, in the Clerk's Office of the Circuit Court, Va. Beach, Va., Lynnhaven Borough, Virginia Beach, Virginia, for George J. Parker, et al., Scale: 1'-40', May 31, 1978", made by Wilfred P. Large, Certified Land Surveyor, Norfolk, Virginia, more particularly described as follows:

Beginning at a point being S. 0°35'12" W. 260.40 feet, N. 87°10'00" E. 170.00 feet, and S. 76°05'43" E. 621.25 feet from the southeastern intersection of Parker Lane and Virginia Beach Boulevard; thence proceeding from said point of beginning N. 16°09'16" E. 155.38 feet to a point; thence turning and proceeding S. 49°19'18" E. 69.24 feet to a point; thence S. 72°51'36" E. 109.11 feet to a point; thence S. 29°08'00" E. 55.80 feet to a point; thence turning and proceeding S. 12°22'00" W. 187.26 feet to a point on the

northern right of way line of U.S. Route 44; thence turning and proceeding N. 60°57'05" W. 229.91 feet to a point; thence turning and proceeding N. 16°09'16" E. 50.04 feet to a point being the said point of beginning.

It being the same property conveyed to George J. Parker by deed of Parco Building Corporation, a Virginia corporation, dated August 10, 1978, and duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Deed Book 1896 at Page 345.

PARCEL 2

ALL that certain lot or parcel of land, being adjacent to Parcel 1, and conveyed to James P. Coates Enterprises, Inc. by Deed dated January 7, 1966, recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach in Deed Book 967 at Page 718, being more particularly described as follows:

Being as shown on Sheet No. 502-19 of the plans for Route 44, State Highway Project 0044-134-101, RW-201, and beginning at a point in the northern right of way line of Route 44, said point being 135 feet opposite and left of approximate survey Station 441+66; thence, N. 5°33'26" E., 189 feet to a point marked by a pipe; thence, S. 32°23' E., 138.4 feet; thence, S. 74°37'18" E., 42 feet to a point common with the northern right of way line of Route 44; thence, with said right of way line S. 64°59'10" W., 159 feet to the point of beginning; and containing .007 acre, more or less, and being a part of the lands acquired by the Commonwealth by Certificate of Deposit No. N-VBH 137, recorded December 31, 1964 in the office of the Clerk of the Circuit Court of Virginia Beach, Virginia in Deed Book 880, Page 572.

For a more particular description of the land hereunder quitclaimed, reference is made to a photo copy of said Sheet 502-19, showing outlined in RED the said land, which photo copy is annexed hereto as a part hereof to be recorded simultaneously herewith.

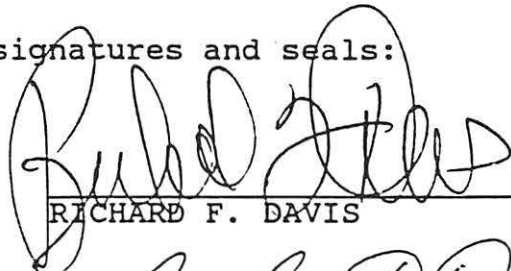
B. The purchase price is \$150,000.00.

C. The option period shall extend to the earlier of July 28, 1998 or the termination of the Agreement ("Option Period").

D. The option granted to Buyer by the Agreement shall be exercisable by written notice from Buyer to Seller prior to the end of the Option Period.

E. This Memorandum is not a complete summary of the Agreement. This Memorandum is subject to the terms, conditions and restrictions contained in the Agreement. In the event of a conflict between this Memorandum and the Agreement, the Agreement shall control.

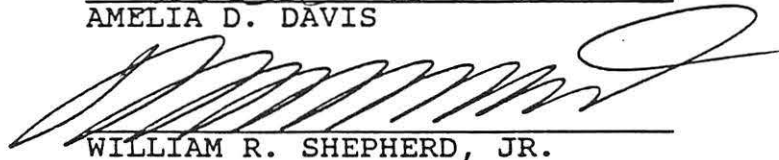
WITNESS the following signatures and seals:



RICHARD F. DAVIS



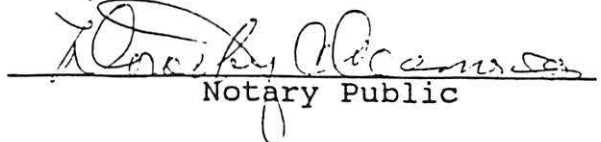
AMELIA D. DAVIS



WILLIAM R. SHEPHERD, JR.

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH

The foregoing writing was acknowledged before me by RICHARD F. DAVIS this 21 day of Sept, 1993.


Notary Public

My Commission Expires: 11-30-93

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH


The foregoing writing was acknowledged before me by
AMELIA D. DAVIS this 21 day of Sept, 1993.


Notary Public

My Commission Expires: 11-30-93

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH

The foregoing writing was acknowledged before me by
WILLIAM R. SHEPHERD, JR. this 21 day of Sept, 1993.

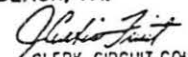

Notary Public

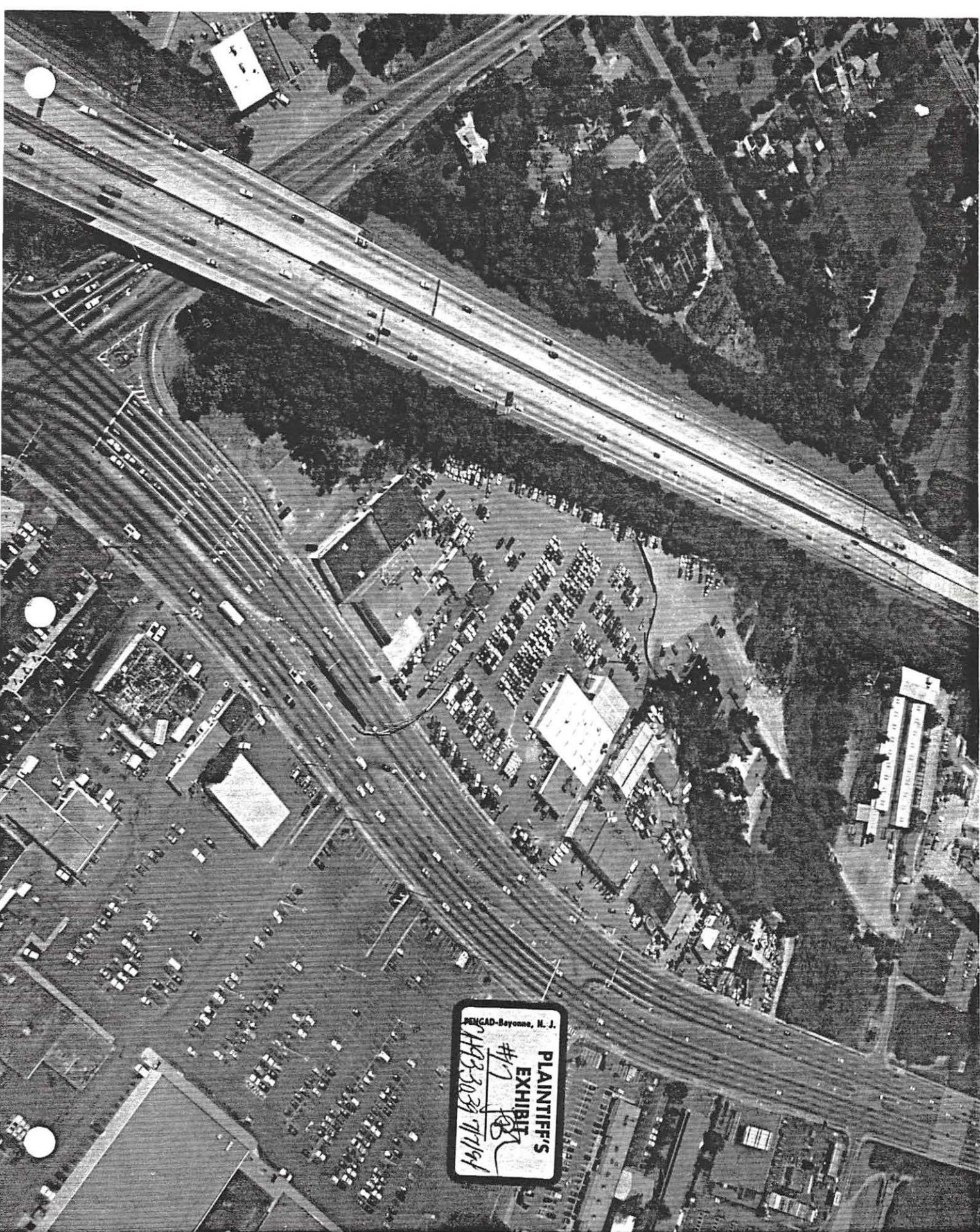
62050000/
moption.eah

RECORDED WITH
CERTIFICATE ANNEXED

93 SEP 24 AM 8: 35

58.1-802 TAXES PAID \$
VIRGINIA BEACH, VA.

TESTE: 
CLERK, CIRCUIT COURT



PENCAD-Bayonne, N. J.
#17
EXHIBIT
CH93-3039 7/1/84

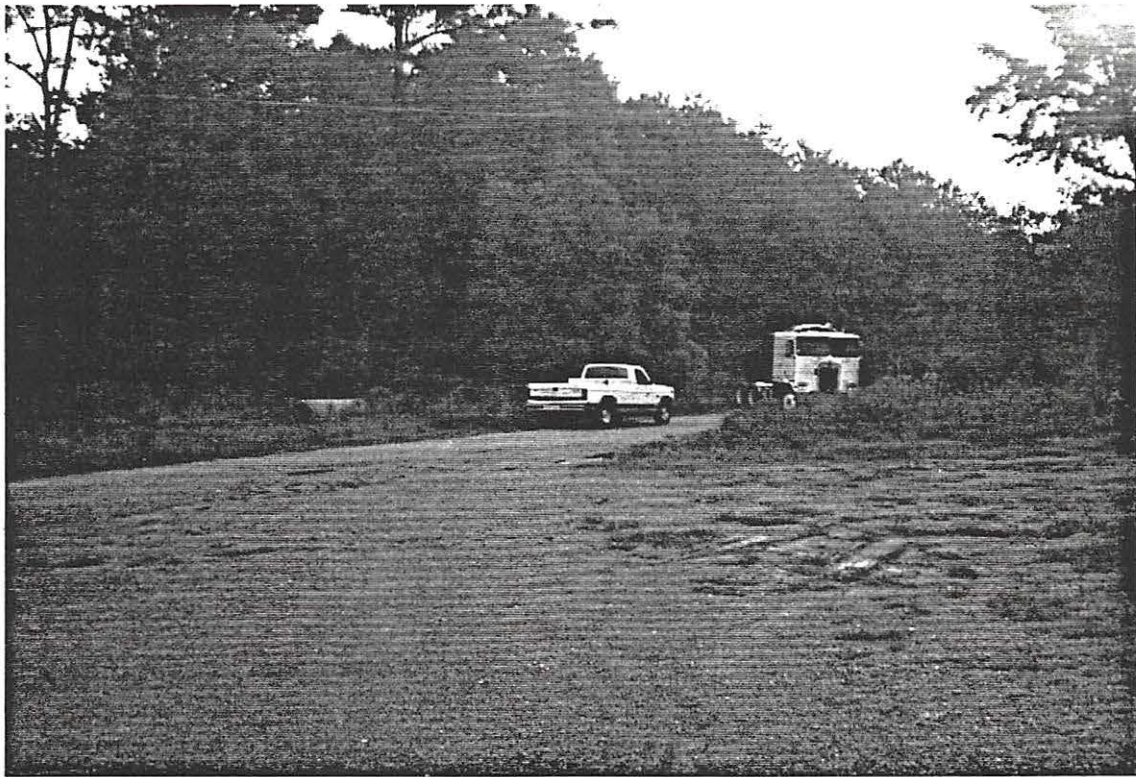
AUGUST 1992



PLAINTIFF'S
EXHIBIT
#18
CH93-3039 7/7/92



FALL 1993



FEB 1994



THIS DEED IS EXEMPT FROM THE TAXES IMPOSED BY §58.1-801 AND §58.1-803 PURSUANT TO THE EXEMPTION STATED IN §58.1-811(A)11.

Witneseth
This Deed, Made this 6th day of December, 1985, by and between PARKER ROAD ASSOCIATES, a Virginia general partnership consisting of David J. Cross, John T. Henning, Harold F. Scattergood, and P. Arthur Peregoff, general partners, party of the first part, grantors and SOUTHEAST METAL DECK, INC., a Virginia corporation, party of the second part; grantees, whose mailing address is 120 Parker Lane, Virginia Beach, Virginia 23454.

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable considerations, including the assumption of the hereinafter mentioned deed of trust, the receipt of which is hereby acknowledged, the said party of the first part does hereby grant, bargain, sell and convey with General Warranty of Title and with English Covenants of Title unto the said Southeast Metal Deck, Inc., a Virginia Corporation, the following property, to-wit:

ALL THAT certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, designated as 7.103 acres and outlined in red, on that certain plat entitled "Composite Plat of Property of George J. Parker, et al. Location Near London Bridge, Virginia Beach, Virginia. Lynnhaven Borough Scale: 1" = 100', May 16, 1966, Rev. 6-1-73, Wilfred B. Large, Certified Land Surveyor, Norfolk, Virginia," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 98, at page 44, and further described as follows:

Beginning at a point on the East side of Parker Lane 260.40' South from a pin at southeastern corner of Virginia Beach Boulevard and Parker Lane; thence from said point of beginning N 87°-10' E 170.0' to a point; thence S 76°-05'43" E 621.25'; thence N 16°-09'-16" E 155.38' to a point; thence S 49°-19'-18" E 69.24' to a point; thence S 72°-51'-36" E 109.11' to a point; thence S 29°-08' E 55.80' to a point; thence S 12°-22' W 187.26' to a point on the northern right of way line of U.S. Route #44; thence turning and running along the northern right of U.S. Route #44 in a southwesterly direction S 71°-56' 10" W 316.00' to a point; thence N 75°-02'-28" W 119.27' to a point; thence S 71°-56'-10" W 390.85' to a point; thence turning and running in a northwesterly direction N 18°-03'-50" W 380.49' to a point; thence turning and running S 87°-10' W 55.74' to a point on the East side of Parker Lane; thence turning and running along a curve to the left with an arc distance of 130.90 and a radius of 50' to a point of reverse curve; thence along a curve to the right with an arc distance of 52.36' and a radius of 50' to the point of beginning.

SAVE AND EXCEPT:

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, described in the site plan entitled "Site Plan of Part of 7.013 Acre Parcel Shown on Plat entitled Composite Plat of Property of George J. Parker et al, Location Near London Bridge, recorded in M.B. 98, Pg. 44, in the Clerk's Office of the Circuit Court, Va. Beach, VA, Lynnhaven Borough, Virginia Beach, Virginia for George J. Parker et al, Scale 1"=40', May 31, 1978", made by Wilfred P. Large, Certified Land Surveyor, Norfolk, Virginia, more particularly described as follows:

Beginning at a point S 0° 35' 12" W 260.40 feet from the southeastern intersection of Parker Lane and Virginia Beach Boulevard; thence running N 87° 10' 00" E 170.00 feet, thence running S 76° 05' 43" E 621.25 feet to the true point of beginning; thence proceeding from said point of the beginning N 16° 09' 16" E 109.11 feet to a point; thence S 29° 08' 00" E 55.80 feet to a point; thence turning and proceeding S 12° 22' 00" W 107.26 feet to a point on the northern right of way line of U.S. Route #44; thence turning and proceeding N 60° 57' 05" W 229.91 feet to a point; thence turning and proceeding N 16° 09' 16" E 50.04 feet to a point being the said point of beginning.

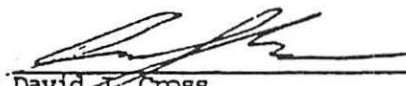
This conveyance is made subject to the conditions, restrictions, easements and reservations of record, if any, affecting the aforesaid property and constituting constructive notice.

The party of the second part, as part of the consideration for this conveyance, does hereby agree to fully assume and pay in full the balance due on the following Deeds of Trust:

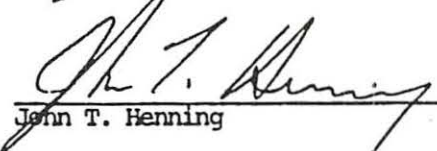
1. Deed of Trust dated April 13, 1984, and recorded April 16, 1984, in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Deed Book 2326 at page 840 executed by Parker Road Associates, a Virginia general partnership, to Stanley A. Phillips, trustee, and securing an Industrial Development Authority Bond in the original principal amount of \$600,000.00;
2. Deed of Trust dated September 12, 1985, and recorded September 20, 1985, in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 2444 at page 562 made by Parker Road Associates to David Clark, IV, et als, trustees and securing United Virginia Bank in the original amount of \$450,000.00

WITNESS the following signatures and seals:


PARKER ROAD ASSOCIATES,
A Virginia general partnership


David J. Cross


(SEAL)


John T. Henning

(SEAL)


Harold F. Scattergood

(SEAL)

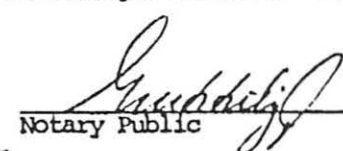

P. Arthur Peregoff

(SEAL)

STATE OF VIRGINIA

CITY OF NORFOLK, to-wit:

The foregoing instrument was acknowledged before me this 9th day of December, 1985, by David J. Cross.

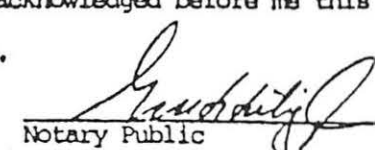

Notary Public

My Commission Expires: March 21, 1989

STATE OF VIRGINIA

CITY OF NORFOLK, to-wit:

The foregoing instrument was acknowledged before me this 9th day of December, 1985, by John T. Henning.


Notary Public

My Commission Expires: March 21, 1989

STATE OF PENNSYLVANIA

CITY OF HAVERFORD, to-wit:

The foregoing instrument was acknowledged before me this 12th day of December, 1985, by Harold F. Scattergood.

Margaret M. Donahue
Notary Public

My Commission Expires:

MARGARET M. DONAHUE
Notary Public, Phila., Phila. Co.
My Commission Expires Oct 24, 1988

STATE OF VIRGINIA

CITY OF NORFOLK, to-wit:

The foregoing instrument was acknowledged before me this 4th day of December, 1985, by P. Arthur Peregoff.

[Signature]
Notary Public

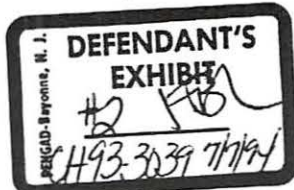
My Commission Expires: March 21, 1989

VIRGINIA:

In the Clerk's Office of the Circuit Court of Virginia Beach 27 day of December, 19 85 at 11:19, this instrument was received and upon the certificate of acknowledgment thereto annexed, admitted to record. "The tax imposed by §58.1-802 of the Code, has been paid, in the amount of \$....."

TESTE: J. CURTIS FRUIT, Clerk

By: [Signature]



BK 2718 PG 0533

TRUSTEE'S DEED

241 20

THIS DEED, made this 21st day of March, 1988, by and between FRANK J. SANTORO, Substitute Trustee, party of the first part, hereinafter referred to as Substitute Trustee; and JOHN T. HENNING, DAVID J. CROSS and CAREN CROSS, parties of the second part.

W I T N E S S E T H:

WHEREAS, Parker Road Associates and Southeast Metal Deck Company, Inc., by Deed dated September 12, 1985, recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Deed Book 2444, at Page 562, did grant and convey unto David Clark, IV and Christopher W. Brown, Trustees, the hereinafter described property, the description of which was fully set forth in the said Deed of Trust, in trust to secure a certain debt therein described to be paid to United Virginia Bank, or its assigns; and

WHEREAS, by instrument dated December 3, 1987, recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Deed Book 2696, at Page 896, Frank J. Santoro was named Substitute Trustee, in accordance with the terms of the aforesaid Deed of Trust which provided for substitution of trustees; and

WHEREAS, the said Substitute Trustee was empowered upon the failure of the maker of the aforesaid deed of trust to pay the debt secured thereby in accordance with the terms thereof to sell the property therein described to accomplish the purposes of said trust as

therein set forth; and

WHEREAS, the said Southeast Metal Company, Inc. did fail to pay the said debt in accordance with the terms of the note evidencing same and the aforesaid Deed of Trust, and the Substitute Trustee, at the request of the noteholder, in execution of the Deed of Trust did, on the 19th day of March, 1988, after first giving the notice required by Section 55-59 of the Code of Virginia, as amended, and after giving notice of the time and place of sale by advertisement for three (3) consecutive days in the Virginian-Pilot, a newspaper having a general circulation in the City of Virginia Beach, Virginia, did offer for sale the said property at public auction to the highest bidder for cash according to the terms of the aforesaid Deed of Trust, at which sale the parties of the second part herein became the purchasers thereof, being the last and highest bidders;

NOW, THEREFORE, in consideration of the sum of One Hundred Sixty-One Thousand Dollars (\$161,000.00), to Frank J. Santoro, Substitute Trustee, paid by the party of the second part, at and before the sealing and delivery of this Deed, said payment being made by the party of the second part, the holder of the note secured by the aforesaid Deed of Trust in accordance with the terms thereof giving credit for the balance due on the net proceeds of the sale, the receipt of which is hereby acknowledged, the Substitute Trustee, by and with the consent and concurrence of the parties of the second part, does grant, bargain, sell, convey, release and confirm unto the said parties of the

second part, with special warranty of title, John T. Henning to take a half share as tenant in common and David J. Cross and Caren Cross jointly to take a half share as tenant in common, the Cross's however to hold their joint share as tenants by the entirety with right of survivorship as at common law, the hereinafter described parcel of property, it being the same parcel of property conveyed in trust by the hereinabove described Deed of Trust, to-wit:

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, designated as 7.103 acres and outlined in red, on that certain plat entitled "Composite Plat of Property of George J. Parker et. al. Location Near London Bridge, Virginia Beach, Virginia, Lynnhaven Borough, Scale: 1' = 100', May 16 1966, Rev. 6-1-73, Wilfred B. Large, Certified Land Surveyor, Norfolk, Virginia," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 98, at Page 44, and further described as follows:

Beginning at a point on the East side of Parker Lane 260.40' South from a pin at southeastern corner of Virginia Beach Boulevard and Parker Lane; thence from said point of beginning north 87°-10' E 170.0' to a point; thence S 76°-05'43" E 621.25'; thence N 16°-09'-16" E 155.38' to a point; thence S 49°-19'-18" E 69.24' to a point; thence S 72°-51'-30" E 109.11' to a point; thence S 29°-08' E 55.80' to a point; thence S 12°-22' W 187.26' to a point on the northern right of way line of U.S. Route #44; thence turning and running along the northern right of U.S. Route #44 in a southwesterly direction S 71°-56'10" W 316.00' to a point; thence N 75°-02'-28" W 119.27' to a point; thence S 71°-56'-10" W 390.85' to a point; thence turning and running in a northwesterly direction N 18°-03'-50" W 380.49' to a point; thence turning and running S 87°-10' W 55.74' to a point on the East side of Parker Lane; thence turning and running along a curve to the left with an arc distance of 130.90' and a radius of 50' to a point of reverse curve; thence along a curve to the right with an arc distance of 52.36' and a radius of 50' to the point of beginning.

SAVE AND EXCEPT:

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, described in the site plan entitled "Site Plan of Part of 7.013 Acre Parcel Shown on Plat entitled Composite Plat of Property of George J. Parker et al. Location Near London Bridge, recorded in M.B. 98 page 44, in the Clerk's Office of the Circuit Court, Va. Beach, VA, Lynnhaven Borough, Virginia Beach, Virginia for George J. Parker et al., Scale 1" = 40', May 31, 1978", made by Wilfred P. Large, Certified Land Surveyor, Norfolk, Virginia, more particularly described as follows:

Beginning at a point S. 0° 35' 12" W. 260.40 feet from the southeastern intersection of Parker Lane and Virginia Beach Boulevard; thence running N. 87° 10' 00" E. 170.00 feet, thence running S. 76° 05' 43" E. 621.25 feet to the true point of beginning; thence proceeding from said point of the beginning N. 16° 09' 16" E. 155.38 feet to a point; thence turning and proceeding S. 49° 19' 18" E. 69.24 feet to a point; thence S. 72° 51' 36" E. 109.11 feet to a point; thence S. 29° 08' 00" E. 55.80 feet to a point; thence turning and proceeding S. 12° 22' 00" W. 187.26 feet to a point in the northern right of way line of U.S. Route 44; thence turning and proceeding N. 60° 57' 05" W. 229.91 feet to a point; thence turning and proceeding N. 16° 09' 16" E. 50.04 feet to a point being the said point of beginning

This conveyance is made subject to all liens, covenants, restrictions, easements and conditions of record, all covenants, restrictions, easements and conditions of record.

WITNESS the following signature and seal:

 (SEAL)
Frank J. Santoro
Substitute Trustee

STATE OF VIRGINIA

CITY OF VIRGINIA BEACH, to-wit:

I, Cheryl M. Labay, a Notary Public in and for the City of Virginia Beach, State of Virginia, do hereby certify that Frank J. Santoro, Substitute Trustee, whose name is signed to the foregoing writing bearing date on the 21st day of March, 1988, has acknowledged the same before me in my City and State aforesaid.

Cheryl M. Labay
Notary Public

My Commission Expires: 9-4-90

JLH/8081.2.C

C.C. 21 REV. 3/85

VIRGINIA: In the Clerk's Office of the Circuit Court of Virginia Beach 21 day of March 19 88 at 5:16, this instrument was received and upon the certificate of acknowledgment thereto annexed, admitted to record. "The tax imposed by §58.1-802 of the Code, has been paid, in the amount of \$ 161.50."

TESTE: J. CURTIS FRUIT, Clerk

By: Catherine Munnally D. C.

An exemption is claimed from recording taxes pursuant to Section 58.1-811(A)(6) of the Code of Virginia, 1950, as amended.

THIS DEED, dated this 23rd day of September, 1988, by and between JOHN T. HENNING, unmarried, and DAVID J. CROSS and CAREN CROSS, husband and wife, hereinafter called Grantors, and DESIGN ASSISTANCE CONSTRUCTION SYSTEMS, INC., a Virginia corporation, hereinafter called Grantee, whose mailing address is: 120 Parker Lane, Virginia Beach, Virginia 23454.

W I T N E S S E T H:

That for and in consideration of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, the said Grantors do hereby grant and convey with General Warranty and English Covenants of Title, unto the said Grantee, the following described to-wit:

ALL THAT certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, designated as 7.103 acres and outlined in red, on that certain plat entitled "Composite Plat of Property of George J. Parker et. al. Location Near London Bridge, Virginia Beach, Virginia, Lynnhaven Borough, Scale: 1"=100', May 16, 1966, Rev. 6-1-73, Wilfred B. Large, Certified Land Surveyor, Norfolk, Virginia," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 98, at page 44, and further described as follows:

Beginning at a point on the East side of Parker Lane 260.40' south from a pin at southeastern corner of Virginia Beach Boulevard and Parker Lane; thence from said point of beginning N 87° 10' E 170.0' to a point; thence S 76° 05' 43" E 621.25'; thence N 16° 09' 16" E 155.38' to a point; thence S 49° 19' 18" E 69.24' to a point; thence S 72° 51' 30" E 109.11 to a point; thence S 29° 08' E 55.80' to a point; thence S 12° 22' W 187.26' to a point on the northern right of way line of U. S. Route #44; thence turning and running along the northern right of U. S. Route #44 in a southwesterly direction S 71° 56' 10" W 316.00' to a point; thence N 75° 02' 28" W 119.27' to a point; thence S 71° 56' 10" W 390.85' to a point; thence turning and running in a northwesterly direction N 18° 03' 50" W 380.49' to a point; thence turning and running S 87° 10' W 55.74' to a point on the East side of Parker Lane; thence turning and running along a curve to the left with an arc distance of 130.90' and a radius of 50' to a point of reverse curve; thence along a



curve to the right with an arc distance of 52.36' and a radius of 50' to the point of beginning.

LESS, SAVE AND EXCEPT that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, described in the site plan entitled "Site Plan of Part of 7.013 Acre Parcel Shown on Plat entitled: 'Composite Plat of Property of George J. Parker et al. Location Near London Bridge', recorded in M. B. 98, P. 44, in the Clerk's Office of the Circuit Court, Va. Beach, Va., Lynnhaven Borough, Virginia Beach, Virginia for George J. Parker et. al. Scale 1"=40', May 31, 1978", made by Wilfred P. Large, Certified Land Surveyor, Norfolk, Virginia, more particularly described as follows:

Beginning at a point S 0° 35' 12" W 260.40' from the southeastern intersection of Parker Lane and Virginia Beach Boulevard; thence running N 87° 10' 00" E 170.00', thence running S 76° 05' 43" E 621.25 feet to the true point of beginning; thence proceeding from said point of beginning N 16° 09' 16" E 155.38' to a point; thence turning and proceeding S 49° 19' 18" E 69.24' to a point; thence S 72° 51' 36" E 109.11' to a point; thence S 29° 08' 00" E 55.80' to a point; thence turning and proceeding S 12° 22' 00" W 187.26' to a point in the northern right of way line of U. S. Route 44; thence turning and proceeding N 60° 57' 05" W 229.91' to a point; thence turning and proceeding N 16° 09' 16" E 50.04' to a point being the said point of beginning.

IT BEING the same property conveyed to the Grantors herein by deed of Frank J. Santoro, Substitute Trustee, dated March 21, 1988 and recorded in the aforesaid Clerk's Office in Deed Book 2718, at page 533.

This conveyance is made subject to any covenants, conditions, easements, restrictions and reservations of record.

WITNESS the following signatures and seals:

 (SEAL)
JOHN T. HENNING


 (SEAL)
DAVID S. CROSS

 (SEAL)
CAREN CROSS

STATE OF VIRGINIA
CITY/COUNTY OF

Virginia Beach, to-wit:

23rd day of September, 1988 by John T. Henning.


Notary Public

My commission expires:

August 30, 1991

-2-

330

THOMAS M. ANGELO, III
ATTORNEY AT LAW
VIRGINIA BEACH, VIRGINIA

Notary Public

August 30, 1991

Notary Public

August 30, 1981

VIRGINIA: In the Clerk's Office of the Circuit Court of Virginia Beach 26 day of Sep 19 88 at 2:34, this instrument was received and upon the certificate of acknowledgment thereto annexed, admitted to record. The tax imposed by §38.1-802 of the Code, has been paid, in the amount of \$.....

TESTE: J. CURTIS FRUIT, Clark

By: John D. C. D. C.

THIS DEED, made this 1st day of April, 1993, by and between Design Assistance Construction Systems, Inc., a Virginia corporation, Grantor(s), and John T. MENNING, married and David J. CROSS, married, Grantee(s), who reside(s) at: 120 Parker Lane, Virginia Beach, Virginia 23454.

WITNESSETH:

That for and in consideration of the sum of Ten (\$10.00) Dollars, cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, the said Grantor(s) do/does hereby grant and convey with General Warranty and, save as hereinafter set out, with English Covenants of Title unto the Grantee(s) as tenants in common, the following described property:

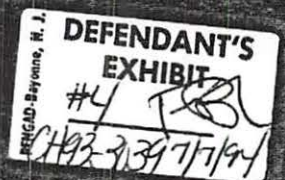
ALL THAT certain lot, piece or parcel of land, with the building and improvements thereon, situate in the City of Virginia Beach, State of Virginia, designated as 7.103 acres and outlined in red, on that certain plat entitled "Composite Plat of Property of George J. Parker, et. al. Location Near London Bridge, Virginia Beach, Virginia, Lynnhaven Borough, Scale: 1"=100', May 16, 1966, Rev. 6-1-73, Wilfred B. Large, Certified Land Surveyor, Norfolk, Virginia," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 98, at page 44, and further described as follows:

Beginning at a point on the East side of Parker Lane 260.40' south from a pin at southeastern corner of Virginia Beach Boulevard and Parker Lane; thence from said point of beginning N 87° 10' E 170.0' to a point; thence S 76° 05' 43" E 621.25'; thence N 16° 09' 16" E 155.38' to a point; thence S 49° 19' 18" E 69.24' to a point; thence S 72° 51' 10" E 109.11' to a point; thence S 29° 08' E 55.80' to a point; thence S 12° 22' W 187.26' to a point on the northern right of way line of U.S. Route #44; thence turning and running along the northern right of U.S. Route #44 in a southwesterly direction S 71° 56' 10" W 316.00' to a point; thence N 75° 02' 28" W 119.27' to a point; thence S 71° 56' 10" W 390.85' to a point; thence turning and running in a northwesterly direction N 18° 03' 50" W 380.49' to a point; thence turning and running S 87° 10' W 55.74' to a point on the East side of Parker Lane; thence turning and running along a curve to the left with an arc distance of 120.90' and a radius of 50' to a point of reverse curve; thence along a curve to the right with an arc distance of 52.36' and a radius of 50' to the point of beginning.

LESS, SAVE AND EXCEPT that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, described in the site plan entitled "Site Plan of Part of

Grin # 1497948654000

332



7.013 Acre Parcel Shown on Plat entitled: 'Composite Plat of Property of George J. Parker et al. Location Near London Bridge', recorded in M.B. 98, P. 44, in the Clerk's Office of the Circuit Court, Va. Beach, Va., Lynnhaven Borough, Virginia Beach, Virginia for George J. Parker et. al. Scale 1"=40', May 31, 1978", made by Wilfred E. Large, Certified Land Surveyor, Norfolk, Virginia, more particularly described as follows:

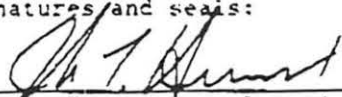
Beginning at a point S 0° 25' 12" W 260.40' from the southeastern intersection of Parker Lane and Virginia Beach Boulevard; thence running N 87° 10' 00" E 170.00'; thence running S 76° 05' 43" E 421.25 feet to the true point of beginning; thence proceeding from said point of beginning N 16° 9' 16" E 155.38' to a point; thence turning and proceeding S 49° 19' 18" E 69.24' to a point; thence S 72° 51' 36" E 109.11' to a point; thence S 29° 08' 00" E 55.80' to a point; thence turning and proceeding S 12° 22' 00" W 187.26' to a point in the northern right of way line of U.S. Route 44; thence turning and proceeding N 60° 57' 05" W 229.91' to a point; thence turning and proceeding N 16° 09' 16" E 50.04' to a point being the said point of beginning.

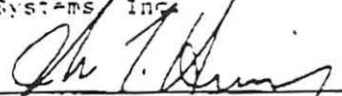
IT BEING the same property conveyed to the Grantor above by deed of John T. Henning, unmarried, and David J. Cross and Caren Cross, husband and wife, dated September 23, 1988 and recorded in the aforesaid Clerk's Office in Deed Book 2771 at page 0679.

This property is conveyed subject to a Deed of Trust from Parker Road Associates, to Stanley A. Phillips, Trustee, dated April 13, 1984 and recorded April 16, 1984, in Deed Book 2326 at page 840, securing Virginia Beach Development Authority, in the original principal amount of \$600,000.00, which trust the Grantees hereby agree to assume and pay off as evidenced by their signing and recording this Deed.


This property is conveyed subject to any covenants, conditions, easements, restrictions, reservations of record and recorded deeds of trust.

WITNESS the following signatures and seals:

 (SEAL)
John T. Henning, President,
Design Assistance Construction
Systems, Inc.

 (SEAL)
John T. Henning, Individually

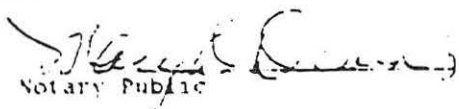
BK3202P60615


David J. Cross, Individually

(SEAL)

STATE OF VIRGINIA
CITY OF VIRGINIA BEACH, 10-511:


This foregoing instrument was acknowledged before me this 12th
day of April, 1993 by John T. Henning, President, Design
Assistance Construction Systems, Inc.


Notary Public

My Commission Expires: 9-30-95

STATE OF VIRGINIA
CITY OF VIRGINIA BEACH, 10-511:

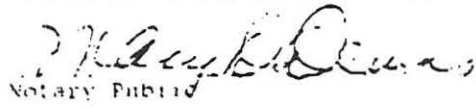
This foregoing instrument was acknowledged before me this 11th
day of April, 1993 by John T. Henning, Individually.


Notary Public

My Commission Expires: 9-30-95

STATE OF VIRGINIA
CITY OF VA Beach, 10-511:

This foregoing instrument was acknowledged before me this 13th
day of April, 1993 by David J. Cross, Individually.


Notary Public

My Commission Expires: 9-30-95

GP1A8

RECORDED WITH
CERTIFICATE NO. 150

93 APR 13 PM 12:46
43400

334

TESTER
NOTARY

| | | | | | | | | |
|----|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 85 | | | | | | | | |

Binder No. _____ Date Entered _____ Inventory Card _____
 Policy Premium _____ Any variation from standard rate is explained as follows:
 Issued simultaneously with Policy No. _____ Issued in lieu of Policy No. _____ Reissue of Policy No. _____
 Schedule A

| CASE NUMBER | DATE OF POLICY | AMOUNT OF INSURANCE |
|-------------|-------------------------|---------------------|
| 34-0967-N | 5-16-84 4:11:03 A.M. | \$400,000.00 |

THE POLICY NUMBER SHOWN ON THIS SCHEDULE MUST AGREE WITH THE PRINTED NUMBER ON THE COVER SHEET

| POLICY NUMBER |
|---------------|
| 35-00-227 |

1. Name of Insured

PARKER ROAD ASSOCIATES, A GENERAL PARTNERSHIP

2. The estate or interest in the land described herein and which is covered by this policy is

Fee Simple

3. The estate or interest referred to herein is at Date of Policy vested in

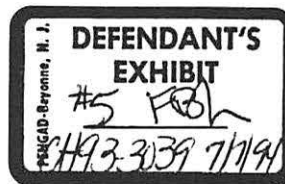
Parker Road Associates, a General Partnership

4. The land referred to in this policy is described as follows

SEE ATTACHED RIDER

Being the same property conveyed to Parker Road Associates, a General Partnership by deed from George J. Parker and Patricia L. Parker, dated April 13, 1984, filed for record April 16, 1984, recorded in Deed Book 2326, Page 0839.

END



335

on 7-31-84

NORFOLK BRANCH OFFICE, Norfolk, Virginia

Policy Number 34-0967-N
Issued on 5-16-84

This Policy is issued subject to the terms, conditions and exclusions of the policy contract.

As To Amount of Policy Form B-18 applies. 10/17/70 Copyright 1984

ISSUING OFFICE COPY

EXHIBIT "A"

X

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, designated as 7.013 acres and outlined in red, on that certain plat entitled "Composite Plat of Property of George J. Parker et. al. Location Near London Bridge, Virginia Beach, Virginia, Lynnhaven Borough, Scale: 1"=100', May 16 1966, Rev. 6-1-73, Wilfred B. Large, Certified Land Surveyor, Norfolk, Virginia," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 98, at page 44, and further, described as follows:

Beginning at a point on the East side of Parker Lane 260.40' South from a pin at southeastern corner of Virginia Beach Boulevard and Parker Lane; thence from said point of beginning N 87°-10' E 170.0' to a point; thence S 76°-05' 43" E 621.25' to a point; thence S 16°-09' 16" E 155.38' to a point; thence S 49°-19'-18" E 69.24' to a point; thence S 72°-51'-36" E 109.11' to a point; thence S 29°-08' E 55.80' to a point; thence S 12°-22' W 187.26' to a point on the northern right of way line of U. S. Route 44; thence turning and running along the northern right-of U. S. Route 44 in a southwesterly direction S 71°-56'-10" W 316.00' to a point; thence N 73°-01'-28" W 119.27' to a point; thence S 71°-56'-10" W 390.85' to a point; thence turning and running in a northwesterly direction N 18°-03'-50" W 380.49' to a point; thence turning and running S 87°-10' W 55.74' to a point on the East side of Parker Lane; thence turning and running along a curve to the left with an arc distance of 130.90' and a radius of 50' to a point of reverse curve; thence along a curve to the right with an arc distance of 52.36' and a radius of 50' to the point of beginning.

Data and excepts

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, described on the site plan entitled "Site Plan of Part of 7.013 Acre Parcel Shown on Plat Entitled Composite Plat of Property of George J. Parker et. al. Location Near London Bridge, recorded in M.B. 98 pg 44, in the Clerk's Office of the Circuit Court, Va. Beach, VA, Lynnhaven Borough, Virginia Beach, Virginia for George J. Parker et. al., Scale 1"=40', May 31, 1978", made by Wilfred P. Large, Certified Land Surveyor, Norfolk, Virginia, more particularly described as follows:

Beginning at a point being S. 0° 35' 12" W. 260.40 feet from the southeastern intersection of Parker Lane and Virginia Beach Boulevard; thence running N. 87° 10' 00" E 170.00 feet; thence running S. 76° 05' 43" E. 621.25 feet to the true point of beginning thence proceeding from said point of beginning N. 16° 09' 16" E. 155.38 feet to a point; thence turning and proceeding S 49° 19' 18" E. 69.24 feet to a point; thence S. 72° 51' 36" E. 109.11 feet to a point; thence turning S 29° 08' 00" E. 55.80 feet to a point; thence turning and proceeding S 12° 22' 00" W. 187.26 feet to a point on the northern right of way line of U. S. Route 44; thence turning and proceeding N. 60° 57' 05" W. 229.91 feet to a point; thence turning and proceeding N. 16° 09' 16" E. 50.00 feet to the point of beginning.

Lawyers Title Insurance Corporation

OWNER'S POLICY

POLICY NUMBER
84 0967-N
DATE OF POLICY
4-16-84
@11:05 A.M.

THE POLICY NUMBER IS SHOWN ON THE DEED
AND IS AGREE WITH THE POLICY NUMBER
ON THE COVER SHEET
Schedule B

POLICY NUMBER
85-00-174227

This policy does not insure against loss or damage by reason of the following:

XX

1. Taxes for the last half of the fiscal year beginning July 1, 1983 and ending June 30, 1984, and all taxes for subsequent fiscal years.

2. Deed of easement dated July 11, 1980, and recorded in Deed Book 2026, page 231, for ingress and egress to Parker Lane and for construction, installation and maintenance of utilities over and under 50 feet along the northern property line.

3. Rights or claims of parties in possession and easements or claims of easements not shown by the public records, boundary line disputes, overlaps, encroachments, deficiency in quantity of ground, and any matters not of record which would be disclosed by an accurate survey and inspection of the premises.

4. Deed of Trust from Parker Road Associates to Stanley A. Phillips, Trustee, dated as of April 13, 1984, filed for record April 16, 1984, in Deed Book 2326, page 0840. "Lec Lec"

TICOR TITLE INSURANCE

LOAN POLICY
SCHEDULE A

Agent's I.D. Number:
7016

Agent's Reference Number:
31,485

Policy Number: Amount of Insurance: Date of Policy:
056533 \$700,000.00 27 DEC 1985
at 11:19 AM

Name of Insured:

DOMINION BANK OF GREATER HAMPTON ROADS

The estate or interest referred to herein is at Date of
Policy vested in:

Southeast Metal Deck Co. Inc.

The estate or interest in the land described in this Schedule
and which is encumbered by the insured mortgage is FEE SIMPLE.

The mortgage herein referred to as the insured mortgage, and
the assignments thereof, if any, are described as follows:

Deed of Trust from Southeast Metal Deck Co. Inc. to Charles D. Robison,
II and Gleason C. Snow, Trustees for Dominion National Bank of Greater
Hampton Roads, dated 6 DEC 1985 and duly recorded in the Clerk's Office of
the Circuit Court of the City of Virginia Beach, Virginia, on 27 DEC 1985
at 11:19 AM, in Deed Book 2467, at page 1623, securing the principal sum of,
700,000.00 and interest thereon.

The land referred to in this policy is located in the City of
Virginia Beach, State of Virginia and described as follows:

SEE ATTACHED:

* This policy valid only if Schedule B is attached *

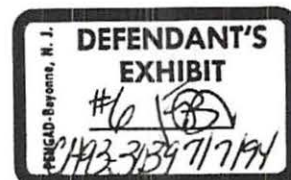


EXHIBIT A

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, designated as 7.103 acres and outlined in red, on that certain plat entitled "Composite Plat of Property of George J. Parker et. al. Location Near London Bridge, Virginia Beach, Virginia, Lynnhaven Borough, Scale: 1" = 100', May 16 1966, Rev. 6-1-73, Wilfred B. Large, Certified Land Surveyor, Norfolk, Virginia," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 98, at page 44, and further described as follows:

Beginning at a point on the East side of Parker Lane 260.40' South from a pin at southeastern corner of Virginia Beach Boulevard and Parker Lane; thence from said point of beginning N 87°-10' E 170.0' to a point; thence S 76°-05'43" E 621.25'; thence N 16°-09'-16" E 155.38' to a point; thence S 49°-19'-18" E 69.24' to a point; thence S 72°-51'-36" E 109.11' to a point; thence S 29°-08' E 55.80' to a point; thence S 12°-22' W 187.26' to a point on the northern right of way line of U. S. Route #44; thence turning and running along the northern right of U. S. Route #44 in a southwesterly direction S 71°-56' 10" W 316.00' to a point; thence N 75°-02'-28" W 119.27' to a point; thence S 71°-56'-10" W 390.85' to a point; thence turning and running in a northwesterly direction N 18°-03'-50" W 380.49' to a point; thence turning and running S 87°-10' W 55.74' to a point on the East side of Parker Lane; thence turning and running along a curve to the left with an arc distance of 130.90' and a radius of 50' to a point of reverse curve; thence along a curve to the right with an arc distance of 52.36' and a radius of 50' to the point of beginning.

SAVE AND EXCEPT:

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach, State of Virginia, described in the site plan entitled "Site Plan of Part of 7.013 Acre Parc Shown on Plat entitled Composite Plat of Property of George J. Parker et al. Location Near London Bridge, recorded in M.B. 98 pg 44, in the Clerk's Office of the Circuit Court, Va. Beach, VA, Lynnhaven Borough, Viry Beach, Virginia for George J. Parker et. al., Scale 40', May 31, 1978", made by Wilfred P. Large, Certi

Land Surveyor, Norfolk, Virginia, more particularly described as follows:

Beginning at a point S. $0^{\circ} 35' 12''$ W. 260.40 feet from the southeastern intersection of Parker Lane and Virginia Beach Boulevard; thence running N. $87^{\circ} 10' 00''$ E. 170.00 feet, thence running S. $76^{\circ} 05' 43''$ E. 621.25 feet to the true point of beginning; thence proceeding from said point of the beginning N. $16^{\circ} 09' 16''$ E. 155.38 feet to a point; thence turning and proceeding S. $49^{\circ} 19' 18''$ E. 69.24 feet to a point; thence S. $72^{\circ} 51' 36''$ E. 109.11 feet to a point; thence S. $29^{\circ} 08' 00''$ E. 55.80 feet to a point; thence turning and proceeding S. $12^{\circ} 22' 00''$ W. 187.26 feet to a point on the northern right of way line of U. S. Route 44; thence turning and proceeding N. $60^{\circ} 57' 05''$ W. 229.91 feet to a point; thence turning and proceeding N. $16^{\circ} 09' 16''$ E. 50.04 feet to a point being the said point of beginning.

TICOR TITLE INSURANCE

LOAN POLICY SCHEDULE B

Policy Number
L9-056533

Agent's Reference No.
31,485

Part I.

This policy does not insure against loss or damage by reason of the following:

- (1) TAXES Real estate taxes accruing from the beginning of the second half of the fiscal year 1985/1986 and subsequent semi-annual payments are not yet due and payable.
- (2) Easement to Virginia Electric and Power Company as recorded in the Clerk's office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 859, at page 647; and in Deed Book 859, page 653.
- (3) Easement to Virginia Electric and Power Company as recorded in the Clerk's office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 2349, at page 978, fifteen (15) foot interior.
- (4) Easement to Princess Anne and Virginia Beach Telephone Company recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 89, at page 567.
- (5) Easement to Chesapeake and Potomac Telephone Company as recorded in the Clerk's office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 844, at page 346.
- (6) Riparian rights and those public easements and rights for commerce, navigation, and fisheries. Any right, title, or interest of the public up to the mean high water mark and those portions of described property created by artificial means including accretions thereto.
- (7) DEED OF TRUST dated April 13, 1984 and recorded in Deed Book 2326, page 840, securing the principal sum of \$600,000.00 to Stanley Q. Phillips, Trustee.
- (8) UCC Financing Statement No. 84-1807 recorded April 16, 1984 from Park Road Associates to George J. Parker.
- (9) Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of the premises SUBSEQUENT TO JUNE 1, 1973.
- (10) Rights of others entitled thereto in and to the easement for ingress and egress to Parker Lane and for the construction, installation and maintenance of utilities over said easement as described in Deed Book 2026, at page 231.

TICOR TITLE INSURANCE

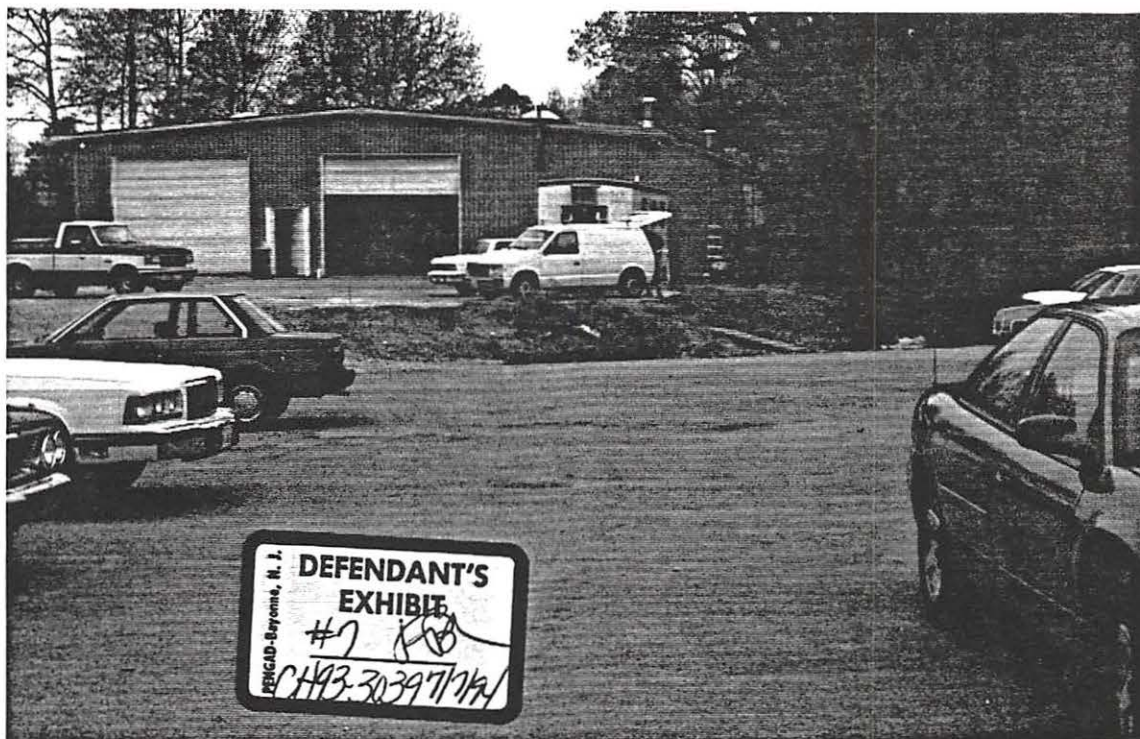
LOAN POLICY SCHEDULE B

Policy Number
L9-056533

Agent's Reference No.
31,485

Part II

In addition to the matters set forth in Part I of this schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that such matters are subordinate to the lien or charge of the insured mortgage upon said estate or interest.



Customer Bill

MAY 20 94 Bill For:
LYNNHAVEN LINCOLN
MERCURY MERKUR INC

| Meter Readings | |
|----------------|-----------|
| MAY 18 94 | APR 20 94 |

17039 14257

Kilowatt
Hour Usage

2782

130 PARKER LN
VA BEACH VA 23452

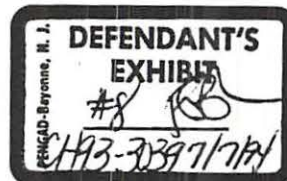
Please Pay

\$ 240.52
by JUN 16

| Summary of Charges | |
|---|--------|
| Description | Amount |
| Schedule GS-1 Three Phase (Demand 11 KW) | 209.15 |
| VIRGINIA BEACH Utility Tax | 31.37 |
| Account Balance | 240.52 |

| T/ | NET |
|-----|--------|
| NO. | AMOUNT |
| | 240 |
| 110 | -240 |
| 100 | 240 |

Thank you for your last payment of \$ 179.45 on APR 27 94.



Important Customer Information

- Your account number is 15 35 6058 2. You may phone us Monday-Friday before 5:00 P.M. at (804) 858-4699 with a change of mailing address or question about your service.
- If payment in full is received by JUN 16 94, you will avoid a late payment charge of 1.5%. Include your payment coupon to ensure prompt processing.
- Use energy wisely - your next bill will be on summer rates.
- Help EnergyShare - add \$1, 2, 5, 10, 20, 25 or 35 to your payment.
- Your average daily cost is \$ 7.47 for this 28 day billing period.

| | Basic Charge \$ | Fuel Chp \$ / KWH | c / KWH First 1400 | c / KWH Excess Over |
|------------------------|--|-------------------|--------------------|---------------------|
| Schedule GS-1 | 15.47 | 1.418 | 6.736 | 4.356 |
| Monthly Rate (OCT-MAY) | Minimum charge is \$3.66 per kw when kw is 50 or more. | | | |

48637 C



VIRGINIA POWER

10 240

REMITTANCE AD



Hampton Roads' Largest Lincoln-Mercury Dealership
In Top 100 In America

2375 Virginia Beach Boulevard
VIRGINIA BEACH, VIRGINIA 23454
Telephone (804) 340-0800

CRESTAR BANK
NORFOLK, VIRGINIA

2136

88-34
514

| |
|---------|
| DATE |
| 27MAY94 |

| PAY THIS AMOUNT | | |
|-----------------|---------|----------|
| *****240 | DOLLARS | 52 CENTS |

| AMOUNT OF CHECK |
|-----------------|
| *****240.52 |

TO
THE
ORDER
OF

VIRGINIA POWER
PO BOX 26543
RICHMOND, VA 23290-0001

344

BY *** NOT NEGOTIABLE ***
BY *****

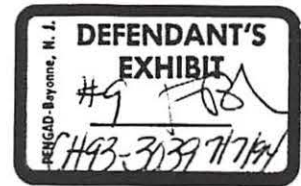
AUTHORIZED REPRESENTATIVE

FILE COPY

Lawyers Title
Insurance Corporation

NATIONAL HEADQUARTERS

RICHMOND, VIRGINIA



September 21, 1993

Clark & Stant
900 Sovran Bank Building
One Columbus Center
Virginia Beach, VA 23462

Attn: Eric A. Hauser, Esquire

Re: RICHARD F. DAVIS and AMELIA D. DAVIS
Case No. C93-0253-N (Please reference on all correspondence).
Your file:

The following documents are enclosed:

Your Commitment:

Lawyers Title Policies:

Owners
Lenders
Other

The copies you requested. (

Documents as returned by the Clerk's Office.

Invoice for services referenced above to be placed in line
for payment. Please indicate our case number on all checks.

X Endorsement (s)

Please do not hesitate to call if you have any questions. Thank you for this opportunity to be of service.

Yours truly,

LAWYERS TITLE INSURANCE CORPORATION

Sandra H. Jones
Senior Underwriter

shj

345

Lawyers Title
Insurance Corporation

NATIONAL HEADQUARTERS
RICHMOND, VIRGINIA

COMMITMENT OR BINDER ENDORSEMENT
CONTINUED

Case No.: C93-0253-N

Beginning at a point being S. 0° 35' 12" W. 260.40 feet, N. 87° 10' 00" E. 170.00 feet, and S 76° 05' 43" E. 621.25 feet from the southeastern intersection of Parker Lane and Virginia Beach Boulevard; thence proceeding from said point of beginning N. 16° 09' 16" E. 155.38 feet to a point; thence turning and proceeding S. 49° 19' 18" E. 69.24 feet to a point; thence S. 72° 51' 36" E. 109.11 feet to a point; thence S. 29° 08' 00" E. 55.80 feet to a point; thence turning and proceeding S. 12° 22' 00" W. 187.26 feet to a point on the northern right of way line of U.S. Route 44; thence turning and proceeding N. 60° 57' 05" W. 229.91 feet to a point; thence turning and proceeding N. 16° 09' 16" E. 50.04 feet to a point being the said point of beginning.

It being the same property conveyed to George J. Parker by deed of Parco Building Corporation, a Virginia corporation, dated August 10, 1978, and duly recorded in the Clerk's Office of the Circuit court of the City of Virginia Beach, Virginia, in Deed Book 1896 at Page 345 also described by this indenture as property conveyed to Richard F. Davis and Amelia D. Davis by deed from George F. Parker, dated May 28, 1981 and filed for record in Deed Book 2420, page 199.

GEORGE J. PARKER died January 30, 1991 and by his will recorded in Will Book 79, page 449, Patricia L. Parker and Michael J. Parker were appointed Co-Trustees and Co-Executors of his will.

B) Being as shown on Sheet No. 502-19 of the plans for Route 44, State Highway Project 0044-134-101, RW-201, and beginning at a point in the northern right of way line of Route 44, said point being 135 feet opposite and left of approximate survey Station 441+66; thence, N. 5° 33' 26" E., 189 feet to a point marked by a pipe; thence, S. 32° 23' E., 138.4 feet; thence, S. 74° 37' 18" E., 42 feet to a point common with the northern right of way line of Route 44; thence, with said right of way line S. 64° 59' 10" W. (erroneously stated as SE in deed), 159 feet to the point of beginning; and containing .007 acre, more or less, and being a part of the lands acquired by the Commonwealth by Certificate of Deposit No. N-VBH 137, recorded December 31, 1964 in the office of the Clerk of the Circuit Court of Virginia Beach, Virginia in Deed Book 880, Page 572.

It being the same property conveyed to JAMES P. COATES ENTERPRISES, INCORPORATED by deed from Commonwealth of Virginia, acting by and through the State Highway commissioner, dated January 7, 1966, and filed for record July 7, 1966, in Deed Book 967, page 718.

Continued

Lawyers Title Insurance Corporation

NATIONAL HEADQUARTERS
RICHMOND, VIRGINIA

COMMITMENT OR BINDER ENDORSEMENT CONTINUED

Case No.: C93-0253-N

PARCEL TWO (EASEMENT):

That certain easement over the fee parcel described below for ingress and egress as set forth in that certain Agreement dated July 11, 1980, recorded in Deed Book 2021, page 231:

All that certain piece or parcel of land thirty feet in width situate, lying and being in the City of Virginia Beach, Virginia and being the northernmost fifty (50) feet along the northern property line of the property designated as 7.013 acres and described on that certain site plan entitled "Site Plan of Part of 7.013 Acre Parcel Shown on Plat entitled Composite Plat of Property of George J. Parker et al, Location Near London Bridge, recorded in M.B. 98, pg. 44 in the Clerk's Office of the Circuit Court, Va. Beach, Virginia for George J. Parker et al., Scale" 1" = 40', May 31, 1978, which said plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Deed Book ___, page ___.

It being a part of the same property conveyed to JOHN T. HENNING, married, and DAVID J. CROSS, married, by deed from Design Assistance Construction Systems, Inc., a Virginia corporation, dated April 12, 1993, and filed for record April 13, 1993, in Deed Book 3202, page 613.

Lawyers Title Insurance Corporation

NATIONAL HEADQUARTERS
RICHMOND, VIRGINIA

Lawyers Title Insurance Corporation
World Trade Center, Suite 1100
P.O. Box 3296 (23514)
Norfolk, Virginia 23510

December 8, 1993

Clark & Stant
900 Sovran Bank Building
One Columbus Center
Virginia Beach, VA 23462

Attention: Eric Hauser, Esquire

Re: RICHARD F. DAVIS and AMELIA D. DAVIS
Case No. C93-0253-N

Ladies/Gentlemen:

Based on a search of those public records wherein deeds are recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, the following deeds appear to affect the issue of the easement which we will refer to as the "Davis Basement".

1. Deed conveying entire 7.103 acres to J. K. Parker, Incorporated, dated August 15, 1973, recorded in Deed Book 1421, page 663 (re-recording of Deed Book 1370, page 355).
2. Deed of trust encumbering entire 7.103 acres dated June 30, 1976, and recorded in Deed Book 1578, page 180.
3. Deed conveying entire 7.103 acres to Parco Building Corporation, dated November 18, 1976, and recorded in Deed Book 1625, page 550, subject to deed of trust in Deed Book 1578, page 180.

SPLITS:

(Smaller piece)

4. Deed from Parco Building Corporation to George J. Parker, dated August 10, 1978, and recorded in Deed Book 1896, page 345. (copy enclosed)
 5. Basement granted by Parco Building Corporation to George J. Parker, dated July 11, 1980, and recorded in Deed Book 2026, page 231, benefitting the smaller piece (copy enclosed).
- Continued

Lawyers Title Insurance Corporation

NATIONAL HEADQUARTERS
RICHMOND VIRGINIA

Case No. C93-0253-N

6. Contract between George J. Parker and Richard F. Davis and Amelia D. Davis, dated May 28, 1981, recorded on June 20, 1985, in Deed Book 2420, page 194 (copy enclosed).

7. Indenture dated May 28, 1981, between parties listed in #6 hereof, including all interest of George J. Parker recorded on June 20, 1985, in Deed Book 2420, page 199 (copy enclosed).

(Larger piece)

8. Easement across northern portion of larger piece granted by Parco Building Corporation to George J. Parker, dated July 11, 1980, and recorded in Deed Book 2026, page 231, benefitting the smaller piece (copy enclosed).

9. Deed from Trustee foreclosing on Deed of Trust in Deed Book 1578, page 180, to George J. Parker, dated July 22, 1980, and recorded in Deed Book 2028, page 596 (copy enclosed).

10. Deed from George J. Parker to Parker Road Associates, dated April 13, 1984, and recorded in Deed Book 2326, page 838, subject to easement listed as #5 hereof (copy enclosed).

11. Deed of trust recorded in Deed Book 2444, page 562.

12. Deed from Parker Road Associates to Southeast Metal Deck, Inc., dated December 6, 1985, and recorded in Deed Book 2467, page 1620, subject to deed of trust in Deed Book 2444, page 562, and subject to easements of record.

13. Deed by Substitute Trustee foreclosing on deed of trust in Deed Book 2444, page 562, to John T. Henning, David J. Cross and Caren Cross, dated March 21, 1988, and recorded in Deed Book 2718, page 533, subject to easements of record.

DRAWING DATED 9/8/88 BY ATEC FOR DACS SITE SHOWS DIRT ROAD CROSSING NORTHERN SIDE OF REMAINING 7.103 ACRES

14. Deed from John T. Henning, David J. Cross and Caren Cross to Design Assistance Construction Systems, Inc., dated September 23, 1988, and recorded in Deed Book 2771, page 679, subject to easements of record.

15. Deed from Design Assistance Construction Systems, Inc. to John T. Henning and David J. Cross, dated April 12, 1993, and recorded in Deed Book 3202, page 613, subject to easements of record.

Based on the deeds of record, it would appear that the easement created in Deed Book

Continued

Lawyers Title Insurance Corporation

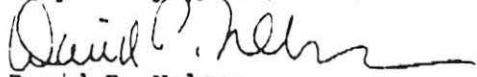
NATIONAL HEADQUARTERS
RICHMOND, VIRGINIA

Case No. C93-0253-N

2026, page 231 ceased to exist upon the merger of title which occurred in Deed Book 2028, page 596. However, it was recreated or reimposed in Deed Book 2326, page 838 when the owner of both parcels conveyed the larger piece and retained ownership in the smaller piece. At that time, the easement became the means of access to the smaller parcel and appears to still exist in the absence of any releases of same of record.

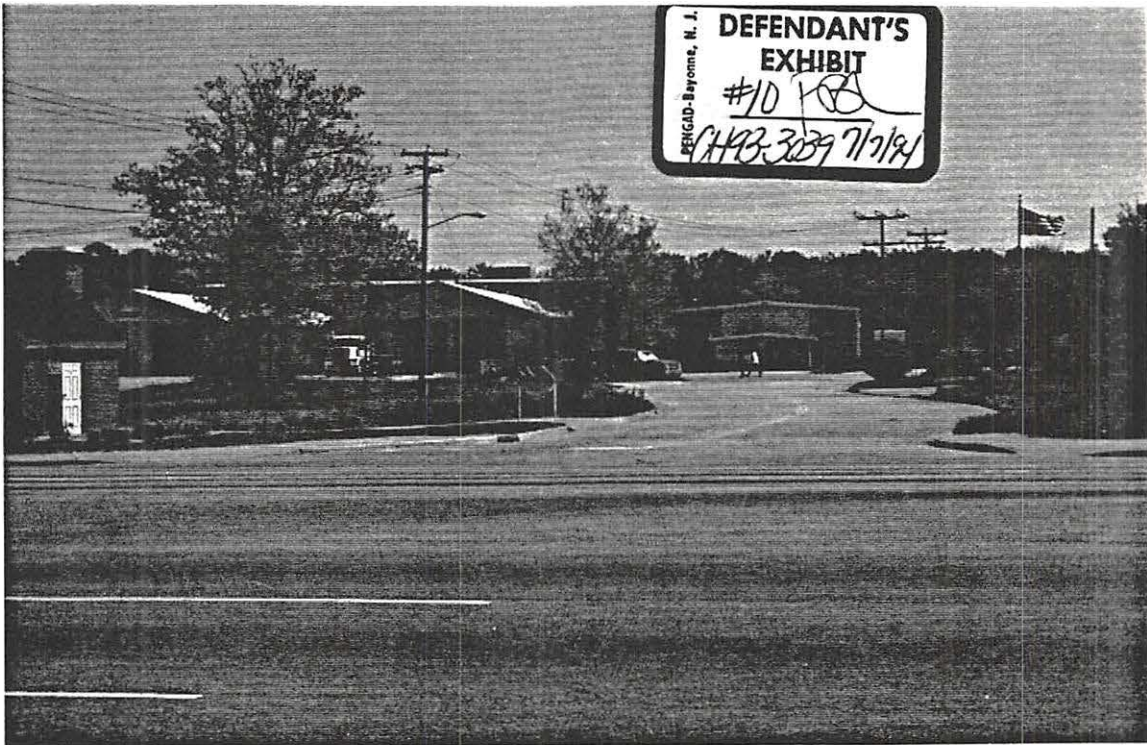
Please let us hear from you if you require further clarification of the foregoing.

Very truly yours,

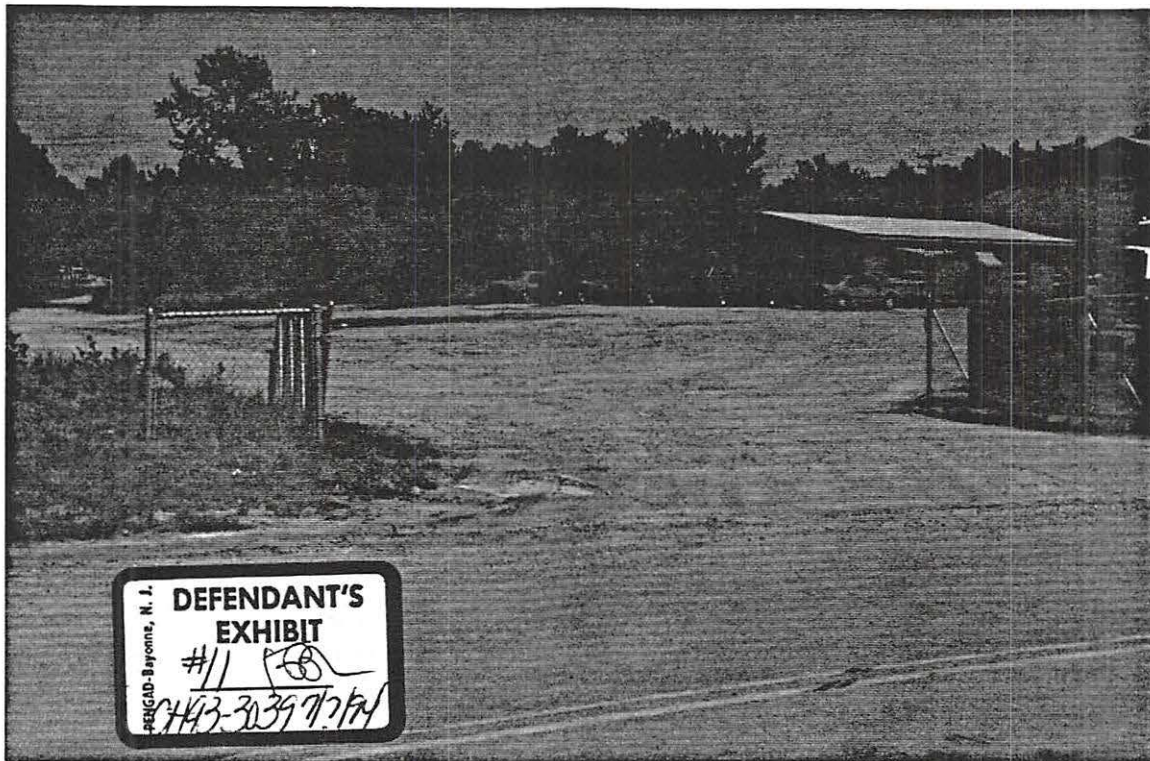


David P. Nelson
Commercial Transactions Counsel

DPN:pam



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**DEFENDANT'S
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