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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-034774 10/05/2010

HONORABLE J. KENNETH MANGUM

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Deputy

C S A 13-101 LOOP L L C SCOTT A KLUNDT

v.

LOOP 101 L L C, et al. LOUIS D LOPEZ

MARK W ROTH

RULING

This matter was tried to the Court on August 16 and 17, 2010. Having considered the pleadings on file, the testimony of the witnesses and the exhibits admitted into evidence, and the deposition of Ashley Brooks, the Court makes the following Findings of Fact and Conclusions of Law. If any Finding of Fact is more appropriately a Conclusion of Law or vice versa, it shall be so considered.

FINDINGS OF FACT

1. This hearing is to determine the fair market value ("FMV") of the defendants' commercial office building and property located at 1860 N. 95th Lane, Phoenix, Arizona. The issue is whether the value of the property was less, more or equal to the $6,140,000 which plaintiff bid for the lot at the foreclosure sale on October 16, 2009.

2. The bank transferred the property to CSA 13-101 Loop, LLC, to sell it. Regardless of the designation, the "bank" is the owner. The bank took possession of the property by making a credit bid at the foreclosure sale.

3. Defendant Loop 101, LLC, argues that the property should be valued at $13,100,000 at

the date of the sale, and in a stabilized market, at $17,000,000.

4. Generally speaking, testimony is summarized under each person's name and is generally in the first person.

Ralph Joseph Brekan

5. Ralph Joseph Brekan has a BA in finance with an MBA in 1973.

6. I started as an appraiser in 1973 and got my MAI designation in 1980. In 1989, I started my own company, which is now known as Brekan Nava Group.

7. The firm does 20-30 appraisals per month. I work on half of them, either entirely or as the supervisor. Our work breaks down approximately as follows:

Type of Property	**Percentage of Work Done**
Golf and Hospitality Related	10-20%
Office Buildings	10-15%
Retail	10-15%
Apartments & Multi-family	10-15%
Subdivisions & Land	20%

8. Our source of work is as follows:

Source	**Percentage of Work**
Financial Institutions	60%
Law Firms	10-20%
Government Agencies	10-20%
Individual Investors	10-15%

9. I've testified in five states including Arizona.

10. The Loop 101 Center is a three story office building located at 1860 N. 95th Lane, Phoenix, Az. It has 85,700 sq. ft. with 81,636 sq. ft. rentable. It is on the east side of Loop 101 but without direct access. It is a class A building with one tenant renting out 16,265 sq. ft. Therefore, it is 19.9% occupied. It was completed in 2008. There are no tenant improvements ("TI") in the non-rented portion.

11. My evaluation date is September 2, 2009. The FMV in an "as is" condition is $6,140,000.

12. If one assumes that it's 90% occupied and a stabilized occupancy and with tenant improvements, the FMV would be about $11,115,000, or $135/sq. ft. This is value as if the building were 90% occupied and all TI were paid for, i.e., the stabilized market price.

13. There are three approaches to valuating property:
    a. Cost/replacement cost
    b. Sales comparison
    c. Income approach

14. Exhibit 1 is my appraisal report.

15. The cost approach isn't helpful for this property because you can buy properties cheaper than the cost to build, so it would make no sense to consider this approach. In other words, investors won't pay full cost when you can buy for 30% to 50% off.

16. The income approach and the sales comparison are appropriate approaches.

17. In September 2009, the market was declining and therefore, revenues were falling. The net absorption was negative, that is, the vacancy levels were going up. Also, the rental rates in the 3rd quarter of 2009 were lower than in the prior two quarters.

18. The primary sources of information are comparable sales of nearby properties. You want actual sales or rentals. Secondary sources would be sales and leasing agents. CoStar Comps lists all of the land sold in the area.

19. Comparable sale #1 is older, selling in August 2009, with all TI in place. It was 93.8% occupied and sold for $127.88 per sq. ft. The price was $18,670,000. I heard this was a distress sale. Its rate of return was 10.66%. The seller said it was an arms length sale without duress.

20. Sale #2 is not that good: Arrowhead Health, but it was on the west side. I didn't put

weight on the sale. It was in escrow for $12,125,000 in January 2009, closing in July 2009. The price was chosen before the market crashed. It was 89% occupied and the seller guaranteed 100% occupancy in five years, a promise that raised the value. The capitalization rate was 8.5%.

21. Comparable #3 is the Glendale Corporate Center at 99th Avenue. It sold for $70/sq. ft. as a shell building, i.e., with no TI, but with leasing costs and no income until it becomes occupied. The building was only 2% occupied at the time of the sale. The price was $12.6 million or $66.84/sq. Ft.

22. Comparable #4 is a May 2009 sale, closing on August 26, 2009, i.e., a week before the building in this lawsuit. This sale #4 is in the Scottsdale Kierland area and sold for 10 million. It was 66% occupied and was 100% TI finished. It sold for $125.73/sq. ft. The investment rate works out to 10.24%.

23. Improved listing A is not a sale but a listing. A person told me that there was a $9,500,000 offer, but the sale was for less. The building was 71% occupied and sold for $157.19/sq. ft.

24. Improved listing B is at Gilbert Road and is an inferior property. This is a weak comparison and therefore is similar to property #2.

25. You would have to make adjustments to the properties for such things as
    a. Property rights
    b. Financing terms or condition of sale
    c. Market conditions if they've changed
    d. Locational factors
    e. Age and condition
    f. Size of the property
    g. Quality of the property

26. My summary is on page 78.

27. The market rental rate of $22.50/sq. ft. indicates that there was little leasing, with the pending lease of $25.00/month but 16 months were free; therefore, the effective lease rate was $20.45.

28. Mr. Nava did a summary analysis earlier in 2009 and I did a self-contained analysis. I used or modified the following from his report:
    a. Format and description

b. General forma
c. Neighborhood data
d. Site analysis (although I changed tax information)
e. Improvement analysis (the tenant was still there)
f. I updated the market study

29. I used all new comparison sales and updated the rent information. I lowered the taxes from $3.00 to $2.60/sq.ft. I was aware that Mr. Nava had evaluated the property in the neighborhood of $13,100,000 and the stabilized value was $17,000,000 as of February 2009. Exhibit 33 is the Nava appraisal of February 2009. I didn't use the cost approach although Mr. Nava felt it was a good approach. Mr. Nava is a competent appraiser.

30. I know the subject property was sold in September for $7,050,000.

31. Plaintiff asked me to value the building on a liquidated basis with six months of marketing time.

32. Standard #2 of the Uniform Standards of Professional Appraisals specify that the work must show those who provided information for the appraisal, but I didn't do that. A self-contained report is supposed to describe my evaluation. In a summary report, you summarize the data. This report that I did was a self-contained report as was ordered though I described it as a summary report.

33. I used comps #1 (a class A building), #2 (an REO building[1]), and #4 (listed as a class B building on page 78 of my report and a class A on page 81) as completed sales. Comp 3 and A (a class B building) were offers to buy. Comp B (a class B building) was a listing that led to a sale; it should be adjusted down by 5% for that reason.

34. Comp 2 had a capitalization rate of 7.75% but I raised it to 8.5% based on what Wickerman told me. Comp 4's cap rate is 8.38% (but not based on 90%) raised to 10.24% if stabilized at 90% occupancy. Wickerman said that #3, the Glendale Corporate Center, was going for $70/sq.ft. and the smaller buildings were $85/sq.ft. Number 3 wasn't in foreclosure when I prepared Exhibit 1–the bank already owned it.

35. The Maricopa County Education Center was 96% a shell and had no freeway frontage, but went for $120/sq.ft. in November 2009. Our property had freeway frontage and was

[1] This is a Real Estate Owned property, the designation of property which a bank has taken back.

20% improved. The $70/sq.ft. was a bank REO sales price, and therefore reduced. REO properties aren't typically sold for their appraised value.

36. I don't remember if Wickerman told me that #3 was in foreclosure, but if it was, I should have included that information.

37. Comp #4 had an 8.38% cap rate based on 66% occupancy.

38. I had a confidential source (Mr. Toci) for Comp #1 along with Wickerman, but I didn't mention Toci. But this is still a self-contained report. Principal Life Insurance paid $19,986,055 for #1, but sold it for a $1.2 million loss ($18,670,000) even though it was 96% occupied

39. I used a 3% per month downward adjustment to reflect market conditions, or 21% for the seven months from February to September 2009. Thus, Mr. Nava's finding of $220/sq.ft. would drop to $173.80. I used current data and Nava used old data. Therefore, he and I used different comparables and different starting points. Mr. Nava used 2007 and 2008 when the market was totally different and thus his sales comps were not relevant.

40. I lowered the value of #2 by 10% but I didn't show the reduction in my report. I did show that #3 was adjusted to $75, but my report doesn't show it. On page 76 of my report (Ex. 32), there's a typo where sale #4 should be Listing A. Page 76 shows a downward adjustment but it should be upward as I showed on page 78. Page 76 says that there was an upward adjustment of 1% but on page 78 I didn't show the upward adjustment. Regarding listing B, the 5% isn't consistent. Therefore, there are six potential inconsistencies between the page 78 chart and the narrative. The professional standards say that errors should not be made that reflect poorly on the report.

41. I don't agree that 69% of the competing office space was to be soon off the market, but page 6 of exhibit 12 has a memo from plaintiff saying that if a couple of rentals go through, then 69% of the competing space would be taken off the market. No one told me that. Also, no one told me that ITT was looking for 30-40,000 sq. ft. of space in our building.

42. Exhibit 19 shows a September 29, 2009, proposal from Allied Health for 81,000 sq. ft. of space, but I didn't have this when I did my report. Allied was to pay $26.50 average rental rate before considering free rent.

43. Sargent & Lundy was the company renting the approximate 20% of space in the subject building. It paid $40/parking space, but I utilized the rate of $15. Therefore, I under

priced the parking income by $5,000. This would be a $50,000 difference based on a 10% cap rate.

44. Thus, by using a lower rent and a lower parking income from its tenant, I lowered the value of the building in question.

45. Regarding building expenses on page 94, I used four buildings but I don't know what buildings they are, where they are, their age, or whether they are class A, B or C. I can't disclose the information because of confidentiality issues.

46. The higher the cap rate, the lower the value of the property. Therefore, I cut the value of the property by using a higher cap rate and less parking income for the building in question. But this was on a difference of $100,000 or $150,000. Thus, my FMV estimate would go from $6,150,000 to $6,250,000 or $6,300,000.

47. I used an absorption rate of 30 months. Mr. Brooks thought that 12 months was the right absorption rate, and Wickerman thought 24 months. I assumed that there would be no increase in rental rates during the absorption period.

48. I didn't discount the cash flow to present value, but I didn't overstate the value of the money.

49. Brokers told me that they gave one month of free rent for each year of the lease, but I used 1.43 months per year in my analysis. This would be ten months for a seven year lease.

50. I included lease commissions and TI in the full amount though it might not happen for 30 months.

51. I used 30,000 sq. ft. for Allied Health though they wanted 36,000 sq. ft., so their needs went up 20%. Thus, if Allied Health took the lease, then that would raise the total rental income from $750,000 to $900,000.

52. I turned in my report on September 8, 2009, but I clarified it and sent it back in perhaps October 2009.

53. In exhibit 33, Mr. Nava assumed that the building was 52.1% leased, i.e., that it had a second lease. When I did the appraisal on September 2, 2009, there was only one tenant: Sargent & Lundy.

Marisa Bradanini

54. Marisa Bradanini is a Vice President of MidFirst Bank since the fall of 2009.

55. I oversee disposition of REO assets. My prior job was with AIG where I ran $1.2 billion in assets. At AIG, I was the contact with 100+ limited partners and I hosted the quarterly meetings. My job before AIG was with Cushman and Wakefield for six years as a three member team selling $3 billion in assets. I have a BS from UCLA and a Masters from Columbia.

56. We are not a distressed lender, so we maximize value to get the best price.

57. In October 2009, I took over the property and dealt with all interested parties. I prepared a six page brochure, exhibit 52, to market the property in question. We got dozens of calls per day. We listed the property at $8 million, or $25/sq.ft. We got five written offers, the highest being $4.7 million with a mixture of cash and terms. Thereafter we ended up turning the marketing over to a broker who had a broader reach.

58. We asked for a Broker Opinion of Value ("BOV") with sales comps, a market analysis, a suggested list price and a suggested sales price. Cushman & Wakefield came up with a higher BOV, but CB Richard Ellis was lower than the offers we had received, so we thought Cushman would believe in the property better as the selling broker. Cushman suggested a list price of $10.8 or $10.6 million. Later on they reduced that to $8 million and we agreed to that lower figure. Exhibit 9 is Cushman's offering memorandum and is offered to show how it was marketed.

59. We got 14 offers by our deadline of June 3, 2009. We took the highest offer with two options, one for cash and one with financing. We countered with a cash figure and then settled on a final price.

60. Our final sales price was $7,050,000 as shown in exhibit 8.

Kevin Schilling

61. Kevin Schilling is Senior VP for the Real Estate Group with MidFirst Bank and has been for four years.

62. I spent ten years with JP Morgan Chase and five years with Bank of America. I handle $1 billion in assets with 60-70 clients and 100 loans.

63. On June 30, 2010, we closed the sale with a cash price of $7,050,000. I didn't negotiate the sale and don't know how the closing date or the buyer was selected. I was involved in the financing and the loan modification. A credit committee reviews the CSAD Action Request and has all the relevant information. See exhibits 11, 12, and 13. I signed these as being accurate.

64. Exhibits 14 and 15 are the monthly reports regarding the status of the property. Special Asset Updates ("SAU") do not call for action, but the CSADs do.

65. In early 2009, Mr. Anton approached me for a loan modification and there were conditions to extend the loan, but there were also leasing problems and maybe loan-to-value requirements, so we had Mr. Nava do an appraisal. That led to our extending the loan for 12 months.

66. We're a Fortress Balance Sheet, meaning that when we take assets back we sell for the highest price.

67. We hired Marisa Bradanini to sell our REOs full time.

Albert Nava

68. Albert Nava is a real estate appraiser and Executive VP and partner at Brekan-Nava Group.

69. I am an MAI member. I have a BA from UT at El Paso in accounting and have been an appraiser for 30 years. Exhibit 33 is my February 27, 2009 appraisal. Intended use by the bank of my report, such as for loan underwriting, doesn't affect my appraisal. I used all three approaches in the appraisal. In a stable or increasing market, the cost approach works better for newer properties. My results and conclusions are as follows:

Method	Value
Cost	$22,450,000
Sales	$17,960,000
Income	$16,275,000

70. I came to a FMV of $17,000,000 in a stabilized market. In an "as is" condition, the value is $13,100,000. I assumed that a proposed lease for part of the building would go

through. I used a value of $160/sq.ft.

71. External considerations include the fact that the market was decreasing.

72. I'm not here as an expert and I'm not criticizing Mr. Brekan's report. Mr. Brekan is one of the most complete appraisers and analytical people I know–he's as thorough as anyone I've seen.

73. In 2008 and 2009, the market cratered.

74. It's OK to use a prior report as a template to avoid reinventing the descriptive purposes.

Paul Anton

75. Paul Anton is the Managing Member of Loop 101 LLC.

76. I am a commercial real estate developer with 34 years of experience. I got a Business Administration degree in 1976. I moved to Phoenix in 1984.

77. The defendant company is a single asset company whose purpose was to acquire 37 acres at the northeast corner of McDowell Avenue and Loop 101. We were to prepare a master plan and to subdivide the land. We bought it in late 2003 and sold all but 5.3 acres, the most valuable piece, so we decided to build a Class A building.

78. Our competition was buildings as far north as Glendale Avenue, i.e., the West Loop 101 office submarket. There was no Class A building in this submarket at the time. The building was completed in May 2008.

79. Class A buildings attract high quality tenants by offering exceptional
    a. Location
    b. Access
    c. Features
    d. Design
    e. Quality materials

80. There are five similar properties:
    a. Subject property, the only one on two different freeways (Loop 101 and I-10).
    b. Glendale Corporate Center at Camelback Road with 104,000 sq. ft., the only competitor with freeway access.
    c. Westgate City Center with 170,000 sq. ft.

d. Glendale 91 at the NE corner of Glendale and 91st Ave.
e. Westgate Garden Center with 40,000 sq. ft.

81. I handled the design and supervision and construction process and draw requests. Our costs were with land and soft costs as well amounted to $16,000,000 or $200/sq.ft. I hired tax consultants to appeal our tax assessment.

82. It's a true Class A building with:
   a. Location
   b. Access
   c. Two-story lobby with cherry wood and travertine
   d. Mechanical system is in a separate yard with two cooling towers paid for by us whereas our competition had package units that were to be a part of TI which the tenant had to pay for
   e. Aluminum trellis system
   f. Extensive curtain walls in the lobby
   g. Exterior balconies

83. I worked with CB Richard Ellis, met with brokers, did marketing materials and cold called.

84. The original due date for the loan was February 20, 2009 with automatic extensions for one year if we met certain ratios. By August 2008 Sargent & Lundy, an engineering firm, had occupied 20% of the building. It was a five year lease for 16,275 sq. ft. with an average rental of $28/sq.ft. over five years, or five and one-third years with the four free months. They also rented 16 covered spaces at $40/space. They had expansion rights for all of the 3rd floor and half of the 2nd floor.

85. In early 2009, Alaris Corp. looked to take over the entire 2nd floor (26,265 sq.ft.) With a ten year lease and one year of free rent. That's when I met with Mr. Nava for his appraisal and we got the loan extension. We paid the loan down and paid interest. After our May 1st payment, my partner said he couldn't pay more interest.

86. I continued to manage the property because the bank trusted us and it was cheaper than using a receiver. There was significant interest during the summer. The Arizona College of Allied Health wanted 30,000 to 36,000 sq. ft. and there were other parties with interest. Had all these lease transactions occurred the available leasing space would have been reduced from 75% to 25%. Allied Health ended up staying in their space and didn't end up leasing any new space.

87. My motivation in leasing the property was not to earn commissions; I wanted to pay the bank back. I wanted to add value to the building and be sure the bank was paid. The Notice of Trustee Sale was filed on June 2, 2009, and that hurt my ability to market the property because I had to tell buyers that I was in default. But I could market the building better than anyone.

88. The bank liked the lease proposal we had from Alaris and made it a condition for a continuation of the loan; they asked us to pursue a lease with Allied Health. The leasing market was better in August and September 2009 than in February 2009.

89. I paid taxes on the property and hired B&G Property Tax Associates who argued that the full cash value was between $17.37 million and $12.95 million. Their work led the county to lower the assessment to $12,947,590. This is the figure that is equivalent to FMV. The bank didn't appeal the Board of Equalization's decision.

90. Loop 101 hired Dave Lyons of Lyons Evaluation Group and gave him the same information that I gave to Mr. Brekan. Lyons determined the "as is" value was $12,500,000.

91. When I saw Brekan's appraisal, I called regarding comparable #1 and learned that Principal Financial was sued over it. See exhibit #39.

92. I believe the FMV is $12,500,000, though I'm not an appraiser. I am the guarantor for the loan.

93. From June to September 2009, I tried to sell the property including preparing marketing materials. I got no offers to buy. I offered to sell at $11,000,000 and at that time the loan amount was $10.8 million. I spoke with 50 investors, but they felt they could deal directly with the bank and do better.

94. I built this as speculative property. However, 2008 was a poor climate for real estate and there's an oversupply of Class A buildings. Arizona College of Allied Health was the only company that asked to lease in our building (other than Sargent & Lundy).

95. I couldn't fund the TI for Allied Health and the bank wouldn't do so either.

96. Sargent & Lundy was in arrears $3600 for parking as of September 4, 2009. They wanted their employees to pay the covered parking, but I told them that I had no authority to change the payment. This was more a matter of interpretation than modification.

97. Humana was looking for leasing space during this time frame. They wouldn't rent from us, but by leasing 100,000 sq. ft. elsewhere, that would significantly reduce the available 500,000 sq. ft., and therefore would increase the demand for our space. In all, 69% of the competing space was taken off the market by various companies leasing space in our submarket.

98. In a Triple Net Lease, the tenant pays all of the expenses of tax, insurance and maintenance in addition to its lease. In a Full Market Lease, the lease payment pays these additional expenses. Humana's lease was a Triple Net Lease.

David Lyons

99. David Lyons has been a real estate appraiser since 1990 and an MAI since 1999, with a BS from U of Illinois and a Masters from Depaul University in Chicago.

100. I started appraising industrial and office buildings in Chicago and then in Arizona I've done industrial, office, retail, subdivisions and raw land. We do appraisals for tax reasons, divorce cases, financing, etc. We work for private parties, banks, and government, etc.

101. I was hired in July 2009 for the foreclosure. Exhibit 34 is my appraisal. For a stabilized market, I find the FMV to be $16.1 million. On an "as is" basis, the FMV is $12.5 million. My date of appraisal is September 22, 2009. I used the following approaches: cost, income and sales.

102. The cost approach leads to $16.44 million in a stabilized market.

103. With respect to the income approach, I used the direct capitalization approach (i.e., you capitalize it once rented) and the discounted cash flow approach as though not stabilized. I considered both Class A and Class B buildings though this is definitely a Class A building. A Class B building has lower quality overall and lesser quality tenants. Because there is a 22% difference in rental rates, therefore a Class B building will have its rents adjusted up by 20%. The rental rate of $26.50/sq.ft. applies to the subject property. I looked at tenant demand by considering the comments of Ashley Brooks (the leasing broker) who said that businesses who expressed an interest in renting would take up nearly all the available space in the submarket.

104. It was important to consider the Sargent & Lundy rate and the likely rate of Arizona College of Allied Health. I saw that Brekan used $22.50 but this is too low considering existing rates. For example, Brekan's #1 is an older Class B building and the Glendale

Corporate Center was being foreclosed so renters weren't much looking at it. Rental #3 was asking $24.50 and #4 was going for $29-$30 per sq. ft. I couldn't find any support for Brekan's $22.00/sq.ft. Another example is that Brekan uses Allied Health at $20.45 but that includes concessions that were greater than typical.

105. I considered rental rates for parking spaces and used $30/space though the market was $30 to $50/space. Brekan used $15/space.

106. For the vacancy rate, I used 12%; no one ever uses 100%. The effective gross rental including parking is $1,962,983 (i.e., lease rate times the square footage less the vacancy rate). Brekan used the Sargent & Lundy rent, but didn't include the automatic increases in its lease. The expenses amount to $7.33/sq.ft., or $598,392.

107. We don't know how comparable Brekan's expense figures are.

108. Net operating income is income less expenses, or $1,364,601. Then I capitalized to convert income to FMV. I looked at marketing information, Bama Investment Analysis, and published sources. The market at the time was fluctuating but not cratering. I didn't see any basis for the capitalization rate used by Brekan. I used 8 ½ %.

109. With respect to the "as is" value, you consider the stabilized rate meaning the building is operating up to its potential. As it is now, the building is only 20% rented. I considered the Sargent & Lundy rent and went out two years and then discounted back; this is the professional way to evaluate property. Brekan didn't discount which means you'd get a lower present value because you don't consider the present value of money. Also, Brekan used a longer absorption rate which lowers the value because you ignore the money coming in. Brekan used the base rate for the leases for the entire lease term, and his calculation of free rent was too high; he used the full cost of free rent rather than the present value which would lower the final FMV figure. Lastly, Brekan used Allied Health at 30,000 sq. ft. but they were planning on renting 36,000 sq. ft.

110. In the sales comparison approach, I ignore REO properties because the seller is under duress and it's usually a credit bid. From January 2008 to the present for over 10,000 sq. ft., there are discounts of 55%.

111. Chris Toci told me that Brekan's #1 wasn't a market sale, so I didn't include it.

112. My comparables were on or close to highways. I didn't consider Brekan's to be truly comparable sales. For example, comparable B is a Class B building and is 1 ½ miles south of the freeway in Gilbert and is near a shopping center that is not doing well.

Similarly, Comp #2 is a four building medical office complex that is miles from a highway. Comp #3 was not a sale. Comp #4 is an older Class B building in Scottsdale and not on a highway. Comp A was a listing and Comp B is not at all like the subject building.

113. I adjusted downward for the market at 1% to 1 ½% per month. Brekan used 3%/month and he went back to 2007 and 2008 but his sales comps were for 2009!

114. My sales approach came in at $16.3 million.

115. I reconciled the three approaches and came up with $16.1 million stabilized and $12.5 million "as is." All of this is as of September 2009.

116. The rental market for west Phoenix was poor overall. Rates went down five quarters in a row including late 2009. There was an oversupply of office space in 2009 in the Phoenix market. We didn't have surveys of changes that occurred between the 2nd and 3rd quarters of 2009. Generally, you get one free month per year of the lease, but Allied was to get one free year for a seven year lease, so I used a ratio that considered that higher value.

117. Larger spaces sometimes rent for less per sq. ft. but it's possible for a lessee of 10,000 to 30,000 sq. ft. to get a lower rate. Going from net to gross may raise rates by $7.00/sq.ft.

118. I utilized an absorption rate of two years to get to 88% occupancy. No one told me that Sargent & Lundy was behind $3600 for their car rental. Allied Health proposed parking at $15/space though I used $30/space, as the latter is a good average.

119. I used a sales approach for 2007 and 2008 to get equivalent property and then adjusted them. I didn't use non-highway property and adjust up. Brekan used 2009 comparables, but those weren't comparable properties in my opinion.

120. On page 95 of exhibit 34, I counted 187 parking spaces whereas I'm told there are 180.

121. I wasn't told that Mr. Anton was trying to sell the building for $10.8 million, but I would like to have known that.

122. If a bank sells the property too quickly, it wouldn't be at the market rate even though it would be arm's length. However, ownership by a bank by itself doesn't affect the FMV. If you get exposure, then the market rate will prevail.

123. It wouldn't be feasible to build a building just to hold it for later sale. If I can accurately

estimate the land and construction costs, then the cost approach is valid.

124. Today's market has a lot of REOs. Ten of 80 sales were REO properties for buildings over 10,000 sq. ft.

Ralph Brekan (Rebuttal)

125. Ralph Brekan speaks in rebuttal.

126. I've served on the local panel for the Regional Standards Panel for appraisers in 1993 to 1995 which includes the methodology of reports. I reviewed other appraisers' reports to make sure they complied with ethics and standards. The USPAP[2] requires standards for both self contained reports and summary reports. My exhibit 1 complied with the self contained report requirements.

127. I included sales comp B that I didn't rely on, just to show what's on the market. Comp #8 is on a freeway and required a 200% adjustment. However, page 80 doesn't adjust the figure.

128. Mr. Lyons adjusted one of his comps by 300%. I used comp #8 which is in escrow and it's located on the freeway; it sold for $6.10 and that requires a 200% adjustment by Mr. Lyons to get to his conclusion of the average rental price.

129. I also disagree with Mr. Lyons because he has a rental rate of $26.50 when the proposed lease rate was $25.00; in fact, the effective rate was $21.00. In other words, Mr. Lyons has a declining market but he raises the rents.

130. Also, Mr. Lyons can't criticize my rate of $22.50 when my actual effective rent is actually higher than the lease that was on the table and his effective rent is actually 14% higher than the lease in place.

131. Furthermore, Mr. Lyons' cap rate of 8.5% doesn't take into consideration the pending sales and the actual sales which indicated that the cap rate should have been higher as the market was looking at additional risk.

132. Mr. Lyons used eight comparables, five east of I-17 and three to the west; the west ones were dated two years or more prior to the date of valuation. That's improper in a

[2] Uniform Standards of Professional Appraisal Practice

declining market.

133. I spoke with Chris Toci regarding my comp #1. Mr. Toci said that it was an arm's length transaction and he didn't remember telling me it was not an arm's length sale. I also spoke to the seller, Mr. Hannerhand, who confirmed this was not a distressed sale.

134. In today's market, from 20% to 50% of the sales are REO sales.

135. The appropriate tax rate based on the evidence is $2.03/sq.ft. When you have higher expenses with an income approach, there will be less income to capitalize.

136. The figure of $26.50 used by Mr. Lyons would be based on the asking rate, not the actual leasing rate. If $25 <u>is</u> the base rate, then when the free rent is included, the actual rate drops to less than $21.

137. People want a high cap rate because anything they buy has enormous risk even though bank interest rates are low. Also, most of the sales are for cash, so there is no leverage. So even though there's no other place to park money, people want high cap rates.

Ashley Brooks, Jr. (By deposition dated August 10, 2010)

138. Ashley Brooks, Jr., was the main leasing broker from the day it was built for the Loop 101, LLC property through a formal listing agreement.

139. The only relationship I've had with Paul Anton was on this one project.

140. The property in question is known as the 101 Corporate Center, located at 1860 N. 95th Lane. I was involved in leasing Sargent & Lundy, whose main client was Palo Verde Power Plant, as well as attempting to lease to Alaris. Leasing takes quite a bit of time. Humana initially showed interest, but they needed more space than we had. Arizona College of Allied Health showed tremendous interest in the project and they and I and Mr. Anton held numerous meetings. The Devry Online Group had great interest but they had too high a parking ratio. The Maricopa County Tax Assessor was actively looking in the area. The Oncology Group really liked the area.

141. The best name for this submarket is West Phoenix or South Glendale (or even West Loop 101), but there's no fixed designation or location. This submarket does not include the Arrowhead area at 83rd and Bell.

142. Competing projects include Glendale Corporate Center, Glendale 91 Project, Westgate

City Center–all newer with good parking ratios and pretty good retail amenity base nearby. The subject air conditioning and heating would be a notch above the other properties. Determination of what constitutes Class A, B and C is pretty subjective.

143. Humana took up most all of the Glendale 91 Project. Arizona College of Allied Health stayed at 43rd Avenue and Olive. Devry Online Group leased 15,600 square feet at Westgate City Center. Oncology Group leased about 12,000 feet in a two story building just north of West 101. Maricopa County Tax Assessor didn't lease, but they still need about 30,000 sq. ft. Catholic Health Care West is still looking for space. Western Maricopa Education Center was looking as was ITT Educational Service and Allstate.

144. Besides a handful of small leases (less than 4000 feet), the only significant leasing deal in this submarket in all of 2009 was the Humana lease for about 105,000 square feet.

145. I don't remember when Catholic Health Care West was looking but ITT definitely was at the time in question.

146. I spoke with Mr. Brekan about leasing activity for his appraisal and I spoke with MidFirst Bank. We were asking for a rental rate of $26 per square foot for full service, and with 50 cent bumps. The actual market rate then was probably $22 to $23. Many companies were looking to pay in the range of $25.

147. Forty dollars for TI was typical in the area.

148. There was a general perception that MidFirst was unwilling to look at appropriate lease proposals as shown by the fact that Allied Health couldn't get help even though they were willing to pay $25 a foot. Allied came back to this property looking to rent space at that rate. MidFirst ended up selling the building without hiring a leasing agent.

149. However, just because Sargent & Lundy was paying a high rate, and Allied Health was willing to pay a high rental rate doesn't mean that subsequent renters would pay that high a rent.

150. The project in question could be bought cheaper than it could be built for. I brought two prospective buyers to Mr. Anton when he was trying to sell it for the loan amount owed to MidFirst: Craig Hannay of Hannay Investment Properties, and George Getz of Globe Corporation.

CONCLUSIONS OF LAW

151. The relevant statute relative to fair market value is as follows:

> A.R.S. §33-814. Action to recover balance after sale or foreclosure on property under trust deed
>
> A. . . . . For the purposes of this subsection, "fair market value" means the most probable price, as of the date of the execution sale, in cash, or in terms equivalent to cash, or in other precisely revealed terms, after deduction of prior liens and encumbrances with interest to the date of sale, for which the real property or interest therein would sell after reasonable exposure in the market under conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably and for self-interest, and assuming that neither is under duress. . . .

152. Determining FMV is difficult in a declining market. This is especially so because fair market value requires that there be a "reasonable exposure in the market" assuming that "neither [buyer nor seller] is under duress. . . ." Thus, if the market is declining, then one has to carefully calculate how long to estimate the length of the reasonable exposure so that the decline in value can be stopped. The Court estimates that a time of 8 to 12 months is reasonable for expensive commercial properties such as the subject property. Accordingly, the efforts by Mr. Anton to sell the property for $11 million unsuccessfully doesn't mean that $11,000,000 is overstated.

153. The second difficulty in determining FMV is the use of comparables. Mr. Brekan used more current sales and listings and Mr. Lyons used older ones. That should favor Mr. Brekan's results. However, Mr. Brekan used dissimilar properties compared to Mr. Lyons, both in location and in quality. In short, each of those two appraisers have merit and lapses. Nevertheless, Mr. Lyons' comparables are more reflective of the subject property and are lead to a more accurate value for the property in question.

154. In considering Mr. Lyons' comparables, the issue is raised as to whether the appropriate adjustments were made, the same is true for some of the other adjustments used by Mr. Brekan. Nevertheless, the Court concludes that the Lyons' appraisal was subject to fewer errors and mistakes than the Brekan appraisal.

155. REO sales should not be given much weight given the expectation that the sale might be as much at 50% off from a normal selling price.

156. Another pointed difficulty is the difference between the appraisals of Mr. Nava and Mr.

Brekan. In just seven months, using these two reports made by partners in the same firm, the "as is" value apparently declined from $13,000,000 to $6,140,000. There is no way to explain this discrepancy just from the cratering of the economy. The Court is drawn more to Mr. Nava's report than Mr. Brekan's understanding that a declining market would lower Mr. Nava's figures by the next September.

157. One factor that favors a higher rather than lower value is the saturation of the market. The estimates varied from two years for Mr. Lyons to three years for Mr. Brekan, who states that the market was at the time at a negative absorption rate. The difficulty for Loop 101, LLC, is that the market was getting saturated rather fast, but too slow to stave off foreclosure. The Court considers it important that the available leasing space was significantly lowered by the time of the evaluation date. While these new lessees went to locations other than the subject property, the loss of that competitive office space meant that the subject property was ripe for being the next leased space.

158. The Court also concludes that MidFirst Bank didn't act as it should have to lease space to Allied Health. Had they done so, the value of the property would have been significantly greater.

159. A summary of the various valuations is as follows:

Source	**As Is Value (in Millions)**	**Stabilized Value (in Millions)**
Brekan	$6.14	$11.115
Nava	$13.1[3]	$17
Broker Opinion of Value	10.6+[4]	
Board of Equalization	$12.9+[5]	
Lyons	$12.5	$16.1
Anton	$12.5	

[3] Nava assumed that there would be a second tenant.

[4] This was the Cushman & Wakefield analysis. It was used to attempt an immediate sale after the foreclosure; the figure was reduced to $8 million.

[5] This was with only the Sargent & Lundy tenant.

Each of the valuations can be attacked or disputed to some extent per the prior testimony. But it is helpful to note that all of the figures are in a relatively close range except that of Mr. Brekan. Mr. Brekan's "as is" estimate is less than 50% of the values of any other appraiser except for being about 60% of the Broker's original Opinion of Value. And of course, the BOV was for a relatively quick sale, less than the required "reasonable exposure in the market." This comparison detracts from Mr. Brekan's conclusion.

160. In considering all the factors, the Court concludes that the fair market value of the subject property on October 16, 2009, is $12,500,000.