

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re:

3700 ULMERTON ROAD PLAZA, LLC,

Debtor.

Case No. 8:12-bk-04339-KRM

Chapter 7

**ORDER GRANTING MOTION TO APPROVE COMPROMISE  
OF CONTROVERSY WITH ELAINE SWITZER, INDIVIDUALLY  
AND AS TRUSTEE OF THE ELAINE S. EAST TRUST**

THIS CASE came before the Court for consideration upon the *Motion to Approve Compromise of Controversy with Elaine Switzer, Individually and as Trustee of the Elaine S. East Trust* (Doc. No. 180) (the “**Motion**”) filed by M. D. Luetgert, as chapter 7 trustee (the “**Trustee**” or “**Luetgert**”) of the estate of 3700 Ulmerton Road Plaza, LLC. Through the Motion, the Trustee seeks the entry of an order (1) granting the Motion; (2) approving the terms of the settlement agreement (the “**Settlement Agreement**”)<sup>1</sup> among the (i) Trustee, (ii) Elaine Switzer, individually and as trustee of the Elaine S. East Trust, and (iii) Stearns Bank; and (3) finding that the Settlement Agreement is in the best interest of the estate and its creditors and satisfies the factors set forth in *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544,1549 (11th Cir. 1990), *cert. denied*, 498 U.S. 959 (1990).

From the record, the Court finds that, the parties-in-interest were provided with notice and opportunity to object or otherwise respond to the Motion in accordance with the *Order Granting Trustee’s Motion for Approval of Procedures for Future Notices Under Federal Rule*

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<sup>1</sup> All capitalized terms not specifically defined herein shall have the meaning ascribed to them in the Settlement Agreement.

*of Bankruptcy Procedure 2002* (Doc. No. 158). No responses have been filed to the Motion, and the Court, therefore, finds that the Motion is unopposed and that it is appropriate to grant the relief requested. The Court further finds that it is appropriate to approve the Settlement Agreement because it is in the best interest of the estate and its creditors and satisfies the *Justice Oaks II, Ltd.* factors. Accordingly, it is

**ORDERED:**

1. The Motion is **GRANTED**, and the Settlement Agreement attached hereto as **Exhibit "A"** is hereby **APPROVED**.

2. The Trustee is hereby authorized to effectuate the Settlement Agreement and immediately distribute the assets contemplated therein, including but not limited to (a) assigning the NC Farm Property to Stearns bank or its designee, (b) assigning judgments against CDE and Clark to Stearns Bank or its designee, (c) making an interim disbursement of \$130,000.00 to Stearns Bank of funds recovered by the Trustee in connection with this case to date, and (d) assigning the estate's interest in any BP claim to Stearns Bank or its designee.

3. The Court will retain jurisdiction over any disputes regarding the Settlement Agreement or to enforce the Settlement Agreement.

**DONE** and **ORDERED** in Chambers at Tampa, Florida.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
K. Rodney May  
United States Bankruptcy Judge

Attorney Kathleen L. DiSanto is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

**SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** (the "Settlement Agreement") is made and entered into by and between (i) M.D. Luetgert, as chapter 7 trustee ("Luetgert"), of the estate of 3700 Ulmerton Road Plaza, LLC (the "Debtor"), (ii) Stearns Bank (the "Bank"), and (iii) Elaine S. East n/k/a Elaine Switzer ("Switzer"), individually and as trustee of the Elaine S. East Trust (the "Trust").

**WHEREAS**, on March 26, 2012, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court for the Middle District of Florida, Tampa Division (the "Bankruptcy Court"), which was assigned Case No. 8:12-bk-05664-KRM (the "Bankruptcy Case").

**WHEREAS**, on September 18, 2012, the Bankruptcy Court entered an *Order Converting the Captioned Chapter 11 Case to Case Under Chapter 7* (Doc. No. 109).

**WHEREAS**, on September 18, 2012, Andrea P. Bauman (the "Interim Trustee") was duly appointed as interim chapter 7 trustee, as reflected by the Bankruptcy Court's *Notice of Conversion of Case to Chapter 7* (Doc. No. 110). On October 19, 2012, at the Section 341 Meeting of Creditors, the United States Trustee conducted an election of trustee at the request of the Bank. On October 22, 2012, the United States Trustee filed its *Report of Election of Chapter 7 Trustee* (Doc. No. 130) which designated Luetgert as the elected trustee. On October 25, 2012, the United States Trustee filed the *Acceptance of Permanent Trustee Office* (Doc. No. 131), indicating Luetgert's acceptance of the office of permanent trustee in this bankruptcy case.

**WHEREAS**, on June 29, 2012, the Court entered the *Order Granting Motion to Sell Assets Free and Clear of Liens and Authorizing Sale of Assets to Winning Bidder* (Doc. No. 51) (the "Sale Order"), which authorized the sale of certain assets owned by the Debtor (the "Assets"). Pursuant to the Sale Order, proceeds from the sale of the Assets in the amount of \$1,852,000.00 (the "Sale Proceeds") were deposited in the Debtor's debtor-in-possession account (the "DIP Account") maintained at Wells Fargo Bank. The Debtor's principal, Clark D. East ("Clark") absconded with not less than \$828,854.66 of the Sale Proceeds.

**WHEREAS**, on September 21, 2012, the Interim Trustee filed the *Verified Complaint to Avoid and Recover Post-Petition Transfers, for Injunctive Relief and Seeking Turnover of Property of the Estate* (Doc. No. 1) (the "Complaint"), which was assigned Adv. Proc. No. 8:12-ap-00869-KRM (the "Adversary").

**WHEREAS**, on March 14, 2013, Luetgert filed the *Amended Verified Complaint to Avoid and Recover Post-Petition Transfers, for Injunctive Relief and Seeking Turnover of Property of the Estate* (Doc. No. 124) (the "Amended Complaint") in the Adversary.

**WHEREAS**, Switzer and/or the Trust received transfers totaling \$446,000.00, which are attributable to the Sale Proceeds. Of that \$446,000.00 total, Switzer and/or the Trust made

transfers to Brendan East totaling \$30,000.00, and one transfer to Jack Stein in the amount of \$28,928.00, among other transfers.

**WHEREAS**, Switzer and/or the Trust returned \$141,946.58 to Luetgert, including \$28,510.00 returned by Lyndi Gordon on behalf of Switzer and/or the Trust.

**WHEREAS**, Jack Stein entered a settlement with Luetgert and restored \$20,000.00 of the Sale Proceeds to Luetgert.

**WHEREAS**, Luetgert secured a final judgment in the Adversary by default against CDE Commercial Holdings, LLC from the Bankruptcy Court in the total amount of \$821,000.00 on November 21, 2012.

**WHEREAS**, Luetgert secured a final judgment in the Adversary by default against Clark from the Bankruptcy Court in the total amount of \$821,000.00 on July 18, 2013.

**WHEREAS**, Switzer, individually and as trustee of the Trust, denies knowledge about Clark's transfers of the Sale Proceeds and the source of the funds they received respectively.

**WHEREAS**, on October 18, 2012, Switzer filed a petition for dissolution of marriage in the Circuit Court in and for Pinellas County, Florida, which has been assigned Case No. 12-009151-FD-22 (the "Divorce Proceeding"), and on or about December 17, 2012, Switzer and Clark entered a Marital Settlement Agreement (the "MSA"). Through the MSA, Clark waived any and all of his right, title, and interest in the real property more specifically described in **Exhibit "A"** (the "NC Farm Property"). Among other assets, Clark agreed to transfer multiple business interests to Switzer, including his interest in Fairfield Inn, Central Development Enterprises Medical, LLC, Fourth Street St. Pete Associates, RLLP, Ocala-SR 200 Equity Partners, RLLP, St. Lucie Equity Partners, RLLP, and CDE Hotel Properties, LLC (the "Business Interests"). In addition, the MSA provides that Switzer will receive half of any BP claim proceeds remaining after a payment of \$50,000.00 is made to Clark's attorney and \$168,000.00 or whatever funds remain outstanding to repay the United States Trustee.

**WHEREAS**, Switzer acknowledges that the MSA's reference to the "United States Trustee" was intended to refer to Luetgert.

**WHEREAS**, Luetgert, the Bank, Switzer, individually and as trustee of the Trust (together the "Parties") desire to settle and resolve all issues relating to claims asserted by Luetgert through the Complaint and Amended Complaint against Switzer, individually and as trustee of the Trust, and the Trust in the Adversary without the need for further litigation.

**NOW THEREFORE**, in consideration of the foregoing and for good and valuable consideration, the Parties resolve all pending controversies between Luetgert, Switzer, individually and as trustee of the Trust, and the Trust in connection with the Adversary, and as full and final settlement of the Adversary agree as follows:

1. **Incorporation by Reference.** The above recitals are true and correct and are incorporated herein by reference.

2. **Judgment Against the Trust.** Switzer, as trustee of the Trust, shall consent to the entry of a judgment in favor of Luetgert and against the Trust in the amount of \$284,053.42 (the "Judgment"). The Judgment shall not be entered against Switzer in her individual capacity. Upon the Judgment becoming final and non-appealable, Luetgert shall assign the Judgment to the Bank or its designee. The Bank shall stay its execution on the Judgment until December 1, 2013, in order to give Clark time to restore the full amount of the funds taken. In the event that Clark restores the full amount of the funds taken before December 1, 2013, then the Judgment against the Trust shall be set aside. To the extent that Clark restores some portion of the funds taken before December 1, 2013, then such funds or other property shall first be credited to the outstanding judgment in favor of Luetgert and against CDE Commercial Holdings, LLC, then to any outstanding judgment in favor of Luetgert and against Clark, and lastly to the Judgment or any consent judgment which may be obtained in connection with Paragraph 13 of this Settlement Agreement. As explained more fully below, Switzer agrees to pledge certain assets, in the event that she ultimately receives them, toward satisfaction of any outstanding portion of the Judgment. In any event, the Bank shall not be entitled to more than the value of the Judgment.

3. **Funds Restored to Luetgert.** Any funds restored to Luetgert by Switzer on behalf of Switzer or the Trust, including the \$141,946.58 restored by Switzer (the "Restored Funds") shall be retained by Luetgert. Switzer and the Trust hereby irrevocably waive all rights, claims or interest in the Restored Funds.

4. **North Carolina Farm Property.** Switzer, as trustee of the Trust, will tender the NC Farm Property to the Bank or its designee within fourteen (14) days of any order of the Bankruptcy Court approving this Settlement Agreement becoming a final and non-appealable order. Upon the tender of the NC Farm Property to the Bank, the Bank will assume responsibility for the maintenance, insurance, and ultimate sale of the NC Farm Property. The Bank will provide Luetgert and Switzer with fourteen (14) days notice of any sale of the NC Farm Property, along with an estimate of the net proceeds that will be credited to the amount outstanding on the Judgment. In the event that the Bank acts in a commercially reasonable manner in selling the NC Farm Property, the Bank will deduct the actual and reasonable costs of maintenance, insurance, and property taxes from the proceeds of the sale of the NC Farm Property, and the Trust will be given a credit against the amount of the Judgment for the balance of the proceeds of sale of the NC Farm Property. In the event that the sale of the NC Farm Property generates proceeds exceeding the outstanding judgments obtained in this Adversary, Elaine and the Trust shall not be entitled to any of the excess proceeds unless and until the Bank has been fully restored to its position prior to Clark's theft of the Sale Proceeds, including but not limited to reimbursement of all fees and expenses, including but not limited to attorney's fees and costs, and any interest or other amounts to which the Bank may be entitled. The Bank will promptly notify Elaine of the existence and the extent of any excess proceeds; otherwise, the Bank bears no obligation (aside from notifying Elaine of the amount credited against the Judgment) to provide an accounting following the sale of the NC Farm Property. Notwithstanding anything above or herein, the Bank may sell or otherwise dispose of the NC Farm Property as it chooses, in its sole and exclusive discretion.

**5. Future Assets.** To the extent that any judgment obtained in the Adversary against any defendant named in the Adversary remains unsatisfied and Clark, either (i) individually or (ii) through an entity in which Clark has a legal or equitable interest or otherwise controls, transfers any property, money, or confers any financial benefit, directly or indirectly (pursuant to the MSA or otherwise) to or for the benefit of Switzer, (i) in her capacity as an individual or (ii) to any entity controlled by Switzer or in which Switzer has a legal or equitable interest, including but not limited to the Trust, such property, money, or financial benefit, with the exception of de minimis transfers in the nature of a gift or support of less than \$200.00 per occurrence and less than \$2,000.00 cumulatively on an annual basis, shall be immediately and automatically impressed with a lien in favor of the Bank, without the need for the Bank to take any further action to perfect its lien. Switzer shall turnover such property, money, or financial benefit, with the exception of de minimis transfers in the nature of a gift or support of less than \$200.00 per occurrence and less than \$2,000.00 cumulatively on an annual basis to the Bank within fourteen (14) days of receipt. To the extent the Bank determines that any legal or transactional documents are necessary to effectuate the transfer of such property, money, or financial benefit, the Bank shall prepare documentation typical for the transaction for Switzer's execution. To the extent that such property, money, or financial benefit is recovered by the Bank as a judgment creditor or turned over by Switzer, the property, money, or financial benefit shall first be credited to the outstanding judgment in favor of Luetgert and against CDE Commercial Holdings, LLC, then to any outstanding judgment in favor of Luetgert and against Clark, and lastly to the Judgment or any consent judgment which may be obtained in connection with Paragraph 13 of this Settlement Agreement.

**6. Business Interests and BP Claim.** In the event that any of the Business Interests which Clark agreed to transfer to Switzer in the MSA, are ultimately transferred to Switzer, then Switzer will transfer said Business Interests to the Bank or its designee within thirty (30) days of receiving title or other documentation of ownership of those interests to the extent that any judgment (i) obtained in the Adversary against CDE Commercial Holdings, LLC or Clark, or (ii) provided by this Settlement Agreement, remains unsatisfied. Any proceeds from the Business Interests shall first be credited to the outstanding judgment in favor of Luetgert and against CDE Commercial Holdings, LLC, then to any outstanding judgment in favor of Luetgert and against Clark, and lastly to the Judgment or any consent judgment which may be obtained in connection with Paragraph 13 of this Settlement Agreement. To the extent that the Bank elects to liquidate such Business Interests, the Bank shall act in a commercially reasonable manner. In the event that the Bank receives Business Interests worth more than the amount outstanding on any unsatisfied judgment obtained through the Adversary, the Bank will refund any amount that exceeds the amount outstanding on any unsatisfied judgment obtained through the Adversary.

In the event that Switzer receives any proceeds from the BP claim, she will transfer those proceeds to the Bank or its designee within twenty-one (21) days of her receipt of the funds to the extent that any judgment (i) obtained in the Adversary against CDE Commercial Holdings, LLC or Clark, or (ii) provided by this Settlement Agreement, remains unsatisfied. Any proceeds from the BP claim shall first be credited to the outstanding judgment in favor of Luetgert and against CDE Commercial Holdings, LLC, then to any outstanding judgment in favor of Luetgert and against Clark, and lastly to the Judgment or any consent judgment which may be obtained in connection with Paragraph 13 of this Settlement Agreement. In the event that the Bank receives proceeds from the BP Claim in an amount greater than the amount outstanding on any

unsatisfied judgment obtained through the Adversary, the Bank will refund any amount that exceeds the amount outstanding on any unsatisfied judgment obtained through the Adversary.

7. **Affidavits.** Upon the execution of this Settlement Agreement and on January 15<sup>th</sup> of each calendar year during which any judgment obtained in the Adversary against any defendant named in the Adversary remains unsatisfied, Switzer, individually, shall, in a form substantially similar to the affidavit attached hereto as **Exhibit “B,”** (1) disclose any property, money, or financial benefit transferred to her or for her benefit from Clark either (a) individually or (b) through an entity in which Clark has a legal or equitable interest or otherwise controls, or (2) attest that she has not received any property from Clark, either (a) individually or (b) through an entity in which Clark has a legal or equitable interest or otherwise controls, transfers any property, money, or confers any financial benefit, directly or indirectly (pursuant to the MSA or otherwise) nor has Clark, either (i) individually or (ii) through an entity in which East has a legal or equitable interest or otherwise controls, made any transfers of property, money, or other financial benefit to or for her respective benefit.

8. **Cooperation by Switzer.** Switzer will continue to make a good faith effort to assist counsel in the prosecution of the Adversary.

9. **No Admissions.** Nothing contained in this Settlement Agreement nor any action taken or not taken by any party in connection with this Settlement Agreement constitutes or shall be deemed to be an admission of fault or liability, such fault and liability being expressly denied.

10. **Abatement and Dismissal of the Adversary as to Switzer.** As to Switzer, the Adversary shall be abated pending an order approving or disapproving this Settlement Agreement becoming a final and non-appealable order. In the event the Bankruptcy Court does not approve this Settlement Agreement and an order disapproving the Settlement Agreement becomes final and non-appealable, Switzer shall have twenty-one (21) days to respond to the Amended Complaint. In the event the Bankruptcy Court approves the Settlement Agreement and an order approving the Settlement Agreement becomes final and non-appealable, Luetgert shall file a notice dismissing the Adversary as to Switzer with prejudice.

11. **Tolling Agreement.** Switzer hereby agrees that the running of any and all notice, statute of limitations, laches, or other notice or limitations periods which may apply to any of Luetgert’s claims or causes of action against Switzer, individually, is extended until the Judgment is fully satisfied. With respect to any right, claim, or cause of action brought or to be brought by Luetgert against Switzer arising from the Sale Proceeds or the claims asserted in the Adversary, Switzer hereby waives all rights to assert that any limitations period has expired during the tolling period. Switzer acknowledges that Luetgert shall have the right to file any and all claims or causes of action against Switzer in connection with the Sale Proceeds and the claims asserted in the Amended Complaint, if any, at any time before the Judgment is satisfied, and any claim so filed will not be time-barred.

12. **Covenants Not to Sue.** Upon any order approving the Settlement Agreement becoming a final and non-appealable order, Luetgert and the Bank, covenant that they will not sue or file any manner of claims, actions, charges, suits, demands, or other obligations against Switzer individually or as trustee of the Trust, or the Trust based upon any event, conduct, or

circumstances, known or unknown, occurring prior to the date of full execution of this Settlement Agreement. However, nothing in this paragraph shall prohibit Luetgert or the Bank from bringing a claim for breach of this Settlement Agreement.

Upon any order approving the Settlement Agreement becoming a final and non-appealable order, Switzer individually or as trustee of the Trust, or the Trust, covenant that they will not sue or file any manner of claims, actions, charges, suits, demands, or other obligations against Luetgert or the Bank based upon any event, conduct, or circumstances, known or unknown, occurring prior to the date of full execution of this Settlement Agreement. However, nothing in this paragraph shall prohibit Switzer individually or as trustee of the Trust, or the Trust from bringing a claim for breach of this Settlement Agreement.

**13. Default.** In the event that Switzer, individually or as trustee of the Trust, fails to perform her respective obligations under this Settlement Agreement at any time, Luetgert shall give notice to the party failing to perform its respective obligations under this Settlement Agreement (the “Defaulting Party”) of any such default, and the Defaulting Party shall have five (5) business days to cure any such default (the “Cure Period”). In the event the default is not cured by the Defaulting Party during the Cure Period, Luetgert (or its assignee) shall be immediately entitled to a final judgment against Switzer in the amount of \$284,053.42 (the “Judgment Amount”), less the amount of any funds credited to Switzer, with the exception of the Restored Funds, as the Judgment Amount has already been reduced by the amount of the Restored Funds. Switzer agrees that she shall not contest Luetgert’s request for a final judgment against the Defaulting Party. In the event Switzer defaults under the Settlement Agreement, Luetgert shall not be required to refund or disgorge the Restored Funds. Switzer, as trustee of the Trust, shall also not seek to set aside the Judgment against the Trust.

**14. Competence of the Parties.** The Parties hereby acknowledge and represent that they have been fully advised by their legal counsel of their rights and responsibilities under this Settlement Agreement, or have elected not to obtain legal counsel, and that they have read and understand completely the contents hereof, and that they have voluntarily executed same.

**15. Fees and Costs.** Except as otherwise provided herein, each party shall bear its, his, or her own costs, attorneys’ fees and other expenses incurred in connection with this action

**16. Construction.** The Parties acknowledge that they each have had input into the drafting of this Settlement Agreement and that, accordingly, this Settlement Agreement shall not be construed for or against either party, but shall be given a fair and reasonable interpretation based upon the language of the Settlement Agreement and the intent of the Parties.

**17. Representations, Integration and Modification.** This Settlement Agreement constitutes the entire agreement and understanding between the Parties relating to the subject matter contained herein, and is intended as a final expression of the Parties with respect to such terms as are included in this Settlement Agreement, is intended as a complete and exclusive statement of the terms of such agreement, and supersedes all negotiations, stipulations, understandings, agreements representations, and warranties, if any, with respect to such subject matter, which precede or accompany the execution of this Settlement Agreement. This Settlement Agreement may not be altered, amended, or modified in any respect or particular

whatsoever except by a writing duly executed by each Party. Each Party represents that it has not relied on any representations other than as expressly set forth herein.

**18. Counterparts.** This Settlement Agreement may be executed and delivered in counterparts, all of which taken together will constitute one agreement, and any of the parties hereto may execute this Settlement Agreement by signing any such counterpart. Facsimile copies of signatures, including those delivered in pdf format via email, shall be treated as original signatures for all purposes.

**19. Jurisdiction and Venue.** The parties acknowledge, agree, and irrevocably consent to the jurisdiction of the Bankruptcy Court to resolve any and all disputes which may arise out of or in connection with this Settlement Agreement, and that venue is appropriate in the Bankruptcy Court. The Bankruptcy Court shall retain jurisdiction to enforce all provisions of this Settlement Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Settlement Agreement as of the date last executed below.

[Signature pages to follow]

M.D. Luetgert, Guener  
M.D. Luetgert, Chapter 7 Trustee of the Estate of 3700  
Ulmerton Road Plaza, LLC

STATE OF FLORIDA  
COUNTY OF Hillsborough

Sworn to and subscribed before me this 1 day of August, 2013 by  
M.D. Luetgert, who is personally known to me or who has produced  
as identification.



Laura K. Davis  
NOTARY PUBLIC

My Commission Expires: 5/22/17

\_\_\_\_\_  
Elaine S. East n/k/a Elaine Switzer

STATE OF LOUISIANA  
PARISH OF \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2013 by  
\_\_\_\_\_, who is personally known to me or who has produced  
as identification.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

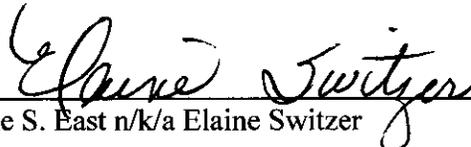
\_\_\_\_\_  
M.D. Luetgert, Chapter 7 Trustee of the Estate of 3700  
Ulmerton Road Plaza, LLC

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2013 by  
\_\_\_\_\_, who is personally known to me or who has produced  
\_\_\_\_\_ as identification.

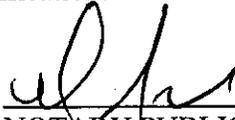
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

  
\_\_\_\_\_  
Elaine S. East n/k/a Elaine Switzer

STATE OF LOUISIANA  
PARISH OF Tangipahoa

Sworn to and subscribed before me this 6<sup>th</sup> day of August, 2013 by  
Elaine Switzer, who is personally known to me or who has produced  
Driver's license as identification.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: at Death

**Diana C. Lind**  
**Notary Public No. 86433**  
**Parish of Tangipahoa, LA**  
**Statewide Jurisdiction**  
**Commission Expires at Death**

Elaine Switzer  
Elaine S. East n/k/a Elaine Switzer, as trustee of the Elaine S. East Trust

STATE OF LOUISIANA  
PARISH OF Tangipahoa

Sworn to and subscribed before me this 6<sup>th</sup> day of August, 2013 by  
Elaine Switzer, who is personally known to me or who has produced  
Drivers license as identification.

**Diana C. Lind**  
**Notary Public No. 86433**  
**Parish of Tangipahoa, LA**  
**Statewide Jurisdiction**  
**Commission Expires at Death**

[Signature]  
NOTARY PUBLIC

My Commission Expires: at Death

\_\_\_\_\_  
Stearns Bank, N.A.

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

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

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_ day of \_\_\_\_\_, 2013 by  
\_\_\_\_\_, who is personally known to me or who has produced  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

Elaine S. East n/k/a Elaine Switzer, as trustee of the Elaine S. East Trust

STATE OF LOUISIANA  
PARISH OF \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2013 by  
\_\_\_\_\_, who is personally known to me or who has produced  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Stearns Bank, N.A.

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

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

STATE OF FLORIDA  
COUNTY OF Pinellas

Sworn to and subscribed before me this 12th day of September, 2013 by  
Peggy Meek, who is personally known to me or who has produced  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_



[REDACTED]

BEGINNING at a point (said point being located as follows: commence at a point in center of intersection of U. S. 276 and new 20-foot right of way described in Plat Cabinet "C" at Slot 353, and follow said highway, South 78 deg. 32 min. 42 sec. East, 109.70 feet to a point in center of bridge over said highway; thence three (3) calls as follows: South 00 deg. 40 min. 26 sec. East, 148.44 feet; South 00 deg. 40 min. 35 sec. East, 501.25 feet; and South 69 deg. 29 min. 31 sec. West, 58.92 feet), and running thence from said point along western edge of the East Fork of the Pigeon River, six (6) calls as follows: South 04 deg. 09 min. 27 sec. West, 109.17 feet; South 14 deg. 46 min. 28 sec. East, 117.77 feet; South 25 deg. 57 min. 36 sec. West, 136.23 feet; South 36 deg. 28 min. 35 sec. West, 277.73 feet; South 39 deg. 26 min. 19 sec. West, 273.62 feet; and South 30 deg. 53 min. 55 sec. West, 33.89 feet to a fence stake at edge of said river; thence North 74 deg. 10 min. West, 191.31 feet to an iron pipe set; thence North 26 deg. 11 min. 57 sec. East, 317.78 feet to a 50-inch black oak in fence; thence North 10 deg. 08 min. 03 sec. West, 179.01 feet to an existing iron pipe; thence North 68 deg. 00 min. 01 sec. East, 139.09 feet; thence North 72 deg. 10 min. 36 sec. East, 48.17 feet; thence North 67 deg. 57 min. 58 sec. East, 64.48 feet; thence North 08 deg. 30 min. 29 sec. West, 19.18 feet; thence North 08 deg. 30 min. 29 sec. West, 36.34 feet to an iron pipe set; thence North 69 deg. 29 min. 31 sec. East, 209.49 feet; thence North 69 deg. 29 min. 31 sec. East, 50.42 feet to the BEGINNING, containing 5.375 acres, as per plat and survey of J. Randy Herron, RLS, dated September 27, 1989, Drawing No. 2367-1630-B.

BEING the same property conveyed from Michael C. Polka and wife, Julianna J. Polka to Herbert Tomlin Wyche by deed dated June 27, 1995, recorded in Deed Book 447 at Page 2097, Haywood County Registry.

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TOGETHER WITH AND INCLUDING an easement for a road right of way as recorded in Book 315 at Page 214 and Book 96 at Page 435, Haywood County Registry.

[REDACTED]

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

Exhibit "B"  
to Settlement Agreement

In re:

3700 Ulmerton Road Plaza, LLC,

Case No. 8:12-bk-04339-KRM

Chapter 7

Debtor.

\_\_\_\_\_ /

M. D. Luetgert, Chapter 7 Trustee,  
Plaintiff,

v.

Adv. Proc. No. 8:12-ap-869-KRM

Elaine S. East n/k/a Elaine Switzer,  
individually and as Trustee of The Elaine S.  
East Trust, Robert White, individually,  
Clark D. East, individually, and Brendan  
East, individually,

Defendants.

\_\_\_\_\_ /

**AFFIDAVIT OF \_\_\_\_\_ PURSUANT TO SETTLEMENT AGREEMENT DATED**

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
\_\_\_\_\_ OF \_\_\_\_\_ )

Before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who  
being duly sworn, states as follows:

1. My name is \_\_\_\_\_. I am over 18 years of age and a resident of  
\_\_\_\_\_.

2. I am competent to provide this Affidavit as required by Federal Rule of Evidence  
601.

3. From the execution of the Settlement Agreement through January 2, \_\_\_\_, I have  
not received any property from Clark D. East ("East"), either (i) individually or (ii) through an  
entity in which East has a legal or equitable interest or otherwise controls, or transfers any

property, money, or financial benefit (pursuant to the Marital Settlement Agreement or otherwise), nor has East, either (i) individually or (ii) through an entity in which East has a legal or equitable interest or otherwise controls, made any transfers of property, money, or other financial benefit, to or for my benefit.

OR

3. From the execution of the Settlement Agreement through January 2, \_\_\_\_, I have received the following property, money, or other financial benefit from Clark D. East ("East"), either (i) individually or (ii) through an entity in which East has a legal or equitable interest or otherwise controls, or transfers any property, money, or financial benefit (pursuant to the Marital Settlement Agreement or otherwise), or East, either (i) individually or (ii) through an entity in which East has a legal or equitable interest or otherwise controls, has made the following transfers of property, money, or other financial benefit, to or for my benefit:

[Remainder of page intentionally left blank]

<b>Date</b>	<b>Transferor</b>	<b>Transferee</b>	<b>Description of Property Transferred</b>	<b>Value of Property Transferred</b>

4. This concludes my Affidavit.

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

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_  
\_\_\_\_\_ OF \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me this \_\_\_\_ day of January, 2014, by  
\_\_\_\_\_. He/She is personally known to me OR produced identification \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_