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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY COMMON PLEAS COURT
Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2023-001132
Trial Court Case No. 2018-CP-26-00307

Wedgewood Condominium Association, Respondent,

v.

Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as Successor by Merger to Centex Construction Company, Inc., and Centex Construction, LLC; Crescent Engineering, Inc., Defendants,

Of which Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as Successor by Merger to Centex Construction Company, Inc., and Centex Construction, LLC, are the Appellants.

and

Centex Homes, a Nevada General Partnership, Third Party Plaintiff,

v.

Right Way Construction, Inc. a/k/a RWG, Inc. a/k/a Right Way Group, Inc. a/k/a RWGR, Inc.; Frank Harris d/b/a Frank Harris Construction a/k/a/ F. Harris Construction a/k/a Harris Drywall; Builders First Source- South East Group, LLC; Stock Building Supply, LLC f/k/a Stock Building Supply, Inc. f/k/a Carolina Builders Corporation; Michael D. Brownlee d/b/a Carolina Drywall & Interiors; Carolina Drywall & Interior, Inc., a/k/a Carolina Drywall & Interiors, Inc. a/k/a Carolina Drywall Contractors, Inc.; Roof Doctor of the Carolinas, Inc.; John D. Frazier d/b/a and/or a/k/a Roof Doctor and/or Roof Doctor of the Carolinas and/or Roof Doctor of the Carolinas, Inc.; Steven Bosch d/b/a The Roofer Man; Tri- City Insulation and Building Products of Myrtle Beach, Inc.; Martin Mata d/b/a Martin Masonry, Inc.; Martin Masonry, Inc.; BR Brick & Masonry, Inc.; BR Brick & Masonry, LP f/k/a BR Brick & Masonry, Inc.; Unicon Concrete, LLC; Seno's Cleaning Services; Rice Planter Carpets, Inc. n/k/a Creative Touch Interiors, Inc., Floors, Inc. Successor By Merger to Rice Planter Carpets, Inc.; Carpets by Kendall, Inc.; Reliable Floor Systems, Inc.; TNT Painting; Paint with Pride a/k/a Painting with Pride; William Evans d/b/a Top Notch Painters; Morningstar Consultants, Inc.; MI Windows and Doors, LLC; Michael Dawson d/b/a Michael

Dawson Construction, and Inc.; Vereen Concrete Co. Inc.; AK Construction Inc. a/k/a AK Framing and Siding Co.; and AK United, Inc. f/k/a AK Construction Inc., Third-Party Defendants.

RECORD ON APPEAL – VOLUME I

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ELECTRONICALLY FILED - 2022 Nov 18 12:48 PM - HORRY - COMMON PLEAS - CASE#2018CP2600307

STATE OF SOUTH CAROLINA COUNTY OF HORRY Wedgewood Condominium Association, Plaintiff, vs. Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, Crescent Architects, LLC and CEMS Engineering, Inc., Defendants. Centex Homes, a Nevada General Partnership, Third-Party Plaintiff, vs. Right Way Construction, Inc. a/k/a RWG, Inc. a/k/a Right Way Group, Inc. a/k/a RWGR, Inc.; et. al., Third-Party Defendants.	IN THE COURT OF COMMON PLEAS Case No.: 2018-CP-26-00307 **ORDER GRANTING PARTIAL SUMMARY JUDGMENT**

This matter came before the court on a motion for summary judgment against Plaintiff filed by Defendant Centex Homes, a Nevada General Partnership ("Centex"). Centex moves for summary judgment or, in the alternative, partial summary judgment against Plaintiff based on the statute of limitations.

BACKGROUND

This is a construction defect lawsuit arising out of the construction of the Wedgewood condominiums ("Wedgewood"). Wedgewood was built between 2000 – 2001 and is comprised of nine buildings with a total of 111 separate condominium units.

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Plaintiff is the Wedgewood Condominium Association and was created by the filing of the Master Deed for Wedgewood on January 18, 2001. Under the Master Deed, Plaintiff has the duty to maintain, and repair as needed, the "Common Areas" (as defined by the Master Deed) of the Wedgewood property. Plaintiff is managed by a board of directors comprised of Wedgewood unit owners, and Plaintiff has utilized a property management company to assist it with the management of the Association.

Plaintiff seeks damages from Centex in this lawsuit in the amount of a cost estimate prepared by Robert Gallagher to perform the various items of work at Wedgewood recommended by architect Ross Clements based on his investigation of the property. Among other items, Clements' recommended scope of work at Wedgewood includes the following:

> Scope sanitary drainage lines at each stack of Buildings 1 through 7 to determine presence of improperly sloped/sagging sanitary lines. Provide allowance for removal and replacement of existing gravity sewer line below four (4) of eight (8) stacks at Buildings 8 and 9 and 50-percent of stacks at Buildings 1 through 7. New sewer lines shall be connected to existing sewer lines and be positively sloped to drain. Remove and replace existing interior finishes/flooring, framing, vapor barrier, exterior carpet, and concrete slab-on-grade in-kind, as required. Soil excavated around sewer lines shall be reinstalled and compacted prior to placement of overburden materials. Restore existing landscaping as required. (Item 9.1 in Clements' 11/14/19 Addendum to his Report).
>
> Remove built-up curb ramps located in access aisles. Provide accessible route at each accessible parking space by creating curb ramp within adjacent sidewalk. New accessible features shall be in accordance with current building code and accessibility requirements. Repair asphalt paving and restripe accessible parking. (Item 7.1 in Clements' 3/2/18 Report).

Regarding the plumbing issue (Clements' Item 9.1), Clements testified that the basis for this repair recommendation was that, after he scoped the eight sanitary drainage lines present at Buildings 8 & 9 at Wedgewood, he identified "deficiencies with bellies and standing water in the sewage underneath the slab and the sewage line underneath the

slab" at four of those eight lines. Exhibit D to Centex's Motion, Depo. of R. Clements, 537:2-15. Clements testified that he "found three of the four lines at Building 9 had problems with standing water and bellies in the sewer line" and found this at one of the four lines at Building 8. *Id*.

Regarding the curb ramps, Clements made this repair recommendation because he found the "built-up curb ramps were improperly located within access aisles adjacent to accessible parking spaces" within the parking areas for the Wedgewood buildings. See Item 7.1 to Clements 3/2/18 Report.

Plaintiff alleges these conditions identified by Clements were deviations from appliable construction standards and codes that entitle Plaintiff to damages from Centex.

LEGAL STANDARD

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.,* 368 S.C. 342, 356, 628 S.E.2d 902, 910 (Ct. App. 2006). When factual matters are in dispute, all ambiguities, conclusions, and inferences arising in and from the evidence must be viewed in a light most favorable to the non-moving party. *Id.* However, when the facts are not in dispute, the question before the court is one of law. *Id*.

"Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." *Allwin v. Russ Cooper Assocs., Inc*., 426 S.C. 1, 11, 825 S.E.2d 707, 712 (Ct. App. 2019). A three-year statute of limitations applies to claims alleging construction defects and property damage. *See* S.C. Code Ann. § 15-3-530(1) and (5) (2005) (providing a three-year statute of limitations for "an action upon a contract, obligation, or liability, express or implied" and "an action for assault, battery, or

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any injury to the person or rights of another, not arising on contract and not enumerated by law"); *see also Allwin v. Russ Cooper Assocs., Inc*., 426 S.C. 1, 12, 825 S.E.2d 707, 713 (Ct. App. 2019) (affirming order granting summary judgment against plaintiff-homeowner in lawsuit alleging construction defects against homebuilder based on three year statute of limitations).

Generally, a cause of action accrues under South Carolina law the moment the defendant breaches a duty owed to the plaintiff. *Id.* However, the discovery rule may toll the accrual of the statute of limitations. *Id.* Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. *Id.* Therefore, the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto. *Id.* The South Carolina Supreme Court has interpreted the "exercise of reasonable diligence" to mean that the injured party must act with some promptness when on notice of a potential claim. *Id.*

When only one reasonable inference can be drawn from the evidence, the determination of when a party knew or should have known that he or she had a claim becomes a matter of law to be decided by the trial court. *Gibson v. Bank of Am., N.A.,* 383 S.C. 399, 406–07, 680 S.E.2d 778, 782 (Ct. App. 2009).

FINDINGS

Centex is entitled to summary judgment against Plaintiff's claims and alleged damages relating to the curb ramps and plumbing lines at Wedgewood.

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Plumbing. On June 26, 2009, November 11, 2011, and November 2, 2012, Unit 912 at Wedgewood had issues with backup in the plumbing. Exhibit A to Centex's Motion, ¶¶ 52, 66, & 68 and exhibits thereto. On November 2, 2012, the sewer lines under Unit 912 were inspected with a camera, which prompted the plumbing repair company to recommend that the HOA change the height of the pipe in order to improve drainage and prevent further backups. Exhibit A, ¶68. The board of directors for Wedgewood included in the minutes for their board meeting on November 2, 2012 that the cause of the sewer issues may be "due to poor installation of the builder's part." Exhibit A, ¶69. The court finds these plumbing issues were well known to Plaintiff by November 2, 2012. Furthermore, Plaintiff's own expert Ross Clements testified that that the property manager had notice that the sewage was backing up at Unit 912 every six months. Exhibit D to Centex's Motion, Dep. of R. Clements, 536:1-25.

Curb Ramps. Clements testified that the location of the ramps were open and obvious to Plaintiff from the time the concrete was poured to the present and is not a latent issue. Deposition of R. Clements, 1431:11 – 19. The court agrees with that assessment.

The only reasonable inference that can be drawn from the evidence submitted to the court is that Plaintiff knew or should have known, at a time more than three years before this lawsuit was filed, that Plaintiff might have a claim against Centex for the alleged deficiencies identified by Plaintiff's expert Ross Clements as Items 7.1 (curb ramps) and 9.1 (plumbing lines) in his reports.

Therefore, this Court hereby GRANTS partial summary judgment in favor of Centex, finding that Centex is entitled to judgment as a matter of law based on the statute

of limitations as to Plaintiff's claims and alleged damages relating to curb ramps and plumbing lines at Wedgewood.

IT IS SO ORDERED.

_____
Carmen T. Mullen
Circuit Court Judge

_____, South Carolina
_____ __, 2022

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Horry Common Pleas

Case Caption: Wedgewood Condominium Association VS Centex Homes , defendant, et al

Case Number: 2018CP2600307

Type: Order/Summary Judgment

So Ordered

s/Carmen T Mullen 2142

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2600307

Wedgewood Condominium Association
PLAINTIFF(S)

Centex Homes et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☑ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

We, the jury, unanimously find in favor of Wedgewood Condominium Association in the amount of $6,750,000.00 Actual Damages. We, the jury, unanimously find in favor of the Centex Entities on the issue of Punitive Damages.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/31/2023 .

Unicon Concrete LLC
Right Way Construction Inc
Crescent Architects LLC
Right Way Group Inc
RWGR Inc
Senos Cleaning Service

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

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Horry Common Pleas

Case Caption: Wedgewood Condominium Association VS Centex Homes , defendant, et al

Case Number: 2018CP2600307

Type: Order/Electronic Form 4

So Ordered

s/Carmen T Mullen 2142

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2600307

Wedgewood Condominium Association
PLAINTIFF(S)

Centex Homes et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☑ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

- AMENDED -
We, the jury, unanimously find in favor of the Plaintiff, Wedgewood Condominium Association against the Defendants, Centex Homes, Balfour Beatty Construction LLC as successor by merger to Centex Construction Company Inc. and Centex Construction LLC (Centex Entities) in the amount of $6,750,000.00, Actual Damages.
We, the jury, unanimously find in favor of the Centex Entities on the issue of Punitive Damages.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/07/2023 .

Unicon Concrete LLC
Right Way Construction Inc
Crescent Architects LLC
Right Way Group Inc
RWGR Inc
Senos Cleaning Service

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

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Horry Common Pleas

Case Caption: Wedgewood Condominium Association VS Centex Homes , defendant, et al

Case Number: 2018CP2600307

Type: Order/Electronic Form 4

So Ordered

s/Carmen T Mullen 2142

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-**CP**-26-00307

Wedgewood Condominium Association	Centex Homes, a Nevada General Partnership, et al.
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: Court	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

This matter came before the Court on June 14, 2023, upon Defendants' Motion for Judgment Not Withstanding the Verdict or, in the alternative, a New Trial and a Motion for a New Trial or in the alternative *Nisi Remittitur*. Based upon the arguments of counsel, the record of this case, and the memoranda filed with the Court, this motion is denied.

An order as to Defendants' Motion for Leave to Deposit the Judgment Sum with the Court and Stay of Execution of Proceedings to Enforce Judgment was also heard on June 14, 2023. The Order as to this motion was separately entered by this Court on June 14, 2023.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$

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		$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Carmen T. Mullen — **Circuit Court Judge**

2142 — **Judge Code**

Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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Horry Common Pleas

Case Caption: Wedgewood Condominium Association VS Centex Homes , defendant, et al

Case Number: 2018CP2600307

Type: Order/Form 4

So Ordered

s/Carmen T Mullen 2142

ELECTRONICALLY FILED - 2023 Jun 01 11:38 AM - HORRY - COMMON PLEAS - CASE#2018CP2600307

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C.A. No.: 2018-CP-26-00307
Wedgewood Condominium Association,	)	
	)	
Plaintiff,	)	
v.	)	**VERDICT**
	)	
Centex Homes, a Nevada General Partnership, Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, et al.	)	
	)	
Defendants.	)	

1. As to the claim of gross negligence, we the jury, find in favor of:

 ✓ Wedgewood Condominium Association **(ANSWER QUESTION 2)**

 _____ The Centex Entities **(STOP DELIBERATING – YOU HAVE REACHED A VERDICT FOR THE DEFENDANTS)**

2. We, the jury, find for Wedgewood Condominium Association in the amount of:

 $ 6,750,000.00 Actual Damages.

I certify that this is the unanimous decision of the jury.

FOREPERSON

May 26, 2023
Conway, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C.A. No.: 2018-CP-26-00307
Wedgewood Condominium Association,	)	
	)	
Plaintiff,	)	
v.	)	**VERDICT – PUNITIVE DAMAGES**
	)	
Centex Homes, a Nevada General Partnership, Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, et al.	)	
	)	
Defendants.	)	
	)	

Now that you have found that Wedgewood Condominium Association sustained actual damages, you may consider an award of punitive damages.

1. _____ Upon clear and convincing evidence, we, the jury, find for Wedgewood Condominium Association in the amount of:

$ _____ Punitive Damages.

OR

_____ We, the jury, find for the Centex Entities.

I certify that this is the unanimous decision of the jury.

Olivia Beatty
FOREPERSON

May 26, 2023
Conway, South Carolina

ELECTRONICALLY FILED - 2023 Jun 01 11:38 AM - HORRY - COMMON PLEAS - CASE#2018CP2600307

ELECTRONICALLY FILED - 2018 Jan 18 4:22 PM - HORRY - COMMON PLEAS - CASE#2018CP2600307

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-
Wedgewood Condominium Association,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**SUMMONS**
	)	
Centex Homes, a Nevada General Partnership, Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, Crescent Architects, LLC, and CEMS Engineering, Inc.,	)	**(JURY TRIAL DEMANDED)**
	)	
Defendants.	)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscriber at his office at 3303 East Highway 9, Little River, South Carolina 29566, within THIRTY (30) DAYS after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

STANLEY LAW FIRM

s/ Stacy L. Stanley
Stacy L. Stanley
SC Bar No.: 13410
3303 East Highway 9
Little River, SC 29566
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Email: sstanley@stanleylawfirm.com
Attorney for the Wedgewood
Condominium Association

January 17, 2018

ELECTRONICALLY FILED - 2018 Jan 18 4:22 PM - HORRY - COMMON PLEAS - CASE#2018CP2600307

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-
Wedgewood Condominium Association,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**COMPLAINT**
	)	
Centex Homes, a Nevada General Partnership, Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, Crescent Architects, LLC, and CEMS Engineering, Inc.,	)	**(JURY TRIAL DEMANDED)**
	)	
Defendants.	)	

TO: THE DEFENDANTS ABOVE NAMED

The Plaintiff, above named, complaining of the Defendants herein, respectfully alleges as follows:

FACTS COMMON TO ALL CAUSES OF ACTION

1. Wedgewood Horizontal Property Regime is a horizontal property regime organized and existing under South Carolina law as provided in the Horizontal Property Act, S.C. Code Ann. §§ 27-31-10 et. seq., and is located in North Myrtle Beach, South Carolina.

2. Plaintiff Wedgewood Condominium Association (the "HOA") is a non-profit corporation organized and existing under South Carolina law with its principal place of business in Horry County, South Carolina. The HOA was formed pursuant to the Master Deed of the Wedgewood Horizontal Property Regime and the HOA's responsibilities include, but are not limited to, maintenance, replacement, and repair of the Wedgewood common area and property.

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3. Defendant Centex Homes ("Centex Homes") is a Nevada general partnership having its principal place of business, and which was, at all relevant times hereto, conducting business, in Horry County, South Carolina.

4. Defendant Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC ("Balfour Beatty") is, upon information and belief, a corporation organized and existing under South Carolina law, and which was, at all times relevant hereto, conducting business in Horry County, South Carolina.

5. Defendant Crescent Architects, LLC ("Crescent"), is, upon information and belief, a corporation organized and existing under South Carolina law, and which was, at all times relevant hereto, conducting business in Horry County, South Carolina.

6. Defendants CEMS Engineering, Inc. ("CEMS") is, upon information and belief, a corporation organized and existing under South Carolina law, and which was, at all times relevant hereto, conducting business in Horry County, South Carolina.

7. Centex Homes held certain real estate in Horry County, South Carolina that was developed into the Wedgewood Horizontal Property Regime condominium project (the "Wedgewood project").

8. The Defendants at all times collectively contemplated the construction and sale of condominium units and property to individual purchasers and the formation of the HOA to be charged with the responsibility for maintenance and repair of the Wedgewood project.

9. To that end, the Defendants, acting individually and in concert: developed the Wedgewood project; built, marketed, and sold individual condominium units in the Wedgewood project; and used in-house construction managers, in-house architects, in-house purchasing agents, and in-house, on-site construction superintendents for the construction of the Wedgewood project.

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10. Centex Homes was the developer for the Wedgewood project.

11. Centex Construction was the general contractor for the Wedgewood project.

12. Balfour Beatty was the general contractor for the Wedgewood project.

13. Crescent was an architect for the Wedgewood project.

14. CEMS was an engineer for the Wedgewood project.

15. The HOA recently became aware of structural and safety defects in the Wedgewood project.

16. Upon learning that the problems experienced at the Wedgewood project might be the result of construction defects, rather than routine maintenance issues, the HOA hired a forensic engineer to investigate and determine the nature of the deficiencies existing at the Wedgewood project and the consequences resulting from those deficiencies. In the scope of that investigation, which included destructive testing, the HOA has been made aware of violations of building codes, good workmanship practices, and manufacturer specifications in the development, design, construction, oversight, and supervision of the Wedgewood project, which have resulted in, among other things, water intrusion and elevated moisture levels and content that has caused wood and building material degradation and resulting rot impacting upon the structural integrity, use, and safety of the Wedgewood project.

17. The structural and safety defects have caused the Wedgewood project to be continuously and repeatedly exposed to damages.

18. The structural and safety defects are the result of defective design and construction.

19. The structural, safety, and continuous and repeated defects and damages include, but are not limited to, the following:

a) improper installation of rough opening flashing at window sills;

b) improper installation of flashing at window heads;

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c) premature deterioration of self-adhered flashing membrane;

d) premature deterioration of the vinyl windows and insulated glass units;

e) improper attachment of horizontal lap fiber-cement siding;

f) improper installation of vertical fiber-cement siding panels;

g) inadequate support of steel lintels above windows;

h) inadequate and missing through-wall flashing at brick veneer;

i) inadequate installation of brick veneer ties;

j) inadequate protection of untreated wood furring members;

k) improper and incomplete installation of flashing and weather-resistive barrier;

l) incomplete installation and damaged waterproofing on front walkways and stair towers;

m) improper installation of roof underlayment and metal drip edge;

n) improper attachment of roof shingles;

o) improper attachment of roof shingle starter strip;

p) improper attachment of metal fascia;

q) inadequate fireproofing of structural members along front walkways and rear balconies;

r) improper stair riser dimensions; and

s) improper installation of accessible ramps within vehicle access aisles.

FIRST CAUSE OF ACTION
(NEGLIGENCE, GROSS NEGLIGENCE, CARELESSNESS, RECKLESSNESS, WILLFULNESS, AND WANTONNESS)
(ALL DEFENDANTS)

20. The HOA references and incorporates every allegation set forth above as if fully repeated verbatim herein.

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21. The Defendants owed a duty to the HOA to exercise the degree of skill necessary to construct, supervise, inspect, and review the design and construction of the Wedgewood project.

22. The Defendants owed a duty to the HOA to ensure that the Wedgewood project was built and designed in conformity with the customary and ordinary standards of the building and construction industry.

23. The Defendants owed a duty to the HOA to ensure that the Wedgewood project was built and designed in conformity with manufacturer's specifications.

24. The Defendants owed a duty to the HOA to ensure that the Wedgewood project was built and designed in conformity with applicable building codes, including, but not limited to, the Standard Building Code. The defects and deficiencies set forth herein were the direct and proximate result of the acts and omissions of Defendants that constitute negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness in one or more of the following:

a) in failing to properly construct or provide for the proper construction of the project by deviating from the plans and specifications;

b) in failing to employ practices and methods of construction and construction oversight conforming to the normal, customary, and ordinary standards of the construction industry;

c) in failing to properly install standard materials and products;

d) in failing to properly install materials and products that are in accordance with the project's plans and specifications;

e) in failing to properly install material and products in accordance with the instructions of product and material manufacturers;

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f) in failing to perform work in accordance with applicable building codes including, but not limited to, the Standard Building Code;

g) in failing to properly supervise or provide supervision and oversight for employees, agents, and subcontractors to ensure that all work proceeded in accordance with the plans and specifications, industry standards, code requirements, and customary and ordinary standards of the construction industry;

h) in failing to accept conforming materials and labor;

i) in failing to provide sufficient workmanship and/or materials in the project with proper supervision and inspections in accordance with plans and specifications, industry standards, code requirements, and customary and ordinary standards of the construction industry;

j) in failing to inform the in-house architect of the defects in plans and specifications.

25. As a direct and proximate result of the negligence, gross negligence, and recklessness of the Defendants, the HOA has suffered injuries and damages in the amount equal to actual damages and punitive damages for the repair, maintenance, and reconstruction costs as expended and loss of use to be expended in the future over the expected life of the structure.

SECOND CAUSE OF ACTION
(BREACH OF EXPRESS WARRANTY)
(CENTEX HOMES)

26. The HOA references and incorporates every allegation set forth above as if fully repeated verbatim herein.

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27. Centex Homes as the seller, grantor, and developer expressly warranted that the Wedgewood project would be free of construction defects and deficiencies. That warranty was made in connection with the construction of the project, the sale of the units, and the formation of the Wedgewood Horizontal Property Regime and the HOA.

28. Centex Homes breached its express warranty by producing and selling the Wedgewood project in an inferior condition that is plagued with extensive and severe construction defects.

29. As a direct and proximate result of Centex Homes' breach of its express warranty, the HOA has suffered injuries and damages in the amount equal to actual damages and punitive damages for the repair, maintenance, reconstruction, and loss of use expended and to be expended in the future over the expected life of the structure.

THIRD CAUSE OF ACTION
(BREACH OF IMPLIED WARRANTIES)
(BALFOUR BEATTY)

30. The HOA references and incorporates every allegation set forth above as if fully repeated verbatim herein.

31. Balfour Beatty, as general contractor for the Wedgewood project, impliedly warranted that the project would be constructed in a careful, diligent, and workmanlike manner in accordance with accepted industry and construction standards and that the project would be free of construction defects.

32. The defects and deficiencies set forth herein were the direct and proximate result of the acts and omissions of Balfour Beatty and constitute negligence, gross negligence, and recklessness including, but not limited to, the following:

a) in failing to properly construct or provide for the proper construction of the project by deviating from the plans and specifications as designed;

b) in failing to employ practices and methods of construction and construction oversight conforming to the normal, customary, and ordinary standards of the construction and oversight industry;

c) in using and/or supplying substandard materials and products;

d) in installing or allowing the installation of materials and products not in accordance with the project's plans and specifications;

e) in installing or allowing the installation of materials and products in violation of instructions and directions provided by the material and product manufacturers;

f) in allowing, accepting, or performing the project work in violation of the applicable building codes including, but not limited to, the Standard Building Code;

g) in failing to properly supervise or provide for proper supervision and oversight of employees, agents, and subcontractors to ensure that all work proceeded and was completed in accordance with the project plans and specifications, industry standards, code requirements, and customary and ordinary standards of the construction industry;

h) in accepting and allowing the installation of defective, substandard, or non-conforming materials and labor;

i) in accepting and performing deficient, substandard, or defective workmanship or materials in the project without proper inspections to ensure that the work completed was correct and in conformity with industry standards, plans and specifications, Standard Building Code requirements, and customary and ordinary construction practices; and

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j) in failing to inform the in-house architect of the defects in the plans and specifications.

33. As a direct and proximate result of Balfour Beatty's breach of its implied warranties, the HOA suffered injuries and damages in the amount equal to actual damages and punitive damages for the repair, maintenance, reconstruction, and loss of use expended and to be expended in the future over the expected life of the structure.

FOURTH CAUSE OF ACTION
(BREACH OF IMPLIED WARRANTIES OF HABITABILITY AND FITNESS)
(CENTEX HOMES)

34. The HOA references and incorporates every allegation set forth above as if fully repeated verbatim herein.

35. Centex Homes sold condominium units along with their proportionate share of the common elements.

36. Centex Homes made implied warranties of habitability and fitness for a particular purpose.

37. Centex Homes breached its implied warranties of habitability and fitness for a particular purpose by selling the condominium units along with their proportionate share of the common elements in an inferior and rapidly deteriorating condition with the buildings and common elements containing the defects and deficiencies as set forth above.

38. As a direct and proximate result of Centex Homes's breach of its implied warranties, the HOA suffered injuries and damages in the amount equal to actual damages and punitive damages for the repair, maintenance, reconstruction, and loss of use expended and to be expended in the future over the expected life of the structure.

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FIFTH CAUSE OF ACTION
(FRAUD)
(ALL DEFENDANTS)

39. The HOA references and incorporates every allegation set forth above as if fully repeated verbatim herein.

40. After construction of the Wedgewood project was completed, each of the Defendants misrepresented that the project was properly designed and constructed, even though each of the Defendants knew at that time that the construction defects identified herein existed. In addition, each of the Defendants fraudulently advised or represented to the HOA that, to their knowledge, there were no construction or design defects in the project.

41. Each of the Defendants deliberately concealed the construction defects from the HOA.

42. The Defendants' misrepresentations affected the materiality of the HOA's actions.

43. The Defendants made the misrepresentations to the persons or class of persons whom they intended or had reason to expect to act or to refrain from action in reliance upon the fraudulent misrepresentations.

44. The HOA was not aware of the Defendants' misrepresentations.

45. The HOA relied on the Defendants' misrepresentations.

46. The HOA had a right to rely on the Defendants' misrepresentations.

47. As a direct and proximate result of the Defendants' fraud, the HOA suffered injuries and damages in the amount equal to actual damages and punitive damages for the repair, maintenance, reconstruction, and loss of use expended and to be expended in the future over the expected life of the structure.

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SIXTH CAUSE OF ACTION
(UNFAIR TRADE PRACTICES)
(CENTEX HOMES AND BALFOUR BEATTY)

48. The HOA references and incorporates every allegation set forth above as if fully repeated verbatim herein.

49. By their actions described in this Complaint, Centex Homes and Balfour Beatty have engaged in unfair and deceptive acts and practices in the conduct of any trade or commerce in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-20(a).

50. The unfair and deceptive acts and practices committed by Centex Homes and Balfour Beatty are capable of repetition in that both Defendants remain in the same business of developing and building properties and are often faced with opportunities to repeat their misconduct. In fact, Centex Homes and Balfour Beatty have already repeated their misconduct on many occasions, resulting in multiple construction defect actions being filed against them.

51. Centex Homes and Balfour Beatty knew that their conduct violated the South Carolina Unfair Trade Practices Act.

52. As a direct and proximate result of the unfair and deceptive acts and practices committed by Centex Homes and Balfour Beatty, the HOA has suffered actual, direct, incidental, consequential, and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the cause of the multiple defects described in this Complaint and having to expend substantial sums of money in carrying out the HOA's obligation to maintain, repair, and replace the Wedgewood property. In addition, the HOA has been injured, and will continue to be injured, in that there has been a continuous exposure to moisture and water that intruded and continues to intrude, causing damage to the Wedgewood property that it is the HOA's obligation to maintain, repair, and replace, which will require the HOA to continue

to expend substantial sums of money to repair the damage caused by the Defendants' unfair and deceptive acts and practices.

SEVENTH CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)
(CENTEX HOMES)

53. The HOA references and incorporates every allegation set forth above as if fully repeated verbatim herein.

54. As the developer of the Wedgewood project, Centex Homes has a fiduciary duty to the HOA to transfer common areas that are in good repair.

55. Centex Homes has not transferred the Wedgewood project's common areas to the HOA.

56. Centex Homes has not transferred the Wedgewood project's common areas to the HOA in good repair.

57. Centex Homes is, therefore, in breach of its fiduciary duty to transfer the common areas to the HOA in good repair.

58. To carry out its fiduciary duty, Centex Homes must transfer the common areas to the HOA, and must either bring those common areas up to standard as of the date of transfer or provide the HOA with the funds necessary to bring the common areas up to standard.

59. As a direct and proximate result of Centex Homes' breach of its fiduciary duty, it is also liable to the POA for all damages flowing from the breach including damages for the continued maintenance and deterioration of the common areas.

WHEREFORE, the Plaintiff prays as follows:

A. For actual damages for the extraordinary repair, maintenance, reconstruction, and loss of use expended and to be expended in the future over the expected life of the Wedgewood project

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B. For three times the actual damages sustained;

C. For future damages;

D. For continuous and repeated damage;

E. For punitive damages;

F. For loss of use;

G. For attorney's fees;

H. For the costs and disbursements of this action;

I. For an injunction ordering Centex Homes to transfer the Wedgewood project's common areas to the HOA in good repair; and

J. For such other and further relief as this Court may deem just and proper.

STANLEY LAW FIRM

s/ Stacy L. Stanley
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Condominium Association

January 17, 2018

ELECTRONICALLY FILED - 2018 Jan 18 4:22 PM - HORRY - COMMON PLEAS - CASE#2018CP2600307

ELECTRONICALLY FILED - 2022 Mar 01 6:23 PM - HORRY - COMMON PLEAS - CASE#2018CP2600307

STATE OF SOUTH CAROLINA COUNTY OF HORRY Wedgewood Condominium Association, Plaintiff, vs. Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, Crescent Architects, LLC and CEMS Engineering, Inc., Defendants. Centex Homes, a Nevada General Partnership, Third-Party Plaintiff, vs. Right Way Construction, Inc. a/k/a RWG, Inc. a/k/a Right Way Group, Inc. a/k/a RWGR, Inc.; et. al., Third-Party Defendants.	IN THE COURT OF COMMON PLEAS Case No.: 2018-CP-26-00307 **CENTEX HOMES' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF**

YOU WILL PLEASE TAKE NOTICE that Centex Homes, a Nevada General Partnership, (hereinafter "Centex"), will move pursuant to SCRCP Rule 56 before the court within ten (10) days, or as soon thereafter as may be heard by the court, for an Order granting Centex summary judgment against Plaintiff on the grounds that Plaintiff's claims are barred by the statute of limitations, S.C. Code § 15-3-530(3), and that Centex is entitled to judgment as a matter of law against all Plaintiff's claims asserted against it in this matter. In the alternative, Centex moves for partial summary judgment as to all of Plaintiff's claims and damages found to be barred by the statute of limitations.

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This motion is based upon the List of Undisputed Facts and numerous exhibits submitted therewith (together submitted as Exhibit A to this motion), the additional deposition testimony submitted as Exhibits B - D to this motion, the memorandum in support of this motion and any exhibits thereto that will be filed shortly hereafter, as well as applicable case law, statutes, and court rules and any additional deposition testimony, affidavits, documents, and/or supporting memorandum that may be submitted prior to oral argument or other appropriate grounds submitted to the court.

PARKER POE ADAMS & BERNSTEIN, LLP
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March 1, 2022

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Exhibit A

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UNDISPUTED FACTS

1. The minutes of the meeting of the board of directors for Wedgewood on August 18, 2003 provides:

> B. Carpet mold was again discussed. The real problem areas are the patios and laundry rooms. It is clear there is a problem, although it is uncertain where responsibility lies. Tom explained most regimes are having similar problems and perhaps a President's meeting would be beneficial to discuss this and other similar problems.

Exhibit 1.1 at page 1 (Board meeting minutes); Exhibit 1.2 (HOA witness testimony regarding the same).

> B. Powderpost Beetles
> Our exterminator service (Aaron Pest Control) was called in to inspect Unit #411. He advised it appeared to be Powderpost Beetles, He further stated that their service did not do this type of pest control and recommended calling Terminex. Terminex came out, inspected and confirmed it was the Powderpost Beetles. It was decided that CCMC maintenance would inspect other units in Building #4 before proceeding with extermination. Altogether four units were found to be invaded and all in the same area (in window frame of arc-transom). Frames will be removed and replaced and area will be treated.

Exhibit 1.1 at page 2 (Board meeting minutes); Exhibit 1.2 (HOA witness testimony regarding the same).

2. The minutes of the meeting of the board of director for Wedgewood on October 24, 2003 provides:

> Carpet mold was again discussed. John Kidd talked to the President of Cypress Bend COA and presented a letter that he created. He requested that the letter be sent to Mike Wyatt, President of Centex Regional office in Myrtle Beach. After discussion, it was put to vote. Jason Bradley made the motion and it was seconded by Richard Breeden. Motion passed. The letter will be sent Certified/Return Receipt.

Exhibit 2.1 at page 1 (Board meeting minutes); Exhibit 2.2 (HOA witness testimony regarding the same).

3. By letter dated October 28, 2003, the president of the board of directors for Wedgewood sent the following to Centex Homes:

> On behalf of the Board of Directors for the Wedgewood Condominium Association at Barefoot Resort, this letter is to serve as notice to a number of unsatisfactory conditions existing in all buildings at the Wedgewood Villas.

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> With the growth of mold and mildew, the carpet in the common areas, walkways and patios, is unsightly, unsafe and promoting a general health hazard. As a result of this unacceptable carpet condition, mold and mildew is also growing on the ceilings between each floor of the common areas and patios. All efforts to clean and prevent the further growth have been both ineffective and expensive. The condition is further compounded by the screen enclosures on the patios that do not allow rainwater to escape and results in the carpet retaining water for days. The situation has become unbearable and unacceptable!
>
> It is the Board's position that Centex, having installed this carpet material without any input from the homeowners, has a responsibility to remedy the situation before the problem compounds itself.
>
> Your earliest response to these issues is requested so that we might make a timely and accountable response to our homeowners.

Exhibit 3.1 at page 1 (letter to Centex); Exhibit 3.2 (HOA witness testimony regarding the same).

4. The minutes of the Annual Members Meeting for Wedgewood on January 10, 2004 provides:

> Chairman Kidd advised that the ongoing issue of mold and mildew has been addressed with both CCMC and Centex. It is the goal of the Board to resolve this issue through the collective partnership of the Centex, CCMC and the Board. R. Spencer #(713) made a motion that the Board stay on top of this issue and also have an inspection of common area ceilings to prevent moisture from gathering and causing damage. P. Holloway (#532) seconded. Motion passed.

Exhibit 4.1 at page 4 (Board meeting minutes); Exhibit 4.2 (HOA witness testimony regarding the same).

5. The minutes of the meeting of the board of director for Wedgewood on March 13, 2004 provides:

> B. Maintenance Report
>
> 1. John Kidd reported on his meeting with Centex on March 12th.
>
> a. Main issue was mold and mildew in common areas. The fibrous carpet attracts mold and routine preventative maintenance must be done.
>
> b. Power washing was recommended for every six months
>
> c. Mr. Kidd will write a letter to Centex regarding the March 12th meeting and all items discussed.
>
> A. Building Maintenance

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1. Maintenance will set up schedule to power wash carpets in common area, then steam clean to extract water and finally apply a mold retardant.
2. Jim stated that there is a bad mold problem in the pool area. Power wash was recommended and putting down "kills". Then using a semi-gloss to deter the mold. Centex agreed this would be a good idea.
3. Tom suggested that the BOD bring in an independent inspector to inspect walls, ceilings and other problem areas including to determine best and safest cleaning methods.
    a. Tom suggested hiring this inspector in partnership with Cypress Bend to reduce cost and request a report, giving a 2-week deadline
    b. A motion was made by Jason Bradley and seconded by Randal Spencer to hire the independent inspector. Motion passed
    c. John Kidd asked that this be acted upon as soon as possible and once the report is obtained, forward to the Board

Exhibit 5.1 at page 2 (Board meeting minutes); Exhibit 5.2 (HOA witness testimony regarding the same).

6. On March 25, 2004, Full Steam Ahead, Inc. inspected the walkway ceilings for mold and reported surface mold on the corridor ceilings and two areas with excessive moisture readings.

Exhibit 6.1 at page 1 (Full Steam Ahead report); Exhibit 6.2 (HOA witness testimony regarding the same).

7. By check dated April 6, 2004, Plaintiff paid $225.00 to Full Steam Ahead, Inc. for work at Building 9 at Wedgewood described in the invoice as:

> Unit 912- Caulked, puttied, sealed and painted triple window in master bedroom.
>
> Unit 913- Repaired drywall and painted wall corner to corner. Caulked, puttied, sealed and painted triple widow in master bedroom.

Exhibit 7.1 at pages 1 and 2 (check and invoice); Exhibit 7.2 (HOA witness testimony regarding the same).

8. On August 04, 2004, the Plaintiff's property manager generated a work order for Unit 722 at Wedgewood including the following:

> Maintenance Code: Water Intrusion Call
> Owner of Wedgewood #722 reported a water leak in the master bedroom on the wall beneath the left-hand corner of the window. It is unclear where the moisture is coming from. Please inspect and determine if this is an association matter. *** This is a premier rental. However the owner Dan Williams is there this week. Mr. Williams cell phone number is [xxx-xxx-xxxx].

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> 8-20 Mrs. Williams called again. She said that Billy at Centex is going to replace window but CCMC needs to caulk windows.

Exhibit 8.1 at page 2 (work order); Exhibit 8.2 (HOA witness testimony regarding the same).

> Description of Work: Mr. Williamson stopped by and advised still a problem with his windows. Called Jim and asked him to meet Mr. Williams at his unit.

Exhibit 8.1 at page 1 (work order); Exhibit 8.2 (HOA witness testimony regarding the same).

9. Plaintiff property manager responds to report of window leaking in unit 813 on March 20, 2005.

> Master bedroom window still leaking – please check to see if more caulking is needed.

Exhibit 9.1 at page 1 (work order report); Exhibit 9.2 (HOA witness testimony regarding the same).

10. On March 21, 2005, Plaintiff's property manager generated a work order for Wedgewood including the following:

> Please check the landing on the 2nd floor just before the steps. Homeowner has reported that the wood is rotting on the floor.

Exhibit 10.1 at page 1 (work order); Exhibit 10.2 (HOA witness testimony regarding the same).

11. Minutes for the meeting of the board of directors for Plaintiff on April 19, 2005 include the following:

> Jim McGrath stated that the caulking around the windows is going bad, causing leaks. Jim Finn will get bids to repair caulking.

Exhibit 11.1 at page 2 (Board meeting minutes); Exhibit 11.2 (HOA witness testimony regarding the same).

> A discussion ensued regarding the status of the carpets in the building. Many are mildew stained. Jim Finn stated that he has a bid from a company who uses a three-step process which includes treating the carpets with a mildicide. This bid was for $150.00 per building. The company claims that this process will last for 3 – 6 months. Randall Spencer asked if there is enough money in the budget for this. Jim Finn assured Mr. Spencer that there was. Jerome Grant inquired into the expected life of the carpets. Mr. Finn stated that the carpets are listed in the Reserve Study as having an expected life of 7 years.

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Exhibit 11.1 at page 2 (Board meeting minutes); Exhibit 11.2 (HOA witness testimony regarding the same).

12. On August 12, 2005, Plaintiff's property manager generated a work order for Unit 611 at Wedgewood stating, "Reporting water stains and wood rotting on all corner units."

Exhibit 12.1 at page 1 (work order); Exhibit 12.2 (HOA witness testimony regarding the same).

13. On September 20, 2005, Plaintiff's property manager generated a work order for Unit 813 at Wedgewood stating:

> Windows in master bedroom need to be inspected. Please caulk where needed. Please check flashings. Also, front door does not seem to close property. Please check.

Exhibit 13.1 at page 1 (work order); Exhibit 13.2 (HOA witness testimony regarding the same).

14. Minutes of the meeting of the board of directors for Wedgewood on August 12, 2005 state:

> Randall Spencer stated that he had an informal meeting with some homeowners. There are general concerns about the deterioration of the buildings. The major complaints were: mold around the soffitt, mold on the vinyl edging, the fronts of buildings 5 and 6 are covered with cobwebs and weeds and crabgrass in the front of the buildings.

Exhibit 14.1 at page 3 (Board meeting minutes); Exhibit 14.2 (HOA witness testimony regarding the same).

> Bids to Repair Caulking Around Windows - Jim Finn stated that he has spoken with other Board Presidents about this issue. The other Board Presidents have requested that Mr. Finn speak with Centex about many of the Associations needing the windows fixed.

Exhibit 14.1 at page 3 (Board meeting minutes); Exhibit 14.2 (HOA witness testimony regarding the same).

> Jerome Grant made a motion to have Wedgewood be included in any correspondence with Centex. . . . Motion carried.

Exhibit 14.1 at page 3 (Board meeting minutes); Exhibit 14.2 (HOA witness testimony regarding the same).

> Update on Window Washing - The Board agreed that because of the window caulking concerns, the window washing will be put on hold until next year.

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Exhibit 14.1 at page 3 (Board meeting minutes); Exhibit 14.2 (HOA witness testimony regarding the same).

15. On October 17, 2005, Plaintiff's property manager generated a work order for Unit 612 at Wedgewood including the following:

> Maintenance Code: Water Intrusion Call
> Work to be Done: Please caulk window in master bedroom – much water reported coming in.

Exhibit 15.1 at page 1 (work order); Exhibit 15.2 (HOA witness testimony regarding the same).

16. On October 30, 2005, Plaintiff's property manager generated a work order for Unit 312 at Wedgewood including the following:

> Standard instructions: Repair or replacement of windows
> Work to be done: Windows in master bedroom need to be caulked.

Exhibit 16.1 at page 2 (work order); Exhibit 16.2 (HOA witness testimony regarding the same).

17. On December 30, 2005, Plaintiff's property manager generated a work order for Unit 413 at Wedgewood including the following:

> Standard instructions: Repair or replacement of windows
> Work to be done: Please check window caulking in the master bedroom. Please recaulk as needed. List all damage.
> Description of Work: No access to check for damage. Caulking done 1-6-06.

Exhibit 17.1 at page 1 (work order); Exhibit 17.2 (HOA witness testimony regarding the same).

18. Minutes for the meeting of the board of directors for Wedgewood on January 14, 2006 provide:

> Pamela Morgan, Unit # 331 commented that the first thing she noticed was the clean buildings. She then questioned if there is a timeline for the replacement of hall carpets. Tatyana Sallee also questioned what other types could be used. Jim Finn is to look at alternatives and report to the Board.

Exhibit 18.1 at page 2 (Board meeting minutes); Exhibit 18.2 (HOA witness testimony regarding the same).

> Bill Carey, Unit # 813 reported that the master bedroom window is still leaking after being caulked. Jim Finn replied that caulking should be replaced every 3 to 4 years.

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Exhibit 18.1 at page 2 (Board meeting minutes); Exhibit 18.2 (HOA witness testimony regarding the same).

19. On February 21, 2006, the owner of Unit 921 emailed members of Plaintiff's board of directors regarding "concerns of the deteriorating property of Wedgewood," which included "carpet is molded, pillers cracked and rotten, ceiling drywall cracked/peeling, stairwells rotten wood."

Exhibit 19.1 at page 2 (email); Exhibit 19.2 (HOA witness testimony regarding the same).

20. The minutes of the meeting of the board of director for Wedgewood on March 24, 2006 provide:

> A. Alternatives to Replacing Hallway Carpets - Chuck Gomick presented two alternatives for the carpet replacement. Tatyana Sallee suggested looking into a synthetic covering. Chuck Gornick will look into these and other alternatives. A discussion ensued regarding the cleaning of the carpets as soon as the pollen season is over.

Exhibit 20.1 at pages 1-2 (Board meeting minutes); Exhibit 20.2 (HOA witness testimony regarding the same).

21. On June 20, 2006, Plaintiff's property manager generated a work order for Unit 124 at Wedgewood including the following:

> Maintenance Code: Water Intrusion Call
> Work to be done: Please caulk window in living room.

Exhibit 21.1 at page 1 (work order); Exhibit 21.2 (HOA witness testimony regarding the same).

22. On June 30, 2006, Plaintiff's property manager generated a work order for Unit 911 at Wedgewood including the following:

> Maintenance Code: Water Intrusion Call
> Work to be done: Please caulk window in the dining room and master bedroom.

Exhibit 22.1 at page 1 (work order); Exhibit 22.1 (HOA witness testimony regarding the same).

23. By check dated August 18, 2006, Plaintiff paid $2,700.00 to Termite and Pest Control, LLC for termite inspections at buildings at Wedgewood, and the invoice states:

> No visual signs of termites. Wood moisture content 10%-15%. Wood decay on corners and door frame on far left. Needs repaired.

Exhibit 23.1 at page 2 (check and invoice); Exhibit 23.2 (HOA witness testimony regarding the same).

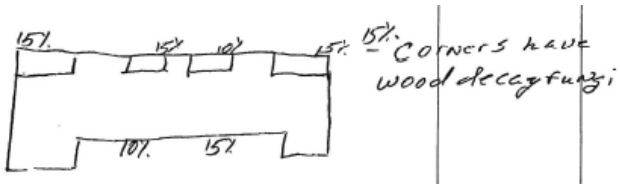
Corners have wood decay fungi. 

Exhibit 23.1 at page 3 (check and invoice); Exhibit 23.2 (HOA witness testimony regarding the same).

24. On August 2, 2006, a Wedgewood homeowner emailed the following to the property manager for Wedgewood:

> At Wedgewood building 4, at the bottom of the stairs on the second level of the south side of the building, the flooring board under the carpet is rotten and you can step through it if you try to. It is in the comer up against the bottom step and the front railing.

Exhibit 24.1 at page 1 (email); Exhibit 24.2 (HOA witness testimony regarding the same).

25. Plaintiff's property manager generated a work order dated August 02, 2006 for Building 4 at Wedgewood including the following:

> Work to be done: Please check the stairs on the second level of the south side of Building 4. An owner reports that the landing wood is rotten and a foot can easily go through.

Exhibit 25.1 at page 2 (work order); Exhibit 25.2 (HOA witness testimony regarding the same).

> Description of Work: Started 9-18. Removed damaged section of floor. Had to go to Home Depot for supplies (wood, saw, nails, etc.). Installed new floor and caulked. Waited til 9-19 to return and installed waterproof membrane over repaired area. Put down outdoor carpet adhesive and positioned carpet in place. 9-18, 6 hrs / 9-19 1.5 hrs.

Exhibit 25.1 at page 2 (work order); Exhibit 25.2 (HOA witness testimony regarding the same).

26. On September 5, 2006, Plaintiff's property manager generated a work order for Unit 911 at Wedgewood including the following:

> Maintenance Code: Water Intrusion Call
> Work to be done: Owner reports water leaking through windows.

Exhibit 26.1 at page 1 (work order); Exhibit 26.2 (HOA witness testimony regarding the same).

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26. On September 5, 2006, Plaintiff's property manager generated a work order for Unit 913 at Wedgewood including the following:

> Maintenance Code: Water Intrusion Call
> Work to be done: Owner reports master bedroom (middle window) is leaking.

Exhibit 26.1 at page 2 (work order); Exhibit 26.2 (HOA witness testimony regarding the same).

27. By check dated September 15, 2006, Plaintiff paid $1,672.00 to Lampley Enterprises for repair work at Units 124 and 134 at Wedgewood described in the invoice as:

> Remove and replace water damage sheetrock
> Remove and replace screen 1x4 & 1x6 cedar base trim boards
> Reflash base of columns 2nd & 3rd floors
> Caulk voids with NP-1 sealant on deck
> Reinstall railings
> Prime & paint all new wood
> Haul off all debris
> Put up plywood ceiling

Exhibit 27.1 at page 2 (check and invoice); Exhibit 27.2 (HOA witness testimony regarding the same).

28. By check dated September 25, 2006, Plaintiff paid $1,000.00 to Lampley Enterprises Inc. as a down payment for work on Building 1 at Wedgewood described in the invoice:

> Tearing off back wall, repairing all damage, take out sheathing around windows, replace new, put everything back, wrap windows, etc.

Exhibit 28.1 at page 2 (check and invoice); Exhibit 28.2 (HOA witness testimony regarding the same).

29. By check dated November 10, 2006, Plaintiff paid $2,400.00 to Lampley Enterprises Inc. for work on Buildings 2, 8, and 9 described in the invoices as: "Paint ceiling, put up strips, patch bad places."

Exhibit 29.1 at page 2 (check and invoice); Exhibit 29.2 (HOA witness testimony regarding the same).

30. By check dated October 06, 2006, Plaintiff paid $3,500.00 to Lampley Enterprises Inc. for work on Building 1 at Wedgewood described in the invoice as:

> Tear off side of building, replace all bad wood and wet insulation, wrap windows with 12'' window wrap, replace siding, prime & paint, caulk building back, reflash all windows.

Exhibit 30.1 at page 2 (check and invoice); Exhibit 30.2 (HOA witness testimony regarding the same).

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31. By check dated November 16, 2006, Plaintiff paid $3,300.00 to Lampley Enterprises Inc. for work on Building 8 at Wedgewood described in the invoices as:

> Tear off sides of building, replace damaged wood, retape around windows, etc., caulk, prime and paint new siding.

Exhibit 31.1 at page 2 (check and invoice); Exhibit 31.2 (HOA witness testimony regarding the same).

31. By checks dated November 16, 2006, Plaintiff paid $9,950.00 to Lampley Enterprises Inc. for work on Building 8 at Wedgewood described in the invoices as:

> Down payment on repairs to Building no. 9.
> Tearing out around 911-12 or 912 & 913, bring everything like before. labor and material.

Exhibit 31.1 at pages 3-5(check and invoice); Exhibit 31.2 (HOA witness testimony regarding the same).

32. The minutes for the meeting of the board of directors for Wedgewood on October 28, 2006 provide:

> B. Update to Repairs on Buildings 1, 9 and 8
> Chuck Gornick stated that the repairs to Building 1 have been completed, Building 9 is finishing up and Building 8 will be next. Mr. Gomick stated that it appears that in windows that are double and triple hung, there is a gap at the top of the strip between the windows. It is believed that this is where the leaking is occurring. Mr. Gornick recommended having an engineering expert look at these windows to try and determine if this is a Centex problem. The Board recommended notifying Centex that an expert would be looking at the windows. Chuck Gomick stated that he would keep the Board posted on all developments.
>
> Teresa D'Arcy stated that the paint that was recently applied to the columns at Building 1 is not adhering. Chuck Gomick stated that he would inspect this.

Exhibit 32.1 at page 2(Meeting Minutes); Exhibit 32.2 (HOA witness testimony regarding the same).

33. By check dated January 11, 2007, Plaintiff paid $1,500 to L/E of South Carolina, Inc. for repair work at Building 6 at Wedgewood described in the invoice as:

> Tear out corner from 1st floor to 3rd floor, take rails down, repair bad wood put everything back.

Exhibit 33.1 at page 2(check and invoice); Exhibit 33.2 (HOA witness testimony regarding the same).

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34. By check dated February 01, 2007, Plaintiff paid $2,500.00 to L/E of South Carolina, Inc. for repair work at Building 8, where the invoice described the work as:

> Tearing out wall, replacing wood, new insulation, dry vents, wrapping, windows and walls, changing vents (drier).

Exhibit 34.1 at page 2(check and invoice); Exhibit 34.2 (HOA witness testimony regarding the same).

35. The minutes of the meeting of the board of director for Wedgewood on February 9, 2007 provide:

> E. Update on Plan to Replace Rotting Wood:
> Chuck Gornick presented bids to replace the rotting wood on the front posts of the buildings. Mr. Gornick stated that the worst buildings were Buildings 1, 3, 6 and 9. The Board agreed that work should begin on Building 1.

Exhibit 35.1 at page 2(Meeting Minutes); Exhibit 35.2 (HOA witness testimony regarding the same).

36. By check dated February 23, 2007, Plaintiff paid $2,500.00 to L/E of South Carolina, Inc. for work at Building 9 at Wedgewood described in the invoice as:

> A draw of $2500.00 to help pay for materials. Take carpet up on four hallways, cut floors out as needed. Put new installation in ceiling. Replace braces if bad, put new floor down and waterproof them. Put carpet back and clean. Repair sheetrock under ceilings and paint.

Exhibit 36.1 at page 2(check and invoice); Exhibit 36.2 (HOA witness testimony regarding the same).

37. By check dated February 23, 2007, Plaintiff paid $2,000.00 to L/E of South Carolina, Inc. for repair work at Building 9, where the invoice described the work:

> A draw of $2,000 for materials on tearing off back. Replace decayed boards, change installation, caulk windows, wrap windows, and wrap building before putting back together, prime, caulk, and paint."

Exhibit 37.1 at page 2(check and invoice); Exhibit 37.2 (HOA witness testimony regarding the same).

37. By check dated March 15, 2007, Plaintiff paid $6,000.00 to L/E of South Carolina, Inc. for repair work at Building 9, where the invoice described the work:

> Tearing off back wall, replacing all decayed wood, installation, spraying for mildew, wrap body of building, wrap windows, caulk and reassemable, prime and paint.

Exhibit 37.1 at page 4(check and invoice); Exhibit 37.2 (HOA witness testimony regarding the same).

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38. By check dated March 22, 2007, Plaintiff paid $10,500.00 to L/E of South Carolina, Inc. for work at Building 9 at Wedgewood described in the invoice as:

> Remove carpet, scrape floors tear out floors and replace. Install Hy-dro Stop, take rails down and replace all bad wood, fix 20 poles, tear out and replace, raise steps and repair steps, repair landing, install metal flashing, clean and reinstall carpet.
> Caulk, prime and paint.
> 4 porches, 4 ceilings, 4 landings.
> Balance due for both material and labor.
> Pictures have been submitted for all work. Job length is estimated to be about 4 weeks.

Exhibit 38.1 at page 2(check and invoice); Exhibit 38.2 (HOA witness testimony regarding the same).

39. On May 30, 2007, Wedgewood board member Randall Spencer, and copying other board members, included the following in an email to the Chuck Gornick, the property manager for Wedgewood: “By the way..bldg 6 has severe rotten wood on two posts facing the parking lot...first thing you notice as you walk up.. Please check”

Exhibit 39.1 at page 1(Email); Exhibit 39.2 (HOA witness testimony regarding the same).

40. By checks issued in March and April 2007, Plaintiff paid $22,967.00 to Ferg & Sons, LLC for repair work at Buildings 1 & 3, where the invoice described the work as:

> Removed and replaced all decayed wood with composite materials

Exhibit 40.1 at page 2, 11 and 19(check and invoice); Exhibit 40.2 (HOA witness testimony regarding the same).

> Primed and painting of new wood

Exhibit 40.1 at page 5, 7, 9, 12, 15 and 17(check and invoice); Exhibit 40.2 (HOA witness testimony regarding the same).

> Installed trim, Replaced bad wood, Caulked and primed wood, Painted all new wood on back of building

Exhibit 40.1 at page 4(check and invoice); Exhibit 40.2 (HOA witness testimony regarding the same).

41 Plaintiff’s property management generated a work order for Building 9 at Wedgewood including the following:

> Work to be Done: Repair damages wood railing on 2nd flr
> Work Completed Date: 11-28-07

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> Description of the Work: Home Depot for pressure treated lumber 14 miles R/T. Removed all damaged wood. Cut down and ripped wood to get installed. Cleaned up parking lot and disposed of damaged material.
> *Pressure treated lumber needs to air dry before sealing, caulking, and painting. Approx. 7 to 10 days.

Exhibit 41.1 at page 1(Work Order); Exhibit 41.2 (HOA witness testimony regarding the same).

42. Plaintiff's property management generated a work order on November 28, 2007 for Building 2 at Wedgewood including the following:[1]

> Work to be Done: Noticed during railing and light inspection. 1st flr-rt side by 214-ceiling coming apart. Water leaking from 2nd flr landing thru floor

Exhibit 42.2 at page 1(Work Order); Exhibit 42.2 (HOA witness testimony regarding the same).

43. On January 18, 2008, an email from the owner of Wedgewood Unit 824 to Chicora Management included the following:

> Also the carpeting at the base of the outside stairs has a spot that is accumulating water from somewhere and is stained and moldy, as well as by our door." The email response indicates that the email from forwarded to Chuck Gornick, property manager at Wedgewood, and that this area would be included in his next property inspection.

Exhibit 43.2 at page 1(email); Exhibit 43.2 (HOA witness testimony regarding the same).

44. On February 20, 2008, the owner of Unit 613 at Wedgewood emailed someone at Plaintiff's property management company stating:

> In December 2006, we visited the Chicora office about a water problem we found with our master bedroom window. We were advised that you were aware of the sealant issues and that it would be taken care of in the upcoming weeks/months. You advised that Wedgewood was being worked on at that time and Building #6 would come soon (in 2007).
>
> In the summer 2007, we saw a Chicora employee and questioned him about the issue. He was very kind, followed up for us, and advised "it will be done".
>
> It is now February 2008 and we have water coming into our bedroom. We have caulked our windows twice and that seemed to help - at least for the

[1] This Work Order is undated but would have been during the time that Chicora was Plaintiff's property management company. Plaintiff 30(b)(6) Dep., 236:19-237:1. Chicora ceased being Plaintiff's property manager on January 1, 2014, when Waccamaw Management became Plaintiff's property manager. See Waccamaw Management 30(b)(6) Dep., 23:15-20.

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> short term. but when we were in our condo on Monday Feb 1 9th during the morning rain -- quite a bit of water was coming in. We have a contractor coming in to caulk/seal from the inside ($150 - $50/window) but he says this will not fix the problem -- it must be correct by Centex . He advised it was from bad sealants and that this is a known.
>
> Please advise what the status is. Thank you very much.

Exhibit 44.1 at pages 3-4(email); Exhibit 44.2 (HOA witness testimony regarding the same).

44. Plaintiff's property manager responded by email to the owner of Unit 613 on February 20, 2008 stating:

> I have spoken with Chuck Gornick (Association Manager) and he has relayed that the 2007 Wedgewood budget constraints did not allow for the completion of this project and that Centex is no longer involved with The Wedgewood Association and will not take the responsibility of this sealant issue. The 2008 schedule for these repairs will begin in the summer and first , will be Bldg 9 and then Bldg 6.

Exhibit 44.1 at page 1(email); Exhibit 44.2 (HOA witness testimony regarding the same).

45. By checks issued in May, July, and August of 2008, Plaintiff paid $18,164.30 to Ferg & Sons, LLC for repair work at Buildings 6 & 9 described on the invoice:

> Completion of buildings #6 and #9 in Wedgewood for removal and replacement of all decayed wood," and "Completion of building #6 and #9 for caulking, priming and painting.

Exhibit 45.1 at pages 1-7(check and invoice); Exhibit 45.2 (HOA witness testimony regarding the same).

46. On August 18, 2008, the property manager for Wedgewood, Chuck Gornick, received an email reporting the following conditions at Building 4 at Wedgewood:

> I'd like to pass along two maintenance issues that maybe you could have someone take a look at:
> 1) The ceiling over the right side step well must be leaking because large paint/wallboard chips are falling down. It is in the corner near the street side.
> 2) On the second level, the floor under the carpet is rotting and feels weak when you step on it. It is near the rail up against the first step on the way up to the third level.

Exhibit 46.1 at page 1(email); Exhibit 46.2 (HOA witness testimony regarding the same).

47. By check dated October 31, 2008, Plaintiff paid $338.60 to LE of South Carolina Inc. for repair work at Building 2 at Wedgewood described in the invoice as:

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> Take up existing carpet, cut out section of floor in front of the Steps on the 2nd floor. Install a 1/2" sheet of plywood in the cut out area, install a water proof material on top of sheetrock, apply silicone to crack in the front of the steps. Reinstall the taken up carpeting by gluing back into position.

Exhibit 47.1 at page 2(check and invoice); Exhibit 47.2 (HOA witness testimony regarding the same).

47. By check dated October 31, 2008, Plaintiff paid $900.00 to LE of South Carolina Inc. for repair work at Buildings 2 & 4 at Wedgewood described in the invoice as:

> Tear out, Mud, sand, tape, prime, and paint the sheetrock where it is coming loose on the Buildings.

Exhibit 47.1 at pages 5-6(check and invoice); Exhibit 47.2 (HOA witness testimony regarding the same).

48. Minutes for the meeting of the board of directors for Wedgewood on August 22, 2008 provide:

> Property Inspection Report
> Chuck Gornick stated that U.S. Lawns would begin their contract on September 15th. Chuck Gornick, Randall Spencer and Jerome Grant had completed a walk through. Jerome Grant stated that the trim/frame at back of Bldg 1 is holding water and rust is appearing. Replacing the flashing would assist in this problem and noted Ferg & Sons would be correcting this problem. Also noted that this is a Reserve Item. Carl also noted that Clean Technologies be contracted to clean the carpets.

Exhibit 48.1 at page 2(meeting minutes); Exhibit 48.2 (HOA witness testimony regarding the same).

49. The minutes for the meeting of the board of directors for Wedgewood on February 6, 2009 state:

> Water Intrusion - Unit 611
> A leak was discovered above the dining room window area, most likely due to gaps and spacing not completely sealed and caulked. A musty smell was present in the unit, and pricing was obtained in order to correct the problem. The area will be visited and the estimate reviewed by the Board to ensure the proper corrective action is taken. Maintenance Staff will be starting a project to caulk and seal all 1st floor window areas as a preventative measure.

Exhibit 49.1 at page 4(meeting minutes); Exhibit 49.2 (HOA witness testimony regarding the same).

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50. By check dated April 24, 2009, Plaintiff paid $4,600.00 to Livingston's Carpet Cleaning for repair work at Building 6 at Wedgewood described in the invoice:

> Wedgewood 611 1-30-09
> Mold Cleaning…- Removed brick form under kitchen window…removed header, put new header in & treated area for mod…replaced brick & sealed area around window & window sill
>
> -removed sheetrock & headers from under dining room window…replaced headers & treated exterior walls & 2x4's for mold…replaced sheetrock—mudded & painted…sealed area around outside window & window sill

Exhibit 50.1 at page 2(check and invoice); Exhibit 50.2 (HOA witness testimony regarding the same).

51. The minutes for the meeting of the board of directors for Wedgewood on May 29, 2009 state:

> **B. Water Intrusion - Unit 611**
> This issue is ongoing from past meeting. The area will be visited and the estimate reviewed by the Board to ensure the proper corrective action is taken. Joe Rankin of the Chicora Maintenance Staff will begin the caulk and seal project, as discussed previously, on all 1st floor window areas as a preventative measure.
>
> **C. Unit 613- Water Intrusion**
> Carl Junier stated that Joe Rankin, Chicora On-Site Maintenance, has begun recaulking of this unit's windows to eliminate this problem.

Exhibit 51.1 at page 4 (board meeting minutes); Exhibit 51.2 (HOA witness testimony regarding the same).

52. On June 26, 2009, Plaintiff paid $123.15 to the Watershed Plbg. Co. Inc. for work at Unit 912 at Wedgewood described in the invoice as:

> Pulled clean out cap in front of unit and snake main line to clear clog causing backup into hall bathroom.

Exhibit 52.1 at page 1 (check and invoice); Exhibit 52.2 (HOA witness testimony regarding the same).

53. The minutes of the meeting of the board of director for Wedgewood on August 21, 2009 provide:

> Breezeway Ceilings
> Ellie Chuba reported that there are several repairs needed to the breezeway ceilings of building number 7. Randall Spencer requested that Chicora walk all the buildings to see if there are any others that need repair

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Exhibit 53.1 at page 2 (board meeting minutes); Exhibit 53.2 (HOA witness testimony regarding the same).

54. By check dated November 25, 2009, Plaintiff paid $750.00 to Livingston's Carpet Cleaning for "Mold Assessment throughout entire unit by Air Quality Analytical, Inc." for Unit 611 at Wedgewood.

Exhibit 54.1 at page 2 (check and invoice); Exhibit 54.2 (HOA witness testimony regarding the same).

55. By check dated December 18, 2009, Plaintiff paid $290.00 to Indigo Homes and Investments, Inc. for work at Building 1 at Wedgewood described:

> Labor and materials to replace trim around two windows on the right side of building, replacement wood used will be cedar , primed, chalked and painted.

Exhibit 55.1 at page 2 (check and invoice); Exhibit 55.2 (HOA witness testimony regarding the same).

56. By check dated January 22, 2010, Plaintiff paid $640.00 to Indigo Homes and Investments, Inc. for repair work at Unit 621 at Wedgewood described in the invoice as:

> Labor and materials to remove all rotten wood on rear balcony support column and replace with cedar wood, prime, caulk, and finish paint.
> Labor and materials to apply one coast of Kiltz and one coat of finish paint to the back porch ceiling.

Exhibit 56.1 at page 2 (check and invoice); Exhibit 56.2 (HOA witness testimony regarding the same).

By check dated January 22, 2010, Plaintiff paid $550.00 to Indigo Homes and Investments, Inc. for repair work at Building 4 at Wedgewood described in the invoice as:

> Labor and materials to repair water leak on the second floor at the top of stairs, pull carpet back and repair leak and reglue carpet and back in place and patch and paint ceiling below.

Exhibit 56.1 at page 3 (check and invoice); Exhibit 56.2 (HOA witness testimony regarding the same).

57. By check dated April 2, 2010, Plaintiff paid $770.00 to GH Home Builders LLC for repair work at Unit 621 at Wedgewood described in the invoice as:

> Window trim/siding removed @ side and rear window. Three (3) vent penetrations, ½ round window (rear), and entire double window (side) correctly flashed w/ Forti-flash. Metal Z-flashing installed @ both windows.

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> New window trim and 8 ¼" plank siding installed and painted to match existing. Three (3) vent covers installed and sealed.

Exhibit 57.1 at page 4 (check and invoice); Exhibit 57.2 (HOA witness testimony regarding the same).

By check dated April 2, 2010, Plaintiff paid $200 to CH Custom Renovations & Construction, LLC for an investigation of the source of water intrusion at Unit 621 at Wedgewood; the invoice provides:

> Perform discovery on this building to find where water intrusion was coming from. We found upon investigating that water was coming in around the dryer vent on the second floor at Unit 621. Upon finding problem, multiple pictures were taken then the area was sealed off until Chicora makes a decision on how to proceed.

Exhibit 57.1 at page 2 (check and invoice); Exhibit 57.2 (HOA witness testimony regarding the same).

By check dated June 11, 2010, Plaintiff paid $480.00 to Livingston's Cleaning & Restoration for repair work at Unit 621 described in the invoices as:

> -kiltz water stains around windows in and on dining room & master bedroom.
> -repaired cracks on wall and under window
> -caulked cracks on window & baseboards
> -painted wall around windows, casing & baseboards.

Exhibit 57.1 at page 6 (check and invoice); Exhibit 57.2 (HOA witness testimony regarding the same).

By check dated June 11, 2010, Plaintiff paid $365.00 to Livingston's Cleaning & Restoration for repair work at Unit 613 described in the invoices as:

> -kiltz water stains on window
> -scraped & removed old caulking, and recaulked window
> - painted window, baseboards & wall around window (corner to corner)

Exhibit 57.1 at page 6 (check and invoice); Exhibit 57.2 (HOA witness testimony regarding the same).

58. By check dated October 8, 2010, Plaintiff paid $1,155.00 to Indigo Homes and Investments, Inc. for repair work at Buildings 2, 4, and 9 at Wedgewood described in the invoice as:

> Labor and materials to remove and replace rotten floor decking in 3 areas , bldg. # 2 on 2nd floor, bldg. # 4 on 2nd floor, bldg. # 9 on 2nd floor.

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Exhibit 58.1 at page 2 (check and invoice); Exhibit 58.2 (HOA witness testimony regarding the same).

59. By check dated September 3, 2010, Plaintiff paid $57,077.64 to Plantation Flooring to remove and replace the outdoor carpets along the exterior walkways at all nine buildings at Wedgewood.

Exhibit 59.1 at page 2 (check and invoice); Exhibit 59.2 (HOA witness testimony regarding the same).

60. By check dated November 5, 2010, Plaintiff paid $1,145.00 to GH Home Builders LLC for repair work at Unit 722 described in the invoice as:

> • Remove triple window w / arch
> • Remove/ replace damaged structural components (ie jack studs and OSB sheathing)
> • Re-install existing window, flash window (fortiflash @ head, legs, and sill; tyvek)
> • Install/paint new window trim & lap siding
> • Remove/ replace damaged drywall
> • Remove/ replace damaged baseboard & window casing/jamb
> • Kick carpet back in place

Exhibit 60.1 at page 2 (check and invoice); Exhibit 60.2 (HOA witness testimony regarding the same).

61. By check dated December 17, 2010, Plaintiff paid $295.00 to Indigo Homes and Investments, Inc. for repair work at Building 9 at Wedgewood described in the invoice as:

> Labor and materials to remove and replace rotten floor decking on building # 9.

Exhibit 61.1 at page 2 (check and invoice); Exhibit 61.2 (HOA witness testimony regarding the same).

62. Plaintiff paid Indigo Homes and Investments, Inc. $1,154.00 for repair work at Buildings 1 & 2 at Wedgewood described in a December 26, 2010 invoice as:

> Labor and materials to remove and replace rotten double end post on the second floor at stairway landing by steps.

Exhibit 62.1 at page 1 (invoice); Exhibit 62.2 (HOA witness testimony regarding the same).

63. Plaintiff paid Indigo Homes and Investments, Inc. $1,154.00 for repair work at Buildings 4 & 9 at Wedgewood described in a December 29, 2010 invoice as:

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> Labor and materials to remove and replace rotten double end post on 2nd floor landing at end of rail post.

Exhibit 63.1 at page 1 (invoice); Exhibit 63.2 (HOA witness testimony regarding the same).

64. By checks issued in July – December 2010, Plaintiff paid GH Home Builders LLC $86,200.00 to remove and replace exterior trim at all nine buildings at Wedgewood. Exhibit 64.1 at pages 1-22 (check and invoices); Exhibit 64.3 (HOA witness testimony regarding the same).

Documents submitted to and by the Building Department describe this work:

> Replace damaged exterior trim (miratec) as need with new plycem cement boards. Per all applicable codes and ordinances.

Exhibit 64.2 at pages 1-29 (Building Department records); Exhibit 64.3 (HOA witness testimony regarding the same).

65. The minutes from the meeting of the board of directors for Wedgewood dated November 11, 2011 state:

> C. Ceilings
> Due to the conditions of the breezeway ceilings the Board has requested Mike Runser to gather proposals for repairing the damaged areas in all of the buildings.

Exhibit 65.1 at page 1 (board meeting minutes); Exhibit 65.2 (HOA witness testimony regarding the same).

66. On November 11, 2011, Plaintiff paid $75.00 to the Watershed Plbg. Co. Inc. for work at Unit 912 at Wedgewood described in the invoice: “Snaked main drain through clean out in front of unit to clear clog.”

Exhibit 66.1 at page 1 (check and invoice); Exhibit 66.2 (HOA witness testimony regarding the same).

67. By check dated January 20, 2012, Plaintiff paid $12,595.00 to GH Home Builders LLC for repair work at all nine buildings described in the invoice as:

- Remove existing damaged drywall (as needed) in all breezeway corridor ceilings, remove (cut out) tape at all drywall joints in ceilings, scrape all loose material in ceilings
- Remove existing damaged MiraTec trim boards (as needed) in all breezeway corridor ceilings
- Provide/hang/tape/finish new drywall (as needed) in ceilings (total 12 sheets)
- Tape/finish all drywall joints, point-up/finish all deficiencies in breezeway ceilings

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- Caulk all existing trim/ drywall intersections in breezeway ceilings
- Provide/install new Hardee board trim in damaged areas in breezeway ceilings (total 13 boards)
- Prime all breezeway ceilings (material and labor), entire area
- Finish paint all breezeway ceilings (material and labor), entire area
- Finish paint all new Hardee board trim in breezeway ceilings
- All equipment/ cleanup included

Exhibit 67.1 at page 2 (check and invoice); Exhibit 67.2 (HOA witness testimony regarding the same).

68. On November 2, 2012, Plaintiff paid $192.12 to the Watershed Plbg. Co. Inc. for work at Unit 912 at Wedgewood described in the invoice as:

> Used jetter to clear grease clog from main. The grease caused backup. Installed safety fitting outside unit to help prevent future backups.

Exhibit 68.1 at page 2 (check and invoice); Exhibit 68.2 (HOA witness testimony regarding the same).

On November 2, 2012, Plaintiff paid $150.00 to the Watershed Plbg. Co. Inc. for work at Unit 912 at Wedgewood described in the invoice as:

> Used camera to check sewer main serving # 12 stack of units and found line holding water to at least 2 feet under unit.

Exhibit 68.1 at page 3 (check and invoice); Exhibit 68.2 (HOA witness testimony regarding the same).

This invoice dated October 17, 2012 from Watershed Plbg. Co. Inc. for its inspection at Unit 912 added:

> I recommend changing the direction and height of the pipe that can be reached under sidewalk to see if it will be enough to stop backups before the next step of going through the floor of the unit to access that part of the sewer line.

Exhibit 68.1 at page 3 (check and invoice); Exhibit 68.2 (HOA witness testimony regarding the same).

69. The minutes for the board meeting for the board of directors for Wedgewood on November 2, 2012 provide as follows:

> B. Additional Maintenance
> Mike Runser gave an update on the damages and repairs to a unit as a result of a plumbing backup. The Board was told that Chicora is working with RJM Plumbing to determine if the cause of the backup was due to poor

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installation on the builder's part. The Board asked Mike Runser to keep them up to date on what happens as the investigation continues.

Exhibit 69.1 at page 4 (board meeting minutes); Exhibit 69.2 (HOA witness testimony regarding the same).

70. The minutes from the meeting of the board of directors for Wedgewood dated January 25, 2013 state:

> A. Outdoor Carpet Repairs
> The Board was updated on the progress of the breezeway repairs. All repairs have been made to the wood, and we are now waiting on the carpet to be installed.

Exhibit 70.1 at page 2 (board meeting minutes); Exhibit 70.2 (HOA witness testimony regarding the same).

71. By check dated February 22, 2013, Plaintiff paid $1,565.00 to SB Precision Builders for repair work at Building 4 at Wedgewood described in the invoice as:

> 2nd & 3rd floor left side:
> Remove drywall, carpet, rotted flooring & blocking, hardie trim, railing, brackets, and install temporary rails where required.
> Remove & replace 1 - 5" posts and 4 - 4" posts.
> Install treated flooring, bracing, aluminum drip edge, 5 rail posts, brackets, railing, drywall, hardie, and paint touch ups.
> Sealoflex applied around all posts and newly installed lumber.

Exhibit 71.1 at page 2 (check and invoices); Exhibit 71.2 (HOA witness testimony regarding the same).

By check dated February 22, 2013, Plaintiff paid $1,280.00 to SB Precision Builders for repair work at Building 6 at Wedgewood described in the invoice as:

> 2nd floor right side:
> Secure and repair 2nd floor right side stairway. Stabilize stairs and add a ledger to secure treads.
> Remove drywall, carpet, rotted flooring & blocking, hardie trim, railing, brackets, and install temporary rails where required.
> Remove & replace 1 - 5" post.
> Install treated flooring, bracing, aluminum drip edge, 1 rail post, brackets, railing, drywall, hardie, and paint touch ups.
> Sealoflex applied around post and newly installed lumber

Exhibit 71.1 at page 3 (check and invoices); Exhibit 71.2 (HOA witness testimony regarding the same).

By check dated February 22, 2013, Plaintiff paid $2,675.00 to SB Precision Builders for repair work at Building 1 at Wedgewood described in the invoice as:

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Remove drywall, install temporary floor bracing on right side 2nd floor.

2nd floor left & right sides:
Remove drywall, carpet, rotted flooring & blocking, hardie trim, railing, brackets, and install temporary rails where required.
Remove & replace 6 - 5" posts and 3 - 4" posts.
Install treated flooring, bracing, aluminum drip edge, 9 rail posts, brackets, railing, drywall, hardie, and paint touch ups.
Sealoflex applied around all posts and newly installed lumber.

Exhibit 71.1 at page 4 (check and invoices); Exhibit 71.2 (HOA witness testimony regarding the same).

By check dated February 22, 2013, Plaintiff paid $2,675.00 to SB Precision Builders for repair work at Building 2 at Wedgewood described in the invoice as:

Remove drywall, install temporary floor bracing on right side 2nd floor.
2nd & 3rd floor right side:
Remove drywall, carpet, rotted flooring & blocking, hardie trim, railing, brace and install temporary rails where required.
Remove & replace 5 - 5" posts and 4 - 4" posts.
Install treated flooring, bracing, aluminum drip edge, 9 rail posts, brackets, railing, drywall, hardie, and paint touch ups.
Sealoflex applied around all posts and newly installed lumber.

Exhibit 71.1 at page 5 (check and invoices); Exhibit 71.2 (HOA witness testimony regarding the same).

72. By check dated May 31, 2013, Plaintiff paid $4,880.00 to SB Precision Builders for repair work at Units 613/623 at Wedgewood described in the invoice:

Repair leak at window at 2nd story, repair damage to unit below around window.

Exhibit 72.1 at page 2 (check and invoice); Exhibit 72.2 (HOA witness testimony regarding the same).

73. By check dated August 30, 2013, Plaintiff paid $480.00 to SB Precision Builders for repair work at Building 9 at Wedgewood described in the invoice as:

Pull back carpet remove rotten wood near 2nd floor kneewall in breezeway, waterproof new section. (Carpet install by others).

Exhibit 73.1 at page 2 (check and invoice); Exhibit 73.2 (HOA witness testimony regarding the same).

74. By check dated October 11, 2013, Plaintiff paid $215.00 to SB Precision Builders for repair work at Unit 912 at Wedgewood described in the invoice:

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> Termite repairs in exterior wall of master bedroom. Remove the following: hardie trim, brick, triple window, house wrap, sheathing, trim, drywall, insulation, and damaged lumber. Replaced all damaged framing, sheathing, housewrap, brick, hardie, insulation, drywall, trim, and paint to match existing color in master bedroom.

Exhibit 74.1 at page 2 (check and invoice); Exhibit 74.2 (HOA witness testimony regarding the same).

By check dated October 11, 2013, Plaintiff paid $1,110.00 to SB Precision Builders for repair work at Unit 123 at Wedgewood described in the invoice as:

> Remove drywall on ceiling, remove railing & screening, rotten flooring. Waterproof new areas, install railing, install screening, install drywall, finish, and paint.).

Exhibit 74.1 at page 3 (check and invoice); Exhibit 74.2 (HOA witness testimony regarding the same).

75. By check dated May 29, 2014, Plaintiff paid $4,220.00 to SB Precision Builders for repair work at Wedgewood described in the invoice as:

> Remove drywall, install temporary floor bracing on left/right side 2nd floor.
>
> 2nd Floor left & right side:
> Remove drywall, carpet, rotted flooring & blocking, hardie trim, railing, brackets, and install temporary rails where required.
> Remove & replace 5" posts and 4" posts.
> Install treated flooring, bracing, aluminum drip edge, rail posts, brackets, railing, drywall, hardie, and paint touch ups.
> Sealoflex applied around all posts and newly installed lumber.

Exhibit 75.1 at page 2 (check and invoice); Exhibit 75.2 (HOA witness testimony regarding the same).

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STATE OF SOUTH CAROLINA COUNTY OF HORRY Wedgewood Condominium Association, Plaintiff, vs. Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, Crescent Architects, LLC and CEMS Engineering, Inc., Defendants. Centex Homes, a Nevada General Partnership, Third-Party Plaintiff, vs. Right Way Construction, Inc. a/k/a RWG, Inc. a/k/a Right Way Group, Inc. a/k/a RWGR, Inc.; et. al., Third-Party Defendants.	IN THE COURT OF COMMON PLEAS Case No.: 2018-CP-26-00307 **MEMORANDUM IN SUPPORT OF CENTEX'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF**

Centex Homes, a Nevada General Partnership, ("Centex") hereby submits this memorandum in support of its motion for summary judgment against Plaintiff.

INTRODUCTION

Centex seeks summary judgment against Plaintiff based the statute of limitations. Plaintiff asserts claims based on alleged construction defects identified by its expert Ross Clements, largely at the exterior walls and exterior walkways/balconies of the Wedgewood buildings and mostly relating to alleged sources of water intrusion that Plaintiff's expert says have or may result in wood rot or other property damage.

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Submitted as Exhibit A to Centex's motion is a lengthy list of Undisputed Facts (and the exhibits 1.1 – 75.2 thereto, comprising of the invoices, board meeting minutes, correspondence, and other documents, as well as the HOA deposition testimony regarding each), which details the lengthy history between 2003 and May 2014 of moisture and other building issues at Wedgewood. The only reasonable inference from this set of undisputed facts submitted with Centex's motion is that Plaintiff knew, or should have known through the exercise of reasonable diligence, that a cause of action might exist in its favor well more than three years prior to filing of this lawsuit on January 18, 2018.[1] Therefore, the Court should grant summary judgment in favor of Centex.

LEGAL STANDARD

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.,* 368 S.C. 342, 356, 628 S.E.2d 902, 910 (Ct. App. 2006). When factual matters are in dispute, all ambiguities, conclusions, and inferences arising in and from the evidence must be viewed in a light most favorable to the non-moving party. *Id.* However, when the facts are not in dispute, the question before the court is one of law. *Id*.

"Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." *Allwin v. Russ Cooper Assocs., Inc*., 426 S.C. 1, 11, 825 S.E.2d 707, 712 (Ct. App. 2019). A three-year statute of limitations applies to claims alleging construction defects and property damage. *See* S.C. Code Ann. § 15-3-

[1] Plaintiff initially filed this claim with the AAA on October 19, 2017 but on November 7, 2017 agreed to withdraw from arbitration and, on January 18, 2018, filed this action in court. While Centex reserves the right to argue that January 18, 2018 was the date on which the statute of limitations stopped running, the distinction between October 19, 2017 and January 18, 2018 does not appear to be material with respect to this motion, as the evidence Centex submits in support of its motion ranges from 2003 to May 2014.

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530(1) and (5) (2005) (providing a three-year statute of limitations for "an action upon a contract, obligation, or liability, express or implied" and "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law"); *see also Allwin v. Russ Cooper Assocs., Inc*., 426 S.C. 1, 12, 825 S.E.2d 707, 713 (Ct. App. 2019) (affirming order granting summary judgment against plaintiff-homeowner in lawsuit alleging construction defects against homebuilder based on three year statute of limitations).

Generally, a cause of action accrues under South Carolina law the moment the defendant breaches a duty owed to the plaintiff. *Id.* However, the discovery rule may toll the accrual of the statute of limitations. *Id.* Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. *Id.* Therefore, the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto. *Id.* The South Carolina Supreme Court has interpreted the "exercise of reasonable diligence" to mean that the injured party must act with some promptness when on notice of a potential claim. *Id.*

When only one reasonable inference can be drawn from the evidence, the determination of when a party knew or should have known that he or she had a claim becomes a matter of law to be decided by the trial court. Gibson v. Bank of Am., N.A., 383 S.C. 399, 406–07, 680 S.E.2d 778, 782 (Ct. App. 2009).

PLAINTIFF'S CLAIMS

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This is a construction defect lawsuit arising out of the construction of the Wedgewood condominiums ("Wedgewood"). Wedgewood was built between 2000 – 2001 and is comprised of nine buildings with a total of 111 separate condominium units.

Plaintiff is the Association for Wedgewood and was created by the filing of the Master Deed for Wedgewood on January 18, 2001. See Exhibit B (Master Deed & By-Laws). Under the Master Deed, Plaintiff has the duty to maintain, and repair as needed, the "Common Areas" (as defined by the Master Deed) of the Wedgewood property.[2] Exhibit B at p.23 (§8.1 of Master Deed); Exhibit C, Excerpts from 30(b)(6) Dep. of Plaintiff at p.10; 39:7-41:9. Plaintiff is managed by a five-person board of directors comprised of Wedgewood unit owners. Id. at 38:15-40:21. Since its inception, Plaintiff has utilized a property management company to assist it with the management of the property.

Plaintiff asserts claims against Centex as the general contractor and developer for Wedgewood based on alleged construction defects identified by its expert witness, architect Ross Clements. Clements investigated the property starting in 2016 and, on May 2, 2018, issued a written report identifying construction deficiencies he contends exist at Wedgewood and repairs he contends are needed as a result. The damages Plaintiff seeks is the amount of money its estimating expert, Robert Gallagher, says is needed to make the repairs recommended by Clements.

Clements' investigation of Wedgewood largely focused on the buildings' exteriors, particularly for sources of water intrusion. The photographs below are examples of the typical front and rear exteriors of the Wedgewood buildings.[3]

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[2] Generally speaking, the Common Areas include the building exteriors and project grounds while the "Units" are the building interiors. Plaintiff 30(b)(6) Dep., 44:4-13. The specific delineation between Common Areas (maintained by Plaintiff) and the "Units" (maintained by the individual unit owners) is determined by the Master Deed.

[3] While there are some differences in design, the nine Wedgewood buildings are mostly the same.

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During his investigation of Wedgewood, Clements made "destructive test cuts" on the buildings, removing exterior building components to inspect the condition of the building behind the removed components. These "destructive test cuts" were largely made at two general areas of the buildings: (1) at the exterior walls (mostly above or below windows) and (2) at the exterior walkways/balconies.

Exterior walls

Shown below are representative photographs from Clements' files depicting typical destructive test cuts made by Clements at the exterior walls.



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Clements contends he uncovered construction deficiencies that have or may result in water intrusion at these locations, including leaking widows due to improper or missing sealants within the mull joints of the double- and triple-windows and improper flashings. Clements issued a recommended scope of repairs to remove the entire exterior cladding and building wrap on nine buildings at Wedgewood in order to inspect for and make repairs to building components damaged by water intrusion.[4]

Exterior Walkways/Balconies

The front of the Wedgewood buildings have walkways leading to each unit's front door. These "exterior walkways" are carpeted and, on the 2nd and 3rd floors, below the carpet is a liquid-applied waterproofing membrane placed over the top of the wood deck subflooring. On the rear of buildings, each unit has a private balcony and, similar to the front walkways, under the carpeted or tiled flooring for these balconies is a liquid-applied waterproofing membrane placed over the top of the wood deck subflooring.





To investigate potential water intrusion at the exterior walkways and balconies, Clements made destructive test cuts from the flooring surface of the walkways/balconies

[4] Clements contends the exterior walls should also be replaced due to alleged attachment errors. While the merits of this disagreement are beyond the scope of this motion, it should be noted that engineering experts retained by Centex to inspect the property disagree with much of Clements' opinions, and they have issued a far narrower recommended scope of repairs for which an estimating expert retained by Centex has estimated would cost $417,889.01 (and opines that the need for much of these repairs was caused or contributed by Plaintiff's own lack of proper maintenance).

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and through the ceilings to inspect for water intrusion damage. Clements also made destructive test cuts into the face of the walkways and balconies, as well as at the exterior wall where it intersects with the edge of the walkways and balconies. To illustrate, below are representative photographs of Clements' test cuts at these general locations.


IMG_3306




IMG_2915




DSCF8587



Clements contends that deficiencies exists with the waterproofing membrane and other weather protection components at these locations, which he says allow for water to infiltrate to the walkway ceilings and subflooring and to the face of the walkways and balconies and down to the exterior walls, and Clements' repair recommendation is to remove and replace essentially all of the components comprising the walkways and balconies (carpets, waterproofing membranes, wood subflooring and framing) due to the water intrusion issues he says exists.

Summary of Location of Plaintiff's Expert's Destructive Test Cuts

Plaintiff's expert Ross Clements included in his May 2, 2018 report a list of the destructive test cuts he had made as part of his investigation. Clements' list is reproduced below, except that colored highlights have been added to each cut to show to which of these categories Clements' test cuts belong.

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Key
Exterior Wall above/below Windows
Walkway/Balcony Flooring/Membrane
Walkway/Balcony Ceiling
Walkway/Balcony Intersection with Exterior Wall
Base of Exterior Wall below Deck-Wall Intersection
Face of Walkway/Balcony

Destructive Test Cuts			
Building	Test Cut	Description	Cladding/Covering
1	1-A	Window sill	Brick
1	1-B	Base of wall	Brick
1	1-C	Window head	Brick
1	1-D	Window sill	Hardiplank
1	1-E	Horizontal band board	Hardipanel
1	1-F	Balcony edge-to-wall	Hardipanel
1	1-G	Base of stairs (ceiling)	Gypsum Sheathing
1	1-H	Stair landing edge (ceiling)	Gypsum Sheathing
1	1-I	Stair landing edge (ceiling)	Gypsum Sheathing
2	2-A	Walkway edge (ceiling)	Gypsum Sheathing
2	2-B	Walkway edge (ceiling)	Gypsum Sheathing
3	3-A	Walkway edge-to-wall	Harditrim
		Horizontal band board	Hardipanel
3	3-B	Walkway edge-to-wall	Harditrim
		Horizontal band board	Hardipanel
3	3-C	Window sill	Brick
3	3-D	Window head (arch)	Brick
3	3-E	Window head (arch)	Brick
3	3-F	Field of wall below stair landing	Brick
3	3-G	Base of wall	Brick
3	3-H	Window sill	Hardie Shingleside
3	3-I	Face of balcony	Hardipanel
		Balcony edge-to-wall	Brick
3	3-J	Base of wall	Brick
3	3-K	Window sill	Brick
3	3-L	Walkway waterproofing	Carpet
4	4-A	Window sill	Hardiplank
4	4-B	Horizontal band board	Hardipanel
5	5-A	Balcony edge (ceiling)	Gypsum Sheathing
6	6-A	Face of balcony	Hardiplank
		Balcony edge-to-wall	
6	6-B	Balcony deck-to-wall	Hardiplank
6	6-C	Balcony edge-to-wall	Hardipanel
6	6-D	Balcony ceiling	Gypsum Sheathing
6	6-E	Base of wall	Brick
6	6-F	Face of walkway	Hardipanel
		Horizontal band board	
6	6-G	Face of walkway at column	Hardipanel
6	6-H (ext.)	Walkway waterproofing	Carpet
6	6-H (int.)	Shear wall	N/A
6	6-I	Ceiling at party wall	N/A
7	7-A	Window head (arch)	Brick
7	7-B	Base of wall	Brick
7	7-C	Window sill	Brick
7	7-D	Shear wall	N/A
7	7-E	Ceiling at party wall	N/A
8	8-A	Window sill	Hardiplank
8	8-B	Window head	Hardiplank
8	8-C	Walkway edge/field (ceiling)	Gypsum Sheathing
8	8-D	Walkway ceiling at attic	Gypsum Sheathing
9	9-A (DMV)	Window head	Hardiplank
9	9-A (IWH)	Walkway deck-to-wall	Hardiplank
9	9-B (DMV)	Window sill	Hardiplank
9	9-B (IWH)	Face of walkway at column	Hardipanel
9	9-C (DMV)	Horizontal band board	Hardipanel
9	9-C (HBC)	Walkway waterproofing	Carpet
9	9-D	Base of stairs (ceiling)	Gypsum Sheathing
9	9-E	Walkway edge (ceiling)	Gypsum Sheathing
9	9-F	Walkway edge (ceiling)	Gypsum Sheathing
9	9-G	Walkway waterproofing	Carpet
9	9-H	Balcony edge (ceiling)	Gypsum Sheathing
9	9-I	Balcony column	Hardipanel

As shown above, all but four (Test Cuts #6-H, 6-I, 7-D, and 7-E) of the 62 test cuts made by Clements before issuing his May 2, 2018 report were made at the exterior walls or locations at the front exterior walkways or rear balconies.

Other Alleged Defects.

A smaller portion of Plaintiff's claim relates to alleged defects that Plaintiff's expert Clements identified away from the exterior walls or walkways or balconies: at the attics, shear walls, floor/ceiling assemblies, plumbing lines, roofs, and handicap ramps and other exterior concrete work.

ARGUMENT

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Plaintiff's claims against Centex are barred by the statute of limitations. The list Undisputed Facts submitted as Exhibit A to Centex's motion for summary judgment contains seventy-five paragraphs detailing the long history from 2003 to 2014 of repeated water intrusion issues and repairs Plaintiff has had at the exterior walls, walkways, and balconies, as well as Plaintiff's board meeting minutes, correspondence, and other documents showing Plaintiff's knowledge of these repeated issues and Plaintiff's assertions at the time that Centex was responsible for them. Similarly, Plaintiff was put on notice at a time no later than 2012 of the exact condition it complains of with respect to alleged plumbing defects, and Plaintiff's board of directors thought at that time that Centex might be responsible.

The only reasonable inference from this set of undisputed facts is that Plaintiff knew, or should have known through the exercise of reasonable diligence, that a cause of action might exist in its favor well more than three years prior to filing of this lawsuit on January 18, 2018. Therefore, the Court should grant summary judgment in Centex's favor.

I. Moisture Issues and Repairs from 2003 to May 2014 Put Plaintiff on Notice of Its Claims.

The list of Undisputed Facts submitted as Exhibit A to Centex's motion for summary judgment is in chronological order. Below is a summary of the items organized in these categories: (1) water intrusion issues at exterior walls, (2) water intrusion issues at exterior walkways and balconies; and (3) plumbing repairs at Unit 912.

1. Exterior Walls / Windows

Minutes from a meeting of Plaintiff's board of directors on August 18, 2003 show that a powderpost beetle infestation was found at four windows at Building 4. Undisputed Facts, ¶1. In April 2004, Plaintiff paid $225.00 to re-caulk the rear triple windows in Unit

912 and Unit 913 and repair drywall within Unit 913. Undisputed Facts, ¶7. In August 2004, the owner of Unit 722 reported a water leak at the triple window at the rear of that unit to Plaintiff's property manager. Undisputed Facts, ¶8. In September 2005, a window leak in Unit 813 was reported to Plaintiff's property manager; the work order generated to repair the issue states: "Please caulk where needed. Please check flashings." Undisputed Facts, ¶13. Minutes from a meeting of Plaintiff's board of directors on April 19, 2005 show it was reported to Plaintiff's board of directors during this meeting that "the caulking around the windows is going bad, causing leaks." Undisputed Facts, ¶11.

On August 12, 2005, minutes from a meeting of Plaintiff's board of directors shows the Plaintiff's board had "window caulking concerns" and that its president spoke with board presidents of other condominiums in the Barefoot Resort built by Centex about speaking with Centex about "needing the windows fixed." Undisputed Facts, ¶14. On this same date, Plaintiff's property manager issued a work order based on reports of "water stains and wood rotting on all corner units." Undisputed Facts, ¶12.

From October 2005 to September 2006, Plaintiff's property manager received complaints of water intrusion at windows on at least ten different occasions, across nine different units in six different buildings. The owner of Unit 813 reported during a meeting of Plaintiff's board of directors on January 14, 2006 that a window in his unit was still leaking even after being recaulked. Undisputed Facts, ¶18.

In August 2006, Plaintiff paid $2,700 to have three buildings inspected for termites, showing the concern the board of directors had regarding water intrusion at this time. Undisputed Facts, ¶23. The inspector reported that the buildings' corners had "wood decay fungi." *Id*.

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From September – November 2006, Plaintiff paid $17,750 to perform water intrusion repairs at three of the building at Wedgewood. Undisputed Facts, ¶¶28, 30, 31. These repairs included "tearing off" the exterior walls and "replacing damaged wood" and to "reflash all windows." *Id*. The minutes for Plaintiff's board meeting on October 28, 2006 (in a paragraph labeled "Update to Repairs on Buildings 1, 9 and 8") show that Plaintiff's property manager reported to Plaintiff's board of directors that the cause for the water intrusion that necessitated these repairs was that "in windows that are double and triple hung, there is a gap at the top of the strip between the windows."[5] Undisputed Facts, ¶32.

During that same board meeting on October 28, 2006, Plaintiff's property manager recommended to Plaintiff's board of directors to have "an engineering expert look at these windows to try and determine if this is a Centex problem." Undisputed Facts, ¶32. The minutes added, "The Board recommended notifying Centex that an expert would be looking at the windows." Undisputed Facts, ¶32.

Plaintiff paid $2,500 in February 2007 for repairs at Building 8 and another $8,000 for repairs to Building 9. Undisputed Facts, ¶36 and ¶37. Similar to the repairs from the previous year, these repairs were to "tear off" the exterior wall in order to "replace decayed boards, change installation, caulk windows, wrap windows, and wrap building." *Id*.

Plaintiff then made similar repairs to Buildings 1 and 3 at Wedgewood. In March and April 2007, Plaintiff paid at least $22,967.00 to Ferg & Sons, LLC for repairs to

[5] Notably, this is precisely what Plaintiff's expert in this case contends: Dep. of R. Clements, 628:19-22 ("[I]t's clear to me that the windows were not properly mulled together, and I believe that's contributing to the water intrusion that we have below the windows."); Dep. of R. Clements, 630:13-28 ("[W]e don't have that sealant installed where these window are mulled together. So I believe that's providing a direct path for water to migrate behind the flashing at the sill and also to enter at the head of the window and go down between the mullions."). Exhibit D at 2.

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"remove and replace all decayed wood." Undisputed Facts, ¶36. The invoices show that the "new wood" was installed at the "back of buildings." *Id*.

On February 20, 2008, the owner of Unit 613 emailed Plaintiff's property manager complaining of another window leak and advising that a repair contractor told her: that caulking the window will not fix the problem, that "it must be correct[ed] by Centex," and that "it was from bad sealants and that this is a known problem that is being fixed." Undisputed Facts, ¶44. The property manager responded by email that "Centex is no longer involved with The Wedgewood Association and will not take the responsibility of this sealant issue." Undisputed Facts, ¶44.

Minutes from a meeting of Plaintiff's board of directors on August 22, 2008 show that two members of Plaintiff's board of directors and it property manager had recently done a walkthrough and found that "that the trim/frame at back of Bldg 1 is holding water and rust is appearing" and that "replacing the flashing would assist in this problem and noted Ferg & Sons would be correcting this problem." Undisputed Facts, ¶48.

In May, July, and August of 2008, Plaintiff paid another $18,164.30 to Ferg & Sons, LLC for repair work at Buildings 6 & 9 for "removal and replacement of all decayed wood." Undisputed Facts, ¶45.

Minutes from a meeting of Plaintiff's board of directors on February 6, 2009 show that Plaintiff's board of directors discussed window leak at Unit 611 during this meeting; the minutes show it was reported to Plaintiff's board that the leak was "most likely due to gaps and spacing not completely sealed and caulked." Undisputed Facts, ¶49. In April 2009, Plaintiff paid $4,600.00 to remove, repair, reinstall the exterior wall around windows at Unit 611. Undisputed Facts, ¶50. Minutes from a meeting of Plaintiff's board of directors on May 29, 2009 shows water intrusion at windows within Unit 613 was also reported to

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board at this time. Undisputed Facts, ¶51. In November 2009, Plaintiff paid to have a mold assessment throughout the entire unit of Unit 611. Undisputed Facts, ¶54.

In April 2010, Plaintiff paid $770 to make repairs at Unit 621, which included removing the siding and trim around the triple window on the rear of Unit 621 and double window on the side of Unit 621 and three exterior vent penetrations in order to "correctly flash" the windows with "Forti-flash" and "metal z-flashing." Undisputed Facts, ¶57. In June 2010, Plaintiff paid $480.00 to repair water damage at these windows at Unit 621 and paid $365 to repair water damage at a window at Unit 613. Undisputed Facts, ¶57.

In November 2010, Plaintiff paid $1,145 to remove the triple window at the rear of Unit 711, replace damaged structural components, re-install and re-flash the window, and install new exterior cladding at this location. Undisputed Facts, ¶60.

In December 2009, Plaintiff paid $290.00 to remove and replace the exterior trim around two windows at Building 1 with a new replacement product. Undisputed Facts, ¶55. Then, in July – December 2010, Plaintiff paid $86,200.00 to remove and replace exterior trim at all nine buildings at Wedgewood with new cement boards. Undisputed Facts, ¶64. Documents submitted by the contractor to the building department state that the work was to "replace damaged exterior trim." Undisputed Facts, ¶64.

In May 2013, Plaintiff paid $4,880.00 to a repair contractor to "repair leak at window at 2nd story [and] repair damage to unit below around window." Undisputed Facts, ¶72. In October 2013, Plaintiff paid $215 to that repair contractor for similar work at a window at Unit 912. Undisputed Facts, ¶74.

2. Exterior Walkways / Balconies.

During an August 2003 board meeting, Plaintiff's board of directors discussed mold in the walkway carpets. Undisputed Facts, ¶1. The meeting minutes state, "It is clear there

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is a problem, although it is uncertain where responsibility lies." *Id*. Plaintiff's property manager explained to the board that the other communities in Barefoot Resort built by Centex were having similar problems and that "perhaps a President's meeting would be beneficial to discuss this and other similar problems." *Id*. Minutes from a meeting of Plaintiff's board of directors on October 24, 2003 show that "Carpet mold was again discussed," and that Plaintiff's board voted in favor of sending the letter to Centex. Undisputed Facts, ¶2.

On October 28, 2003, Plaintiff sent a letter to Centex as "notice to a number of unsatisfactory conditions existing in all buildings at the Wedgewood." Undisputed Facts, ¶3. The letter states:

> With the growth of mold and mildew, the carpet in the common areas, walkways and patios, is unsightly, unsafe and promoting a general health hazard. As a result of this unacceptable carpet condition, mold and mildew is also growing on the ceilings between each floor of the common areas and patios. . . . The situation has become unbearable and unacceptable!
>
> It is the Board's position that Centex, having installed this carpet material without any input from the homeowners, has a responsibility to remedy the situation before the problem compounds itself.

Undisputed Facts, ¶3.

Minutes from a meeting of Plaintiff's board of directors on January 10, 2004 show that Plaintiff had met with Centex regarding the ongoing issue of mold and mildew and that Plaintiff hoped to resolve the issue in partnership with Centex and its property manager. Undisputed Facts, ¶4. The board passed a motion to "stay on top of this issue and also have an inspection of common area ceilings to prevent moisture from gathering and causing damage." *Id*.

Minutes from a meeting of Plaintiff's board of directors show that Plaintiff's board president met with Centex on March 12, 2004, where the "main issue was mold and

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mildew in common areas." Undisputed Facts, ¶5. During this meeting, Plaintiff's property manager suggested that the board hire "an independent inspector to inspect walls, ceilings and other problem areas." *Id*. On March 25, 2004, Full Steam Ahead, Inc. inspected the walkway ceilings for mold and reported surface mold on the corridor ceilings and two areas with excessive moisture readings. Undisputed Facts, ¶6.

On March 21, 2005, a homeowner reported that wood is rotting on the floor landing on the exterior walkways. Undisputed Facts, ¶10. Minutes from a meeting of Plaintiff's board of directors on August 12, 2005 show that the president of Plaintiff's board of directors met with some homeowners regarding their "general concerns about the deterioration of the buildings." Undisputed Facts, ¶14. The minutes show the "major complaints" included "mold around the soffit" and "mold on the vinyl edging." *Id*. Minutes from a meeting of Plaintiff's board of directors on April 19, 2005 show that during this meeting "a discussion ensued regarding the status of the carpets in the building" and it was noted that "many are mildew stained." Undisputed Facts, ¶11.

On February 21, 2006, the owner of Unit 921 emailed members of Plaintiff's board of directors regarding "concerns of the deteriorating property of Wedgewood," which included "carpet is molded, pillers cracked and rotten, ceiling drywall cracked/peeling, stairwells rotten wood." Undisputed Facts, ¶19. During a meeting of Plaintiff's board of directors on March 24, 2006, the board discuss replacing the exterior carpets with the different, synthetic covering. Undisputed Facts, ¶20.

On August 2, 2006, a Wedgewood homeowner reported to Plaintiff's property manager that, at Building 4 at Wedgewood, "the flooring board under the carpet is rotten and you can step through it if you try to." Undisputed Facts, ¶24. To repair this area, Plaintiff's property manager had work performed to "Removed damaged section of floor"

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and "installed waterproof membrane over repaired area. Put down outdoor carpet adhesive and positioned carpet in place." Undisputed Facts, ¶25. Plaintiff's 30(b)(6) designee, a board member since 2011, admits that damage under the exterior carpets on the walkways can and has been discovered over the years by walking over soft spots. *Id*.

In September 2006, Plaintiff paid $1,672.00 to perform repairs on the rear balconies at Units 124 and 134, which included removing and reinstalling the railings, reflashing the columns, and removing water damaged sheetrock ceilings and installing new plywood ceilings. Undisputed Facts, ¶27. In November 2006, Plaintiff paid $2,400.00 to "paint ceiling, put up strips, patch bad places" at Buildings 2, 8, and 9. Undisputed Facts, ¶29. In January 2007, Plaintiff paid $1,500 to take the rails down, repair bad wood on 1st, 2nd, and 3rd floors at Building 6 at the front walkways. Undisputed Facts, ¶33.

During a meeting for Plaintiff's board of directors on February 9, 2007, Plaintiff's property manager presented bids to the board to "replace the rotting wood on the front posts of the buildings." Undisputed Facts, ¶35. The minutes shows that the property manager stated during the meeting that "the worst buildings were Buildings 1, 3, 6 and 9." Undisputed Facts, ¶35.

In February and March 2007, Plaintiff paid $13,000 perform the following at Building 9:

> Remove carpet, scrape floors tear out floors and replace. Install Hy-dro Stop, take rails down and replace all bad wood, fix 20 poles, tear out and replace, raise steps and repair steps, repair landing, install metal flashing, clean and reinstall carpet.
> Caulk, prime and paint.
> 4 porches, 4 ceilings, 4 landings.

Undisputed Facts, ¶37.

On May 30, 2007, the president of Plaintiff's board of directors at the time emailed Plaintiff's property manager advising that the exterior walkway at Building 6 at

Wedgewood "has severe rotten wood on two posts facing the parking lot." Undisputed Facts, ¶39. On November 28, 2007, Plaintiff's property manager repaired damaged wood railing on the floor of Building 9. Undisputed Facts, ¶41. On January 2008, Plaintiff's property manager received a report from the owner of 824 that "the carpeting at the base of the outside stairs has a spot that is accumulating water from somewhere and is stained and moldy, as well as by our door." Undisputed Facts, ¶43. Plaintiff's property manager generated a work order to repair the exterior ceilings at Building 2, noting "1st flr-rt side by 214-ceiling coming apart. Water leaking from 2nd flr landing thru floor." Undisputed Facts, ¶42. On August 18, 2008, Plaintiff's property manager received an email reporting that at Building 4 "the ceiling over the right side step well must be leaking because large paint/wallboard chips are falling down" and that "the floor under the carpet is rotting and feels weak when you step on it." Undisputed Facts, ¶46.

In October 2008, Plaintiff paid $338.60 to replace wood and install new waterproofing material under the carpet on a location at the exterior walkways at Building 2. Undisputed Facts, ¶47. Plaintiff also paid $900.00 that month to "tear out, Mud, sand, tape, prime, and paint the sheetrock where it is coming loose" at Buildings 2 and 4. Undisputed Facts, ¶. A member of Plaintiff's board of directors reported during a board meeting on August 21, 2009 that "there are several repairs needed to the breezeway ceilings of building number 7." Undisputed Facts, ¶53. In January 2010, Plaintiff paid $640.00 to "remove all rotten wood on rear balcony column" at Unit 621. Undisputed Facts, ¶56. Also in January 2010, Plaintiff paid $550.00 to pull carpet back and repair water leak at the top of stairs on the second floor of Building 4. Undisputed Facts, ¶56. In October 2010, Plaintiff paid $1,155.00 to remove and replace rotten floor decking at three areas at Buildings 2, 4, and 9. Undisputed Facts, ¶58.

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In September, 2010, Plaintiff paid $57,077.64 to Plantation Flooring to remove and replace the outdoor carpets along the exterior walkways at all nine buildings at Wedgewood. Undisputed Facts, ¶59.

In December 2010, Plaintiff paid $295.00 to remove and replace rotten floor decking" at Building 9 at Wedgewood. Undisputed Facts, ¶61. Also in December 2010, Plaintiff paid $2,308.00 to "remove and replace rotten double end post on the second floor at stairway landing by steps" at Buildings 1, 2, 4, and 9 at Wedgewood. Undisputed Facts, ¶62. During a meeting of Plaintiff's board of directors on November 11, 2011, the board, "due to the conditions of the breezeway ceilings," asked Plaintiff's property manager to "gather proposals for repairing the damaged areas in all of the buildings." Undisputed Facts, ¶65. In January 2012, Plaintiff paid $12,595.00 to remove and replace damaged drywall ceilings and trim boards within the exterior walkways. Undisputed Facts, ¶67.

In February 2013, Plaintiff paid $8,195.00 to "remove drywall, carpet, rotted flooring & blocking, remove and replace walkway posts, and install new sealofelx waterproofing membrane and new lumber around the new posts," at Building 1, 2, 4, and 6 at Wedgewood. Undisputed Facts, ¶71.

In August 2013, Plaintiff paid $480.00 to "Pull back carpet remove rotten wood near 2nd floor kneewall in breezeway, waterproof new section" at Building 9. Undisputed Facts, ¶73. In October 2013, Plaintiff paid $1,110.00 to "remove drywall on ceiling, remove railing & screening, rotten flooring. Waterproof new areas, install railing, install screening, install drywall, finish, and paint" at Unit 123. Undisputed Facts, ¶74. In May 2014, Plaintiff paid $4,220.00 to remove drywall, carpet, rotted flooring & blocking, remove and replace walkway posts, and install new sealofelx waterproofing membrane and new lumber around the new posts. Undisputed Facts, ¶75.

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2. Plaintiff's Claims are Barred by the Statute of Limitations

The only reasonable inference from the set of undisputed facts submitted with Centex's motion for summary judgment is that Plaintiff knew, or should have known through reasonable investigation, that it might have a cause of action in its favor well prior to three year before this suit was filed on January 18, 2018.

At all times since Plaintiff's inception in 2001, Plaintiff was duty bound to the 111 unit owners at Wedgewood to maintain, and repair if needed, the common areas of the property. Exhibit B at p.23 (§8.1 of Master Deed); Exhibit C, Excerpts from 30(b)(6) Dep. of Plaintiff at p.10; 39:7-41:9. Plaintiff is an corporation whose entire existence is dedicated to only one single thing: maintenance of the common areas of Wedgewood. Plaintiff is managed by a five-person board of directors, and when the board met for meetings (typically 3-5 times a year) the management and maintenance of the Wedgewood property was the sole focus. In response to the repeated, high cost repair work to respond to water intrusion and wood rot at Wedgewood, Plaintiff should have taken steps to further investigate and act on its potential right to pursue legal claims.

The size, scope, and repeated nature of these repairs, occurring across multiple buildings, should have put Plaintiff on notice that the issues necessitating these repairs might give rise to a cause of action in its favor, or at least prompted Plaintiff to investigate if they did. For instance, just from September 2006 to April 2007, Plaintiff spent at least $33,439 to remove the remove and replace the exterior walls in order to repair damage around the windows and install new flashing at the windows at four of the nine buildings at Wedgewood (Building 1: $14,982; Building 3: $8,693; Building 8: $5,800; Building 9: $17,950). In fact, the repairs at Building 9 appears to have been to remove and replace **the entire back wall of the building**. Undisputed Facts, ¶37 (Invoice includes: "Tearing

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off back wall"); Undisputed Facts, ¶19.1 at 3 (handwritten note on an email maintained by Plaintiff's property manager where a unit owner had asked the status of repairs at Building 9 stating "used $ for 9 to repair entire back of 9 building.") (emphasis added). The work at this time on Buildings 1 and 8 was similar. See Undisputed Facts, ¶30 & 37 (Invoice for Building 1: "Tearing off back wall" and "Tear off side of building"); ¶39 Building 1 (October 06, 2006 "Tear off side of Building"); ¶31 Building 8 ("Tear off sides of building").

Plaintiff was aware that these repairs were exceeding the planned maintenance budgets for the buildings. For example, Plaintiff's property manager stated to Plaintiff's board of directors during a board meeting on October 28, 2006 that there was a negative variance in the "Maintenance and Building Repairs" allotment in Plaintiff's financial statements for September 2006 due to repairs to Building 1 being in excess of budget. Undisputed Facts, ¶32.1. Minutes from the meeting of Plaintiff's board of directors on November 9, 2007 show that when Plaintiff's property manager presented the September/October 2007 Financial Statements to the board, the property manager reported $40,000 variance above budget "due to excessive building repairs."

Further, when these repairs were made, undisputed evidence shows that Plaintiff did in fact believe these repairs were addressing water intrusion for which Centex might be responsible. The board meeting minutes state:

> B. Update to Repairs on Buildings 1, 9 and 8
> Chuck Gornick stated that the repairs to Building 1 have been completed, Building 9 is finishing up and Building 8 will be next. Mr. Gomick stated that it appears that in windows that are double and triple hung, there is a gap at the top of the strip between the windows. It is believed that this is where the leaking is occurring. Mr. Gornick recommended having an engineering expert look at these windows to try and **determine if this is a Centex problem**. The Board recommended notifying Centex that an expert would be looking at the windows. Chuck Gomick stated that he would keep the Board posted on all developments.

Undisputed Facts, ¶32 (emphasis added).

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Additionally, leading up to this time, Plaintiff had already thought the "window caulking concerns" it was aware of in August 2005 were Centex's responsibility; this explains why Plaintiff was planning to speak with Centex about "needing the windows fixed" back in 2005. Undisputed Facts, ¶14. Further, a homeowner reported to Plaintiff's property manager on February 20, 2008 that a contractor told her that recaulking the windows would not fix the problem and that it "**must be corrected by Centex because the issue was from bad sealants**" and that "this is a known problem that is being fixed." Undisputed Facts, ¶44. (emphasis added). Shortly thereafter, in May, July, and August of 2008, Plaintiff paid $18,164.30 for removal and replacement of all decayed wood at Buildings 6 & 9 from these window leak issue.[6] Undisputed Facts, ¶45. The minutes from Plaintiff's board meeting February 6, 2009 state that a window leak at Unit 611 was "most likely **due to gaps and spacing not completely sealed** and caulked." Undisputed Facts, ¶49. Several months later, Plaintiff paid $4,600.00 to repair damage from window leaks at that unit. Undisputed Facts, ¶50.

Notably, at about this same time in 2007 that entire sides of the exterior walls were being replaced to repair water intrusion damage, Plaintiff was also paying to remove and replace the front walkways due to water intrusion and wood rot. In January and February 2007, Plaintiff paid $13,000 to take down the railings on the front walkways at Building 9 and to remove the carpet and prior waterproofing membrane, replace all bad wood, install new waterproofing membrane, and reinstall the carpet. Undisputed Facts, ¶36, 38. Similar repairs were done around that time in 2007 to the front walkways at Buildings 1, 3, 6 and

[6] While the invoices for these payments do not provide many more details, Plaintiff's 30(b)(6) designee agreed after cross-reference to meeting minutes and other correspondence that these repairs likely were to address issues with window leaks. Undisputed Facts, ¶45.2 at 15; 487:14 – 488:17.

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9 Cite. “February 9, 2007 Board Meeting Minutes: Chuck Gornick presented bids to replace the rotting wood on the front posts of the buildings. Mr. Gornick stated that the worst buildings were Buildings 1, 3, 6 and 9.” Undisputed Facts, ¶35.

These repairs at the front walkways in 2007 discussed in the preceding paragraph were at the area of the buildings that was the subject of Plaintiff’s letter to Centex on October 28, 2003, in which Plaintiff said it was putting Centex on notice of “unsatisfactory conditions existing in all buildings,” specifically including “growth of mold and mildew, the carpet in the common areas, walkways and patios,” which Plaintiff’s board described in this 2003 letter as “unbearable and unacceptable!”. Undisputed Facts, ¶3. Further, this 2003 letter from Plaintiff to Centex stated that it was Plaintiff’s position “that Centex, having installed this carpet material without any input from the homeowners, has a responsibility to remedy the situation before the problem compounds itself.” Undisputed Facts, ¶3.

Along with the numerous and repeated lower cost repairs detailed above, the high-cost repairs continued past 2006 – 2009 as well. In 2010, Plaintiff paid $86,200.00 to remove and replace damaged exterior trim at all nine buildings at Wedgewood. Undisputed Facts, ¶64. In January 20, 2012, Plaintiff paid $12,595 to replace the existing damaged walkways ceilings at all nine buildings at Wedgewood (where the invoice said it was all addressing “all deficiencies in breezeway ceilings”) Undisputed Facts, ¶67 (emphasis added). In February 2013, Plaintiff paid $8,195 at Buildings 2, 4, 6, 9 to remove and replace the walkways flooring and waterproofing membrane, walkway posts, and repair rotted flooring and blocking. Undisputed Facts, ¶71.

Common sense and experience would and should have informed Plaintiff’s board of directors that these repeated issues and costly repairs to address them might provide

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Plaintiff with a cause of action in its favor, or at least that further action should be taken to investigate the matter. In fact, Plaintiff's own board president (and 30(b)(6) designee), who has been a board member since 2011, admits as much. In explaining the circumstances that led to Plaintiff filing this action, Plaintiff's board president explained that, in 2016, after Plaintiff paid a contractor $8,000 to $10,000 for repairs at two different buildings that year, the board decided it needed to hire a lawyer to in order look into potential legal claims. Plaintiff's board president/designee testified as follows:

> Q. Okay. So it was the fact that two different apparent water intrusion events happened in close proximity on different buildings made the board believe that it had a duty to investigate that and figure out if it was occurring elsewhere?
>
> A. That's correct.
>
> Q. And the board needed to figure out if somebody else may be legally responsible for those repairs?
>
> A. Yes.
>
> Q. And in doing so, the board had a board meeting and talked with its property manager about potentially hiring a lawyer; is that right?
>
> A. That's correct.

Exhibit B at 16, 55:24 – 56:14.

However, these two repairs in 2016 that prompted Plaintiff to hire a lawyer were no different than any of the myriad repairs listed above that Plaintiff made from 2003 – May 2014. In effect, Plaintiff's own board president acknowledges that in response to the numerous repairs occurring between 2003 and May 2014, Plaintiff should have known, or discovered through the exercise of reasonable diligence, that a cause of action might exist in its favor.

South Carolina case law shows that summary judgment should be granted here.

In *Barr v. City of Rock Hill*, a homeowner sued the home seller in 1994 after the plaintiff obtained a forensic inspection report in 1992 revealing numerous problems with

the home. 330 S.C. 640, 642–43, 500 S.E.2d 157, 158–59 (Ct. App. 1998). The court of appeals affirmed the trial court's order granting summary judgment based on the statute of limitations. *Id*. at 645–46, 500 S.E.2d at 160. The court found that the plaintiff was put on notice of its potential claim sometime between 1987 and 1990, as annual termite inspections during those years revealed excessive moisture under the plaintiff's home and recommended repairs to address the condition. *Id*. The Court of Appeals rejected the plaintiff's argument that the statute of limitations did not begin to run until they received forensic report in August 1992, stating, "If the [plaintiffs] had exercised reasonable diligence and investigated the problems noted in the termite inspection reports, they could have realized the magnitude of the problem and brought suit before the statute of limitations ran." *Id*.

The present motion against Plaintiff is essentially the exact same as the one in *Barr v. City of Rock Hill*, just on a larger scale and longer timeframe with far more opportunities for Plaintiff to have "exercised reasonable diligence and investigated the problems" revealed to it between 2003 and May 2014. Instead, like the homeowners in *Barr*, Plaintiff did not file suit until after it received a detailed report from the forensic building inspector that Plaintiff's lawyer hired in 2016. As in *Barr v. City of Rock Hill*, Plaintiff cannot avoid summary judgment by arguing it should be a question of fact as to whether Plaintiff should have obtained a lawyer or forensic building earlier. *Id*.; *see also Dean v. Ruscon Corp.,* 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996) ("[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial."); *Allwin v. Russ Cooper Assocs., Inc.,* 426 S.C. 1, 17, 825 S.E.2d 707, 715 (Ct. App. 2019) ("[The plaintiff's] failure to comprehend the magnitude of the water intrusion and other defective conditions is immaterial."); *Maher v. Tietex Corp.,* 331 S.C. 371, 377, 500 S.E.2d 204,

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207 (Ct. App. 1998) ("The statute [of limitations] is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to "act with some promptness.").

In *Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp.*, 332 S.C. 197, 208, 503 S.E.2d 761, 767 (Ct. App. 1998), the court of appeals affirmed the summary judgment entered against the plaintiff contracting firm that had asserted a claim against the project owner and engineer based on the alleged inadequacies of the project plans prepared by the engineer. The court of appeals found that the plaintiff, more than three years prior to filing its complaint, "had sufficient information to put it on inquiry notice, which, if developed, would have revealed the defects in [the engineer's] work." The *Republic* Court rejected the plaintiff's argument that the jury should decide the question of whether plaintiff should have consulted an expert (and thereby informing plaintiff of the alleged design defects) at an earlier date. *Id*. ("The statute of limitations begins to run when a plaintiff knows or should know of a potential claim against another party, not when the plaintiff develops a full-blown theory of recovery.") (emphasis).

In *Allwin v. Russ Cooper Assocs., Inc.*, a construction defect case, the court of appeals affirmed the trial court's order granting summary judgment based on the statute of limitations. 426 S.C. 1, 20, 825 S.E.2d 707, 717 (Ct. App. 2019). Similar to this case, the plaintiff homeowner in *Allwin v. Russ Cooper* had repaired "numerous and repeated leaks" at her home from 1999 – 2011 but did not file suit until 2013. *Id*. The court of appeals found that plaintiff "was on notice of her potential claims against [the homebuilder] as early as February 1999," when the leaks began. *Id.* at 15, 825 S.E.2d at 714. The *Allwin* Court rejected the plaintiff's argument that applicability of statute of limitations was a question of disputed fact and that the jury may find that she acted

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reasonably in response to these leaks by diligently repairing them. *Id*. at 20, 825 S.E.2d at 717 ("Although the record reflects a lengthy history of maintenance and repairs, such does not negate the fact that Allwin was on notice of her potential claims as early as February 1999 but failed to bring suit" until 2013).

In sum, based on well-established South Carolina law, there are no facts Plaintiff can submit to show that its notice of potential claims is a genuinely disputed question for the jury. The standard as to when the limitations period begins to run is *objective*, and the voluminous set of undisputed facts submitted with Centex's motion leaves only one reasonable inference: at a time well prior to three years before to filing this action, Plaintiff either actually did know of its potential claims or that Plaintiff, through the exercise of reasonable diligence, should have known that it might have a claim. As a result, this court should grant summary judgment in Plaintiff's favor.

III. Plaintiff Knew of the Basis for its Alleged Plumbing Defect Claims in 2012.

As discussed above, Centex is entitled to summary judgment against the entirety of Plaintiff's claims, but Centex submits the following as an additional basis for summary judgment against Plaintiff's claims alleging plumbing defects.

1. Plaintiff's Plumbing Claims / Investigation.

On November 14, 2019, Plaintiff's expert Ross Clements produced a supplemental report in this case identifying alleged plumbing deficiencies at Wedgewood. Clements contends that at Buildings 8 and 9 at Wedgewood, four of the eight plumbing lines that run from the slab under those buildings out to the main sewer line for the community under the parking areas for those buildings do not have appropriate downslope slopes. Clements recommends that these four plumbing lines be dug up and re-sloped. Exhibit D at pp. 6 - 14, Excerpts of R. Clements Dep. Clements did not investigate the plumbing

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lines at Building 1 – 7 and is not aware of any plumbing backups at those buildings. Exhibit D at p. 8; 538:12-22. Nevertheless, Clements instructed Plaintiff's estimating expert to also include the cost to perform these same repairs at 50% of the plumbing lines at Buildings 1 – 7 at Wedgewood. Exhibit D at p. 14; 544:2-8.

As to what prompted this investigation by Clements, he says that Plaintiff's property manager advised him that under the second "stack" of units at Building 9 (i.e., Units, 912, 922, 923, at the first, second, and third floors, respectively) had problems with sewage backing up "pretty much on a biannual basis," that "every six months or so" the "sewage backs up into that first floor unit." Exhibit D at p. 6; 536:1-22. Clements admits he is not aware of any backups at any of the units at Wedgewood other than at the second stack at Building 9. Exhibit D at p. 8; 538:19-22.

2. Plaintiff Knew or Should Have Known of Its Plumbing Claims No Later than in 2012.

The undisputed evidence shows that Plaintiff was aware of this condition at Building 9 since no later than November 2012. On June 26, 2009, Plaintiff paid $123.15 the Watershed Plbg. Co. Inc. for work at Unit 912 described in the invoice as: "Pulled clean out cap in front of unit and snake main line to clear clog causing backup into hall bathroom." Undisputed Facts, ¶52. On November 11, 2011, Plaintiff paid $75.00 to the Watershed Plbg. Co. Inc. for work at Unit 912 at Wedgewood described in the invoice: "Snaked main drain through clean out in front of unit to clear clog." Undisputed Facts, ¶66. On November 2, 2012, Plaintiff paid $192.12 to the Watershed Plbg. Co. Inc. for work at Unit 912 at Wedgewood described in the invoice as: "Used jetter to clear grease clog from main. The grease caused backup. Installed safety fitting outside unit to help prevent future backups." Undisputed Facts, ¶68.

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On November 2, 2012, Plaintiff paid $150.00 to the Watershed Plbg. Co. Inc. for work at Unit 912 at Wedgewood described in the invoice as: "Used camera to check sewer main serving # 12 stack of units and found line holding water to at least 2 feet under unit." Undisputed Facts, ¶68. Based on this investigation of the second stack at Building 9 in October 2012, Watershed Plbg. Co. Inc. stated in its invoice to Plaintiff:

> I recommend changing the direction and height of the pipe that can be reached under sidewalk to see if it will be enough to stop backups before the next step of going through the floor of the unit to access that part of the sewer line.

Undisputed Facts, ¶68.

Therefore, in response to repeated plumbing backups at the second stack at Building 9, in October 2012 Plaintiff hired a plumbing company to "snake" that plumbing line with a camera to determine if it is holding excess water, and the plumbing company reported that it was. The plumbing recommended to Plaintiff in 2012 to seek to change the height and direction of the line to avoid further backup. This inspection and repair recommendation in 2012 was precisely the same inspection and repair recommendation done by Ross Clements in 2019 that is the basis for Plaintiff's claims alleging plumbing defects.

Further, the minutes for the board meeting for the board of directors for Wedgewood on November 2, 2012 provide as follows:

> B. Additional Maintenance
> Mike Runser gave an update on the damages and repairs to a unit as a result of a plumbing backup. The Board was told that Chicora is working with RJM Plumbing to determine if the cause of the backup was due to poor installation on the builder's part. The Board asked Mike Runser to keep them up to date on what happens as the investigation continues.

Undisputed Facts, ¶69.

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The only reasonable inference from this evidence is that Plaintiff knew or should have known, at a time no later than November 2012, that it might have a cause of action against Centex with respect to its alleged plumbing deficiencies. Plaintiff did not file this lawsuit until well past three years later. Therefore, this evidence presents additional grounds as to why the court should grant summary judgment against Plaintiff's claims alleging plumbing deficiencies.

CONCLUSION

Centex seeks summary judgment against Plaintiff's claims asserted in this action based on the statute of limitations. The only reasonable inference from the evidence submitted from 2003 – May 2014 is that Plaintiff had notice of its claims well prior to three years before filing this action on January 18, 2018.

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March 2, 2022

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-00307
Wedgewood Condominium Association,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**PLAINTIFF'S MEMORANDUM IN**
	)	**OPPOSITION TO DEFENDANT**
Centex Homes et al.,	)	**CENTEX'S MOTION FOR SUMMARY**
	)	**JUDGMENT**
Defendants.	)	
	)	
Centex Homes,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
Right Way Construction, Inc., et al.,	)	
	)	
Third-Party Defendants.	)	
_____	)	

INTRODUCTION

This is an action by the Plaintiff Wedgewood Condominium Association (the "Association") to recover damages for construction defects in the Wedgewood Horizontal Property Regime condominium project (the "Wedgewood project") built by the Defendant Centex Homes ("Centex"), a Nevada general partnership doing business in South Carolina. The Association has alleged a variety of claims against Centex arising out of its defective construction of the Wedgewood project, including negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness (count one); breach of express and implied warranties (counts two, three, and four); fraud (count five); unfair trade practices (count six); and Breach of

Fiduciary Duty (count seven). Centex has moved for summary judgment as to all of the Association's claims based on the statute of limitations.

Centex's position is quite simple. In Exhibit A to its motion, Centex includes 24 pages of supposedly "Undisputed Facts." In compiling the "Undisputed Facts," Centex combed through every invoice and other record it obtained in discovery to find every dollar that the Association paid for repairs that arguably relate to water intrusion at the Wedgewood project during the nearly 11-year period from August 2003 to May 2014. Centex's meticulous digging turned up a sum total of exactly $280,627.54 in such repairs to the nine buildings that make up the Wedgewood project over that time. (*See* Def.'s Mot. Ex. A at 1-24.) Centex's entire argument for summary judgment, which it bears the burden to establish, is that the "only reasonable inference" that can be drawn from its "Undisputed Facts" is that the Association "knew, or should have known through the exercise of reasonable diligence, that a cause of action might exist in its favor well more than three years prior to [the] filing of this lawsuit on January 18, 2018." (Def.'s Mem. at 9; *see also id.* at 19 ("The size, scope, and repeated nature of these repairs, occurring across multiple buildings, should have put Plaintiff on notice that the issues necessitating these repairs might give rise to a cause of action in its favor, or at least prompted Plaintiff to investigate if they did.").)

In fact, however, the $280,000 in repairs and maintenance painstakingly tallied up by Centex amounts to about $26,000 a year, which is a small fraction of the approximately $350,000 per year in Annual Assessments that the Association collected, on average, from Unit Owners during that time, and about a quarter or less of what the Association spent on repairs and maintenance every year from 2003 to 2014. As such, a far more reasonable inference from the summary-judgment record is that there was nothing about the expenditures identified by Centex

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to put the Association on notice of the construction defects at the Wedgewood project, which are far broader in scope than the ordinary maintenance and repairs Centex points out. Those construction defects were not discovered until the Association's expert conducted destructive testing beginning in November of 2016, which is well within the three-year limitations period before the Association filed this action. Because there is much more than a mere scintilla of evidence to refute Centex's argument that the Association's claims are barred by the statute of limitations, the Court should deny Centex's Motion for Summary Judgment in its entirety.

STANDARD OF REVIEW

Summary judgment may be granted under Rule 56 only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. The moving party has the initial responsibility to demonstrate the absence of a genuine issue of material fact. *Lord v. D&J Enters.*, 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014). If the moving party carries its initial burden, then the burden shifts to the nonmoving party to show that there is a genuine issue for trial. *Id.* The nonmoving party is "only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Id.* (quoting *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)).

In determining whether there are any triable issues of fact, the court views the evidence and all reasonable inferences that may be drawn from that evidence in the light most favorable to the nonmoving party. *Id.* "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Id.* (quoting *Lanham v. Blue*

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Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002)). In addition, summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts. *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333. Because "summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues." *Lord*, 407 S.C. at 553, 757 S.E.2d at 699.

STATEMENT OF FACTS

In light of the foregoing standard of review, the facts relevant to considering Centex's motion for summary judgment are as follows: The Wedgewood Horizontal Property Regime ("Wedgewood") is a horizontal property regime organized and existing under South Carolina law as provided in the Horizontal Property Act (the "Act"), S.C. Code Ann. §§ 27-31-10 et seq. (Compl. ¶ 1.) Wedgewood was created when Centex, as the "Developer," filed the Master Deed of the Wedgewood Horizontal Property Regime (the "Master Deed") on January 18, 2001. (Master Deed at 1-2, attached as Ex. A to Corn Aff.) Even before filing the Master Deed, Centex had incorporated the Association, a South Carolina nonprofit corporation including all of the Wedgewood Unit Owners. (Master Deed Ex. D.) The Association's Articles of Incorporation and Bylaws were recorded with the Master Deed, as required by the Act. *See* S.C. Code Ann. § 27-31-150. (Master Deed Exs. D (Articles of Incorporation), E (Bylaws).)

Under the Master Deed, it is the Association's responsibility to "maintain the Common Area in first class condition in accordance with proper maintenance procedures applicable thereto." (Master Deed § 8.1; *see also* Bylaws § 7.1(A) (it is the duty of the Board of Directors of the Association to "[p]erform the maintenance described in the Master Deed").) In addition to

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performing all required maintenance, the Association must also "repair or replace all parts of the Common Area as necessary." (Master Deed § 8.1.) The cost of necessary maintenance, repair, and replacement of the Common Area is "charged to the Owners as a Common Expense." (*Id.*; *see also id.* § 1 (defining "Common Expense(s)" as "all expenses incident to the administration of the Association and maintenance, repair and replacement of the Common Areas").) The Unit Owners pay the Common Expenses associated with maintaining, repairing, and replacing the Common Areas through Annual Assessments, which are determined by the Association's Board based on a budget that estimates the Common Expenses for the next succeeding Annual Assessment Period. (*Id.* § 4.2.) The Board is also required to "establish and maintain an adequate reserve fund for the periodic repair and replacement of the Common Area." (*Id.* § 4.9.) The Board must "include amounts needed to maintain an adequate reserve fund in its estimation of the Common Expenses for each fiscal year and … cause deposits to the reserve fund to be made in connection with the collection of the Annual Assessment." (*Id.*) Although the Annual Assessment is calculated on a yearly basis, the Unit Owners pay the Annual Assessment in equal monthly installments. (*Id.* § 4.5.) In addition to the Annual Assessments, the Board is authorized to levy Special Assessments "for the purpose (i) of supplementing the Annual Assessments if the same are inadequate to pay the Common Expenses and (ii) of defraying, in whole or in part, the cost of any reconstruction, repair, or replacement of the Common Area." (*Id.* § 4.4.) In carrying out its duties under the Master Deed, the Board must "retain a professional property management company to manage the day-to-day affairs of the Associations." (*Id.* § 2.8.)

The Wedgewood project includes 111 units in nine buildings. (Corn Aff. ¶ 6; Fuller Report at 1, attached as Ex. A to Clements Aff.) Centex completed construction of the nine buildings between 2000 and 2001. (Corn Aff. ¶ 7.) Between 2003 and 2014, the Annual

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Assessments charged to each of the 111 Unit Owners ranged between $233.05 (in 2006) and $309.00 (in 2004) per month, with an average of $262.53 per month, or $3,150.33 per year. (*Id.* ¶ 10.) That means the Association collected, on average, $349,686.63 per year in Annual Assessments during the period from 2003 and 2014. For the year ended December 31, 2013, for example, the Association collected $356,976 in Annual Assessments, based on a monthly charge of $268 to each unit owner. (*Id.* ¶ 10 & Ex. C at 3, 8.) Of that amount, $316,976 went to the Association's operating fund, while $40,000 was deposited in the reserve fund, which is held in separate accounts and is generally not available for operating purposes. (*Id.* Ex. C at 3, 10.) As of December 31, 2013, the Association had accumulated in the reserve fund $276,425 for future major repairs and replacements. (*Id.* Ex. C at 10.)

The annual Common Expenses for repairs and maintenance have historically been in the range of up to $100,000 and more. (*Id.* ¶ 14 & Exs. B at 3, C at 3.) During 2013, for example, the Association paid $122,734 for repairs and maintenance, of which $110,840 came from the operating fund and $11,894 from the reserve fund. (*Id.* Ex. B at 3.) The Association has always been able to pay the Common Expenses through the Annual Assessments and reserve fund, such that the Board has never levied a Special Assessment to pay the Common Expenses or to defray any of the cost of repairing or replacing the Common Area. (*Id.* ¶¶ 8, 11-12.)

Prior to 2016, the Association's property manager, Waccamaw Management, had never recommended to the Association's Board that it consult with an attorney related to construction defect issues. (*Id.* ¶ 16.) In 2016, however, the Association began to experience issues at Buildings 6 and 9 related to siding and trim. (*Id.* ¶ 15.) It was only at that time that Waccamaw Management first advised the Board that it should consult with an attorney to determine whether these were maintenance or construction defect issues. (*Id.*)

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Once alerted to the issue in early 2016, the Association was unable to determine for certain if there were construction defects at Wedgewood until a forensic architect, H. Ross Clements, AIA, one of the owners of Fuller Group, Inc., performed destructive testing beginning in November of 2016 and continuing through January of 2018. (Fuller Report at 2.) Based on his test cuts, Mr. Clements concluded that "numerous deficiencies are present at the Wedgewood Condominium due to improper construction and use of materials." (*Id.* at 13.) The many deficiencies detailed by Mr. Clements (*see id.* at 3-13) "have allowed water to penetrate the building envelope, as well as reduce the integrity of the structure and accessibility of the building" (*id.* at 13). Mr. Clements determined that if the many observed deficiencies caused by Centex's construction defects were not corrected, they "will continue to subject the residences to water-related damages." (*Id.*) Accordingly, Mr. Clements also provided an outline of the substantial repairs that are "needed to restore each building to a healthy state." (*Id.* at 13 & App'x.) The Association's construction repair expert, Procon & Associates, Inc., has estimated that the total cost to repair the defects for all nine buildings caused by Centex's faulty construction is $12,273,031.00 (Procon Repair Estimate at 24, attached as Ex. D to Corn Aff; Procon Repair Estimate Addendum 1 at 5, attached as Ex. E to Corn Aff.)

ARGUMENT

IT IS A QUESTION OF FACT FOR THE JURY WHEN THE ASSOCIATION SHOULD HAVE KNOWN OF ITS CLAIMS AGAINST CENTEX

Centex seeks summary judgment against the Association based solely on the statute of limitations. (*See* Def.'s Mem. at 1, 9, 29.) "The burden of establishing the bar of the statute of limitations rests upon the one interposing it, and where the testimony is conflicting upon the

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question, it becomes an issue for the jury to decide." *Brown v. Finger*, 240 S.C. 102, 113, 124 S.E.2d 781, 786 (1962) (citation omitted). The Association's claims against Centex are all governed by a three-year statute of limitations. *See* S.C. Code Ann. § 15-3-530(1) (three years to bring action upon a contract, obligation, or liability, express or implied), (5) (three years to bring action for any injury to the rights of another, not arising on contract and not otherwise enumerated by law); *Stoneledge at Lake Keowee Owners' Ass'n v. IMK Dev. Co.*, LLC, 425 S.C. 268, 271, 821 S.E.2d 504, 506 (Ct. App. 2018) (hereinafter *Stoneledge II*) (applying three-year statute of limitations in construction defect case), *aff'd in part & rev'd in part on other grounds*, 435 S.C. 176, 866 S.E.2d 577 (2021); *Graham v. Welch*, 404 S.C. 235, 239, 743 S.E.2d 860, 862 (Ct. App. 2013) (applying three-year statute of limitations to fraud and breach-of-fiduciary-duty claims).

While "a statute of limitations commences to run only from the time that the cause of action accrues, it is often difficult to determine when that time arrives." *Brown*, 240 S.C. at 111, 124 S.E.2d at 785 (citation omitted). Even so, a cause of action generally accrues "the moment the defendant breaches a duty owed to the plaintiff." *Barr v. City of Rock Hill*, 330 S.C. 640, 644, 500 S.E.2d 157, 159-60 (Ct. App. 1998) (quoting *Grooms v. Med. Soc'y of S.C.*, 298 S.C. 399, 402, 380 S.E.2d 855, 857 (Ct. App. 1989)). South Carolina has, however, adopted a "discovery rule" of general applicability, pursuant to which "all actions … must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535; *accord Barr*, 330 S.C. at 644, 500 S.E.2d at 160.[1] The supreme court recently emphasized that it is important for a court called

[1]Although Section 15-3-535 by its terms applies only to "actions initiated under Section 15-3-530(5)," the supreme court has held that the discovery rule also applies "to contracts

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on to consider a dispositive motion based on the statute of limitations to be "equally mindful" of the public policy informing the General Assembly's enactment of *both* "the three-year limitations period in section 15-3-350" *and* "the 'discovery rule' set forth in section 15-3-535." *Stoneledge at Lake Keowee Owners' Ass'n v. IMK Dev. Co.*, 435 S.C. 176, 177, 866 S.E.2d 577, 578 (2021) (hereinafter *Stoneledge III*).

In applying the discovery rule to determine when a cause of action accrues, the "exercise of reasonable diligence" means that "the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist." *Dean v. Ruscon Corp.*, 321 S.C. 360, 363-64, 468 S.E.2d 645, 647 (1996); *see also Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994) ("The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist." (quoting *Snell v. Columbia Gun Exch., Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981))). The test of whether the injured party should have known facts sufficient to put it on notice is objective, rather than subjective. *See Wiggins*, 314 S.C. at 128, 442 S.E.2d at 170. If there is conflicting evidence as to whether a party knew or should have known that it had a cause of action, then the question is one of fact for the jury. *See Garner v. Houck*, 312 S.C. 481, 485, 435 S.E.2d 847, 849 (1993); *Santee Portland Cement Co. v. Daniel Int'l Corp.*, 299 S.C. 269, 274, 384 S.E.2d 693, 696 (1989), *overruled on other grounds by Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics*

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governed by § 15-3-530(1)." *Santee Portland Cement Co. v. Daniel Int'l Corp.*, 299 S.C. 269, 271, 384 S.E.2d 693, 694 (1989), *overruled on other grounds by Atlas Food Sys. & Servs., Inc. v.*

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Corp., 319 S.C. 556, 462 S.E.2d 858 (1995); *Kagan v. Simchon*, 429 S.C. 516, 528, 839 S.E.2d 106, 112 (Ct. App. 2020).

The supreme court recently reaffirmed the principle that "[a]pplication of both the basic three-year limitations period and the discovery rule in any given case can present factual issues for a jury to resolve." *Stoneledge III*, 435 S.C. at 177, 866 S.E.2d at 578. The court, "constrained by [its] standard of review," affirmed the lower courts' holdings that "there was a jury issue as to whether the statute of limitations had expired by the time the action was commenced against" the general contractor in that construction defect case. *Id.* While that case involved a motion for directed verdict rather than a motion for summary judgment, the standard of review is similar, in that the court of appeals found no error in the trial court's denial of the motion because there was "some evidence" that the latent defects in question "could not have been discovered through the exercise of reasonable diligence" until less than three years before suit was filed. *Stoneledge II*, 425 S.C. at 275, 821 S.E.2d at 508; *see also id.* at 271, 821 S.E.2d at 506 ("When reviewing a motion for directed verdict, this court must consider all evidence in the light most favorable to the nonmoving party, and may only reverse a jury's verdict if the factual findings implicit within it are contrary to the only reasonable inference from the evidence." (internal quotation marks omitted)); *Santee*, 299 S.C. at 274, 384 S.E.2d at 695-96 (a motion for directed verdict must be denied "[i]f any evidence tends to prove the allegations of the complaint"). That is quite similar to requiring only a mere scintilla of evidence—which is "any material evidence which, taken as true, would tend to establish the issue in the mind of a reasonable juror," *Lemmons v. Macedonia Water Works, Inc.*, 431 S.C. 186, 200, 847 S.E.2d 471, 479 (Ct. App. 2020) (quoting *Crosby v.*

Crane Nat'l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 462 S.E.2d 858 (1995).

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Seaboard Air Line Ry., 81 S.C. 24, 31, 61 S.E. 1064, 1067 (1908))—to defeat a motion for summary judgment. *Lord*, 407 S.C. at 553, 757 S.E.2d at 699.

The court of appeals' decision as to the statute of limitations in *Stoneledge II*, which was affirmed by the supreme court in December 2021, is also notable for its favorable discussion of, and reliance on, a case Centex is quite familiar with but ignored in its moving papers: *Centex Homes v. S.C. State Plastering, LLC*, No. 4:08-cv-2495-TLW, 2010 WL 2998519, 2010 U.S. Dist. LEXIS 76978 (D.S.C. July 27, 2010). *See Stoneledge II*, 425 S.C. at 273-74, 821 S.E.2d at 507-08. The shoe was on the other foot in *Centex Homes*, as Centex was able to use the discovery rule to defeat a motion for summary judgment based on the statute of limitations that had been filed against it by its subcontractors on another Centex project in North Myrtle Beach plagued by construction defects.

In the *Centex Homes* case that was conspicuously left out by Centex in its Memorandum, Centex built a condominium complex consisting of ten buildings, of which Building 3 was completed in June 2001 and Building 1 in April 2002. Buildings 1 and 3 were nearly identical and built next door to each other. In 2002, Centex discovered water damage to Building 3, which was thought to have been caused by water intrusion at the intersection of the decks and the outside walls of the units. Two of the subcontractors performed "extensive repairs" to address the damage. 2010 U.S. Dist. LEXIS 76978, at *9. In 2006, Centex discovered water damage to Buildings 1 and 3, which was again caused by water intrusion at the intersection of the decks and the outside walls of the units. Centex spent more than $1 million to repair the damage in 2006 and 2007, then filed suit in 2008 against three of its subcontractors who participated in the construction of Buildings 1 and 3, alleging various claims, including negligence and breach of warranty.

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The subcontractors all moved for summary judgment based on the three-year statute of limitations. Despite the more lenient standard for granting summary judgment in a federal case,[2] the court ruled in Centex's favor and denied all of the motions based on the existence of fact questions in applying the discovery rule. *Id.* at *30. For example, one of the subcontractors, which worked only on Building 1, asserted that Centex knew or should have known, by the exercise of reasonable diligence, that a cause of action existed with regard to Building 1 in the summer of 2002, when similar problems with water intrusion developed in the nearly identical Building 3 only months after it was completed in April of 2002. Centex responded that the problems were caused by a latent defect because the deck-wall intersections were covered by both the deck surface and stucco. *Id.* at *14. Centex thus likened its case to *Santee*, in which the South Carolina Supreme Court held that the reasonableness of the plaintiff's actions in dealing with latent construction defects "was an issue to be decided by the jury," so that the trial court erred in granting the general contractor's motion for a directed verdict. 299 S.C. at 273-74, 384 S.E.2d at 695. Centex argued that the record in its case "contain[ed] similar questions of material fact with regard to the statute of limitations that must be resolved by a jury." *Centex Homes*, 2010 U.S. Dist. LEXIS 76978, at *14. The court agreed with Centex as to the motions for summary judgment filed by all three of its subcontractors, concluding as to each of them that the determination of whether Centex, "through the exercise of reasonable diligence, should have

[2]In federal court, once the moving party satisfies its initial burden to demonstrate the absence of a genuine issue of material fact, the burden shifts to the nonmoving party to "offer more than a mere 'scintilla of evidence' that a genuine issue of material fact exists." *Centex Homes*, 2010 U.S. Dist. LEXIS 76978, at *6 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)). In South Carolina, by contrast, the nonmoving party is "only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Lord*, 407 S.C. at 553, 757 S.E.2d at 699 (internal quotation marks omitted).

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discovered these alleged deficiencies prior to 2006 is an issue properly resolved by the finder-of-fact." *Id.* at *30.

The court of appeals compared the record evidence in the *Stoneledge* case to the evidence of the latent defects at issue in *Santee* and *Centex Homes*. In *Stoneledge*, Bostic began construction on a townhouse community on Lake Keowee in 2002. There was testimony to indicate that some of the owners knew about issues including roof leaks and water intrusion as early as 2003, but the homeowners' association did not bring suit until 2010. Even so, the court noted that the defects in question "were hidden by stone veneers and exterior walls, and many could not be seen without destructive testing." *Stoneledge II*, 425 S.C. at 275, 821 S.E.2d at 508. Accordingly, the court found there was "some evidence these latent defects could not have been discovered through the exercise of reasonable diligence until 2009 at the earliest," which was enough to "create[] a jury question as to whether it was reasonable for the homeowners to know, or by reasonable diligence discover, there were issues with their construction." *Id.* at 275-76, 821 S.E.2d at 508. And the supreme court agreed that "there was a jury issue as to whether the statute of limitations had expired by the time the action was commenced against Bostic." *Stoneledge III*, 435 S.C. at 177, 866 S.E.2d at 578.

Here, just like in *Stoneledge*, *Santee*, and *Centex Homes*, there is evidence to show that the damages claimed by the Association were caused by latent defects from original construction that could not have been discovered until Mr. Clements investigated the Wedgewood property, including by conducting destructive testing, beginning in 2016, less than three years before the Association filed this action on January 18, 2018. Mr. Clements has specifically testified that, in his professional opinion, the prior repairs to the property were consistent with routine

maintenance and gave no indication of the latent defects from original construction that Mr. Clements was able to discover only through his destructive testing. (*See* Clements Aff. ¶¶ 8-9.)

Centex counters Mr. Clements' expert opinion with its 24-page statement of supposedly "Undisputed Facts," in which Centex painstakingly details every repair made in any of the nine buildings of the Wedgewood project, from August 18, 2003 to May 29, 2014, that could conceivably have had water intrusion as a factor. (*See* Def.'s Mot. Ex. A at 1-24.) Centex argues that the "only reasonable inference" from those records is that the Association "knew, or should have known through reasonable investigation, that it might have a cause of action in its favor well prior to three year[s] before this suit was filed on January 18, 2018." (Def.'s Mem. at 19.) In particular, Centex contends that "[t]he size, scope, and repeated nature of these repairs, occurring across multiple buildings, should have put [the Association] on notice that the issues necessitating these repairs might give rise to a cause of action in its favor, or at least prompted [the Association] to investigate if they did." (*Id.*; *see also id.* at 22-23 ("Common sense and experience would and should have informed [the Association's] board of directors that these repeated issues and costly repairs to address them might provide [the Association] with a cause of action in its favor, or at least that further action should be taken to investigate the matter.").) But Centex's evidence is nowhere near sufficient to merit granting summary judgment in its favor.

The expenditures related to upkeep and maintenance identified in Centex's "Undisputed Facts" total only about $280,000 to nine buildings over a nearly 11-year period. That averages out to about $26,000 per year between 2003 and 2014. During that same time period, the Association collected, on average, about $349,686 per year in Annual Assessments from the Unit Owners. That means the upkeep and maintenance expenditures identified by Centex amounted to

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a small drop in the bucket (about 6.7%) compared to what the Association was taking in to cover, among other things, the Common Expenses, that is, the costs of maintaining, repairing, and replacing the Common Area. Of that amount, the Association spent up to $100,000 and more each year ($122,734 in 2013 and $133,031 in 2014) for repairs and maintenance. (Corn Aff. ¶ 14 & Exs. B, C.) That means the expenditures identified by Centex amounted to a quarter or less than what the Association was spending on repairs and maintenance each year over that time. Notably, monthly charges for Annual Assessments did not rise dramatically during that time; to the contrary, the monthly charges actually *dropped* from 2003 ($294) and 2004 ($309) to 2013 ($268) and 2014 ($271). (*Id.* ¶ 10.) And the Board never had to levy a Special Assessment to cover any unusual or unforeseen expenditures in paying the Common Expenses. (*Id.* ¶ 12.) As such, it is no surprise that Mr. Clements has opined that the size, scope, and nature of the $280,000 of expenditures identified by Centex in its "Undisputed Facts" are "consistent with routine maintenance and repairs to the nine buildings comprising the Wedgewood project and were insufficient to put the Association or its management company on notice of the construction defects I later discovered through destructive testing at the Wedgewood project beginning on November 29, 2016." (Clements Aff. ¶ 8.) Mr. Clements also opined that the latent construction defects he discovered through his investigations were "far broader in scope and not tailored to the specific repairs previously made at Wedgewood that are catalogued in Centex's 'Undisputed Facts.'" (*Id.* ¶ 9); *see Pier View Condo. Ass'n v. Johns Manville, Inc.*, No. 2:18-0022-BHH, 2021 WL 616292, 2021 U.S. Dist. LEXIS 29438, at *21 (D.S.C. Feb. 17, 2021) (prior repairs that addressed only isolated roofing issues were insufficient to put the condominium association on notice of subsequent claims that were far broader in scope and not tailored to specific repairs so as to trigger the running of the statute of limitations).

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Mr. Clements' opinion that the "size, scope, and nature" of the repairs and maintenance picked out by Centex were insufficient to raise any eyebrows at the Association or its management company is backed up both by common sense and a more detailed examination of some of the expenditures. For example, Centex points out that the Association paid $57,077.64—which represents fully 20% of all the expenditures identified by Centex—for new carpeting in 2010, nine years after Centex completed construction of the last building in the Wedgewood project. (*See* Def.'s Mot. Ex. A ["Facts"] ¶ 59; Def.'s Mem. at 18.) At the same time, Centex acknowledges in its own moving papers that Jim Finn, the Community Manager, had informed the Association's Board that the carpets had an "expected life" of only seven years. (Def.'s Facts ¶ 11 (citing Def.'s Ex. A. Ex. 11.1, at 2 (minutes of April 19, 2005 Board meeting)).) Thus, it was entirely expected that the Association would have to pay a substantial sum to remove and replace the original carpeting, which actually lasted a few years beyond its expected life. As such, the expenditure of more than $57,000 for new carpeting in 2010 was nothing more than ordinary maintenance and obviously gave no indication of any underlying construction defects that should have been addressed at that time by the Association.

In summary, Centex went to great lengths to cherry pick every expenditure that the Association made for repairs and maintenance between 2003 and 2014 that might in any way have been related to water intrusion, hoping to show that the Association should have realized at some point, just by the supposedly overwhelming amount of the repairs, that there were construction defects at the Wedgewood project. The summary-judgment record, viewed in the light most favorable to the Association, shows just the opposite, however. The amount spent on repairs and maintenance during that time was in no way sufficient to raise any eyebrows with the Association's Board or its management company that Centex's latent defects from original

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construction were to blame, as opposed to ordinary maintenance issues. It was only in 2016, less than three years before this action was filed, that the Association discovered with Mr. Clements' expert assistance, that there were original, latent defects in the Wedgewood project. It is, therefore, a question of fact for the jury exactly when the Association knew or should have known of its claims against Centex.

CONCLUSION

For the foregoing reasons, the Court should deny Centex's Motion for Summary Judgment as to each of the Association's claims against Centex.

Respectfully submitted,

STANLEY LAW FIRM, L.L.C.

s/ *Stacy L. Stanley*
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Attorney for the Plaintiff

August 25, 2022

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-00307
Wedgewood Condominium Association,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**AFFIDAVIT OF H. ROSS CLEMENTS IN OPPOSITION TO DEFENDANT CENTEX'S MOTION FOR SUMMARY JUDGMENT**
	)	
Centex Homes et al.,	)	
	)	
Defendants.	)	
	)	
Centex Homes,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
Right Way Construction, Inc., et al.,	)	
	)	
Third-Party Defendants.	)	
	)	

PERSONALLY APPEARED BEFORE ME, H. Ross Clements, AIA, who, after being duly sworn, states as follows:

1. In May of 2001, I earned an accredited Bachelor of Architecture degree from the University of Tennessee. Since that time, I have participated in numerous continuing education courses and seminars.

2. I have been a Registered Architect since April 2006, and am currently licensed to practice architecture in South Carolina, where I have been a licensed architect for over 16 years.

3. I am certified by the National Council of Architectural Registration Boards (NCARB) and am a member of the American Institute of Architects (AIA).

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4. I am one of the owners of Fuller Group, LLC ("Fuller"). Fuller was retained by the Plaintiff in this action, Wedgewood Condominium Association (the "Association"), to perform an investigation of the existing conditions at the Wedgewood condominium project in North Myrtle Beach, South Carolina.

5. As part of Fuller's forensic architectural services, I reviewed project documents and visited the Wedgewood project on numerous occasions, beginning on September 16, 2016, to perform visual surveys and conduct destructive testing to determine if the buildings were constructed in accordance with applicable building code requirements, accepted industry standards, and manufacturers' instructions.

6. As a result of my investigations, I issued a comprehensive report (Summary of Field Observations) dated March 2, 2018 and an addendum report dated November 14, 2019. The text portion of these reports is attached as Exhibit A to this Affidavit.

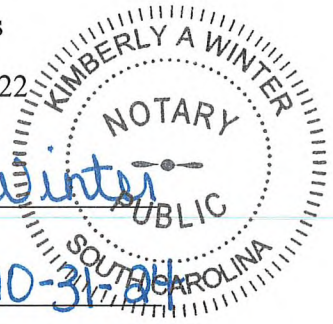
7. I have reviewed the 24 pages of "Undisputed Facts" included in Exhibit A to the Motion for Summary Judgment filed by the Defendant Centex Homes ("Centex"), as well as the Memorandum submitted in support of Centex's Motion for Summary Judgment.

8. With regard to the approximately $280,000 of expenditures identified in Centex's "Undisputed Facts" for the period from August 18, 2003 to May 29, 2014, it is my professional opinion that the size, scope, and nature of those expenditures are consistent with reasonably anticipated expenditures for routine maintenance and repairs to the nine buildings comprising the Wedgewood project and were insufficient to put the Association or its management company on notice of the construction defects I later discovered through destructive testing at the Wedgewood project beginning on November 29, 2016.

9. The latent construction defects I discovered through my investigations between September of 2016 and June of 2020 are far broader in scope and not tailored to the specific repairs previously made at Wedgewood that are catalogued in Centex's "Undisputed Facts."

H. Ross Clements, AIA

SWORN to before me this
23rd day of August, 2022.



Kimberly A. Winter
Notary Public

My commission expires: 10-31-24

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-00307
Wedgewood Condominium Association,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**AFFIDAVIT OF RENEE CORN IN**
	)	**OPPOSITION TO DEFENDANT**
Centex Homes et al.,	)	**CENTEX'S MOTION FOR SUMMARY**
	)	**JUDGMENT**
Defendants.	)	
	)	
Centex Homes,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
Right Way Construction, Inc., et al.,	)	
	)	
Third-Party Defendants.	)	

PERSONALLY APPEARED BEFORE ME, Renee Corn, CMCA, AMS, who, after being duly sworn, states as follows:

1. I am employed as an Association Manager by Waccamaw Management ("Waccamaw"), which is a professional property management company located in Myrtle Beach, South Carolina.

2. I have current certifications both as a Certified Manager of Community Associations (CMCA) and Association Management Specialist (AMS).

3. Since 2014, Waccamaw has been retained by the Board of Directors ("Board") of the Wedgewood Condominium Association (the "Association") to manage the property and day-

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to-day affairs of the Association and the Wedgewood Horizontal Property Regime condominium project in North Myrtle Beach.

4. I am familiar with Waccamaw's management of the Association's day-to-day affairs and the Wedgewood property and serve as the custodian of the Association's records.

5. Attached to this Affidavit as Exhibit A is a true and correct copy of the Master Deed of the Wedgewood Horizontal Property Regime, including Exhibits D (the Association's Articles of Incorporation) and E (the Association's Bylaws) to the Master Deed.

6. The Wedgewood property includes 111 Units in nine buildings.

7. The property was developed and built by Centex Homes, which completed construction of the nine buildings between 2000 and 2001.

8. Pursuant to the Master Deed, the Association is responsible to maintain the Wedgewood property's Common Area in first class condition. The cost of necessary maintenance, repair, and replacement of the property's Common Area is charged to the Unit Owners as a Common Expense. The Unit Owners pay the Common Expenses through Annual Assessments, which are determined by the Association's Board based on a budget that estimates the Common Expenses for the next succeeding Annual Assessment Period.

9. Although the Annual Assessment is calculated on a yearly basis, the Unit Owners pay the Annual Assessment in equal monthly installments.

10. For the years 2003 through 2014, each Unit Owner paid the Annual Assessments in the following monthly installments:

2003	$294.00

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2004	309.00
2005	234.28
2006	233.05
2007	249.00
2008	249.00
2009	256.00
2010	256.00
2011	263.00
2012	268.00
2013	268.00
2014	271.00

11. In addition to the Annual Assessments, the Board is also authorized to levy Special Assessments either to supplement the Annual Assessments if they are inadequate to pay the Common Expenses or to defray the cost of any reconstruction, repair, or replacement of the Common Area.

12. The Board has never levied a Special Assessment. All of the Common Expenses have always been covered by the Annual Assessments paid as monthly charges.

13. Every year, independent auditors prepare financial statements for the Association. Attached to this Affidavit as Exhibits B and C, as representative samples, are the auditors' financial statements for the years ended December 31, 2013, and December 31, 2014, respectively.

14. The operating expenses for repairs and maintenance shown in those financial statements ($122,734 in 2013 and $133,031 in 2014) are consistent with what the Association

has historically paid for repairs and maintenance each year, that is, up to $100,000 and more between 2003 and 2014.

15. In 2016, the HOA began to experience issues at Buildings 6 and 9 related to siding and trim. At that time, Waccamaw advised the Association's Board of Directors that it should consult with an attorney to determine whether these were maintenance or construction defect issues.

16. Prior to 2016, Waccamaw had not recommended that the Board consult with an attorney related to construction defect issues.

17. The Association's construction repair expert, Procon & Associates, Inc., has provided two estimates for the cost to repair the defects caused by Centex's faulty construction. Procon's estimated total to repair the construction defects for all nine buildings is $12,273,031. Copies of Procon's repair estimates are attached to this Affidavit as Exhibits D and E.

Renee Corn, CMCA, AMS

SWORN to before me this

25th day of August, 2022

Debra Silvestri

Notary Public

My commission expires: 8-4-27

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EXHIBIT A

PORTIONS OF THIS AGREEMENT ARE SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, § 15-48-10, S.C. CODE OF LAWS OF 1976, AS AMENDED.

MASTER DEED OF

THE WEDGEWOOD HORIZONTAL PROPERTY REGIME

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HORRY COUNTY, S.C.
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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

MASTER DEED
OF THE WEDGEWOOD
HORIZONTAL PROPERTY REGIME

TO ALL WHOM THESE PRESENT MAY COME:

WHEREAS, CENTEX HOMES (the "Developer") is a Nevada general partnership having its principal place of business located at 11746 Highway 17 Bypass, Murrells Inlet, South Carolina 29576; and

WHEREAS, the Developer is the owner of that certain real property in the City of North Myrtle Beach, Horry County, South Carolina (the "Land") more fully described in Exhibit "A" attached hereto and located within the community known as "Barefoot Resort," a master planned mixed-use development which community ; and

WHEREAS, the Developer intends to construct certain improvements on the Land; and

WHEREAS, the Developer now deems it appropriate to organize a horizontal property regime by duly executing and recording this Master Deed in the Office of the Register of Deeds ("ROD") for Horry County, South Carolina.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Developer hereby submits the Land more fully described in Exhibit "A" attached hereto and all improvements located thereon, together with all easements, rights and appurtenances thereunto belonging, to the provisions of Sections 27-31-10 et seq. of the South Carolina Code of Laws (1976) and hereby creates thereon a horizontal property regime (sometimes termed "condominium ownership") to be known as THE WEDGEWOOD HORIZONTAL PROPERTY REGIME, subject to the following:

1. Definitions. Unless defined herein or unless the context requires otherwise, the words defined in Section 27-31-20, South Carolina Code of Laws (1976), when used in this Master Deed or any amendment hereto, will have the meaning therein provided. The following words, as well as other defined terms set forth herein, when used in this Master Deed or any amendment or supplement hereto, unless the context requires otherwise, will be deemed to include the singular and plural forms as the context requires and have the following meanings:

"Assessment" means the amount assessed against an Owner and his Unit from time to time by the Association in the manner provided herein.

"Assigned Value" means the value assigned to each Unit in accordance with Exhibit "C" attached hereto and utilized for purposes of computing the Percentage Interest appurtenant to such Unit, which Assigned Value will not constitute the sales price of the Unit or be relied upon as a representation of the actual value of the Unit.

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"Annual Assessment Period" means the fiscal year of the Association established by the Association's Board of Directors.

"Association" means The Wedgewood Condominium Association, being an association of Owners of Units located in the Regime, in the form of a nonprofit, non-stock membership association which will be incorporated in accordance with the Article of Incorporation attached hereto as Exhibit "D" and the Nonprofit Corporation Act.

"Board of Directors" or "Board" means the Board of Directors of the Association, and "director" or "directors" means a member or members of the Board.

"Building" means a structure containing Units comprising a portion of the Regime.

"Bylaws" means the Bylaws of the Association attached hereto as Exhibit "E," as amended from time to time in accordance with the terms of the Bylaws and this Master Deed.

"Common Area" means all of the Regime property after excluding the Units, including the following:

1. Easements through the Units for conduits, ducts, plumbing, chimneys, wiring, and other facilities for the furnishing of utility services to Units and the Common Areas; provided, however, such easements through a Unit will be only according to the Plans for the Building, or as the Building is constructed unless otherwise approved by the Unit Owner.

2. An easement of support in every portion of a Unit which contributes to the support of a Building.

3. Easements through the Units and Common Areas for maintenance, repair and replacement of the Units and Common Areas.

4. Installation for the furnishing of utility services to more than one Unit or to the Common Areas or to a Unit other than the one containing the installation, which installation will include ducts, plumbing, wiring, and other facilities for the rendering of such services.

5. The tangible personal property required for the maintenance and operation of the Unit, even though owned by the Association.

When used herein, "Common Area" will be deemed to include any service provided by the Association in furtherance of the uses and purposes to which any of the aforesaid facilities are put.

"Common Expense(s)" means (a) all expenses incident to the administration of the Association and maintenance, repair and replacement of the Common Areas and the Limited Common Areas, after excluding there from such expenses which are the responsibility of an Owner,

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(b) expenses determined by the Association to be Common Expenses and which are lawfully assessed against Owners; (c) expenses declared to be Common Expenses by the Condominium Act or the Regime Documents; and (d) reasonable reserves established for the payment of any of the foregoing.

"Condominium Act" means the Horizontal Property Act of South Carolina, South Carolina Code of Laws (1976), Section 27-31-10 to Section 27-31-300, as may be amended from time to time.

"Developer" means CENTEX HOMES, a Nevada general partnership , its successors and assigns.

"Golf Course Land" will mean and refer to all that certain piece, parcel and tract of land located adjacent to the Project and identified as "The Norman Course," which land is operated at the date this Master Deed is filed of record as an 18-hole golf course and driving range. When used herein, the term "owner of the Golf Course Land" and variants thereof shall mean, collectively, the title owner of such land and any other person leasing and/or operating the golf facilities located thereon, their successors, assigns, members, managers, directors, officers, agents, employees and contractors.

"Institutional Mortgage" will mean and refer to a first lien Mortgage (prior to all other Mortgage liens) held by a bank, trust company, insurance company, or other recognized lending institution, or by an institutional or governmental insurer or purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation. Such term will also mean and refer to the holder of any Mortgage securing a loan made by the Developer, its affiliates, successors, or assigns

"Land" means the Land which is described in Exhibit "A" attached hereto, as said exhibit may be amended from time to time in accordance with the provisions of this Master Deed to withdraw unimproved portions thereof from the Regime.

"Limited Common Area" means that portion of the Common Area set aside and allocated for the exclusive use of the Owner of the Unit to which attached or assigned, and will include that portion of any Common Area that is pierced by the Unit's interior stairs, if any; a Unit's chimney structure and flue, if any; air conditioner units and condensers and hot water heaters located outside of the Unit, and the spaces occupied by same; and the balcony adjacent to the Unit.

"Master Deed" means this document, as amended from time to time.

"Master Association" means Barefoot Resort Residential Owners Association, Inc., a South Carolina nonprofit corporation.

"Member" means each Owner who is a member of the Association.

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"Mortgage" will mean and refer to a mortgage, security deed, deed of trust, installment land sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Unit.

"Mortgagee" will mean and refer to the holder of a Mortgage.

"Nonprofit Corporation Act" means and refers to the South Carolina Nonprofit Corporation Act of 1994, South Carolina Code Sections 33-31-101, et. seq., as amended.

"Owner" means the record owner, whether one or more persons, of fee simple title in and to any Unit; excluding, however, those persons having such interest merely as security for the performance of an obligation.

"Percentage Interest" means the undivided percentage interest owned by each Owner as a tenant-in-common in the Common Areas. "Total Percentage Interest" means the aggregate of all the Percentage Interests.

"Plans" mean and include the site plan and the floor plans of the Project which are filed as an attachment to this Master Deed showing the boundaries of the Land, the horizontal and vertical location of the improvements and Common Areas of the Project thereon and certified by a licensed engineer or architect in accordance with the provisions of the Condominium Act.

"Project" means, collectively, the Land, the Building and all other improvements and structures located thereon, and all easements, rights and appurtenances belonging thereto, submitted to the Condominium Act by this Master Deed, as amended from time to time in accordance with the provisions hereof.

"Regime" means the horizontal property regime established by this Master Deed, including all appurtenances and incidents of ownership attendant therewith.

"Regime Documents" means and includes this Master Deed, all Exhibits hereto, the Articles of Incorporation of the Association, the Bylaws and the Rules and Regulations, all as amended from time to time in accordance with the provisions thereof or in accordance with the laws of the State of South Carolina.

"Rules and Regulations" means the rules and regulations from time to time promulgated by the Board of Directors governing the use of the Common Areas and Units.

"Transition Period" means the time period commencing on the date of recording of this Master Deed and ending on the earlier of:

1. December 31, 2005; or

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2. Three (3) months after the conveyance in the ordinary course of Developer's business of one hundred percent (100%) of the maximum number of Units to be contained in all phases of the Project; or

3. Three (3) months following the date the Developer surrenders its authority as a Class "B" Member of the Association to appoint and remove directors and officers of the Association by an express amendment to this Master Deed executed and filed of record by Developer.

"Trustee" means the Board of Directors acting as a fiduciary for the benefit of the Association and the Owners in holding certain funds and providing services as provided herein, or such bank or trust company authorized to do trust business in the State of South Carolina and appointed therefor by the Board of Directors.

"Unit" means that part of the Project intended principally for residential use by an Owner, situate within the Unit boundaries described in Exhibit "B" attached hereto, as amended from time to time in accordance with the provisions of this Master Deed and constituting an "apartment" as defined in the Condominium Act. Each Unit will be identified in the architect's plans incorporated in and made a part of Exhibit "B" attached hereto by a specific letter, number or combination thereof, which identification will be sufficient to identify the Unit for all purposes. "Unit" will also mean all the components of ownership held by an Owner, including not only the rights and interests of the Owner in and to the Unit, but also the rights of use of and the undivided interest in the Common Area.

2. Administration

2.1 The Association. The administration of the Regime will be the responsibility of the Association, which will be made up of all the Owners of Units in the Regime. The Association and the Owners will be governed by the Regime Documents, as the same may be amended from time to time.

2.2 Membership. Each Owner of a Unit, including the Developer, will be a Member of the Association. Membership will be appurtenant to and may not be separated from ownership of a Unit and ownership of a Unit will be the sole qualification for such membership. In the event that fee title to a Unit is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto will automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include any Mortgagee or any other person who holds an interest merely as security for the performance of an obligation, and the giving of a security interest will not terminate or otherwise affect an Owner's membership in the Association.

2.3 Agreements. The Association will be and hereby is authorized to enter into such contractual arrangements, including without limitation, management contracts, as it may deem necessary or desirable for the administration and operation of the Regime, subject, however, to the following limitations:

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(a) The Association will not enter into any contractual arrangement with a term of longer than two (2) years without Member approval therefor by a majority of the votes cast by written ballot or in person or by proxy at a meeting at which a quorum is present; and

(b) Any agreements entered into during the Transition Period will provide that such contractual arrangement is subject to termination without cause at any time after the expiration of the Transition Period without a penalty upon not more than ninety (90) days prior written notice from the Association, and failing to contain such a provision, the Association will not be bound directly or indirectly by such contractual arrangement.

Anything contained herein to the contrary notwithstanding, the following contracts will be exceptions to the provisions of Sections 2.3(a) and 2.3(b) above:

(1) Any contract with a utility company if the rates charged for the materials or services are subject to regulation by the South Carolina Public Service Commission; provided, however, that the term of the contract will not exceed the shortest term for which the utility will contract at the regulated rate in effect at the contract date;

(2) Any prepaid casualty and/or liability insurance policy with a term not to exceed three (3) years, provided that the policy permits short rate cancellation by the insured;

(3) Any contract for cable television services and equipment or satellite dish television services and equipment for a term not to exceed five (5) years, provided the supplier is not an entity in which the Developer has a direct or indirect ownership interest of ten percent (10%) or more; and

(4) Any contract for the sale or lease of burglar and/or fire alarm equipment, installation and/or services for a term not to exceed five (5) years, provided the supplier is not an entity in which the Developer has a direct or indirect ownership interest of ten percent (10%) or more.

Each Owner by acquiring or holding an interest in a Unit thereby ratifies and agrees to be bound by the terms and conditions of all such contractual arrangements entered into by the Board of Directors on behalf of the Association prior to the conveyance of the Unit to the Owner.

2.4 Books and Records. The Association will keep full and accurate books of account and financial records showing all receipts and disbursements. In particular, the books will be maintained with a detailed account, in chronological order, of the receipts and expenditures affecting the Project and its administration, and specifying the maintenance and repair expenses of the Common Area as well as other expenditures incurred. Vouchers accrediting the entries made thereupon will also be maintained in chronological order.

2.5 Financial Statements. No later than 120 days after the close of any fiscal year of the Association, the Association will cause an audited financial statements for such fiscal year to be

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prepared. Copies of the financial statements will be available to any Owner or Mortgagee upon written request to the Association. The Association may charge a reasonable fee for copying such statements.

2.6 Access to Information. The Association will make available to Owners of any Unit and to any Mortgagee current copies of the Regime Documents and the books, records, vouchers, contractual arrangements and financial statements of the Association. "Available" means available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association may charge reasonable copying costs for any requested copies or extracts. Any party entitled to the benefits of this Section 2.6 will be permitted to designate one or more agents who will be permitted to represent said party in connection with any and all reviews of the Regime Documents and books, records, contractual arrangements and financial statements of the Association.

2.7 Rules and Regulations. The Board of Directors will be entitled to promulgate reasonable Rules and Regulations from time to time, which will be binding on the Association and all Owners and lessees of Owners, their families, invitees and guests, regarding the use and enjoyment of Units and Common Areas. Copies of the current Rules and Regulations will be furnished to Owners and lessees of Owners upon request.

2.8 Professional Property Manager. The Board of Directors shall retain a professional property management company to manage the day-to-day affairs of the Association.

2.9 Collection and Remission of Master Association Assessments. The Board of Directors may collect assessments made against the Units by the Master Association and remit the same to the Master Association on behalf of the Unit Owners in accordance with the applicable provisions of the Declaration of Covenants, Conditions and Restrictions for Barefoot Resort Residential Properties which have been filed in Book 2251 at Page 384 in the Horry County ROD, as such restrictive covenants may be amended from time to time as set forth therein. Such assessments will not be deemed a Common Expense hereunder.

2.10 Collections and Remission of Optional Cable Television, Telephone and Other Charges; Master Utility Charges. In the event the Association at any time secures any optional cable, telephone or other service, including broadband communications access, the Association will be entitled to collect fees charged to those Unit Owners who elect to receive such optional service made available to the Unit Owners through the Regime and remit the same to the provider thereof on behalf of such Unit Owners. Such elective costs and expenses will not be deemed a Common Expense hereunder, but will be charged to the Units Owners separately from their Assessment. Furthermore, the Board of Directors will pay any master utility meter charge, base cable to all Units, or other blanket utility fee for services to all units not otherwise separately metered or charged to individual Units. Such master cost and expense will be a Common Expense hereunder; provided, however, in the event actual costs exceed the budgeted costs therefor, such unbudgeted excess may be prorated and charged to the Units Owners separately from their Assessment, and will not require payment thereof from any other budget line item surplus or a Special Assessment or other extraordinary measure of collection.

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3. Property Rights

3.1 Units. Each Unit will for all purposes constitute a separate parcel of real property which, subject to the provisions of this Master Deed, may be owned in fee simple and which may be conveyed, transferred, leased and encumbered in the same manner as any other real property. Each Owner, subject to the provisions of the Condominium Act and this Master Deed, will be entitled to the exclusive ownership and possession of his Unit.

3.2 Description of Units. The dimensions, area and location of the Units are as set forth on Exhibit "B" attached hereto and are generally intended to include the following:

(a) Horizontal (Upper and Lower).

(i) The upper horizontal boundary of each Unit is the plane formed by the uppermost, unexposed surface of the wallboard or other material comprising a part of the ceiling in the uppermost story of the Unit.

(ii) The lower horizontal boundary of each Unit is the plane formed by the finished surface of the concrete slab or uppermost surface of the sub-flooring on which the lowermost story of the Unit is constructed.

(b) Vertical (Perimetric or Lateral). The vertical boundaries of each Unit are the planes formed by the outermost, unexposed surface of the wallboard or other surface comprising the perimeter walls enclosing the Unit.

(c) Units Deemed to Include. Notwithstanding the description of the boundaries set forth above, the Units shall be deemed to include the following: all portions of the plumbing, heating, electrical, and air conditioning systems (including furnaces, compressors, components, pipes, wires, conduits, ducts, and the like) serving only that Unit even if partially outside the boundaries of the Unit; all windows, glass surfaces, and doors (including window and door frames and the hardware thereof) serving the Unit; all window screens and screens on any screened balcony; and any fireplace or stove hearth, facing brick, tile or firebox; provided, however, that a Unit shall not include any of the structural components of the Building or utility or service lines within the Unit but serving more than one Unit. In interpreting deeds and plans, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or plan, regardless of settling or lateral movement of the Building, and regardless of minor variance between the boundaries shown on the plans or in a deed and those of the Unit.

The ownership of each Unit shall include, and there shall pass with each Unit as an appurtenance thereto whether or not separately described in the conveyance thereof, that percentage of the right, title and interest in the Common Areas attributable to such Unit, together with membership in the Association and an undivided interest in the funds and assets held by the

Association. Every portion of a Unit and all Limited Common Area contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

3.3 Modification of Units. The Developer, on behalf of itself, its successors and assigns, hereby reserves the right to modify or reconstitute, at any time and from time to time, one or more Units owned by Developer or its affiliates without the consent of the Association or any Owner other than those who may be directly affected; provided, however, that the aggregate Percentage Interest assigned to the Units so affected will not change even though the same may be reallocated among such changed Units. If Developer makes any changes in Units pursuant to this Section 3.3, such changes will be reflected by an amendment of this Master Deed which will be duly recorded in the Horry County ROD. Such amendment will not require the consent of Owners other than the Developer.

3.4 Common Area and Limited Common Area.

(a) Percentage Interest. The Owners will own the Common Area as tenants-in-common, with each Unit having, appurtenant thereto, the Percentage Interest in the Common Areas set forth in Exhibit "C" attached hereto; provided, however, that the use of the Limited Common Area will be restricted as set forth in Section 3.4(e). The Percentage Interest appurtenant to each Unit has been determined by dividing the Assigned Value of the respective Unit as shown on Exhibit "C" by the aggregate Assigned Value of all Units as shown on Exhibit "C." The value assigned to any Unit in Exhibit "C" does not represent the sales price or market value of the Unit and will only be utilized for purposes of computing the Percentage Interest appurtenant to the respective Unit.

(b) Inseparability of Percentage Interests. The Percentage Interest in the Common Area cannot be separated from the Unit to which it appertains and will be automatically conveyed or encumbered with the Unit even though such Percentage Interest is not expressly mentioned or described in the deed or other instruments.

(c) No Partition. The Common Area will remain undivided and no right to partition the same or any part thereof will exist except as provided in the Condominium Act, the Bylaws and this Master Deed.

(d) Use of Common Area. The Common Area will be used in accordance with the intended purposes without hindering the exercise of or encroaching upon the rights of other Owners. The Board of Directors will, if any question arises, determine the purpose for which a part of the Common Area is intended to be used. All Owners and lessees of Owners, their families, invitees and guests will abide by all Rules and Regulations from time to time in effect governing the use of the Common Area.

(e) Use of Limited Common Area. Anything to the contrary contained herein notwithstanding, ownership of each Unit will entitle the Owner or Owners thereof to the exclusive use of the Limited Common Area adjacent and appurtenant to such Unit, which exclusive use may be delegated by such Owner to persons who reside in his Unit. All Owners and lessees of Owners,

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their families, invitees and guests will abide by all Rules and Regulations from time to time in effect governing the use of the Limited Common Area. An Owner will be responsible for maintenance and repair of the Limited Common Area appurtenant to his Unit as set forth in Section 8.3 below.

(f) Reservation of Easements and Use and Expansion Rights. The Common Areas will be subject to all easements and use rights, if any, reserved by the Developer hereunder and the right of the Developer to expand the regime by construction of additional Units pursuant to Section 14.2.

3.5 Status of Title of Project. The Developer represents to the Association and all the Owners that, as of the effective date hereof, the Developer has marketable, fee simple title to the Project. The rights and interests of all Owners in and to the Project will be subject only to (i) liens for real estate taxes for the current year and subsequent years; (ii) existing and/or recorded easements, conditions, covenants, declarations, reservations and restrictions including, without limitation, those set forth in this Master Deed; (iii) easements and use rights, if any, reserved by the Developer hereunder; and (iv) applicable governmental regulations, including zoning laws, which may be imposed upon the Project from time to time.

3.6 Limited Warranty From Developer. FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF COMPLETION OF CONSTRUCTION (BEING THE LATER OF SUBSTANTIAL COMPLETION UNDER THE CONSTRUCTION CONTRACT, OR THE DATE A CERTIFICATE OF OCCUPANCY IS ISSUED THEREFOR), THE DEVELOPER SHALL AT NO COST TO THE ASSOCIATION REPAIR OR REPLACE (IN THE DEVELOPER'S DISCRETION) ANY PORTIONS OF THE COMMON AREA (EXCEPT FIXTURES, ACCESSORIES AND APPLIANCES COVERED BY SEPARATE WARRANTIES OF THEIR RESPECTIVE MANUFACTURERS) WHICH ARE DEFECTIVE AS TO MATERIALS OR WORKMANSHIP. THIS LIMITED WARRANTY IS IN PLACE OF ALL OTHER CONTRACTUAL OBLIGATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND THE DEVELOPER DISCLAIMS ALL OTHER CONTRACTUAL OBLIGATIONS OR WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE FULLEST EXTENT PERMITTED BY LAW, THE LIABILITY OF THE DEVELOPER SHALL BE LIMITED TO SUCH REPAIR OR REPLACEMENT AND THE DEVELOPER SHALL NOT BE LIABLE FOR DAMAGES OF ANY NATURE, WHETHER DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, REGARDLESS OF WHETHER SUCH DAMAGES ARE CLAIMED TO ARISE OUT OF THE LAW OF CONTRACT, TORT OR OTHERWISE, OR PURSUANT TO STATUTE OR ADMINISTRATIVE REGULATION. Each Owner, in accepting a deed from the Developer or any other party to a Unit, expressly acknowledges and agrees that this Section 3.6 establishes the sole liability of the Developer to the Association and the Owners related to defects in the Common Area and the remedies available with regard thereto. At the end of the one (1) year warranty period referred to hereinabove in this Section 3.6, the Developer will assign to the Association in writing all of its rights, claims, causes of action and demands which it has or which may thereafter accrue against all other people who may be responsible for the design and/or construction of the Common Area.

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4. Assessments

4.1 Creation of Lien and Personal Obligation for Assessments. Each Unit is and will be subject to a lien and permanent charge in favor of the Association for the Assessments set forth herein. Each Assessment, together with interest thereon and cost of collection thereof as hereinafter provided, will be a permanent charge and continuing lien upon the Unit against which it relates, and will also be the joint and several personal obligation of each Owner of such Unit at the time the Assessment comes due and upon such Owner's successor in title if unpaid on the date of the conveyance of such Unit, and each and every Owner by acquiring or holding an interest in any Unit thereby covenants to pay such amounts to the Association when the same will become due; provided, however, that no Owner acquiring title to any Unit at a foreclosure sale of any Institutional Mortgage, his successors and assigns, will have any personal obligation with respect to the portion of any Assessments (together with late charges, interest, fees and costs of collection) related to such Unit, the lien for which is subordinate to the lien of the Institutional Mortgage being foreclosed as provided in Section 4.8.

4.2 Annual Assessments. At least thirty (30) days prior to the Association's next succeeding Annual Assessment Period the Board will adopt a budget for the next succeeding Annual Assessment Period by estimating the Common Expenses to be incurred during such Annual Assessment Period, including a reasonable allowance for contingencies and operating and replacement reserves, such budget to take into account the projected anticipated income which is to be applied in reduction of the amount to be collected as an assessment. Upon adoption of the budget, a copy thereof will be delivered to each Owner. The Annual Assessment fixed against each Unit will be based upon said budget and in proportion to the respective Percentage Interests of each Unit subject to assessment, and the Board will give written notice to each Owner of the Annual Assessment fixed against his Unit for such next succeeding Annual Assessment Period; provided, however, the delivery of a copy of said budget will not be a condition precedent to an Owner's liability for payment of such Annual Assessment. In fixing the annual budget, the Board of Directors shall first contract for the performance of an annual maintenance audit by a professional inspector and shall reflect such inspector's recommendation's in the Board's adopted annual budget.

The Annual Assessment will not be used to pay for the following:

(a) Casualty insurance of individual Owners on their possessions within the Units and liability insurance of such Owners insuring themselves and their families individually, which will be the sole responsibility of such Owners;

(b) Ad valorem taxes assessed against Units;

(c) Other charges or expenses related solely to individual use or occupancy of any Unit; or

(d) Assessments charged directly to Owners by the Master Association pursuant to the Declaration of Covenants, Conditions and Restrictions for Barefoot Resort Residential Properties, to which the Regime is subject.

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It is anticipated that ad valorem taxes and other governmental assessments, if any, upon the Project will be assessed by the taxing authority upon the Unit, and that each assessment will include the assessed value of the Unit and of the undivided interest of the Owner in the Common Area; provided, however, that for the current calendar year, the ad valorem taxes will be based upon the condition of the Land as of January 1, and the Developer will be liable for that portion of the taxes applicable to the period prior to the recordation of this Master Deed. When current ad valorem taxes are due and payable, the remainder of the ad valorem taxes for the current calendar year will be prorated between the Developer and each Owner based upon the Owner's Percentage Interest and based upon the number of days each owned the Unit as evidenced by the date of the Unit Deed. Any such taxes and governmental assessments upon the Project which are not so assessed will be included in the Association's budget as a recurring expense and will be paid by the Association as a Common Expense. Except as otherwise provided herein, each Owner is responsible for making his own return of taxes and such return will include such Owner's undivided interest in the Common Area as such undivided interest is determined by law for purposes of returning taxes.

4.3 Rounding. Annual Assessments charged by the Association will be rounded off to the nearest dollar.

4.4 Special Assessments. In addition to the Annual Assessments, the Board of Directors may levy in any calendar year "Special Assessments" for the purpose (i) of supplementing the Annual Assessments if the same are inadequate to pay the Common Expenses and (ii) of defraying, in whole or in part, the cost of any reconstruction, repair, or replacement of the Common Area; provided, however, that any such Special Assessment which in the aggregate exceeds twenty percent (20%) of the total Annual Assessments for such year will have the approval of Members therefor by a majority of the votes cast by written ballot or in person or by proxy at a meeting at which a quorum is present, duly called for the express purpose of approving such Special Assessment.

4.5 Date of Commencement of Annual Assessments; Due Dates. Although the Annual Assessment is calculated on a yearly basis for the Annual Assessment Period, each Owner of a Unit will be obligated to pay to the Association or its designated agent such Assessment in equal monthly installments on or before the last day of the month in which the Assessment is billed.

The obligations of Owners regarding the payment of monthly portions of the Annual Assessment provided for in this Section 4 will, as to each Unit, commence upon the recording of this Master Deed. The first monthly payment of the Annual Assessment for each such Unit will be an amount equal to the monthly payment for the Annual Assessment Period in progress on such commencement date, divided by the number of days in the month of conveyance, and multiplied by the number of days then remaining in such month.

The Association will, upon demand at any time, furnish any Owner liable for any such Assessment a certificate in writing signed by an Officer of the Association or the property manager of the Association, setting forth whether the same has been paid. A reasonable charge, as determined by the Board, may be made for the issuance of such certificate. Such certificate will be

conclusive evidence of payment of any Assessment stated to have been paid as to any person or entity who has relied on the certificate to his detriment.

4.6 Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of Association.

(a) If an Assessment is not paid on the date when due, as hereinabove provided, then such Assessment together with such late charges and interest thereon and any costs of collection thereof as hereafter provided, will be a charge and continuing lien on the Unit to which it relates, and will bind such property in the hands of the Owner, his heirs, legal representatives, successors, and assigns. The personal obligation of the then Owner to pay such Assessment, however, will remain his personal obligation, and if his successors in title assume his personal obligation, such prior Owner will nevertheless remain as fully obligated as before to pay to the Association any and all amounts which he was obligated to pay immediately preceding the transfer. Furthermore, such prior Owner and his successor in title who assumes such liabilities will be jointly and severally liable with respect thereto, notwithstanding any agreement between such prior Owner and his successor in title creating the relationship of principal and surety as between themselves, other than one by virtue of which such prior Owner and his successor in title would be jointly and severally liable to pay such amounts.

(b) Any Assessment shall be due in full not later than the last day of the month in which the Assessment is billed, and any Assessment or portions thereof which is not paid when so due will be delinquent. Any delinquent Assessment will incur a late charge in an amount as may be determined by the Board from time to time and, upon adoption of a policy therefor by the Board of Directors, will also commence to accrue simple interest at the rate set by the Board of Directors from time to time. A lien and equitable charge as herein provided for each Assessment installment shall attach simultaneously as the same will become due and payable, and if an Assessment installment has not been paid as aforesaid, the entire unpaid balance of the Assessment installments for the Annual Assessment Period then in effect remaining to be paid during the fiscal year may be accelerated by the option of the Board and be declared due and payable in full.

(c) The Association may bring legal action against the Owner personally obligated to pay the same or foreclose its lien against the Unit to which it relates or pursue both such courses at the same time or successively. In any event, the Association will be entitled also to recover reasonable attorney's fees actually incurred and all other costs of collection. Each Owner, by his acceptance of a deed or other transfer of a Unit, vests in the Association or its agent the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien in any appropriate proceeding at law or in equity. All Owners, to the fullest extent permitted by law, waive the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained by the Association against any Owner in the event of such foreclosure and further, waive all benefits that might accrue to any Owner by virtue of any present or future homestead exemption or law exempting any Unit or portion thereof from sale. If the Association commences to foreclose its lien, the Owner may be required to pay a reasonable rental for the Unit after the commencement of the action and at its option the Association will be entitled to the appointment of a receiver to collect such rents. The Association will have the power

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to bid on the Unit at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No Owner may be relieved from liability from the Assessment provided for herein by abandonment of his Unit or otherwise.

(d) During any period in which an Owner will be in default in the payment of any Annual or Special Assessment levied by the Association, the voting rights of the Owner and the rights of the Owner and lessees of the Owner, their families, invitees and guests, to use and enjoy the recreational areas of the Common Area may be suspended by the Board of Directors until such time as the Assessment has been paid.

4.7 Developer's Unsold Units. Anything contained in this Section 4 to the contrary notwithstanding, so long as the Developer owns any Unit for sale, the Developer may annually elect either to pay the regular Assessment for each such Unit or to pay the difference between the amount of Assessments collected on all other Units not owned by the Developer and the amount of actual expenditures by the Association during the fiscal year, but not in a sum greater than its regular Assessment. Unless the Developer otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, the Developer will be deemed to have elected to continue paying on the same basis as during the immediately preceding year. Furthermore, so long as the Developer owns any Unit for sale, the Developer may, but will not be obligated to, reduce the regular Assessment for any year to be paid by Owners of Units, which may be a contribution to the Association, an advance against future regular Assessments due from said Owners, or a loan to the Association, in the Developer's sole discretion. The amount and character (contribution, advance or loan) of such subsidy will be conspicuously disclosed as a line item in the budget and will be made known to the Owners. The payment of such a subsidy in any year will under no circumstances obligate the Developer to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Developer.

4.8 Subordination of the Charges and Liens to Institutional Mortgages.

(a) The lien and permanent charge for the Assessments (together with late charges, interest, fees and cost of collection) authorized herein with respect to any Unit is hereby made subordinate to the lien of any holder of an Institutional Mortgage or his assigns placed on such Unit, and all Assessments with respect to such Unit having a due date on or prior to the date such Institutional Mortgage is filed for record have been paid. The lien and permanent charge hereby subordinated is only such lien and charge as relates to Assessments authorized hereunder having a due date subsequent to the date such Institutional Mortgage is filed for record and prior to the satisfaction, cancellation or foreclosure of such Institutional Mortgage.

(b) Such subordination is merely a subordination and will not relieve the Owner of the mortgaged Unit of his personal obligation to pay all Assessments coming due at a time when he is the Owner; will not relieve such Unit from the lien and permanent charge provided for herein (except as to the extent the subordinated lien and permanent charge is extinguished against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure); and no sale or transfer of such Unit to the Mortgagee or to any other person pursuant to a foreclosure sale will relieve any previous Owner from liability for any Assessment coming due before such sale or transfer.

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(c) To the extent any subordinated lien and permanent charge for any Assessment is extinguished by foreclosure of any Institutional Mortgage, then the amount or amounts otherwise secured thereby which cannot otherwise be collected will be deemed a Common Expense collectible from all Owners, including the person who acquires title through the foreclosure sale.

4.9 Reserves. The Board of Directors will establish and maintain an adequate reserve fund for the periodic repair and replacement of the Common Area. The Board of Directors will include amounts needed to maintain an adequate reserve fund in its estimation of the Common Expenses for each fiscal year and will cause deposits to the reserve fund to be made in connection with the collection of the Annual Assessment.

4.10 Working Capital Collected at Initial Closing. Notwithstanding anything to the contrary in this Master Deed, a working capital fund will be established for the Association by collecting from each Owner who acquires title to his Unit from the Developer a working capital amount equal to 2/12ths of the Annual Assessment then in effect, which Assessment will be due and payable at the time of transfer of each Unit by the Developer to any other Owner. Each such Owner's share of working capital, as aforesaid, will be transferred to the Association at the time of closing the conveyance from the Developer to the Owner. Such sum is and will remain separate and distinct from the Annual Assessment and will not be considered advance payment of the Annual Assessment. The working capital receipts may be used by the Association in covering operating expenses as well as any other expense incurred by the Association pursuant to this Master Deed and the Bylaws.

5. Insurance and Casualty Losses

5.1 Hazard Insurance.

(a) The Association will obtain, maintain and pay the premiums, as a Common Expense, upon a "master" or "blanket" type policy or policies of property insurance covering the entire Project, except (i) land, foundation, excavation, or other items normally excluded from coverage; (ii) all improvements and betterment made to Units by Owners at their expense; and (iii) personal property of Owners and lessees of Owners, their families, invitees and guests. Such coverage will also insure supplies, equipment and other personal property of the Association. All policies of property insurance will be single entity condominium insurance coverage. The master insurance policy will afford, at a minimum, protection against loss or damage by fire and other perils normally covered by standard extended coverage endorsements; and all other perils which are customarily covered with respect to condominium projects similar in construction, location and use, including all perils normally covered by a standard "all risk" endorsement, where such is available. The policy will be in an amount equal to one hundred (100%) percent of the current replacement cost of the Project, exclusive of land, foundations, excavation, and other items normally excluded from coverage. A "deductible amount" not to exceed the lesser of $10,000 or one percent (1%) of the policy face amount may be included at the discretion of the Board of Directors if available and if a material savings, as determined by the Board in its sole discretion, in premium cost results therefrom, but the deductible amount will be considered a Common Expense and borne by the

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Association regardless of the number of Owners directly affected by the loss and reserves will be established therefor.

(b) The name of the insured under the master policy will be substantially as follows: "The Wedgewood Condominium Association for the use and benefit of the Individual Owners of Units in The Wedgewood Horizontal Property Regime." Loss payable provisions will be in favor of the Association and the Trustee, as a trustee for each Owner, and each such Owner's Mortgagee as the interests of such parties may appear. Each Owner and his respective Mortgagee, if any, will be beneficiaries of the policy in a percentage equal to the Percentage Interest attributable to the Unit owned by such Owner. All policies will contain a standard mortgagee clause, or equivalent endorsement (without contribution), which is commonly accepted by Institutional Mortgage investors in the area in which the Project is located, and which appropriately names all Mortgagees or their servicer in such form as requested by such Mortgagees or their servicer.

(c) All policies will be written with a company holding a general policyholder rating of "A" or better by Best's Insurance Reports and in a financial category of Class VI or better in Best's Key Rating Guide. Policies are unacceptable where (i) under the terms of the insurance carrier's charter, bylaws or policy, contributions or assessments may be made against the Association, Owners, Mortgagees or the designees of Mortgagees; (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members; or (iii) the policy includes any limiting clause (other than insurance provisions) which could prevent Mortgagees or Owners from collecting insurance proceeds. Policies may not be cancelable or substantially modified by any party without at least ten (10) days prior written notice to the Association and each Mortgagee which is listed as a scheduled holder of a first Mortgage in the insurance policy. Policies should also contain a "special condominium endorsement" or its equivalent which provides for the following: recognition of any insurance trust agreement; a waiver of the rights of subrogation against Owners individually; the insurance is not prejudiced by any act or negligence of individual Owners which is not under the control of the Association or such Owners collectively; and the policy is primary in the event the Owner has other insurance covering the same loss.

(d) The Association will provide to Owners and/or Mortgagees requesting the same in writing a certificate of insurance, or a copy of the certificate of insurance, for the Regime, for which the Association may charge reasonable copying costs.

(e) Each Owner may obtain additional insurance at his own expense; provided, however, that no Owner will be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all of the Owners and their Mortgagees, may realize under any insurance policy which the Association may have in force on the Project at any particular time. Any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of any Owner's policy will be chargeable to the Owner who acquired such other insurance. Any Owner who obtains an individual insurance policy covering any portion of the Project, other than the personal property belonging to such Owner, will file a copy of such policy with the Association within thirty (30) days after purchasing such insurance. Each Owner, at his own expense, may obtain on his Unit or the contents thereof,

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title insurance, homeowner's liability insurance, theft and other insurance covering improvements, betterment and personal property damaged and lost. In addition, risk of loss with respect to any improvements made by an Owner within his Unit shall be that of the Owner. Betterments coverage or "improvements insurance" shall be secured solely by an Owner wishing such coverage of his risk of loss, and the Association shall have no liability therefor.

5.2 Liability Insurance. The Association will obtain, maintain and pay the premiums, as a Common Expense, upon a policy of comprehensive general liability insurance coverage covering at a minimum all of the Common Area. Coverage limits will be in amounts generally required by private Institutional Mortgage holders for projects similar in construction, location and use to the Project; provided, however, that such coverage will be for at least $1,000,000 for bodily injury, including death of persons, and property damage arising out of a single occurrence. Coverage under this policy will include, without limitation, legal liability to the insured for property damage, bodily injury and death of persons in connection with the operation, maintenance and use of the Common Area and legal liability arising out of law suits related to employment contracts in which the Association is a party. If the policy does not include "severability of interest" in its terms, an endorsement will be included which precludes the insurer's denial of the claims of an Owner because of the negligent acts of the Association or another Owner. Such policy must provide that it cannot be canceled or substantially modified, by any party, without at least thirty (30) days prior written notice to the Association and each Mortgagee listed as a scheduled holder of a first Mortgage in the insurance policy.

5.3 Fidelity Bonds and Other Insurance. The Association will obtain, maintain and pay the premiums, as a Common Expense, upon a blanket fidelity bond for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds belonging to or administered by the Association, including any professional management company assisting with the administration of the Regime. The total amount of the fidelity bond coverage required will be based upon the best business judgment of the Board of Directors and will not be less than the estimated maximum funds, including reserve funds, in the custody of the Association or a professional management company, as the case may be, at any given time during the term of each bond; provided, however, that in no event will the aggregate amount of such bonds be less than a sum equal to 2/12ths of the total Annual Assessments plus reserve funds. Fidelity bonds will meet the following requirements: the Association will be named as an obligee; the bonds will contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and the bond will provide that it may not be canceled or substantially modified (including cancellation for nonpayment of a premium) without at least ten (10) days prior written notice to the Association and each Mortgagee listed as a scheduled holder of a first Mortgage in the fidelity bond.

The Association will obtain, maintain and pay the premiums, as a Common Expense, on a policy of directors and officers liability insurance in such amounts as determined by the Board of Directors.

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The Board of Directors will be authorized on behalf of the Association to obtain and maintain such other and further insurance as the Board of Directors may determine from time to time.

5.4 Authority to Adjust Loss. The exclusive authority to negotiate, settle and otherwise deal in all respects with insurers and adjust all losses under policies provided for herein will be vested in the Board of Directors or its duly authorized agent for the benefit of all Owners and Mortgagees; provided, however, that all Owners and Mortgagees having an interest in such loss will be advised in advance of all actions anticipated to be taken of a material nature related to the adjustment of the loss. Each Owner, in accepting a deed to a Unit, expressly appoints the directors, and each of them, his due and lawful attorneys-in-fact, with full power of substitution, to act on behalf of the Owner as fully as the Owner could act in person on all matters related to the authority granted in this Section 5.4, including executing all documents required in connection therewith on behalf of the Owner.

5.5 Trustee.

(a) The Board of Directors may, from time to time, designate a third party Trustee hereunder. The Trustee, whether the Board of Directors acting in said capacity, or a third-party designated by the Board, will serve the Association and the Owners and their Mortgagees (as their interests may appear) as provided herein. Any third-party Trustee, but not the Board of Directors acting in such capacity, will be entitled to receive reasonable compensation for services rendered which will be a Common Expense of the Association.

(b) All insurance policies obtained by the Association will name the Association and the Trustee as loss payees. Immediately upon the receipt by the Association of any insurance proceeds, the Association will endorse the instrument by means of which such proceeds are paid and deliver the instrument to the Trustee. The Trustee will not be liable for payment of premiums, for the renewal or the sufficiency of the policies or for the failure to collect any insurance proceeds. Nor will the Trustee have any obligation to inspect the Project to determine whether a loss has been sustained or to file any claim or claims against any insurer or any other person.

(c) Among other things, the duties of the Trustee will be to receive proceeds delivered to it, hold such proceeds in trust for the benefit of the Owners and their Mortgagees, and disburse the proceeds as hereinafter provided.

(d) Proceeds of insurance policies received by the Trustee will be disbursed as follows:

(i) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purposes, will be disbursed in payment for such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs will be paid to the Association for the benefit of all Owners and their Mortgagees, if any;

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(ii) If it is determined, as provided in Section 5.6, that the damage or destruction for which the proceeds are paid will not be repaired or reconstructed, such proceeds will be disbursed to such persons as therein provided;

(iii) Any and all disbursements of funds by the Trustee for any purpose whatsoever will be made pursuant to and in accordance with a certificate of the Association signed by the President and attested by the Secretary directing the Trustee to make the disbursements;

(iv) If the damage or destruction is to the Common Area and is to be repaired or reconstructed, two days prior written notice of each disbursement will be given to the Mortgagee known by the Trustee from the records of the Association to have the largest interest in or lien upon such Common Area; and if the damage or destruction is to one or more Units and is to be repaired or reconstructed, said notice will also be given to the Mortgagee or Mortgagees known to the Trustee from the records of the Association to have an interest in or lien upon such Unit or Units.

(c) The Trustee will not incur liability to any Owner, Mortgagee or other person for any disbursements made by it in good faith pursuant to and in accordance with the foregoing requirements.

5.6 Damage and Destruction.

(a) Immediately after all or any part of the Project covered by insurance is damaged or destroyed by fire or other casualty, the Board of Directors or its duly authorized agent will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section 5.6, means repairing or restoring the damaged property to substantially the same conditions in which it existed prior to the fire or other casualty, with each Unit and the Common Area having the same vertical and horizontal boundaries as before.

(b) Any such damage or destruction to the Project will be repaired; provided, however, that any such damage which requires the reconstruction of the whole or more than two-thirds (⅔) of the Project will not be undertaken unless sixty-seven percent (67%) of the Members agree, voting in person or by proxy at a meeting at which a quorum is present, duly called, in whole or in part, for the purpose of disapproving such repair or reconstruction. If the Project is not reconstructed, all insurance proceeds will be delivered in accordance with the provisions of Section 5.6(c) below. Except as otherwise provided, any such damage or destruction which renders any Unit untenantable or uninhabitable, or any such damage or destruction to the Common Area, will be repaired and reconstructed as promptly as practicable. No Mortgagee will have any right to restrict the use of insurance proceeds otherwise available for repair, reconstruction or rebuilding.

(c) In the event that it is determined by the Association in the manner prescribed above that the damage or destruction will not be repaired, reconstructed or rebuilt, then and in that event:

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(i) The Project will be owned by the Owners as tenants-in-common;

(ii) The undivided interest in the Project of each Owner will be a percentage equal to the Percentage Interest appurtenant to the Unit theretofore owned by the Owner;

(iii) All liens affecting any of the Units will be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owners of the respective Units;

(iv) The Project will be subject to an action for partition at the instance of any Owner, in which event the net proceeds of the sale will be deposited with the Trustee;

(v) The Association will proceed to satisfy all of its liabilities and convert all of its assets to cash which will be deposited with the Trustee;

(vi) The proceeds from the sale of the Project, the liquidation of the assets of the Association and the insurance proceeds related to the damage or destruction to the Project will be considered one fund which, after paying the reasonable expenses of the Trustee, will be distributed to all the Owners and their respective Mortgagees as their interests may appear in percentages equal to the Percentage Interests of said Owners. Distributions to such Owners and their Mortgagees will be made pursuant to certificates provided for in Section 5.5.

5.7 Insufficient Proceeds to Repair.

(a) If the damage or destruction for which the insurance proceeds are paid to the Trustee is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, or if no insurance proceeds exist with respect to such damage or destruction, the Board of Directors will levy an Assessment against the Owners of damaged or affected Units in sufficient amounts to provide funds to pay costs in excess of insurance proceeds for repair or reconstruction. Additional Assessments may be made at any time during or following the completion of any repair or reconstruction. That portion of such Assessments levied against each Owner will be equal to that percentage computed by dividing the Percentage Interest appurtenant to such Owner's Unit by the aggregate Percentage Interests appurtenant to all Units damaged or affected.

(b) Any and all sums paid to the Association under and by virtue of those Assessments provided for in Paragraph (a) of this Section 5.7 will be deposited by the Association with the Trustee. Such proceeds from insurance and Assessments, if any, received by the Trustee will be disbursed as provided in Section 5.5.

6. Condemnation

6.1 General. Whenever all or any part of the Project will be taken by any authority having the power of condemnation or eminent domain, each Owner will be entitled to notice thereof; provided, however, that the exclusive right to negotiate, settle and otherwise deal in all respects with

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the condemning authority as to the taking of the Common Area will be vested in the Board of Directors or its duly authorized agent on behalf of the Association. Each Owner, in accepting a deed to a Unit, expressly appoints the directors, and each of them, his due and lawful attorneys-in-fact, with full power of substitution, to act on behalf of the Owner as fully as the Owner could act in person in all matters related to the authority granted in this Section 6.1, including executing all documents required in connection therewith on behalf of the Owner. The award made for such taking will be payable to the Trustee. Unless otherwise required by law at the time of such taking, any award made therefor will be disbursed by the Trustee, as hereinafter provided in this Section 6.

6.2 Non-Essential Areas. If the taking does not include any portion of any Unit or any portion of the Common Area essential to the continued occupancy of any Unit, then the Board of Directors will be permitted to replace any nonessential improvements to the extent deemed appropriate and the Trustee will disburse the proceeds of such awards in the same manner as hereinabove provided for and in connection with the repair, reconstruction or rebuilding of improvements after damage or destruction, with all excess proceeds to be distributed to the Association.

6.3 Essential Areas. If the taking includes any portion of a Unit or the Common Area essential to the use of any Unit, then the award will be disbursed, and all related matters, including, without limitation, alteration of the Percentage Interests appurtenant to each Unit, will be handled, by (i) the Developer, for so long as the Developer has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association, and (ii) thereafter, the Board of Directors in a just and equitable manner to all Owners; provided, however, that all action of the Board of Directors will be pursuant to and in accordance with a plan approved by Members representing at least sixty-seven (67%) percent of the total votes of the Association voting in person or by proxy, at a meeting at which a quorum is present duly called, in whole or in part, for the purpose of approving such in a duly recorded amendment to this Master Deed. In the event that such an amendment will not be recorded within ninety (90) days after the taking, then such taking will be deemed to be and will be treated as damage or destruction which will not be repaired or reconstructed as provided for in Section 5.6, whereupon the Regime will be terminated in the manner therein prescribed.

7. Architectural Control

7.1 Approval Required for Changes. To preserve the original architectural appearance of the Project, after the purchase of a Unit from the Developer, its successors or assigns, no exterior construction of any nature whatsoever, except as specified in the Regime Documents, will be commenced or maintained upon the Building, including without limitation, a Limited Common Area, nor will there be any change, modification or alteration of any nature whatsoever of the design and appearance of any of the exterior surfaces or facades, nor will any Owner paint any gate, fence or roof, nor will any Owner change the design or color of the exterior lights, nor will any Owner install, erect or attach to any part of the exterior any addition or change until after the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same will have been submitted to and approved in writing as to harmony of exterior design, color and location

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in relation to the surrounding structures by the Board of Directors. Furthermore, such required approval by the Board of Directors shall extend to any interior features or aesthetic elements which may be viewed from outside of a Unit in which the same is located. The failure of an Owner to secure the required approval of the Board of Directors as aforesaid, or to take such action, remedial or otherwise, as the Board shall at any time determine to be required hereunder shall be subject to the authority and enforcement powers of the Board as set forth in Section 18.5(a) below.

8. Maintenance

8.1 Responsibility of Association. Except as specifically provided to the contrary herein, the Association will maintain the Common Area in first class condition in accordance with proper maintenance procedures applicable thereto and will enforce all warranties with respect to the Common Area. In addition, the Association will repair or replace all parts of the Common Area as necessary. Except as otherwise provided herein, the cost of such will be charged to the Owners as a Common Expense.

8.2 Access to Units. The Association will have the irrevocable right, to be exercised by the Board of Directors or its agent, to have reasonable access to each Unit from time to time as may be necessary for the inspection, maintenance, repair or replacement of any of the Common Area accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Area or to other Units.

8.3 Responsibility of Owner. In the event that the Board of Directors should determine that the need for maintenance or repairs by the Association as provided for in this Section 8 is caused through the willful or negligent act of an Owner or the lessee of an Owner, their families, invitees or guests, or the Owner's pets, the cost of which is not covered or paid for by insurance, then the cost, both direct and indirect, of such maintenance or repairs will be added to and become a part of the Assessment to which such Owner and his Unit are subject. Each Owner will maintain, repair or replace at his own expense all portions of his Unit which may become in need thereof, including the heating and air-conditioning system for such Unit, all bathroom and kitchen fixtures and appliances, light fixtures, interior non-load-bearing walls, carpeting, drapes, doors, windows, screens, window and door hardware, and other items within the Unit. Further, each Owner will, at his own expense, maintain, repair and replace, when necessary, that portion of the heating and air-conditioning system exclusively servicing his Unit which is located outside his Unit. Each Owner will, at his own expense, keep the Limited Common Area to which his Unit has exclusive access and to which he has exclusive use clean and neat, and will conduct maintenance and repair thereto as necessary. If the Owner does not make those repairs required to be made by him within thirty (30) days from the date of receipt of written demand from the Association, the same may be repaired by the Association and the cost thereof will be assessed against the Owner and Unit owned by such Owner.

9. Access, Ingress and Egress. All Owners, by accepting title to a Unit, waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such property and acknowledge and agree that such access, ingress, and egress will be limited to roadways, sidewalks and walkways located within the Project from time to time, provided that pedestrian and vehicular access to and from all such property will be provided at all times.

9.1 Developer's Right to Develop. Notwithstanding anything herein contained to the contrary, the Developer hereby reserves unto itself, its successors and assigns, the right of unobstructed and uncontrolled passage of construction vehicles for persons engaged in both infrastructure and building construction activities. The within right, if exercised, will be limited to the hours of 6 a.m. to 6 p.m. and will terminate upon expiration of the Transition Period.

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10. Unit Restrictions

10.1 Units. All Units will be, and the same are hereby restricted exclusively, for residential use, provided, however, a Unit may be used as a combined residence and executive or professional office by the Owner thereof so long as such use does not interfere with the quiet enjoyment by other Owners and does not include visitation by clients, or unreasonable levels of mail, shipping, storage or trash requirements. No immoral, improper, offensive or unlawful use will be made of any Unit and no use or condition will be permitted which is a source of unreasonable noise or interference with the peaceful possession and quiet enjoyment of any other portion of the Project by other Owners or lessees of Owners, their families, invitees and guests. All Units will be kept in a clean and sanitary condition and no rubbish, refuse or garbage will be allowed to accumulate. No fire hazard will be allowed to exist and no use or condition will be permitted which will increase any rate of insurance related to the Project. In addition, all Owners and lessees of Owners, their families, invitees and guests will abide by all Rules and Regulations in effect from time to time governing the use of Units.

10.2 Animals and Pets. No animals, livestock or poultry of any kind will be raised, bred or kept on any part of the Project, except that dogs, cats or other normal household pets may be kept by the respective Owners inside their respective Units provided that they are not kept, bred or maintained for any commercial purpose and do not create any health hazard or, in the sole discretion of the Board of Directors, unreasonably disturb the peaceful possession and quiet enjoyment of any other portion of the Project by other Owners and lessees of Owners, their families, invitees and guests.

10.3 Antennas. No television antenna, radio receiver, or other similar device will be attached to or installed on any portion of the Regime by an Owner, except as required by the Telecommunications Act of 1996 and implementing rules therefor issued by the Federal Communications Commission and by the Association in conformity with rules or guidelines of the Federal Communications Commission; provided, however, the Developer and the Association, and their successors and assigns, will not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio, or other similar systems within the Regime.

10.4 Leasing of Units. Any Owner will have the right to lease or rent his Unit; provided, however, that all leases and rental contracts will be for a duration of 3 nights or more and will be in writing and will require the lessee to abide by all conditions and restrictions placed on the use and occupancy of the Unit and the Common Area by the Regime Documents. The Board of Directors will have the right to approve the form of all such leases and rental contracts at any time if it elects to do so. Occupancy by a tenant or renter under any such approved form of lease or rental contract is subject to continuing approval of the Board thereunder, which may be removed at any time by the Board for any violation by any such tenant or renter of the Rules and Regulations of the Association.

10.5 Motor Homes, Trailers, Boats, Etc. All vehicles will be parked in spaces within the Common Area designated therefor. There will be no storage or parking upon any portion of the Project of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other related forms of transportation devices.

10.6 Repurchase Option. During the Transition Period, the Developer will have the right and option to purchase any Unit within the Project which is offered for sale by the Owner thereof, such option to be at the price and on the terms and conditions of any bona fide offer therefor which is acceptable to such Owner and which is made in writing to such Owner. The Owner will promptly submit a copy of the same

to the Developer, and the Developer will have a period of ten (10) business days (exclusive of Saturday, Sunday and Federal holidays) from and after the presentation of such offer to the Developer in which to exercise its purchase option by giving such Owner written notice of such exercise. If the Developer fails to respond or to exercise such purchase option within said ten (10) -day period, the Developer will be deemed to have waived such purchase option. If the Developer responds by declining to exercise such option, the Developer will execute an instrument evidencing its waiver of its repurchase option, which instrument will be in recordable form. In the event that the Developer does not exercise its purchase option and such sale to a third party is not consummated on such terms and conditions set forth in the bona fide offer within six (6) months of the date in which the offer is transmitted to the Developer, or within the period of time set forth in such bona fide offer, whichever is later, the terms and limitations of this Section 10.6 will again be imposed upon any sale by such Owner. If the Developer elects to purchase, the transaction will be consummated within the period of time set for closing in said bona fide offer, or within thirty (30) days following delivery of written notice by the Developer to such Owner of the Developer's decision to so purchase such Unit, whichever is later.

11. Easements

11.1 Encroachments. If any portion of the Common Area encroaches upon any Unit or any Unit encroaches upon any other Unit or upon any portion of the Common Area as a result of settling or shifting of the Building or variances from the Plans, an easement will exist for the encroachment and for the maintenance of the same so long as the Building stands. If the Building, any Unit, and/or any adjoining part of the Common Area will be partially or totally destroyed as a result of fire or other casualty or a result of eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Area upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Area due to such rebuilding, will be permitted, and valid easements for such encroachments and the maintenance thereof will exist so long as the Building will stand.

11.2 Easement for Air Space. The Owner of each Unit will have an exclusive easement for the use of the air space occupied by said Unit as it exists at any particular time and as said Unit may be altered or reconstructed from time to time pursuant to this Master Deed.

11.3 Utilities, etc. There is hereby granted a blanket easement upon, across, over and under all the Project for ingress, egress, installation, replacing, repairing and maintaining a master television antenna or CATV system and all utilities, including, but not limited to water, gas, sewers, telephones and electricity. Such easements grant to appropriate utility companies the right to erect and maintain the necessary poles and other necessary equipment on the Project and to affix and maintain utility wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Units. In addition, the Board of Directors will be entitled to grant additional permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Project.

11.4 Easement for Construction. Notwithstanding anything herein to the contrary, Developer and persons designated by the Developer will have an easement to enter upon and cross over the Common Areas for purposes of ingress and egress to all portions of the Project; to use portions of the Common Areas and any Units owned by the Developer for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project; and to maintain and correct drainage of surface, roof or storm water.

11.5 Easement for Sales Purposes. Developer and persons designated by the Developer will have an easement to maintain one or more sales offices, management offices and models throughout the Project

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and to maintain one or more advertising signs on the Common Areas while the Developer is selling Units in the Project or any contemplated expansion thereof. Developer reserves the right to place models, management offices and sales offices in any Units owned by Developer and on any portion of the Common Area in such number, of such size and in such locations as Developer deems appropriate. So long as Developer will be selling Units in the Project or any contemplated expansion thereof, Developer will have the right to restrict the use of a reasonable number of parking spaces, for purposes including, but not limited to, the providing of spaces for use by prospective Unit purchasers, Developer's employees and others engaged in sales, maintenance, construction or management activities.

11.6 No View Easements. No view easements, express or implied, will be granted to any Owner in connection with the conveyance of a Unit to such Owner.

11.7 Easement for Bulkhead Maintenance. Pursuant to Section 7.2 of the Declaration of Covenants, Conditions and Restrictions for Barefoot Resort Residential Properties the Master Association is responsible for the maintenance of the bulkhead within or adjacent to the Project. The Master Association is hereby granted a non-exclusive, appurtenant easement over, upon and across the Project for the installation, maintenance, repair and replacement of the said bulkhead.

11.8 Other. There is hereby granted to the Association, its directors, officers, agents and employees and to any manager employed by the Association and to all policemen, firemen, ambulance personnel, and all similar emergency personnel, an easement to enter upon the Project or any part thereof in the proper performance of their respective duties. Except in the event of emergencies, the rights under this Section 11.8 will be exercised only during reasonable daylight hours, and then, whenever practicable, only after advance notice to the Owner or Owners affected thereby.

12. Special Provisions Applicable to the Golf Course Land.

12.1 Landscaping, Fencing and Signage Along Golf Course Land. The owner of the Golf Course Land shall have the right to place landscaping, fencing, signage, and similar improvements at the boundary lines of the Golf Course land and the Project as reasonably necessary to prevent trespass, to regulate play on the Golf Course Land and to frame and beautify golf holes (as determined in its sole discretion). Neither the Association or any Owner may install any fencing between the Golf Course Land and the Project except as approved by the ARC and by the owner of the Golf Course Land.

12.2 Restrictions and Owners' Assumed Risks Related to the Golf Course Land. So long as the Golf Course Land is owned and operated as a golf facility, the following shall apply to the Project:

(a) Distracting Activity by Owners of Lots Prohibited. Owners and Occupants, as well as their pets, will refrain from any actions which would detract from the playing qualities of the Golf Course Land. Such prohibited actions will include, but are not limited to, burning materials where smoke will cross the Golf Course Lands, owning dogs or other pets under conditions which interfere with golf course play due to their loud barking or other actions, playing of loud radios, televisions, stereos and musical instruments, running, bicycling, skateboarding, walking or trespassing in any way upon the Golf Course Land, picking up balls or any other similar interference with play.

(b) Assumed Inconveniences and Disturbances by Owners Adjacent to Golf Course Land. By the acceptance of a deed of conveyance to a Unit, each Owner acknowledges and agrees that such Owner assumes the risks of (i) the entry by golfers onto the Project to retrieve golf balls pursuant to the easement set forth in Section 12.3(a) below (which such entry will not be deemed a nuisance or trespass); (ii)

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possible overspray in connection with the irrigation and fertilization of the roughs, fairways, greens and tees of the golf course and odors arising therefrom; (iii) noise from golf course maintenance and operation equipment; (iv) disturbance and loss of privacy resulting from golf cart traffic and golfers, and (v) activities associated with lake or lagoon and lagoon edge maintenance. Additionally, each Owner acknowledges and understands that herbicides, fungicides, pesticides and chemicals may be applied to the golf course areas throughout the year, and that treated effluent or other sources of non-potable water may be used for the irrigation thereof.

(c) Assumption of Risks by Owners Adjacent to Golf Course. Each Owner and Occupant, for himself and his guests and invitees, acknowledges that risks of injury to persons or property are inherent to persons or property located upon or in close proximity to a golf course, and agrees that Owner or Occupant assumes all risks resulting therefrom, including but not limited to, claims of negligent design of the golf course, dwellings and negligent construction of improvements or location of improvements. Each Owner and Occupant, by expressly assuming such detriments and risks, agrees that neither the Developer, nor the owner of the Golf Course Land, nor the Association, nor their successors or assigns will be liable to any Owner or Occupant claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of, or damage to, property, trespass, or any other alleged wrongdoing or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of the Project to the Golf Course Land, including, without limitation, any claim arising in whole or in part from the negligence of the Developer, any affiliate of the Developer, the owner of the Golf Course Land, the Association, and/or their invitees, agents, servants, successors and assigns, against any and all such claims, including claims of negligent design of the golf course, dwellings and negligent construction of improvements or location of improvements.

12.3 Easements and Restrictions for the Benefit of the Golf Course Land.

(a) Flight and Retrieval of Golf Balls. The owner of the Golf Course Land and its guests will have, for as long as said land is used as a golf course, a perpetual, exclusive easement of access over the Project for the flight and retrieval of golf balls over, across and upon the Project, and for the purpose of retrieving golf balls from bodies of water within the Common Areas, lying reasonably within range of golf balls hit from the Golf Course Land.

(b) Golf Play. The owner, and its guests, licensees, and employees, of the Golf Course Land will have, for as long as said land is used as a golf course, a perpetual, non-exclusive easement to do every act necessary and incident to playing golf on the Golf Course Land, including, but not limited to, the creation of usual and common noise levels associated with golf play, and the play while standing out of bounds of a golf ball that lies within bounds as permitted by the rules of golf as are from time to time applicable.

(c) Overspray. The Project is hereby burdened with a nonexclusive easement for overspray of water from the irrigation system serving the Golf Course Land, as well as overspray of herbicides, fungicides and pesticides. Under no circumstances will the Developer, the owner of the Golf Course Land, or the Association be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(d) Golf Course Land Maintenance Noise Easement. There is hereby reserved for the benefit and use of the owner of the Golf Course Land the perpetual, nonexclusive right and easement over and across the Property for the creation of noise related to normal maintenance and operation of the golf course, including, but not limited to, the operation of mowing, raking and spraying equipment.

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(e) Golf Course Facilities' Construction, Maintenance, Repair and Replacement. There is hereby reserved for the benefit and use of the owner of the Golf Course Land the perpetual, nonexclusive right and ingress, egress, access and construction easement over the Project's roadways and Common Areas reasonably necessary to the construction, operation, maintenance, repair and replacement of the golf course facilities.

(f) Errant Golf Balls. The existence of the within easements shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall the Developer, the Association or the owner of the Golf Course Land, nor any of their respective appointees, directors, officers, employees, contractors, consultants, shareholders, affiliates, assignees, successors, nominees or agents, be held liable for any damage or injury to person or the Unit or any Project improvement thereon resulting from errant golf balls, whether in motion or at rest, which has been driven from the golf course or its environs.

(g) Encroachment Easements. If, after any repair, reconstruction, maintenance or other work on the Golf Course Land is complete, minor encroachments exist by the golf course playing area and improvements onto the Project or the Project onto the golf course playing area and improvements, the Regime Owners and the owner of the Golf Course Land Club Owner shall be deemed to have hereby granted to each other easements which shall allow said encroachments to exist, so long as they are not expanded in any way. Further, should any improvement constituting an encroachment ever be abandoned for a period of six (6) months or destroyed, the easement for that particular encroachment shall be terminated. The Association and Regime Owners and the owner of the Golf Course Land shall cooperate with each other to locate and accommodate said minor encroachments.

13. Assigned Value and Voting Rights

13.1 Units, Assigned Values, and Percentage Interests. The Schedule of Percentage Interests contained in Exhibit "C" attached hereto shows the Assigned Value of each Unit as of the date of this Master Deed and the Percentage Interest appurtenant to such Unit for all purposes, and the aggregate Assigned Values of Units in Buildings of all phases which may be added to the Regime pursuant to Section 14. The aggregate Assigned Values of Units in a Building to be added to the Regime in a future phase may be changed by the Developer at the time Developer submits said Building and its Units to this Master Deed, provided that following such submission the total Assigned Values of all Units in the Project, if all phases are constructed and submitted, will not be greater or less than said total contained in Exhibit "C."

13.2 Voting Rights. Members and the Developer will be entitled to a vote in the Association and for all other purposes herein in accordance with the provisions of the Association's Articles of Incorporation attached hereto as Exhibit "D" and the By-Laws of the Association attached as Exhibit "E," and as the same may be hereafter amended.

(a) Voting by Multiple Owners. When any Unit is owned in the name of two or more persons, other than husband and wife, or entities, whether fiduciaries, or in any manner of joint or common ownership, the vote for such Unit will be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting; or the vote will be exercised by such co-Owner, or his duly appointed proxy, as will be designated in a writing by all co-Owners recorded in the Horry County ROD, a copy of which will be delivered to the Secretary of the Association and will remain effective for all meeting until revoked by the co-Owners in a similar writing or until such designation terminates pursuant to the terms of such writing.

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14. The Development Plan For The Project

14.1 Phase I. The Regime as initially constituted (sometimes referred to herein as "Phase I") is Building Number 3, as depicted on Exhibit "B," which contain a total of fifteen (15) Units, and the Common Areas, as more fully described on Exhibit "B" attached hereto.

14.2 Reservation of Right to Expand and Contract. Anything to the contrary contained in this Master Deed notwithstanding, at any time during the Transition Period, the Developer will be entitled to expand the Regime to a maximum total of one hundred eleven (111) Units in a maximum of nine (9) Buildings.

(a) Expansion; Conversion of Common Area. The Developer is entitled, but not obligated, to expand the Regime during the Transition Period by constructing additional Units on all or any portion of the Common Area and to submit said real property (or any portion thereof) and all improvements constructed thereon, to the Regime, from time to time, by filing one or more Amendments to this Master Deed (including amendments to the Exhibits, including Exhibit "C" to reflect any required change in the Percentage Interests pursuant thereto and Section 13.1). Improvements as shall be so constructed by Developer shall be consistent with the quality and structure type of those constructed at the time this Master Deed is filed of record in the ROD, although additional Units may be laid out in different configurations or plans and different classes of accessory Units may be provided. An Amendment will be executed solely by the Developer for itself and as attorney in-fact for all Owners. An Amendment will be effective upon recording such Amendment in the Horry County ROD.

(b) Contraction; Withdraw of Unimproved Common Area. During the Transition Period, the Developer is entitled to subdivide portions of the Common Area from the Project which are unimproved with structures and to remove the subdivided portion from the application of this Master Deed by filing one or more Amendments to this Master Deed (including amendments to the Exhibits). An Amendment will be executed solely by the Developer for itself and as attorney in-fact for all Owners. An Amendment will be effective upon recording such Amendment in the Horry County ROD.

14.3 Amenities; Required Expansion. Amenities may be, but will not be required to be, constructed as part of the expansion of the Regime pursuant to this Section 14, all such amenities being optional with the Developer. No Owner will have the right to require construction or addition to the Regime under any circumstances.

14.4 Assignability of Rights. The Developer will be entitled to assign the rights reserved in this Section 14 to any person or entity by an instrument recorded in the Horry County ROD.

14.5 Application of Master Deed. Upon the filing of the Amendment prescribed by Section 14.2 hereof, all definitions contained in this Master Deed will be deemed amended to the extent necessary to cause the additional real property and the improvements described in such Amendment to be treated as fully an integral part of the Regime as if said real property and improvements constituted a portion of the Project as of the effective date hereof.

14.6 Annual Assessments for Additional Units and Working Capital Reserve. The Annual Assessment with respect to the Units added to the Regime pursuant to this Section 14 will be equal to the then current Annual Assessment applicable to existing Units with equivalent Percentage Interests, pro rated on a per diem basis; provided, however, that as to any type of Unit being added to the Regime for which there is currently no Annual Assessment, the Annual Assessment will be proportionately increased or decreased based

upon the Percentage Interest of such Units. Assessments regarding all of the additional Units will commence upon the recording of the Amendment prescribed by Section 14.2 hereof.

All obligations with respect to working capital provided for in Section 4.10 will be applicable upon the transfer of the additional Units by the Developer.

14.7 No Consent Required. Subject to the time limit set forth in Section 14.2 hereinabove, the Developer, its successors and assigns, will have the absolute right to effect an expansion or contraction of the Regime in accordance with this Section 14 and to file the Amendments prescribed in Section 14.2 hereof without any action or consent on the part of any Owner or Mortgage holder; provided, however, that to the extent any action on the part of any Owner is required by any third party to assure the expansion of the Regime as provided in this Section 14, each Owner, in accepting a deed to a Unit, agrees to undertake such actions and/or provide such consents as are reasonably requested, and expressly appoints the Developer his due and lawful attorney-in-fact, with full power of substitution, to execute all documents reasonably required to evidence the requisite action or consent.

14.8 Multiple Ownership. No Unit in the Regime will be used for or subject to any type of Vacation Time Sharing Plan or Vacation Multiple Ownership Plan as defined by the 1976 Code of Laws for the State of South Carolina, as amended, Section 27-32-10, et. seq., or any subsequent laws of this State dealing with that or similar type of ownership by a Unit Owner, or which is used for, in conjunction with and/or as an advertised part of any time share exchange program which makes available as accommodations the Unit and which is not otherwise registered as a Vacation Time Sharing Plan or Vacation Multiple Ownership Plan or which utilizes the Unit as accommodations for time share sale prospects of any Person, without the prior written consent of the Developer during the Developer's Transition Period and thereafter by the Board of Directors of the Association. The Developer specifically reserves the right in its sole discretion, to time share any additional phase added to the Regime pursuant to this Section 14.

15. Transition Provisions

15.1 Appointment of Directors and Officers. At all times during the Transition Period, the Developer will have the sole and exclusive right to appoint the Board of Directors and officers of the Association, fill any vacancy of the Board or officers caused by the withdrawal of any director or officer appointed by the Developer and veto the removal of any director or officer appointed by the Developer. Upon the expiration of the Transition Period, the Developer will retain the right to elect at least one (1) director. This right will continue for as long as the Developer holds for sale in the ordinary course of business one or more of Units included in the Regime.

15.2 Special Meeting to Elect Board. Within sixty (60) days after the date on which Owners other than the Developer become entitled pursuant to Section 13.1 above to elect members of the Board of Directors of the Association, the Association will call, and give not less than thirty (30) days' and not more than forty (40) days' notice of, a special meeting of the Members to elect the Board of Directors.

15.3 Cooperation. The Association will cooperate with the Developer to the extent reasonably requested by the Developer during and after the Transition Period to promote the orderly development and marketing of the additional Units planned for the Project, and it is acknowledged by the Association that it is in the best interest of all Owners to expand the Regime to include all Units authorized by Section 14 hereof.

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15.4 Controlling Provisions. In the event of any inconsistency between this Section 15 and the other provisions of the Regime Documents, this Section 15 will be controlling and binding on all parties having an interest in the Regime.

16. Alternative Dispute Resolution

16.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Developer, Association, Owners, and any persons not otherwise subject to the Regime Documents who agree to submit to this Section 16 (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes between and among themselves involving this Master Deed or the Regime, and to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances and disputes (including those in the nature of counterclaims or cross-claims) between Bound Parties involving the Regime Documents or the Regime, including without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement thereof (collectively "Claims"), except for "Exempt Claims" under Section 16.2, are subject to the procedures set forth in Section 16.3.

16.2 Exempt Claims. The following Claims ("Exempt Claims") are exempt from the provisions of Section 16.3:

(a) any suit by the Association or the Master Association against any Bound Party to enforce any Assessments or other charges hereunder; and

(b) any suit by the Association or the Master Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and other relief the court may deem necessary in order to maintain the status quo and preserve any enforcement power of the Association or Master Association until the matter may be resolved on the merits pursuant to Section 16.3 below; and

(c) any suit involving a matter which is not an Exempt Claim under (a) or (b) above, but as to which matter the Bound Party against whom the Claim is made waives the mandatory provisions of Section 16.3 below.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 16.3, but there is no obligation to do so.

16.3 Mandatory Procedures for Non-Exempt Claims. Any Bound Party having a Claim ("Claimant") against a Bound Party involving the Regime Documents or the Regime, or all or any combination of them ("Respondent'"), other than an Exempt Claim under Section 16.2, will not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of the Claim until it has complied with the procedures set forth in Exhibit "G", and then only to enforce the results hereof.

16.4 Litigation. No judicial or administrative proceeding with an amount in controversy exceeding $25,000.00, will be commenced or prosecuted by the Association unless approved by seventy-five percent (75%) of the total votes of the Association at a regular or special meeting at which a quorum is present, duly called, in whole or in part, for the purpose of approving the proceeding. This Section will not apply, however, to (a) actions brought by the Association to enforce the provisions of this Master Deed (including, without limitations, the foreclosure of liens); (b) the imposition and collection of Assessments; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings

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instituted against it; or (e) actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section will not be amended unless the amendment is approved by the requisite percentage of votes of Members of the Association, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision will apply in addition to the negotiation and arbitration provisions of this Section 16, if applicable.

16.5 Miscellaneous Alternative Dispute Resolution Provisions.

(a) Conflicting Provisions. Any conflict or discrepancy between the terms and conditions set forth in this Section 16 and any term, condition or procedure of the American Arbitration Association, or any remedy allowed at law or in equity, the terms, conditions, procedures and remedies set forth herein will control.

(b) TIME IS OF ESSENCE. All periods of time set forth herein or calculated pursuant to provisions of this Section 16 will be strictly adhered to, TIME BEING OF THE ESSENCE hereof.

17. Mortgagee Protection

17.1 Introduction. This Section establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain mortgages. This Section is supplemental to, and not in substitution for, any other provisions of the Master Deed, the Bylaws of the Association and the Articles of Incorporation of the Association (the "Constituent Documents"), but in the event of conflict, this Section shall control. Unless the Board of Directors shall vote to suspend this provision, the Board shall periodically amend this Section from time to time, to be consistent with generally applicable requirements of the Federal National Mortgage Association governing mortgagee approval requirements.

17.2 Eligible Mortgagees. Wherever in the Constituent Documents the approval or consent of a specified percentage of "Eligible Mortgagees" is required, it shall mean the approval or consent of the Institutional Mortgagees holding first lien Mortgages on Units which have provided to the Association written requests, stating their names and addresses and the street addresses of the Units to which their Mortgages relate, to receive written notice of the matters for which they are entitled to vote, and which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to first Mortgages held by Eligible Mortgagees.

17.3 Notice of Actions. The Association shall give prompt written notice to each Eligible Mortgagee of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Common Interest Community or any Unit in which there is a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer as applicable;

(b) Any delinquency in the payment of Assessments owed by an Owner whose Unit is subject to a first Mortgage held, insured, or guaranteed, by such Eligible Mortgagee which remains unpaid for a period of sixty (60) days.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

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(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 17.4; and

(e) Any judgment rendered against the Association.

17.4 Consents Required; Constituent Documents' Changes. Notwithstanding any lower requirement permitted by the Constituent Documents or the Nonprofit Corporation Act, no amendment of any material provision of the Constituent Documents by the Owners described in this Section 17.4 may be effective without the vote of sixty-seven percent (67%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting), or any greater vote required in the Constituent Documents or the Nonprofit Corporation Act, and until approved in writing by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by the Constituent Documents). The foregoing approval requirements do not apply to amendments effected by the exercise of any rights of the Developer to amend the Constituent Documents until expiration of the Transition Period. Consent of an Eligible Mortgagee is deemed granted if no denial is received within thirty (30) days after the Eligible Mortgagee receives notice of the proposed changes, provided such notice is delivered by certified or registered mail, return receipt requested. Material provisions requiring such Members' vote and Eligible Mortgagees' approval include, but are not limited to, any provision affecting:

(a) Assessments, assessment liens, or subordination of assessment liens;

(b) Voting rights;

(c) Reserves for maintenance, repair and replacement of the Common Areas;

(d) Responsibility for maintenance and repairs;

(e) Reallocation of interests in the Common Areas or Limited Common Areas except that when Limited Common Areas are reallocated by agreement between Unit Owners, only those Unit Owners and only the Eligible Mortgagees which hold Mortgages on such Units must approve such action;

(f) Rights to use Common Areas and Limited Common Areas;

(g) Boundaries of Units except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Unit Owners and the Eligible Mortgagees holding mortgages on such Unit or Units must approve such action.

(h) Convertibility of Units into Common Areas or Common Areas into Units;

(i) Expansion or contraction of the Regime, or the addition, annexation or withdrawal of property to or from the Regime;

(j) Insurance or fidelity bonds;

(k) Leasing of Units;

(l) Imposition of restrictions on a Unit Owner's right to sell or transfer his or her Unit;

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(m) Establishment of self-management when professional management had been required previously by the Constituent Documents or by an Eligible Mortgagee;

(n) Restoration or repair of the Property after a hazard damage or partial condemnation in a manner other than that specified in the Constituent Documents;

(o) Termination of the legal status of the Regime after occurrence of substantial destruction or condemnation; and

(p) Any provision that expressly benefits Mortgage holders, insurers or grantors.

17.5 Actions. Notwithstanding any lower requirement permitted by the Constituent Documents or the Nonprofit Corporation Act, the Association may not take any of the following actions without the approval of at least fifty-one (51%) of the Eligible Mortgagees or such higher percentage as set forth herein:

(a) The conveyance or encumbrance of the Common Areas or any portion thereof, as to which at least a sixty-seven percent (67%) approval by Eligible Mortgagees is required. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas for the benefit of the Regime shall not be deemed a conveyance or encumbrance within the meaning of this clause;

(b) The restoration or repair of the Property after damage or a partial condemnation in a manner other than that specified in the Constituent Documents;

(c) The termination of the legal status of the Regime for reasons other than substantial destruction or condemnation, as to which at least sixty-seven percent (67%) approval by Eligible Mortgagees is required;

(d) The alteration of any partition or creation of any aperture between adjoining Units when Unit boundaries are not otherwise being affected, in which case only the owners of Units affected and Eligible Mortgagees of those Units need approve the action;

(e) The merger of the Association with any other common interest community;

(f) The granting of any easements, leases, licenses and concessions through or over the Common Areas excluding, however, any utility easements serving or to serve the Regime and excluding any leases, licenses or concessions for no more than one year;

(g) The assignment of the future income of the Association, including its right to receive Common Expense assessments; and

(h) Any action taken not to repair or replace the Property.

The foregoing consents do not apply to the exercise of any right reserved by the Developer in the Constituent Documents.

17.6 Change From Monthly Assessment. The Association may not change the period for collection of regularly budgeted Common Expenses Assessments to other than monthly without the consent of all Eligible Mortgagees.

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17.7 Developer's Reserved Rights. No rights reserved by the Developer may be voluntarily abandoned or terminated by the Developer unless all persons holding security interests in the Developer's reserved rights consent to the abandonment or termination.

17.8 Inspection of Books. The Association shall permit any Eligible Mortgagee to inspect the books and records of the Association during normal business hours.

17.9 Financial Statements. The Association shall provide any Eligible Mortgagee which submits a written request, with a copy of an annual financial statement within one hundred twenty (120) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if the number of Units is 50 or more, or if the number of Units is less than 50 and no audited statement is otherwise required under the Constituent Documents, any Eligible Mortgagee may have an audited statement prepared at its own expense.

17.10 Enforcement. The provisions of this Section 17 are for the benefit of Eligible Mortgagees and their successors, and may be enforced by any of them by any available means, at law, or in equity.

17.11 Attendance at Meetings. Any representative of an Eligible Mortgagee may attend any meeting which a Unit Owner may attend.

18. General Provisions

18.1 Adherence to Provisions of Master Deed, Bylaws and Rules and Regulations. Every Owner who rents his Unit must post inside his Unit a list of the Rules and Regulations of the Association. Any rental agency handling an Owner's rental must further agree to abide by the Rules and Regulations and will be responsible for informing persons renting through its agency of any breaches of the Rules and Regulations by said persons and for taking any and all necessary corrective action. Should a particular agency or person continue not to take corrective action against the renters it has contracted with, or refuse to cooperate with the Association in the enforcement of its Rules and Regulations or other provisions of the Regime Documents, the Association may require the Owner to cease using the services of that particular rental agency. Refusal to do so may result in fines against the Owner in an amount to be determined by the Board of Directors. Any fines will be added to and become a part of the Assessment against the Unit and Owner.

18.2 Amendment. Amendments to this Master Deed, except as herein expressly provided to the contrary, including, but not limited to amendments pursuant to Section 14 which may be made without the consent or approval of either the Board or the Members, will be proposed by the Board of Directors in accordance with the following procedure:

(a) Notice. Notice of the subject matter of the proposed amendment or amendments will be included in the notice of the meeting of the Association at which such proposed amendment or amendments are to be considered.

(b) Adoption. The Master Deed may be amended at any time and from time to time at a meeting of the Association called in accordance with the Bylaws and this Master Deed upon the vote of Members holding sixty-seven percent (67%) or more of the total vote in the Association; provided, however, that if the Association will vote to amend the Bylaws in any respect, such amendment will be set forth in an amendment to this Master Deed and will be valid only when approved by Members holding more than fifty percent (50%) of the total vote in the Association.

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(c) Nondiscrimination. Irrespective of the foregoing, no amendment will (i) alter the Percentage Interest applicable to each Unit (except as permitted in accordance with Section 6 and and Sections 3.3 and 13.1 hereof); or (ii) discriminate against any Owner or against any Unit or class or group of Units, unless in each instance all Owners adversely affected thereby expressly consent thereto in writing. Notwithstanding any Rule or Regulation or other restriction, the Board of Directors of the Association will make reasonable accommodations in its Rules and Regulations or other restrictions as may be necessary to afford a handicapped person equal opportunity to use and enjoy his Unit and the Common Area, and in furtherance thereof is authorized and empowered to assign Common Area parking spaces for handicap parking generally or to assign same for exclusive use of a Person as handicap parking.

(d) Necessary Amendments. Notwithstanding any other provisions of this Master Deed to the contrary, if any amendment is necessary in the judgment of the Board to cure any ambiguity or to correct or supplement any provisions of the Regime Documents that are defective, missing or inconsistent with any other provisions thereof, or if such amendment is necessary to conform to the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or other secondary Mortgage market lenders, guarantors or insurers with respect to condominium projects, then at any time and from time to time the Board may effect an appropriate corrective amendment so long as written objection to such amendment is not received from Members representing more than fifty percent (50%) of the total votes of the Association within twenty (20) days after written notice of the proposed amendment is given to all Members.

(e) Recording. A copy of each amendment provided for in this Section 18.2 will be certified by the Association as having been duly adopted and will be effective when recorded.

In recognition of the fact that certain provisions of this Master Deed are for the benefit of the owner of the Golf Course Land, no amendment in derogation of any right reserved or granted to the owner of the Golf Course Land by provisions of this Master deed may be made without the written approval of the owner of the Golf Course Land. The limitations hereof shall not apply, however, to amendments made by the Developer.

18.3 Termination. The Regime may be terminated and the Project removed from the provisions of the Act in the following manner:

(a) Agreement. All of the Owners may remove the Project from the provisions of the Act by an instrument to that effect, duly recorded, subject to Sections 12.1 and 12.2 of this Master Deed.

(b) Destruction. In the event it is determined in the manner provided in Section 5.6 that the Project will not be repaired or reconstructed after casualty, the Regime will be terminated and the Regime Documents revoked. The determination not to repair or reconstruct after casualty will be evidenced by a certificate of the Association certifying as to the facts effecting the termination.

(c) Condemnation. In the event that any part of a Unit, or the Common Area essential to the use of any Unit will be taken by an authority having the power of eminent domain and the consent of Members representing at least sixty-seven (67%) percent of the total votes of the Association as provided in Section 6.3 to a plan for continuation of the Regime will not be expressed in an amendment to this Master Deed duly recorded within ninety (90) days after such taking, the Regime will be terminated and the Regime Documents revoked. Such taking will be evidenced by a certificate of the Association certifying as to the facts effecting the termination.

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18.4 Covenants Running With the Land. All provisions of this Master Deed will be construed to be covenants running with the land, and with every part thereof and interest therein, including, but not limited to, every Unit and the appurtenances thereto; and each and every provision of this Master Deed will bind and inure to the benefit of the Developer and all Owners and claimants of the Project or any part thereof or interest therein, and their heirs, executors, administrators, successors and assigns.

18.5 Enforcement. Each Owner will comply strictly with the Bylaws and with the Rules and Regulations of the Association, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Master Deed and in the deed to his Unit. Failure to comply with any of the same will be grounds for an action to recover sums due, for damages or injunctive relief, or for all three, maintainable by the Board of Directors on behalf of the Association or by any aggrieved Owner. In addition, the rights of any Owner or lessee of an Owner, their families, invitees or guests to use and to enjoy the Common Area may be suspended by the Board of Directors for continued violation of the Rules and Regulations. Failure by the Association or any Owner to enforce any of the foregoing will in no event be deemed a waiver of the right to do so thereafter.

(a) Authority and Enforcement. Subject to the provisions of Section 18.5(b) hereof, upon the violation of this Master Deed, the Bylaws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments, the Board will have the power (i) to impose reasonable monetary fines which will constitute an equitable charge and a continuing lien as a specific Assessment, (ii) to suspend an Owner-Member's right to vote in the Association, or (iii) to suspend an Owner's or Occupant's right to use any of the Common Areas. The Board will have the power to impose all or any combination of these sanctions, and may establish each day a violation remains uncured as a separate violation for which a fine is due; provided, however, an Owner's access to its property over the private roads and streets constituting Common Areas will not be terminated hereunder. An Owner or Occupant will be subject to the foregoing sanctions in the event of such a violation by such Owner or Occupant. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days.

(b) Procedure. Except with respect to the failure to pay Assessments, the Board will not impose a fine, suspend voting rights, or infringe upon or suspend any other rights of an Owner or other Occupant of the Project for violations of the Master Deed, By-Laws, or any rules and regulations of the Association, unless and until the following procedure is followed:

(i) Demand to Cease and Desist. Written demand to cease and desist from an alleged violation will be served upon the Owner responsible for such violation specifying:

(A) The alleged violation;

(B) The action required to abate the violation; and

(C) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Master Deed, the By-Laws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

(ii) Notice of Hearing. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session. The notice will contain:

(A) The nature of the alleged violation;

(B) The time and place of the hearing, which time will be not less than ten (10) days from the giving of the notice;

(C) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and

(D) The proposed sanction to be imposed.

(iii) Hearing. The hearing will be held in executive session of the Board of Directors pursuant to the notice and will afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard will be placed in the minutes of the meeting. Such proof will be deemed adequate if a copy of the notice together with a statement of the date and matter of delivery is entered by the officer, director, or other individual who delivered such notice. The notice requirement will be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction imposed, if any.

18.6 Severability. All provisions of this Master Deed and all of the Regime Documents will be construed in a manner which complies with the Act and South Carolina law to the fullest extent possible. If all or any portion of any provision of this Master Deed or any other Regime Documents will be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision hereof or thereof, and such provision will be limited and construed as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

18.7 Gender or Grammar. The singular whenever used herein will be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, will in all cases be assumed as though in each case fully expressed. In addition, the use of the terms "herein" or "hereof" will mean this Master Deed and not merely the Section or paragraph in which such term is utilized.

18.8 Headings. All Section headings are utilized merely for convenience and will not restrict or limit the application of the respective Sections.

18.9 Powers of Attorney. By acceptance of a deed or other conveyance of an interest in a Unit, all Members do hereby grant, and if further required, do agree to vote in a manner to provide to, and to ratify and confirm retention by, Developer of Developer's rights under this Master Deed, including, without limitation, the right to amend this Master Deed in accordance with the provisions hereof. In connection with this voting agreement, each member appoints Developer as proxy for such member with full power of substitution to vote for the member on all such matters on which the member may be entitled to vote, and with respect to which there is a reservation or designation of voting rights in Developer under this Master Deed, and with all powers which the member would possess if personally present at any meeting of members. Such appointment will be, upon acceptance of a deed or other conveyance by the member and without the necessity

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of further action by the Developer or the member, a power coupled with an interest and will be irrevocable. Such appointment will be effective as of the date on which a deed or other conveyance of an interest to the Member is recorded in the Horry County ROD. This irrevocable proxy will automatically terminate thirty (30) days after the conveyance in the ordinary course of Developer's business of ninety percent (90%) of the maximum number of Units to be contained in all phases of the Project. The within voting agreement and proxy are in addition to, and not in substitution of, all rights of Developer herein provided, which will run with the land.

18.10 Unit Deeds. In accepting a deed to any Unit, the grantee will be deemed to have accepted and agreed to all terms and conditions contained in this Master Deed and the Exhibits, as amended, and further agrees to execute any and all documents reasonably requested by the Developer or the Association from time to time to expressly evidence the foregoing.

19. Exhibits

19.1 Exhibits Attached. The following Exhibits are attached hereto and incorporated verbatim in this Master Deed by reference as fully as if set forth herein.

Description	Identification
Legal Description of the Land	A
Site Plan and Floor Plans	B
Schedule of Assigned Values and Percentage Interests	C
Articles of Incorporation of Association	D
Bylaws of the Association	E
Alternative Dispute Resolution Procedures	F

IN WITNESS WHEREOF, Developer has caused this Master Deed to be executed to be effective as of this 17th day of Jan. 2001

WITNESS:

CENTEX HOMES, a Nevada general partnership

By: _____

Its: Vice President, Construction

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PROBATE

PERSONALLY appeared before me the undersigned witness who being duly sworn, says that s/he saw the within-named CENTEX HOMES, a Nevada general partnership , by Michael Wyatt, its Vice President, Construction, sign, seal and as its act and deed deliver the within-written Master Deed and that s/he with the other witness whose signature appears above witnessed the execution thereof.

WITNESS

SWORN TO before me this
17 day of January, 2001

(L.S.)
Notary Public for South Carolina
My Commission expires: 01-07-09

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Exhibit "A"

Legal Description of The Land

ALL that certain piece, parcel and tract of land situate, lying and being in the County of Horry, State of South Carolina, shown and designated as "Tract E-1," containing 7.27 acres more or less, and shown on a plat by DDC Engineers, Inc. dated January 2000, revised April 4, 2000, and entitled, "Barefoot Resort Final Master Plat," recorded in the Office of Register of Deeds for Horry County in Book 148, Page 119.

The within conveyance is subject to all easements of record and/or upon the ground.

This being a portion of the property conveyed to Centex Homes, a Nevada general partnership by deed of Intracoastal development Company, LLC and Silver Carolina Development Company, LLC dated April 12, 2000, and recorded in the Office of Register of Deeds for Horry County in Deed Book 2251, Page 512.

Pursuant to Section 27-31-100 of The South Carolina Code (1976), as amended, notice is given that all activities on or over and all uses of any submerged land and other critical areas are subject to the jurisdiction of the Office of Ocean and Coastal Resource Management ("OCRM") of the South Carolina Department of Health and Environmental Control (formerly known as, "The South Carolina Coastal Council"), including, but not limited to, the requirements that any activity or use must be authorized by OCRM. Any owner to the extent of his ownership is liable for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning, any submerged land, coastal waters, or any other critical area.

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Exhibit "B"

Site Plan and Floor Plans

WEDGEWOOD HORIZONTAL PROPERTY REGIME

NOTE

Exhibit "B" is a survey showing the location of the Building and other improvements, a set of floor plans of the Building which shows graphically the dimensions, area and location of each Unit therein, and the dimensions, area and location affording access to each Unit. Both plat and plans have been recorded in Plat Book 174 at Page 101 and Condominium Cabinet C at Page 976, ROD for Horry County, South Carolina. Said Exhibit further includes the matters set forth below

The Phase I Building is Building 3, which is three stories in height. Building 3 contains six (6) 3-bedroom Units and nine (9) 2-bedroom Units. Each Unit in the Building 3 is individually numbered and described as Units 311, 312, 313, 314, 315, 321, 322, 323, 324, 325, 331, 332, 333, 334 and 335.

Each of the Units in the Building is a one-story flat with a separate entrance door off of an exterior, common landing. Each two-bedroom Unit has two bathrooms and has the same floor plan configuration, although one may be a mirror configuration of another. Each three-bedroom Unit has two bathrooms and the same floor plan configuration, although two such Units may be mirror configurations of each other. In addition to the bedrooms and two (2) baths, all Units consist of a foyer, a kitchen area, living room, dining area and a laundry closet, as well as an open patio or balcony (Limited Common Area).

Unit 311 is a three-bedroom Unit located on the northeast end of Building 3. Unit 315 is a three-bedroom Unit and is located on the southwest end of Building 3. Units 312, 313 and 314 are each two-bedroom Units and are located between Units 311 and 315. Units 321, 322, 323 324 and 325 are located above, and have the identical floor configurations as, Units 311, 312, 313, 314 and 115. Units 331, 332, 333, 334 and 335 are located above, and have the identical floor configurations as, Units 321, 322, 323, 324 and 325.

The locations of each Unit and floor plan thereof Building 3 in Phase I is graphically shown on the plans of Crescent Architects, LLC entitled, "Barefoot Landing Resort Wedgewood Building #3, Golf Villa 2A" dated June 6, 1999 and last revised April 14, 2000, and the as-built survey by Engineering and Technical Services, Inc. shows the ground location of Building 3 and the Common Areas, each of which is and made a part hereof and recorded simultaneously herewith.

As to each Unit: All built-in kitchen appliances, the refrigerator, air conditioner units and condensers and hot water heater located in each Unit are part of the Unit in which they are located and are not Common Areas. The patio or balcony adjacent to each Unit, including the railing thereof, is a Limited Common Area and is subject to restrictions as set forth elsewhere in this Master Deed.

Reference to areas as Common Areas or elements in this paragraph will be in addition to and read in conjunction with the further designations of Common Areas and elements set out in other portions of this

Master Deed and the survey and floor plans making up the balance of this Exhibit "B". The asphalt parking areas designated on the as-built survey are Common Areas.

Exhibit "B" is deemed to include the attached certification letter of Crescent Architects, LLC, architects of the above referenced plans recorded simultaneously herewith

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CRESCENT
ARCHITECTS, LLC

PO Box 1676, Pawleys Island, SC 29585
Voice 843/235-0278 – Fax 843/237-3548
email: crescentar@aol.com

January 17, 2001

Mr. Brian Kernaghan
C/O Nexsen Pruet Jacobs Pollard & Robinson, LLP
2411 N. Oak Street Suite 105
Myrtle Beach, South Carolina 29577

RE: Barefoot Landing Resort – Golf Villa 2A (Wedgewood Building No. 3)

Dear Mr. Kernaghan,

This letter is to serve as the Architect's Certification for the above referenced project as requested by you for attachment to the Master Deed.

The undersigned Architect, registered to practice architecture in the State of South Carolina, certifies that these documents reflect, to the best of the Architect's ability, the observable and accessible configuration of the structures as measured by the Architect. They show floor plans and elevations of the joined buildings, and graphically show the dimensions, area and locations of each apartment therin, with the dimensions, areas and location of the common elements affording access to each apartment.

Please don't hesitate to call with any questions and/or comments.

Sincerely,

Chris R. Clark, AIA

CRC/crc

cc: file



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Exhibit "C"

Schedule of Assigned Values and Percentage Interests

This is a schedule of Assigned Values and Percentage Interests in the Common Areas appurtenant to Units in The Wedgewood Horizontal Property Regime, Phase I, and if developed, Phases II through IX, inclusive. The Assigned Value is for statutory purposes only and has no relationship to the actual value of each Unit.

Phase I Buildings 3 Unit Numbers	Values for Statutory Purposes	Statutory Percentages
311	$2,000.00	6.66667%
312	2,000.00	6.66667%
313	2,000.00	6.66667%
314	2,000.00	6.66667%
315	2,000.00	6.66667%
321	2,000.00	6.66667%
322	2,000.00	6.66667%
323	2,000.00	6.66667%
324	2,000.00	6.66667%
325	2,000.00	6.66667%
331	2,000.00	6.66667%
332	2,000.00	6.66667%
333	2,000.00	6.66667%
334	2,000.00	6.66667%
335	2,000.00	6.66667%
Grande Total	$30,000.00	100.00005%

Buildings 2, 3, 4, 5, 6, 7,8, and 9, or any of them, may be submitted in any order as Phases II through IX of The Wedgewood Horizontal Property Regime. As each phase is added, the total Assigned Value of all phases submitted and constituting The Wedgewood Horizontal Property Regime at that time and the Percentage Interest of each Unit may be determined. In determining the Percentage Interest of each Unit, a formula is employed using the Assigned Value of each Unit set forth in this Exhibit "C", as amended for each phase added, as the numerator and the total Assigned Values of all Units (including the phase being submitted and all phases previously submitted to the Regime) as the denominator. The resulting fraction will then be expressed as a percentage rounded to the nearest .00001. The total Assigned Values assigned to each Building which may be constructed and submitted to the Regime as phases I through IX, if constructed and submitted, will be in accordance with the following schedule.

Total Assigned Values in Buildings 3 Submitted Herewith	$30,000
Total Assigned Values in Building 1	$24,000
Total Assigned Values in Building 2	$24,000

Total Assigned Values in Building 4	$24,000
Total Assigned Values in Building 5	$24,000
Total Assigned Values in Building 6	$24,000
Total Assigned Values in Building 7	$24,000
Total Assigned Values in Building 8	$24,000
Total Assigned Values in Building 9	$24,000
Total Assigned Values of the Project, If All Phases Remaining Are Constructed and Submitted	$222,000

As an example, if Building 2, composed of twelve (12), two-bedroom Units, is added as Phase II, the total Assigned Values in Phase I ($30,000) would be added to the additional Assigned Values in Phase II ($24,000), so that, following submission the total Assigned Values in Phases I and II would be $54,000. To determine the Percentage Interest of Unit 221 if Phase II is added to Phase I and those two (2) phases constitute the entire Regime, the following formula would be used:

$$\frac{\text{ASSIGNED VALUE}}{\text{TOTAL ASSIGNED VALUES}} \qquad \frac{\$\ 2,000}{\$\ 54,000} = \qquad 3.70370\%$$

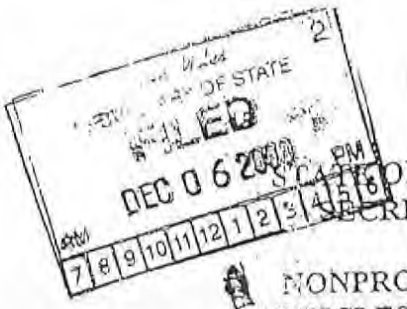
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EXHIBIT "D"

Articles of Incorporation

Attached Hereto

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STATE OF SOUTH CAROLINA
SECRETARY OF STATE
JIM MILES
NONPROFIT CORPORATION
ARTICLES OF INCORPORATION



1. The name of the nonprofit corporation is The Wedgewood Condominium Association

2. The initial registered office of the nonprofit corporation is 11746 Highway 17 Bypass
(Street & Number)

Murrells Inlet (City) Georgetown (County) S.C. (State) 29576 (Zip Code)

The name of the registered agent of the nonprofit corporation at that office is:

Hampton Pitts

3. Check (a), (b), or (c) whichever is applicable. Check only one box.

a. [ ] The nonprofit corporation is a public benefit corporation.

b. [ ] The nonprofit corporation is a religious corporation.

c. [X] The nonprofit corporation is a mutual benefit corporation.

4. Check (a) or (b), whichever is applicable:

a. [X] This corporation will have members.

b. [ ] This corporation will not have members.

5. The address of the principal office of the nonprofit corporation is 11746 Highway 17 Bypass
(Street & Address)

Murrells Inlet (City) Georgetown (County) S.C. (State) 29576 (Zip Code)

6. If this nonprofit corporation is either a public benefit or religious corporation (box a. or b. of ¶ 3. is checked), complete either (a) or (b), whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.

a. [ ] Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local

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government, for a public purpose. Any such asset not so disposed of shall be disposed of by the court of common pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

b. [ ] Upon dissolution of the corporation, consistent with law, the remaining assets of the corporation shall be distributed to: _____

_____

_____

7. If the corporation is a mutual benefit corporation (box "c" of ¶ 3. is checked), complete either (a) or (b), whichever is applicable, to describe how the [remaining] assets of the corporation will be distributed upon dissolution of the corporation.

a. [X] Upon dissolution of the mutual benefit corporation the remaining assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefitting or serving.

b. [ ] Upon dissolution of the mutual benefit corporation the [remaining] assets, consistent with law, shall be distributed to _____

_____

_____

8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See § 33-31-202(c) of the 1976 South Carolina Code, the applicable comments thereto, and the instructions to this form):

a. Capitalized Words. The use of capitalized words herein shall have the meanings attributed to them in the Master Deed of The Wedgewood Horizontal Property Regime, hereinafter the "Master Deed," recorded or to be recorded in the Office of the Register of Deeds for Horry County, South Carolina.

b. Purpose. This Association does not contemplate pecuniary gain or profit, and the specific, primary purposes for which it is formed are to provide for management, administration, maintenance and preservation of The Wedgewood Horizontal Property Regime and the Common Areas thereof, all according to the Master Deed. No part of the net earnings of the Association shall inure to the benefit of any person, other than for acquiring, constructing, or providing

management, maintenance, and care of Association property, and other than by a rebate of excess Association fees and assessments, if any.

c. Right to Appoint Directors and Officers. The Developer under the Master Deed shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following dates: (i) December 31, 2005; (ii) three (3) months after the conveyance by the Developer, in the ordinary course of business to persons other than a successor Developer, of one hundred percent (100%) of the maximum number of Units to be contained in all phases of the Project; (iii) or three (3) months following the date the Developer surrenders its authority to appoint directors of the Association by an express amendment to the Master Deed executed and filed in the Office of the Register of Deeds for Horry County, South Carolina by the Developer.

d. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in a Unit which is subject to the Master Deed (including the Developer) shall be a member of the Association. Until the expiration of the Developer's right to appoint directors and officers of the Association pursuant to subparagraph c of this ¶ 8, the Developer, and its successors and assigns, other than as an owner of a Unit, shall be a member of the Association. The membership of each owner of a Unit shall be appurtenant to and may not be separated from ownership of the Unit and ownership of a Unit shall be the sole qualification for such membership. In the event that fee title to a Unit is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto shall automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. Any person or entity who holds an interest in a Unit merely as security for the performance of an obligation shall not be a member of this Association.

e. Voting Rights. The Association shall have two (2) classes of voting membership. Members are divided into classes for the sole purpose of computing voting rights and shall not vote as a class.

Class A. Class A members of the Association shall be all owners of Units (including the Developer). A Type A Member shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine as provided in the Master Deed, but in no event shall more than one (1) vote be cast with respect to any Unit.

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Class B The Type B member shall be the Developer or its designated assign, in its capacity other than as an Owner of a Lot or Dwelling. The Type B member shall be entitled to three (3) votes for each vote held by Type A members, plus one (1) vote, until the expiration of the Developer's right to appoint directors and officers of the Association pursuant to subparagraph c of this ¶ 8. Thereafter, the Type B member shall exercise votes only as to its Type A memberships.

9. The name and address (with zip code) of each incorporator is as follows (only one is required):

Name	Address (with zip code)
Brian F. Kernaghan	2411 N. Oak Street, Suite 105, Myrtle Beach, SC 29577

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:

_____ Signature of director
(only if named in articles)

_____ Signature of director
(only if named in articles)

_____ Signature of director
(only if named in articles)

11. Each incorporator must sign the articles.

_____
Signature of incorporator
Brian F. Kernaghan

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The State of South Carolina

Office of Secretary of State Jim Miles

Certificate of Incorporation, Nonprofit Corporation

I, Jim Miles, Secretary of State of South Carolina Hereby certify that:

WEDGEWOOD CONDOMINIUM ASSOCIATION THE,

a nonprofit corporation duly organized under the laws of the state of South Carolina on December 6th, 2000, and having a perpetual duration unless otherwise indicated below, has as of the date hereof filed a Declaration and Petition for Incorporation of a nonprofit corporation for Religious, Educational, Social, Fraternal, Charitable or other eleemosynary purpose.

Now, therefore, I Jim Miles, Secretary of State, by virtue of the authority in me vested, by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto, do hereby declare the organization to be a body politic and corporate, with all the rights, powers, privileges and immunities, and subject to all the limitations and liabilities, conferred by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto.

Given under my Hand and the Great Seal of the State of South Carolina this 14th day of December, 2000.

Jim Miles, Secretary of State

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EXHIBIT "E"

By-Laws of the Association

Attached Hereto

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BYLAWS OF

THE WEDGEWOOD CONDOMINIUM ASSOCIATION

ARTICLE I
NAME AND LOCATION

1.1 Name and Location. The name of the corporation is THE WEDGEWOOD CONDOMINIUM ASSOCIATION, hereinafter referred to as the "Association." The principal office of the Association shall be located at the Project, or at such other place as may be designated by the Board.

ARTICLE II
DEFINITIONS

2.1 Incorporation. The definitions contained in the Master Deed are incorporated by reference herein.

(a) The Master Deed. "Master Deed" shall mean and refer to the Master Deed Of The Wedgewood Horizontal Property Regime recorded in the Office of Register of Deeds for Horry County, South Carolina, and subsequent amendments thereto.

ARTICLE III
MEETING OF MEMBERS AND VOTING

3.1 Annual Meeting. The first meeting of the Members, whether an annual or a special meeting, shall be held on the second Saturday of December which is more than nine (9) months following the date of the close of the sale of the first Unit in the Project. Subsequent annual meetings of the Members shall be held thereafter at an hour and place within thirty (30) days of the same month and day of such first meeting, as set by the Board.

3.2 Special Meetings. Special meetings of the Members shall be promptly scheduled at any time by the Board upon vote of a majority of the Board of Directors or upon written request of the President. A special meeting of the Members shall be called upon written demand delivered to the Secretary by the Members representing five percent (5%) of the total voting power of the Association, notice of which shall be by written notice to all Members within thirty (30) days of the Secretary's receipt of the demand. For purposes of determining the five percent (5%), the record date shall be thirty (30) days before delivery of the written demand. Upon the failure of the Association to send notice of a special meeting within thirty (30) days following delivery of written demand as aforesaid, any Member signing the demand may set the time and place of the special meeting and give notice thereof to all Members in accordance with the Nonprofit Corporation Act.

3.3 Notice and Place of Meetings. Unless otherwise provided in the Master Deed, the Articles of Incorporation, in these By-Laws, or in the Nonprofit Corporation Act, written notice of each meeting of the Members, annual or special, shall be given by, or at the direction of, the Secretary, by mailing a copy of such notice, first class mail, postage prepaid, at least thirty (30) but not more than sixty (60) days before such meeting to each Member, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. In the case of written demand of Members representing five percent of the total voting power of the (5%) Association, written notice of such

meeting shall be given not more than thirty (30) days after written demand is delivered to the Association. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting, and shall provide for voting by proxy. If action is proposed to be taken at any meeting for approval for any of the following proposals, the notice shall also state the general nature of the proposal: (a) removing a Director without cause; (b) filling vacancies in the Board of Directors by the Members; or (c) amending the Articles of Incorporation. Meetings shall be held within the Project or at a meeting place within the same county, as close to the Project as possible.

Notice of a meeting of Members need not be given to any Member who signs a waiver of notice, in person or by proxy, either before or after the meeting. The waiver must be delivered to the Association for inclusion in the minutes or filing with the corporate records. Attendance of a Member at a meeting, in person or by proxy, shall of itself constitute waiver of notice, except when the Member attends a meeting solely for the purpose of stating his objection, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened. Objection by a Member shall be effective only if written objection to the holding of the meeting or to any specific action so taken is filed with the Secretary of the Association.

3.4 Quorum. Unless otherwise provided herein, in the Master Deed, the Articles of Incorporation, or the Nonprofit Corporation Act, the presence of Members representing one-third (⅓) of the votes of all Members, in person or by proxy, shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum of one-third (⅓) of the votes of all Members is present may continue to do business until adjournment, notwithstanding the withdrawal from the meeting of enough Members to leave less than such required quorum, provided that Members representing twenty percent (20%) of the total votes of the Association remain present in person and/or by proxy, and provided further that any action taken shall be approved by a majority of the Members required to constitute such quorum. If the required quorum is not present, another meeting may be called, not less than ten (10) nor more than sixty (60) days following the first meeting, and the required quorum at the subsequent meeting shall be the Members present, in person or by proxy, and entitled to vote. Unless otherwise provided, any reference hereafter to "votes cast" at a duly called meeting shall be construed to be subject to the quorum requirements established by this Section 3.4. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed in Section 3.3.

3.5 Ballots and Representative Voting.

(a) Written Ballots. Any vote of Members on a matter which would be cast at an annual, regular or special meeting may be taken, without a meeting, by written ballot delivered to every Member by the Association. The ballot shall set forth the matter to be voted upon and provide thereon a place to vote for or against such matter. Approval by written ballot without a meeting shall be effective only when the number of votes cast by ballot equals or exceed the quorum required to be present had the matter been considered at a meeting, and the number voting for the matter equals or exceeds the number of votes required to approve it had the matter been considered at a meeting at which the requisite quorum is present. A solicitation of votes by ballot shall (1) indicate the record date for Members eligible to vote; (2) indicate the number of returned ballots voting for or against the matter that is required to satisfy the quorum requirement; (3) state the required number of votes or percentage voting in favor of the matter required to approve it (except in the case of election of directors, which shall be by plurality); and (4) state the date and time by which a Member's completed ballot must be received by the Secretary in order to be counted in the vote to be taken. A ballot, once delivered to the Secretary, may not be revoked. A Member's signed ballot shall be delivered to the

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Secretary by hand delivery, by U.S. mail, or by such other means as shall be permitted under South Carolina law, including, but not limited to and if allowed, overnight courier service, facsimile and e-mail transmission, internet form submission, or by any other technology or medium, now existing or hereafter devised, provided in every such case the sender retains proof of transmission and receipt.

(b) Proxies. All of the provisions of this Section 3.5(b) are subject to Section 18.9 of the Master Deed. To the extent that a provision set forth in this Section is inconsistent with Section 18.9 of the Master Deed, the provisions of Section 18.9 of the Master Deed shall control. At all meetings of Members, each Member may vote in person or by proxy. The appointment form of proxy shall be in writing and received by the Secretary before the appointed time of the meeting. Every proxy appointment shall automatically cease upon conveyance by the Member of his Unit, or upon receipt of written notice by the Secretary of the death or judicially declared incompetence of a Member prior to the counting of the vote, upon revocation of the appointment of the proxy in accordance with the Nonprofit Corporation Act, or upon the expiration of eleven (11) months from the date of the proxy. Unless the proxy appointment form otherwise states, it shall be deemed to confer the authority to execute consents and waivers and to exercise the right to examine the books and records of the Association. Any proxy appointment form distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon set forth in the notice of the meeting. The appointment shall provide that, where the Member specifies a choice, the vote shall be cast by the proxy in accordance with that choice. The form shall also identify the person or persons acting as the proxy and the length of time it will be valid. In addition, voting by a proxy shall comply with any other applicable requirements of the Nonprofit Corporation Act. The Member's signed proxy appointment form shall be delivered to the Secretary by hand delivery, by U.S. mail, and by such other means as shall be permitted under South Carolina law, including, but not limited to and if allowed, overnight courier service, facsimile and e-mail transmission, internet form submission, or by any other technology or medium, now existing or hereafter devised, provided in every such case the sender retains proof of transmission and receipt.

3.7 Membership and Voting. The Association shall have two (2) classes of voting membership:

Type A: The Type A Members shall be all Owners, including the Developer (as defined in the Master Deed) and shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine as provided in the Master Deed, but in no event shall more than one (1) vote be cast with respect to any Unit.

Type B: The Type B Member shall be the Developer whose voting rights shall be three (3) votes for each vote held by Type A Members, plus one (1) vote. The Type B membership shall cease upon the first of the following dates:

(a) December 31, 2005;

(b) three (3) months following the date on which the Developer has conveyed to Owners in the ordinary course of its business property representing one hundred percent (100%) of the total number of Units to be contained in all phases of the Regime; or

(b) three (3) months following the date the Developer surrenders the authority to appoint and remove Directors and officers of the Association by an express amendment to the Master Deed executed and filed in the Office of Register of Deeds for Horry County, South Carolina by the Developer.

Except as otherwise provided in the Master Deed, the Articles of Incorporation, these By-Laws, or the Nonprofit Corporation Act, any action by the Association which must have the approval of the Members before being undertaken shall require voting approval by a majority of the votes cast by Members at which the required quorum is present. An abstention shall be counted as a negative vote in calculating the majority. Members are divided into Type A and Type B Members for the sole purpose of computing voting rights and shall not vote as a class. Owners of Units in all phases shall have the same voting rights.

3.7 Eligibility to Vote: Voting rights attributable to Units shall not vest until Assessments against those Units have been levied by the Association. Only Members in good standing shall be entitled to vote on any issue or matter presented to the Members for approval. In order to be in good standing, a Member must be current in the payment of all assessments levied against the Member's Unit and not subject to any suspension of voting privileges as a result of disciplinary proceeding conducted in accordance with the Master Deed. A Member's good standing shall be determined as of the record date established in accordance with section 3.8. The Association shall not be obligated to conduct a hearing in order to suspend a Member's voting privileges on the basis of the nonpayment of assessments, although a delinquent Member shall be entitled to request such a hearing.

3.8 Record Dates:

A. Record Dates Established by the Board: For the purpose of determining which Members are entitled to receive notice of any meeting, vote, act by written ballot without a meeting, or exercise any rights in respect to any other lawful action, the Board may fix, in advance, a "record date" and only Members of record on the date so fixed are entitled to notice, to vote, or to take action by written ballot or otherwise, as the case may be, notwithstanding any transfer of any membership on the books of the Association after the record date, except as otherwise provided in the Articles of Incorporation, by agreement, or in the Nonprofit Corporation Act. The record dates established by the Board pursuant to this section shall be as follows:

(1) Record Date for Notice of Meetings: In the case of determining those Members entitled to notice of a meeting, the record date shall be no more than ninety (90) nor less than ten (10) days before the date of the meeting;

(2) Record Date for Voting: In the case of determining those Members entitled to vote at a meeting, the record date shall be no more than sixty (60) days before the date of the meeting;

(3) Record Date for Action by Written Ballot Without Meeting: In the case of determining Members entitled to cast written ballots, the record date shall be no more than sixty (60) days before the day on which the first written ballot is mailed or solicited; and

(4) Record Date for Other Lawful Action: In the case of determining Members entitled to exercise any rights in respect to other lawful action, the record date shall be no more than sixty (60) days prior to the date of such other action.

(5) "Record Date" Means as of the Close of Business: For purposes of this subparagraph A, a person holding a membership as of the close of business on the record date shall be deemed the Member of record.

B. Failure of Board to Fix a Record Date: If the Board, for any reason, fails to establish a record date, rules set forth in the Nonprofit Corporation Act shall apply.

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3.9 Action Without Meeting: Any action that may be taken at any annual or special meeting of Members (except the election of Directors) may be taken without a meeting in accordance with the provisions of the Nonprofit Corporation Act. Any form of written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the Board be named in the written ballot. The written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice.

3.10 Conduct of Meetings: Meetings of the membership of the Association shall be conducted in accordance with a recognized systems of parliamentary procedure or such parliamentary procedures as the Association may adopt. Notwithstanding any other provision of law, notice of meetings of the Members shall specify those matters the Board intends to present for action by the Members, but, except as otherwise provided by law, any proper matter may be presented at the meeting for action. Members of the Association shall have access to Association records in accordance with the Nonprofit Corporation Act. Any Member of the Association may attend meetings of the Board, except when the Board adjourns to executive session to consider litigation, matters that relate to the formulation of contracts with third parties, or personnel matters. Any matter discussed in executive session shall be generally noted in the minutes of the Board. In any matter relating to the discipline of an Association Member, the Board shall meet in executive session if requested by that Member, and the Member shall be entitled to attend the executive session.

ARTICLE IV
BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

4.1 Number. The affairs of the Association shall be managed by a Board of Directors, all of whom must be Members of the Association, or an officer, director, employee or agent of a Member, including Developer. The initial Board of Directors shall consist of three (3) Directors who shall be appointed by the Developer. The Developer shall have the sole right to appoint and remove any member or members of the Board of Directors of the Association pursuant to the Master Deed until the expiration of the Transition Period.. Within sixty (60) days after the expiration of the Transition Period, the Members shall elect five (5) Directors. The Association shall either call, and give not less than thirty (30) days' and not more than sixty (60) days' notice of, such special meeting of the Members to elect the Board of Directors, or the date on which the Association shall count the written ballots distributed to the Members with such notice or the election of the Board of Directors. Each year thereafter, the Members shall elect such number of Directors as shall exist whose terms are expiring.

4.2 Term of Office. The election of Directors shall be by plurality, the number of nominees equal to the number of vacancies to be filled receiving the greatest number of votes being elected. However, at the meeting of the Association following expiration of the Transition Period held to elect five (5) Directors or the date following expiration of the Transition Period when written ballots are to be counted for the election of such Directors pursuant to Section 4.1, the two (2) nominees receiving the highest number of votes will each be elected for a term of two (2) years, and the next three (3) nominees receiving the highest number of votes will each be elected for a term of one (1) year. At the expiration of the initial term of office of each respective Director, his successor shall be elected to serve for a term of two (2) years. Unless vacated sooner, each Director shall hold office until the Director's term expires and a successor is elected.

4.3 Removal; Vacancies. A Director appointed by the Developer may only be removed by the Developer, otherwise, a Director may be removed from office, with or without cause, at any regular or special meeting of the Members by sixty-seven percent (67%) of the votes of the Members voting in person or by proxy at a meeting at which a quorum is present. A successor to any removed Director may be elected at the

same meeting at which the vacancy is created by the removal of the Director. A Director whose removal is proposed to be voted upon at any meeting shall be given notice of the proposed removal not less than 10 days prior to the date of the meeting and shall be given an opportunity to be heard at the meeting. In the event of death or resignation of a Director, the vacancy shall be filled by majority vote of the Board at a duly held meeting, or by the sole remaining Director. A successor Director shall serve for the unexpired term of his or her predecessor. The Members may elect a Director at any time to fill any vacancy not filled by the Directors.

4.4 Compensation. No Director shall receive compensation for any service rendered to the Association. However, any Director may be reimbursed for his actual expenses, if reasonable, that are incurred in the performance of his or her duties, including, but not limited to, travel expenses.

4.5 Indemnification of Corporate Agents. The Association shall indemnify any present or former Director, officer, employee or other agent of the Association to the fullest extent authorized under the Nonprofit Corporation Act, or any successor statute, and may advance to any such person funds to pay expenses that may be incurred in defending any action or proceeding on receipt of an undertaking by or on behalf of such person to repay such amount unless it is ultimately determined that such person was not entitled to indemnification under this provision.

ARTICLE V
NOMINATION AND ELECTION OF DIRECTORS

5.1 Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Notice to the Members of the meeting shall include the names of all those who are nominees at the time the notice is sent. Nominations to be placed on the ballot may also be solicited by the Nominating Committee or the Board from the membership, and if the election is to take place at a meeting and not solely by written ballot, nominations may also be made from the floor at the meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than sixty (60) days prior to the meeting of the Members at which the election is to be held, or if the election is to take place solely by written ballot not less than sixty (60) days prior to the date set on the ballot as the election date when ballots are to be counted, and shall serve until the close of the election. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. All candidates shall have reasonable opportunity to communicate their qualifications to Members and to solicit votes.

5.2 Election. The first election of the Board shall be conducted as set forth in Section 4.1. At such election the Members or their proxies may cast as many votes as they are entitled to exercise under the provisions of the Master Deed. The persons receiving the largest number of votes shall be elected. No cumulative voting shall be permitted. Voting for Directors at a meeting shall be by secret written ballot. Voting for Directors may also be conducted by written ballot pursuant to Section 3.5(a).

ARTICLE VI
MEETINGS OF DIRECTORS

6.1 Regular Meetings. Regular meetings of the Board of Directors shall be held at least annually at such place within the Project, and at such hour as may be fixed from time to time by resolution of the Board. If a larger meeting room is required than exists with the Project, the Board shall select a room as close

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as possible to the Project. Should a regularly scheduled meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday, excluding Saturday and Sunday.

6.2 Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Vice President or Secretary of the Association, or by any two (2) Directors. Notice of the special meeting shall specify the time and place of the meeting and the nature of the special business to be considered.

6.3 Quorum. A majority of the Directors then in office (but not less than two (2)) shall constitute a quorum for the transaction of business. Every act performed or decisions made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by a majority of the required quorum for that meeting.

6.5 Executive Session. The Board may, with approval of a majority of the Directors present at a meeting in which a quorum for the transaction of business has been established, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel and matters involving contracts of which the Association is a party, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

6.6 Telephone Meetings. Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all Directors participating in the meeting can hear one another, and all such Directors shall be deemed to be present in person at such meeting. An explanation of the action shall be filed with the minutes of the proceedings of the Board.

6.7 Waiver of Notice. The transaction of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minute. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

6.8 Notice of Adjourned Meeting. Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

6.9 Action Without Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

6.10 Notices Generally. Notice of any meeting of the Board of Directors, whether regular or special, shall be given to each Director by one (1) of the following methods; (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the

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Director or to a person at the Director's office who would reasonably be expected to communicate such notice promptly to the Director; (d) by telegram, charges prepaid; or (e) by facsimile transmission to the fax number of the Directors or to e-mail address of the Directors, with proof of transmission and receipt thereof being retained in the minutes of the meeting. All such notices shall be given or sent to the Director's address, telephone number, fax number or e-mail address as shown on the records of the Association. Such notice shall be shall be sent to all Directors not less than seventy-two (72) hours prior to the scheduled time of the meeting, provided, however, notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, telegraph, facsimile transmission or e-mail shall be delivered, telephoned, given to the telegraph company, faxed or e-mailed, as the case may be, at least seventy-two (72) hours before the time set for the meeting. Notice of any meeting need not be given to any Director who has signed a waiver of notice or written consent to holding of the meeting.

ARTICLE VII
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

7.1 Duties. It shall be the duty of the Board of Directors to:

A. Maintenance: Perform the maintenance described in the Master Deed;

B. Insurance: Maintain insurance as required by the Master Deed;

C. Discharge of Liens: Discharge by payment, if necessary, any lien against the Common Area and assess the cost thereof to the Member or Members responsible for the existence of the lien (after notice and hearing as required by these Bylaws);

D. Assessments: Fix, levy, collect and enforce Assessments as set forth in the Master Deed;

E. Expenses and Obligations: Pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes, or governmental charges levied or imposed against the property of the Association;

F. Records: Cause to be kept a complete record of all its acts and affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (¼) of the Class "A" Members, keep adequate and correct books and records of account, minutes of proceedings of its Members, Board and committees, and a record of its Members giving their names and addresses and classes of membership;

G. Supervision: Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

H. Enforcement: Enforce these Bylaws and the Master Deed;

I. Review of Financial Records: Review on at least a quarterly basis a current reconciliation of the Association's operating and reserve accounts, the current year's actual reserve revenues and expenses compared to the current year's budget, and an income and expense statement for the Association's operating and reserve accounts. In addition, the Board shall review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts. For

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purposes herein, "reserve accounts" shall mean monies that the Association's Board has identified for use to defray the future repair or replacement of, or additions to, these major components which the Association is obligated to maintain.

J. Reserve Account Withdrawal Restrictions: Require that at least two (2) signature is needed for the withdrawal of monies for the Association's reserve accounts, at least one (1) of whom shall be a member of the Board. One (1) signature may be that of the Association's manager or such manager's designee.

K. Reserve Account Fund Management: The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

L. Reserve Studies. At least every five (5) years the Board shall cause an independent analysis of the reserve component of the operating budget to be conducted to confirm that component replacement costs and useful lives are accurately reflected in the reserve allocation.

7.2 Powers. The Board of Directors shall have power to:

A. Manager: Employ a manager as provided in the Master Deed;

B. Adoption of Rules; Set Aside Common Area Parking for Handicap: Adopt rules in accordance with the Master Deed, including rules setting aside Common Area parking spaces as handicap parking only, and adopt rules limiting the number of cars which will be permitted to be parked in the Common Area parking spaces;

C. Assessments, Liens and Fines: Levy and collect Assessments and impose fines as provided in the Master Deed.

D. Enforcement (Notice and Hearing): Enforce these Bylaws and/or the Master Deed, provided that at least fifteen (15) days' prior notice of any charges (other than Assessment) or potential discipline or fine and the reasons therefor are given to the Member affected, and that an opportunity is provided for the Member to be heard, orally or in writing not less than five (5) days before the effective date of the discipline or fine, said hearing to be before the Board. Any notice required herein shall be given by any method reasonably calculated to provide actual notice. Any notice given by mail shall be given by first class or registered mail sent to the last address of the Member as shown on the Association's records.

E. Contracts: Contract for goods and/or services in accordance with the Master Deed.

F. Delegation: Delegate its authority and powers to committees, officers or employees of the Association or to a manager employed by the Association. The Board may not delegate the authority to procure insurance, make capital expenditures for additions or improvements chargeable against the reserve funds; to conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee with the Master Deed or rules and regulation promulgated by the Board, or to make a decision to levy monetary fines, impose special Assessments against individual Units, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline following any such hearing; to make a decision to levy Annual or Special Assessments; or to make a decision to bring suit, record a claim of lien, or institute foreclosure proceedings for default in payment of Assessments. Any such delegation shall be revocable by

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the Board at any time. The members of the Board, individually or collectively, shall not be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated by written instrument executed by a majority of the Board.

G. Appointment of Trustee: Appoint a trustee as provided in the Master Deed.

H. Borrowings. Borrow money (i) for the purpose of improving the Regime, or any portion thereof, (ii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Regime, (iii) for providing services authorized herein, and, (iv) to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association will be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Developer, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

I. Other Powers: In addition to any other power contained herein or in the Master Deed, the Association may exercise the powers granted to a nonprofit mutual benefit corporation as enumerated in the Nonprofit Corporation Act.

7.3 Prohibited Acts. The Board shall not take any of actions prohibited of it under the Master Deed except with the vote or written consent of a majority of the Members other than Developer.

ARTICLE VIII
OFFICERS AND THEIR DUTIES

8.1 Enumeration of Officers. The officers of this Association shall be a President and Secretary, who shall at all times be members of the Board of Directors, a Vice President, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

8.2 Election of Officers. The Developer shall have the sole right to appoint and remove officers during the Transition Period. Thereafter, all officers shall hold office at the pleasure of the Board.

8.3 Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

8.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

8.5 Resignation and Removal. Any officer may be removed from office (but not from the Board, if the officer is also a Board member) by the Board with or without cause. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

8.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

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8.7 Duties. The duties of the officers are as follows:

A. President. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall sign all promissory notes. The President shall have the general powers and duties of management usually vested in the office of the President of a South Carolina nonprofit mutual benefit corporation, and shall have such powers and duties as may be prescribed by the Board or by these Bylaws.

B. Vice President. The Vice President shall act in the place of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

C. Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with the addresses, and shall perform such other duties as required by the Board. The ministerial functions of the Secretary in recording votes, keeping minutes, sending notices, and keeping the records of names and addresses of Members may be delegated to an Association manager.

D. Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all promissory notes of the Association; shall keep proper books of account; and shall prepare and shall distribute budgets and statements. The ministerial functions of the Treasurer in sending Assessment notices, receiving and depositing Assessments, keeping books and ledgers of account, and preparing and distributing budgets and statements may be delegated to an Association manager.

ARTICLE IX
COMMITTEES

9.1 Appointment. An Architectural Review Committee may be appointed as provided in the Master Deed, and a Nominating Committee shall be appointed as provided in these Bylaws. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purpose. No committee, regardless of Board resolution, may: (a) take any final action on matters which, under the Nonprofit Corporation Act also requires Members' approval; (b) fill vacancies on the Board of Directors or in any committee; (c) amend or repeal Bylaws or adopt new Bylaws; (d) amend or repeal any resolution of the Board of Directors; (e) appoint any other committees of the Board of Directors or the members of those committees; (f) approve any transaction to which the Association is a party and in which one (1) or more Directors have a material financial interest.

ARTICLE X
BOOKS AND RECORDS

10.1 Inspection by Members. The membership register (including names, mailing addresses, telephone numbers and voting rights), books of account and minutes of meetings of the Members, of the Board (including drafts and summaries), and of committees shall be made available for inspection and copying by any Member of the Association, or by his duly appointed representative, at any reasonable time and for a purpose reasonably related to his interest as a Member, at the office of the Association or at such other place within the Project as the Board shall prescribe. Board minutes shall be available to Members

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within thirty (30) days of the meeting, and shall be distributed to any Member upon request and upon reimbursement of the costs in making that distribution.

10.2 Rules for Inspection. The Board shall establish reasonable rules with respect to:

A. Notice to be given to the custodian of the records by the Member desiring to make the inspection;

B. Hours and days of the week when such an inspection may be made;

C. Payment of the cost of reproducing copies of documents requested by a Member.

10.3 Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents, at the expense of the Association.

10.4 Documents Provided by Board. Upon written request, the Board shall, within ten (10) days of the mailing or delivery of such request, provide an Owner with a copy of the governing documents of the Project, a copy of the most recent budget and statements of the Association, and a true statement in writing from an authorized representative of the Association as to the amount of the Association's current Annual and Special Assessments and fees, as well as any Assessments levied upon the Owner's interest which, as of the date of the statement, are or may be made a lien upon the Owner's Unit. The Board may impose a fee for providing the foregoing which may not exceed the reasonable cost to prepare and reproduce the requested documents.

ARTICLE XI
MISCELLANEOUS

11.1 Amendments. Prior to close of the sale of the first Unit, Developer may amend these Bylaws. After sale of the first Unit these Bylaws may be amended, only as provided in the Master Deed or in the Nonprofit Corporation Act.

11.2 Conflicts. In the case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Master Deed and these Bylaws, the Master Deed shall control.

11.3 Fiscal Year. Unless directed otherwise by the Board, the fiscal year of the Association shall begin on the first day of January and end on the thirty-first (31st) day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

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CERTIFICATE

I, the undersigned, the duly elected and acting Secretary of WEDGEWOOD CONDOMINIUM ASSOCIATION, a South Carolina nonprofit mutual benefit corporation, do hereby certify that the foregoing Bylaws were adopted as the Bylaws of the Association on _____, _____, and that the same do now constitute the Bylaws of the Association.

Dated: _____ _____

Secretary

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EXHIBIT "F"

1. Mandatory Procedures for Non-Exempt Claims. Any Claimant with a Claim against a Respondent shall comply with the following procedures:

1.1 Notice. Within a reasonable time after the Claim in question has arisen, and in each event prior to the date when institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitation, Claimant will notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

(a) the nature of the Claim, including applicable date, time, location, Persons involved, Respondent's role in the Claim and the provisions of the Master Deed or other authority out of which the Claim arises;

(b) what Claimant wants Respondent to do or not do to resolve the Claim; and

(c) that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss, in good faith, ways to resolve the Claim.

1.2 Negotiation.

(a) Each Claimant and Respondent (the "Parties") will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation, not later than 30 days following the Notice, unless otherwise agreed by the Parties.

(b) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint an attorney licensed to practice law in the State of South Carolina to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes his or her efforts will be beneficial to the Parties. Such an attorney will have been actively engaged in the practice of law for at least fifteen (15) years, specializing in commercial transactions with substantial experience in planned real estate developments and will not have a conflict of interest with any of the Parties.

1.3 Final and Binding Arbitration.

(a) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiation"), a Claimant will have 30 days within which to submit the Claim to binding arbitration under the auspices and the Commercial Arbitration Rules of the American Arbitration Association; and in accordance with the substantive and procedural laws of the state of South Carolina, except as said rules, procedures and substantive laws are applied otherwise as follows:

(i) Unless the parties mutually set another date, within ten (10) days following Termination of Negotiation, Claimant and Respondent will jointly select one arbitrator, whose decision will be absolutely binding on all Parties; provided, however, if Claimant and Respondent are unable to jointly select one arbitrator within said ten (10) -day period, or on or before any later day set by them by which to select an arbitrator, the arbitrator will be selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration will be conducted in Myrtle Beach, South Carolina before a neutral person who is a member of the Bar of the State of South Carolina, who has been

actively engaged in the practice of law for at least fifteen (15) years, specializing in commercial transactions with substantial experience in planned real estate developments, and who has no conflict of interest with any Party. The arbitrator may award any remedy or relief that a court of the State of South Carolina could order or grant, including, without limitation, specific performance of any obligation created under this Master Deed, or the issuance of an injunction, as well as the imposition of sanctions for abuse or frustration of the arbitration process; provided, however, the arbitrator will have no authority to award punitive damages or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Master Deed.

(ii) In the event Claimant does not submit the Claim to binding arbitration as aforesaid, the Claim is deemed abandoned, and Respondent is released and discharged from any and all liability to Claimant arising out of the Claim; provided, nothing herein will release or discharge Respondent from any liability to a Person not a Party to the foregoing proceedings, or the mandatory requirements of this Paragraph 1 with respect to any subsequently arising new dispute or claim by the Claimant which is identical or similar to the Claim previously deemed abandoned under this Paragraph 1.3(a)(ii).

This Paragraph 1 is an agreement of the Bound Parties to arbitrate all Claims against Respondent, except Exempt Claims, and is specifically enforceable under South Carolina law. The arbitration award (the "Award") is final and binding on the Parties, and judgment upon the Award rendered by the arbitrator may be entered upon it in any court of competent jurisdiction.

2 Allocation of Costs of Resolving Claims.

2.1 Costs of Notice and Negotiation. Each Party will bear all of its own costs incurred prior to and during the proceedings described in Paragraphs 1.1 and 1.2, including the fees of its attorney or other representative. Claimant and Respondent will share equally the costs and expenses of any attorney appointed by the Board pursuant to Paragraph 1.2, whose compensation will be at a rate equal to his or her then current regular hourly billing rate, unless the Board is able to arrange with the Parties and the arbitrator to agree otherwise, and who will be entitled to receive his or her then customary costs and expenses.

2.2 Arbitration Costs. In the event the Claim proceeds to arbitration pursuant to Paragraph 1.3, the "Prevailing Party," as hereinafter defined, will receive from the non-Prevailing Party, all of its costs and expenses, including reasonable expert and attorney's fees, incurred from commencement of selection of the arbitrator under Paragraph 1.3 to the issuance of the Award. Furthermore, the non-Prevailing Party will pay all costs and expenses of the arbitration, including the costs and expenses of any attorney appointed by American Arbitration Association pursuant to Paragraph 1.3, whose compensation will be at a rate equal to his or her then current regular hourly billing rate, unless the American Arbitration Association is able to arrange with the Parties and the arbitrator to agree otherwise, and who will be entitled to receive his or her then customary costs and expenses. The "Prevailing Party" will be determined as follows:

(a) Not less than five (5) days prior to the first meeting with the arbitrator, a Party or Parties may file and serve on the other Party(ies) an offer of settlement, and within three (3) days thereafter the Party(ies) served may respond by filing and serving such Party(ies) its own offer of settlement. An offer of settlement will state that it is made under this paragraph and will specify the amount, exclusive of interest and costs, which the Party(ies) serving the settlement offer is/are willing to agree constitutes a settlement of the Claim.

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(b) An offer of settlement is considered rejected by the recipient unless an acceptance, in writing, is filed and served on the Party(ies) making the offer twenty-four (24) hours prior to the first meeting with the arbitrator.

(c) If an offer of settlement is rejected, it may not be referred to for any purpose at arbitration, but may be considered solely for the purpose of awarding costs and expenses of arbitration under Paragraph 1.3.

(d) If Claimant makes no written offer of settlement, the amount of the Claim offered in arbitration is deemed to be Claimant's final offer of settlement under this Paragraph 2.2.

(e) If Respondent makes no written offer of settlement, Respondent's offer of settlement under this Paragraph 2.2 is deemed to be zero.

(f) The Party(ies) whose offer, made or deemed made, is closer to the Award granted by the arbitrator is considered the "Prevailing Party" hereunder. If the difference between Claimant's and Respondent's offers and the Award is equal, neither Claimant nor Respondent is considered to be the Prevailing Party for purposes of determining the award of costs and expenses of arbitration.

3 Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation in accordance with Paragraph 1.2 and any Party thereafter fails to abide by the terms of the agreement reached through negotiation, or if, following arbitration, any Party thereafter fails to comply with the Award, then any other Party may file suit or initiate administrative proceedings to enforce the agreement or Award without the need to again comply with the procedures set forth in Paragraph 1. In such event, the Party taking action to enforce the agreement or Award is entitled to recover from the noncomplying Party (or if more than one noncomplying Party, from all the Parties jointly and severally) all costs incurred in enforcing the agreement or Award, including, without limitation, attorney's fees and court costs.

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EXHIBIT B

WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.
NORTH MYRTLE BEACH, SOUTH CAROLINA

FINANCIAL STATEMENTS
AND SUPPLEMENTARY INFORMATION

Year Ended December 31, 2013

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WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.
NORTH MYRTLE BEACH, SOUTH CAROLINA

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Andrew C. Thompson, CPA
Certified Public Accountant and Auditor



REPORT OF INDEPENDENT AUDITORS

To the Board of Directors and Members
Wedgewood Condominium Association, Inc.
North Myrtle Beach, South Carolina

We have audited the accompanying financial statements of Wedgewood Condominium Association, Inc., which comprise the balance sheet as of December 31, 2013, and the related statements of revenues and expenses, changes in fund balances, and cash flows for the year then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Wedgewood Condominium Association, Inc. as of December 31, 2013, and the results of its operations and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Myrtle Beach, South Carolina
June 15, 2014

Andrew C. Thompson, CPA

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WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.

BALANCE SHEET
December 31, 2013

ASSETS	Operating Fund	Reserve Fund	Total
Cash - (Notes 2 and 5)	$ 21,658	$ 276,425	$ 298,083
Member assessments receivable, net (Note 3)	2,408	-	2,408
Prepaid insurance	333	-	333
Prepaid expenses	4,463	-	4,463
Utility deposits	1,000	-	1,000
TOTAL ASSETS	$ 29,862	$ 276,425	$ 306,287
LIABILITIES AND FUND BALANCES			
LIABILITIES			
Accounts payable and accrued expenses	$ 7,672	-	$ 7,672
Prepaid member assessments (Note 3)	10,862	-	10,862
TOTAL LIABILITIES	18,534	-	18,534
FUND BALANCES (Note 5)	11,328	276,425	287,753
TOTAL LIABILITIES AND FUND BALANCES	$ 29,862	$ 276,425	$ 306,287

SEE REPORT OF INDEPENDENT AUDITORS

The accompanying Notes to Financial Statements are an integral part of this financial statement.

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WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.

STATEMENT OF REVENUES AND EXPENSES
For the Year Ended December 31, 2013

	Operating Fund	Reserve Fund	Total
REVENUES			
Regular assessments (Note 3)	$ 316,976	$ 40,000	$ 356,976
Fines and late charges	1,703	-	1,703
Interest income	-	709	709
Capital credit refunds - utility companies	767	-	767
TOTAL REVENUES	319,446	40,709	360,155
OPERATING EXPENSES			
Repairs and maintenance	110,840	11,894	122,734
General and administrative	58,038	-	58,038
Utilities	103,920	-	103,920
Total Operating Expenses	272,798	11,894	284,692
OTHER EXPENSES			
Security monitoring	1,711	-	1,711
Joint committee fee	18,648	-	18,648
Residential association fee	17,316	-	17,316
Beach club fee	6,660	-	6,660
Income and property taxes (Note 4)	242	-	242
Operating contingency	6,640	-	6,640
Bad debt expense (Note 3)	4,666	-	4,666
Total Other Expenses	55,883	-	55,883
TOTAL EXPENSES	328,681	11,894	340,575
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENSES	$ (9,235)	$ 28,815	$ 19,580

SEE REPORT OF INDEPENDENT AUDITORS

The accompanying Notes to Financial Statements are an integral part of this financial statement.

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WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.

STATEMENT OF CHANGES IN FUND BALANCES
For the Year Ended December 31, 2013

	Operating Fund	Reserve Fund	Total
FUND BALANCES, January 1, 2013	$ 20,563	$ 247,610	$ 268,173
Excess (deficiency) of revenues over expenses	(9,235)	28,815	19,580
FUND BALANCES, December 31, 2013	**11,328**	**276,425**	**287,753**

SEE REPORT OF INDEPENDENT AUDITORS

The accompanying Notes to Financial Statements are an integral part of this financial statement.

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WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.

STATEMENT OF CASH FLOWS
For the Year Ended December 31, 2013

	Operating Fund	Reserve Fund	Total
CASH FLOWS FROM OPERATING ACTIVITIES			
Excess (deficiency) of revenues over expenses	$ (9,235)	28,815	$ 19,580
Adjustments to reconcile excess (deficiency) of revenues over expenses to net cash provided (used) by operating activities			
(Increase) decrease in:			
Member assessments receivable	3,924	-	3,924
Prepaid insurance	(16)	-	(16)
Prepaid expenses	1,676	-	1,676
Increase (decrease) in:			
Accounts payable and accrued expenses	(729)	-	(729)
Prepaid member assessments	3,280	-	3,280
NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES	(1,100)	28,815	27,715
NET INCREASE (DECREASE) IN CASH	(1,100)	28,815	27,715
CASH, at beginning of year	22,758	247,610	270,368
CASH, AT END OF YEAR	$ 21,658	$ 276,425	$ 298,083
SUPPLEMENTAL DISCLOSURE:			
Income taxes paid	$ 182	$ -	$ 182

SEE REPORT OF INDEPENDENT AUDITORS

The accompanying Notes to Financial Statements are an integral part of this financial statement.

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NOTE 1. NATURE AND PURPOSE OF ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Wedgewood Condominium Association, Inc. (the "Association") is a statutory association incorporated and existing under the laws of the State of South Carolina. The Association is responsible for maintaining and preserving common property, enforcing rules for mutual benefit, and providing other common services to Association members. Wedgewood is a residential community consisting of one-hundred eleven (111) residential units, and is a part of the Barefoot Resort, a multi-phase residential, commercial, and golf course community located in North Myrtle Beach, South Carolina. The Association began its operations in 2000.

The following is a summary of the more significant accounting policies used in the preparation and presentation of the accompanying financial statements of the Association.

Basis of Accounting:

The financial statements were prepared under accounting principles generally accepted within the United States of America, utilizing the accrual basis of accounting with revenues being recognized when they are billed or due and expenses being recognized when the expense is incurred.

The Association's governing documents provide certain guidelines for managing its financial activities. To ensure observance of limitations and restrictions on financial resources, the Association maintains its accounts using fund accounting. Financial resources are classified for accounting and reporting purposes in specific funds established according to their nature and purpose. The Association's funds are separated between operating funds and funds for future major repairs and replacements (reserve fund). Operating disbursements are made generally at the discretion of the Board of Directors and the Association's property management company. Replacement funds have been set aside for a specific purpose and are to be disbursed accordingly.

Allowance for Doubtful Accounts:

The Association, as determined necessary and on an annual basis, establishes an allowance for potentially uncollectible member assessments receivable based on historical collection experience and management's evaluation of collectibility of outstanding balances due.

(continued)

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NOTE 1. NATURE AND PURPOSE OF ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Common Property:

Real property owned by individual unit owners in common and improvements made by the Association to such property are not capitalized in the financial statements. All expenditures for real property common elements and improvements are reflected as an expense in the period incurred. Common property elements not recognized as assets in the financial statements consist primarily of access driveways and parking areas, a swimming pool facility, and landscape and building common areas.

Use of Estimates:

The preparation of financial statements in conformity with accounting principles generally accepted in the U.S. requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Contingencies:

During the course of its operations, the Association is subject to various claims, torts, and actions. Management reviews the validity of such actions and acts accordingly. Management does not believe the outcome of any current actions will result in a material loss to the Association.

Subsequent Events:

Management has evaluated subsequent events through June 15, 2014, the date the financial statements were available to be issued, and has concluded that no significant subsequent events meet the criteria of professional accounting standards to be recognized, or not recognized but disclosed, in the financial statements.

NOTE 2. CASH AND CREDIT CONCENTRATIONS

Cash consists of amounts on deposit (including interest bearing deposits) with financial institutions. Financial instruments which potentially subject the Association to concentrations of credit risk may consist primarily of bank accounts with balances in excess of amounts insured by the Federal Deposit Insurance Corporation (FDIC). Management of the Association evaluates the financial stability of its depositories and considers the risk of loss to be remote. There were no uninsured balances at December 31, 2013.

NOTE 3. ASSESSMENTS CHARGED TO UNIT OWNERS

Regular Assessments:

The regular monthly assessment charged to unit owners, including reserve fees and other fees discussed below, totaled $268 for 2013.

Community Assessments:

The Residential Association

All Owners of residential units (either single family or multi-family) within the Barefoot Resort development are also members of the Barefoot Resorts Residential Owners Association, Inc. ("The Residential Association"). That association is responsible for the administration, maintenance, management, ownership and control of common areas within the Barefoot Resort residential properties.

The Residential Association assesses fees on a per unit basis, which are included in the monthly assessments charged to each unit owner within Wedgewood. The Association remits these fees on a monthly basis to the Residential Association. For 2013, the monthly fee per unit for the Residential Association was approximately $13, the monthly fee for the Beach Club was approximately $5, and the monthly fee for the Joint Committee was approximately $14. The "Joint Committee Fee" is actually paid by Wedgewood Condominium Association, Inc., to the "Residential Association", and the "Residential Association", in turn remits funds to the "Joint Committee" under a "shared services reimbursement plan" as described below.

The Joint Committee

The Residential Association is a member of the Barefoot Resort Joint Committee, Inc. (the "Joint Committee"). The purpose of the Joint committee is to be a unifying entity for the residential and non-residential components of the Barefoot Resort development. The Joint Committee also provides maintenance services for the common elements of the development not designated as part of either an individual regime or the Residential Association.

(continued)

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NOTE 3. ASSESSMENTS CHARGED TO UNIT OWNERS (CONTINUED)

The Barefoot Resort Joint Committee, Inc., allocates its' operating expenses to the residential and non-residential associations based on an agreed upon formula, The formula is intended to be consistent with the actual costs borne by the Joint Committee on behalf of the other Associations. For the year 2013, the allocation was 1/3 to the non-residential associations, and 2/3 to the residential associations.

All residential owners within the development (whether part of the Barefoot Residential Owners Association or within another residential "regime") remit payments to the Barefoot Residential Owners Association. In turn, Barefoot Residential Owners Association remits a portion of the amounts collected from owners to the Barefoot Resort Joint Committee in order to fund its' share of the Shared Services Reimbursements" described above.

All fees paid by the Association to the Residential Association and the Joint committee are reflected as expenses within the Association's Statement of Revenues and expenses.

Collection Policy and Budget:

The Association's policy is to retain legal counsel and place liens on units of members whose assessments are over ninety (90) days delinquent. At December 31, 2013, the Association had not recorded an allowance for potential uncollectible accounts as probable uncollectible amounts were considered immaterial.

The annual budget and owners' assessments are determined by the Board of Directors to provide for current operating expenditures and required replacement funds. The Association retains excess operating funds at the end of each year, if any, for use in the subsequent year.

NOTE 4. INCOME TAXES

Under the provisions of the Internal Revenue Code, the Association is allowed to elect each year to file as an eligible Section 528 homeowners association, thereby excluding exempt function income from taxation, or file as an ordinary taxable corporation. For the year ended December 31, 2013, the Association elected to file as an eligible homeowners association in order to minimize income taxes. The provision for income taxes for 2013 relate primarily to interest income. The Association has no temporary differences relating to the recognition of income and expenses for financial and tax reporting purposes. Accordingly, no deferred tax assets or liabilities are recorded.

(continued)

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NOTE 4. INCOME TAXES (continued)

The Association has analyzed its various federal and state income tax filing positions and believes that no accrual for tax liabilities relating to uncertain tax positions are required at December 31, 2013. Therefore, no reserves for uncertain income tax positions have been recorded. During 2013, there were no increases or decreases in unrecognized tax benefits for current or prior years and no significant increases or decreases in unrecognized tax benefits are expected to occur within the next 12 months. The periods that remain open to examination under federal statute are 2010 through 2013.

NOTE 5. FUTURE MAJOR REPAIRS AND REPLACEMENTS

The Association's governing documents provide that the Association accumulate funds for future major repairs and replacements of the specific components of common property, including personal property. As of December 31, 2013, the Association had accumulated funds for future major repairs and replacements of $ 276,425. This amount is held in separate accounts and is generally not available for operating purposes. It is the Association's policy that interest earned on the separate cash balances is generally allocated to the replacement fund.

The Board of Directors and the Association's property manager conduct an annual study and consult engineering firms to estimate the remaining useful lives and the replacement costs of common property components. The Association is funding for such future major repairs and replacements over the estimated useful lives of the components based on the study's estimates of current replacement costs, considering amounts previously designated for future major repairs and replacements. Because actual expenditures may vary from estimated future expenditures, and the variations may be material, amounts designated for future major repairs and replacements may not be adequate to meet all future needs for major replacements and repairs. If additional funds are needed, the Association has the right, subject to appropriate approval, to increase regular assessments, pass special assessments, or delay major repairs and replacements until funds are available.

NOTE 6. SUBSEQUENT EVENTS

Management has evaluated subsequent events through June 15, 2014, the date the financial statements were available to be issued, and has concluded that no significant subsequent events meet the criteria of professional accounting standards to be recognized, or not recognized but disclosed, in the financial statements.

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Andrew C. Thompson, CPA
Certified Public Accountant and Auditor

REPORT OF INDEPENDENT AUDITORS ON SUPPLEMENTARY INFORMATION

To the Board of Directors and Members
Wedgewood Condominium Association, Inc.
North Myrtle Beach, South Carolina

We have audited the accompanying financial statements of Wedgewood Condominium Association, Inc., which comprise the balance sheet as of December 31, 2013, and the related statements of revenues, expenses, and changes in fund balances, and cash flows for the year then ended, and the related notes to the financial statements. Our opinion on supplementary information is presented below.

Disclaimer of Opinion on Required Supplementary Information

Accounting principles generally accepted in the United States of America require that supplementary information schedule on future major repairs and replacements, appearing on pages 12 - 13 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Financial Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Myrtle Beach, South Carolina
June 15, 2014

Andrew C. Thompson, CPA

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WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.

SUPPLEMENTARY INFORMATION ON FUTURE MAJOR REPAIRS AND REPLACEMENTS

December 31, 2013

(Unaudited)

The board of directors and the Associations property manager conduct an annual study to estimate the remaining useful lives and the replacement costs of common property components. Replacement costs were based on estimated costs to repair or replace the common property components at the time of the updated study. An engineering firm's report on common property is also obtained.

Estimated replacement costs do not take into account the effects of inflation between the date of the study and the date the components will require repair or replacement.

The following information is based on the study and presents significant information about the components of common property.

Component	Estimated Useful Life (Years)	Estimated Current Remaining Useful Life (Years)	Estimated Current Replacement Cost
Parking Area - Seal Coat	8	8	8,000
Parking Area - Resurface	20	8	34,200
Mail Center Siding	35	23	2,349
Mail Boxes	30	18	6,500
Storm Water Piping	20	8	6,950
Roofs - 3 Buildings	13	1	57,300
Roofs - 3 Buildings	14	2	57,300
Roofs - 3 Buildings	15	3	57,300
Gutter/Downspout - 3 Bldgs	13	1	10,800
Gutter/Downspout - 3 Bldgs	14	2	10,800
Gutter/Downspout - 3 Bldgs	15	3	10,800
Siding - 3 Buildings	43	31	88,700
Siding - 3 Buildings	44	32	88,700
Siding - 3 Buildings	45	33	88,700
Trim - 4 buildings	44	38	14,100
Trim - 4 buildings	44	32	14,100
Wood Stairs - 3 Buildings	19	7	14,400
Wood Stairs - 3 Buildings	20	8	14,400
Wood Stairs - 3 Buildings	21	9	14,400
Guard Rail - 3 Buildings	34	22	19,440
Guard Rail - 3 Buildings	35	23	19,440
Guard Rail - 3 Buildings	36	24	19,440
Hall Carpet - 3 Buildings	9	-	23,040
Hall Carpet - 3 Buildings	10	-	23,040
Hall Carpet - 3 Buildings	11	-	23,040

(continued)

SEE REPORT OF INDEPENDENT AUDITORS ON SUPPLEMENTARY INFORMATION

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WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.

SUPPLEMENTARY INFORMATION ON
FUTURE MAJOR REPAIRS AND REPLACEMENTS
December 31, 2013
(Unaudited)

(continued)

Component	Estimated Useful Life (Years)	Estimated Current Remaining Useful Life (Years)	Estimated Current Replacement Cost
Carpet membrane - 3 buildings	9	-	13,905
Carpet membrane - 3 buildings	10	-	13,905
Carpet membrane - 3 buildings	11	-	13,905
Hall ceiling - 3 buildings	15	3	12,636
Hall ceiling - 3 buildings	16	4	12,636
Hall ceiling - 3 buildings	17	5	12,636
Building Fire Alarm System	30	18	4,590
Exit Lights	30	24	3,240
Exit Lights	31	25	3,240
Exit Lights	32	26	3,240
Waste Water Risers	50	38	180,000
Pool Structure	45	33	48,000
Pool Finish	10	-	9,810
Pool Deck	10	-	8,978
Pool Salt System	8	5	1,800
Pool House Siding	45	33	9,000
Windows & Doors	25	13	2,400
Pool Fence	38	26	7,020
Pool Pole Lighting	25	13	3,000
			$ 1,091,180

SEE REPORT OF INDEPENDENT AUDITORS ON SUPPLEMENTARY INFORMATION

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EXHIBIT C

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WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.
NORTH MYRTLE BEACH, SOUTH CAROLINA

FINANCIAL STATEMENTS
AND SUPPLEMENTARY INFORMATION

Year Ended December 31, 2014

WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.
NORTH MYRTLE BEACH, SOUTH CAROLINA

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Andrew C. Thompson, CPA
Certified Public Accountant and Auditor

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REPORT OF INDEPENDENT AUDITORS



To the Board of Directors and Members
Wedgewood Condominium Association, Inc.
North Myrtle Beach, South Carolina

We have audited the accompanying financial statements of Wedgewood Condominium Association, Inc., which comprise the balance sheet as of December 31, 2014, and the related statements of revenues and expenses, changes in fund balances, and cash flows for the year then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Wedgewood Condominium Association, Inc. as of December 31, 2014, and the results of its operations and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Myrtle Beach, South Carolina
June 21, 2015

Andrew C. Thompson, CPA

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WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.

BALANCE SHEET
December 31, 2014

ASSETS	Operating Fund	Reserve Fund	Total
Cash - (Notes 2 and 5)	$ 11,972	$ 297,583	$ 309,555
Member assessments receivable, net (Note 3)	3,015	-	3,015
Prepaid insurance	333	-	333
Prepaid expenses	203	-	203
Utility deposits	1,000	-	1,000
TOTAL ASSETS	$ 16,523	$ 297,583	$ 314,106
LIABILITIES AND FUND BALANCES			
LIABILITIES			
Accounts payable and accrued expenses	$ 2,051	-	$ 2,051
Prepaid member assessments (Note 3)	10,913	-	10,913
TOTAL LIABILITIES	12,964	-	12,964
FUND BALANCES (Note 5)	3,559	297,583	301,142
TOTAL LIABILITIES AND FUND BALANCES	$ 16,523	$ 297,583	$ 314,106

SEE REPORT OF INDEPENDENT AUDITORS

The accompanying Notes to Financial Statements are an integral part of this financial statement.

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WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.

STATEMENT OF REVENUES AND EXPENSES
For the Year Ended December 31, 2014

	Operating Fund	Reserve Fund	Total
REVENUES			
Regular assessments (Note 3)	$ 320,972	$ 40,000	$ 360,972
Fines and late charges	1,380	-	1,380
Interest income	-	1,108	1,108
Capital credit refunds - utility companies	695	-	695
Other income	93	-	93
TOTAL REVENUES	323,140	41,108	364,248
OPERATING EXPENSES			
Repairs and maintenance	113,081	19,950	133,031
General and administrative	58,760	-	58,760
Utilities	111,019	-	111,019
Total Operating Expenses	282,860	19,950	302,810
OTHER EXPENSES			
Security monitoring	2,622	-	2,622
Joint committee fee	18,648	-	18,648
Residential association fee	18,648	-	18,648
Beach club fee	7,992	-	7,992
Bad debt expense (Note 3)	139	-	139
Total Other Expenses	48,049	-	48,049
TOTAL EXPENSES	330,909	19,950	350,859
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENSES	$ (7,769)	$ 21,158	$ 13,389

SEE REPORT OF INDEPENDENT AUDITORS

The accompanying Notes to Financial Statements are an integral part of this financial statement.

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WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.

STATEMENT OF CHANGES IN FUND BALANCES
For the Year Ended December 31, 2014

	Operating Fund	Reserve Fund	Total
FUND BALANCES, January 1, 2014	$ 11,328	$ 276,425	$ 287,753
Excess (deficiency) of revenues over expenses	(7,769)	21,158	13,389
FUND BALANCES, December 31, 2014	**3,559**	**297,583**	**301,142**

SEE REPORT OF INDEPENDENT AUDITORS

The accompanying Notes to Financial Statements are an integral part of this financial statement.

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WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.

STATEMENT OF CASH FLOWS
For the Year Ended December 31, 2014

	Operating Fund	Reserve Fund	Total
CASH FLOWS FROM OPERATING ACTIVITIES			
Excess (deficiency) of revenues over expenses	$ (7,769)	21,158	$ 13,389
Adjustments to reconcile excess (deficiency) of revenues over expenses to net cash provided (used) by operating activities			
(Increase) decrease in:			
Member assessments receivable	(607)	-	(607)
Prepaid expenses	4,260	-	4,260
Increase (decrease) in:			
Accounts payable and accrued expenses	(5,621)	-	(5,621)
Prepaid member assessments	51	-	51
NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES	(9,686)	21,158	11,472
NET INCREASE (DECREASE) IN CASH	(9,686)	21,158	11,472
CASH, at beginning of year	21,658	276,425	298,083
CASH, AT END OF YEAR	$ 11,972	$ 297,583	$ 309,555
SUPPLEMENTAL DISCLOSURE:			
Income taxes paid	$ -	$ -	$ -

SEE REPORT OF INDEPENDENT AUDITORS

The accompanying Notes to Financial Statements are an integral part of this financial statement.

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NOTE 1. NATURE AND PURPOSE OF ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Wedgewood Condominium Association, Inc. (the "Association") is a statutory association incorporated and existing under the laws of the State of South Carolina. The Association is responsible for maintaining and preserving common property, enforcing rules for mutual benefit, and providing other common services to Association members. Wedgewood is a residential community consisting of one-hundred eleven (111) residential units, and is a part of the Barefoot Resort, a multi-phase residential, commercial, and golf course community located in North Myrtle Beach, South Carolina. The Association began its operations in 2000.

The following is a summary of the more significant accounting policies used in the preparation and presentation of the accompanying financial statements of the Association.

Basis of Accounting:

The financial statements were prepared under accounting principles generally accepted within the United States of America, utilizing the accrual basis of accounting with revenues being recognized when they are billed or due and expenses being recognized when the expense is incurred.

The Association's governing documents provide certain guidelines for managing its financial activities. To ensure observance of limitations and restrictions on financial resources, the Association maintains its accounts using fund accounting. Financial resources are classified for accounting and reporting purposes in specific funds established according to their nature and purpose. The Association's funds are separated between operating funds and funds for future major repairs and replacements (reserve fund). Operating disbursements are made generally at the discretion of the Board of Directors and the Association's property management company. Replacement funds have been set aside for a specific purpose and are to be disbursed accordingly.

Allowance for Doubtful Accounts:

The Association, as determined necessary and on an annual basis, establishes an allowance for potentially uncollectible member assessments receivable based on historical collection experience and management's evaluation of collectibility of outstanding balances due.

(continued)

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NOTE 1. NATURE AND PURPOSE OF ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Common Property:

Real property owned by individual unit owners in common and improvements made by the Association to such property are not capitalized in the financial statements. All expenditures for real property common elements and improvements are reflected as an expense in the period incurred. Common property elements not recognized as assets in the financial statements consist primarily of access driveways and parking areas, a swimming pool facility, and landscape and building common areas.

Use of Estimates:

The preparation of financial statements in conformity with accounting principles generally accepted in the U.S. requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Contingencies:

During the course of its operations, the Association is subject to various claims, torts, and actions. Management reviews the validity of such actions and acts accordingly. Management does not believe the outcome of any current actions will result in a material loss to the Association.

Subsequent Events:

Management has evaluated subsequent events through June 21, 2015, the date the financial statements were available to be issued, and has concluded that no significant subsequent events meet the criteria of professional accounting standards to be recognized, or not recognized but disclosed, in the financial statements.

NOTE 2. CASH AND CREDIT CONCENTRATIONS

Cash consists of amounts on deposit (including interest bearing deposits) with financial institutions. Financial instruments which potentially subject the Association to concentrations of credit risk may consist primarily of bank accounts with balances in excess of amounts insured by the Federal Deposit Insurance Corporation (FDIC). Management of the Association evaluates the financial stability of its depositories and considers the risk of loss to be remote. There were no uninsured balances at December 31, 2014.

NOTE 3. ASSESSMENTS CHARGED TO UNIT OWNERS

Regular Assessments:

The regular monthly assessment charged to unit owners, including reserve fees and other fees discussed below, totaled $271 for 2014.

Community Assessments:

The Residential Association

All Owners of residential units (either single family or multi-family) within the Barefoot Resort development are also members of the Barefoot Resorts Residential Owners Association, Inc. ("The Residential Association"). That association is responsible for the administration, maintenance, management, ownership and control of common areas within the Barefoot Resort residential properties.

The Residential Association assesses fees on a per unit basis, which are included in the monthly assessments charged to each unit owner within Wedgewood. The Association remits these fees on a monthly basis to the Residential Association. For 2014, the monthly fee per unit for the Residential Association was approximately $14, the monthly fee for the Beach Club was approximately $6, and the monthly fee for the Joint Committee was approximately $14. The "Joint Committee Fee" is actually paid by Wedgewood Condominium Association, Inc., to the "Residential Association", and the "Residential Association", in turn remits funds to the "Joint Committee" under a "shared services reimbursement plan" as described below.

The Joint Committee

The Residential Association is a member of the Barefoot Resort Joint Committee, Inc. (the "Joint Committee"). The purpose of the Joint committee is to be a unifying entity for the residential and non-residential components of the Barefoot Resort development. The Joint Committee also provides maintenance services for the common elements of the development not designated as part of either an individual regime or the Residential Association.

(continued)

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NOTE 3. ASSESSMENTS CHARGED TO UNIT OWNERS (CONTINUED)

The Barefoot Resort Joint Committee, Inc., allocates its' operating expenses to the residential and non-residential associations based on an agreed upon formula, The formula is intended to be consistent with the actual costs borne by the Joint Committee on behalf of the other Associations. For the year 2014, the allocation was 1/3 to the non-residential associations, and 2/3 to the residential associations.

All residential owners within the development (whether part of the Barefoot Residential Owners Association or within another residential "regime") remit payments to the Barefoot Residential Owners Association. In turn, Barefoot Residential Owners Association remits a portion of the amounts collected from owners to the Barefoot Resort Joint Committee in order to fund its' share of the Shared Services Reimbursements" described above.

All fees paid by the Association to the Residential Association and the Joint committee are reflected as expenses within the Association's Statement of Revenues and expenses.

Collection Policy and Budget:

The Association's policy is to retain legal counsel and place liens on units of members whose assessments are delinquent. At December 31, 2014, the Association had recorded an allowance for potential uncollectible accounts in the amount of $4,688 for probable uncollectible accounts.

The annual budget and owners' assessments are determined by the Board of Directors to provide for current operating expenditures and required replacement funds. The Association retains excess operating funds at the end of each year, if any, for use in the subsequent year.

NOTE 4. INCOME TAXES

Under the provisions of the Internal Revenue Code, the Association is allowed to elect each year to file as an eligible Section 528 homeowners association, thereby excluding exempt function income from taxation, or file as an ordinary taxable corporation. For the year ended December 31, 2014, the Association elected to file as an eligible homeowners association in order to minimize income taxes. The provision for income taxes for 2014 relate primarily to interest income. The Association has no temporary differences relating to the recognition of income and expenses for financial and tax reporting purposes. Accordingly, no deferred tax assets or liabilities are recorded.

(continued)

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NOTE 4. INCOME TAXES (continued)

The Association has analyzed its various federal and state income tax filing positions and believes that no accrual for tax liabilities relating to uncertain tax positions are required at December 31, 2014. Therefore, no reserves for uncertain income tax positions have been recorded. During 2014, there were no increases or decreases in unrecognized tax benefits for current or prior years and no significant increases or decreases in unrecognized tax benefits are expected to occur within the next 12 months. The periods that remain open to examination under federal statute are 2011 through 2014.

NOTE 5. FUTURE MAJOR REPAIRS AND REPLACEMENTS

The Association's governing documents provide that the Association accumulate funds for future major repairs and replacements of the specific components of common property, including personal property. As of December 31, 2014, the Association had accumulated funds for future major repairs and replacements of $ 297,583. This amount is held in separate accounts and is generally not available for operating purposes. It is the Association's policy that interest earned on the separate cash balances is generally allocated to the replacement fund.

The Board of Directors and the Association's property manager conduct an annual study and consult engineering firms to estimate the remaining useful lives and the replacement costs of common property components. The Association is funding for such future major repairs and replacements over the estimated useful lives of the components based on the study's estimates of current replacement costs, considering amounts previously designated for future major repairs and replacements. Because actual expenditures may vary from estimated future expenditures, and the variations may be material, amounts designated for future major repairs and replacements may not be adequate to meet all future needs for major replacements and repairs. If additional funds are needed, the Association has the right, subject to appropriate approval, to increase regular assessments, pass special assessments, or delay major repairs and replacements until funds are available.

NOTE 6. SUBSEQUENT EVENTS

Management has evaluated subsequent events through June 21, 2015, the date the financial statements were available to be issued, and has concluded that no significant subsequent events meet the criteria of professional accounting standards to be recognized, or not recognized but disclosed, in the financial statements.

Andrew C. Thompson, CPA
Certified Public Accountant and Auditor

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REPORT OF INDEPENDENT AUDITORS ON SUPPLEMENTARY INFORMATION

To the Board of Directors and Members
Wedgewood Condominium Association, Inc.
North Myrtle Beach, South Carolina



We have audited the accompanying financial statements of Wedgewood Condominium Association, Inc., which comprise the balance sheet as of December 31, 2014, and the related statements of revenues, expenses, and changes in fund balances, and cash flows for the year then ended, and the related notes to the financial statements. Our opinion on supplementary information is presented below.

Disclaimer of Opinion on Required Supplementary Information

Accounting principles generally accepted in the United States of America require that supplementary information schedule on future major repairs and replacements, appearing on pages 12 - 14 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Financial Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Myrtle Beach, South Carolina
June 21, 2015

Andrew C. Thompson, CPA

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WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.
SUPPLEMENTARY INFORMATION ON
FUTURE MAJOR REPAIRS AND REPLACEMENTS
December 31, 2014
(Unaudited)

The board of directors and the Associations property manager conduct an annual study to estimate the remaining useful lives and the replacement costs of common property components. Replacement costs were based on estimated costs to repair or replace the common property components at the time of the updated study. An engineering firm's report on common property is also obtained.

Estimated replacement costs do not take into account the effects of inflation between the date of the study and the date the components will require repair or replacement.

The following information is based on the study and presents significant information about the components of common property.

Component	Estimated Useful Life (Years)	Estimated Current Remaining Useful Life (Years)	Estimated Current Replacement Cost
Concrete Sidewalk (6%)	60	4	$ 6,426
Concrete Sidewalk (6%)	60	10	6,426
Concrete Sidewalk (6%)	60	16	6,426
Concrete Sidewalk (6%)	60	22	6,426
Concrete Sidewalk (6%)	60	28	6,426
Concrete Sidewalk (6%)	60	34	6,426
Concrete Sidewalk (6%)	60	40	6,426
Concrete Sidewalk (6%)	60	46	6,426
Concrete Sidewalk (6%)	60	52	6,426
Concrete Sidewalk (6%)	60	58	6,426
Concrete Roll Curbing (20%)	60	10	25,840
Concrete Roll Curbing (20%)	60	28	25,840
Concrete Roll Curbing (20%)	60	46	25,840
Asphalt Roadeway - Seal Coat	8	1	7,371
Asphalt Roadeway - Resurface	20	6	62,654
Parking Area - Seal Coat	8	1	6,840
Parking Area - Resurface	20	6	58,140
Mail Center Siding	25	9	1,827
Mail Center Roof	25	9	999
Mail Center Gutters & Downspouts	25	9	444
Mail Center Railing	25	9	480
Mail Boxes	30	16	4,800
Underground Storm Water Piping	15	11	7,450
Irrigation System Allowance	1	0	2,000
Grills, Charcoal	10	3	400
Bench	30	16	800

(continued)

SEE REPORT OF INDEPENDENT AUDITORS ON SUPPLEMENTARY INFORMATION

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WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.
SUPPLEMENTARY INFORMATION ON
FUTURE MAJOR REPAIRS AND REPLACEMENTS
December 31, 2014
(Unaudited)
(continued)

Component	Estimated Useful Life (Years)	Estimated Current Remaining Useful Life (Years)	Estimated Current Replacement Cost
Roofs - 3 Buildings	25	8	$ 74,464
Roofs - 3 Buildings	25	9	74,464
Roofs - 3 Buildings	25	10	74,464
Gutter/Downspout - 3 Bldgs	25	8	5,840
Gutter/Downspout - 3 Bldgs	25	9	5,840
Gutter/Downspout - 3 Bldgs	25	10	5,840
Gutter/Downspout - Rear	25	21	16,677
Siding/Trim - 3 Buildings	50	36	74,281
Siding/Trim - 3 Buildings	50	37	74,281
Siding/Trim - 3 Buildings	50	38	74,281
Wood Stairs - 3 Buildings	20	6	28,800
Wood Stairs - 3 Buildings	20	7	28,800
Wood Stairs - 3 Buildings	20	8	28,800
Guard Rail - 3 Buildings	35	21	24,134
Guard Rail - 3 Buildings	35	22	24,134
Guard Rail - 3 Buildings	35	23	24,134
Hall Carpet - 3 Buildings	8	3	18,462
Hall Carpet - 3 Buildings	8	4	18,462
Hall Carpet - 3 Buildings	8	5	18,462
Carpet Membrane- 3 Bldgs	8	3	10,258
Carpet Membrane- 3 Bldgs	8	4	10,258
Carpet Membrane- 3 Bldgs	8	5	10,258
Hall Ceiling - 3 Buildings	20	6	13,230
Hall Ceiling - 3 Buildings	20	7	13,230
Hall Ceiling - 3 Buildings	20	8	13,230
Exit Lights	30	22	1,350
Exit Lights	30	23	1,350
Exit Lights	30	24	1,350
Masonry Tuckpointing	10	10	6,639
Waste Water Risers	50	37	333,000
Waste Water Lateral Allowance	35	22	72,000
Pool Structure	45	32	78,000
Pool White Coat	10	0	6,300

(continued)

SEE REPORT OF INDEPENDENT AUDITORS ON SUPPLEMENTARY INFORMATION

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WEDGEWOOD CONDOMINIUM ASSOCIATION, INC.
SUPPLEMENTARY INFORMATION ON
FUTURE MAJOR REPAIRS AND REPLACEMENTS
December 31, 2014
(Unaudited)
(continued)

Component	Estimated Useful Life (Years)	Estimated Current Remaining Useful Life (Years)	Estimated Current Replacement Cost
Pool Waterline Tiles	10	0	$ 2,340
Pool Deck - Replace	10	6	9,405
Pool Deck - Coating	10	7	2,822
Pool Pump	10	0	1,800
Pool Filter	20	10	1,800
Pool Salt System	10	0	2,400
Pool - Furniture Restrap	5	0	1,000
Pool - Lounge Chairs	15	3	6,300
Pool - Large Tables	15	3	900
Pool - Small Tables	15	3	550
Pool - Umbrellas	15	3	1,625
Pool - Chairs	15	3	2,420
Pool House - Siding	50	37	11,400
Pool House - Windows	35	22	1,512
Pool House - 2 Doors	20	7	1,200
Pool House - 2 Doors	20	16	1,200
Pool House - Roof	25	12	3,195
Pool Restroom Renovate Allowance	15	2	6,000
Pool Perimeter Fence	35	22	8,640
Pool Pole Lighting	25	12	3,000
Total Replacement Costs			**$ 1,630,567**

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EXHIBIT D

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PROCON
& ASSOCIATES, INC.

Wedgewood Condominiums
Repair Estimate

O: 843.399.8918
F: 843.399.8928

Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
M	**Mobilization**					
M.1	Scaffolding delivery and return - freight charges	LS	1	3,000.00	3,000.00	South East Access
M.2	Scaffolding erection, dismantle and moves (based on setting up and working on 3 buildings at a time)	LS	1	528,000.00	528,000.00	South East Access
M.3	Dumpster delivery	EA	3	85.00	255.00	Kidd Construction
M.4	Delivery and return of portable toilet's	EA	3	61.68	185.04	Elvis Service Co.
M.5	Delivery and return of lull lift equipment	EA	1	207.26	207.26	United Rentals
M.6	Delivery and return of 20 foot office/storage box	EA	1	270.00	270.00	Elvis Service Co.
M.7	Delivery and return of storage containers - based on three (3) containers	EA	3	270.00	810.00	Elvis Service Co.
M.8	Moving of containers to each building - two moves required - ($135.00 per container per move)	EA	3	270.00	810.00	Elvis Service Co.
	Section Subtotal				**533,537.30**	
1.0	**Exterior Walls**					
1.1	**Incomplete Coverage of Weather-Resistive Barrier**					
	Labor					
1.1.1	Remove and replace existing weather-resistive barrier where damaged - Allowance (40 % of 86,840 sq ft)	SF	34,736	1.50	52,104.00	MJK Construction
1.1.2	Replace weather-resistive barrier where missing - Allowance (10% of 52,104 sq/ft)	SF	5,211	1.00	5,211.00	MJK Construction
1.1.3	Note: Remove WRB as required to remove and replace damaged framing, sheathing, and insulation				Note	
1.1.4	Note: Reference Issue's 1.5, 1.9 and 4.1 (Total surface area of these areas combined = 124,840 sq/ft)				Note	
1.1.5	Note: Reference Photos 1.1.A through L				Note	
1.1.6	*Alternate: Remove and replace entire WRB				Alternate	
	Material					
1.1.7	Tyvek building wrap (9' x 150' = 1,350 sq/ft)	SF	39,947	0.16	6,391.52	Blanton Building Supplies
1.1.8	Tyvek house wrap tape (2" x 165')	EA	60	16.73	1,003.80	Blanton Building Supplies
1.1.9	Wrap caps staple pac (1,000 EA) (Note - one box covers approximately 25 squares)	EA	16	113.40	1,814.40	Blanton Building Supplies
1.1.10	Stinger auto feed tacker plastic cap	EA	3	76.68	230.04	Blanton Building Supplies
	Section Subtotal				**66,754.76**	

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PROCON
& ASSOCIATES, INC.

Wedgewood Condominiums
Repair Estimate

O: 843.399.8918
F: 843.399.8928

Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
1.2	**Improper Termination and lapping of Weather Resistive Barrier at Waterproofing.**					
	Labor					
1.2.1	Properly lap and seal WRB at all terminations w/waterproofing at balcony and walkway locations (216 Loc)	LOC	216	12.50	2,700.00	MJK Construction
1.2.2	Remove and replace damaged framing below balcony and walkway terminations - Allow (25% or 54 Loc)	EA	324	10.50	3,402.00	MJK Construction
1.2.3	Remove and replace damaged sheathing below balcony and walkway terminations - Allow (25% or 54 Loc)	SHT	108	72.00	7,776.00	MJK Construction
1.2.4	Remove and replace damaged insulation below balcony and walkway terminations - Allow (25% or 54 Loc)	SF	3,456	1.00	3,456.00	MJK Construction
1.2.5	Note: Coordinate with 1.1 and 4.2 Repair Scopes				Note	
1.2.6	Note: Reference Photos 1.2.A through M				Note	
	Material					
1.2.7	Tyvek building wrap (9' x 150' = 1,350 sq/ft)	SF	3,456	0.16	552.96	Blanton Building Supplies
1.2.8	Tyvek house wrap tape (2" x 165')	EA	6	16.73	100.38	Blanton Building Supplies
1.2.9	Wrap caps staple pac (1,000 EA) (Note - one box covers approximately 25 squares)	EA	2	113.40	226.80	Blanton Building Supplies
1.2.10	WRB flashing tape (12" x 75')	EA	6	82.08	492.48	Blanton Building Supplies
1.2.11	Wood sheathing - (4' x 8' x 7/16" - OSB)	EA	108	12.59	1,359.72	Blanton Building Supplies
1.2.12	Wood studs - (2" x 4" x 10')	EA	324	5.39	1,746.36	Blanton Building Supplies
1.2.13	Insulation - (R-13 Batts - one package equals 106.56 sq/ft)	SF	3,456	0.54	1,866.24	The Home Depot
1.2.14	Fasteners for sheathing	EA	10,800	0.02	216.00	Menards.com
1.2.15	Fasteners for studs	EA	3,240	0.03	97.20	The Home Depot
	Section Subtotal				**23,992.14**	
1.3	**Improper Installation of Z-Flashing at Band Board.**					
	Labor					
1.3.1	Remove existing band board, wood furring and fiber-cement siding to access Z - flashing	LF	2,000	1.50	3,000.00	MJK Construction
1.3.2	Provide and install new Z - flashing / top & bottom (due to damage during cement siding removal)	LF	4,000	1.50	6,000.00	MJK Construction
1.3.3	Properly lap WRB over vertical leg of Z - flashing	LF	2,000	1.00	2,000.00	MJK Construction
1.3.4	Install new wood furring per 1.4 Repair Scope - (Included)	1.4	0		Included	Included in line Item 1.4
1.3.5	Install new band board to match existing leaving a minimum of 1/4" gap between BB & Z- flashing	LF	2,000	2.50	5,000.00	MJK Construction
1.3.6	Prepare, prime, paint and seal as required	LF	2,000	2.00	4,000.00	MJK Construction
1.3.7	Apply new sealants	LF	2,000	1.25	2,500.00	MJK Construction
1.3.8	Note: Coordinate with 1.1, 1.4, 1.5, and 1.6 Repair Scopes				Note	
1.3.9	Note: Reference Photos 1.3.A through L				Note	
	Material					
1.3.10	New Aluminum Z- flashing (8' each)	EA	500	13.40	6,700.00	Trim Bender
1.3.11	WRB flashing tape (12" x 75')	EA	27	82.08	2,216.16	Blanton Building Supplies
1.3.12	New band board - James Hardie 4' x 8' panels cut to 13" in width	SHT	84	38.07	3,197.88	Blanton Building Supplies
1.3.14	Paint - intermediate and top coat	SF	2,000	0.22	440.00	The Home Depot
1.3.15	Exterior sealant	LF	2,000	0.35	700.00	Lowes Home Improvement
1.3.16	Fasteners 1/4 lb box = 150	EA	28	4.05	113.40	Trim Bender
	Section Subtotal				**35,867.44**	

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PROCON
& ASSOCIATES, INC.

Wedgewood Condominiums
Repair Estimate

O: 843.399.8918
F: 843.399.8928

Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
1.4	**Inadequate Protection of Non-Preservative Treated Wood Furring.**					
	Labor					
1.4.1	Remove existing wood furring behind band board during repairs to Z - flashing in 1.3 Repair Scope	LF	6,000	1.50	9,000.00	MJK Construction
1.4.2	Install new preservative treated wood for furring outboard of WRB	LF	6,000	1.00	6,000.00	MJK Construction
1.4.3	Note: Reference Photos 1.4.A, B and C				Note	
1.4.4	*Alternate: Install new 11.25" wide 5/4 fiber-cement trim for band board with no furring				Alternate	
	Material					
1.4.5	PT - wood studs - (2" x 4" x 10')	EA	600	5.58	3,348.00	Blanton Building Supplies
1.4.6	Fasteners for PT lumber	EA	600	0.12	72.00	The Home Depot
	Section Subtotal				**18,420.00**	
1.5	**Inadequate Attachment and Installation of Fiber-Cement Siding.**					
	Labor					
1.5.1	Remove existing fiber cement siding	SF	82,000	2.25	184,500.00	MJK Construction
1.5.2	Prior to installation of cladding, seal existing fastener holes in WRB where applicable - Allow (50%)	SF	41,000	0.50	20,500.00	MJK Construction
1.5.3	Install new fiber cement siding in accordance w/mfg. instructions, using required fasteners at studs	SQ	820	350.00	287,000.00	MJK Construction
1.5.4	Prepare, prime, paint, and seal as required	SF	82,000	2.00	164,000.00	MJK Construction
1.5.5	Apply new sealants	LF	20,500	1.25	25,625.00	MJK Construction
1.5.6	Note: New siding width to match existing				Note	
1.5.7	Note: Reference Photos 1.5.A through F				Note	
	Material					
1.5.8	Tyvek tape for sealing holes	EA	30	16.73	501.90	Blanton Building Supplies
1.5.9	New James Hardie fiber cement lap siding (7-1/4")	SQ	820	140.59	115,283.80	Blanton Building Supplies
1.5.10	Paint - intermediate and top coat	SF	82,000	0.22	18,040.00	The Home Depot
1.5.11	Exterior sealant	LF	20,500	0.35	7,175.00	Lowes Home Improvement
1.5.12	Fasteners	EA	34	47.75	1,623.50	Blanton Building Supplies
	Section Subtotal				**824,249.20**	

ROA 222

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Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
1.6	**Inadequate Attachment of Fiber-Cement Trim and Unprimed Edges of Engineered Trim.**					
	Labor					
1.6.1	Removal of all existing trim is required to complete repairs;	LF	70,000	1.00	70,000.00	MJK Construction
1.6.2	• Includes all trim at doors (Coordinate with Section 2.0 Repair Scope)	INC			Included	
1.6.3	• Includes all trim at windows (Coordinate with Section 2.0 Repair Scope)	INC			Included	
1.6.4	• Includes all trim at corners	INC			Included	
1.6.5	Install new fiber cement trim in accordance w/mfg. instructions, attach w/required fastener spacing	LF	70,000	1.50	105,000.00	MJK Construction
1.6.6	Prepare, prime, paint, and seal new trim	LF	70,000	2.00	140,000.00	MJK Construction
1.6.7	Apply new sealants	LF	70,000	1.25	87,500.00	MJK Construction
1.6.8	Note: New fiber cement trim to match width and thickness of existing trim				Note	
1.6.9	Note: Reference Photos 1.6.A through F				Note	
	Material					
	New James Hardie fiber cement trim:					
1.6.10	• 5/4" x 3.5" x 12'	LF	33,595	1.13	37,962.35	Blanton Building Supplies
1.6.11	• 5/4" x 5.5" x 12'	LF	23,540	1.76	41,430.40	Blanton Building Supplies
1.6.12	• 5/4" x 7.5" x 12'	LF	7,465	2.30	17,169.50	Blanton Building Supplies
1.6.13	New PVC brick mould	LF	5,400	1.64	8,856.00	The Home Depot
1.6.14	Paint - intermediate and top coat	LF	70,000	0.22	15,400.00	The Home Depot
1.6.15	Exterior sealant	LF	70,000	0.35	24,500.00	Lowes Home Improvement
1.6.16	Fasteners	EA	30	47.75	1,432.50	Blanton Building Supplies
	Section Subtotal				**549,250.75**	
1.7	**Inadequate Installation of Through-Wall Flashing at Base of Brick Veneer.**					
	Labor					
1.7.1	Remove existing brick veneer along base of walls - (Included)	1.9.1	0		Included	Included in line item 1.9.1
1.7.2	Provide through wall flashing (Included)	1.9.3	0		Included	Included in line item 1.9.3
1.7.3	Properly integrate through wall flashing with WRB	LF	3,800	1.00	3,800.00	MJK Construction
1.7.4	Remove and replace damaged wood sheathing - Allowance (10% or 1,600 sq/ft)	SHT	50	72.00	3,600.00	MJK Construction
1.7.5	Remove and replace damaged wood framing - Allowance (10% or 2,280 board feet)	EA	285	10.50	2,992.50	MJK Construction
1.7.6	Remove and replace damaged insulation - Allowance (10% or 1,600 sq/ft)	SF	1,600	1.00	1,600.00	MJK Construction
1.7.7	Install brick veneer with weep holes directly above through wall flashing following industry standards - (Inc.)	1.9	0		Included	Included in line item 1.9
1.7.8	Note: Coordinate with 1.9 Repair Scopes				Note	
1.7.9	Note: Reference Photos 1.7.A through H				Note	
	Material					
1.7.10	Through wall flashing -	LF	3,800	0.87	3,306.00	Guaranteed Supply
1.7.11	WRB flashing tape (12" x 75')	LF	3,800	1.10	4,180.00	Blanton Building Supplies
1.7.12	Wood sheathing - (4' x 8' x 7/16" - OSB)	SHT	50	12.59	629.50	Blanton Building Supplies
1.7.13	Wood studs - 2" x 4" x 10'	EA	285	5.39	1,536.15	Blanton Building Supplies
1.7.14	Insulation - (R-13 Batts - one package equals 106.56 sq/ft)	SF	1,600	0.54	864.00	The Home Depot
1.7.15	Fasteners for sheathing	EA	5,000	0.02	100.00	Menards.com
1.7.16	Fasteners for studs	EA	2,850	0.03	85.50	The Home Depot
	Section Subtotal				**22,693.65**	

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PROCON & ASSOCIATES, INC.

Wedgewood Condominiums
Repair Estimate

O: 843.399.8918
F: 843.399.8928

Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
1.8	**Inadequate Support of Lintels Along Triple-Ganged Window Heads.**					
	Labor					
1.8.1	Remove existing brick veneer above triple-ganged windows - (Included)	1.9.1	0		Included	Included in line item 1.9.1
1.8.2	Remove existing lintels and provide new cont. lintels with arch shape along length of window head (25 loc.)	EA	25	40.00	1,000.00	MJK Construction
1.8.3	Note: Coordinate with 1.9, 2.1, and 2.3 Repair Scopes				Note	
1.8.4	Note: Reference Photos 1.8.A through G				Note	
	Material					
1.8.5	New steel lintels with arch shape	EA	25	196.56	4,914.00	SC Metal Fabrication
1.8.6	Fasteners for steel lintels	EA	150	2.53	379.50	Lowes Home Improvement
	Section Subtotal				**6,293.50**	
1.9	**Improper Installation of Metal Ties at Brick Veneer.**					
	Labor					
1.9.1	Remove existing brick veneer, corrugated wall ties, and WRB	SF	38,000	3.00	114,000.00	Cicco Construction
1.9.2	Install new WRB properly integrated with adjacent WRB and flashings	SF	38,000	1.00	38,000.00	MJK Construction
1.9.3	Install new brick veneer and wall ties in accordance w/ building code req. and industry standards	SF	38,000	10.00	380,000.00	Cicco Construction
1.9.4	Note: Reuse all existing steel lintels with the exception of the steel lintels over the triple-ganged windows				Note	
1.9.5	Note: Coordinate with 1.1, 1.7, and 1.8 Repair Scopes				Note	
1.9.6	Note: Reference Photos 1.9.A through G				Note	
	Material					
1.9.7	New bricks, mortar, sand, seismic ties, plastic weep screens & mortar net (Included)	1.9.3	0		Included	Included in line item 1.9.3
1.9.8	Tyvek building wrap (9' x 150' = 1,350 sq/ft)	SF	38,000	0.16	6,080.00	Blanton Building Supplies
1.9.9	Tyvek house wrap tape (2" x 165')	EA	56	16.73	936.88	Blanton Building Supplies
1.9.10	Wrap caps staple pac (1,000 EA) (Note - one box covers approximately 25 squares)	EA	16	113.40	1,814.40	Blanton Building Supplies
	Section Subtotal				**540,831.28**	
1.10	**Installation of Vapor Barrier on Interior Side of Exterior Walls.**					
	Labor					
1.10.1	Cut out vapor barrier from within wall cavity during other repair scopes when removal of materials (cladding, WRB, and sheathing) provides access to wall cavity - Allowance	SF	32,640	0.50	16,320.00	MJK Construction
1.10.2	Note: Reference Photos 1.10.A through D				Note	
	Section Subtotal				**16,320.00**	

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PROCON
& ASSOCIATES, INC.

Wedgewood Condominiums
Repair Estimate

O: 843.399.8918
F: 843.399.8928

Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
2.0	**Windows**					
2.1	**Inadequate Installation of Rough Opening Flashing.**					
	Labor					
	Reference attached window and door schedule					
2.1.1	Remove existing windows NOT being replaced	EA	130	150.00	19,500.00	MJK Construction
2.1.2	If NOT replaced per other Repair Scopes, reinstall existing windows	EA	130	350.00	45,500.00	MJK Construction
2.1.3	Wrap window rough openings prior to re-setting the existing windows (Included)	2.2.2	0		Included	Included in line item 2.2.2
2.1.4	Install SAF sill pan flashing per industry standards and mfg. installation instructions - (All Window Sills)	LF	2,557	2.50	6,392.50	MJK Construction
2.1.5	Use self adhered flashings at window nailing flange - (All Windows)	LF	8,613	2.00	17,226.00	MJK Construction
2.1.6	Remove and replace damaged wood sheathing - (All Window locations or 838 sheets)	SHT	838	72.00	60,336.00	MJK Construction
2.1.7	Remove and replace damaged wood framing - (All Window locations or 25,140 board feet)	EA	2,514	10.50	26,397.00	MJK Construction
2.1.8	Remove and replace damaged insulation - (All Window locations or 26,816 sq/ft)	SF	26,816	1.00	26,816.00	MJK Construction
2.1.9	Note: Properly integrate window flashings with WRB on field of wall				Note	
2.1.10	Note: Coordinate with 2.3, 2.4, 2.5 and 2.7 Repair Scopes				Note	
2.1.11	Note: Allow 64 sq ft. Below each window (There are 419 R/O x 64 sq ft = 26,816 sq ft or 838 sheets)				Note	
2.1.12	Note: Reference Photos 2.1.A through S				Note	
	Material					
2.1.13	SAF - rough opening sill flashing - (Tyvek Flex Wrap Tape - 9" x 75')	LF	2,557	2.55	6,520.35	Blanton Building Supplies
2.1.14	Sealant	LF	8,613	0.35	3,014.55	Lowes Home Improvement
2.1.15	SAF - window nailing flange - (Tyvek Flex Wrap Tape - 9" x 75')	LF	8,613	2.55	21,963.15	Blanton Building Supplies
2.1.16	Wood sheathing - (4' x 8' x 7/16" - OSB)	SHT	838	12.59	10,550.42	Blanton Building Supplies
2.1.17	Wood studs - 2" x 4" x 10'	EA	2,514	5.39	13,550.46	Blanton Building Supplies
2.1.18	Insulation - (R-13 Batts - one package equals 106.56 sq/ft)	SF	26,816	0.54	14,480.64	The Home Depot
2.1.19	Window fasteners	EA	25,839	0.01	258.39	The Home Depot
2.1.20	Fasteners for sheathing	EA	83,800	0.02	1,676.00	Menards.com
2.1.21	Fasteners for studs	EA	25,140	0.03	754.20	The Home Depot
	Section Subtotal				**274,935.66**	
2.2	**Failed Self-Adhered Flashing at Windows.**					
	Labor					
2.2.1	Remove existing self adhered flashings at windows as part of 2.1 Repair Scope	LF	8,613	1.00	8,613.00	MJK Construction
2.2.2	Replace self adhered flashing at window rough openings	LF	8,613	2.00	17,226.00	MJK Construction
2.2.3	Note: Properly integrate window flashings with WRB on field of wall				Note	
2.2.4	Note: Reference Photos 2.2.A, B and C				Note	
	Material					
2.2.5	SAF - window rough opening - (Tyvek Flex Wrap Tape - 9" x 75')	LF	8,613	2.55	21,963.15	Blanton Building Supplies
	Section Subtotal				**47,802.15**	

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PROCON & ASSOCIATES, INC.

Wedgewood Condominiums
Repair Estimate

O: 843.399.8918
F: 843.399.8928

Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
2.3	**Absence of Through-Wall Flashing and Weep Holes and Incomplete SAF at Brick Veneer Above Window Heads.**					
	Labor					
2.3.1	Remove existing brick veneer above windows - (Included)	1.9.1	0		Included	Included in line item 1.9.1
2.3.2	Provide new through wall flashing with end dams along lintels	LF	768	2.50	1,920.00	MJK Construction
2.3.3	Install brick veneer with weep holes directly above lintel in accordance with BC and Ind. Standards (Included)	1.9.3			Included	Included in line item 1.9.3
2.3.4	Remove and replace damaged wood sheathing - Allowance (25% or 768 sq/ft)	SHT	24	72.00	1,728.00	MJK Construction
2.3.5	Remove and replace damaged wood framing - Allowance (25% or 1,440 board feet)	EA	144	10.50	1,512.00	MJK Construction
2.3.6	Remove and replace damaged insulation - Allowance (25% or 768 sq/ft)	SF	768	1.00	768.00	MJK Construction
2.3.7	Note: Properly integrate new flashing with WRB				Note	
2.3.8	Note: Coordinate with 1.8, 1.9 and 2.1 Repair Scopes				Note	
2.3.9	Note: Reference Photos 2.3.A through O				Note	
	Material					
2.3.10	Through wall flashing	LF	768	1.10	844.80	Blanton Building Supplies
2.3.11	Wood sheathing - (4' x 8' x 7/16" - OSB)	SHT	24	12.59	302.16	Blanton Building Supplies
2.3.12	Wood studs - (2" x 4" x 10')	EA	144	5.39	776.16	Blanton Building Supplies
2.3.13	Insulation - (R-13 Batts - one package equals 106.56 sq/ft)	SF	768	0.54	414.72	The Home Depot
2.3.14	Fasteners for sheathing	EA	1,200	0.02	24.00	Menards.com
2.3.15	Fasteners for studs	EA	1,440	0.03	43.20	The Home Depot
	Section Subtotal				**8,333.04**	
2.4	**Inadequate Head Flashing Above Windows in Fiber-Cement Siding.**					
	Labor					
2.4.1	Remove existing cladding above windows to access metal flashing - (Included)	1.5.1	0		Included	Included in line item 1.5.1
2.4.2	Install new aluminum drip cap over windows	LF	1,594	2.00	3,188.00	MJK Construction
2.4.3	Properly lap WRB over vertical leg of flashing	LF	1,594	1.00	1,594.00	MJK Construction
2.4.4	Install new cladding above windows - (Included)	1.5.3	0		Included	Included in line item 1.5.3
2.4.5	Note: Coordinate with 1.1, 1.5 and 2.1 Repair Scopes				Note	
2.4.6	Note: Reference Photos 2.4.A through K				Note	
	Material					
2.4.7	New aluminum drip cap	LF	1,594	1.68	2,677.92	Trim Bender
2.4.8	WRB flashing tape (12" x 75')	LF	1,594	1.10	1,753.40	Blanton Building Supplies
	Section Subtotal				**9,213.32**	

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Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
2.5	**Failure of Insulated Glass Units.**					
	Labor					
2.5.1	Remove windows containing failed spacer bars or exhibiting condensation - (Allowance of 50%)	EA	130	150.00	19,500.00	MJK Construction
2.5.2	Replace windows with new - (Allowance of 50%)	EA	130	350.00	45,500.00	MJK Construction
2.5.3	Note: Coordinate window replacement with 2.1 Repair Scope				Note	
2.5.4	Note: Assume 50 percent of windows contain failed IGU / condensation				Note	
2.5.5	Note: New windows shall meet current building code require. for impact resistance and DP rating				Note	
2.5.6	Note: Double & Triple windows to be replaced are in Section 2.7				Note	
2.5.7	Note: Reference Photos 2.5.A through I				Note	
	Material					
2.5.8	New replacement windows:					
2.5.9	• Single Double Hung 40" w x 40" t	EA	38	660.48	25,098.24	Blanton Building Supplies
2.5.10	• Single Double Hung 40" w x 66" t	EA	55	894.63	49,204.65	Blanton Building Supplies
2.5.11	• Single Double Hung With Arch Window 40" w x 60" t	EA	18	1,348.67	24,276.06	Blanton Building Supplies
2.5.12	• Single Double Hung With Arch Window 40" w x 85" t	EA	3	1,495.77	4,487.31	Blanton Building Supplies
2.5.13	• Half Circle at Gable Walls 48" w x 24" t	EA	16	578.14	9,250.24	Blanton Building Supplies
	Section Subtotal				**177,316.50**	
2.6	**Inadequate Design Pressure Rating for Sliding Glass Doors and Transom Windows.**					
	Labor					
2.6.1	Remove / replace with new - existing SGD units with transom windows located above doors	EA	75	2,000.00	150,000.00	MJK Construction
2.6.2	Remove / replace with new - all remaining sliding glass door units without transom windows	EA	36	1,575.00	56,700.00	MJK Construction
2.6.3	Remove existing SAF at rough openings	LF	3,732	1.00	3,732.00	MJK Construction
2.6.4	Flash rough openings in accordance w/ building code req., mfg. instructions and industry standards	LF	3,732	2.00	7,464.00	MJK Construction
2.6.5	Install pan flashing under sliding glass door thresholds integrated into rough opening flashing	LF	980	3.50	3,430.00	MJK Construction
2.6.6	Install new self adhered flashings at sliding glass door nailing flange	LF	3,732	2.00	7,464.00	MJK Construction
2.6.7	Note: Properly integrate sliding glass door flashings with WRB on field of wall				Note	
2.6.8	Note: New SGD & transom windows shall meet current building code / impact res., and DP ratings				Note	
2.6.9	Note: Reference Photos 2.6.A and B				Note	
	Material					
2.6.10	New replacement sliding glass doors:					
2.6.11	New 3 - panel sliding glass doors - 107" w x 93" t (Mfg. can not meet code of transom window design)	EA	75	5,236.21	392,715.75	Blanton Building Supplies
2.6.12	New 3 - panel sliding glass doors - 107" w x 83" t (no transom window)	EA	30	4,713.31	141,399.30	Blanton Building Supplies
2.6.13	New 2 - panel sliding glass doors - 76" w x 83" t (no transom window)	EA	6	2,827.44	16,964.64	Blanton Building Supplies
2.6.14	SAF - window rough opening - (Tyvek Flex Wrap Tape - 9" x 75')	LF	3,732	2.55	9,516.60	Blanton Building Supplies
2.6.15	Pan flashing	LF	980	1.61	1,577.80	Best distributing
2.6.16	SAF - window nailing flange - (Tyvek Flex Wrap Tape - 9" x 75')	LF	3,732	2.55	9,520.33	Blanton Building Supplies
2.6.17	Sealant	LF	3,372	0.35	1,180.20	Lowes Home Improvement
2.6.18	Door fasteners	EA	11,196	0.01	111.96	The Home Depot
	Section Subtotal				**801,776.58**	

ROA 227

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Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
2.7	**Inadequate Design Pressure Rating for Double- and Triple-Ganged Windows.**					
	Labor					
2.7.1	Remove / replace with new - existing double ganged windows	EA	48	675.00	32,400.00	MJK Construction
2.7.2	Remove / replace with new - existing triple ganged windows with NO arch	EA	36	1,012.50	36,450.00	MJK Construction
2.7.3	Remove / replace with new - existing triple ganged windows with arch window in the center	EA	75	1,012.50	75,937.50	MJK Construction
2.7.4	Flash R/O in accordance w/ building code req., mfg. instructions and ind. Standards - (Included)	2.2	0		Included	Included in section 2.2
2.7.5	Note: New window assemblies shall meet current building code / impact res., and DP ratings				Note	
2.7.6	Note: Reference Photos 2.7.A through D				Note	
	Material					
2.7.7	New double ganged windows - 58" x 60"	EA	48	1,435.00	68,880.00	Blanton Building Supplies
2.7.8	New triple ganged windows - 106" x 60" and 106" x 80" (no arch over center window)	EA	36	2,290.36	82,452.96	Blanton Building Supplies
2.7.9	New triple ganged windows - 106" x 60" and 106" x 80" (with arch window over center)	EA	75	2,873.54	215,515.50	Blanton Building Supplies
	Section Subtotal				**511,635.96**	
3.0	**Roofs**					
3.1	**Roof Deck Not Adequately Covered With Underlayment along Eaves, Underlayment Improperly Integrated With Drip Edge.**					
	Applies to Buildings 6 and 7 only					
	Labor					
3.1.1	Remove existing asphalt shingles along roof eaves as required to install underlayment at deck edges	EA	2	6,226.00	12,452.00	Cicco Construction
3.1.2	Install underlayment at deck edges - (Included)	3.1.1	0		Included	Included in line item 3.1.1
3.1.3	Install new shingles to match existing where required (match as close as practical) - (Included)	3.1.1	0		Included	Included in line item 3.1.1
3.1.4	Note: Applies to buildings 6 and 7 only				Note	
3.1.5	Note: Reference Photos 3.1.A through D				Note	
	Material					
3.1.6	GAF Tiger Paw roof underlayment - (Included)	3.1.1	0		Included	Included in line item 3.1.1
3.1.7	GAF Timberline roof shingles - (Included)	3.1.1	0		Included	Included in line item 3.1.1
3.1.8	Roofing cement - (Included)	3.1.1	0		Included	Included in line item 3.1.1
3.1.9	Roofing nails - (Included)	3.1.1	0		Included	Included in line item 3.1.1
	Section Subtotal				**12,452.00**	

ROA 228

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Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
3.2	**Improper Attachment of Shingles.**					
	Applies to Buildings 1 through 5, 8, and 9 only					
	Labor					
3.2.1	Remove existing asphalt shingle roof system - (Included)	3.2.2			Included	Included in line item 3.2.2
3.2.2	Install new asphalt shingle system in accordance w/ mfg. instructions & building code requirements:					
3.2.3	• Building #1	EA	1	19,617.00	19,617.00	Cicco Construction
3.2.4	• Building #3	EA	1	27,194.00	27,194.00	Cicco Construction
3.2.5	• Buildings #2,4,5,8, and 9	EA	5	21,927.00	109,635.00	Cicco Construction
3.2.6	Note: Applies to Buildings 1, 2, 3, 4, 5, 8, and 9 only				Note	
3.2.7	Note: Reference Photos 3.2.A through H				Note	
	Material					
3.2.8	GAF Tiger Paw roof underlayment - (Included)	3.2.2	0		Included	Included in line item 3.2.2
3.2.9	GAF Timberline roof shingles - (Included)	3.2.2	0		Included	Included in line item 3.2.2
3.2.10	White aluminum drip edge - (Included)	3.2.2	0		Included	Included in line item 3.2.2
3.2.11	White aluminum step flashing - (Included)	3.2.2	0		Included	Included in line item 3.2.2
3.2.12	Pipe boots for pipe penetrations - (Included)	3.2.2	0		Included	Included in line item 3.2.2
3.2.13	Ridge vents - (Included)	3.2.2	0		Included	Included in line item 3.2.2
3.2.14	Ridge caps - (Included)	3.2.2	0		Included	Included in line item 3.2.2
3.2.15	WR Grace Ice & Water Shield - (Included)	3.2.2	0		Included	Included in line item 3.2.2
3.2.16	Roofing cement - (Included)	3.2.2	0		Included	Included in line item 3.2.2
3.2.17	Roofing nails - (included)	3.2.2	0		Included	Included in line item 3.2.2
	Section Subtotal				**156,446.00**	
3.3	**Improper Starter Strip Installation.**					
	(Applies to buildings 6 and 7 only)					
	Labor					
3.3.1	Add six (6) dabs of roofing cement per shingle along roof eaves - (Included)	3.1.1	0		Included	Included in line item 3.1.1
3.3.2	Note: Required for adequate adhesion of roof shingles to starter strip				Note	
3.3.3	Note: Applies to buildings 6 and 7 only				Note	
3.3.4	Note: Reference Photos 3.3.A through D				Note	
	Material					
3.3.5	Roofing cement - (Included)	3.1.1	0		Included	Included in line item 3.1.1
	Section Subtotal				-	

ROA 229

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Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
3.4	**Improper Installation and Attachment of Sheet Metal Fascia.**					
	Labor					
3.4.1	Remove and Install new metal fascia attaching with fasteners required to meet code prescribed wind loads					
3.4.2	• Building #1	EA	1	4,540.00	4,540.00	Cicco Construction
3.4.3	• Building #3	EA	1	5,300.00	5,300.00	Cicco Construction
3.4.4	• Buildings # 2, 4, 5, 6, 7, 8, and 9	EA	7	4,190.00	29,330.00	Cicco Construction
3.4.5	Note: Assume 12 inch fastener spacing required				Note	
3.4.6	Note: Match existing color, profile and thickness of material				Note	
3.4.7	Note: Reference Photos 3.4.A through F				Note	
	Material					
3.4.8	Metal fascia - (Included)	3.4.1	0		Included	Included in line item 3.4.1
3.4.9	Fasteners - (Included)	3.4.1	0		Included	Included in line item 3.4.1
	Section Subtotal				**39,170.00**	
4.0	**Walkways and Balconies**					
4.1	**Missing Gypsum Sheathing, Joints Not Sealed in Gypsum Sheathing, and Gypsum Sheathing Deteriorated for Fire Resistance of Structural Members Along Floor Lines.**					
	Labor					
4.1.1	Remove cladding along walkway floor lines - James Hardie Panel	SF	4,840	2.25	10,890.00	MJK Construction
4.1.2	Remove deteriorated gypsum sheathing along walkway floor lines (Allow 50% or 2,420 sq/ft - One layer)	SF	2,420	1.00	2,420.00	MJK Construction
4.1.3	Remove cladding along balcony floor lines - James Hardie Lap Siding - (Included)	1.5	0		Included	Included in section 1.5
4.1.4	Remove deteriorated gypsum sheathing along balcony floor lines- (Allow 100% or 1,250 sq/ft)	SF	1,250	1.00	1,250.00	MJK Construction
4.1.5	Replace deteriorated or missing gypsum sheathing at walkway & balcony floor lines (Allow 3,670 sq/ft - 1 layer)	SF	3,670	1.50	5,505.00	MJK Construction
4.1.6	Replace cladding along walkway floor lines - James Hardie Panel	SQ	49	350.00	17,150.00	MJK Construction
4.1.7	Replace cladding along balcony floor lines - James Hardie Lap Siding - (Included)	1.5	0		Included	Included in section 1.5
4.1.8	Prepare, prime, paint and seal new Hardie Panel	SF	4,840	2.00	9,680.00	MJK Construction
4.1.9	Apply sealants	LF	3,670	1.25	4,587.50	MJK Construction
4.1.10	Note: Tape and mud joints in accordance with manufactures recommendations for fire rating				Note	
4.1.11	Note: Assembly must provide fire rating for structural members as required by building code				Note	
4.1.12	Note: Reference Photos 4.1.A through G				Note	
	Material					
4.1.13	Gypsum sheathing - (4' x 12' x 5/8")	EA	115	20.48	2,355.20	Lowes Home Improvement
4.1.14	Gypsum tape - (1.875" x 500')	EA	3	11.86	35.58	Lowes Home Improvement
4.1.15	Gypsum drywall joint compound	EA	8	16.18	129.44	Lowes Home Improvement
4.1.16	Gypsum fasteners	EA	4,588	0.01	45.88	Lowes Home Improvement
4.1.17	James Hardie panel - (4' x 8')	SHT	152	38.07	5,786.64	Blanton Building Supplies
4.1.18	Fasteners	EA	1	47.75	47.75	Blanton Building Supplies
4.1.19	Paint - intermediate and top coats	SF	4,840	0.22	1,064.80	The Home Depot
4.1.20	Sealant	LF	3,670	0.35	1,284.50	Lowes Home Improvement
	Section Subtotal				**62,232.29**	

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Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
4.2	**Improper and Incomplete Installation of Liquid-Applied Waterproofing Membrane.**					
	(Allow for replacement of 25-percent at walkways).					
	Labor					
4.2.1	Remove existing carpet from 2nd and 3rd level walkways (22,000 sq/ft) - (Included)	4.2.14	0		Included	Included in line item 4.2.14
4.2.2	Remove existing carpet from 2nd and 3rd level balconies (8,400 sq/ft) - (Included)	4.2.14	0		Included	Included in line item 4.2.14
4.2.3	Remove existing carpet glue and waterproofing	SF	30,400	5.50	167,200.00	MJK Construction
4.2.4	Remove existing cladding along base of walls - (Included)	1.5.1	0		Included	Included in line items 1.5.1 & 1.6.1
4.2.5	Remove existing cladding along base of guardrails and columns - James Hardie Panel	SF	7,000	2.25	15,750.00	MJK Construction
4.2.6	Remove, replace damage sheathing (allow for 25 percent at walkways or 5,500 sq/ft or 172 sheets)	SHT	172	72.00	12,384.00	MJK Construction
4.2.7	Install new Bituthene waterproofing properly integrated with adjacent construction - (Two layers)	SF	60,800	3.50	212,800.00	MJK Construction
4.2.8	Install new stainless steel deck-to-wall flashing	LF	7,500	2.50	18,750.00	MJK Construction
4.2.9	Install new WRB over flashing leg at deck to wall	LF	7,500	2.00	15,000.00	MJK Construction
4.2.10	Install new cladding along base of walls - (Included)	1.5.1	0		Included	Included in line items 1.5.1 & 1.6.1
4.2.11	Install new cladding along base of guardrails and columns - James Hardie panel	SQ	70	350.00	24,500.00	MJK Construction
4.2.12	Prepare, prime, paint and seal new James Hardie panel	SF	7,000	2.00	14,000.00	MJK Construction
4.2.13	Apply sealants	LF	1,750	1.25	2,187.50	MJK Construction
4.2.14	Remove existing and Install new outdoor carpet over Bituthene waterproofing with compatible adhesive	YDS	3,378	21.60	72,964.80	Williams Flooring
4.2.15	Note: Follow manufacturers recommendations for Bituthene applications				Note	
4.2.16	Note: Reference Photos 4.2.A through Z				Note	
	Material					
4.2.17	Walkway sheathing (4' x 8')	SHT	172	32.16	5,531.52	The Home Depot
4.2.18	Fasteners	EA	17,200	0.02	344.00	The Home Depot
4.2.19	Bituthene system primer	SF	30,400	0.13	3,952.00	Guaranteed supply company
4.2.20	Bituthene system liquid membrane - (two applications required)	SF	60,800	0.24	14,592.00	Guaranteed supply company
4.2.21	Bituthene system membrane roll	SF	30,400	0.56	17,024.00	Guaranteed supply company
4.2.22	Bituthene system mastic	LF	7,500	0.73	5,475.00	Guaranteed supply company
4.2.23	Stainless steel flashing	LF	7,500	2.38	17,850.00	Guaranteed supply company
4.2.24	Fasteners	EA	15,000	0.11	1,650.00	The Home Depot
4.2.25	WRB flashing tape (12" x 75')	LF	7,500	1.10	8,250.00	Blanton Building Supplies
4.2.26	James Hardie panel (4' x 8')	SHT	219	38.07	8,337.33	Blanton Building Supplies
4.2.27	Fasteners	EA	1	47.75	47.75	Blanton Building Supplies
4.2.28	Paint - intermediate and top coats	SF	7,000	0.22	1,540.00	The Home Depot
4.2.29	Sealants	LF	1,750	0.35	612.50	Lowes Home Improvement
4.2.30	New carpet and adhesive - (Included)	4.2.14	0		Included	Included in line item 4.2.14
	Section Subtotal				**640,742.40**	

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PROCON & ASSOCIATES, INC.

Wedgewood Condominiums
Repair Estimate

O: 843.399.8918
F: 843.399.8928

Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
4.3	**Improper Drip Edge Flashing at Columns.**					
	Labor					
4.3.1	Provide new drip edge flashing with vertical leg at columns during 4.2 Repair Scope	LF	3,670	2.50	9,175.00	MJK Construction
4.3.2	Lap Bituthene waterproofing with drip edge in water shedding manner	LF	3,670	1.75	6,422.50	MJK Construction
4.3.3	R&R damaged gypsum sheathing at columns prior to the installation of waterproofing - (Allow 25% or 918 s/f)	SF	918	1.50	1,377.00	MJK Construction
4.3.4	R&R damaged metal strapping at columns prior to the installation of waterproofing - (Allow 10% or 72)	EA	72	15.00	1,080.00	MJK Construction
4.3.5	Labor to break new drip edge flashing	LF	3,670	1.50	5,505.00	MJK Construction
4.3.6	Note: Reference Photos 4.3.A through G				Note	
	Material					
4.3.7	Aluminum drip edge flashing	LF	3,670	1.61	5,908.70	Best distributing
4.3.8	Bituthene waterproofing system - (Included)	4.2	0		Included	Included in section 4.2
4.3.9	Gypsum sheathing - (4' x 12' x 5/8")	EA	30	20.48	614.40	Lowes Home Improvement
4.3.10	Gypsum tape - (1.875" x 500')	EA	2	11.86	23.72	Lowes Home Improvement
4.3.11	Gypsum drywall joint compound	EA	2	16.18	32.36	Lowes Home Improvement
4.3.12	Gypsum fasteners	EA	1,450	0.01	14.50	Lowes Home Improvement
4.3.13	Metal strapping	EA	72	1.35	97.20	Blanton building supplies
4.3.14	Fasteners for strapping	EA	720	0.02	14.40	Menards.com
4.3.15	Fasteners for aluminum	EA	7,340	0.01	73.40	Lowes Home Improvement
	Section Subtotal				**30,338.18**	
4.4	**Inadequate Waterproofing at Post Fastener Penetrations and Missing Blocking.**					
	Labor					
4.4.1	Remove guardrails along walkways and balconies	LF	3,670	5.00	18,350.00	MJK Construction
4.4.2	Remove guardrail posts and concrete fill inside of sleeve during 4.2 Repair Scope	EA	362	25.00	9,050.00	MJK Construction
4.4.3	Remove and replace damaged sheathing - (Allow 25% or 2,944 sq/ft)	SHT	92	72.00	6,624.00	MJK Construction
4.4.4	Add blocking at the underside of posts and provide blocking where missing - (Allow 25% or 92 locations)	LOC	92	50.00	4,600.00	MJK Construction
4.4.5	Apply sealant at fastener penetrations through waterproofing	LOC	368	1.25	460.00	MJK Construction
4.4.6	Reinstall guardrail posts and guardrails	LF	3,670	10.00	36,700.00	MJK Construction
4.4.7	Note: Reference Photos 4.4.A, B, and C				Note	
	Material					
4.4.8	Wood sheathing - (4' x 8')	SHT	92	32.16	2,958.72	The Home Depot
4.4.9	Wood studs treated - (2" x 8" x 12')	EA	92	14.87	1,368.04	The Home Depot
4.4.10	CertainTeed post support mount & sleeve for guardrail post	EA	362	84.14	30,458.68	ABC Supply
4.4.11	Sealant	LOC	92	0.35	32.20	Lowes Home Improvement
4.4.12	Fasteners for sheathing	EA	9,200	0.02	184.00	Menards.com
4.4.13	Fasteners for rails	EA	9,216	0.13	1,198.08	Lowes Home Improvement
	Section Subtotal				**111,983.72**	

ROA 232

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PROCON
& ASSOCIATES, INC.

Wedgewood Condominiums
Repair Estimate

O: 843.399.8918
F: 843.399.8928

Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
4.5	**Improper Construction of Stairways.**					
	Labor					
4.5.1	Remove existing handrails	LF	1,440	5.00	7,200.00	MJK Construction
4.5.2	Remove existing grab-rails	LF	1,728	2.50	4,320.00	MJK Construction
4.5.3	Remove existing wood stringers, treads and risers	EA	72	150.00	10,800.00	MJK Construction
4.5.4	Construct and install new wood stairways which meet building code requirements	EA	18	2,770.81	49,874.58	Southern Staircase
4.5.5	Reinstall handrails and grab-rails	EA	144	12.50	1,800.00	MJK Construction
4.5.6	Remove wall projections adjacent to handrails to provide min. 1 1/2 inch clear space - (Allowance)	EA			Included	MJK Construction
4.5.7	Note: Reference Photos 4.5.A through F				Note	
	Material					
4.5.8	Wood step stringers 2" x 12" x 110" each (8 per building x 9 buildings = 72) - (Included)	4.5.4	0		Included	Included in line item 4.5.4
4.5.9	Wood steps 2" x 12" x 42" each (64 per building x 9 buildings = 576) - (Included)	4.5.4	0		Included	Included in line item 4.5.4
4.5.10	Wood risers 2" x 8" x 42" each (72 per building x 9 buildings = 648) - (Included)	4.5.4	0		Included	Included in line item 4.5.4
4.5.11	Fasteners for wood - (Included)	4.5.4	0		Included	Included in line item 4.5.4
4.5.12	Fasteners for railings and grab-rails	EA	1,728	0.13	224.64	Lowes Home Improvement
	Section Subtotal				**74,219.22**	
5.0	**Attics**					
5.1	**Missing MTS16 Hurricane Anchors and Lack of 2x Blocking at Trusses Along Rear Exterior Wall Framing**					
	Reference Fuller RFI response 9/26/18. Reference details 1-S8 and 8-S8					
	Labor					
5.1.1	Where missing; install MTS -16 hurricane anchors at all truss locations for eight (8) buildings - (Allowance)	LOC	1,600	15.00	24,000.00	MJK Construction
5.1.2	Where missing; install 2 x blocking at all truss locations for nine (9) buildings - (Allowance)	LOC	1,800	8.00	14,400.00	MJK Construction
5.1.3	Note: Installation must follow mfg instructions and building code requirements per structural drawings				Note	
5.1.4	Note: Assume MTS - 16 repairs at eight (8) buildings & wood blocking at nine (9) buildings				Note	
5.1.5	Note: Reference Photos 5.1.A through G				Note	
5.1.6	*Alternate: Install supplemental clip at missing anchor locations to provide adequate hold down cap				Alternate	
5.1.7	*Alternate: Review truss design drawings to determine loads at trusses				Alternate	
	Material					
5.1.8	MTS - 16 Hurricane Anchors	EA	1,600	1.35	2,160.00	Blanton Building Supplies
5.1.9	Wood Blocking - (2" x 6" x 10')	EA	360	7.99	2,876.40	Blanton Building Supplies
5.1.10	Fasteners	EA	14,400	0.30	4,320.00	Fasteners Plus.com
	Section Subtotal				**47,756.40**	

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Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
5.2	**Missing H2.5 Hurricane Ties at Trusses along Exterior Walls of Walkways and Balconies.**					
	Reference Fuller RFI response 9/26/18. Reference details 8-S8					
	Labor					
5.2.1	At walkway walls add two (2) Simpson H2.5 HT staggered at each truss loc. four (4) buildings - (Allowance)	LOC	304	15.00	4,560.00	MJK Construction
5.2.2	At walkway walls add one (1) Simpson H2.5 HT at each truss location for one (1) building - (Allowance)	LOC	38	15.00	570.00	MJK Construction
5.2.3	At balcony ext. walls add two (2) Simpson H2.5 HT staggered at each truss for five (5) buildings - (Allow)	LOC	380	15.00	5,700.00	MJK Construction
5.2.4	At balcony ext. walls add one (1) Simpson H2.5 HT at each truss location for three (3) buildings - (Allow)	LOC	114	15.00	1,710.00	MJK Construction
5.2.5	Note: Installation must follow mfg instructions and building code requirements per structural drawings				Note	
5.2.6	Note: Reference Photos 5.2.A through D				Note	
5.2.7	*Alternate: Install supplemental clip at missing hurricane tie locations to provide adequate HDC				Alternate	
5.2.8	*Alternate: Review truss design drawings to determine loads at trusses				Alternate	
	Material					
5.2.9	H2.5 Hurricane Ties	EA	836	0.32	267.52	Blanton Building Supplies
5.2.10	Fasteners	EA	5,016	0.30	1,504.80	Fasteners Plus.com
	Section Subtotal				**14,312.32**	
5.3	**Inadequate Anchorage of Truss Girders.**					
	Reference Fuller RFI response 9/26/18. Reference details S5					
	Labor					
5.3.1	Install eight (8) tension ties where missing or damaged at seven (7) buildings	LOC	56	15.00	840.00	MJK Construction
5.3.2	Note: Installation shall be in accordance with mfg. instructions, building code requirements & SD				Note	
5.3.3	Note: Assume repairs at 7 buildings				Note	
5.3.4	Note: Reference Photos 5.3.A through D				Note	
5.3.5	*Alternate: install supplemental clip at missing tension tie locations to provide adequate HDC				Alternate	
5.3.6	*Alternate: Review truss design drawings to determine loads at trusses				Alternate	
	Material					
5.3.7	Tension ties - Simpson MTS12 - 12"	EA	56	0.94	52.64	Fasteners Plus.com
5.3.8	Fasteners	EA	1,232	0.30	369.60	Fasteners Plus.com
	Section Subtotal				**1,262.24**	

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Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
5.4	**Inadequate Support of Truss Framing.**					
	Reference Fuller RFI response 9/26/18. Reference detail S5					
	Building 9					
	Building 5					
	Building 2 and 5					
	Labor					
5.4.1	Repair or replace ALL jack trusses to extend to girder truss and ridge line per SD (Building 9) - (Allowance)	LOC	32	15.00	480.00	MJK Construction
5.4.2	Repair or replace valley trusses to extend to girder truss and ridge line per SD (Building 9) - (Allowance)	LOC	4	15.00	60.00	MJK Construction
5.4.3	Repair or replace jack trusses to provide adequate bearing along balcony exterior walls (Building 5) (Allow)	LOC	9	25.00	225.00	MJK Construction
5.4.4	Provide support along bottom chords of valley trusses (Building 2 and 5) - (Allowance)	LOC	8	25.00	200.00	MJK Construction
5.4.5	Note: Perform repairs in accordance with truss manufacture				Note	
5.4.6	Note: Reference Photos 5.4.A through H				Note	
	Material					
5.4.7	Wood Framing - (2" x 6" x 10')	EA	67	7.99	535.33	Blanton Building Supplies
5.4.8	Fasteners	EA	536	0.03	16.08	The Home Depot
	Section Subtotal				**1,516.41**	
5.5	**Inadequate Lateral and Diagonal Truss Bracing.**					
	Reference Fuller RFI response 9/26/18					
	Labor					
5.5.1	Provide supplemental framing for proper overlap of permanent lateral bracing, min. 2 -foot overlap (Allowance)	LOC	222	27.00	5,994.00	MJK Construction
5.5.2	Fasten unattached diagonal bracing members to truss members - (Allowance)	LOC	222	10.00	2,220.00	MJK Construction
5.5.3	Note: Assume six (6) locations per attic of each unit in all buildings				Note	
5.5.4	Note: Reference Photos 5.5.A through C				Note	
	Material					
5.5.5	Wood Framing (2" x 6" x 10')	EA	222	7.99	1,773.78	Blanton Building Supplies
5.5.6	Fasteners	EA	2,220	0.03	66.60	The Home Depot
	Section Subtotal				**10,054.38**	

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Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
5.6	**Improper and Damaged Truss Members.**					
	Assume repairs to 2 truss members within each attic of each unit.					
	Labor					
5.6.1	Repair broken and improper truss members in accord. with truss mfg. recommendations - (Allow 74 Loc.)	LOC	74	27.50	2,035.00	MJK Construction
5.6.2	Note: Assume repairs to 2 truss members within each attic of each unit				Note	
5.6.3	Note: Review truss design drawings to determine grade of lumber specified in truss design				Note	
5.6.4	Note: Repair or replace trusses not in conformance with structural design				Note	
5.6.5	Note: Reference Photos 5.6.A through F				Note	
	Material					
5.6.6	Wood framing 2" x 8" x 12'	EA	74	13.77	1,018.98	Blanton Building Supplies
5.6.7	Fasteners	EA	1,776	0.03	53.28	The Home Depot
	Section Subtotal				**3,107.26**	
5.7	**Inadequate Framing Around Gable Windows**					
	Reference Fuller RFI response 9/26/18					
	Labor					
5.7.1	Repair or replace modified truss in accordance with truss manufacturer recommendations (Allowance)	LOC	28	27.50	770.00	MJK Construction
5.7.2	Provide framing around window opening	LOC	28	50.00	1,400.00	MJK Construction
5.7.3	Note: Assume repairs at gable walls of all buildings except building #9				Note	
5.7.4	Note: Reference Photos 5.7.A and B				Note	
	Material					
5.7.5	Wood framing (2" x 6" x 10')	EA	28	7.99	223.72	Blanton Building Supplies
5.7.6	Wood framing (2" x 4" x 10')	EA	168	5.39	905.52	Blanton Building Supplies
5.7.7	Fasteners	EA	1,568	0.03	47.04	The Home Depot
	Section Subtotal				**3,346.28**	
5.8	**Inadequate Taping of Fastener Heads and Gypsum Joints in Draft stopping in Attic Spaces.**					
	All Attics					
	Building 4					
	Labor					
5.8.1	Install mud over exposed fastener heads at draft stopping in all attics	LOC	74	35.00	2,590.00	MJK Construction
5.8.2	Install tape and mud at all gypsum sheathing joints where failed at Building 4	LOC	8	75.00	600.00	MJK Construction
5.8.3	Note: Reference Photos 5.8.A and B				Note	
	Material					
5.8.4	Drywall mud	EA	15	16.18	242.70	Lowes Home Improvement
5.8.5	Drywall tape	EA	2	11.86	23.72	Lowes Home Improvement
	Section Subtotal				**3,456.42**	

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PROCON & ASSOCIATES, INC.

Wedgewood Condominiums

Repair Estimate

O: 843.399.8918
F: 843.399.8928

Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
6.0	**Shear Walls**					
6.1	**Improper Attachment of First Floor Interior Shear Wall.**					
	Reference Fuller RFI response 9/26/18. Reference details S2 & 7 S6					
	Labor					
6.1.1	Protect interior finishes inside all first floor units	UNIT	37	150.00	5,550.00	MJK Construction
6.1.2	Remove base board then Install new baseboard	LF	1,296	1.00	1,296.00	MJK Construction
6.1.3	Remove interior drywall attached to shear wall locations	SF	5,200	1.00	5,200.00	MJK Construction
6.1.4	Remove OSB sheathing attached to shear wall locations	SF	5,200	1.12	5,824.00	MJK Construction
6.1.5	Install 3/4" anchor bolts along base of shear wall at foundation at 32" o/c - (Allowance)	EA	486	35.00	17,010.00	MJK Construction
6.1.6	Install H2.5 hurricane ties along base of shear wall at foundation at 48" o/c- (Allowance)	EA	432	16.00	6,912.00	MJK Construction
6.1.7	Install new 7/16" OSB sheathing - 163 sheets	SF	5,200	1.13	5,876.00	MJK Construction
6.1.8	Install new drywall, tape, mud and finish - 163 sheets	SF	5,200	1.27	6,604.00	MJK Construction
6.1.9	Prepare, caulk and paint interior drywall from inside corner to inside corner of shear wall locations	SF	20,000	1.20	24,000.00	MJK Construction
6.1.10	Fine clean units & remove interior finish protection	UNT	37	325.00	12,025.00	MJK Construction
6.1.11	Note: Work is to be performed in accordance with mfg. instructions as required by Structural Drawings				Note	
6.1.12	Note: Reference Photos 6.1.A through D				Note	
	Material					
6.1.13	Anchor Bolts - 3/4" x 7" HDG	EA	486	5.77	2,804.22	Concrete Anchors.com
6.1.14	3/4" SDS Drill Bits	EA	48	37.20	1,785.60	Concrete Anchors.com
6.1.15	Hurricane ties - H2.5	EA	432	0.32	138.24	Blanton Building Supplies
6.1.16	OSB sheathing - 4' x 8' x 7/16"	EA	163	12.59	2,052.17	Blanton Building Supplies
6.1.17	Fasteners for OSB sheathing	EA	9,750	0.02	195.00	Menards.com
6.1.18	Drywall panel 5/8" x 4' x 12'	EA	109	20.48	2,232.32	Lowes Home Improvement
6.1.19	Fasteners for drywall	EA	6,540	0.01	65.40	Lowes Home Improvement
6.1.20	Drywall corner bead	EA	110	13.35	1,468.50	Lowes Home Improvement
6.1.21	Drywall joint tape	EA	4	11.86	47.44	Lowes Home Improvement
6.1.22	Drywall joint compound	EA	11	16.18	177.98	Lowes Home Improvement
6.1.23	Interior baseboard moulding	LF	1,296	1.92	2,488.32	Lowes Home Improvement
6.1.24	Paint - two (2) coats	SF	5,200	0.22	1,144.00	Lowes Home Improvement
6.1.25	Interior sealant	LF	3,600	0.13	468.00	Lowes Home Improvement
6.1.26	Cleaning supplies - (Allowance)	UNIT	37	20.00	740.00	Lowes Home Improvement
6.1.27	Poly for covering and protecting interior finishes	UNIT	37	47.50	1,757.50	Lowes Home Improvement
	Section Subtotal				**107,861.69**	

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Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
6.2	**Inadequate Fastener Spacing for Attachment of Interior Shear Wall Sheathing.**					
	Reference Fuller RFI response 9/26/18					
	Labor					
6.2.1	Protect interior finishes inside all 2nd and 3rd floor units	UNIT	74	150.00	11,100.00	MLK Construction
6.2.2	Remove base board / Install new baseboard	LF	2,592	1.00	2,592.00	MJK Construction
6.2.3	Remove all drywall over shear walls to access OSB sheathing (less quantity listed in 6.1) - (Allowance)	SF	29,800	1.00	29,800.00	MJK Construction
6.2.4	Remove OSB sheathing where blocking is missing - (Allowance of 25%)	SF	8,750	1.12	9,800.00	MJK Construction
6.2.5	Install horizontal blocking between wall studs along sheathing edges - (Allowance of 25%)	LF	4,110	2.64	10,850.40	MJK Construction
6.2.6	Install new OSB sheathing where removed for missing blocking.	SF	8,750	1.25	10,937.50	MJK Construction
6.2.7	Install adequate fasteners at sheathing perimeter and each wall stud - (Allowance)	EA	55,875		Included	MJK Construction
6.2.8	Install new drywall, tape mud and finish - 932 sheets	SF	29,800	1.27	37,846.00	MJK Construction
6.2.9	Prepare, caulk and paint interior drywall from inside corner to inside corner of shear wall locations	SF	40,000	1.20	48,000.00	MJK Construction
6.2.10	Fine clean units & remove interior finish protection	UNIT	74	325.00	24,050.00	MJK Construction
6.2.11	Note: Work to be performed in accordance with mfg. instructions as required by Structural Drawings				Note	
6.2.12	Note: Reference Photos 6.2.A				Note	
	Material					
6.2.13	Wood blocking 2" x 4" x 8'	EA	514	3.88	1,994.32	Blanton Building Supplies
6.2.14	Fasteners for framing	EA	2,056	0.03	61.68	The Home Depot
6.2.15	OSB sheathing	EA	274	12.59	3,449.66	Blanton Building Supplies
6.2.16	Fasteners for sheathing	EA	55,875	0.02	1,117.50	Menards.com
6.2.17	Drywall panel 5/8" x 4' x 12'	EA	621	20.48	12,718.08	Lowes Home Improvement
6.2.18	Drywall screws	EA	37,250	0.01	372.50	Lowes Home Improvement
6.2.19	Drywall corner bead	EA	220	13.35	2,937.00	Lowes Home Improvement
6.2.20	Drywall joint tape	EA	23	11.86	272.78	Lowes Home Improvement
6.2.21	Drywall joint compound	EA	60	16.18	970.80	Lowes Home Improvement
6.2.22	Interior baseboard moulding	LF	2,592	1.92	4,976.64	Lowes Home Improvement
6.2.23	Paint - two (2) coats	SF	29,800	0.22	6,556.00	Lowes Home Improvement
6.2.24	Interior sealant	LF	7,200	0.13	936.00	Lowes Home Improvement
6.2.25	Cleaning supplies - (Allowance)	UNIT	74	20.00	1,480.00	Lowes Home Improvement
6.2.26	Poly for covering and protecting interior finishes	UNIT	74	47.50	3,515.00	Lowes Home Improvement
	Section Subtotal				**212,641.86**	

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Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
6.3	**Missing Sheathing at First Floor Interior Shear Wall.**					
	Labor					
6.3.1	Repair sheathing and attach in accordance with Structural Drawings - (Included)	6.1	0		Included	Included in section 6.1
6.3.2	Note: Reference Photos 6.3.A				Note	
	Material					
6.3.3	OSB sheathing - 7/16" - (Included)	6.1	0		Included	Included in section 6.1
6.3.4	Fasteners - (Included)	6.1	0		Included	Included in section 6.1
	Section Subtotal				-	
7.0	**Accessibility**					
7.1	**Improper Location of Built-Up Curb Ramps in Parking Space Access Aisles.**					
	Labor					
7.1.1	Remove built-up curb ramps located in access aisles	LOC	10	500.00	5,000.00	Sea Coast Concrete
7.1.2	Provide accessible route at each accessible parking space by forming and pouring new curb ramps	LOC	10	3,000.00	30,000.00	Sea Coast Concrete
7.1.3	Repair asphalt paving and restripe accessible parking areas	LS	1	3,000.00	3,000.00	Sea Coast Concrete
7.1.4	Note: New accessible features shall be in accordance with current building code and accessibility requirements.				Note	
7.1.5	Note: Reference Photos 7.1.A through D				Note	
	Material					
7.1.6	All materials - (Included)	7.1			Included	Included in Section 7.1
	Section Subtotal				**38,000.00**	

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PROCON
& ASSOCIATES, INC.

Wedgewood Condominiums
Repair Estimate

O: 843.399.8918
F: 843.399.8928

Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
8.0	**Floor and Ceiling Assemblies**					
8.1	**Missing Blocking Between Floor Trusses, Lack of Continuous and Missing Interior Gypsum Sheathing Within Party Wall Air Space.**					
	Reference Fuller RFI response 9/26/18					
	Labor					
8.1.1	Remove interior drywall at ceilings along unit separation party walls - 1st and 2nd floors only	SF	21,344	1.60	34,150.40	MJK Construction
8.1.2	Install continuous blocking between floor trusses as outlined in Structural Drawings - Allowance	LOC	2,664	5.28	14,065.92	MJK Construction
8.1.3	Repair/install gypsum sheathing to comply with Structural Drawings - Allowance	LOC	2,664	6.88	18,328.32	MJK Construction
8.1.4	Install new interior drywall at ceilings along unit separation party walls - 1st and 2nd floors only	SF	21,344	1.67	35,644.48	MJK Construction
8.1.5	Apply ceiling texture to new drywall	SF	21,344	0.75	16,008.00	MJK Construction
8.1.6	Prepare, caulk, prime new drywall and paint entire ceilings in each effected room	SF	64,032	1.00	64,032.00	MJK Construction
8.1.7	Note: Review architectural drawings related to fire design of Party Walls and Floors				Note	
8.1.8	Note: Reference Photos 8.1.A through F				Note	
	Material					
8.1.9	Wood blocking - 2" x 6" x 10'	EA	533	7.99	4,258.67	Blanton Building Supplies
8.1.10	Fasteners for framing	EA	15,984	0.03	479.52	The Home Depot
8.1.11	Drywall panel 4' x 8' (Blocking areas = 84 sheets and ceilings areas = 667 sheets)	EA	751	14.02	10,529.02	Lowes Home Improvement
8.1.12	Drywall screws	EA	30,000	0.01	300.00	Lowes Home Improvement
8.1.13	Drywall joint tape	EA	16	11.86	189.76	Lowes Home Improvement
8.1.14	Drywall joint compound	EA	43	16.18	695.74	Lowes Home Improvement
8.1.15	Ceiling texture	SF	21,344	0.07	1,494.08	Lowes Home Improvement
8.1.16	Paint - two (2) coats	SF	21,344	0.16	3,415.04	Lowes Home Improvement
8.1.17	Interior sealant	LF	3,700	0.13	481.00	Lowes Home Improvement
	Section Subtotal				**204,071.95**	
9.0	**Additional Work Scope Components Needed In Order to Implement Required Repairs.**					
9.0.1	Remove and reinstall balcony screen enclosures	LOC	61	1,120.00	68,320.00	MJK Construction
9.0.2	Remove and reinstall HVAC disconnect boxes attached to exterior walls	EA	111	150.00	16,650.00	BNB Electric
9.0.3	Remove and reinstall each units electrical panel box attached to exterior walls	EA	18	3,000.00	54,000.00	BNB Electric
9.0.4	Remove and reinstall utility boxes and equipment attached to exterior walls			-	-	Utility provider
9.0.5	Remove and reinstall exterior light fixtures & receptacle's attached to exterior walls	EA	111	40.00	4,440.00	BNB Electric
9.0.6	Remove and reinstall gutters and down spouts	EA	9	1,000.00	9,000.00	MJK Construction
9.0.7	Remove and reinstall building signage and unit numbers attached to exterior walls	EA	9	100.00	900.00	PROCON
9.0.8	Trim back landscaping for access to exterior walls / landscaping repair / sod replacement - (Allowance)	EA	9	7,500.00	67,500.00	Owners' landscape contractor/vendor
	Section Subtotal				**220,810.00**	

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PROCON
& ASSOCIATES, INC.

Wedgewood Condominiums

Repair Estimate

O: 843.399.8918
F: 843.399.8928

Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
GC	**Project Related General Conditions**					
GC.1	Scaffolding monthly rental	MTH	12	18,868.00	226,416.00	Southeast Access
GC.2	Dumpster - dump fee per ton - (Allow 10.21 per dump x 3 dumps per building x nine buildings)	EA	27	382.37	10,323.99	Kidd Construction
GC.3	Dumpster - dump fee charged by vendor (Allow a total of 27 pulls	EA	27	200.00	5,400.00	Kidd Construction
GC.4	Lull - fork lift for debris and material handling	MTH	12	2,061.29	24,735.48	United Rentals
GC.5	Fuel & insurance for rental equipment	MTH	12	450.00	5,400.00	PROCON
GC.6	Company owned trucks and fuel	MTH	12	1,500.00	18,000.00	PROCON
GC.7	Site safety plan for public protection and the maintaining of such in construction work zones	LOC	9	500.00	4,500.00	PROCON
GC.8	Portable toilet's for workers - three each at $61.68 per month	MTH	12	185.04	2,220.48	Elvis Service Co.
GC.9	20 foot site office / storage container monthly rental	MTH	12	243.00	2,916.00	Elvis Service Co.
GC.10	Storage containers monthly rental - based on three containers at $108.00 each per month	MTH	12	324.00	3,888.00	Elvis Service Co.
GC.11	Project manager	MTH	6	9,743.59	58,461.54	PROCON
GC.12	Project supervisor	MTH	12	8,831.42	105,977.04	PROCON
GC.13	Project assistant supervisor	MTH	12	6,550.00	78,600.00	PROCON
GC.14	Project labors (2)	MTH	12	8,529.74	102,356.88	PROCON
	Section Subtotal				**649,195.41**	
	Project Subtotals					
M	**Mobilization**				533,537.30	
1.0	**Exterior Walls**					
1.1	Incomplete Coverage of Weather-Resistive Barrier				66,754.76	
1.2	Improper Termination and lapping of Weather Resistive Barrier at Waterproofing.				23,992.14	
1.3	Improper Installation of Z-Flashing at Band Board.				35,867.44	
1.4	Inadequate Protection of Non-Preservative Treated Wood Furring.				18,420.00	
1.5	Inadequate Attachment and Installation of Fiber-Cement Siding.				824,249.20	
1.6	Inadequate Attachment of Fiber-Cement Trim and Unprimed Edges of Engineered Trim.				549,250.75	
1.7	Inadequate Installation of Through-Wall Flashing at Base of Brick Veneer.				22,693.65	
1.8	Inadequate Support of Lintels Along Triple-Ganged Window Heads.				6,293.50	
1.9	Improper Installation of Metal Ties at Brick Veneer.				540,831.28	
1.10	Installation of Vapor Barrier on Interior Side of Exterior Walls.				16,320.00	
2.0	**Windows**					
2.1	Inadequate Installation of Rough Opening Flashing.				274,935.66	
2.2	Failed Self-Adhered Flashing at Windows.				47,802.15	
2.3	Absence of Through-Wall Flashing and Weep Holes and Incomplete SAF at Brick Veneer Above Window Heads.				8,333.04	
2.4	Inadequate Head Flashing Above Windows in Fiber-Cement Siding.				9,213.32	
2.5	Failure of Insulated Glass Units.				177,316.50	
2.6	Inadequate Design Pressure Rating for Sliding Glass Doors and Transom Windows.				801,776.58	
2.7	Inadequate Design Pressure Rating for Double- and Triple-Ganged Windows.				511,635.96	

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PROCON & ASSOCIATES, INC.

Wedgewood Condominiums

Repair Estimate

O: 843.399.8918
F: 843.399.8928

Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
3.0	**Roofs**					
3.1	Roof Deck Not Adequately Covered With Underlayment along Eaves, Underlayment Improperly Integrated With Drip Edge.				12,452.00	
3.2	Improper Attachment of Shingles.				156,446.00	
3.3	Improper Starter Strip Installation.				-	
3.4	Improper Installation and Attachment of Sheet Metal Fascia.				39,170.00	
4.0	**Walkways and Balconies**					
4.1	Missing Gypsum Sheathing, Joints Not Sealed in Gypsum Sheathing, and Gypsum Sheathing Deteriorated for Fire Resistance of Structural Members Along Floor Lines.				62,232.29	
4.2	Improper Starter Strip Installation.				640,742.40	
4.3	Improper Drip Edge Flashing at Columns.				30,338.18	
4.4	Inadequate Waterproofing at Post Fastener Penetrations and Missing Blocking.				111,983.72	
4.5	Improper Construction of Stairways.				74,219.22	
5.0	**Attics**					
5.1	Missing MTS16 Hurricane Anchors and Lack of 2x Blocking at Trusses Along Rear Exterior Wall Framing and Walkway/Balcony Beams.				47,756.40	
5.2	Missing H2.5 Hurricane Ties at Trusses along Exterior Walls of Walkways and Balconies.				14,312.32	
5.3	Inadequate Anchorage of Truss Girders.				1,262.24	
5.4	Inadequate Support of Truss Framing.				1,516.41	
5.5	Inadequate Lateral and Diagonal Truss Bracing.				10,054.38	
5.6	Improper and Damaged Truss Members.				3,107.26	
5.7	Inadequate Framing Around Gable Windows				3,346.28	
5.8	Inadequate Taping of Fastener Heads and Gypsum Joints in Draft stopping in Attic Spaces.				3,456.42	
6.0	**Shear Walls**					
6.1	Improper Attachment of First Floor Interior Shear Wall.				107,861.69	
6.2	Inadequate Fastener Spacing for Attachment of Interior Shear Wall Sheathing.				212,641.86	
6.3	Missing Sheathing at First Floor Interior Shear Wall.				-	
7.0	**Accessibility**					
7.1	Improper Location of Built-Up Curb Ramps in Parking Space Access Aisles.				38,000.00	
8.0	**Floor and Ceiling Assemblies**					
8.1	Missing Blocking Between Floor Trusses, Lack of Continuous and Missing Interior Gypsum Sheathing Within Party Wall Air Space.				204,071.95	
9.0	**Additional Work Scope Components Needed In Order to Implement Required Repairs.**				220,810.00	
GC	**Project Related General Conditions**				649,195.41	

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PROCON
& ASSOCIATES, INC.

Wedgewood Condominiums
Repair Estimate

O: 843.399.8918
F: 843.399.8928

Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
	Project Subtotal				7,114,199.66	
	Permits and Licenses	Pct.	1.25%		88,927.50	
	Owners' Contingency	Pct.	10%		711,419.97	
	Contractor Overhead and Operation Expenses	Pct.	10%		711,419.97	
	Contractor Fee	Pct.	10%		711,419.97	
	Architectural & Engineering/Contract Administration Fee's (Per Fuller Group)	Pct.	10.0%		711,419.97	
	Estimated Total for All Buildings				**10,048,807.02**	
	Alternate Work Scope Recommendations					
1.1	**Remove and Replace entire WRB.**					
	Labor					
A.1.1	Remove and Replace remaining WRB	sf	62,420	1.50	93,630.00	MJK Construction
	Material					
A.1.2	DuPont Tyvek HomeWrap - 9' x 150' Roll	sf	62,420	0.16	9,987.20	Blanton Building Supplies
A.1.3	DuPont Tyvek Tape - 2" x 164' Roll	ea	93	16.73	1,555.89	Blanton Building Supplies
A.1.4	DuPont Wrap Caps Staple Pac - One Box will cover approximately 25 Squares	ea	3	76.68	230.04	Blanton Building Supplies
	Section Subtotal				**105,403.13**	
1.4	**In Lieu of New Wood Furring Members Behind New Band Board, Install New 11.25-inch Wide 5/4 Fiber-Cement Trim for Band Board With**					
	Labor					
A.1.4.1	In lieu of new wood furring members behind new band board, Install new 5/4" x 11.25	lf	2,000	2.50	5,000.00	MJK Construction
	Material					
A.1.4.2	James Hardie 5/4" x 11.25	lf	2,000	3.99	7,980.00	Blanton Building Supplies
A.1.4.3	Fasteners	ea	1	47.75	47.75	Blanton Building Supplies
	Section Subtotal				**13,027.75**	

ROA 243

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EXHIBIT E

General Contractors

Office - 843-399-8918
Facsimile - 843-399-8928

PROCON
& ASSOCIATES, INC.

Construction Managers

PO Box 4466
North Myrtle Beach, SC 29597

April 4, 2022

Mr. H Ross Clements, AIA
Fuller Group, LLC
1350 C Cleveland St
Greenville, SC 29607

Job: Wedgewood Condominiums
Barefoot Resort
North Myrtle Beach, SC
Fuller File No. 16316.00

Subject: **Updated** ADDENDUM #1 To Preliminary Scope of Repair dated November 14, 2019

Dear Mr. Clements,

Procon and Associates, Inc. (Procon) has received and reviewed the Addendum #1 for the Wedgewood Condominiums.

Based on information outlined in the Addendum, Procon has updated our repair estimate to include the "Summary of Construction Defects and Required Repairs" as identified in Addendum #1.

Summary of Estimates

1. Fuller Group LLC
   Summary of Construction Defects and Required Repairs
   Dated March 2, 2018

   Procon & Associates, Inc.
   Original Repair Estimate Dated December 2018 $10,048,807.02

2. Fuller Group LLC
   Addendum #1
   Summary of Construction Defects and Required Repairs
   Dated November 14, 2019

   Procon & Associates, Inc.
   Addendum #1 Repair Estimate **Updated** April 4, 2022 2,037,480.01

New Revised Combined Total **$12,086,287.03**

Please contact me should you have any questions.

Sincerely,

Robert Gallagher
President

RG/cg

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PROCON & ASSOCIATES, INC.

Wedgewood Repair Estimate

Buildings 1 - 9

Addendum 1

Updated 04-04-2022

Item	Work Scope Description	Unit Type	Quantity	Unit Price	Unit Total	NOTES
1.0	**Exterior Walls**					
	Labor					
1.10	**(REVISED)** Remove existing vapor barrier and insulation from within wall cavity at all areas of exterior walls. Contractor shall determine whether access to exterior wall cavity for removal of existing vapor barrier and insulation is provided through removal of drywall on the interior of units or from removal and replacement of WRB and sheathing on exterior of buildings. Any damaged framing shall be removed and replace in-kind. Any affected interior finishes and drywall shall be replaced, taped/mudded/sanded, and pointed corner to corner to match existing.					
1.10.1	Remove and replace remaining weather-resistive barrier	SF	42,053	1.50	63,079.50	MJK
1.10.2	Remove and replace remaining exterior wall sheathing	Sht	2,730	72.00	196,560.00	MJK
1.10.3	Cut and remove remaining vapor barrier from within the wall cavity	SF	87,360	0.50	43,680.00	MJK
1.10.4	Remove and replace remaining wall cavity insulation	SF	87,360	1.00	87,360.00	MJK
1.10.5	Replacement of damaged framing	inc			Included in	
	Allowances for replacing damaged framing were included in Line Items				1.2.2, 1.7.5,	
	1.2.2, 1.7.5, 2.1.7, and 2.3.5 of the original repair estimate.				2.1.7, and 2.3.5	
1.10.6	**Additional Interior Repair Allowance**					
1.10.6.a	NOTE: End Units (End walls, front and rear walls) Units 54				Note Only	
1.10.6.b	NOTE: Inboard Units (Front and rear walls only) Units 57				Note Only	
1.10.6.c	NOTE: A typical end unit has approximately 726 SF of interior drywall at exterior walls				Note Only	
1.10.6.d	NOTE: A typical inboard unit has 440 SF of interior drywall at exterior walls.				Note Only	
1.10.6.e	Any affected interior finishes and drywall shall be taped/mudded/sanded (Allowance 20% of 64,392 SF)	SF	12,880	0.65	8,372.00	MJK
1.10.6.f	Prepare and paint interior drywall corner to corner	SF	64,392	1.20	77,270.40	MJK
	Material					
1.10.7	Tyvek building Wrap	SF	42,053	0.16	6,728.48	Blanton
1.10.8	Tyvek house wrap tape	EA	64	16.73	1,070.72	Blanton
1.10.9	Wrap cap staple pac	EA	17	113.40	1,927.80	Blanton
1.10.10	Wood sheathing	Sht	2,730	12.56	34,288.80	Blanton
1.10.11	Fasteners for sheathing	EA	137,000	0.02	2,740.00	Menards.com
1.10.12	Insulation	SF	87,360	0.54	47,174.40	The Home Depot
1.10.13	Gypsum tape	EA	10	11.86	118.60	Lowes
1.10.14	Gypsum drywall joint compound	EA	30	16.18	485.40	Lowes
1.10.15	Paint - Interior	Gal	276	41.57	11,473.32	Sherwin Williams
1.10.16	Sealant	EA	222	2.89	641.58	Lowes
	Section Subtotal				**$ 582,971.00**	

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PROCON
& ASSOCIATES, INC.

Wedgewood Repair Estimate

Buildings 1 - 9
Addendum 1
Updated 04-04-2022

4.0	**Walkways and Balconies**					
4.6	Remove existing vinyl ceiling and fasteners (walkways only) (Balconies ceilings are drywall)	SF	24,175	$ 1.50		MJK
4.6.1	Install new wood furring strips (12" o.c.)	LF	31,256	1.25		MJK
4.6.2	Install existing/New vinyl ceiling	SF	24,175	1.90		MJK
	Material					
4.6.3	Screws #10 x 4" (5-Lbs - 237 Screws)	Ea	66	29.14		Lowes
4.6.4	Furring Strips (1"x3"x8')	Ea	3,907	1.82		Lowes
4.6.5	Nail (11-Gauge 30Lb - 5,210 Nails)	Ea	1	35.08		Lowes
4.6.6	Vinyl Ceiling (10-in x 144-in) (192LF/10") (Estimated Amount of missing vinyl ceiling)	Ea	116	15.63		Lowes
4.6.7	Vinyl J Channel (.625" x 150") (Estimated Amount of missing vinyl ceiling)	Ea	10	6.10		Lowes
	Section Subtotal				$ -	
7.0	**Ramp Accessibility - Buildings 3, 4, and 6**					
7.2	Remove existing ramps (Building 3,6)	Ea	2	$ 1,150.00	$ 2,300.00	Dan-Kel
7.2.1	Remove existing ramps (Building 4)	SF	475	6.00	2,850.00	Dan-Kel
7.2.2	Install new code complaint ramp and steps	ls	1	8,650.00	8,650.00	Dan-Kel
	Section Subtotal				$ 13,800.00	
7.3	**Stair Accessibility - Building 5 and 9**					
7.3.1	Remove existing non-compliant concrete steps (Buildings 5 & 9)	Ea	2	$ 600.00	$ 1,200.00	Dan-Kel
7.3.2	Install new code compliant concrete steps (Includes ramps and steps)	Inc			Included in line 7.2.2	Dan-Kel
	Section Subtotal				$ 1,200.00	
7.4	**Handrails Accessibility**					
7.4.1	Material and installation of a 42" vinyl rail and grab rail - Buildings 5, 8, and 9	LS	1	$ 11,268.00	$ 11,268.00	Gator-Strong LLC
7.4.2	Handrails accessibility - Remaining Buildings	Ea	6	$ 3,000.00	$ 18,000.00	Carefree Exterior
	Section Subtotal				$ 29,268.00	

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PROCON & ASSOCIATES, INC.

Wedgewood Repair Estimate

Buildings 1 - 9

Addendum 1

Updated 04-04-2022

9.0	Plumbing					
9.1	Scope sanitary drainage lines buildings 1-9 (Based on 20 ground floor units)	Ea	20	$ 284.34	$ 5,686.80	Dependable Service
9.1.1	Removal-Put back of all Owner personal effects with 3 month Storage	Ea	20	7,195.00	143,900.00	Costal Carrier
9.1.2	Remove Bathroom Vanities, mirrors and other items attached to unit demising walls	Ea	20	375.00	7,500.00	MJK
9.1.3	Set up temporary containments in work areas to help contain dust	Ea	20	210.00	4,200.00	MJK
9.1.4	Removal carpet and vinyl flooring (1,050 Sq Ft per Unit)	SF	21,000	1.50	31,500.00	MJK
9.1.5	Remove drywall at plumbing line locations (224 Sq Ft per unit)	SF	4,480	0.50	2,240.00	MJK
9.1.7	Remove the concrete for resloping the sewer lines	Ea	20	700.00	14,000.00	Dan-Kel
9.1.8	Removal of toilets, and one piece shower	Inc			Included in line 9.1.9	Dependable Service
9.1.9	Replace and reslope the sewer lines	Ea	20	5,500.00	110,000.00	Dependable Service
9.1.10	Pour Back and finish concrete	Ea	20	750.00	15,000.00	Dan-Kel
9.1.11	Install toilets and new one piece shower	Inc			Included in line 9.1.9	Dependable Service
9.1.12	Install and repair drywall (250 Sq Ft allowance per unit)	SF	5,000	2.25	11,250.00	MJK
9.1.13	Install new base board	Ea	20	75.00	1,500.00	MJK
9.1.14	Reinstall Vanities in the Bathrooms and other items removed for construction	Ea	20	475.00	9,500.00	MJK
9.1.15	Paint each interior wall where the drywall was removed to access the plumbing lines	Ea	20	560.00	11,200.00	MJK
9.1.16	Install new Vinyl flooring	Ea	20	1,007.28	20,145.60	Williams Flooring
9.1.17	Install new interior carpet	Ea	20	2,567.40	51,348.00	Williams Flooring
9.1.18	Install new exterior carpet	Ea	20	5,582.41	111,648.20	Williams Flooring
9.1.19	Install 1/4 round trim around all cabinets, vanities, and tub showers	Ea	20	75.00	1,500.00	MJK
9.1.20	Professionally clean the unit	Ea	20	400.00	8,000.00	MJK
	Material					
9.1.21	Drywall (5/8-in x 4-ft x 8-ft)	Ea	140	14.73	2,062.20	Lowes
9.1.22	Drywall tape (500-ft Solid Joint Tape)	Ea	7	4.30	30.10	Lowes
9.1.23	Mud (4.5-Gallon Premixed All-purpose Drywall Joint Compound)	Ea	9	16.18	145.62	Lowes
9.1.24	Drywall screws (#6 x 1-5/8-in Bugle Coarse Thread Drywall Screws (5-lb))	Lb	9	21.58	194.22	Lowes
9.1.25	1/4 Round	Ea	95	3.21	304.95	Lowes
9.1.26	Baseboard	Ea	95	15.29	1,452.55	Lowes
9.1.27	Caulk for trim & counter top	Ea	60	2.89	173.40	Lowes
9.1.28	Screws for cabinets #8 x 2-1/2-in	Lb	19	16.96	322.24	Lowes
9.1.29	Finish nails (1-1/2-in 15-Gauge)	Ea	2	28.30	56.60	Lowes
9.1.30	Paint for the interior of the Unit - five (5) gallons per unit	Gal	100	41.57	4,157.00	Sherwin-Williams
9.1.31	Plastic 12-ft x 50-ft Drop Cloth	Ea	20	11.86	237.20	Lowes
9.1.32	3M tough tape	Ea	20	7.54	150.80	Lowes
	Section Subtotal				**$ 569,405.48**	

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PROCON
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Wedgewood Repair Estimate

Buildings 1 - 9
Addendum 1
Updated 04-04-2022

GC	Project Related General Conditions					
GC.1	Scaffolding monthly rental - Add four additional months to schedule	MTH	4	$ 18,868.00	$ 75,472.00	Southeast Access
GC.2	Dumpster - dump fee per ton - (Allow 10.21 per dump x 15 additional dumps)	EA	15	382.37	5,735.55	Kidd Construction
GC.3	Dumpster - dump fee charged by vendor (Allow 15 additional pulls)	EA	15	200.00	3,000.00	Kidd Construction
GC.4	Lull - fork lift for debris and material handling	MTH	4	2,061.29	8,245.16	United Rentals
GC.5	Fuel and insurance for rental equipment	MTH	4	450.00	1,800.00	PROCON
GC.6	Company owned trucks and fuel	MTH	4	1,500.00	6,000.00	PROCON
GC.7	Site safety plan for public protection and the maintaining of such in construction work zones	LOC	0	500.00	-	PROCON
GC.8	Portable toilet's for workers - three each at $61.68 per month	MTH	4	185.04	740.16	Elvis Service Co.
GC.9	20 foot site office / storage container monthly rental	MTH	4	243.00	972.00	Elvis Service Co.
GC.10	Storage containers monthly rental - based on three containers at $108.00 each per month	MTH	4	324.00	1,296.00	Elvis Service Co
GC.11	Project manager	MTH	4	9,743.59	38,974.36	PROCON
GC.12	Project supervisor	MTH	4	8,831.42	35,325.68	PROCON
GC.13	Project assistant supervisor	MTH	4	6,550.00	26,200.00	PROCON
GC.14	Project labors (2)	MTH	4	8,529.74	34,118.96	PROCON
	Section Subtotal				$ 237,879.87	

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PROCON & ASSOCIATES, INC.

Wedgewood Repair Estimate

Buildings 1 - 9
Addendum 1
Updated 04-04-2022

	Project Summery				
1.0	Exterior Walls				$ 582,971.00
4.0	Walkways and Balconies				-
7.0	Ramp Accessibility - Buildings 3, 4, and 6				13,800.00
7.3	Stair Accessibility - Building 5 and 9				1,200.00
7.4	Handrails Accessibility				29,268.00
9.0	Plumbing				569,405.48
GC	Project Related General Conditions				237,879.87
4.0	**Alternate Work Scope Recommendation - Walkways and Balconies**				7,939.38
	Project Subtotal				**$ 1,442,463.73**
	Permits and Licenses	Pct.	1.25%		18,030.80
	Owners' Contingency	Pct.	10%		144,246.37
	Contractor Overhead and Operation Expenses	Pct.	10%		144,246.37
	Contractor Fee	Pct.	10%		144,246.37
	Architectural & Engineering/Contract Administration Fee's (Per Fuller Group)	Pct.	10.0%		144,246.37
	Estimated Total for All Buildings				**$ 2,037,480.01**

	Alternate Work Scope Recommendations					
4.0	**Walkways and Balconies**					
	Repair Drywall Ceilings (10% of total SF Number)	SF	2,417.5	$ 2.25	$ 5,439.38	MJK
	Material					
	Mud	Ea	6.00	$ 16.18	97.08	Lowes
	Tape	Ea	3	4.30	12.90	Lowes
	Drywall	Ea	152	14.73	2,238.96	Lowes
	Drywall screws (#8 x 2-1/2-in Bugle Coarse Thread Drywall Screws (5-lb))	Ea	7	21.58	151.06	Lowes
	Subtotal				$ 7,939.38	

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STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	**IN THE COURT OF COMMON PLEAS** **FIFTEENTH JUDICIAL CIRCUIT** **C/A NO. 2018-CP-26-00307**
Wedgewood Condominium Association, Plaintiff, vs. Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, Crescent Architects, LLC and CEMS Engineering, Inc., Defendants.	PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO DEFENDANT CENTEX'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

This matter was heard by the Court on September 1, 2022 at the Horry County Government and Justice Center in Conway, South Carolina. At the close of the hearing, the Court informed Plaintiff that it had until September 16, 2022 to file any supplemental memorandums and supporting documentation in opposition to Defendant's motion for summary judgment. This memorandum and supporting documents supplement Plaintiff's original memorandum filed August 25, 2022 with attachments including an affidavit of Ross Clements, Plaintiff's expert, and Renee Corn, Plaintiff Condominium Association's current property manager. Plaintiff's also file with this supplemental memorandum an affidavit of Randall Spencer, board member of Wedgewood Condominium Association and supplemental affidavit of Ross Clements. (See Exhibits 1 and 2). Plaintiff, at the Court's request, also provided the Court the complete deposition of Ross Clements (7 volumes), his report of construction defects and the 30(b)(6) deposition of Wedgewood COA and the deposition of Centex's 30(b)(6) witness, Eric Lundblad.

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STANDARD OF REVIEW

While Plaintiff addressed the standard of review for granting a motion for summary judgment, Plaintiff did not address in great detail the scintilla of evidence rule which has been adopted in South Carolina.

In *Hancock v. Mid-South Management Co*., 381 S.C. 326, 673 S.E.2d 801 (2009), the South Carolina Supreme Court expressed its unique stance on the burden of proof in summary judgment motions. The facts of the *Hancock* case are straightforward: Betty J. Hancock tripped and fell in a parking lot maintained by Mid-South Management and filed suit against Mid-South for negligence, claiming Mid-South had failed to maintain its parking lot in a safe condition and had failed to warn her of the dangers that caused her injuries. Mid-South moved for summary judgment on the ground that because the elevation changes in the parking lot were open and obvious, Mid-South had no duty to warn Hancock about them. At the summary judgment hearing, the parties provided deposition testimony of both Hancock and another witness, as well as photographs of the area. The trial court held that the elevation change in the parking lot that caused Hancock's injuries was indeed open and obvious and that Mid-South had no duty to warn Hancock about it. The Court of Appeals affirmed the decision of the trial court, but the South Carolina Supreme Court reversed, holding that Mid-South could be liable for failing to warn Hancock of an open and obvious danger if Mid-South should have anticipated the risk of harm to invitees despite the openness and obviousness of the danger. The court held that a genuine issue of fact existed as to whether the raised pavement was a dangerous condition that Mid-South should have anticipated and that summary judgment was therefore inappropriate.

Not only did the Supreme Court reverse the Court of Appeals on the merits, but it also addressed an admittedly non dispositive issue. Specifically, the Court chose to settle a dispute among

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the lower courts regarding the standard for summary judgment for different types of issues in South Carolina state courts:

> [W]e hold that in cases applying the preponderance of the evidence burden of proof, the on-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. However, in cases requiring a heightened burden of proof or in cases applying federal law, we hold that the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment. *Hancock*, 673 S.E.2d at 803).

This decision of the Supreme Court has bifurcated South Carolina's summary judgment standard. In cases where the burden of proof is the preponderance of the evidence such as this one, the nonmoving party need demonstrate no more than a mere scintilla of evidence to defeat summary judgment.

Here the standard is a mere scintilla of evidence. While Plaintiff asserts that the evidence is much more than a mere scintilla, Plaintiff's burden of proof in this matter is admittedly low based on the South Carolina Supreme Court's standard for summary judgment. It is especially true here in light of the thousands of pages of depositions of Clements, the 30(b)(6) witness from Centex, Clements' report and the affidavits of Clements, Randall Spencer and Renee Corn.

In order to obtain a definition of scintilla, one must go back almost eighty years when the South Carolina Supreme Court defined "scintilla" as "a gleam," "a glimmer," "a spark," "the least particle," "the smallest trace." See *Bethea v. Floyd*, 177 S.C. 521, 181 S.E. 721, 724 (1934). A more practical understanding of the scintilla rule was a letter that the late Judge Tommy Kemmerlin, the Master in Equity for Beaufort County, kept tacked to his door:

> "Once again, the South Carolina Supreme Court has said that I do not understand Rule 56, SCRCP. Please be careful in asking me to rule on summary judgment motions. The sum total of eleven years of being reversed on one of almost every summary judgment appealed … convinces me that the Appellate Courts of this state view it appropriate to grant summary judgment only where a claim or defense is patently absurd… I don't think I can draw an order that courts hostile to summary judgment could not find a way to reverse. I had rather try a case for three days than to hear a

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> summary judgment motion. Unless you have a motion which a thick-headed person like me (I am not stupid, but I am not fast) can understand in about fifteen minutes you should find some other judge to listen to it."

South Carolina Lawyer, May 2013 Edition.

In this case there is much more than a scintilla in that defense counsel has provided the court with what it has labeled as Exhibit A "Undisputed Facts." [1] As will be shown in this memo, there are multiple issues of disputed facts in Centex's undisputed facts all of which requires this court to deny the motion for summary judgment.

The court should also be aware of a case from the 2021 term of the South Carolina Supreme Court entitled *Stoneledge at Lake Keowee Owners' Association v. IMK Development Co*., 435 S.C. 176, 177, 866 S.E.2d 577, 578 (2021) (hereinafter referred to as "*Stoneledge III*") which reaffirmed the principle that "application of both the basic three-year limitations period and the discovery rule in any given case can present factual issues for a jury to resolve." See *Stoneledge III*, 435 S.C. at 177, 866 S.E.2d at 578. The court, "constrained by [its] standard of review," affirmed the lower courts' holdings that there was a jury issue on the statute of limitations as to the general contractor in that construction defect case.

ARGUMENT

I. ONLY ADMISSIBLE EVIDENCE CAN BE CONSIDERED BY THE COURT IN DECIDING SUMMARY JUDGMENT.

It is well settled in South Carolina that every material fact offered by the movant must be supported by admissible evidence. A lawyer's bald statement of fact with nothing more is the same as having no facts at all. See *Higgins v. Medical University of South Carolina*, 326 S.C. 592, 599, 486 S.E.2d 269, 272 (Ct. App. 1997). ("Factual statements of the attorneys, whether made

[1] Centex has presented 75 paragraphs of facts which it says are undisputed. Never to my understanding in the history of summary judgment motions has such a set of facts been presented to a court with a request that a court grant such a motion.

during argument or in written briefs or memorandum ordinarily may not be considered by the court in determining whether a genuine issue of material fact exists.")

In this case, Defendant Centex has attached to its motion for summary judgment Exhibit A which it has titled "Undisputed Facts" Centex's so-called "undisputed facts" are 75 factual assertions which it claims are supported in the record. In fact, many of the so-called undisputed facts include multiple exhibits from third parties that contain hearsay statements and have not been authenticated. Most of the so-called undisputed facts which Centex has put forth are in fact disputed in the records or contain inadmissible documentation under the rules of evidence or are so vague as to not support its summary judgment request. Centex's undisputed facts can be easily grouped into three categories: (1) maintenance of Wedgewood Condominiums (see Plaintiff's chart in response to Centex's "statement of facts" attached as Exhibit 3); (2) inadmissible third-party hearsay evidence: (3) evidence which does not support that the homeowners association had knowledge there were latent defects.

A. Facts presented by Centex which show maintenance issues.

The following exhibits are a sample of the exhibits presented to the court by Defendant in its Exhibit A to its motion for summary judgment. These sample exhibits and in fact all 75 alleged factual assertions prove nothing more than that the homeowners association was performing maintenance as required by it under the Master Deed:

- Exhibit 1.1 describes exterminator service for powderpost beetles which obviously would have nothing to do with notice of latent construction defects regarding water intrusion.

- Exhibits 2, 3 and 4 all describe mold issues with carpet without regard to water intrusion.

- Exhibit 5 is a Board of Directors minutes meeting 3/13/2004 which describes building maintenance and maintenance report concerning mold and mildew in some common areas.

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- Exhibit 7 describes caulking and sealing of windows in Units 912 and 913 and the efforts by the association to perform routine maintenance.

- Exhibit 8 is the property manager's work order dated 8/4/2004 describing a water leak in the master bedroom of Unit 722.

- Exhibit 8.1 is a property manager's work order dated 8/4/2004 which advised of a problem with windows.

- Exhibit 9 describes a window leak on 3/20/2005 with routine caulking and maintenance performed.

- Exhibit 11 is Board of Directors meeting minutes dated 4/19/2005 which describes window caulking and normal maintenance by the association.

- Exhibit 11.1 is Board of Directors meeting minutes dated 4/19/2005 which describes carpet stain and treating with Mildicide.

- Exhibit 12 is a property manager report dated 8/12/2005 which describes water stains and wood rotting on all corner units.

- Exhibit 13 is a property manager report dated 9/20/2005 which describes caulking in a master bedroom unit in Unit 813 and the maintenance efforts by the association to repair it.

- Exhibit 14 is Board of Directors meeting minutes dated 8/12/2005 which describes general building conditions and the maintenance on those buildings.

- Exhibit 14.1 is Board of Directors meeting minutes dated 8/12/2005 which describes windows needing to be fixed.

- Exhibit 15 is a property manager work order dated 10/17/2005 which describes caulking of windows at Unit 612.

- Exhibit 16 is a property manager report dated 10/30/2005 which describes caulking of a window at Unit 312.

- Exhibit 17 describes window replacement and caulking on 12/30/2005 at Unit 413.

- Exhibit 18 Board of Directors meeting minutes dated 1/14/2006 in which homeowners commented that the buildings were clean and wanted a timeline for replacement of hall carpets.

- Exhibit 18.1 Board of Directors meeting minutes dated 1/14/2006 regarding windows in a master bedroom in Unit 813 leaking after being caulked. Jim Finn

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replied that caulking should be performed every three to four years which is a maintenance issue.

- Exhibit 19 dated 2/21/2006 concerns an email statement by the owner of Unit 921 concerning the deteriorating property of Wedgewood.

- Exhibit 20 Board of Directors meeting 3/24/2006 which describes alternatives to replacing hallway carpet.

- Exhibit 21 is a property manager's work order dated 6/20/2006 involves caulking of windows at Unit 124.

- Exhibit 22 dated 6/30/2006 is a property manager's work order regarding caulking a dining room window in Unit 911.

Plaintiff provides examples from Centex's first twenty-two exhibits but would explain to the court that these same type of examples regularly appear throughout Centex's so-called 75 paragraphs of undisputed facts. Plaintiff has provided an attached spreadsheet (Exhibit 3) which describes Wedgewood's nine buildings and 111 condominium units. As can be seen, only a few condos had window issues. Two units in Building 9, one unit in Building 8, two units in Building 1, three units in Building 6, one unit in Building 4, one unit in Building 7, and one unit in Building 1 had window caulking performed during the period April 9, 2004 through June 20, 2006. Only four of those units had repeat window caulking in the period from September 5, 2006 through November 5, 2010. This, of course, proves nothing and certainly does not prove knowledge by the board of directors that there was a major water intrusion problem in all nine buildings which house 111 units. In fact, the majority of the undisputed facts offered by Defendant proves nothing but general maintenance being performed by the association on a regular basis. Examples are:

- Exhibit 34, Building 8, 2/1/2007 replace some rotten wood.

- Exhibit 29, dated 11/10/2006 paint ceilings and patch.

- Exhibit 39, dated 5/30/2007, Building 6 replace rotten wood on two posts.

- Exhibit 44, dated 2/20/2008 caulk and seal in Unit 613.

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- Exhibit 44, caulk and seal master window bedroom 2/20/2008 in Unit 613.
- Exhibit 49 and Exhibit 50, 2/6/09 and 1/30/09 respectively, caulk and seal windows and brick in Unit 611.
- Exhibit 52, dated 6/26/2009 snake plumbing line in Unit 912

In sum, a close review of the so-called undisputed statement of facts by Centex shows the vast majority of issues to be maintenance at Wedgewood being performed by the association over many years. Centex provides no evidence of the association's knowledge of severe latent defects regarding water intrusion as described by Plaintiff's expert, Ross Clements, in his report.

B. Inadmissible evidence has been presented by Centex.

Centex in Exhibit A entitled "Undisputed Facts" presents numerous issues of inadmissible evidence. In fact, the majority of Defendant's undisputed facts have invoices attached from third-party contractors, subcontractors, suppliers and materialmen which have handwritten notes and writings on them regarding maintenance repairs. These statements, although discussing maintenance issues, are also hearsay and inadmissible under the rules of evidence and thus cannot be considered on summary judgment. Some examples are as follows:

- Exhibit 1, Board of Directors minutes dated 8/18/2013 "Tom explained most regimes are having similar problems and perhaps a president's meeting would be beneficial…." No indication has been made in the filing as to who Tom is although Defendant is offering the exhibit for the truth of the matter asserted which is inadmissible hearsay.
- Exhibit 11.1 Board of Directors minutes say, "Jim Finn stated he has a bid from a company." This is inadmissible hearsay and thus cannot be used to support a summary judgment motion.
- Exhibit 8 which states "Owner of Wedgewood #722 reported a water leak…"
- Exhibits 9, 10, 13, 15, 16, 17 all have property manager work orders which are offered by Defendant for the truth of the matter asserted all of which contain inadmissible hearsay.

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- Exhibits 27, 28, 29, 30, 31 all involve invoices from Lampley Construction for work performed at the association. Those invoices are attached as exhibits despite the fact that defense counsel admitted that the owner of Lampley Construction was dead. Thus, the writings on the invoices are inadmissible as a matter of law.

A close review of all of the exhibits presented in Defendants Exhibit A, #1-75, show most of the complained invoices attached to their undisputed statement of facts are with third-party contractors such a GH Homes, Indigo Homes, carpet cleaners, the City building department, property managers and various and sundry contractors including Ferg & Sons and Lampley Construction each of which invoice contains handwritten statements of work done at the association all of which are inadmissible hearsay and cannot be presented as evidence.

The Court of Appeals made clear in *Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 413 S.C. 58, 773 S.E.2d 607 (2015) that hearsay evidence in business records is not admissible.[2] In that case, the Court found "… establishing that a witness is qualified to testify about a business record does not automatically lead to admission of that record. The qualified witness must then lay the foundation to meet the requirements of Rule 803(6) and section 19-5-510." In *Deep Keel*, the Court of Appeals found that while the records themselves might be admissible, the testimony of a witness about what was contained in the records would not be admissible. See also *Thompson v. State*, 705 So. 2d 1046 (1048) (Fla. D. Ct. App. 1998) (While the business records exception to the hearsay rule allows the admissions "[a] memorandum, report, record or data compilation, it does not authorize hearsay testimony concerning the contents of business records which have not been admitted into evidence.") See also, *Bass v. Washington-Kinney Co*., 119 Ill. App. 3d 713, 75 Ill. D.E.C. 295, 457 N.E.2d 85 (1983) ("It is only the business

[2] An additional issue is whether a third-party invoice in the association records is a business record.

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record itself which is admissible, and not the testimony of the witness who makes reference to the record.") 119 Ill. App. 3d 713 (1983).

In this case there is a double hearsay problem. Centex attempts to boot strap itself into presenting to this court third-party contractors' estimates attached to board of directors meeting minutes. These third-party contractors' records have statements of repairs and impressions of those contractors which Centex argues should be considered in it motion for summary judgment. However, such is not admissible evidence. In *Williams v. Equifax Credit Information Services*, 4:07-00322-RBH, 2000 WL 4458914 (D.S.C. Dec. 17, 2017), the court found "Unsworn, unauthenticated documents cannot be considered on a motion for summary judgment." *Maryland Highways Contractors Association v. Maryland*, 933 F.2d 1246, 1251-52 (4th Cir. 1991) (not allowing hearsay evidence to support summary judgment when it would not have been admissible at trial).

As a result, much of what has been presented in Defendant's so-called undisputed statement of facts involves hearsay documents such as contractors' invoices from contractors who did work on the project but who have not appeared, been deposed or affidavits presented. This type of evidence is not admissible evidence on which to grant summary judgment.

II. WEDGEWOOD HAS EVIDENCE OF LATENT DEFECTS.

During the course of the hearing on September 1, 2022, the court requested that Plaintiff's counsel provide deposition testimony which would support their position that summary judgment cannot be granted in this case. The deposition of Plaintiff's expert, Ross Clements, offers the following pertinent testimony which precludes summary judgment from being granted.[3]

[3] Counsel has provided the complete seven volume deposition of its expert, Ross Clements, which is a part of the record, and his report which is over 500 pages.

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On the first day of Clements deposition, September 12, 2019, he offered the following testimony:

- Because you don't see damage at that time, doesn't mean that damage won't occur because of it at some point going forward. (Depo. p. 102, lines 23-25; p. 103, line 1).

- If it's not code compliant, it needs to be repaired. (Depo. p. 103, lines 2-3)

- The specific problems to the buildings were not reported to me prior to the 2016 destructive testing. (Depo. p. 109, lines 20-25; p. 110, lines 1-2).

- The caulking would not be an issue if the weather barrier flashings were installed properly. (Depo. p. 119, lines 7-13).

- If the flashing and weather barrier were installed properly the water should stay outboard of the weather barrier. (Depo. p. 123, lines 18-22).

- The shingles were good. They just were not installed properly. (depo. p. 126, lines 5-7).

- My opinion is based on the information that I am receiving from the buildings from the body of the test cuts I've done. (Depo. p. 132, lines 7-10).

- Exterior envelope deficiencies violate good workmanlike practices. (Depo. p. 159, lines 15-25)

- Damages from windows may develop later and some areas may have more damage than others. (Depo. p. 160, lines 15-25).

- You can also develop damages in other places where currently in 2016 there isn't damage so you need to go ahead and fix the deficiencies. (Depo. p. 161, lines 1-18).

- Based on my preliminary summary, it looked like there were some things that Morningstar had identified as deficiencies that we also observed as deficiencies during our investigation. There were also some things that they identified as deficiencies during their field work during the construction that we haven't observed or haven't investigated ourselves. And then there were also things that were visible within their photographs and their reports that support the deficiencies that, you know, we found. And maybe they weren't' specifically talked about by Morningstar in their reports, but they have photographs that show deficient construction that supports the deficiencies that we later identified. (Depo. p. 169, lines 5-21; Exhibit 7, Morningstar report listing deficiencies observed during construction in three categories).

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- There are brick deficiencies throughout the buildings. (Depo. p. 177, lines 1-15).

- Test cuts show all the windows were not properly installed. The extent to which there is damage as a consequence of those windows not being properly installed varies. (Depo. p. 135, lines 20-25).

- There's some locations where there's not much damage at all to the wood framing and sheathing. And that's what I said earlier where we try to put allowances on what is, you know, reasonable damage based on what we saw from the investigation that we performed. (Depo. p. 136, lines 1-7)

Further, at the continuation of his deposition on September 12, 2019, Clements was asked:

> Q. What if we say 15 years have passed? Would that be a pretty good – if there's a building code violation of moisture that relates to moisture resistance, and there's been no damage for 15 years, would it be a pretty reasonable inference that there's not going to be any damage?
>
> A. No, not necessarily.
>
> (Depo. p. 103, lines 5-11)

Deposition testimony of Clements on September 2, 2020 is as follows:

- Can't tell from the photo caulk missing. (Depo. p. 698, lines 1-5).

- The HOA did maintenance to keep the windows from leaking. (Depo. p. 704, lines 13-16).

- Caulking does not correlate to the damage between the trim and the window. (Depo. p. 708, lines 4-7).

- I mean, so it's a leap for H2L (Defendant's expert) to take the position that the joint has caused all of the damage below the window. I mean, it's ridiculous. (Depo. p. 739, lines 10-12).

- There are some places where Centex forgot to put sealant. (Depo. p. 740, lines 1-5).

- You will still continue to have water intrusion until water barriers and flashings are properly fixed. (Depo. p. 741, lines 4-8).

- Proper maintenance of the building would include recaulking any gaps that exist. (Dep. p. 741, lines 21-25; p. 742, line 1).

- Proper maintenance of the buildings to include caulking. (Depo. p. 742).

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- Maintaining those sealant joints by themselves is not going to prevent water from being behind the brick. (Depo. p. 742, lines 6-12).

- So just maintaining those sealant joints by themselves is not going to prevent water from being behind the brick. You're still going to have water that goes through the brick. (Depo. p. 742, lines 6-21).

- I mean, that…what you are asking me there supports what I was saying about how ridiculous it is that H2L says that all damages below the windows was caused by the lack of or absence of sealant between the sealant and the brickmould. I mean, it's just – if that were the case, wouldn't you have water damage all the way across the underside of the sill and not concentrations of significant damage at the window mullions and at the jambs. (Depo. p. 744, lines 7-16).

- The board would not know of the defects. (Depo. p. 749, lines 22-23).

Further deposition testimony of Clements on September 3, 2020 includes the following:

- There was water damage in the attic. (Depo. p. 985, lines 1-12).

- The water intrusion became apparent after removing the trim boards. (Depo. p. 1016, lines 14-20).

- There was water intrusion at the deck wall intersection where it gets behind the weather barrier. (Depo. p. 1017, lines 1-5).

- There was improper integration of weather barrier and waterproofing. (Depo. p. 1024, lines 12-21).

- Absence of integration of waterproofing membrane is a problem. (Depo. p. 1029, lines 7-12).

- There was no weatherproofing or water barrier on the beams so gypsum sheathing is not protected. (Depo. p. 1032, lines 21-25).

- Even if you are caulking the joint and maintaining that joint, you should still expect to have some water intrusion occur there. That's why there should be waterproofing over the top of that beam. (Depo. p. 1033, lines 1-13)

- There was damage to metal strapping and wood framing was heavily damaged. (Depo. p. 1035, lines 4-7).

- There's also damage to the wood furring behind the band board. (Depo. p. 1035, lines 4-7)

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- Reverse lap flashing allowed water to get back behind the wood furring. (Depo. p. 1052, line 23-25).

- The OSB is damaged behind the boarding. (Depo. p. 1055, line 6).

- I believe that it was intentional for them (Centex) to install the materials the way that they did. (Depo. p. 1061, lines 20-222).

- They knew or should have known that there was work that they were doing that was deficient. (Depo. p. 1062, lines 2-4).

- There's evidence in the Morningstar Reports[4] where they were notified of deficiencies and that those same or similar deficiencies were – existed and repeated at other locations. (Depo. p. 1062, lines 14-18).

- I just believe that they knew or should have known of those deficiencies as the work was being executed. (Depo. p. 1063, lines 8-10).

- Because as these buildings are being constructed, the deficiencies that are exhibited are open and obvious during the construction process. (Depo. p 1063, lines 14-17).

Clements also provided an affidavit at his September 1 hearing. This affidavit is entirely consistent with his deposition testimony and is not a sham affidavit. His opinions in his deposition and the affidavit are the same: Homeowners could not reasonably have known of hidden damages. Clements' report and photographs to his report (Pages 1-134) clearly show the hidden damage which was discovered after the destructive testing was performed. A sham affidavit only occurs when an affidavit is contra to prior testimony. In this case there is no contradiction and thus the affidavit is admissible. See *Cothran v. Brown*, 357 S.C.210, 582 S.E.2d 629 (2004) in which the Supreme Court set down a test for a sham affidavit.

1. Whether an explanation is offered for the statements that contradict prior statements. (Not applicable in this case).

[4] The Morningstar report was an inspection commissioned by Centex of an independent engineer during construction to correct construction deficiencies. Plaintiff attaches a copy of an exhibit from Clements' deposition which shows the deficiencies Clements observed from the pictures taken by Morningstar employees during construction of deficiencies present. (Exhibit 6).

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2. The importance to the litigation of the fact about which there is a contradiction. (Not an issue in this case as affidavit and deposition testimony of Clements are the same).

3. Whether the nonmovant had access to this fact prior to the previous sworn testimony. (Not an issue in this case).

4. The frequency and degree of variation between statements in the previous sworn statement and statements made in the later affidavit concerning this fact. (Not an issue in this case).

5. Where the previous sworn testimony indicates the witness was confused at the time. (Clements' testimony and affidavit are the same).

6. When, in relation to summary judgment, the second affidavit is submitted. (Not applicable).

III. CENTEX HOMES HELD THE RIGHT TO APPOINT OR REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF DIRECTORS OR ANY OFFICER OR OFFICERS OF THE ASSOCIATION UNTIL DECEMBER 31, 2005 AND THEREFORE CONTROLLED WEDGEWOOD CONDOMINIUM ASSOCIATION UNTIL DECEMBER 31, 2005.

The Developer under the Master Deed shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following dates:

i. December 31, 2005;

ii. Three (3) months after the conveyance by the Developer, in the ordinary course of business to persons other than a successor Developer of one hundred percent (100%) of the maximum number of Units to be contained in all phases of the Project;

iii. or three months (3) months following the date the Developer surrenders its authority to appoint directors of the association by an express amendment to the Master Deed executed and filed in the Office of the Registrar of Deeds for Horry County, South Carolina by the Developer.

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Centex has never deeded all of the real property it owned to Wedgewood COA. It failed to deed the common elements. Further, it has not complied with either (ii) since 100% of the units would include the common elements; or (iii) because it has never filed an amendment to the Master Deed See *Harrington v. Blackstone*, 319 S.C. 1, 459 S.E.2d 309 (1995), in which our Supreme Court stated succinctly "When a controversy regarding the rights of condominium unit owners arises, the court must examine all relevant provisions of the horizontal property regime act, master deed and allied documents. *Carney v. Donnelly*, 261 Ill. App. 3d 1002, 199 Ill. D.C. 219, 633 N.E.2d 1015 (1994). These sources of rights and obligations of the condominium owners must be read together in relation to each other and harmonized if possible.

As an example of what Centex should have done if it wished to surrender all control, Plaintiff's attach hereto copies of the Special Warranty Deeds for Clearwater Bay Homeowners Association and Willow Bend Association,[5] other Centex projects. (Exhibits 4 and 5). Each of those Special Warranty Deeds deeded to the homeowners <u>all business property</u> that Centex owned. In this case, Centex still owns the common area. Specifically, the Special Warranty Deed of Clearwater Bay Homeowners Association at Barefoot states:

> ALL AND SINGULAR that certain piece, parcel or tract of land situate, lying and being in Barefoot Resort North Myrtle Beach, SC identified as Lot 24(D), consisting of 41.22 acres, more or less….

The same language is found in the Special Warranty Deed from Centex to Willow Bend Homeowners Association attached as Exhibit 5. It provides:

> ALL AND SINGULAR that certain piece, parcel or tract of land situate, lying and being in the City North Myrtle Beach, County of Horry, State of South Carolina, containing 15.074 acres, more or less, being shown and described as Tract "L" on that certain map or plat entitled "Bonded Final Plat…"

[5] Clearwater Bay and Willow Bend HOAs were built by Centex and those cases were settled prior to trial.

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Thus, Centex failed to issue a Special Warranty Deed for the Wedgewood Condominium Owners association and legally still owns the common areas and has continued to own it since inception. See *Concerned Dunes W. Residents, Inc. v. Georgia-Pacific Corp.*, 349 S.C. 251, 562 S.E.2d 633, 636-38 (2002) (a developer's duty to transfer the common property to the association has been recognized in South Carolina); see also *Goddard v. Fairways Dev. Gen. P'ship*, 310 S.C. 408, 414-16, 426 S.E.2d 828, 832-33 (Ct. App. 1993). Then later reviewed by the Supreme Court which stated, "developers are held responsible for the condition of the common areas at the time these areas are deeded to the POA. If these areas are not in good repair at the time of conveyance, the developer is liable for the costs of repairs. *Goddard* is consistent with this result." 552 S.E.2d at 638. Thus, because there is no turnover deed, Centex remained and is liable for the condition of the buildings at Wedgewood.

Further, the deposition of Eric Lundblad was taken as the 30(b)(6) designee for Centex and questions were asked to him related to the transition or turnover of the Wedgewood Condominium Association in that deposition. Lundblad was asked the following questions about the transition:

> Q. Do you happen to know when the Wedgewood Homeowners Association was turned over to the unit owners?
>
> A. No.
>
> Q. How would I be able to find that information?
>
> A. I'm not certain.
>
> (Depo. of Loftus, p. 53, lines 19-25).
>
> Q. So, are you telling me that Centex doesn't know when it turned over this project to the unit owners?
>
> A. Twenty years ago, I, I, am not certain. I'm sure that the master deed indicates the process and the timing, but I could not tell you, today, what the date was.

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Q. Okay. Do you know if Centex did everything that was required to turn over the association to the unit owners?

A. I do not.

(Depo. of Loftus, p.54, lines 1-14).

IV. WEDGEWOOD CONDOMINIUM ASSOCIATON BOARD OF DIRECTORS FIRST NOTICE OF DEFECTS.

While Centex argues that the Wedgewood Board of Directors had notice of construction defects in 2005, the deposition of the homeowners president, Chris Loftus, clearly presents a different picture. Loftus was asked the following questions in his deposition regarding the tissue:

Q. So, in essence, after these repairs, the board felt like it needed to investigate what was going on that was causing these problems?

A. Yes.

Q. And given the severity of these repairs, they needed to investigate if it was happening anywhere else in the buildings?

A. That's correct.

Q. And had anybody told you that those same conditions may be present in other buildings, or you just felt that the board needed to figure that out themselves?

A. Well, I think we thought building 9 was an isolated incident to begin with, because I believe that occurred first. Then building 6 occurred, and then we started rethinking. This could be a more widespread problem.

Q. So it was the fact that two different apparent water intrusion events happened in close proximity on different buildings made the board believe that it had a duty to investigate that and figure out if it was occurring elsewhere?

A. That's correct.

Q. And the board need to figure out if somebody else may be legally responsible for those repairs?

A. Yes

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Q. And in doing so, the board had a board meeting and talked with its property manager about potentially hiring a lawyer; is that right?

A. That's correct.

Q. And when about was that?

A. I believe it was in April 2016.

Q. All right. And then ultimately Mr. Stanley' and his firm was retained; is that right?

A. That's correct.

(Depo. of Loftus, p. 55, lines 6-25; p. 56, lines 1-20)

The above evidence from the 30(b)(6) witness of the association clearly shows that the association thought there were isolated incidences until two occurred in a similar timeframe. Thus, Centex's memorandum argues that the Plaintiff's own board president acknowledged that the Plaintiff should have known or discovered through the exercise of reasonable diligence that a cause of action might exist in its favor is not backed up by any testimony or citations to the record. Indeed, President Loftus, the 30(b)(6) deposition witness, stated that Wedgewood was not aware of a cause of action until April 2016 at the earliest. (Depo. p. 55, lines 6-25). Finally, Plaintiff has obtained an affidavit of a board member, Randall Spencer (attached Exhibit 1) who says that the board was not aware of any major construction issues.

IV. PLAINTIFF'S CHART SHOWS A GENUINE ISSUE OF MATERIAL FACT EXISTS.

Plaintiff has prepared its own chart as to the maintenance issues at Wedgewood. It is attached as Exhibit 3. This chart is in response to Defendant's so-called "Statement OF Facts" The chart shows that the 75 paragraphs which Centex has presented primarily deal with maintenance issues at Wedgewood. Those maintenance issues are caulking, insect control, carpet repairs, power washing, rotten posts, painting, termite control, wood railing replacement, mildew,

plumbing repairs and trim boards. None of these maintenance issues equate to knowledge by the board of a water serious intrusion issue at all nine of the buildings at Wedgewood. Accordingly, Plaintiff requests that Defendant's motion for summary judgment be denied.

Respectfully submitted,

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September 16, 2022

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EXHIBIT 1

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-00307
Wedgewood Condominium Association,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**AFFIDAVIT OF RANDALL SPENCER IN OPPOSITION TO DEFENDANT CENTEX'S MOTION FOR SUMMARY JUDGMENT**
	)	
Centex Homes et al.,	)	
	)	
Defendants.	)	
	)	
Centex Homes,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
Right Way Construction, Inc., et al.,	)	
	)	
Third-Party Defendants.	)	

PERSONALLY APPEARED BEFORE ME, Randall Spencer who, after being duly sworn, states as follows:

1. On or about December 8, 2001, I was appointed by Centex Homes ("Centex"), the developer of the Wedgewood project, to serve on the Wedgewood Condominium Association Board of Directors ("Board of Directors") to participate with Centex and CCMC, the management company, in the management of the Wedgewood community.

2. I have served continuously on the Board of Directors in different capacities including President and Vice-President from December 8, 2001 to present.

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3. As required by the Master Deed of the Wedgewood Condominium Association, the Board of Directors is responsible for the maintenance, repair, and replacement of the common elements.

4. During my time on the Board of Directors from 2001 to present, the Board of Directors made routine and ordinary maintenance and repairs to the common elements.

5. In 2016, the Board of Directors was notified by Waccamaw Management, the management company, that we should contact an attorney related to construction issues, however, the Board of Directors was never aware of original construction defects until on or about early to mid-2017 when we were advised of original construction defects as a result of the findings of forensic architect H. Ross Clements of the Fuller Group.

6. Because of spinal cord damage and resulting health issues that began around 2018, I was diagnosed with a proprioception disorder and spasticity. At that time, I was not able to perform many normal activities including my responsibilities as a Board Member. Although I still have physical limitations such as a loss of balance and stiffness of muscle that may affect my movement and speech, I have improved some since 2018.

Randall Spencer

RANDALL SPENCER

SWORN to before me this

15 day of September, 2022

Rachel Bullard

Notary Public

My commission expires: 9-20-28

EXHIBIT 2

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY	**C/A NO. 2018-CP-26-00307**
Wedgewood Condominium Association, Plaintiff, vs. Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, Crescent Architects, LLC and CEMS Engineering, Inc., Defendants.	SUPPLEMENTAL AFFIDAVIT OF H. ROSS CLEMENTS, AIA

PERSONALLY APPEARED BEFORE ME, H. Ross Clements, AIA, who, after being duly sworn, states as follows:

1. My name is H. Ross Clements, and I am an architect employed by Plaintiff regarding latent construction defects at the Wedgewood Condominium Association.

2. This Affidavit supplements my previous Affidavit dated August 23, 2022.

3. I understand that the court has been provided with a copy of my expert report dated March 2, 2018 with all additions and supplements.

4. I direct the Court to the photographs in Section 2 of my report (Pages 1-134) which were taken during destructive testing and demonstrate the latent defects at Wedgewood Condominium Association. I also understand that one of the arguments in this case is whether or not the homeowners could have been put on notice of certain construction defects which I found after performing my investigation.

5. It is my opinion to a reasonable degree of certainty that an ordinary lay person would not be put on notice of these defects without destructive testing.

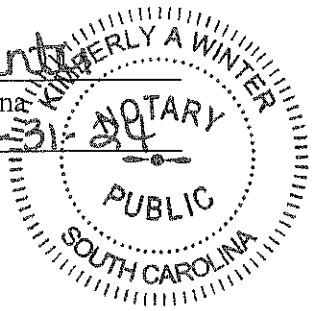
FURTHER AFFIANT SAYETH NOT.

H. Ross Clements, AIA

SWORN AND SUBSCRIBED before me,
this 15th day of September 2022.

Kimberly A. Winter

Notary Public for South Carolina
My Commission Expires: 10-31-24



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EXHIBIT 3

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REVIEW OF CENTEX FACTS

9 Buildings, 111 Condominium Units

	CENTEX EXHIBIT LIST	DATE	CAUSE OF PROBLEM	DISPUTED FACTS/ EVIDENCE/HEARSAY	YES ADMISSIBLE	NO INADMISSIBLE	MAINTENANCE	YES/ NO	CONDOMINIUM UNIT
				2003					
1	Board of Directors minutes- Mold	08/18/03	Unknown	Hearsay - "Tom explained..."		X	Mold issue	YES	
2	Exhibit 1.1 - Beetles	08/18/03	Unknown	Insect report		X	Insect control	YES	
	Board of Directors minutes- Mold	10/24/03	Unknown	Hearsay - "Kidd said..."		X	Maintenance	YES	
3	Board of Directors minutes- Mold, carpet	10/28/03	Unknown	Carpet issues - Maintenance Report		X	Maintenance	YES	
				2004					
				1 WINDOW CAULKED					
4	Board of Directors minutes - Mold	01/10/04	Unknown	Carpet issues		X		YES	
5	Board of Directors minutes - Mold	03/13/04	Unknown	Building maintenance		X	Power wash carpets, pool mold	YES	
6	Full Steam Ahead Letter - Mold	03/25/04	Unknown	Hearsay - Authentication		X		YES	
7	Full Steam Ahead Letter - Check $225	04/06/04	Unknown	Hearsay - Authentication		X	Caulk, putty - Units 912 & 913 only	YES	912, 913
8	Work Order	08/04/04	Unknown	Hearsay - Owner reported		X	Water leak Unit 722	YES	722
8.1	Work Order - Window	08/04/04	Unknown	Hearsay - Mr. Williamson said...		X	Caulk	YES	
				2005					
				4 WINDOWS CAULKED					
9	Window leak	03/20/05	Unknown	Property Manager Responds		X	Caulk	YES	813
10	2nd floor landing	03/21/05	Unknown	Property Manager Work Order		X	Rotten wood -2nd floor	YES	
11	Window caulking	04/19/05	Unknown	Hearsay - James Mcgrath said		X	Caulk	YES	
11.1	Carpet stained	04/19/05	Unknown	Board Minutes		X	Treat carpets with Mildicide	YES	
12	Work order	08/10/05	Unknown	Property Manager hearsay - corner units rotten wood		X	Maintenance	YES	
13	Windows Master Bedroom	09/20/05	Unknown	Property Manager Work Order		X	Caulk	YES	813
14	Board of Directors Minutes	08/12/05	Unknown	Randall Spencer stated...		X	General Building Conditions	YES	
14.1	Board of Directors - Windows	08/12/05	Unknown	Jim Finn stated...		X	Caulk, moved windows	YES	
15	Caulk windows	10/17/05	Unknown	Property Manager Work Order		X	Caulk window	YES	612

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	CENTEX EXHIBIT LIST	DATE	CAUSE OF PROBLEM	DISPUTED FACTS/ EVIDENCE/HEARSAY	YES ADMISSIBLE	NO INADMISSIBLE	MAINTENANCE	YES/ NO	CONDOMINIUM UNIT
16	Window	10/30/05	Unknown	Property Manager Work Order		X	Caulk window	YES	312
17	Window	12/30/05	Unknown	Property Manager Work Order		X	Caulk window	YES	413
	2006 4 WINDOWS CAULKED								
18	Board of Directors Meeting- carpets	01/04/06	Unknown	Pamela Morgan said ...		X	Hall carpets	YES	
18.1	Board of Directors - Window	01/14/06	Unknown	Bill Carey said...		X	Caulk every 3 to 4 years	YES	813
19	Carpet pillars rotten, ceiling cracks	02/21/06	Unknown	Owner Emailed Board		X	Maintenance issues on property	YES	
20	Board of Directors - Carpet replacement	03/24/06	Unknown	Chuck Gornick presented		X	Maintenance	YES	
21	Window	06/20/06	Unknown	Property Manager Report		X	Caulk window	YES	124
22	Window	06/30/06	Unknown	Property Manager Report		X	Caulk window	YES	911
23	Termite Inspection	08/18/06	Unknown	Termite Invoice		X	Termite Control	YES	
23.1	Corners have wood decay	08/18/06	Unknown	Draining by contractor hearsay		X	Maintenance	YES	
25	Landing Building 4	08/02/06	Unknown	Property Manager Report		X	Rotten wood 7.5 hours to repair	YES	
25.1	Landing Building 4	08/02/06	Unknown	Property Manager Report		X	Rotten wood 7.5 hours to repair	YES	
26	Window Work Order	09/05/06	Unknown	Independent Contractor bill		X	Window leak	YES	911
26.1	Leaking Window	09/05/06	Unknown	Contractor Work Order		X	Master Window Leak	YES	913
27	Sheetrock water damage	09/15/06	Unknown	Lampley Construction, owner deceased/Invoice		X	Caulk, sheetrock, trim boards, prime & paint	YES	124, 123
28	Bldg 1, Back wall	09/25/06	Unknown	Lampley Construction, owner deceased/Invoice		X	Back wall Bldg 1	YES	
29	Paint Ceiling, patch	11/10/06	Unknown	Lampley Construction, owner deceased		X	Maintenance Work, paint and patch	YES	
30	Bldg 1, Bad wood, paint & prime	10/06/06	Unknown	Lampley Construction, owner deceased		X	Maintenance Work, paint and patch wood	YES	
31	Bldg 8, Replace wood, caulk & prime	11/16/06	Unknown	Lampley Construction, owner deceased - Invoice and writing inadmissible		X	Maintenance Work - Repairs Bldg 9	YES	
32	Board of Directors Meeting - Repairs Bldg 1, 9 & 8	10/28/06	Unknown	Gornick Statement hearsay - inadmissible		X	Repairs Bldg 1, 819	YES	
	2007 1 WINDOW REPLACED								
33	Bldg 6, Repair corner 1st & 3rd Floors	01/11/07	Unknown	Invoice of Contractor inadmissible		X	Maintenance, repair bad wood, paint and prime	YES	
34	Bldg 8, Replace wood	02/01/07	Unknown	Invoice of Contractor		X	Replace wood, windows	YES	
35	Bldg 1,3,6 & 9, rotted wood front posts	02/09/07	Unknown	Gornick Said - inadmissible		X	Replace Wood	YES	
36	Bldg 9 Carpet, paint, repair sheetrock	02/23/07	Unknown	Invoice of Contractor		X	Carpet, paint and sheetrock	YES	
37	Bldg 9, Back wall, wood, paint, prime	03/15/07	Unknown	Invoice of Contractor		X	Caulk, replace boards	YES	

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	CENTEX EXHIBIT LIST	DATE	CAUSE OF PROBLEM	DISPUTED FACTS/ EVIDENCE/HEARSAY	YES ADMISSIBLE	NO INADMISSIBLE	MAINTENANCE	YES/ NO	CONDOMINIUM UNIT
38	Bldg 9, Carpet, caulk, prime, steps, poles	03/22/07	Unknown	Invoice of Contractor		X	Caulk, carpet, rails, poles	YES	
39	Bldg 6, Rotten wood on 2 posts	05/30/07	Unknown	Email to property manager		X	Post rotten, replace	YES	
40	Bldg 1 & 3 repair work	03 & 04 2007	Unknown	Invoice of Contractor		X	Remove decayed wood	YES	
40.1	Bldg 1 & 3 Prime, paint wood	03 & 04 2007	Unknown	Invoice of Contractor		X	Prime and paint	YES	
41	Bldg 9, rails on 2nd floor	11/28/07	Unknown	Property Manager Report		X	Wood railings	YES	
42	Bldg 2, ceiling by 214 and water leak	11/28/07	Unknown	Property Manager Report		X	Ceiling and railings	YES	No
				2008					
				1 WINDOW CAULKED					
43	Carpet, spot moldy, water standing	01/18/08	Unknown	Owner email, hearsay		X	Water by door	YES	
44	Window master bedroom	02/20/08	Unknown	Owner email hearsay, Chicora email hearsay		X	Sealant	YES	613
44	Sealant issues 613	02/20/08		Property manager email to owner		X	Caulk and seal	YES	613
45	Bldg 6 & 8 Decayed wood	05/08/08	Unknown	Invoice to Ferg & Sons hearsay		X	Paint, prime decayed wood	YES	No
46	Bldg 4 Maintenance issue	08/18/08	Unknown	Email to Property Manager		X	Yes		No
47	Bldg 2, remove carpet, replace section of floor, reinstall carpet	10/31/08	Unknown	Invoice to Ferg & Sons hearsay		X	Tape, prime sheetrock	YES	No
48	Bldg 1, Board of Directors minutes - Flashing	08/22/08	Unknown	Jerome Grant -Bldg 1 holding water -Hearsay		X	Trim/Frame/Flashing	YES	No
				2009					
				2 WINDOWS CAULKED					
49	Board of Directors - Unit 611, water leak	02/06/09	Unknown	Water intrusion unit 611		X	caulked/seal windows	YES	611
50	Unit 611, water leak	01/30/09	Unknown	Invoice of Contractor inadmissible		X	Seal brick, mold	YES	611
51	Board of Directors meeting, Water unit 611 & 613	05/29/09	Unknown	Water intrusion unit 611 and 613, reported by Property Manager report		X	Caulk & seal	YES	611 & 613
52	Plumbing line - Unit 912	06/26/09	Unknown	Plumbing invoice inadmissible - hearsay		X	Snake plumbing line	YES	912
53	Bldg 7, ceilings	08/21/09	Unknown	Ellie Chuba reported - Hearsay		X	Breezeway repair	YES	
54	Board of Directors - Unit 611 mold	11/25/09	Unknown	Invoice to carpet cleaning - hearsay		X	mold assessement	YES	611
55	Board of Directors - Unit 621, rotten wood	12/18/09	Unknown	Invoice to Indigo Homes - Hearsay		X	Carpet, caulk, paint, replaced wood	YES	621
				2010					
				1 WINDOW CAULKED					
57	Unit 621, repair work, window trim	04/02/10	Unknown	Invoice to GH Home Builders - Hearsay		X	Caulk, Flash window	YES	621
57.1	Unit 621, water from dryer vent	04/02/10	Unknown	Invoice from CH Custom Renovations - Hearsay		X	Water stains, caulk, paint, patch	YES	621
57.1	Wall cracks, window, paint	06/11/10	Unknown	Invoice Livingston's Cleaning - Hearsay		X	Caulk, paint wall cracks	YES	613
58	Bldg 2, 4 & 9 Rotten decking	10/08/10	Unknown	Invoice of Contractor		X	Replace floor decking	YES	

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	CENTEX EXHIBIT LIST	DATE	CAUSE OF PROBLEM	DISPUTED FACTS/ EVIDENCE/HEARSAY	YES ADMISSIBLE	NO INADMISSIBLE	MAINTENANCE	YES/ NO	CONDOMINIUM UNIT
59	All 9 bldgs - replace carpets	09/03/10	Unknown	Invoice of Contractor		X	Replace outdoor carpets	YES	
60	Flash window, OSB, Paint	11/05/10	Unknown	Invoice of Contractor		X	Replace window, paint	YES	722
61	Bldg 9, rotten decking	12/17/10	Unknown	Invoice of Contractor		X	Rotten floor	YES	
62	Bldg 1 & 2, rotten end posts	12/26/10	Unknown	Invoice of Contractor		X	Double endposts replaced	YES	
63	Bldg 4 & 9, endpost second floor	12/29/10	Unknown	Invoice of Contractor		X	Endposts replaced	YES	
64	All 9 bldgs - exterior trim	07/12/10	Unknown	Building Department statement - hearsay		X	Replace exterior trim	YES	
	2011								
	0 WINDOWS CAULKED								
65	Board of Directors minutes - Breezeway, ceiling repairs	11/11/11	Unknown	Ceiling maintenance	X		Repair Breezeway ceilings	YES	
66	Unit 912, Plumbing drain	11/11/11	Unknown	Invoice of Contractor		X	Maintenance drain line	YES	912
	2012								
	0 WINDOWS CAULKED								
67	All 9 bldgs - Finish drywall & paint	01/20/12	Unknown	Invoice of Contractor		X	Breezeway wall repair	YES	
68	Unit 912, Plumbing, height of line	11/02/12	Unknown	Invoice of Contractor		X		YES	912
69	Board of Directors meeting, plumbing backup	11/02/12	Unknown	Property manager hearsay		X	Plumbing repair	YES	912
	2013								
	1 WINDOW LEAK								
70	Board of Directors minutes, breezeway repairs	01/25/13	Unknown	Outdoor carpet repairs		X	General maintenance	YES	
71	Bldg 4, drywall, carpet, posts, paint	02/22/13	Unknown	Invoice of Contractor		X	General maintenance	YES	
71.1	Bldg 2 drywall, carpet, paint, stairs, rails	02/22/13	Unknown	Invoice of Contractor		X	General maintenance	YES	
72	Window leak	05/31/13	Unknown	Invoice of Contractor		X	Window leak	YES	613 & 623
73	Bldg 9 Rotten wood second floor	08/30/13	Unknown	Invoice of Contractor		X	Wood, 2nd floor breezeway	YES	
74	Termite repairs	10/11/13	Unknown	Invoice of Contractor		X		YES	912
74.1	Unit 123 repair ceilings/Flooring	10/11/13	Unknown	Invoice of Contractor		X	Flooring, drywall and ceiling	YES	123
	2014								
	0 WINDOWS CAULKED								
75	Drywall, 2nd floor posts	05/29/14	Unknown	Invoice of Contractor		X		YES	

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EXHIBIT 4

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Instrument#: 2015000048529, DEED BK: 3815 PG: 1313 DOCTYPE: 001 04/23/2015 at 02:25:36 PM, 1 OF 5, EXEMPT, HORRY COUNTY, SC REGISTER OF DEEDS

PREPARED BY:
ALLISON A. MURPHY,
COUNSELOR & ATTORNEY AT LAW, PC
10517 Ocean Highway, Unit 4 # 314 | Pawleys Island, South Carolina 29585

****No title search was done by the preparing attorney****

****

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

SPECIAL WARRANTY DEED

****

WHEREAS, on or about February 7, 2007, Centex Homes, a Nevada general partnership (hereinafter "Centex"), filed the Master Deed of The Clearwater Bay Horizontal Property Regime in Deed Book 3220 at Page 327 in the Office of the Register of Deeds for Horry County, South Carolina (hereinafter "Master Deed"), which is incorporated herein by reference; and

WHEREAS, the Master Deed was filed against that certain property shown and described as Lot 24(D) on that certain Plat entitled "Map of Lot 24(D) Barefoot Resort" prepared by DDC Engineers, Inc., dated March 21, 2003 and revised September 26, 2003, which was recorded November 16, 2004 in Plat Book 201 at Page 063 in the Office of the Register of Deeds for Horry County, which is incorporated herein by reference (hereinafter "Subject Property"); and

WHEREAS, upon the filing of the Master Deed, the Subject Property was conveyed to the owners of units in the horizontal property regime, subject to the rights reserved by the Developer (as defined in the Master Deed) to develop the regime, and add additional units to the same, all as more particularly set forth therein; and

WHEREAS, the regime has been developed in its entirety, with no more units to be added or additional construction or development to occur; and

WHEREAS, Centex is desirous of filing this Special Warranty Deed, evidencing its relinquishment of all rights pertaining to the construction and development of the regime, all as more particularly set forth below.

NOW WHEREFORE, this SPECIAL WARRANTY DEED is made this 31 day of March, 2015, to be effective upon the recordation of the same in the Horry County Register of Deeds, and is made between **CENTEX HOMES, a Nevada general partnership,** hereinafter called Grantor, and **THE CLEARWATER BAY CONDOMINIUM ASSOCIATION** whose address is c/o Ponderosa Management, 4876 Barefoot Resort Bridge Road, Ste. C, North Myrtle Beach, SC 29582, hereinafter called Grantee, which expression shall include its successors and assigns, forever, wherever the context so requires or admits; and in this Special Warranty Deed, the singular shall include the plural and the plural the singular and one gender shall include all genders.

KNOW ALL MEN BY THESE PRESENTS that Grantor, for and in consideration of the sum of **Five and 00/100 ($5.00) Dollars** paid to Grantor by Grantee, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, subject to the matters set forth below, unto Grantee, its successors and assigns forever, the following described property, to wit:

See attached Exhibit "A", which is attached hereto and incorporated herein by reference.

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SUBJECT to that certain Master Deed of The Clearwater Bay Horizontal Property Regime recorded February 7, 2007, in Deed Book 3220 at Page 327, in the Office of the Register of Deeds for Horry County, South Carolina, together with all amendments and supplements thereto.

By the acceptance of this Special Warranty Deed, the undersigned GRANTEE agrees to be bound by and agrees to abide by the above referenced restrictive covenants.

ALSO SUBJECT to all other restrictions, reservations, easements and rights of way of record, including those which may be as set out on the within referenced subdivision plat.

TOGETHER WITH all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned, subject to the matters set forth herein, unto Grantee, successors and assigns forever.

AND said Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto Grantee, as hereinabove provided, against itself and its successors and assigns lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, Grantor has caused these premises to be signed and sealed as of the day and year first above written.

WITNESSES:

Tiffany D. Bruce

CENTEX HOMES, a Nevada general partnership

By: Centex Real Estate Corporation,
Its: Managing General Partner

By: Matt Raines
Its: Vice President of Land: Coastal Carolinas Division

****

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF Horry)

****

The foregoing instrument was acknowledged before me this 31 day of March, 2015 by Matt Raines, the Vice President of Land: Coastal Carolinas Division for Centex Real Estate Corporation, the Managing General Partner of Centex Homes, a Nevada general partnership.

Eileen Dowling

Notary Public for the State of South Carolina
My Commission Expires 6/20/18

EILEEN DOWLING NOTARY PUBLIC MY COMMISSION EXPIRES 6/20/18 SOUTH CAROLINA

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at/known as: TMS No. 155-00-01-114.

3. Check one of the following: The deed is
(a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) ____X____ exempt from the deed recording fee because (See Information section of affidavit): transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):
(a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $_____.
(b) _____ The fee is computed on the fair market value of the realty which is
(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check Yes_____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____

6. The deed recording fee is computed as follows:
(a) Place the amount listed in item 4 above here: $0.
(b) Place the amount listed in item 5 above here: $0
(If no amount is listed, place zero here.)
(c) Subtract Line 6(b) from Line 6(a) and place result here: $0.

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $0.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was the Grantor.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Responsible Person Connected with the Transaction:

CENTEX HOMES, a Nevada general partnership
By: Centex Real Estate Corporation,
Its: Managing General Partner

By: _____
Matt Raines
Its: Vice President of Land:
Coastal Carolinas Division

SWORN to before me this
31 day of March, 2015.
Eileen Dowling
Notary Public for South Carolina
My commission expires: 6/20/18

EILEEN DOWLING NOTARY PUBLIC MY COMMISSION EXPIRES 6/20/18 SOUTH CAROLINA

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INFORMATION
Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty.' Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lies or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.
Exempted from the fee are deeds:
(1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars; (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section
12-6-40(A);
(5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
(7) that constitute a contract for the sale of timber to be cut;
(8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation; (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
(12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.
(14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
(15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

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EXHIBIT A

ALL AND SINGULAR that certain piece, parcel, or tract of land situate, lying and being in Barefoot Resort North Myrtle Beach, SC identified as Lot 24(D), consisting of 41.22 acres, more or less, as shown on that certain Plat entitled "Map of Lot 24(D)- Barefoot Resort" prepared by DDC Engineers, Inc., dated March 21, 2003 and revised September 26, 2003 and recorded November 16, 2004 in Plat Book 201 at Page 063 in the Office of the Register of Deeds for Horry County.

The within property is subject to all easements of record and/or upon the ground, and is a portion of the property conveyed to Centex Homes, a Nevada general partnership by Coastal Resort Holdings, LLC, a North Carolina limited liability company by deed dated January 16, 2006 and recorded January 18, 2006 in Deed Book 3037 at Page 209.

TMS# 155-00-01-114

EXHIBIT 5

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Instrument#: 2015000048530, DEED BK: 3815 PG: 1318 DOCTYPE: 001 04/23/2015 at 02:25:37 PM, 1 OF 5, EXEMPT, HORRY COUNTY, SC REGISTER OF DEEDS

PREPARED BY:
ALLISON A. MURPHY,
COUNSELOR & ATTORNEY AT LAW, PC
1057 Ocean Highway, Unit 4 # 314 | Pawleys Island, South Carolina 29585

****No title search was done by the preparing attorney****

****

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

SPECIAL WARRANTY DEED

****

WHEREAS, on or about October 12, 2006, Centex Homes, a Nevada general partnership (hereinafter "Centex"), filed the Master Deed of The Willow Bend Horizontal Property Regime in Deed Book 3172 at Page 308 in the Office of the Register of Deeds for Horry County (hereinafter "Master Deed"), which is incorporated herein by reference; and

WHEREAS, the Master Deed was filed against that certain property shown and described as "Tract 'L'" on that certain plat entitled "Bonded Final Plat, Map of 5 Tracts of Land Containing 55.23 Acres of Land- Barefoot Resort, City of North Myrtle Bach, Horry County, South Carolina," dated January 5, 2005 and recorded in Plat Book 202 at page 181 of the Horry County Register of Deeds, which is incorporated herein by reference (hereinafter "Subject Property"); and

WHEREAS, upon the filing of the Master Deed, the Subject Property was conveyed to the owners of units in the horizontal property regime, subject to the rights reserved by the Developer (as defined in the Master Deed) to develop the regime, and add additional units to the same, all as more particularly set forth therein; and

WHEREAS, the regime has been developed in its entirety, with no more units to be added or additional construction or development to occur; and

WHEREAS, Centex is desirous of filing this Special Warranty Deed, evidencing its relinquishment of all rights pertaining to the construction and development of the regime, all as more particularly set forth below.

NOW WHEREFORE, this SPECIAL WARRANTY DEED is made this 31 day of March, 2015, to be effective upon the recordation of the same in the Horry County Register of Deeds, between **CENTEX HOMES, a Nevada general partnership,** hereinafter called Grantor, and **THE WILLOW BEND CONDOMINIUM ASSOCIATION** whose address is c/o Ponderosa Management, 4876 Barefoot Resort Bridge Road, Ste. C, North Myrtle Beach, SC 29582, hereinafter called Grantee, which expression shall include its successors and assigns, forever, wherever the context so requires or admits; and in this Special Warranty Deed, the singular shall include the plural and the plural the singular and one gender shall include all genders.

KNOW ALL MEN BY THESE PRESENTS that Grantor, for and in consideration of the sum of **Five and 00/100 ($5.00) Dollars** paid to Grantor by Grantee, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, subject to the matters set forth below, unto Grantee, its successors and assigns forever, the following described property, to wit:

See attached Exhibit "A", which is attached hereto and incorporated herein by reference.

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SUBJECT to that certain Master Deed of The Willow Bend Horizontal Property Regime recorded October 12, 2006, in Deed Book 3172 at Page 308, in the Office of the Register of Deeds for Horry County, South Carolina, together with all amendments and supplements thereto.

By the acceptance of this Special Warranty Deed, the undersigned GRANTEE agrees to be bound by and agrees to abide by the above referenced restrictive covenants.

ALSO SUBJECT to all other restrictions, reservations, easements and rights of way of record, including those which may be as set out on the within referenced subdivision plat.

TOGETHER WITH all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned, subject to the matters set forth herein, unto Grantee, successors and assigns forever.

AND said Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto Grantee, as hereinabove provided, against itself and its successors and assigns lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has caused these premises to be signed and sealed as of the day and year first above written.

WITNESSES:

Tiffany D. Bowie

Craig Hall

CENTEX HOMES, a Nevada general partnership

By: Centex Real Estate Corporation,
Its: Managing General Partner

By: Matt Raines
Its: Vice President of Land: Coastal Carolinas Division

****

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

ACKNOWLEDGEMENT

****

The foregoing instrument was acknowledged before me this 31 day of March, 2015 by Matt Raines, the Vice President of Land: Coastal Carolinas Division for Centex Real Estate Corporation, the Managing General Partner of Centex Homes, a Nevada general partnership.

Eileen Dowling

Notary Public for the State of South Carolina
My Commission Expires 6/20/18

EILEEN DOWLING NOTARY PUBLIC MY COMMISSION EXPIRES 6/20/18 SOUTH CAROLINA

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at/known as: TMS No. 155-00-01-117.

3. Check one of the following: The deed is
(a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) ____X____ exempt from the deed recording fee because (See Information section of affidavit): transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):
(a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $_____.
(b) _____ The fee is computed on the fair market value of the realty which is
(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check Yes_____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____

6. The deed recording fee is computed as follows:
(a) Place the amount listed in item 4 above here: $0.
(b) Place the amount listed in item 5 above here: $0
(If no amount is listed, place zero here.)
(c) Subtract Line 6(b) from Line 6(a) and place result here: $0.

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $0.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was the Grantor.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Responsible Person Connected with the Transaction:

CENTEX HOMES, a Nevada general partnership
By: Centex Real Estate Corporation,
Its: Managing General Partner

By: _____
Matt Raines
Its: Vice President of Land:
Coastal Carolinas Division

SWORN to before me this
31 day of March, 2015.
Eileen Dowling
Notary Public for South Carolina
My commission expires: 6/20/18

EILEEN DOWLING NOTARY PUBLIC MY COMMISSION EXPIRES 6/20/18 SOUTH CAROLINA

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INFORMATION
Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty.' Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lies or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.
Exempted from the fee are deeds:
(1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars; (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section
12-6-40(A);
(5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
(7) that constitute a contract for the sale of timber to be cut;
(8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation; (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
(12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.
(14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
(15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

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EXHIBIT A

ALL AND SINGULAR that certain piece, parcel, or tract of land situate, lying and being in the City of North Myrtle Beach, County of Horry, State of South Carolina, containing 15.074 acres, more or less, being shown and described as Tract "L" on that certain map or plat entitled "Bonded Final Plat, Map of 5 Tracts of Land Containing 55.23 Acres of Land – Barefoot Resort, City of North Myrtle Beach, Horry County, South Carolina," prepared by DDC Engineers, Inc., dated January 5, 2005, and recorded January 18, 2005 in Plat Book 202 at Page 181, public records of Horry County, South Carolina, which is by reference made a part of this description.

The within property is subject to all easements of record and/or upon the ground, and is a portion of the property conveyed to Centex Homes, a Nevada general partnership by Centex Land Investments, LLC, a Delaware limited liability company by deed dated March 23, 2004 and recorded March 25, 2004 in Deed Book 2713 at Page 440.

TMS# 155-00-01-117

EXHIBIT 6

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Wedgewood Condominiums
Fuller No. 16316
September 10, 2019

Preliminary Summary of Morningstar Reports

DEFECTS REPORTED BY MORNINGSTAR AND OBSERVED BY FULLER			
Issue	**Building(s)**	**Report(s)**	**Photo(s)**
Raw edge of unprimed wood trim in contact with slabs or near soil. Prime and flash behind wood product material at rowlocks and slabs to reduce wicking action	WW-02/WW-09	Report 4 (Pages 5, 12, 15)	7, 15, 17
	WW-04	Report 7 (Page 20)	115
Overall integrity of the house wrap sealing at patios and porch light receptacles is very critical	General Comment	Report 4 (Page 6)	23, 24, 74
Lateral truss bracing missing	WW-05	Report 4 (Page 14)	58
	WE-06/ WE-08/ WW-04	Report 6 (Pages 12, 13)	57, 70, 74, 88
	WE-08	Report 7 (Page 11)	
Tyvek cut ragged at porch light receptable/Tyvek system breeched	WW-02/WW-07	Report 4 (Page 15)	20, 63
Deck waterproofing membrane damaged/cut by screws, ladders, etc.	WE-05	Report 5 (Pages 6, 11)	None
Deck entrance trashy. Nails/screws on membrane	WW-04	Report 7 (Page 18)	None
Deck waterproofing detail in question	WE-06	Report 7 (Page 18)	None
Missing hurricane clips/column straps	WW-05	Report 6 (Page 11)	32, 33
	WW-05	Report 7 (Pages 5, 21)	123-126, 135
Incorrect lintels at arched window head	WW-07	Report 7 (Pages 6, 21)	142, 143

DEFECTS REPORTED BY MORNINGSTAR AND NOT OBSERVED/INVESTIGATED BY FULLER			
Issue	**Building(s)**	**Report(s)**	**Photos**
Bubbles/puckers and excessive spacing in Homosote flooring underlayment	WE-02/WE-09	Report 2 (Pages 5, 9, and 10)	11, 35, 36,
	WE-05/WE-06/ WE-09	Report 3 (Pages 5, 11)	21
	WW-02/WW-07/ WW-09	Report 4 (Pages 13, 15)	64
Poor examples of providing insulation space to prevent freeze damage to kitchen plumbing in exterior walls	WE-02/WE-09	Report 2 (Pages 5, 9, and 10)	None
	WE-09	Report 3 (Page 11)	40
Sheetrock cutouts in smoke barrier/replaced with OSB/cracks and holes in smoke barrier	WE-02/WE-09	Report 2 (Pages 9 and 10)	7, 15, 41, 43
	WE-02/WE-07/ WE-09	Report 3, (Pages 10, 11)	4, 5, 35, 36, 39, 42, 44, 46
	WW-05	Report 4 (Pages 13, 14)	38-42, 47, 48, 56
	WW-07/WW-05	Report 6 (Page 10)	30, 31
	WW-07	Report 7 (Page 21)	140
Flow resistance of 135 degrees added to drain or tub wastelines	WW-01/WW-03/ WW-04/WW-06/ WW-08	Report 4 (Pages 5, 13)	31
Unstruck head joints in mortar	WW-02	Report 4 (Pages 5, 12)	11
Slip-joint lintel and backer rod detail referenced on Drawings A-203 appears not followed	WW-02/WW-09	Report 4 (Pages 5, 12, 15)	None

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DEFECTS REPORTED BY MORNINGSTAR AND NOT OBSERVED/INVESTIGATED BY FULLER (cont'd)			
Brick veneer expansion joints clogged with mortar/sheetrock spacer	WW-02	Report 4 (Page 5)	12
	WW-02/WE-05/ WE-07/WE-09	Report 5 (Pages 5, 9)	10, 11
	WE-08	Report 8 Report 9 (Pages 6, 20) Report 10 (Page 15)	40 62, 63
Potential for insulation cold spots along floor lines and T-framing at exterior walls	WW-05/WW-07	Report 4 (Pages 6, 13, 14)	43, 46, 52
	WW-04/WE-06	Report 5 (Pages 10, 11)	49, 50
	WW-07	Report 6 (Page 10)	None
Bottom chords of trusses nailed to interior partition walls, concerns of nail pops	WW-05	Report 4 (Page 6)	None
	WW-07/ WW-05/ WE-06	Report 6 (Pages 10, 11)	18, 19, 73
Use of common fasteners instead of galvanized at patio/balcony ceilings and soffits	WW-09	Report 4 (Pages 6, 7, 15)	73
Plumbing gravity lines not pitched in correct direction	WW-01	Report 4 (Page 12)	3
Truss bearing of floor truss less than required by plans	WW-05/WW-07	Report 4 (Pages 13-15)	36
Ridge vent blocked/inadequate attic ventilation at end units (1:300)	WW-05/ WW-07/ WW-09	Report 4 (Pages 14, 15)	57
	WW-02	Report 5 (Pages 6, 10)	None
	General WW-04	Report 6 (Pages 6, 11)	58, 59
PVC stub up to floor drain is 1 ½-inc, SBC requires 2-inch	WW-08	Report 4 (Page 15)	76
	WW-07/WE-08	Report 5 (Pages 5, 9, 12)	6, 100
	WW-07	Report 6 (Pages 6, 10)	4
Excessive cutting of top plate	WW-05/WW-07	Report 4 (Page 13)	49, 50, 55, 62
	WW-07	Report 6	29
Standing water on porch decks	WE-05/ WW-02/ WE-09	Report 5 (Pages 6, 10, 12)	37, 95, 97
Gap between lintel and window frame not caulked	WW-02	Report 5 (Page 9)	20
No insulation around window perimeter	WW-07	Report 7 (Pages 5, 22, 23)	147
Horizontal Tyvek joints not taped	WW-07	Report 7 (Pages 21, 22, 23)	None
Rowlock flat	WE-06	Report 7	101
Unsupported vertical water lines	WW-07	Report 7 (Page 21)	144
Bulged shingle siding on stair towers (will trap water b/t siding and OSB sheathing per Report 10)	WW-04/ WW-05/ WW-07	Report 9 (Pages 6, 14, 17, 18)	27, 46, 53
	WW-04/WW-05	Report 10 (Pages 14, 22)	114
Deck flashing stopped short at entrance deck	WW-07	Report 9 (Page 18)	52

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DEFECTS IN PHOTOGRAPHSS NOT REPORTED BY MORNINGSTAR AND OBSERVED BY FULLER			
Issue	**Building(s)**	**Report(s)**	**Photo(s)**
SAF or Tyvek over sill nailing fin	WE-02	Report 3	1,3
	WW-05/WW-07	Report 4	34, 65
	WE-05	Report 5	56, 58
	WW-04/WE-06/WE-08	Report 6	37, 61, 75, 76
	WW-05/WW-07	Report 7	122, 123, 138, 139
Lack of blocking between floor trusses	WW-05	Report 4	36, 38, 39, 42
	WE-06	Report 5	74
	WW-07/WW-04	Report 6	5, 44
Brick through-wall flashing reversed with WRB	WW-09	Report 4	68
Improper bolt spacing at shear walls	WW-04	Report 6	39
Improper through-wall flashing at window heads in brick	WW-07	Report 7	142, 143

DEFECTS IN PHOTOGRAPHS NOT REPORTED BY MORNINGSTAR AND NOT OBSERVED BY FULLER			
Issue	**Building(s)**	**Report(s)**	**Photo(s)**
	n/a		

DRAFT

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ELECTRONICALLY FILED - 2023 Jun 05 4:42 PM - HORRY - COMMON PLEAS - CASE#2018CP260307

STATE OF SOUTH CAROLINA COUNTY OF HORRY Wedgewood Condominium Association, Plaintiff, vs. Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, et al., Defendants.	IN THE COURT OF COMMON PLEAS Case No.: 2018-CP-26-00307 **DEFENDANTS' MOTION FOR JNOV OR, IN THE ALTERNATIVE, A NEW TRIAL**

Defendants Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, (collectively referred to as "Centex")[1], respectfully move the Court pursuant to the South Carolina Rules of Civil Procedure, to include Rules 50 and 59, for an Order granting Centex judgment notwithstanding the verdict ("JNOV"), or, in the alternative, a new trial.

This matter was tried before a jury in Horry County from May 22–26, 2023. At trial, the jury awarded Plaintiff $6,750,000.00 in actual damages on Plaintiff's gross negligence cause of action. The Court granted the parties 10 days leave to file any post-trial motions. Centex moves for relief on the grounds set forth below.

Centex is entitled to JNOV because the only reasonable inferences that can be

[1] The verdict form reads that the verdict relates to "The Centex entities." Centex Homes interprets that as constituting a judgment only against Centex Homes, a Nevada General Partnership, as there was no evidence introduced regarding the liability or involvement of the other defendants named on the verdict form. However, in an excess of caution, Centex files this motion on behalf of all of the defendants named above, to include Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC.

drawn from the evidence, viewed in the light most favorable to Plaintiff, are that:

(1) Plaintiff's claims are barred by the statute of limitations.

(2) The evidence at trial did not adequately support a verdict in Plaintiff's favor on Plaintiff's claim for gross negligence.

(3) Plaintiff's claims are barred by the statute of repose.

(4) Plaintiff's claims against Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, are barred as Plaintiff introduced no evidence regarding those entities whatsoever, including their involvement with the project as a contractor, developer, seller or otherwise. (See also footnote 1.)

In addition, Centex is entitled to a new trial based on the grounds listed below, each of which prejudiced Centex and impacted the jury's verdict.

(1) The Court erred in allowing testimony and evidence of at least eight other Centex projects in Barefoot Resort, by allowing Plaintiff to cross-examine Centex's experts about those projects, which was inadmissible and highly prejudicial to Centex.

a. This error is magnified and corroborated by the trial judge's acknowledgment on the record that such evidence was inadmissible and prejudicial to Centex.

b. Allowing Plaintiff's counsel to list those other projects inevitably led the jury to speculate and believe that the claimed deficiencies and damages in Wedgewood also existed in those other projects.

(2) The Court erred in allowing Plaintiff's expert Ross Clements to testify regarding alleged structural deficiencies as such testimony was speculative and without a proper foundation, and as Clements lacked qualifications as a structural engineer and failed to conduct an adequate investigation.

(3) The Court erred in permitting Plaintiff's expert Ross Clements to testify that Centex violated the building code by installing a vapor barrier on the buildings. Clements should not have been allowed to opine that the applicable building code prohibited a vapor barrier at Wedgewood when the code simply provided that a vapor barrier was not required in certain sections of the country, to include North Myrtle Beach. In addition, the local building officials, who Clements admitted were the interpreter of the building code and its requirements on this project, required Centex to install the vapor barrier, thus rendering Clements' opinions, that Centex violated the

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building code in installing a vapor barrier, irrelevant, inadmissible and prejudicial.

(4) The Court erred in allowing Plaintiff's counsel to argue and introduce evidence related to the alleged presence and/or use of unlicensed subcontractors on the project.

a. This issue was compounded by the Court's allowance of Plaintiff's counsel to simply hand a stack of purported licensing materials to Pulte's witness, Jeremy Martin, without establishing a foundation as to what work the subcontractors performed, whether any work such subcontractors may have performed was at issue in the case, what subcontractors actually worked on the project, what subcontractors were direct subcontractors of Centex, and what subcontractors did and did not have licenses.

b. This error was further compounded by, as discussed by and with the court on record, that there was no legal requirement in South Carolina for Centex to use only licensed subcontractors, or that Centex's subcontractors had to use licensed sub-subcontractors.

c. This was even further compounded by Plaintiff's failure to provide a foundation for the licensing and testimony by introducing evidence that Centex had improperly supervised its subcontractors.

(5) The Court erred in refusing Centex's request to charge the jury on S.C. Code Ann. § 40–11–270, the subcontractor licensing statute.

(6) The Court erred in allowing Plaintiff's counsel to state and argue that all of the claimed defects raised by its expert Ross Clements were code violations when such had not been established by the evidence.

(7) The court erred in allowing Ross Clements to testify that all of the claimed deficiencies he identified were code defects when he did not establish a proper foundation and basis for those statements.

(8) The Court erred in allowing Plaintiff's counsel to argue in closing argument that all of the alleged code violations were safety violations, which was designed to and did incite the jury render a verdict based on passion, caprice, sympathy and prejudice.

(9) The Court erred in charging the jury regarding the statute of repose.

(10) The Court erred in charging the jury that "Developers are responsible for

the condition of the common areas at the time these areas are deeded over to the homeowner association." This statement is from the case of *Dunes West Residents v. Ga. Pacific Corp*, 562 S.E.2d 633 (2002), which relates to a claim for breach of fiduciary duty, but Plaintiff did not submit a claim for breach of fiduciary duty to the jury, and this statement of duty is more expansive than and contradictory to the applicable duty for a claim for gross negligence, which was the only claim submitted to the jury.

(11) The Court should apply the thirteenth juror doctrine and grant Centex a new trial absolute because the verdict is contrary to the fair preponderance of the evidence.

Alternatively, the Court should grant Centex a new trial *nisi remittitur* and thereby substantially lower the verdict to comport with the evidence.

Centex incorporates all pleadings, filings, evidence, exhibits and arguments made during the trial and in any and all pre-trial motions and memoranda. Centex requests a hearing and will submit a memorandum in support of this motion to include the above-referenced materials and portions of the trial transcript and trial exhibits once available.

Respectfully submitted,

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STATE OF SOUTH CAROLINA COUNTY OF HORRY Wedgewood Condominium Association, Plaintiff, vs. Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, et al., Defendants.	IN THE COURT OF COMMON PLEAS Case No.: 2018-CP-26-00307 **DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR JNOV OR, IN THE ALTERNATIVE, A NEW TRIAL**

Defendants Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, (for ease of reference only, these entities are collectively referred to herein as "Centex"), submit this memorandum in support of their motion dated June 5, 2023, for judgment notwithstanding the verdict ("JNOV"), or, in the alternative, a new trial.

JNOV

Centex is entitled to JNOV because the only reasonable inferences that can be drawn from the evidence, viewed in the light most favorable to Plaintiff, are that:

1. **Plaintiff's claims are barred by the statute of limitations.**

A three-year statute of limitations applies to Plaintiff's claims. *See* S.C. Code Ann. § 15-3-530(1) and (5) (2005). Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. *Allwin v. Russ Cooper Assocs., Inc.*, 426 S.C. 1, 825 S.E.2d 707 (Ct. App. 2019). Therefore, the

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statutory period of limitations begins to run when a person *could or should have known, through the exercise of reasonable diligence, that a cause of action might exist* in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto. *Id.* The South Carolina Supreme Court has interpreted the "exercise of reasonable diligence" to mean that the injured party must act with some promptness when on notice of a potential claim. *Id.*

"When only one reasonable inference can be drawn from the evidence, the determination of when a party knew or should have known that he or she had a claim becomes a matter of law to be decided by the trial court." *Gibson v. Bank of Am., N.A.*, 383 S.C. 399, 406–07, 680 S.E.2d 778, 782 (Ct. App. 2009) (emphasis added); *see also Dean v. Ruscon Corp.*, 321 S.C. 360, 468 S.E.2d 645, 647 (1996) (affirming trial court's directed verdict for the defendant because "the only reasonable conclusion supported by the evidence" is that the lawsuit was filed beyond the statute of limitations); *Allwin v. Russ Cooper Assocs., Inc.*, 426 S.C. 1, 11, 825 S.E.2d 707, 712 (Ct. App. 2019) (affirming order granting summary judgment against plaintiff-homeowner in lawsuit alleging construction defects against homebuilder); *Barr v. City of Rock Hill*, 330 S.C. 640, 645–46, 500 S.E.2d 157, 160 (Ct. App. 1998) (affirming trial court's order granting summary judgment to defendant in construction defect claim against builder/seller of home); *Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp.*, 332 S.C. 197, 208, 503 S.E.2d 761, 767 (Ct. App. 1998) (affirming summary judgment on statute of limitations on claim against the project owner and engineer based on the alleged inadequacies of the project plans prepared by the engineer).

A. Plaintiff was Directly Told by Its Property Manager in 2006 that it Might Have a Claim Against Centex, But Plaintiff Failed to Act on the Recommendation to Hire an Engineer to Pursue the Claim.

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Plaintiff's expert Ross Clements testified that the double and triple windows at the Wedgewood project were improperly mulled and says this caused water intrusion and resulting wood rot and related damages behind the exterior walls. However, Plaintiff was told this very same thing in 2006.

Plaintiff's Board of Directors was told by its property manager on October 28, 2006 that it might have a claim against Centex. Below is a screenshot from the minutes of the meeting of Plaintiff's board of directors on October 28, 2006:

> **B. Update to Repairs on Buildings 1, 9 and 8**
> Chuck Gornick stated that the repairs to Building 1 have been completed, Building 9 is finishing up and Building 8 will be next. Mr. Gornick stated that it appears that in windows that are double and triple hung, there is a gap at the top of the strip between the windows. It is believed that this is where the leaking is occurring. Mr. Gornick recommended having an engineering expert look at these windows to try and determine if this is a Centex problem. The Board recommended notifying Centex that an expert would be looking at the windows. Chuck Gornick stated that he would keep the Board posted on all developments.

A copy of this document that was entered a trial exhibit is attached hereto as Exhibit 1.

Randall Spencer testified at trial that he was the President of the Board of Directors at the time of this meeting on October 28, 2006 and was in attendance at the meeting, and he further testified that these meeting minutes accurately reflected what was discussed during the meeting. That is; Spencer testified that on October 28, 2006, the property manager for Wedgewood informed the Wedgewood Board of Directors that:

- the double and triple windows at Wedgewood have a gap at the top of the strip between the windows;
- it is believed that this issue is the cause of window leaks that necessitated ongoing building repairs at the Wedgewood;
- the property manager recommends that the Wedgewood Board of Directors hire an engineering expert to look at the windows to determine if the issue causing the window leaks are "a Centex problem."

This is direct and unambiguous evidence that Plaintiff was told by its property manager in October 2006 that it might have a claim against Centex. The court can and

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should find that this recommendation to Plaintiff to hire an "engineering expert" to determine if the window leaks are "a Centex problem" can only be interpreted as a recommendation to the Board to hire an engineer for purposes of pursuing a potential legal claim against Centex.

This evidence shows that, as a matter of law, Plaintiff knew or should have known in 2006 that it might have a claim against Centex. Randall Spencer testified that the board of directors relied heavily on the experience, expertise, and advice of its property manager, and Spencer could offer no mitigation or explanatory testimony at trial for why it did not act on this advice from the property manager in October 2006. Additionally, under the Master Deed Plaintiff and its Board of Directors were duty-bound to take action in response to this information it received from the property manager on October 28, 2006. A copy of the Master Deed, which was entered as one of Plaintiff's trial exhibits, is submitted herewith as Exhibit 2. Section 8.1 of the Master Deed ("Responsibility of Association") states that "the Association will maintain the Common Area in first class condition in accordance with proper maintenance procedures applicable thereto and will enforce all warranties with respect to the Common Area." (emphasis added). Plaintiff asserted breach of warranty claims in this lawsuit against Centex relating to claimed window leak issues, but Section 8.1 of the Master Deed imposed an obligation on the Association to pursue those claims upon receiving notice of them on October 28, 2006. Additionally, Plaintiff's obligation to "maintain the Common Area in first class condition in accordance with proper maintenance procedures" required the Plaintiff to take steps to investigate and remedy the window leak issue as recommended by its property manager.

In *Barr v. City of Rock Hill*, the court of appeals affirmed the trial court's order granting summary judgment based on the statute of limitations. 330 S.C. 640, 645–46,

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500 S.E.2d 157, 160 (Ct. App. 1998). In *Barr*, a homeowner had sued the home seller in 1994 after the plaintiff homeowner obtained a forensic inspection report in 1992 revealing numerous problems with the home. *Id*. at 642–43, 500 S.E.2d at 158–59. The Court of Appeals found that the plaintiff was put on notice of its potential claim sometime between 1987 and 1990, as annual termite inspections during those years revealed excessive moisture under the plaintiff's home and recommended repairs to address the condition. *Id*. The Court of Appeals rejected the plaintiff's argument that the statute of limitations did not begin to run until the homeowners received forensic report identifying construction defects in August 1992, stating, "*If the [plaintiffs] had exercised reasonable diligence* and investigated the problems noted in the termite inspection reports, they could have realized the magnitude of the problem and brought suit before the statute of limitations ran." *Id*. (emphasis added).

The takeaway from *Barr v. City of Rock Hill* is the homeowners *in Barr* knew in 1987 through 1990 that their home had moisture issues but did not know until 1992 that construction defects might be the cause of the moisture issues. Nevertheless, the court of appeals held that if the homeowners had timely investigated by exercising reasonable diligence the cause of the moisture issues after learning of moisture issues in 1987 and 1990, they could have learned of the defects within the three year statute of limitations and could have then brought a timely claim.

In *Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp*., 332 S.C. 197, 208, 503 S.E.2d 761, 767 (Ct. App. 1998), the court of appeals affirmed summary judgment entered against the plaintiff contracting firm that had asserted a claim against the project owner and engineer based on the alleged inadequacies of the project plans

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prepared by the engineer. The court of appeals found that the plaintiff, more than three years prior to filing its complaint, "had **sufficient information to put it on inquiry notice, which, if developed, would have revealed the defects in [the engineer's] work."** The *Republic* Court rejected the plaintiff's argument that the jury should decide the question of whether plaintiff should have consulted an expert (and thereby informing plaintiff of the alleged design defects) at an earlier date. *Id*. The same principles apply here, but with even more direct evidence that Plaintiff should have been prompted to act.

Randall Spencer testified that, in response to receiving this crucial information on October 28, 2006, as far as he was aware Plaintiff did not hire an engineer to inspect the windows, did not contact Centex, and did not otherwise take steps to investigate or remedy the issue with the with leaking windows. In fact, Spencer testified that "the whole thing could have been dropped." However, South Carolina law does not permit Plaintiff to escape the statute of limitations in this scenario simply because Plaintiff did not properly act on the advice it received form its property manager on October 28, 2006 that Plaintiff should hire an engineer to investigate if Plaintiff has a claim against Centex. See *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 526, 787 S.E.2d 485, 489 (2016) ("The "standard as to when the limitations period begins to run is *objective* rather than subjective.") (emphasis in original).

Spencer testified that the thing that led to Plaintiff finally filing the lawsuit was its property manager recommending, in 2016, that Plaintiff hire a lawyer after Plaintiff had made some building repairs for water intrusion in 2016 that the property manager believed may entitle Plaintiff to pursue a claim against Centex. The only meaningful difference between the events in 2016 that led the lawsuit being filed and the events in 2006 that did not is that Plaintiff followed its property manager's advice in 2016 but failed to do so

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in 2006. Like the plaintiff property owners in *Barr v. City of Rock Hill* and *Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp*, Plaintiff did not file suit until after it received a detailed report from the forensic building inspector in 2016, but also as in the *Barr* case and *Republic* case, Plaintiff cannot avoid the statute of limitations by arguing that it should be a question of fact for the jury to decide as to whether Plaintiff should have obtained a lawyer or forensic building earlier. *Id*.; *see also Maher v. Tietex Corp.,* 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998) ("The statute [of limitations] is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to "act with some promptness."); *Dean v. Ruscon Corp.,* 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996) ("[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial."); *Allwin v. Russ Cooper Assocs., Inc.,* 426 S.C. 1, 17, 825 S.E.2d 707, 715 (Ct. App. 2019) ("[The plaintiff's] failure to comprehend the magnitude of the water intrusion and other defective conditions is immaterial.").

Additional facts and circumstances leading up to the October 28, 2006 board meeting further show that Plaintiff knew or should have known after October 28, 2006 that it might have a claim against Centex. During a board meeting on April 19, 2005, there was a discussion that "the caulking around the windows is going bad, causing leaks." See Exhibit 3 hereto, also a trial exhibit. During a board meeting on January 14, 2006, a Wedgewood unit owner (who became a board member at that meeting) reported that his master bedroom window was still leaking after being caulked. See Exhibit 4 hereto, also a trial exhibit. The October 28, 2006 meeting minutes show that the window leaks being discussed had necessitated building repairs to Building 1, and the property manager informed the board during the meeting that these repair costs caused a negative

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variance to Wedgewood's September 2006 financial statements (thereby putting the board on notice that these repairs were not anticipated and in the budget). See exhibit 1. The same meeting minutes also show building repairs were ongoing at the time at Building 8 and Building 9 due to the window leaks. Id. Additionally, Plaintiff's own year-end financial statements show that costs for "repairs and maintenance" in 2007 that it caused an *operating loss for 2007 in the amount of $53,995*. See Exhibit 5, also a trial exhibit. Therefore, in addition to being directly told by its property manager on October 28, 2006 that it might have a claim against Centex, these additional facts further put Plaintiff on notice that it might have a claim against Centex.

B. Repairs to Exterior Trim and Exterior Walkways in 2010 to 2014 Further Show Plaintiff was on Notice that It Might have Claim.

Plaintiff's expert Ross Clements testified that exterior trim boards at Wedgewood had prematurely deteriorated, and Plaintiff's cost estimate (which was the sole basis of Plaintiff's damages submitted to the jury) was based in part on the significant cost to remove and replace all the exterior trim at the property. However, in 2010 the Association spent $87,845 to remove and replace exterior trim at the Wedgewood (see Exhibit 10 hereto, also made an trial exhibit), and Plaintiff's own reserve replacement schedules show this was an unanticipated expense and incurred well in advance of the end of the expected useful life of the exterior trim (see, e.g., Exhibit 5 hereto, also made an trial exhibit).

Plaintiff's expert Clements also testified that construction deficiencies relating to the waterproofing membrane at the front exterior walkways of the buildings caused water intrusion and resulting building damage. However, Plaintiff was on notice of water intrusion and resulting building damages at the front walkways well more than three years

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before filing suit. In December 2010, Plaintiff spent $2,308 to make water intrusion repairs at the front exterior walkways. Exhibit 6 hereto, also a trial exhibit. In January 2012, Plaintiff spent $12,595.00 to remove and replaced damaged drywall ceilings and exterior trim within the front exterior walkways of the buildings at all nine buildings, and Plaintiff's own Replacement Reserve Schedule shows this was an unanticipated expense as well. Exhibit 7 hereto, also a trial exhibit. In February 2013, Plaintiff spent $8,195 to remove and replace rotted flooring and rail posts on the front exterior walkways. Exhibit 8 hereto, also a trial exhibit. In May 2014, Plaintiff spent $4,220 to remove and replace rotted flooring and rail posts on the front exterior walkways. Exhibit 9 hereto, also a trial exhibit.

It simply cannot be reasonably debated that Plaintiff knew or should have known, through the exercise of reasonable diligence, that it might have a claim against Centex.

In *Allwin v. Russ Cooper Assocs., Inc*., the court of appeals affirmed the trial court's order granting summary judgment based on the statute of limitations. 426 S.C. 1, 20, 825 S.E.2d 707, 717 (Ct. App. 2019). The plaintiff homeowner in *Allwin v. Russ Cooper* had repaired "numerous and repeated leaks" at her home from 1999 – 2011 but did not file suit until 2013. *Id*. The court of appeals found that plaintiff "was on notice of her potential claims against [the homebuilder] as early as February 1999," when the leaks began. Id. at 15, 825 S.E.2d at 714. The *Allwin* Court rejected the plaintiff's argument that applicability of statute of limitations was a question of disputed fact and that the jury may find that she acted reasonably in response to these leaks by diligently repairing them. *Id*. at 20, 825 S.E.2d at 717 ("Although the record reflects a lengthy history of maintenance and repairs, such does not negate the fact that Allwin was on notice of her potential claims as early as February 1999 but failed to bring suit" until 2013). Similar to *Allwin*, Plaintiff cannot escape the statute of limitations by arguing that it believed it was properly

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performing maintenance and repairs when Plaintiff had been put on legal notice of its potential claims.

Moreover, South Carolina courts reach the same result when the plaintiff in a construction defect lawsuit is an association. In *Rivergate Homeowners' Ass'n v. WW & LB Dev. Co., LLC*, No. 2015-000248, 2017 WL 4817149 (S.C. Ct. App. July 19, 2017) (unpublished) (submitted as Exhibit 11 hereto, p. 3), the Court of Appeals affirmed the Circuit Court Judge Clifton Newman's entry of summary judgment against a homeowners association in favor of a general contractor based on the statute of limitations. In seeking to avoid summary judgment, the plaintiff association argued the statute of limitations did not begin to run until it received the report from its liability expert in 2010. Ex. 11, at 9. The circuit court rejected that argument, finding that although the association may not have known the cause-in-fact of the problems, the association was nonetheless aware of the issues it was having to put it on sufficient notice to conclude that its rights had been potentially infringed. Ex. 11, at 10. The circuit court explained that "[b]ecause [the plaintiff association] was on notice of these facts in 2005, it was under a duty to act promptly in protecting its interests." Ex. 11, at 10. In opposing summary judgment, the plaintiff submitted an affidavit from its expert stating, "While the HOA may have been aware of undesirable symptoms at the HOA . . . it is my opinion that the HOA would not have been aware that these symptoms were associated with or caused by civil construction and design defects until the report that I issued. . . ." Ex. 11, at 13. The circuit court found that the affidavit submitted by Plaintiff's expert did not add any facts to the Court's analysis and simply offered a legal conclusion from the same set of uncontroverted facts. Ex. A, at 14. The Court of Appeals affirmed the order granting summary judgment against the Rivergate Homeowners' Association. Ex. 11, at 3.

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In *Shipwatch Condo. Ass'n, Inc. v. Carolina Concrete Sys., Inc.*, No. 2015-001644, 2018 WL 490904 (S.C. Ct. App. Jan. 17, 2018) (unpublished) (submitted as Exhibit 12 hereto, p. 2), the Court of Appeals affirmed Circuit Court Judge Markley Dennis's order granting summary judgment against the plaintiff association in favor of a general contractor based on the statute of limitations. The condominium association had filed suit against the general contractor alleging defective and deficient repair work at four oceanfront buildings. Ex. 12, p. 5. The circuit court found that the condominium association knew about various water intrusion issues at least 5-10 years before filing suit. Ex. 12, at 8-15. Therefore, the court concluded, based on the rulings of *Dean v. Ruscon* and *Barr v. City of Rock Hill*., that plaintiff association's claims were time barred as a matter of law. Ex. 12, at 15-17.

In *3 Chisolm St. Homeowners Ass'n, Inc. v. Chisolm St. Partners, LLC*, No. 2014-UP-128, 2014 WL 2581458 (S.C. Ct. App. Mar. 26, 2014) (unpublished) (submitted as Exhibit 13 hereto, p. 1), the Court of Appeals affirmed Circuit Court Judge Roger Young's entry of summary judgment against the plaintiff association based on a statute of limitations defense. In *3 Chisolm*, the association brought suit against a window manufacturer, general contractor, and architect, asserting claims related to defects in the original construction. *Id*. at *1. The property in *3 Chisolm* consisted of three separate buildings; a forensic architect evaluated one building, identified defects, and recommended further investigation. *Id*. at *2-3. However, the association did not file suit until six years later. *Id*. at *1. The circuit court held that the plaintiff association's claims were barred by the statute of limitations on all three buildings, even the two which were not specifically evaluated by the architect. *Id*. at *1-2. The circuit court reasoned that the

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architect's report put the association on inquiry notice of its claims for all three buildings based on the evidence submitted. *Id*. at *2.

C. The Law of the Case Is that Plaintiff Knew or Should Have Known by No Later Than November 2012 That It Might Have a Claim against Centex.

Plaintiff's claims in this case previously included complaints about the placement of the built-up ramps within the access aisles in the parking lot and alleged deficient installation of plumbing lines. On November 18, 2022, this Court granted partial summary judgment to Centex on these issues, finding that the only reasonable inference from the evidence was that, at a time more than three years before this lawsuit was filed, that Plaintiff might have a claim against Centex for these alleged deficiencies. See Exhibit 14 hereto. Specifically, the Court noted that during a board meeting on November 2, 2012 the board of directors for Plaintiff noted that the cause of the plumbing issues the Association was having at the time "may be due to poor installation of the builder's part." Additionally, the Court found that the location of the built-up ramps within the access aisles within the parking lot was open and obvious to Plaintiff from the time of construction and is not a latent issue. This order was not appealed and is the law of the case.

These judicial findings, alone and/or acting in concert with the other evidence discussed above, further show that Plaintiff's claims against Centex are barred by the statute of limitations as a matter of law and that Centex is entitled to JNOV. Plaintiff did not separate its claims or causes of action piecemeal against Centex based on the various alleged deficiencies identified by Clements. Instead, Plaintiff submitted only a single claim for gross negligence to the jury, and in support of that claim Plaintiff submitted together all the various claimed deficiencies identified by Clements as its sole liability expert. Clements was the only retained forensic building inspector Plaintiff hired to investigate

the claimed defects admitted at trial, and Clements was also the forensic investigator that inspected the claimed issues with the plumbing lines and built-up curb ramps. Further, Clements' testimony showed that when he was called to investigate the Wedgewood buildings, he did not limit his inspection only to issues that the Plaintiff had asked him to inspect; instead, Clements did a full building and property inspection and looked for any claimed deficiencies he could find. The only reasonable conclusion from this is that if Plaintiff had hired Clements (or another forensic building inspector to perform the same investigation) in 2012 when the Court has ruled that Plaintiff knew or should have known that it might have a claim against Centex; in 2010 - 2014 when Plaintiff was making repeated building repairs to the front walkways and exterior trim; or in 2006 when Plaintiff's property manager recommended that Plaintiff's hire an engineering expert to investigate window leaks to see if Centex is responsible, that the basis for Plaintiff's claim would have been discovered at that time.

Additionally, under South Carolina law, the appellate courts do not separately analyze when the plaintiff in a construction defect lawsuit had separate notice for each of the different defects identified by the Plaintiff's expert. Instead, the courts determine when the Plaintiff first knew or should have known it might have a claim. See, e.g., *Dean v. Ruscon Corp.,* 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996) ("[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial."); *Allwin v. Russ Cooper Assocs., Inc.,* 426 S.C. 1, 17, 825 S.E.2d 707, 715 (Ct. App. 2019) ("[The plaintiff's] failure to comprehend the magnitude of the water intrusion and other defective conditions is immaterial."); *Maher v. Tietex Corp.,* 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998) ("The statute [of limitations] is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable

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diligence requires a plaintiff to "act with some promptness."). An example of this in *Barr v. City of Rock Hill*, 500 SE 2d 157 (SC: Ct. 1998), when the Court of Appeals affirmed the finding that annual termite inspections between 1987 and 1990, which revealed excessive moisture under plaintiff's home, put the plaintiff on notice of its entire claim that was based on a structural engineering report the plaintiff obtained 1992 that included other claimed issues unrelated to moisture issues under the home such as improper installation of floor joists and sills, improper support of floor sills, no solid footing beneath a number of piers.

Therefore, because plaintiff knew or should have known in 2012 that it might have a claim against Centex (which is the law of the case), for this additional reason Centex is entitled to JNOV against Plaintiff's whole claim based on the statute of limitations.

2. **The evidence at trial did not adequately support a verdict in Plaintiff's favor on Plaintiff's claim for gross negligence.**

The court appropriately charged the jury on gross negligence and recklessness, charging:

> Gross negligence involves an intentional, conscious failure to do something which one ought to do or the doing of something one ought not to do. . .
>
> Recklessness implies the doing of a negligent act knowingly. When a person acts negligently and he realizes that he is acting negligently, the law says he is reckless, willful, and/or wanton, whichever term you prefer, they all mean the same thing, that is, the conscious failure to exercise due care.

In this case, there was simply no evidence introduced whatsoever that Centex intentionally, consciously, or knowingly installed defective work. To the contrary, the evidence showed that Centex went well above and beyond in its efforts to ensure that the project was built appropriately, to include having Monthly Technical Training for three hours each month on building issues and techniques emphasizing "EEE" - - "Every building, Every room, Every day; Toolbox Talks - - periodic discussions with outside

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vendors and persons regarding good construction techniques; Tailgate Talks - - regular meetings with subcontractors to discuss construction issues; In-Line Inspections - - a formal inspection process throughout construction and before as each major phase of construction is completed; and, yearly COR inspections - - unannounced, annual, highly detailed inspections with grading reports. Moreover, on this project Centex hired an outside consultant, Herschel Morningstar, to examine each building during critical aspects and then to report on a real time basis on issues that he found and to discuss them with subcontractors in an effort to ensure that the buildings were being completed appropriately. In addition, highly detailed inspection reports were introduced where the local building inspector signed off on each aspect of the building that the plaintiff's expert criticized.

Quite important was the fact that the evidence established that Centex Homes has been in business for 78 years and its business model is based on attempting to building quality products so that its customers would recommend Centex to others and buy subsequent homes from Centex. Moreover, eight employees of Centex bought new condominiums at Wedgewood. In short, the evidence, taken in the light most favorable to the plaintiff, failed to rise to the level of gross negligence or recklessness, and the jury verdict should be reversed.

3. **Plaintiff's claims are barred by the statute of repose.**

See number 2., above.

4. **Plaintiff's claims against Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, are barred as Plaintiff introduced no evidence regarding those entities whatsoever, including their involvement with the project as a contractor, developer, seller or otherwise.**

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The plaintiff introduced no evidence whatsoever that "Balfour Beatty Construction, LLC as successor by merger to Centex Construction, LLC and Centex Construction Company, Inc." were involved with this project, made any errors or omissions, or breached any claimed building codes. As such, plaintiff's claims against those entities were not supported and the verdict and judgment against those entities should be reversed and nullified.

NEW TRIAL

Centex is entitled to a new trial based on the grounds listed below, each of which prejudiced Centex and impacted the jury's verdict.

1. **The Court erred in allowing testimony and evidence of at least eight other Centex projects in Barefoot Resort, by allowing Plaintiff to cross-examine Centex's experts about those projects, which was inadmissible and highly prejudicial to Centex.**

    a. **This error is magnified and corroborated by the trial judge's acknowledgment on the record that such evidence was inadmissible and prejudicial to Centex.**

    b. **Allowing Plaintiff's counsel to list those other projects inevitably led the jury to speculate and believe that the claimed deficiencies and damages in Wedgewood also existed in those other projects.**

Plaintiff's pre-trial brief (attached and filed herewith as Exhibit 15) makes it clear that a primary goal of plaintiff in the case was to introduce evidence of subsequent projects that Centex had constructed in Barefoot Resort. That brief states:

> Plaintiff intends to offer evidence of numerous lawsuits against Centex regarding similar code defects and construction issues. Those include Willow Bend Condominium Association, Clearwater Bay Condominium Association, The Havens Condominium Association, Ironwood Condominium Association, Tanglewood Condominium Association, Cypress Bay Condominium Association, Edgewater Condominium Association and the Greenbrier Condominium Association. (Plaintiff's Pre-

Trial Brief, page 2)

> Plaintiff's experts and Defendant's experts will admit that litigation was brought in the following cases: Edgewater. Greenbrier, The Woodlands, Harbor Cove, The Havens, Tanglewood, Willow Bend, Heron Bay, Clearwater Bay Homeowners Associations. (Plaintiff's Pre-Trial Brief, page 9)

Judge Mullen conscientiously listened to the evidence and then ruled, on several occasions and on the record, that because those other projects were all constructed after Wedgewood, were apparently constructed under different building codes, and were constructed pursuant to different designs and by largely different subcontractors, that the introduction of those actions and evidence related to them was inadmissible and would be prejudicial to Centex.

Despite this ruling, plaintiff again sought to introduce those other matters in its cross-examination of Centex's expert, Robert Carter, specifically arguing that the case of *Yoho v. Thompson*, 548 SE2d 584 (S.C. 2001) allowed that evidence. Despite the court's prior rulings, plaintiff was allowed to enumerate eight other projects in Barefoot Resort where Carter had been retained by Centex Homes to perform investigations. This evidence was allowed despite objection by Centex and comment by Centex that while asking Carter about other work and projects in general, to perhaps include the number of other projects, might have some relevancy on bias, that specifically naming the neighboring projects in Barefoot Resort would have the predictable effect of making the jury believe that all of the alleged issues at Wedgewood had been duplicated and replicated in its neighboring projects. As confirmed by the verdict, the jury surely made that easy inference and found Centex "guilty" of gross negligence and recklessness.

By planting the seed that Centex was running rampant with installation of defective construction in Barefoot Resort, plaintiff surely accomplished the demonization of Centex

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Homes by leaving it to the jury's imagination as to what the construction deficiencies and resulting damages may have been like in those other projects.

The statement of plaintiff's counsel that this evidence was specifically allowed by the *Yoho* case was unfounded. The *Yoho* case involved the issue of whether a medical doctor who "maintained an employment relationship with Nationwide and other insurance companies" was biased. (emphasis added) The court noted that the doctor "was not merely being paid an expert's fee in this matter" because of the actual employment relationship. Unlike *Yoho,* Robert Carter is not an employee of Centex, but that is not the issue. The issue in Wedgewood was whether projects that were constructed after Wedgewood and with other significant differences should be allowed into evidence. In *Yoho*, the Supreme Court admonished trial courts to be hyper careful when introducing otherwise volatile and prejudicial evidence when it stated:

> The cross-examination must be carefully tailored, however, so as not to confuse the jury by revealing that Nationwide, while defending in the name of Thompson, is actually Yoho's underinsured motorist carrier.

In Wedgewood, the court could have simply allowed plaintiff's counsel to cross-examine Carter to establish bias by stating that he had been retained by Centex on other projects, without enumerating the bordering projects in the same Barefoot development. Any arguable probative value of questioning Carter on the other named Barefoot cases was outweighed by the danger of unfair prejudice, confusion of the issues and misleading of the jury under SCRE 403, and should have been excluded. As such, Centex should be granted a new trial.

2. The Court erred in allowing Plaintiff's expert Ross Clements to testify regarding alleged structural deficiencies as such testimony was speculative and without a proper foundation, and as Clements lacked qualifications as a structural engineer and failed to conduct an adequate investigation.

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This issue was thoroughly briefed in a motion to exclude Ross Clements' testimony on this issue by motion in limine, which is attached as Exhibit 16 and incorporated by reference. In short, plaintiff's expert admitted that he was not a structural engineer and could not testify that the as-built structure was incorrect or did not meet the building codes. Despite this admission, the court allowed him to testify about structural issues, stating that Centex Homes could cross-examine him. Plaintiff's counsel inflamed the jury on this very issue in his closing argument when he stated that the structural issues were life safety issues and the residents could be injured during a high wind event by the roofs blowing off!

Thus, testimony was introduced without any foundation and contrary to plaintiff's expert's admission that the construction may well have been in conformity with applicable codes, and that he simply did not know. (In fact, Centex's structural engineer, Skip Lewis, testified that the construction was structurally sound and in compliance with the applicable codes.) The court's statement that Centex could cross-examine Mr. Clements on this issue overlooks the fact that "you can't unring the bell" and it is the court's obligation as the gatekeeper to exclude inadmissible and prejudicial evidence at the outset.

Expert testimony receives additional scrutiny relative to other evidentiary decisions. *See Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). In executing its gatekeeping duties, the trial court must make three key preliminary findings which are fundamental to Rule 702, SCRE, before the jury may consider expert testimony: 1) subject matter; (2) expert qualifications; and (3) reliability. *See id.* "Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability."

Here, none of the prerequisites for allowing the structural testimony of Ross

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Clements were satisfied. He admittedly did not know whether the claimed structural issues were actual issues or not, but was allowed to testify that they were defects. The prejudice to Centex is apparent.

3. The Court erred in permitting Plaintiff's expert Ross Clements to testify that Centex violated the building code by installing a vapor barrier on the buildings. Clements should not have been allowed to opine that the applicable building code prohibited a vapor barrier at Wedgewood when the code simply provided that a vapor barrier was not required in certain sections of the country, to include North Myrtle Beach. In addition, the local building officials, who Clements admitted were the interpreter of the building code and its requirements on this project, required Centex to install the vapor barrier, thus rendering Clements' opinions, that Centex violated the building code in installing a vapor barrier, irrelevant, inadmissible and prejudicial.

Plaintiff's expert, Ross Clements, stated that Centex's installation of a vapor barrier as it did on Wedgewood was in violation of the "Standard Building Code" Section 502.1.4. (See attached page from plaintiff's PowerPoint exhibit introduced through Ross Clements, attached as Exhibit 17.) Clements stated that this section of the building code was violated despite the fact that, as testified by Bob Carter, a subsequent section stated that the vapor barrier was required in certain areas of the country, but not required in other sections. The testimony of Clements, that the installation of the vapor barrier was in violation of this section of the building code when the code simply said that it was not required, was highly prejudicial to Centex and warrants reversal of the verdict and a new trial.

4. The Court erred in allowing Plaintiff's counsel to argue and introduce evidence related to the alleged presence and/or use of unlicensed subcontractors on the project.

a. This issue was compounded by the Court's allowance of Plaintiff's counsel to simply hand a stack of purported licensing materials to Pulte's witness, Jeremy Martin, without establishing a foundation as to what work the subcontractors performed, whether any work such subcontractors may have performed was at issue in the

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case, what subcontractors actually worked on the project, what subcontractors were direct subcontractors of Centex, and what subcontractors did and did not have licenses.

b. This error was further compounded by, as discussed by and with the court on record, that there was no legal requirement in South Carolina for Centex to use only licensed subcontractors, or that Centex's subcontractors had to use licensed sub-subcontractors.

c. This was even further compounded by Plaintiff's failure to provide a foundation for the licensing and testimony by introducing evidence that Centex had improperly supervised its subcontractors.

This issue was also addressed in a detailed motion in limine filed by Centex, which is attached as Exhibit 18 and incorporated by reference.

The introduction of claimed subcontractor licensing issues, which was loudly proclaimed as proof of gross negligence on by plaintiff's counsel in closing arguments and in cross-examination, constituted error on top of error on top of error.

First and foremost, as the court judiciously reflected on the record, there is no provision under South Carolina law that a general contractor was required to use licensed subcontractors, particularly in 2000/2001, for the work that was claimed to be deficient. See South Carolina Code §40-11-270. Thus, the argument that unlicensed subcontractors was wrongful, both by inference and direct statement of plaintiff's counsel, was highly prejudicial to Centex as the jury was left to believe that Centex was in fact required to use licensed subcontractors and intentionally did not do so.

This error was compounded by the fact that the plaintiff utterly failed to lay a proper foundation for the introduction of this evidence. Although the plaintiff could have easily introduced through appropriate means the identities of subcontractors who were used on this project prior to introducing the "unlicensed" evidence, it failed to do so. The witness

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who was cross-examined on this issue, Jeremy Martin, did not know what subcontractors worked on this job nor what they did. The handing of Mr. Martin a stack of documents showing that most subcontractors in the stack were licensed but that a couple may not have been, left the jury with the impression that many or most of the subcontractors were not licensed on this job.

The prejudicial impact of this evidence is clear. Plaintiff's counsel obviously understood that the testimony was derogatory and inflammatory as he trumpeted that testimony to the jury in his closing arguments.

In short, the subcontractor testimony was irrelevant, was without a foundation to even establish which subcontractors worked on the project, and was highly prejudicial.

5. The Court erred in refusing Centex's request to charge the jury on S.C. Code Ann. § 40–11–270, the subcontractor licensing statute.

See discussion of number 4., above. The court's failure to charge the jury on the subcontractor licensing statute, which was an on point and an applicable statement of the law, was prejudicial to Centex as it would likely have reduced somewhat the prejudicial impact of that evidence and argument. See, *Burns v. South Carolina Commission for Blind*, 323 S.C. 77, 80, 448 S.E.2d 589, 591 (Ct.App.1994) (internal citations omitted) the Court held:

> If the requested charge states a sound principle of law that is applicable to the case, and not otherwise covered by the charge, refusal to charge it is error and requires a new trial. Moreover, when general instructions to the jury are insufficient to enable the jury to understand fully the law of the case and issues involved, a refusal to give a requested charge is reversible error.

See also Fairchild v. S.C. Dep't of Transp., 398 S.C. 90, 106, 727 S.E.2d 407, 415 (2012) (granting a new trial on the basis that the trial court refused request to charge the jury on intervening negligence of a third party); *Sanders v. W. Auto Supply Co.*, 256 S.C.

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490, 497, 183 S.E.2d 321, 325 (1971) (granting a new trial on the basis that the trial court refused request to charge the jury on concurrent causation in a negligence action).

6. The Court erred in allowing Plaintiff's counsel to state and argue that all of the claimed defects raised by its expert Ross Clements were code violations when such had not been established by the evidence.

The argument of plaintiff's counsel that all of the claimed deficiencies on the project were building code violations and in fact rendered the buildings unsafe, was not supported by the evidence and was without a proper foundation. As such, that argument was prejudicial to Centex and warrants a new trial.

7. The court erred in allowing Ross Clements to testify that all of the claimed deficiencies he identified were code defects when he did not establish a proper foundation and basis for those statements.

Upon information and belief, plaintiff's expert Ross Clements testified, in response to questioning from plaintiff's counsel, that all of the deficiencies he alleged were building code violations, when he had not established a proper foundation for such testimony through identifying the specific building codes and violations allegedly violated. As such, that testimony was improper and prejudicial.

8. The Court erred in allowing Plaintiff's counsel to argue in closing argument that all of the alleged code violations were safety violations, which was designed to and did incite the jury render a verdict based on passion, caprice, sympathy and prejudice.

See number 6., above.

9. The Court erred in charging the jury regarding the statute of repose.

This issue was also briefed by Centex via a motion in limine, which is attached as Exhibit 19 and incorporated by reference. In short, any reference, arguments, and/or discussion related to the statute of repose and its exception(s) should have been excluded under Rule 402, SCRE, as irrelevant. The existence and effect of the statute of

repose has no bearing on the jury's ultimate fact-finding role in determining whether Centex was grossly negligent or reckless with respect to the building's construction. The statute of repose applies as a matter of law and there is no finding for a jury to make in that regard. The only issue is whether Plaintiff can prove gross negligence, as is alleged in virtually all negligence actions.

The applicability of the statute of repose is **a matter of law for the court** and has no bearing upon the jury's fact finding duties. *See* Rule 39(b), SCRCP ("Issues of law . . . shall be tried by the court . . . ."); *Ocean Winds Corp. of Johns Island v. Lane*, 347 S.C. 416, 556 S.E.2d 377 (2001) (answering certified question from United States District Court as to when statute of repose began to run as matter of law).

Allowing reference, arguments, and/or discussion of the statute of repose in the presence of the jury at trial only served to confuse and mislead the jury, compromised the impartiality of the fact finder, and resulted in inherent prejudice to Centex. Because the jury was aware that there must be a finding of gross negligence or recklessness in order for Plaintiff to get around the bar of the statute of repose and recover anything, then the jury was influenced by sympathy toward Plaintiff to make such a finding if the jury believed Plaintiff should recover at least something, even if the jury did not actually believe that gross negligence or recklessness existed on the part of Centex.

The United States Supreme Court has long recognized that "[i]nformation regarding the consequences of a verdict is . . . irrelevant to the jury's task" due to the likelihood that prejudice, unfairness, and confusion would result. *Shannon v. United States*, 512 U.S. 573, 579 (1994) (emphasis added) (cited with approval by the Fourth Circuit Court of Appeals in *United States v. Dunn*, 398 F. App'x 869, 871 (4th Cir. 2010)). Moreover, jurors must not render verdicts based on sympathy, passion or prejudice. *See*

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Branham v. Ford Motor Co., 390 S.C. 203, 234-35, 701 S.E.2d 5, 21-22 (2010) ("It is improper for counsel to make a 'closing argument to the jury . . . calculated to arouse passion or prejudice.' The closing argument invited the jury to base its verdict on passion rather than reason. The closing argument denied [the defendant] a fair trial."); *see also Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 231, 317 S.E.2d 748, 755 (Ct.App. 1984) ("In a closing argument to the jury, an attorney may not make such remarks which are unfairly calculated to arouse passion or prejudice."). "Arguments by counsel which invite the jury to base its verdict on considerations not relevant to the merits of the case are improper." *Hoeffner v. The Citadel*, 311 S.C. 361, 366, 429 S.E.2d 190, 193 (1993) (citation omitted); *see also City of Columbia v. Myers*, 278 S.C. 288, 289, 294 S.E.2d 787, 788 (1982) ("The argument that the failure to render a verdict for the City would cause the damages to be paid from tax funds had no relevance to the merits of the case. It constituted an appeal to the self-interest of the jurors as taxpayers and was of such a prejudicial nature as to require reversal.").

In addition, the South Carolina Court of Appeals ruled in a similar vein on an analogous issue in *Fernanders v. Marks Const. of S.C., Inc.*, 330 S.C. 470, 499 S.E.2d 509 (Ct.App. 1998), *superseded by statute on other grounds as stated in Fay v. Grand Strand Reg'l Med. Ctr.*, LLC, 412 S.C. 185, 202, 771 S.E.2d 639, 649 (Ct.App. 2015). In *Fernanders*, the court held that the jury in a comparative fault case should not be instructed on joint and several liability and its effect, as that doctrine had no bearing on the jury's ultimate fact-finding role in determining relative negligence of the joint tortfeasors. The South Carolina Court of Appeals explained as follows:

> We decline to align ourselves with the jurisdictions that require trial courts to issue joint and several liability charges and **reject the notion that juries should use normative analysis or outcome-based reasoning to arrive**

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> **at a verdict**. Every litigant is entitled to an impartial finder of fact. Giving instructions about the effect of joint and several liability seriously compromises this right. In our view, charging the jury on the concept of joint and several liability would be similar to charging the jury on the existence of liability insurance, something that is specifically proscribed by South Carolina law. The same policy considerations which support the rule regarding informing the jury about the existence of insurance require that the jury not be instructed on joint and several liability. The prejudice inherent in such an instruction is manifest.

Id. at 474–75, 499 S.E.2d at 511 (citations omitted) (emphasis added).

The Honorable Judge Stephanie P. McDonald previously granted a motion in limine to exclude from the jury issues relating to the statute of repose and its effect on the plaintiff's claims, which motion was filed and argued at trial by Centex's counsel in the case *Nelson v. John Wieland Homes, et al.*, Case No.: 2009-CP-10-6573 (S.C.Comm.Pl. Jan. 23, 2012). In *Nelson,* the plaintiff argued it was prejudicial error for Judge McDonald to not allow the jury to know about the statute of repose and its effect. The motion was denied by Judge McDonald. See exhibit attached to Centex's Exhibit 19.

In light of the foregoing, informing the jury of the legal effect of the statute of repose and the possibility of avoiding the statute's application if the jury found that Centex was grossly negligent or reckless resulted in unfair prejudice to Centex, and, therefore, any such reference or discussion should have been excluded at trial.

10. The Court erred in charging the jury that "Developers are responsible for the condition of the common areas at the time these areas are deeded over to the homeowner association." This statement is from the case of *Dunes West Residents v. Ga. Pacific Corp*, 562 S.E.2d 633 (2002), which relates to a claim for breach of fiduciary duty, but Plaintiff did not submit a claim for breach of fiduciary duty to the jury, and this statement of duty is more expansive than and contradictory to the applicable duty for a claim for gross negligence, which was the only claim submitted to the jury.

This charge constituted a charge on the facts was not reasonably related to any of the issues in the case, and was charged over objection by Centex. The charge is from a

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case that relates to a breach of fiduciary duty claim (*Dunes West Residents v. Ga. Pacific Corp*. 562 S.E.2d 633 2002), which plaintiff had abandoned at the end of the trial. Therefore, including this charge, which misled the jury about the obligations of Centex in relation to the actual and sole claim that the plaintiff was pursuing (gross negligence and recklessness) was error, prejudicial to Centex and warrants a new trial. The trial judge is required to charge the current and correct law of South Carolina. *McCourt v. Abernathy*, 318 S.C. 301, 305, 457 S.E.2d 603, 606 (1995). "Instructions to the jury, however, should be confined to the issues made by the pleadings and supported by the evidence." *Baker v. Weaver*, 279 S.C. 479, 482, 309 S.E.2d 770, 771 (Ct.App. 1983). An erroneous jury instruction constitutes grounds for reversal if the appellant can show prejudice from the erroneous instruction. *Sulton v. HealthSouth Corp.*, 400 S.C. 412, 416, 734 S.E.2d 641, 643 (2012); *id.* at 416–18, 734 S.E.2d at 643–45 (granting a new trial because the trial court improperly instructed the jury that defendant owed a heightened duty of care to plaintiff in medical malpractice action).

11. The Court should apply the thirteenth juror doctrine and grant Centex a new trial absolute because the verdict is contrary to the fair preponderance of the evidence.

See discussion above. Again, the relevant evidence failed to establish that Centex intentionally, consciously or knowingly installed defective work or was otherwise guilty of gross negligence or recklessness in this matter, and a new trial absolute should therefore be ordered.

NEW TRIAL *NISI REMITTITUR*

If the Court does not grant JNOV or a new trial, the Court should grant Centex's motion for a new trial *nisi remittitur*.

In South Carolina, the trial judge "has the power, and with it the responsibility," of

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reducing a damages award that is "unduly liberal" or "merely excessive." *Easler v. Hejaz Temple of Greenville*, 285 S.C. 348, 356, 329 S.E.2d 753, 758 (1985); *see also Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 635, 529 S.E.2d 758, 762 (Ct. App. 2000).

Following a jury trial, a new trial may be granted to all or any of the parties and on all or part of the issues "for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State." Rule 59(a), SCRCP. "A new trial *nisi* is one in which a new trial will be granted unless the party opposing it complies with a condition set by the court." *Waring v. Johnson,* 341 S.C. 248, 257, 533 S.E.2d 906, 911 (Ct. App. 2000). An order granting a new trial *nisi due to an excessive verdict* contemplates not the striking down of the verdict altogether, but remission of part of it and the granting of a new trial in default thereof. *Howard v. Roberson*, 376 S.C. 143, 155, 654 S.E.2d 877, 883 (Ct. App. 2007) (citing *Elliott v. Black River Elec. Co-op*., 233 S.C. 233, 263, 104 S.E.2d 357, 372 (1958)).

A new trial *nisi remittitur* is proper when the jury's verdict is merely excessive or "unduly liberal," but not necessarily "actuated by passion, caprice, or prejudice" sufficient to warrant a new trial absolute.[1] *Elam v. S.C. Dep't of Transp*., 361 S.C. 9, 27, 602 S.E.2d 772, 781 (2004). Compelling reasons should be given to justify invading the jury's province in this manner. *Bailey v. Peacock,* 318 S.C. 13, 14, 455 S.E.2d 690, 691 (1995). In ruling upon a motion for new trial *nisi remittitur*, the trial judge must consider the adequacy of the verdict in light of the evidence presented. *Proctor v. Dep't of Health & Envtl. Control*, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006). The critical inquiry

[1] If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge *must* grant a new trial absolute. *Harrison v. Bevilacqua,* 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003).

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is whether the award excessively compensates the injured party. *See Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984). "While there is no formulaic measure for an actual or punitive damages award, if the trial judge 'is convinced that the amount awarded is overly liberal, he has the authority and corresponding *duty* to reduce the verdict by order *nisi.*'" *Gamble v. Stevenson*, 305 S.C. 104, 111, 406 S.E.2d 350, 354 (1991).

The court should substantially lower the verdict: (1) to remove the repair costs for items for which there was not evidence of a building code violation, (2) to remove the repair costs for the replacement of building components that have already met or exceeded their expected service life, (3) to lower the verdict to reflect the satisfactory performance of building components for much of the components' expected service life, and (4) to account for Plaintiff's contribution to the claimed damages for its lack of proper building maintenance and failure to mitigate.

Plaintiff sought to overcome the statute of repose by introducing evidence from its retained expert Ross Clements of building code violations. However, if the repair cost dedicated solely to the claimed defects that Clements either did not or should not opine that a code violation occurred[2] (structural deficiencies [$1,213,524.60[3]], vapor barrier installation [$1,202,319.94], exterior trim removal and replacement [$1,223,040.27], and sheet metal fascia [$68,971.90]) from Plaintiff's repair cost estimate, the total sum is lowered to roughly $5,610,603.88. This figure should represent the maximum possible

[2] See Exhibit 16.

[3] All figures discussed in this section come from Plaintiff's repair cost estimate and allocate the general contractor's profits, overhead, and other general conditions and similar non-defect specific costs on a pro rata basis. See Exhibit 20 hereto for Plaintiff's cost estimate.

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recovery, given that Plaintiff's claims are barred by the Statute of Repose and this is the most Plaintiff can even arguably contend is for building code violations.

Additionally, the Court should reduce the verdict to reflect the benefits Plaintiff received for the satisfactory service and performance of the building components during the over 22 years of service life during which the components have been on the buildings. *Campus Sweater & Sportswear Co. v. M. B. Kahn Const. Co.*, 515 F. Supp. 64, 103 (D.S.C. 1979), *aff'd sub nom. Campus Sweater & Sportswear Co. v. M. B. Kahn Const. Co*, 644 F.2d 877 (4th Cir. 1981) ("Celotex contends that it is due a discount because the roof in question gave five years of satisfactory service, or in other words, performed satisfactorily for 25 per cent of its estimated life. After examining the amount of the jury verdict, this court finds that Celotex is entitled to relief.").

The evidence shows that the roofs, exterior stairs, and exterior carpets/membranes met or exceeded their expected service lives. Therefore, the repair costs for these items should be reduced from the verdict, which is a reduction of $843,220.84 to remove and replace exterior carpet and membrane, $137,074.98 for replacement the exterior stairways, and $297,401.49 for roof replacement, for a total of $1,277,697.31. Applying this reduction to the $5,610,603.88 figure discussed above would bring the recovery down to $4,332,906.57.

The largest repair cost item is to remove and replace all of the exterior lap siding on the nine buildings, in the amount of $1,698,217.65. There was no evidence of poor performance of the siding, as Plaintiff's expert says it needs to be replaced merely because he found the fasteners do not exactly meet the manufacturer's installation instructions. Plaintiff's reserve replacement schedule set a service life of 50 years for this component, meaning that prior to trial Plaintiff had received satisfactory performance of

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this building component for 44% of its expected useful life. See, e.g.,. Exhibit 21 hereto, also made a trial exhibit. The court should reduce Plaintiff's verdict by $747,215.76 (44% x $1,698,217.65) to reflect this satisfactory service life. Applying this reduction to $4,332,906.57 results in a more appropriate verdict amount of $3,585,690.81.

Additionally, the evidence shows that Plaintiff's own lack of maintenance and/or failure to mitigate greatly contributed to the water intrusion damages that have occurred at the property. Plaintiff routinely failed to follow the advice of its property manager and reserve account specialists by, among other things, failing to recaulk the windows and other building components, failing to respond to being told that the double and triple windows were leaking, failing to replace the waterproofing membrane when the exterior carpet was replaced, failing to ever replace the waterproofing membrane after over 22 years when its own replacement schedule called for it to be replaced every 8 years, and failing to ever repaint the exterior trim and building exteriors. The court should reduce the verdict by 50% to account for these failures on the part of Plaintiff. After doing so, the $3,585,690.81 verdict (as discussed above) would be reduced to a **verdict of $1,792,845.41**, which would be a more appropriate verdict that better conforms to the evidence and prevailing legal principles (if any verdict should stand, which Centex contests and refutes).

CONCLUSION

For the reasons stated above Centex respectfully submits that the court should grant its motion JNOV and reverse the verdict and nullify the judgment, or in the alternative grant a new trial and reverse, modify and/or nullify the verdict and judgment, or in the alternative substantially reduce the amount of the judgment.

Respectfully submitted,

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STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	**IN THE COURT OF COMMON PLEAS** **FIFTEENTH JUDICIAL CIRCUIT** **C/A NO. 2018-CP-26-00307**
Wedgewood Condominium Association, Plaintiff, vs. Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, Crescent Architects, LLC and CEMS Engineering, Inc., Defendants.	PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR JNOV OR, IN THE ALTERNATIVE, A NEW TRIAL

The Plaintiff, Wedgewood Condominium Association, would respectfully offer the following argument in regard to Defendants' Motion for JNOV or, in the Alterative, a New Trial.

I. BACKGROUND FACTS.

This construction case was tried before the Court from May 22, 2023 through May 26, 2023 with the jury rendering a verdict against the Defendant for actual damages only in the amount of $6,750,000.00. The Plaintiff had asked the jury for a verdict of $9,376,719.85. The difference between the actual verdict and the damages claimed by the Plaintiff based on expert testimony was $2,626,719.85. The jury found for the Defendant on the punitive damage claim.

II. STANDARD OF REVIEW FOR NEW TRIAL.

It is well settled in South Carolina that the moving party has the burden, and the Court will view all inferences in favor of the non-moving party. The jury's findings are entitled to great deference. Our courts have repeatedly stated "It is the duty of the court to sustain a verdict when a logical reason for reconciling the verdict can be found." *Holly Woods Hills Assoc. v. Hiller*, 392 S.C. 172, 708 S.E.2d 787 (2011) (Court sustains a verdict in a construction defect case for actual

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damages based on gross negligence in the amount of $971,000.00.). The Court of Appeals also affirms sending the issue of the statute of limitation to the jury to decide.

A. <u>The Court must give the jury great deference</u>.

In evaluating Defendants' post-trial motions, the Court should give substantial deference to the jury's determination of damages. *See Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993) ("The jury's determination of damages ... is entitled to substantial deference."). As the South Carolina Supreme Court has stated:

> The Court must respect the verdict of the jury in fact as well as in pretense or theory and must not interfere or substitute its own judgment for that of the jurors. One is entitled to the constitutional privilege of the fair judgment of a jury rather than that of the Court ....

Brabham v. S. *Asphalt Haulers, Inc.,* 223 S.C. 421,430, 76 S.E.2d 301,306 (1953).

For these reasons, "it is the duty of the court to sustain verdicts when a logical reason for reconciling them can be found." *Daves v. Clemy,* 355 S.C. 216,231,584 S.E.2d 423,430 (Ct. App. 2003). Specifically, "[c]ourts must sustain verdicts when a logical reason for reconciling them can be found. A jury's verdict should be affirmed if it is possible to do so and carry into effect the jury's clear intention." *Id.* at 234, 432 (internal quotations and citations omitted).

Further, in evaluating a jury verdict, the evidence and all inferences from the evidence must be viewed in the light most favorable to the party that prevailed before the jury, here Wedgewood. *See Elders v. Parker,* 286 S.C. 228, 230, 332 S.E.2d 563, 565 (Ct. App. 1985) ("On appeal of a jury verdict, the evidence and any inferences to be drawn therefrom must be viewed in the light most favorable to the respondent. [The Court's] review is limited to determining if there is any evidence which reasonably tends to support the verdict.").

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III. FACTUAL BASIS FOR JURY'S VERDICT.

During the trial, Plaintiff offered Randall Spencer, as the HOA representative, and Ross Clements, as an forensic architect as to damages Further, the Defendants offered experts Robert Carter, J.J. Lewis and a Centex employee, Jeremy Martin. Significantly, all witnesses agreed, including Defendants' experts and Defendants' employee, that Centex had violated building codes, manufacturer specifications and construction industry standards in the construction of Wedgewood. Plaintiff, through its expert, offered a power point presentation which is attached hereto as Exhibit 1 to discuss his findings regarding the Wedgewood Condominium Association. The power point presentation addressed construction defects in the following areas:

- Exterior walls
- Roofs
- Walkways
- Stairs
- Attics
- Shear walls
- Floor ceiling assemblies
- Accessibility
- Vapor barrier
- Window installation

Randall Spencer, who had been on the board of directors since inception, testified as follows:

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- The master deed controlled the board's decision. The master deed 3.6 required Centex to assign its rights to sue those that constructed Wedgewood. Spencer testified Centex did not relinquish all its rights.
- Spencer denied in his testimony knowing anything about the windows in certain buildings (1, 8 and 9). His testimony was that he did not become aware of original construction effects until mid-2017 when the board was advised of original construction defects as a result of the findings of Ross Clements.
- From 2001 to date, Spencer was on the board of directors and the board voted to make routine and ordinary maintenance and repairs to Wedgewood.
- Spencer testified that all maintenance issues were addressed by the board.
- Spencer testified that the earliest he was aware of the construction defects in the Fuller report was when Ross Clements advised the board. (See previously filed affidavit of Randall Spencer on statute of limitations issues).

Ross Clements also testified and had this to say about the construction defects:

- There were hidden construction defects that no one could have known about until destructive testing was performed. (See previously filed Affidavit of Clements).
- That the board of directors could not have known as these hidden defects were not visible.
- That window leaks in a couple of units would not have apprised the board of the construction defects he uncovered after destructive testing.

A Centex employee, Jeremy Martin, was also called to testify. He offered the following testimony:

- He was an employee of Centex, the big company.

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- He had been with Centex since 1999.
- He was an area construction manager but had no contractor's license.
- He admitted there were building code violations, manufacturer specifications and construction industry violations.
- Martin attempted to testify about vapor barriers issue and what building code officials told him and the court sustained the objection.

Robert Carter, a forensic engineer, testified on behalf of Centex. He stated as follows:

- The building code is the law and the bible of contractors.
- When you deviate from the building code you must get permission from the building code officials which was not done here.
- The builder or general contractor is responsible for all the work. He found violations of building codes in various areas at Wedgewood.
- He pointed out and conceded that there were problems with the lintels, the WRB, the brick, the staircases, the mulling, the windows.
- And as per cross examination he found the same problems on other projects as well.
- He conceded that the better construction practice is not to install vapor barrier in warm climates.
- He also stated there was no record Centex had requested no vapor barrier be installed.
- He was also cross examined regarding an email dated October 10, 2019 between himself and his partner, Skip Lewis. The email which was introduced into evidence

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concerned vapor barriers and the high cost of repair. He admitted seeing the email but couldn't remember anything about the discussions he had.

- He also conceded that there were construction defects which needed to be repaired.

Skip Lewis, another expert for Centex, testified as follows:

- He is an expert and had been sued before in Beaufort County for failing to give a proper estimate.
- In this case the construction of shear walls by Centex does not match the construction plans.
- He agreed with Carter that there were code violations, construction industry standards and manufacturer specifications violations.
- He found inadequate attic roof framing. He also admitted to the mail of October 10, 2019 about the vapor barrier and further admitted this repair would be very expensive.
- His testimony regarding the vapor barrier walls was that it would cost more than $5,000,000.00.

Throughout the trial, evidence of gross negligence was offered continuously by Plaintiff through its experts and on cross examination of Defendants' experts. As the Court is aware, gross negligence is an issue which must be decided by the jury and this court properly submitted it to them.

IV. STATUTE OF LIMITATIONS.

Defendants argue the statute of limitations ran in this case. However, both Plaintiff's expert, Ross Clements, and board member, Randall Spencer, testified they were not aware of construction defects until destructive testing was performed. Clements' forensic report which is

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attached lists ten separate and independent construction defects which were uncovered which were not known to the homeowners. The Defendants do not cite the two seminal cases which hold that the three-year statute of limitations and the discovery rule are issues for the jury. See *Stoneledge v. IMK Development*, 455 S.C. 176, 866 S.E.2d 577 (2021) ("Application of the basic three-year limitations period and the discovery rule in any given case present factual issues for a jury.") [1] See also *Holly Woods Association v. Hiller,* 392 S.C. 172, 708 S.E.2d 787 (2011) (jury question as to statute of limitations and construction defects damages to Association).

These two reported cases are clearly applicable to this case. The Defendants in their motion for new trial cite all sorts of unpublished opinions none of which are precedential. Plaintiff also points out *Centex Homes v. South Carolina State Plastering, LLC*, 4:08-cv-2495 (2008). In that case, Centex settled a claim for construction defects with the Edgewater Condominium Association. Centex then sued South Carolina State Plastering, LLC for monies paid on the Edgewater project. The Edgewater buildings were completed in 2001. Centex did not bring suit until 2008. Centex argued the statute of limitations was stayed and cited the Supreme Court case of *Santee Portland Cement Co. v. Daniel International Corp*., 384 S.E.2d 693 (1989). In that case a cement storage complex was installed in 1965 but latent defects were not discovered until 1980 when the storage bin collapsed and killed two people. The Supreme Court stated that was an issue for the jury to decide. Centex won its motion against South Carolina State Plastering, LLC and the case was later settled.

Finally, Plaintiff cites the South Carolina Court of Appeals opinion of *Stoneledge v. IMK Dev. Co., LLC*, 425 S.C. 268, 821 S.E.2d 504 (Ct. App. 2018) (Hereinafter *Stoneledge II*). (A jury

[1] This case is similar to *Stoneledge*. Plaintiff requested $6,309,197.00 and the jury returned a verdict of $5,000,000.00 – not the full amount requested.

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question existed as to whether it was reasonable for the homeowners to know or by reasonable diligence discover there were issues with their construction.). (These defects were hidden by stone veneers and exterior walls, and many could not be seen without destructive testing.)

V. DEFENDANTS'MOTION FOR JUDGMENT JNOV.

A motion for judgment not withstanding the verdict, or JNOV, should always be denied where the evidence yields more than one reasonable inference, or its inference is in doubt. *Strange v. S.C. Dep't of Highways & Pub. Trans*., 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994). "A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.E. 565, 568, 503 S.E.2d 712, 713 (1998).

VI. DEFENDANTS ARE NOT ENTITLED TO A NEW TRIAL *NISI REMITTITUR*.

A new trial or new trial *nisi* should be granted only when the Court finds the amount of the verdict to be excessive. *Proctor v. Dept. of Health & Environmental Control,* 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006). However, the jury's determination of damages is entitled to substantial deference. *Rush*, 310 S.C. at 379, 426 S.E.2d at 805; *Gastineau v. Murphy,* 323 S.C. 168,182,473 S.E.2d 819, 828 (Ct. App. 1996), *rev'd on other grounds,* 331S.C. 565, 503 S.E.2d 712 (1998).

Additionally, where the amount of the verdict falls within the range of damages testified to, the verdict cannot be disturbed on the ground of excessiveness. *Buzhardt v. Cromer,* 272 S.C. 159, 163, 249 S.E.2d 898, 900 (1978). The damages awarded by the jury were within the range of damages presented by Ross Clements. Further, they were below the value placed by Plaintiff's expert, Robert Gallagher. Plaintiff's estimator expert offered an opinion of $9,376,719.85 to repair the project. Accordingly, the jury's verdict cannot be viewed as excessive. The jury verdict was $6,750,000.00 which is not excessive and entitled

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to deference because it was below the amount requested by Plaintiff. In sum, there was overwhelming evidence of damages by all Defendants' and Plaintiff's experts in violation of the building code, industry standards and manufacture specifications.

VII. DEFENDANTS ARE NOT ENTITLED TO INVOCATION OF THE "THIRTEENTH JUROR DOCTRINE."

Defendants also seek a new trial under the "thirteenth juror doctrine." The "thirteenth juror doctrine" is a vehicle by which the trial court may grant a new trial absolute when she finds the evidence does not justify the verdict. *Bailey v. Peacock*, 318 S.C. 13, 455 S.Ed.2d 690 (1995). To support their request, Defendants make the conclusory argument in their motion for new trial that the "verdict is contrary to the fair preponderance of the evidence."

In fact, the jury's verdict does not reveal that the jurors were confused as to any issue and in fact the verdict shows that they carefully considered the meaning of "gross negligence" in reaching their verdict. In sum, jury verdicts are to be given great deference by the Court.

VIII. CROSS EXAMINATION IS SUBJECT TO WIDE LATITUDE.

Centex claims Plaintiff's counsel improperly cross examined its experts. However, this Court carefully tailored the questioning of counsel. Further, cross examination is very broad in South Carolina and counsel has significant latitude. Further, cross examination is very broad and is necessary to test the credibility of witnesses. A trial court's ruling will be upheld absent manifest abuse. *Leevey v. N. C .Mutual Ins. Co.*, 184 S.E. 811 (1937), SCRE 611.

IX. STATUTE OF REPOSE.

The Defendants complain that this Court should not have charged the statute of repose. They are wrong – "A trial court must charge the current and correct law." *Stoneledge at Lake*

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Keowee v. IMK Dev., 425 S.C. 268, 821 S.E.2d 504 (Ct. App. 2018) (defects were hidden by stone veneers and exterior walls and many could not be seen without destructive testing).

Finally, gross negligence may be found under the statute of repose as evidence of recklessness and willfulness. Here, this was a jury issue as gross negligence is always a jury issue in South Carolina. *Clyburn v. Sumter County School District #17*, 317 S.C. 50, 451 S.E.2d 885 (1994) ("Gross negligence is a mixed question of law and fact and should be presented to the jury.")

X. ADDITIONAL ISSUES RAISED IN DEFENDANT'S BRIEF ON MOITON FOR NEW TRIAL OF JUNE 13.

While Plaintiff's counsel has only had less than twelve hours to review the brief, the following additional comments would be offered:

1. The Court erred in allowing Plaintiff's counsel to argue and introduce evidence of unlicensed contractors. Plaintiff's response:

- Plaintiff's counsel was on cross examination. Defendants' counsel had the right to redirect. Any issue goes to the weight of the evidence not the admissibility.
- Defendants' expert admitted on cross examination he would not hire unlicensed contractors.

2. The Court erred in refusing to charge the subcontractor licensing statute. Plaintiff's response:

- Defendants did not ask after the jury charge for any addition to the charge.
- Failure to charge was harmless error.

3. The Court erred in allowing Clements to testify about code defects without proper foundation. Plaintiff's response:

- The Court qualified Clements as an expert.

- This issue goes to the weight of the evidence not its admissibility.

4. The Court erred in allowing Plaintiff's counsel to argue in closing argument that all of the alleged code violations were safety violations. Plaintiff's response:

- No timely objection made during closing argument.
- Plaintiff's counsel did not argue all code violations were safety violations.

5. The Court erred in charging the jury on the statute of repose and that developers are responsible for the condition of common areas. Plaintiff's response:

- Both charges are correct statements of the law.
- Defendants did not except to the charge after the Court read it to the jury.

6. The Court should apply the thirteenth juror doctrine and give Centex a new trial. Plaintiff's response:

- All witnesses agreed there were code violations, construction industry violations and manufacturer specification violation.
- Defendants' counsel argued in the alternative Centex was not responsible or only owed the homeowners about $384,000.00. This created a jury question.

7. The Court erred in allowing testimony on cross examination about other Centex projects. Plaintiff's response:

- The Court carefully limited Plaintiff's cross examination.
- Plaintiff was on cross examination which was broad and the expert's deposition was used by Plaintiff's counsel to raise this issue.
- Further, the HOA received no punitive damage verdict and the actual verdict was much less than Plaintiff's request. Thus, any cross examination of other projects was harmless error, if any.

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8. The Court erred in allowing Plaintiff's expert to testify about structural deficiencies. Plaintiff's response:

- Plaintiff's expert was qualified as an expert and he testified the building was not constructed as per the plans.
- Any testimony goes to the weight of the evidence and not its admissibility.

9. The Court erred in allowing Plaintiff's expert to testify about the vapor barrier. Plaintiff's response:

- Plaintiff was qualified as an expert and any testimony went to the weight and not to the admissibility.

10. Defendants argue claims against Balfour Beaty Construction are barred. Plaintiff's response:

- Defendants did not move a directed verdict to dismiss Balfour Beaty Construction as a party.
- Defendants answer admitted Balfour Beaty Construction was a successor by merger to Centex Construction, Inc.
- Centex did not object to the verdict form entitled The Centex Entities and cannot now complain about it.

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June 14, 2023

Attorneys for Plaintiff

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EXHIBIT 1

FULLER
envelope

ENGINEERING • ARCHITECTURE • FORENSICS

Wedgewood Condominiums

N. Myrtle Beach, SC

FULLER GROUP, LLC
H. Ross Clements, AIA, Principal

Trial Presentation

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Wedgewood

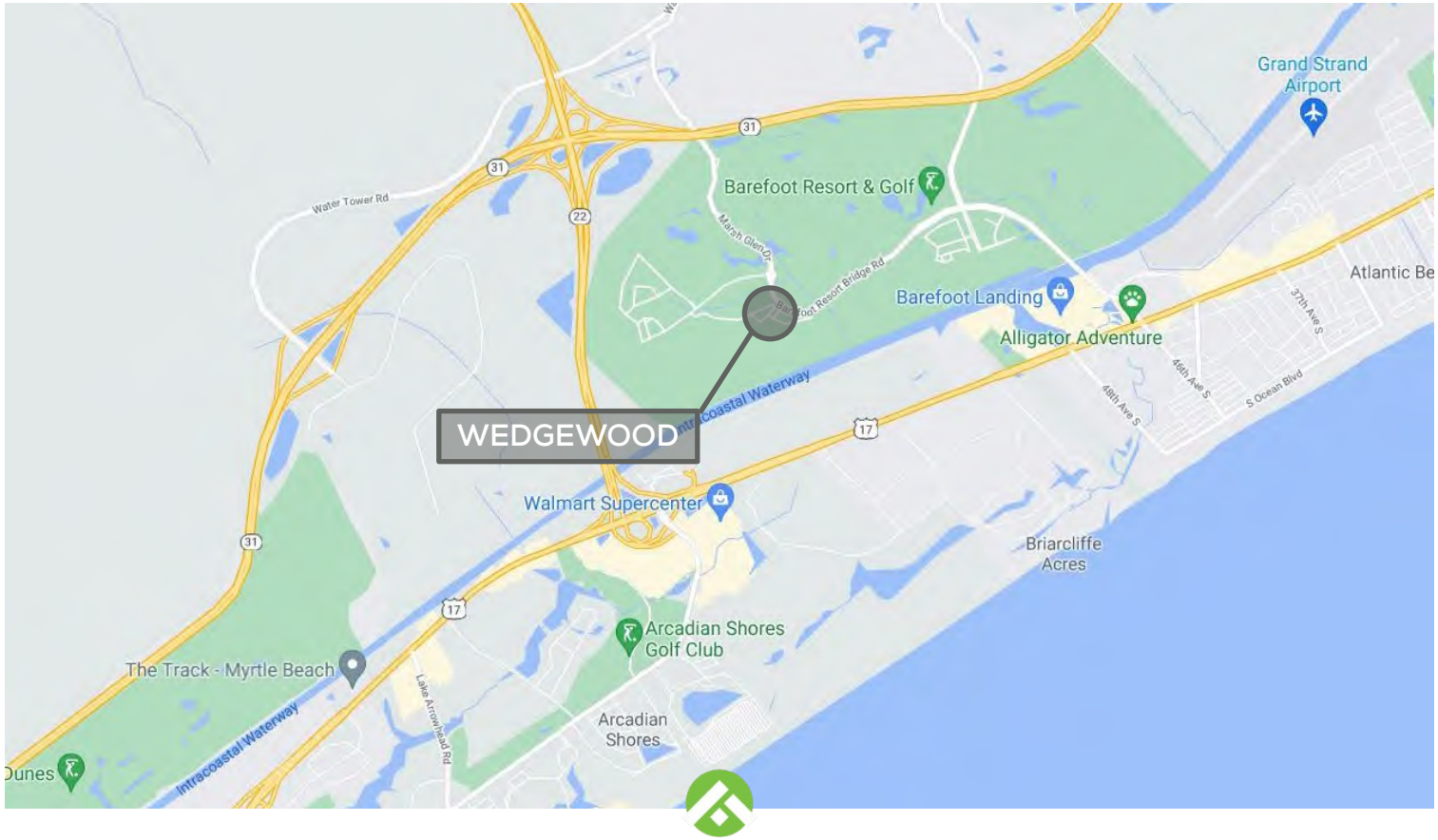
N. Myrtle Beach, SC

- 3-story multi-family condominium buildings
- 9 buildings and pool house
- 111 total residential units

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LOCATION

local map



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LOCATION

site map



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GENERAL BUILDING SUMMARY

ORIGINAL CONSTRUCTION

- Constructed between 2000 and 2001
- Concrete slab-on-grade foundations
- Wood-framed walls with wood roof trusses in attic
- Exterior walls clad with brick veneer and fiber-cement siding
- Engineered wood trim (MDF)
- Vinyl windows with nailing flanges
- Roofs covered with asphalt shingles

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TYPICAL FRONT ELEVATION

ROA 353

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TYPICAL SIDE ELEVATION

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TYPICAL REAR ELEVATION

ROA 355

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SCOPE OF SERVICES

BUILDING ENVELOPE INVESTIGATION

- Initial site visit performed September 2016
  - Met with members of the HOA Board
  - Met with property management
  - Met with attorney Stacy Stanley
  - Made visual observations of the existing buildings
- Following our initial site visit, Fuller was hired to perform a building envelope investigation of the buildings at Wedgewood

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SCOPE OF SERVICES

BUILDING ENVELOPE INVESTIGATION

- Building envelopes typically include:
  - Exterior walls
  - Windows and doors
  - Walkways and balconies
  - Roofs
- Investigations include visual observations and destructive testing to better understand how buildings are constructed
- Different cladding materials and their installation are taken into consideration
- Observations are documented with photographs and field notes

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SCOPE OF SERVICES

BUILDING ENVELOPE INVESTIGATION

- Fuller's Building Envelope Investigation - November 2016
- Watkins Services, Inc.
  - Watkins Services was approached by Fuller to provide contractor assistance for the destructive testing
  - Watkins Services agreed and provided contractor assistance
  - In that relationship, it has been customary for Watkins Services to also provide expert witness services as a co-expert with Fuller
  - After assisting Fuller with destructive testing, we learned that Watkins Services had been retained by Centex to serve as their defense expert

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SCOPE OF SERVICES

BUILDING ENVELOPE INVESTIGATION

- Additional site visits with destructive testing - August 2017
  - Procon & Associates worked with Fuller
- Additional site visits - March 2017 through January 2018
- Fuller Report - March 2, 2018
- Additional site visits - May 2018 through December 2019
- Fuller attended H2L's site visits with destructive testing:
  - January 7, 2019
  - September 16 through 19, 2019
  - June 9 and 10, 2020
- Fuller Addendum Report - November 19, 2019
- Since 2016, Fuller has performed 31 site visits

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CODES + STANDARDS

APPLICABLE AT TIME OF CONSTRUCTION

APPLICABLE BUILDING CODES

- 1997 Standard Building Code
- 1995 Model Energy Code
- ASHRAE 90.2
- CABO/ANSI A117.1-1992
- Code Evaluation Reports for Siding

INDUSTRY STANDARDS

- Brick Industry Association (BIA) Technical Notes
- U.S. Department of Energy Technology Fact Sheet
- ARMA Residential Asphalt Roofing Manual
- Gypsum Fire Resistance Design Manual
- Truss Plate Institute HIB-91

MANUFACTURERS' INSTRUCTIONS

- James Hardie Siding, Trim, and Panel Installation Instructions
- LP Smartstart Trim Instructions
- Tyvek HomeWrap Installation Guidelines
- Moistop E-Z Seal Installation Instructions
- CertainTeed Basic Installation Guide
- Sealoflex Waterproofing Instructions

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FINDINGS

- Exterior Walls
- Roofs
- Walkways
- Stairs
- Attics
- Shear Walls
- Floor/Ceiling Assemblies
- Accessibility
- Vapor Barrier
- Window Installation

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FINDINGS

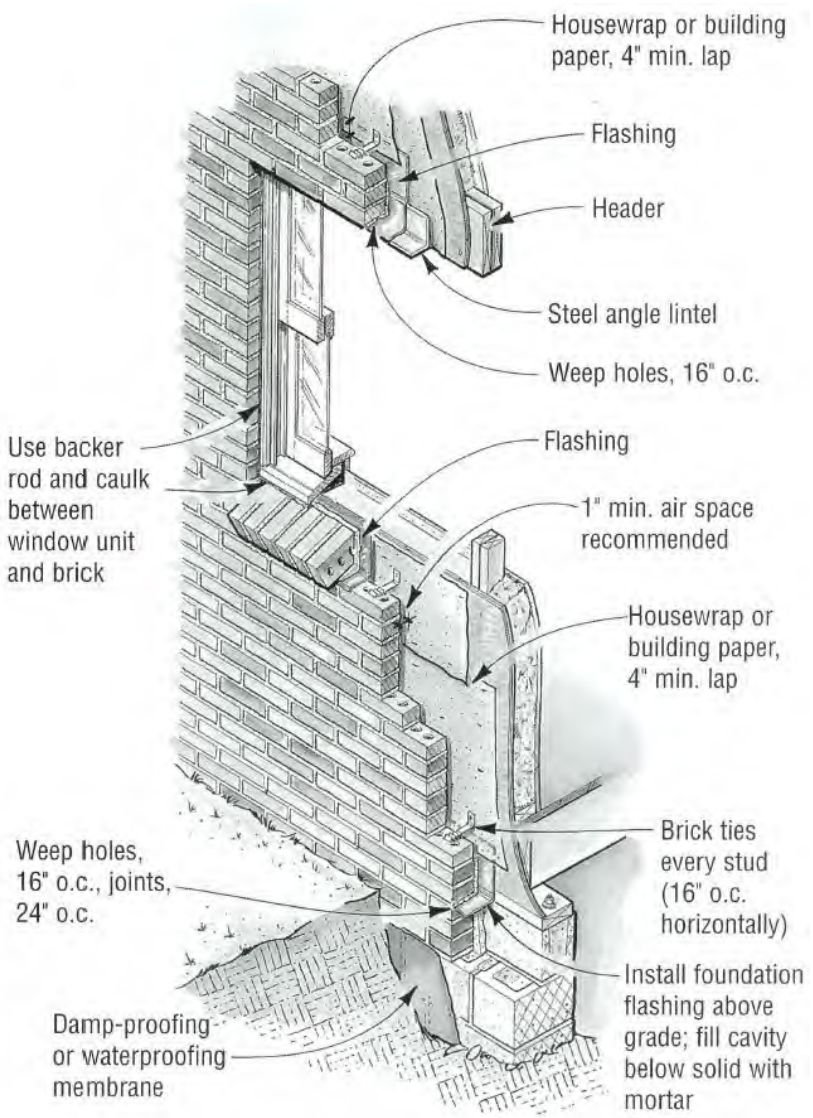
- Exterior Walls
  - Weather-Resistive Barrier (WRB)
  - Cladding + Trim Attachment
  - Brick Veneer

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WATER-MANAGED EXTERIOR WALLS

Typical Details

- WRB and flashings installed in a weather-lapped manner
- Continuous drainage plane
- Flashings at penetrations and base of wall



ROA 363

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FULLER envelope

EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings



ROA 364

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FULLER envelope

EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings



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FULLER envelope

EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings



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FULLER envelope

EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings



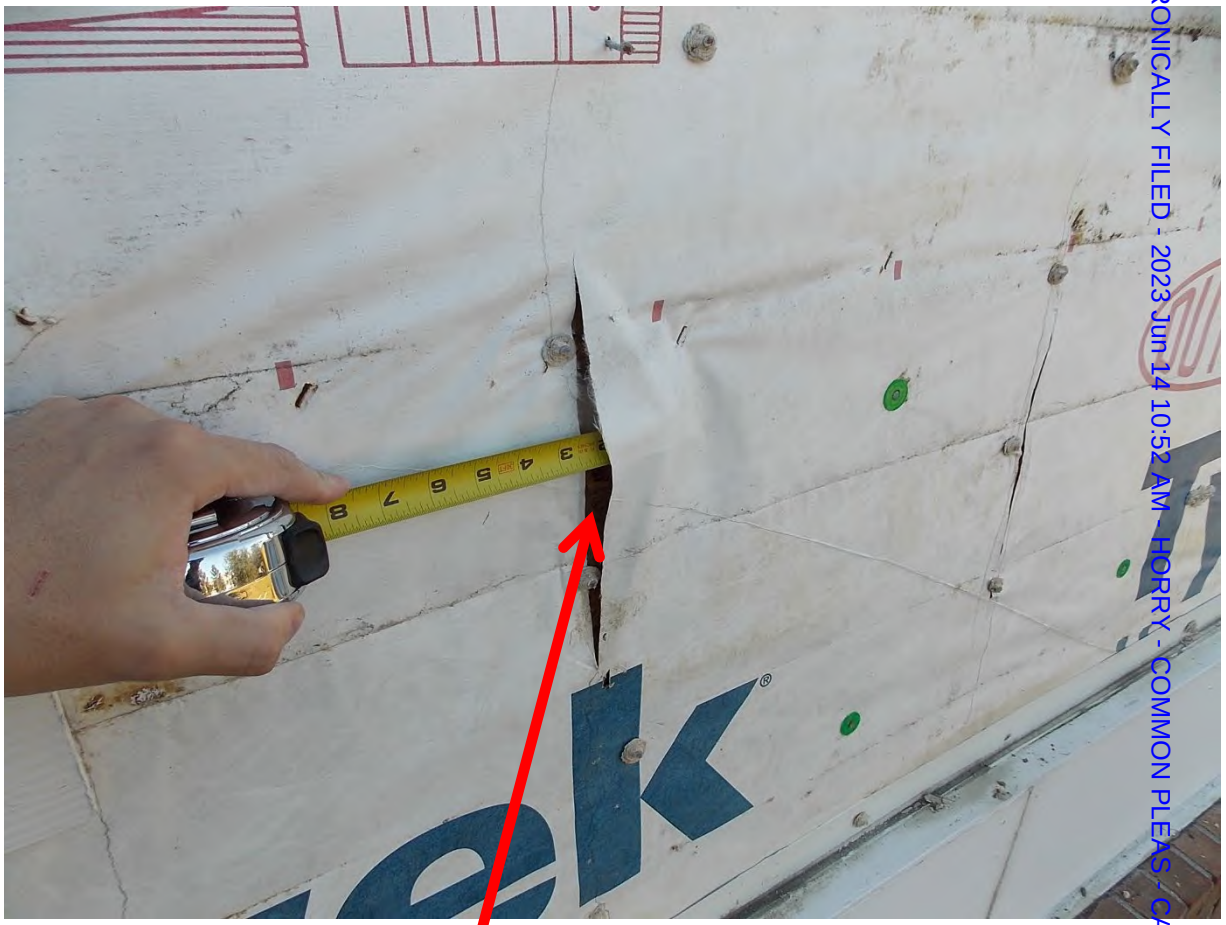
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FULLER envelope

EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings
- Cuts and damage in WRB not taped



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FULLER envelope

EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings
- Cuts and damage in WRB not taped



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FULLER envelope

EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings
- Cuts and damage in WRB not taped
- WRB not weather-lapped with metal Z-flashing



HORIZONTAL METAL Z-FLASHING

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FULLER envelope

EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings
- Cuts and damage in WRB not taped
- WRB not weather-lapped with metal Z-flashing



WRB BEHIND FLASHING

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FULLER envelope

EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings
- Cuts and damage in WRB not taped
- WRB not weather-lapped with metal Z-flashing



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ROA 372

FULLER envelope

EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings
- Cuts and damage in WRB not taped
- WRB not weather-lapped with metal Z-flashing
- Flashing blocked by sealant



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FULLER envelope

EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings
- Cuts and damage in WRB not taped
- WRB not weather-lapped with metal Z-flashing
- Flashing blocked by sealant
- Hidden damage



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EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings
- Cuts and damage in WRB not taped
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EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

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EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

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EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

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EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

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EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

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EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

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- Flashing blocked by sealant
- Hidden damage



ROTTED WOOD

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EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings
- Cuts and damage in WRB not taped
- WRB not weather-lapped with metal Z-flashing
- Flashing blocked by sealant
- Hidden damage



WATER DAMAGED WOOD

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EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings
- Cuts and damage in WRB not taped
- WRB not weather-lapped with metal Z-flashing
- Flashing blocked by sealant
- Hidden damage



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EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings
- Cuts and damage in WRB not taped
- WRB not weather-lapped with metal Z-flashing
- Flashing blocked by sealant
- Hidden damage

Requirements

- Standard Building Code

2303.3 Moisture protection. Surfaces exposed to the weather shall have an approved barrier to protect the structural frame and the interior wall covering. The barrier shall be at least Type 15 felt or kraft waterproof building paper. Building paper and felt shall be free from holes and breaks other than those created by fasteners and construction systems due to attaching of the barrier, and shall be applied over studs or sheathing of all exterior walls. Such felt or paper shall be applied horizontally with the upper layer lapped over the lower layer not less than 2 inches (51 mm). Where verti-

1403.1.4 Flashing shall be provided as necessary to prevent the entrance of water at openings in or projections through veneered walls. Flashing shall be provided at intersections of veneered walls of different materials unless such materials provide a self-flashing joint and at other points subject to the entrance of water. Caulking

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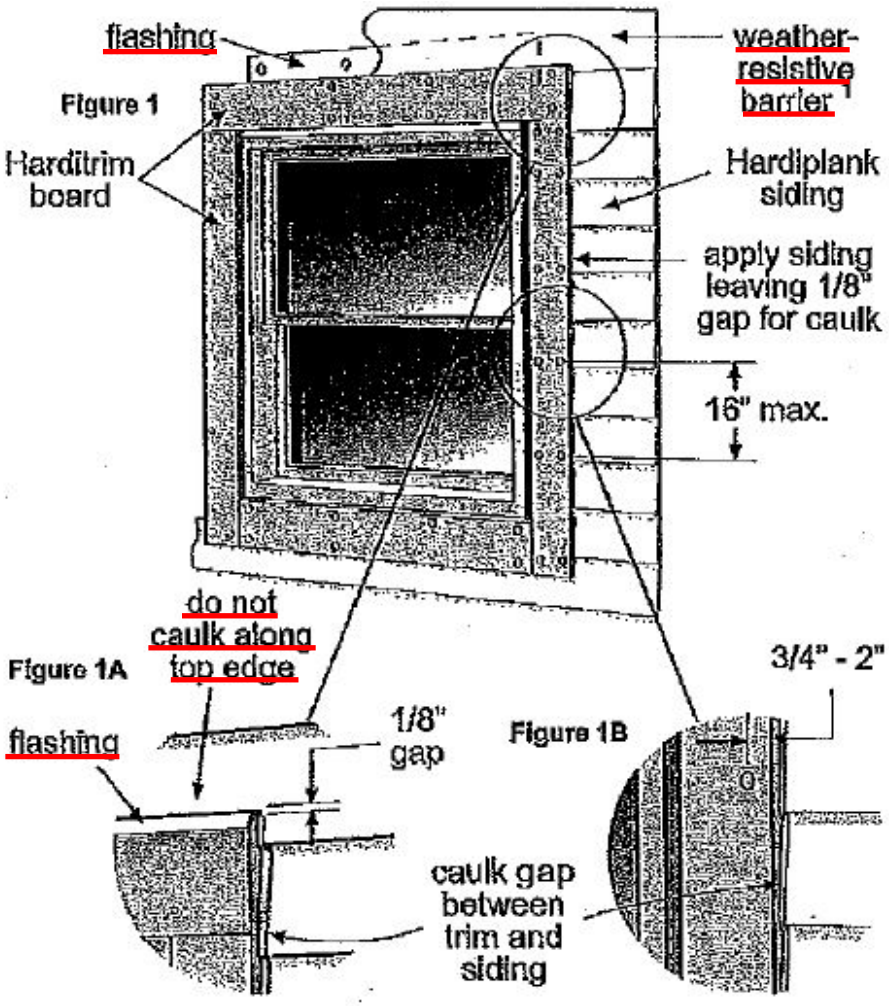
EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings
- Cuts and damage in WRB not taped
- WRB not weather-lapped with metal Z-flashing
- Flashing blocked by sealant
- Hidden damage

Requirements

- Standard Building Code
- Harditrim Installation Instructions



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EXTERIOR WALLS: WEATHER-RESISTIVE BARRIER

As-Built Conditions

- Weather-resistive barrier (WRB) is incomplete behind exterior claddings
- Cuts and damage in WRB not taped
- WRB not weather-lapped with metal Z-flashing
- Flashing blocked by sealant
- Hidden damage

Requirements

- Standard Building Code
- Harditrim Installation Instructions
- Tyvek HomeWrap Installation Instructions

5.

COVER inter-face of upper and lower top plates with Tyvek®. As a best practice, TAPE all horizontal seams at band joists, headers and roll overlaps with 2 or 3" DuPont Contractor tape. Tape any accidental tears or damage.

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FINDINGS

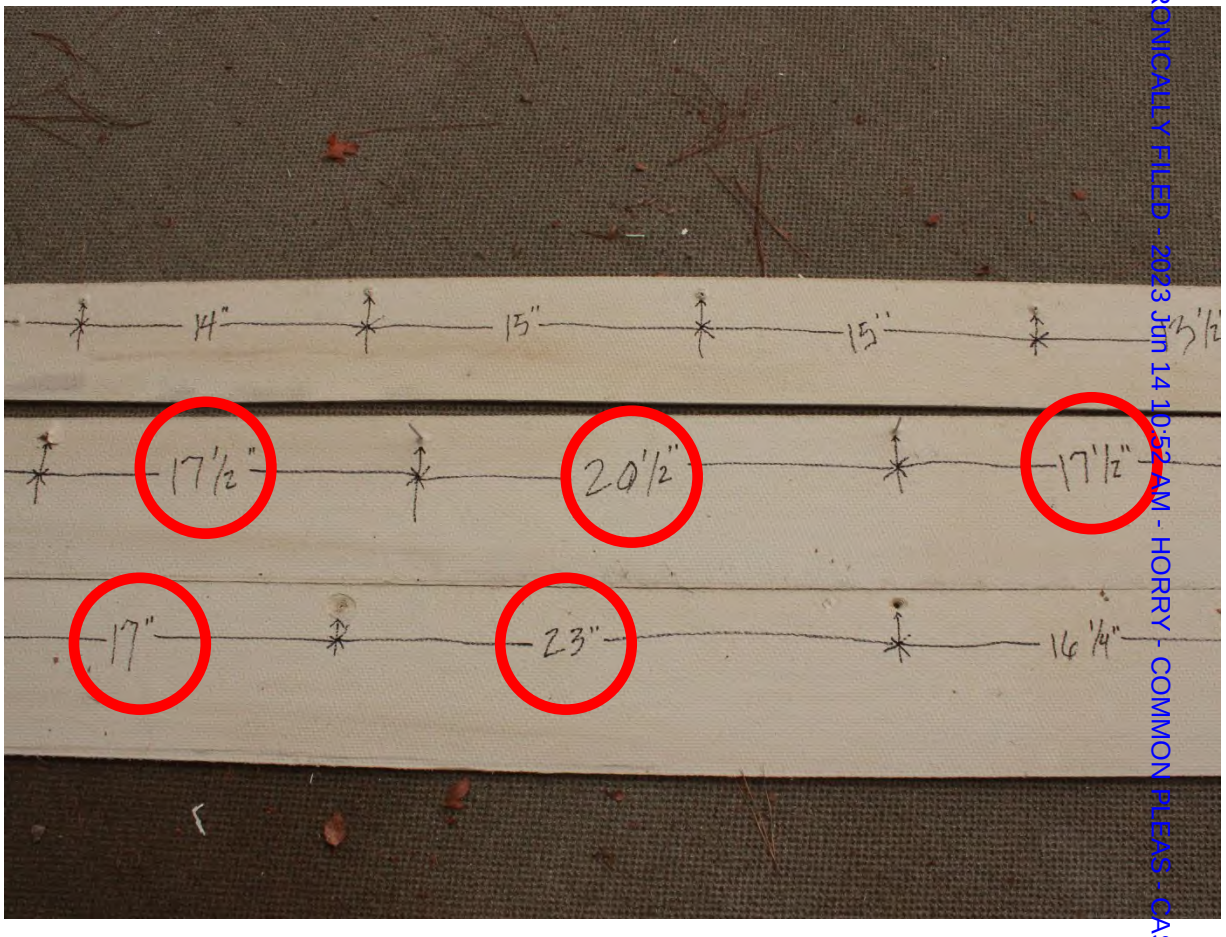
- Exterior Walls
  - Weather-Resistive Barrier (WRB)
  - Cladding + Trim
  - Brick Veneer

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EXTERIOR WALLS: FIBER-CEMENT SIDING

As-Built Conditions

- Fastener spacing exceeded 16-inch o.c. requirement by manufacturer



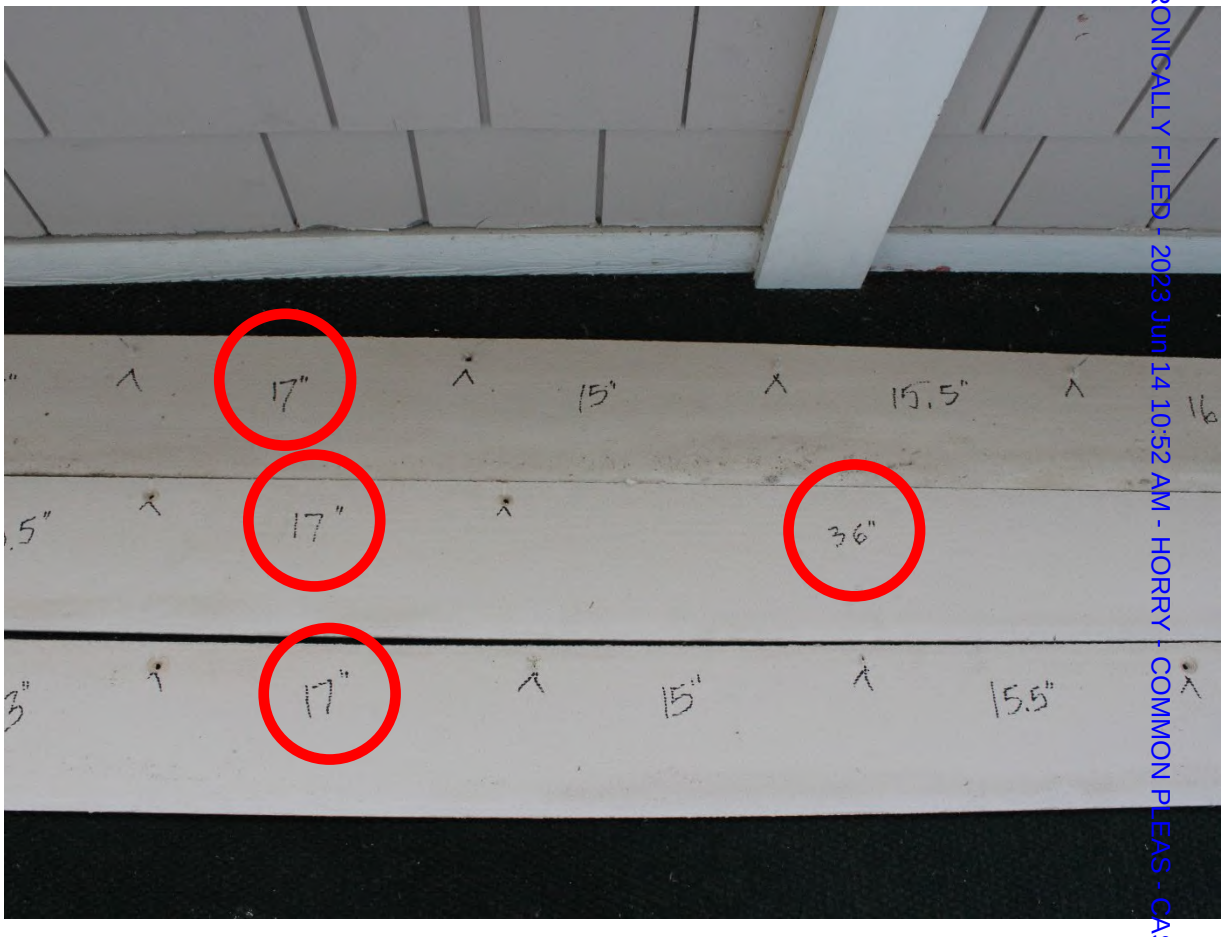
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EXTERIOR WALLS: FIBER-CEMENT SIDING

As-Built Conditions

- Fastener spacing exceeded 16-inch o.c. requirement by manufacturer



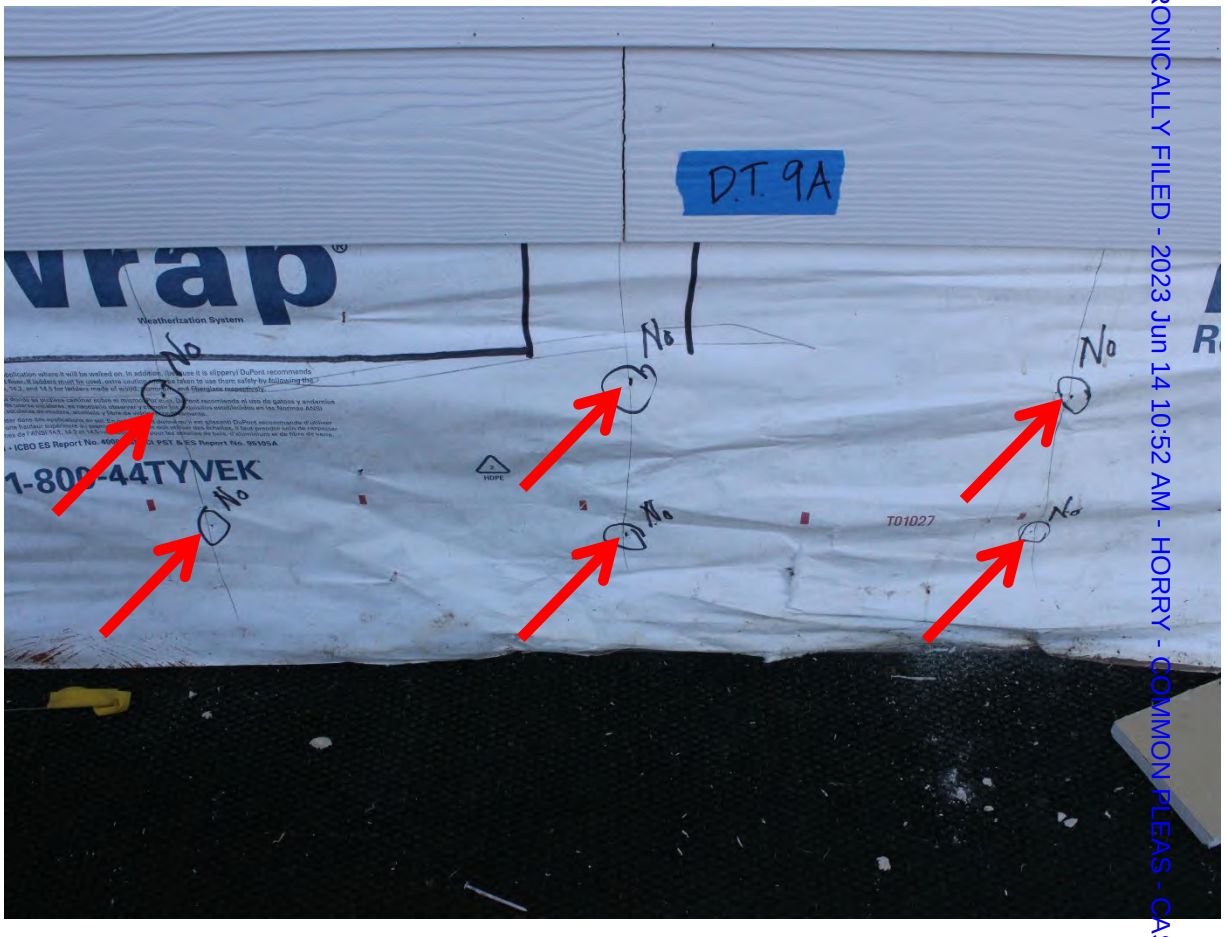
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EXTERIOR WALLS: FIBER-CEMENT SIDING

As-Built Conditions

- Fastener spacing exceeded 16-inch o.c. requirement by manufacturer
- Fasteners not into studs as required by manufacturer



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EXTERIOR WALLS: FIBER-CEMENT SIDING

As-Built Conditions

- Fastener spacing exceeds 16-inch o.c. requirement by manufacturer
- Fasteners not into studs as required by manufacturer

Requirements

- Standard Building Code

SECTION 1606
WIND LOADS

1606.1 Applications. All buildings, structures and parts thereof shall be designed to withstand the appropriate wind loads prescribed herein. Decreases in wind loads shall not be made for the effect of shielding by other structures. Wind pressures shall be assumed to act normal to the surfaces considered.

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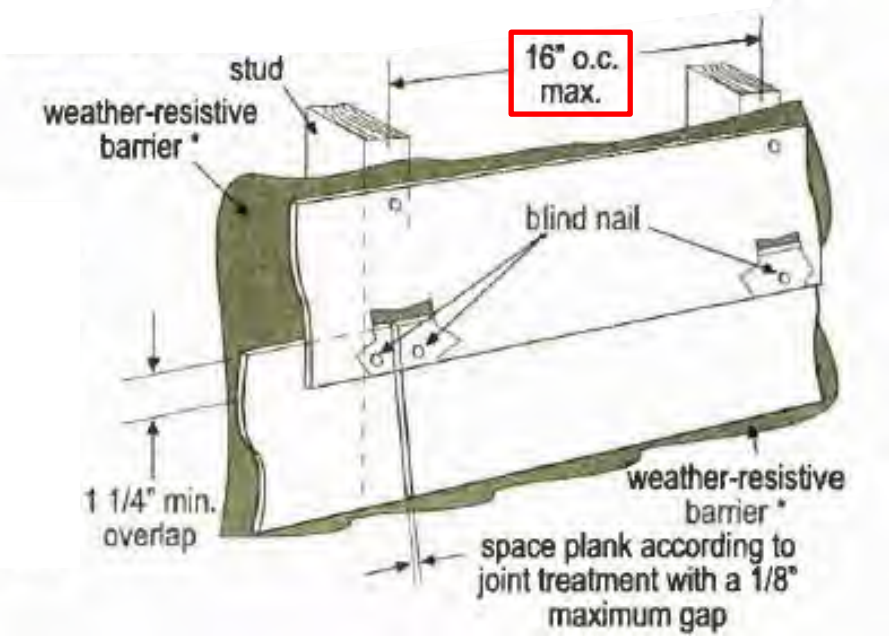
EXTERIOR WALLS: FIBER-CEMENT SIDING

As-Built Conditions

- Fastener spacing exceeds 16-inch o.c. requirement by manufacturer
- Fasteners not into studs as required by manufacturer

Requirements

- Standard Building Code
- HardiePlank Installation Instructions



** The use of a siding nail or roofing nail may not be applicable to all installations where greater windloads or higher exposure categories of wind resistance is required by the Local Building Code. Consult Report No. NER-405 for specific details.

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EXTERIOR WALLS: FIBER-CEMENT SIDING

As-Built Conditions

- Fastener spacing exceeds 16-inch o.c. requirement by manufacturer
- Fasteners not into studs as required by manufacturer

Requirements

- Standard Building Code
- HardiePlank Installation Instructions
- Code Evaluation Report NER-405

When installed on wood-framing members, the siding shall be fastened either through the overlapping planks with corrosion-resistant (galvanized or stainless steel) nails at each wood framing member, or through the top edge of single planks with 1 1/4 inch (32 mm) long corrosion-resistant roofing nails into each wood-framing member.

Table 2
Maximum Wind Speed

PRODUCT TYPE	PRODUCT THICKNESS (Inches)	FASTENER TYPE	FASTENER SPACING (Inches)	FRAME TYPES	STUD SPACING (Inches)	HEIGHT OF BUILDING (Feet)	MAXIMUM BASIC WIND SPEED (MPH) FOR EXPOSURE CATEGORY	
							B	C
Hardiplank 4 in. 6 in. 6-1/4 in. 7-1/2 in. 8 in. 8-1/4 in. 9-1/2 in. w/os/splice	5/16	No. 11 ga. 1-1/4 in. long galvanized roofing nail	Through top edge of plank	2 × 4 wood	16	20 40 100 200	110 100 90 80	90 80 70 70

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EXTERIOR WALLS: TRIM

As-Built Conditions

- Fastener spacing exceeded 16-inch o.c. requirement by manufacturer



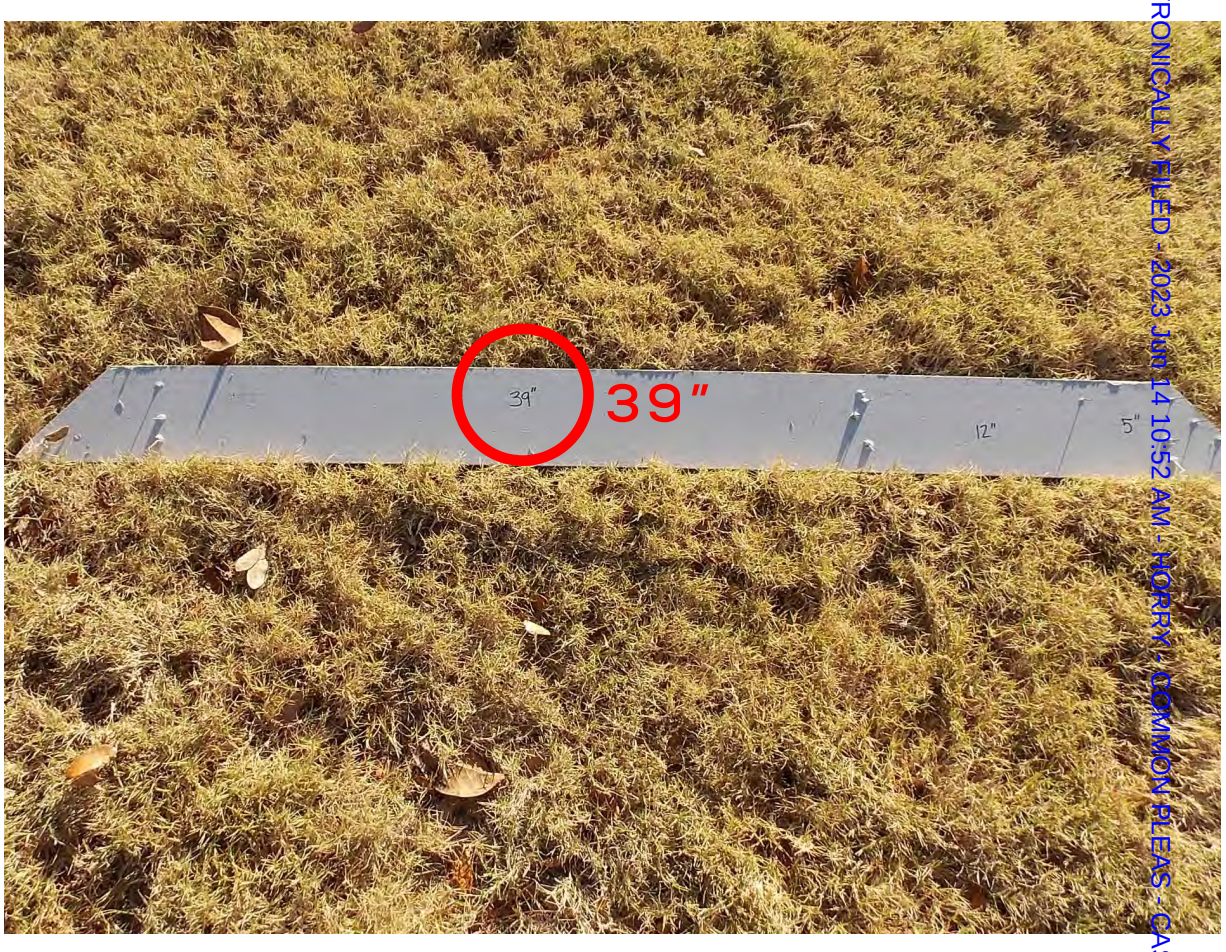
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EXTERIOR WALLS: TRIM

As-Built Conditions

- Fastener spacing exceeded 16-inch o.c. requirement by manufacturer



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EXTERIOR WALLS: TRIM

As-Built Conditions

- Fastener spacing exceeded 16-inch o.c. requirement by manufacturer
- Unpainted/unprimed edges of MDF trim



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EXTERIOR WALLS: TRIM

As-Built Conditions

- Fastener spacing exceeded 16-inch o.c. requirement by manufacturer
- Unpainted/unprimed edges of MDF trim



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EXTERIOR WALLS: TRIM

As-Built Conditions

- Fastener spacing exceeded 16-inch o.c. requirement by manufacturer
- Unpainted/unprimed edges of MDF trim
- Deterioration and swelling of trim



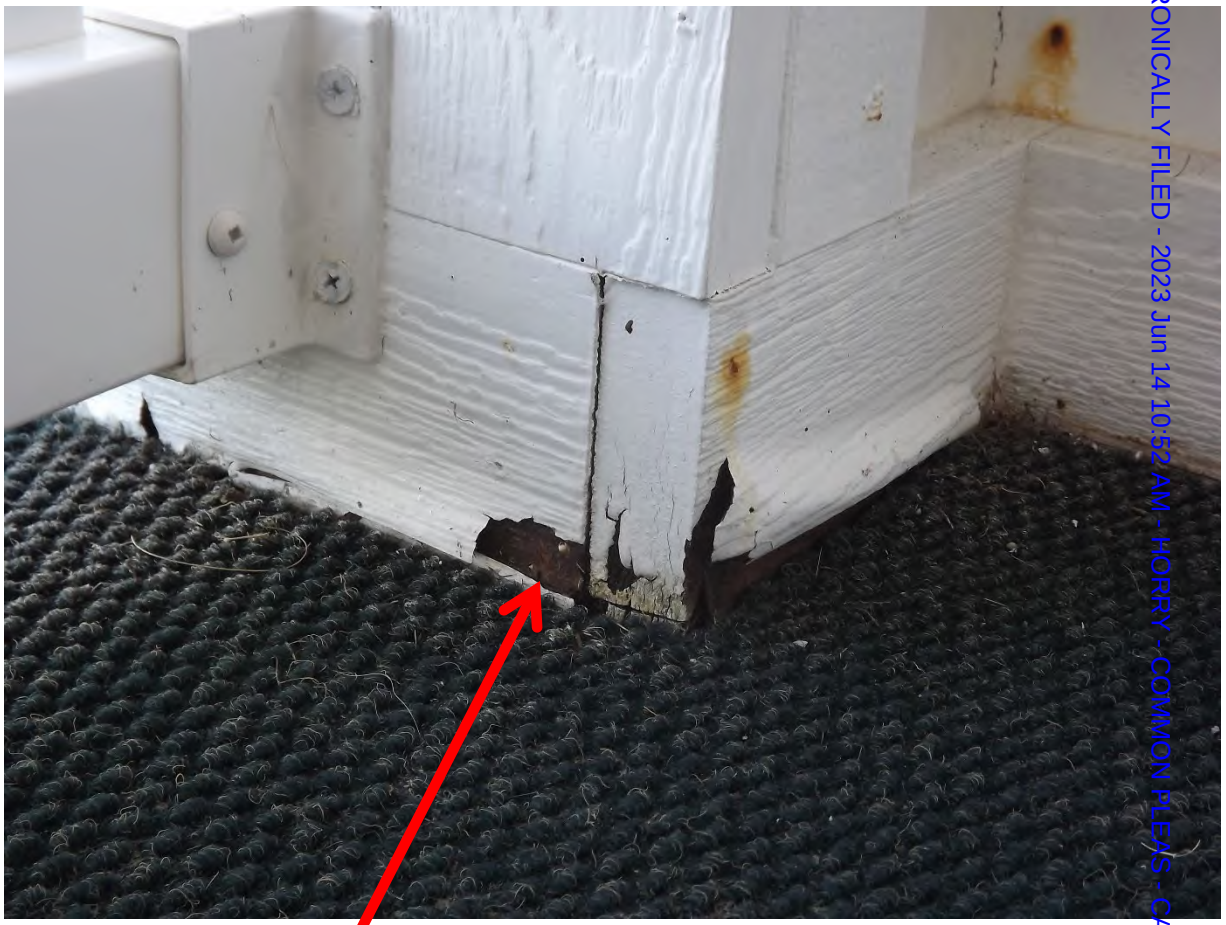
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EXTERIOR WALLS: TRIM

As-Built Conditions

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- Deterioration and swelling of trim



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EXTERIOR WALLS: TRIM

As-Built Conditions

- Fastener spacing exceeded 16-inch o.c. requirement by manufacturer
- Unpainted/unprimed edges of MDF trim
- Deterioration and swelling of trim
- In 2010, Wedgewood replaced some trim at buildings due to observed deterioration

GN HOME BUILDERS LLC

Wedgewood Ext. Trim *7/13/10* ***INVOICE*** *140*

Description	Amount Due
Initial material draw for exterior trim replacement in Wedgewood. Note quantities below. • One (1) full unit, 1x4 Cemplank • One (1) full unit, 1x6 Cemplank • One (1) full unit, 1x8 Cemplank All work done in accordance with previously discussed and accepted scope of work. Draw for Trim wood replacement	$ 7,405.00
Total.....	$ 7,405.00
Payment Due Date: net 30 days	

APPROVED FOR PAYMENT
ASSOC ww 424
ACCT # 910
AUTHORIZED BY MR
DATE / BATCH #
CHECK / VOUCHER #

ROA 400

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EXTERIOR WALLS: TRIM

As-Built Conditions

- Fastener spacing exceeded 16-inch o.c. requirement by manufacturer
- Unpainted/unprimed edges of MDF trim
- Deterioration and swelling of trim
- In 2010, Wedgewood replaced some trim at buildings due to observed deterioration

Requirements

- Standard Building Code

SECTION 1606
WIND LOADS

1606.1 Applications. All buildings, structures and parts thereof shall be designed to withstand the appropriate wind loads prescribed herein. Decreases in wind loads shall not be made for the effect of shielding by other structures. Wind pressures shall be assumed to act normal to the surfaces considered.

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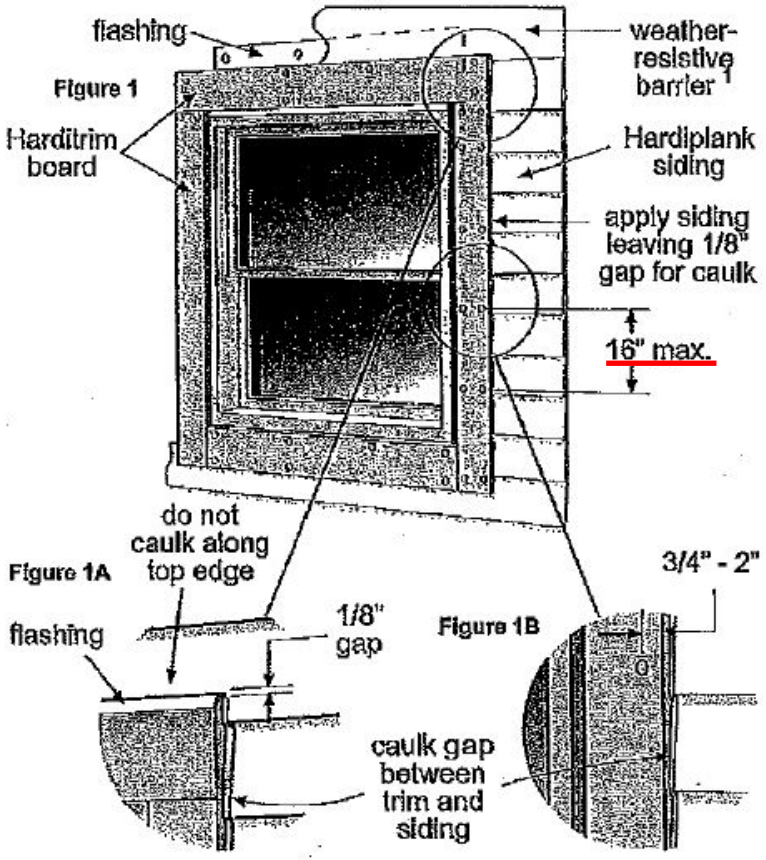
EXTERIOR WALLS: TRIM

As-Built Conditions

- Fastener spacing exceeded 16-inch o.c. requirement by manufacturer
- Unpainted/unprimed edges of MDF trim
- Deterioration and swelling of trim
- In 2010, Wedgewood replaced some trim at buildings due to observed deterioration

Requirements

- Standard Building Code
- Harditrim Installation Instructions



Position nails no closer than 3/4" and no farther than 2" from the side edge of the trim board (Figure 1B), and no closer than 1" from ends. Space fasteners a maximum of 16" on center.

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EXTERIOR WALLS: TRIM

As-Built Conditions

- Fastener spacing exceeded 16-inch o.c. requirement by manufacturer
- Unpainted/unprimed edges of MDF trim
- Deterioration and swelling of trim
- In 2010, Wedgewood replaced some trim at buildings due to observed deterioration

Requirements

- Standard Building Code
- Harditrim Installation Instructions
- LP SmartStart Application Instructions

SmartStart Trim & Fascia are manufactured with a special edge coating which reduces moisture related problems. Ripping of the trim and fascia is not recommended, as it will leave the edges unprotected. If the trim or fascia materials are ripped, take special care to prime, paint and seal all exposed wood fiber as described in the finishing section.

FINISHING

DO

- Prime and paint all cut and exposed surfaces.

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FINDINGS

- Exterior Walls
  - Weather-Resistive Barrier (WRB)
  - Cladding + Trim Attachment
  - Brick Veneer

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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall



FLASHING DOES NOT EXTEND TO EXTERIOR OF BRICK

ROA 405

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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall



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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed



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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed



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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads



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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads



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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads



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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads
- Improper installation of metal ties



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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads
- Improper installation of metal ties
- Damage at brick veneer



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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads
- Improper installation of metal ties
- Hidden damage



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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads
- Improper installation of metal ties
- Hidden damage



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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads
- Improper installation of metal ties
- Hidden damage



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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads
- Improper installation of metal ties
- Hidden damage



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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads
- Improper installation of metal ties
- Hidden damage



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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads
- Improper installation of metal ties
- Hidden damage

Requirements

- Standard Building Code

1403.1.4 Flashing shall be provided as necessary to prevent the entrance of water at openings in or projections through veneered walls. Flashing shall be provided at intersections of veneered walls of different materials unless such materials provide a self-flashing joint and at other points subject to the entrance of water. Caulking

1403.1.4.1 Flashing and weepholes as outlined in 2111.1.3 shall be located in the first course of masonry above finished ground level above the foundation wall or slab, and other points of support, including structural floors, shelf angles and lintels when anchored veneers are designed in accordance with 1403.2.4, 1403.2.5 and 1403.2.6.

2111.1.3 Weepholes. Weepholes shall be provided in masonry veneer and in the outside wythe of masonry walls at a maximum spacing of 4 ft (1219 mm) on center by omitting mortar in the head joints. Weepholes shall be located in the first course above the foundation wall or slab, and other points of support, including structural floors, shelf angles, and lintels.

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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads
- Improper installation of metal ties
- Hidden damage

Requirements

- Standard Building Code

1403.2.3 Noncombustible lintels, shelf angles or plates, shall be provided over all openings where the anchored veneer is not self-supporting. The deflections of all struc-

1403.2.4 Masonry veneer anchored to wood framing shall be attached with corrosion-resistant corrugated sheet metal and shall be not less than 0.029 inch (0.74 mm) by 7/8 inch (22.2 mm) wide or corrosion- resistant ties of strand wire and shall not be less than W1.7 wire (3.76 mm) with ends of the wire bent to a 90° (1.6 rad) angle to form a hook not less than 2 inches (51 mm) long. The metal ties shall be embedded in the mortar joint a minimum of one-half the veneer thickness. Each metal tie shall

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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads
- Improper installation of metal ties
- Hidden damage

Requirements

- Standard Building Code
- BIA Technical Notes 7 and 28

Locations. Proper design requires flashing at wall bases, window sills, heads of openings, spandrels, shelf angles, projections, recesses, tops of walls and roofs.

Wall Base —Moisture which does enter a wall gradually travels downward. Continuous flashing must be placed above grade at the base of all walls to divert this water to the exterior. In addition, base flashing prevents water from rising up into the wall system due to capillary action.

Steel Lintels—Through-wall flashing should be installed over all openings. An exception may be those completely protected by overhangs. The flashing should be placed directly on top of the lintels and turned up at the ends to form dams. Fig. 12 shows several examples of lintels

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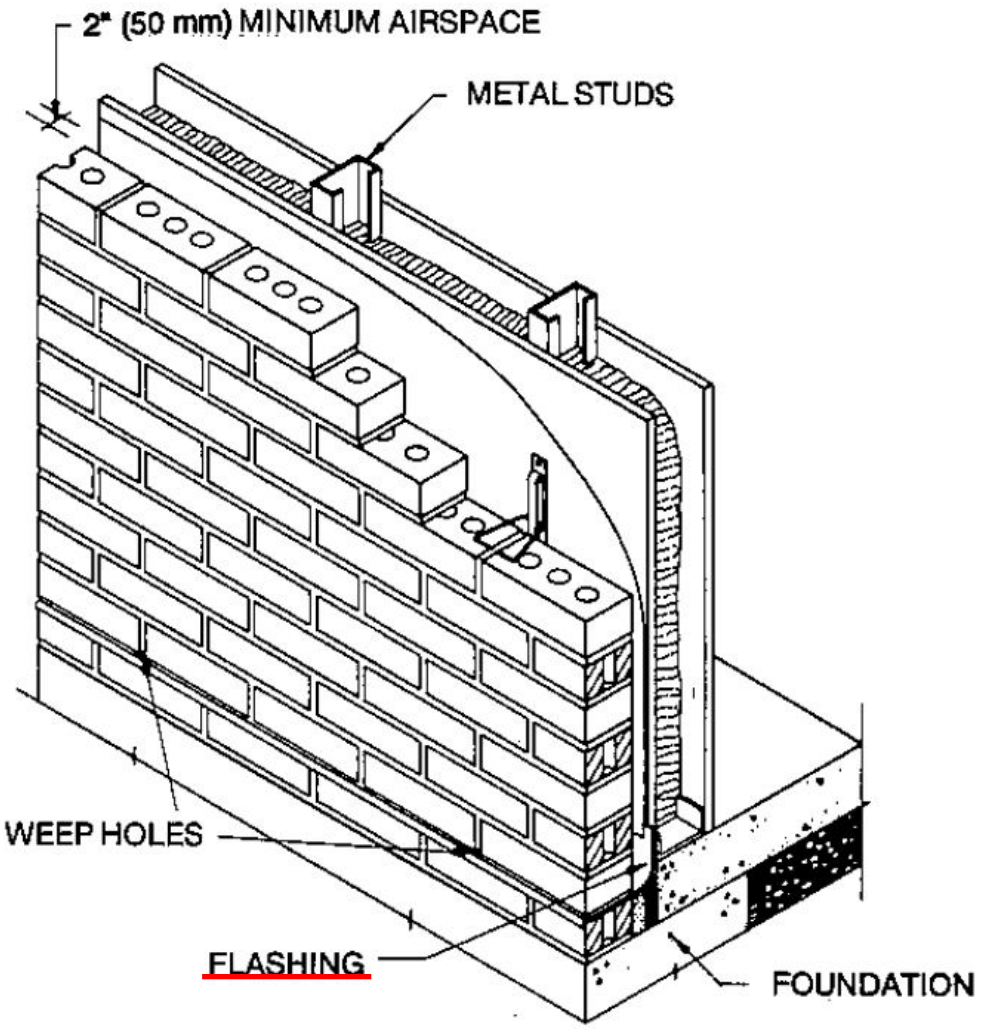
EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads
- Improper installation of metal ties
- Hidden damage

Requirements

- Standard Building Code
- BIA Technical Notes 7 and 28



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EXTERIOR WALLS: BRICK VENEER

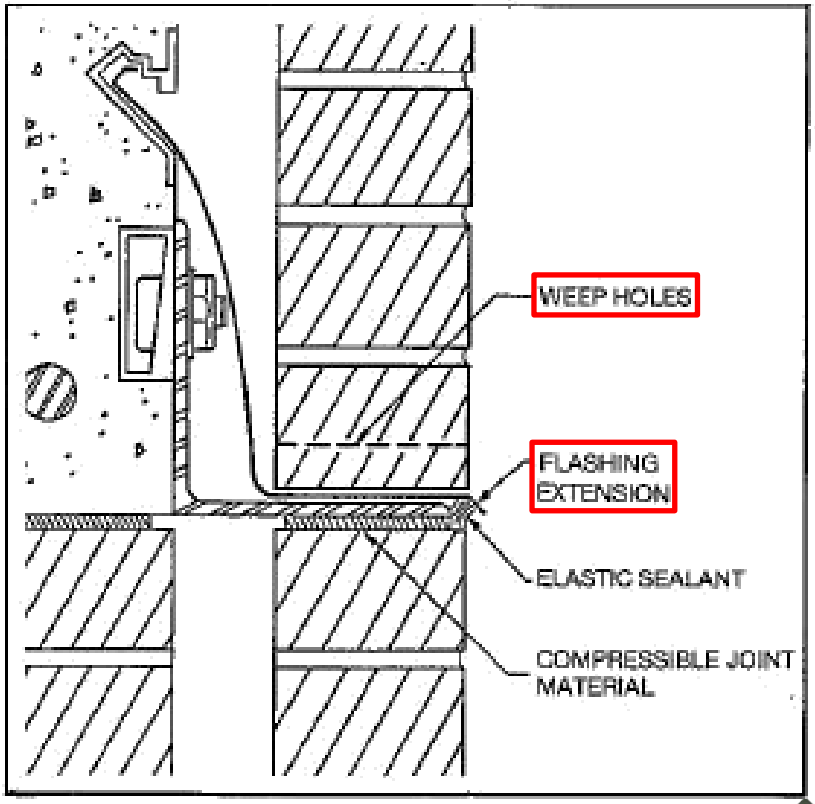
As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads
- Improper installation of metal ties
- Hidden damage

Requirements

- Standard Building Code
- BIA Technical Notes 7 and 28

Extension Through Wall—All flashing should extend beyond the face of the wall to form a drip. Termination of through-wall flashing behind the exterior face of the wall is a dangerous practice and is *not* recommended. See Fig. 22.



Flashing Extended Beyond Face

ROA 423

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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

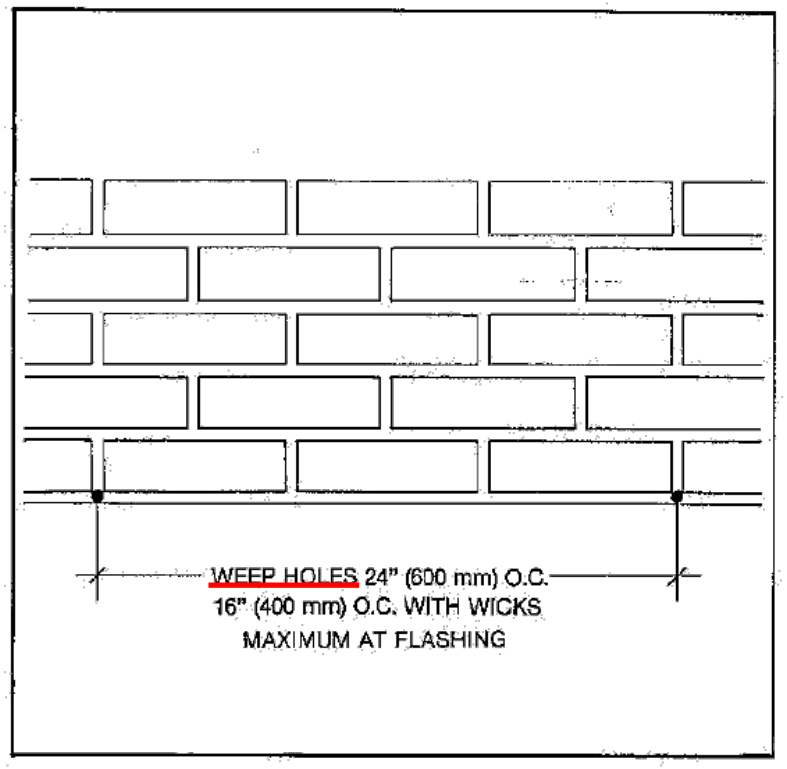
- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads
- Improper installation of metal ties
- Hidden damage

Requirements

- Standard Building Code
- BIA Technical Notes 7 and 28

Weepholes

In order to properly drain any water collected on the flashing, weepholes must be provided immediately above the flashing at all flashing locations. The practice of speci-



Flashing and Weepholes

ROA 424

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EXTERIOR WALLS: BRICK VENEER

As-Built Conditions

- Inadequate through-wall flashing at base of wall
- Brick lintels not properly installed
- No weeps or through-wall flashing at window heads
- Improper installation of metal ties
- Hidden damage

Requirements

- Standard Building Code
- BIA Technical Notes 7 and 28

BIA Technical Note 28

Loose steel, stone or precast lintels should bear at least 4 in. (100mm) at each jamb.

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FINDINGS

- Exterior Walls
- Roofs
  - Underlayment
  - Shingle Attachment
  - Shingle Starter Strip
  - Sheet Metal Fascia

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ROOFS: UNDERLAYMENT

As-Built Conditions

- Underlayment did not cover roof decks along eaves



ROA 427

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ROOFS: UNDERLAYMENT

As-Built Conditions

- Underlayment did not cover roof decks along eaves
- Underlayment did not lap over drip edges along eaves



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ROOFS: UNDERLAYMENT

As-Built Conditions

- Underlayment did not cover roof decks along eaves
- Underlayment did not lap over drip edges along eaves

Requirements

- Standard Building Code

1504.2.2 4:12 pitch to 20:12 pitch. Underlayment shall be applied shingle fashion, parallel to and starting from the eave and lapped 2 inches (51 mm), fastened only as necessary to hold in place. As an alternative to asphalt sat-

1504.2.3 Asphalt shingles shall be fastened along the rake. Asphalt shingles shall be fastened and cemented at all valleys, rakes, penetrations, and all vertical projections. Eaves must be cemented or the metal eave drip shall be installed under the felt.

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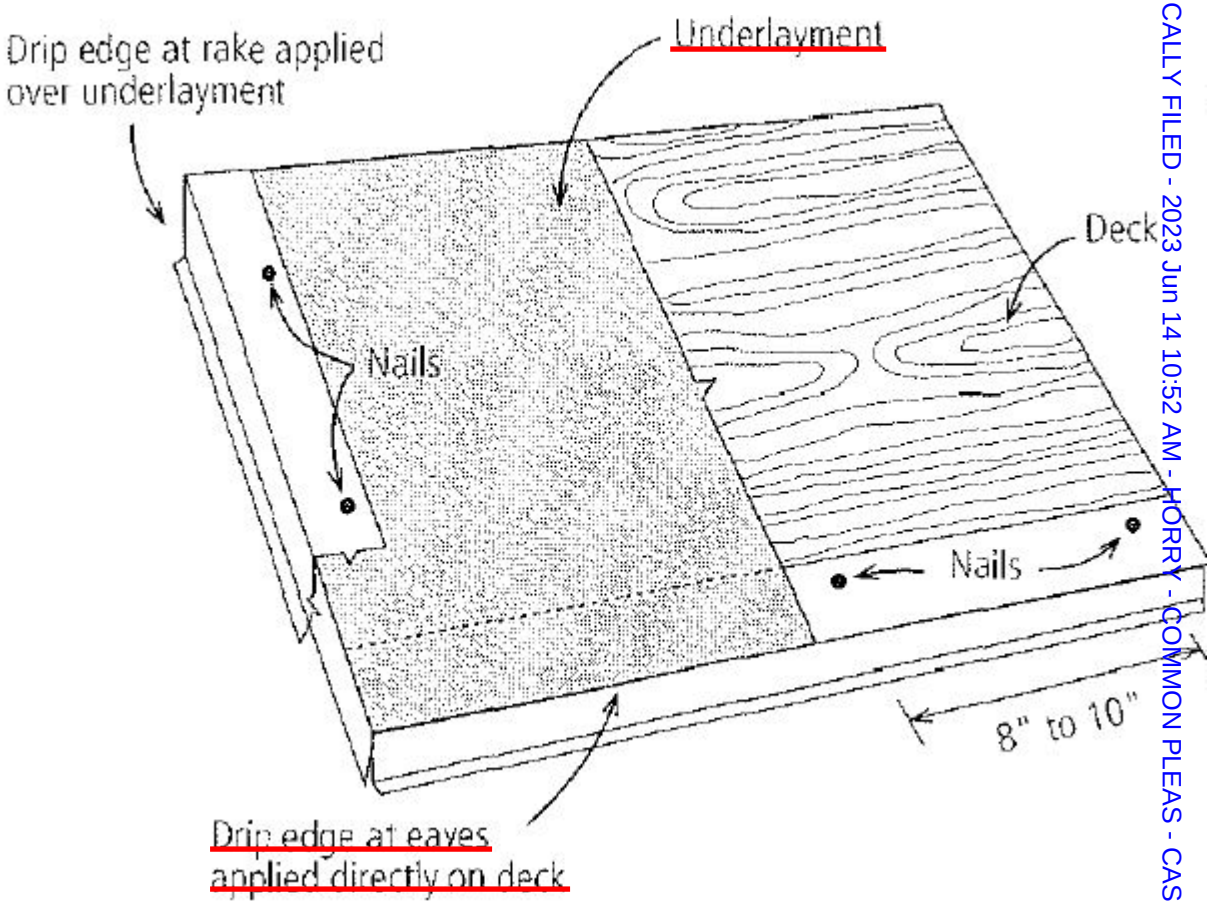
ROOFS: UNDERLAYMENT

As-Built Conditions

- Underlayment did not cover roof decks along eaves
- Underlayment did not lap over drip edges along eaves

Requirements

- Standard Building Code
- ARMA Residential Asphalt Roofing Manual



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FINDINGS

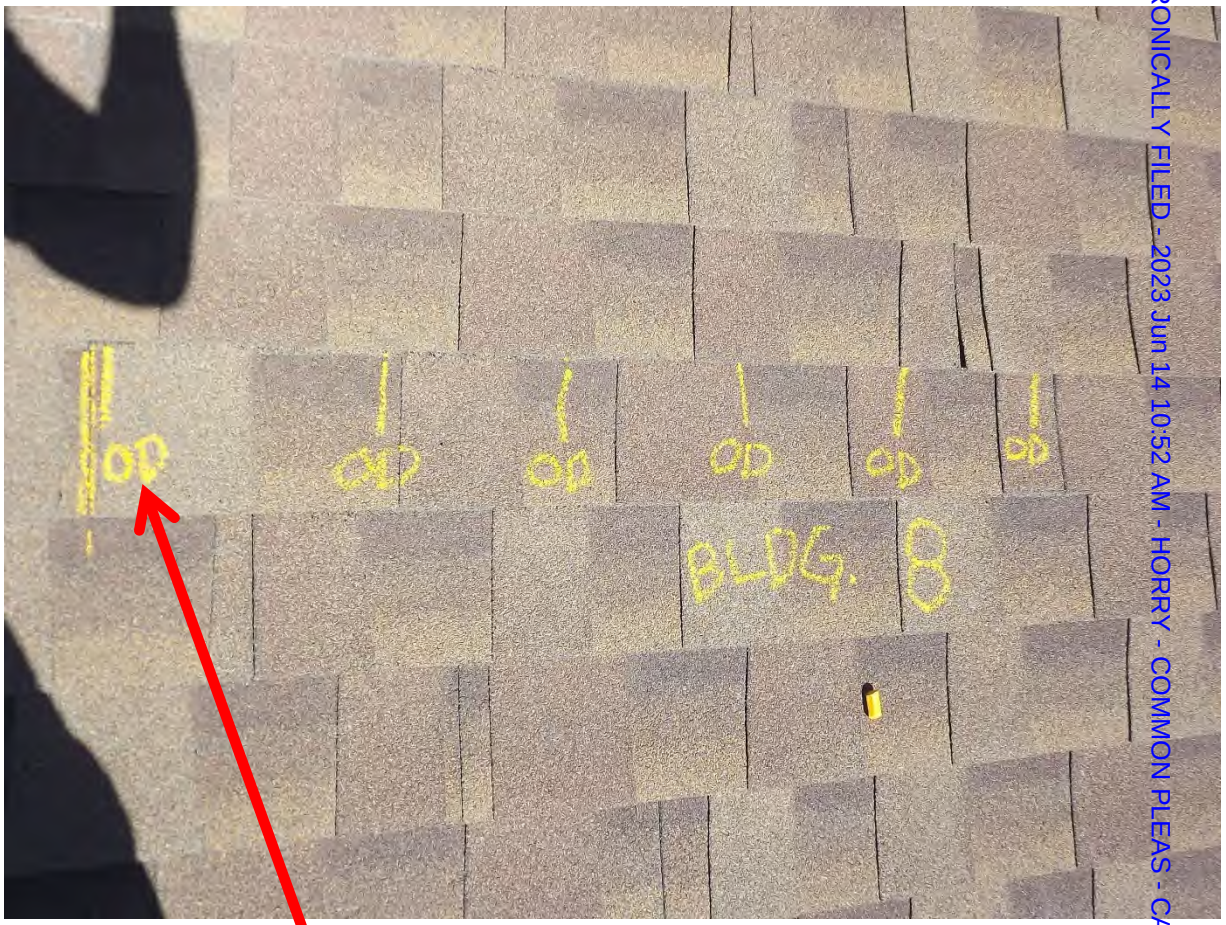
- Exterior Walls
- Roofs
  - Underlayment
  - Shingle Attachment
  - Shingle Starter Strip
  - Sheet Metal Fascia

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ROOFS: SHINGLE ATTACHMENT

As-Built Conditions

- Shingle nails overdriven at 7 out of 9 Buildings



ALL NAILS OVERDRIVEN

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ROOFS: SHINGLE ATTACHMENT

As-Built Conditions

- Shingle nails overdriven at 7 out of 9 Buildings



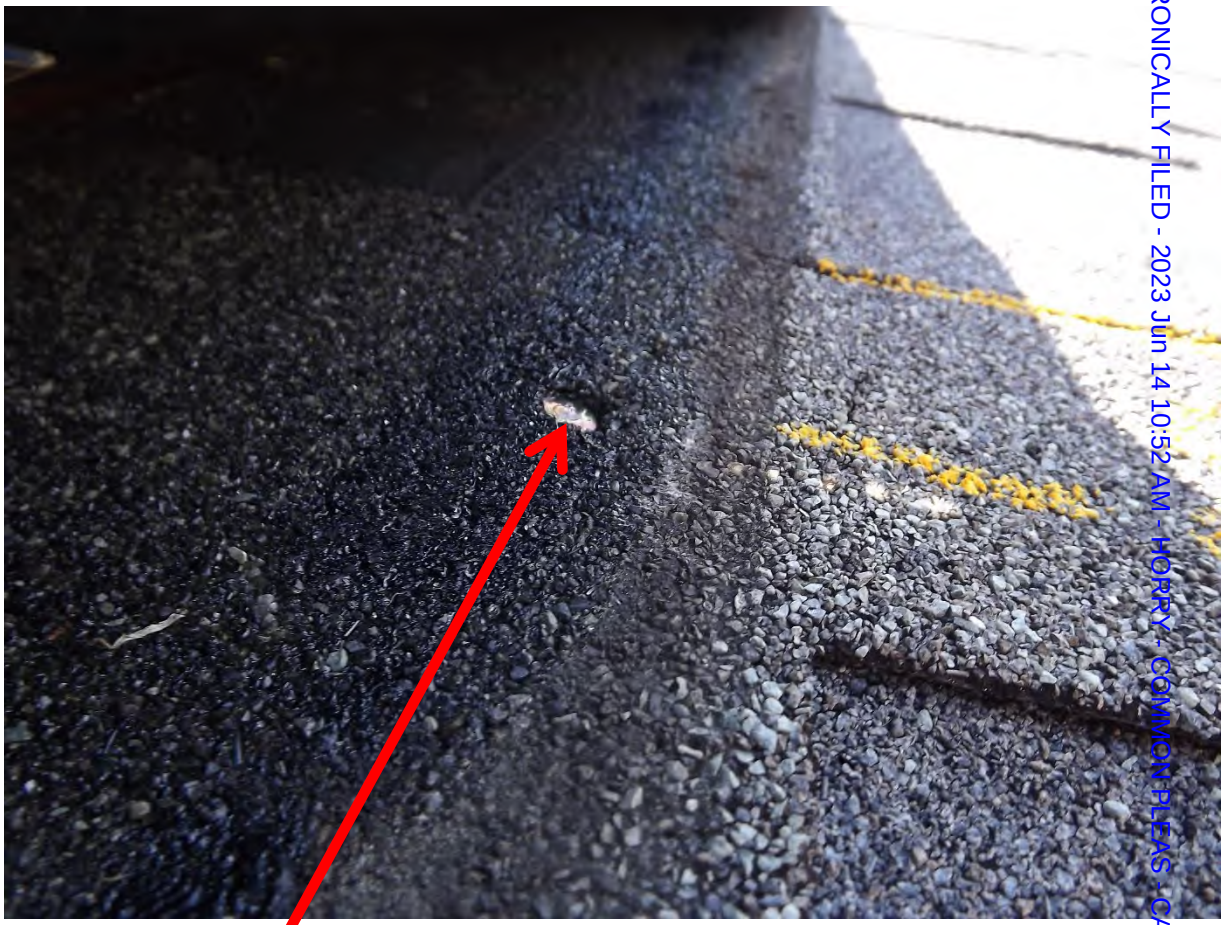
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ROOFS: SHINGLE ATTACHMENT

As-Built Conditions

- Shingle nails overdriven at 7 out of 9 Buildings



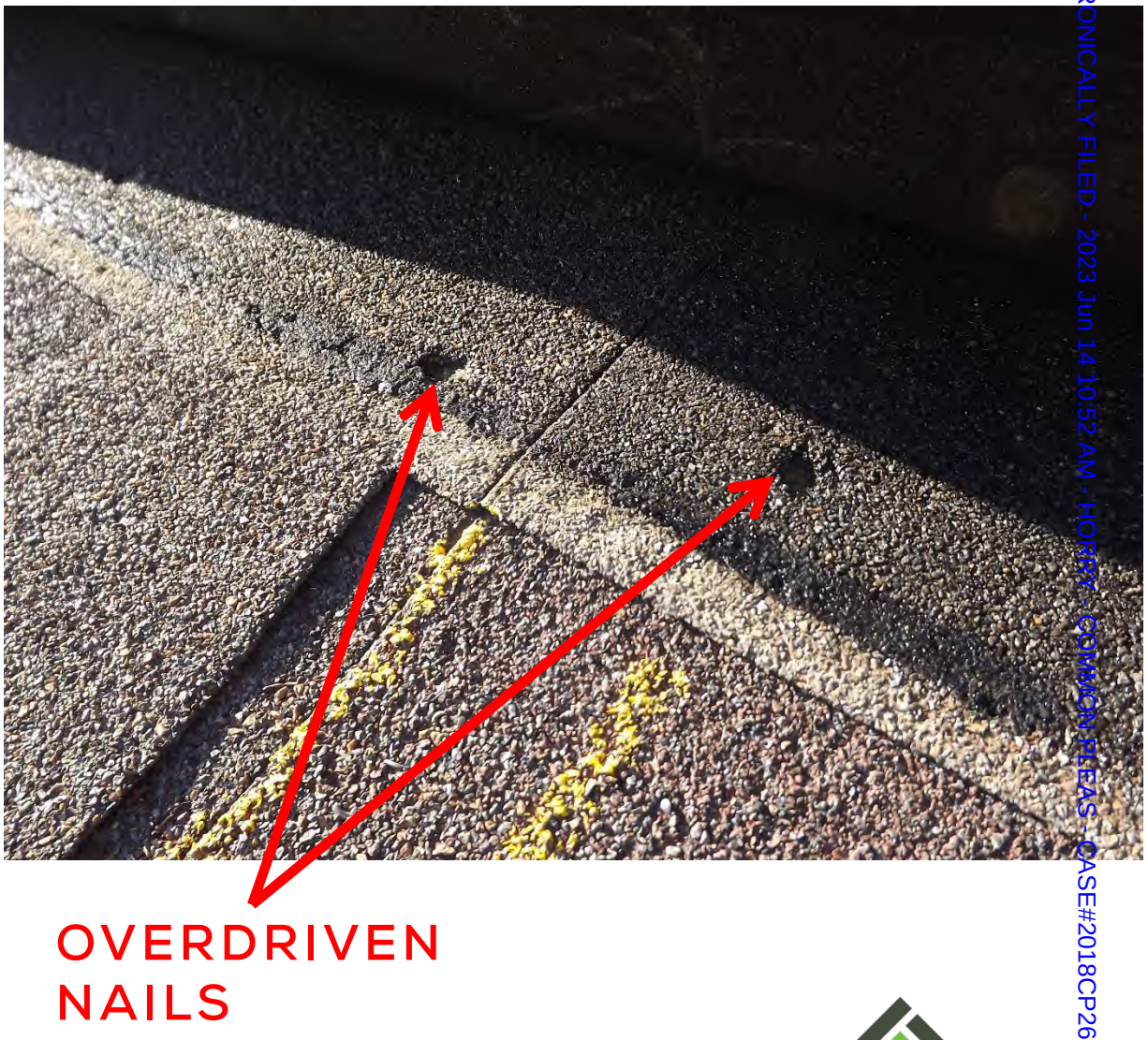
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ROOFS: SHINGLE ATTACHMENT

As-Built Conditions

- Shingle nails overdriven at 7 out of 9 Buildings



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ROOFS: SHINGLE ATTACHMENT

As-Built Conditions

- Shingle nails overdriven at 7 out of 9 Buildings
- Resulting damages



COVERED SHINGLE AREAS (BLOW-OFF)

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ROOFS: SHINGLE ATTACHMENT

As-Built Conditions

- Shingle nails overdriven at 7 out of 9 Buildings
- Resulting damages

Requirements

- Standard Building Code

1504.1.6 Self-sealing asphalt strip shingles shall have a minimum of six fasteners per shingle when the roof is in one of the following categories:

1. The basic wind speed is 90 mph (40.2 m/s) or greater and the eave is 20 ft (6096 mm) or higher above grade.
2. The basic wind speed is 90 mph (40.2 m/s) or greater and the Use Factor in Table 1606 is 1.15.
3. The basic wind speed is 100 mph (44.7 m/s) or greater.

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ROOFS: SHINGLE ATTACHMENT

As-Built Conditions

- Shingle nails overdriven at 7 out of 9 Buildings
- Resulting damages

Requirements

- Standard Building Code

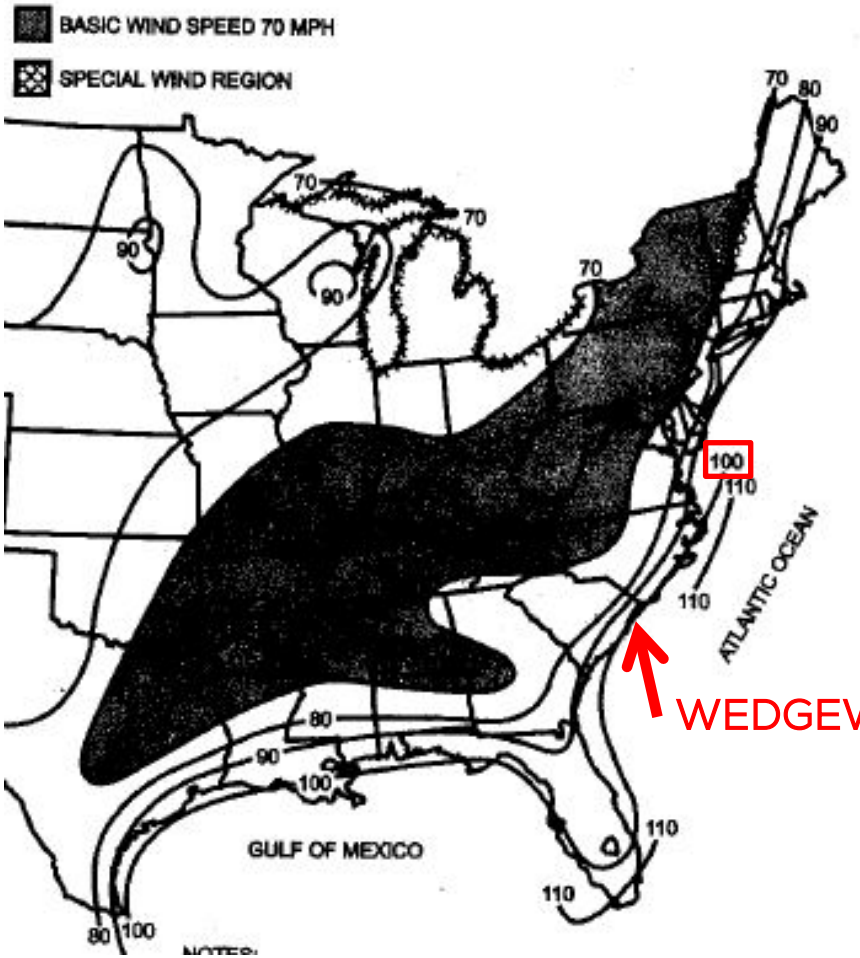


FIGURE 1606
BASIC WIND SPEEDS FOR 50-YEAR MEAN RECURRENCE INTERVAL
(ALEUTIAN ISLANDS, VIRGIN ISLANDS AND PUERTO RICO SHALL USE A BASIC WIND SPEED OF 110 MPH)

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ROA 438

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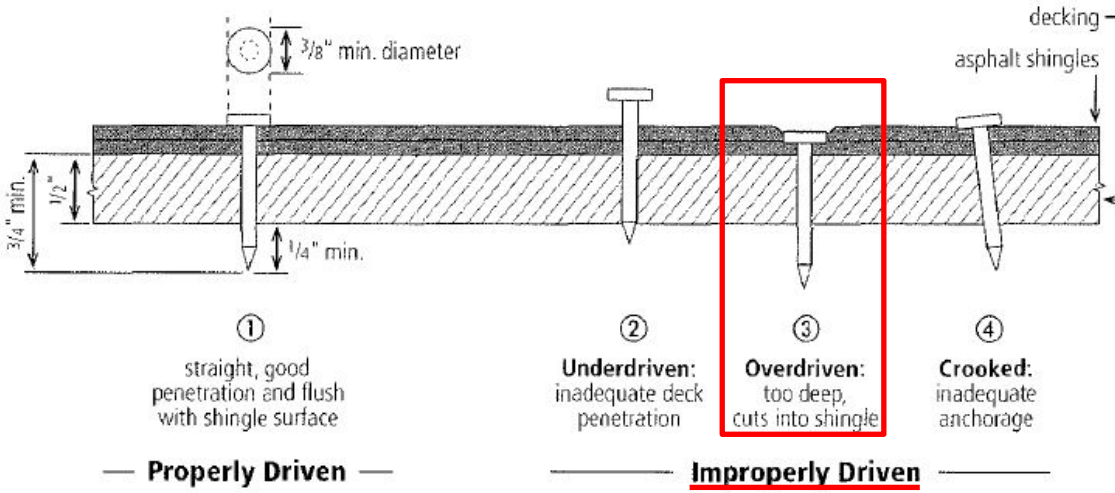
ROOFS: SHINGLE ATTACHMENT

As-Built Conditions

- Shingle nails overdriven at 7 out of 9 Buildings
- Resulting damages

Requirements

- Standard Building Code
- ARMA Residential Asphalt Roofing Manual



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FINDINGS

- Exterior Walls
- Roofs
  - Underlayment
  - Shingle Attachment
  - Shingle Starter Strip
  - Sheet Metal Fascia

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ROOFS: SHINGLE STARTER STRIP

As-Built Conditions

- No self-sealing adhesive along shingle starter strips at 7 of 9 Buildings



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ROOFS: SHINGLE STARTER STRIP

As-Built Conditions

- No self-sealing adhesive along shingle starter strips at 7 of 9 Buildings



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ROOFS: SHINGLE STARTER STRIP

As-Built Conditions

- No self-sealing adhesive along shingle starter strips at 7 of 9 Buildings

Requirements

- Standard Building Code
- ARMA Residential Asphalt Roofing Manual

1504.1.2 Asphalt shingles shall comply with ASTM D 225 or ASTM D 3462, and shall have factory-applied self-seal strips or be interlocking.

1504.1.5 Asphalt shingles shall have self-seal strips or shall be interlocking, and shall have the type and minimum number of fasteners recommended by the manufacturer.

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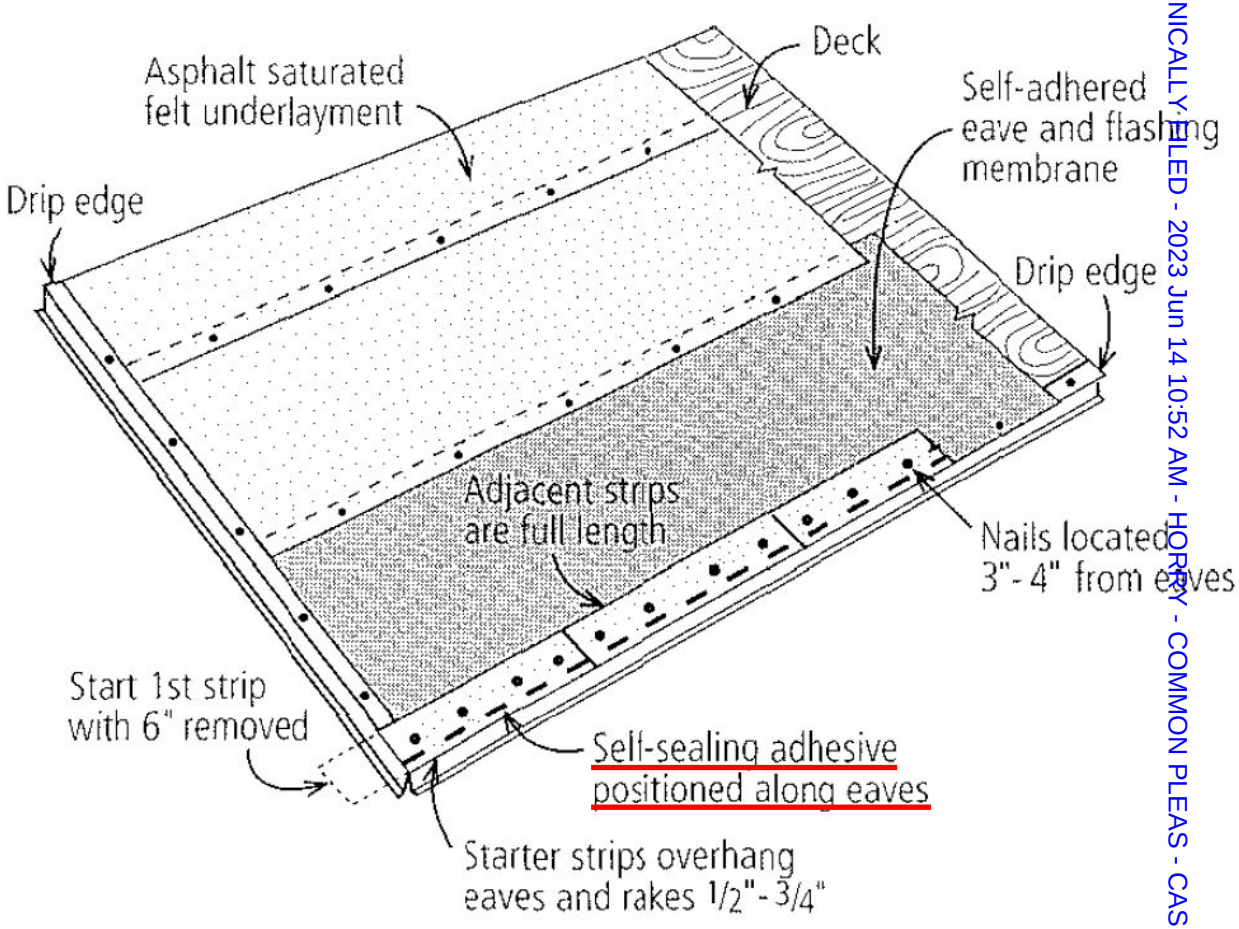
ROOFS: SHINGLE STARTER STRIP

As-Built Conditions

- No self-sealing adhesive along shingle starter strips at 7 of 9 Buildings

Requirements

- Standard Building Code
- ARMA Residential Asphalt Roofing Manual



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FINDINGS

- Exterior Walls
- Roofs
  - Underlayment
  - Shingle Attachment
  - Shingle Starter Strip
  - Sheet Metal Fascia

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ROOFS: SHEET METAL FASCIA

As-Built Conditions

- Fastener spacing exceeded 24-inch o.c. required by typical manufacturer



FASTENER SPACING

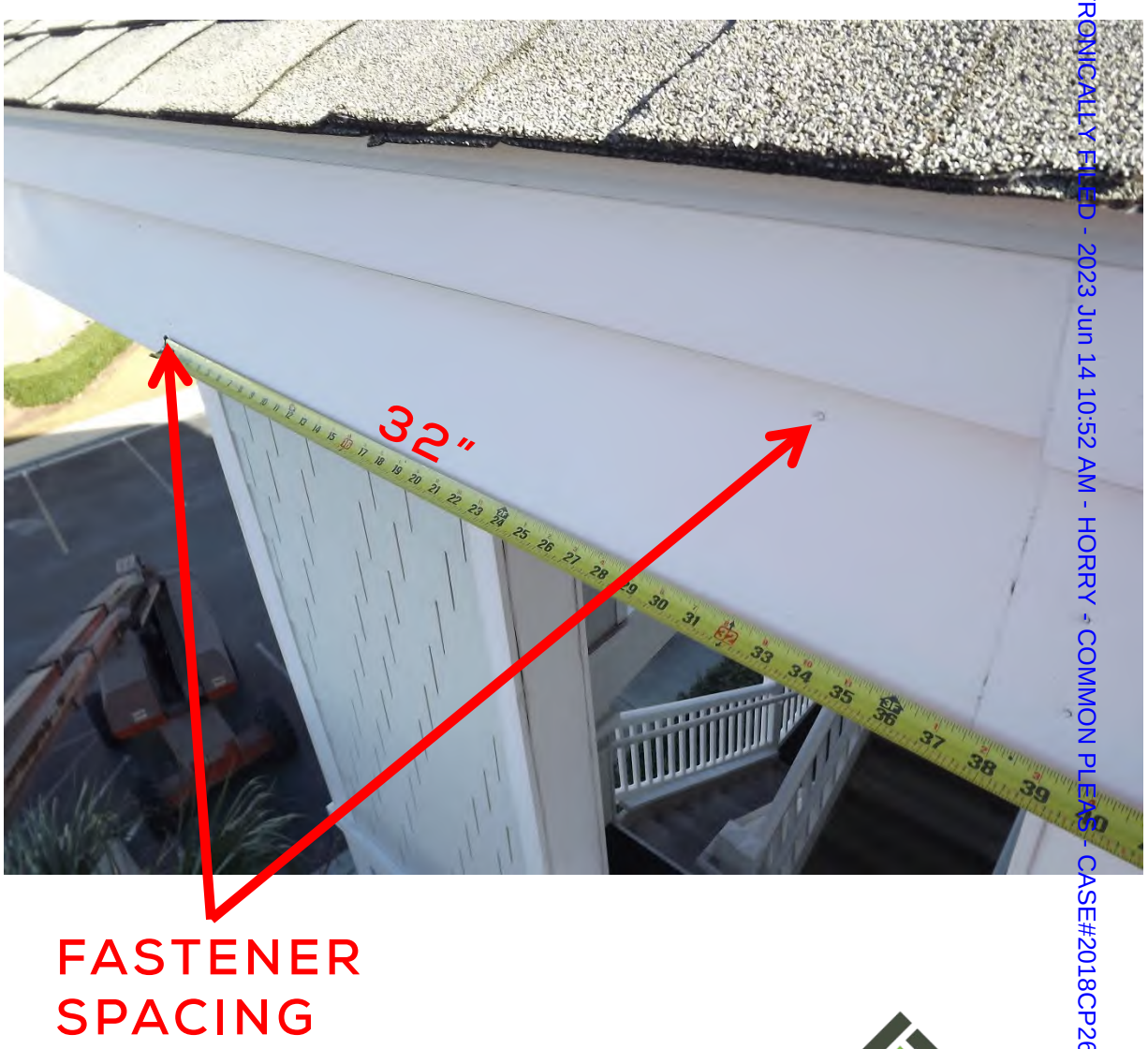
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ROOFS: SHEET METAL FASCIA

As-Built Conditions

- Fastener spacing exceeded 24-inch o.c. required by typical manufacturer



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ROOFS: SHEET METAL FASCIA

As-Built Conditions

- Fastener spacing exceeded 24-inch o.c. required by typical manufacturer
- Inadequate lap with drip edge



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ROOFS: SHEET METAL FASCIA

As-Built Conditions

- Fastener spacing exceeded 24-inch o.c. required by typical manufacturer
- Inadequate lap with drip edge
- Resulting damage



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ROOFS: SHEET METAL FASCIA

As-Built Conditions

- Fastener spacing exceeded 24-inch o.c. required by typical manufacturer
- Inadequate lap with drip edge
- Resulting damage



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ROOFS: SHEET METAL FASCIA

As-Built Conditions

- Fastener spacing exceeded 24-inch o.c. required by typical manufacturer
- Inadequate lap with drip edge
- Resulting damage

Requirements

- Standard Building Code

1504.2.10 Drip edge shall be mechanically fastened a maximum of 12 inches (305 mm) on center.

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ROOFS: SHEET METAL FASCIA

As-Built Conditions

- Fastener spacing exceeded 24-inch o.c. required by typical manufacturer
- Inadequate lap with drip edge
- Resulting damage

Requirements

- Standard Building Code
- CertainTeed Basic Installation Guide

Aluminum fascia

The techniques used to install aluminum fascia panels are similar to those used with vinyl – with three exceptions. There is no special undersill trim to use with aluminum fascia. Aluminum fascia is made without nail slots, so you have to pay attention to proper nailing techniques. And corners are handled differently.

Follow this 4-step procedure to install aluminum fascia:

1) Install drip edge, gutter or all-purpose trim along the top of the fascia board to receive the top edge of the fascia panel.

2) Slip the fascia panel in place, then nail the underside of the panel. Nail every 24", keeping nails lined up with soffit "v" grooves.

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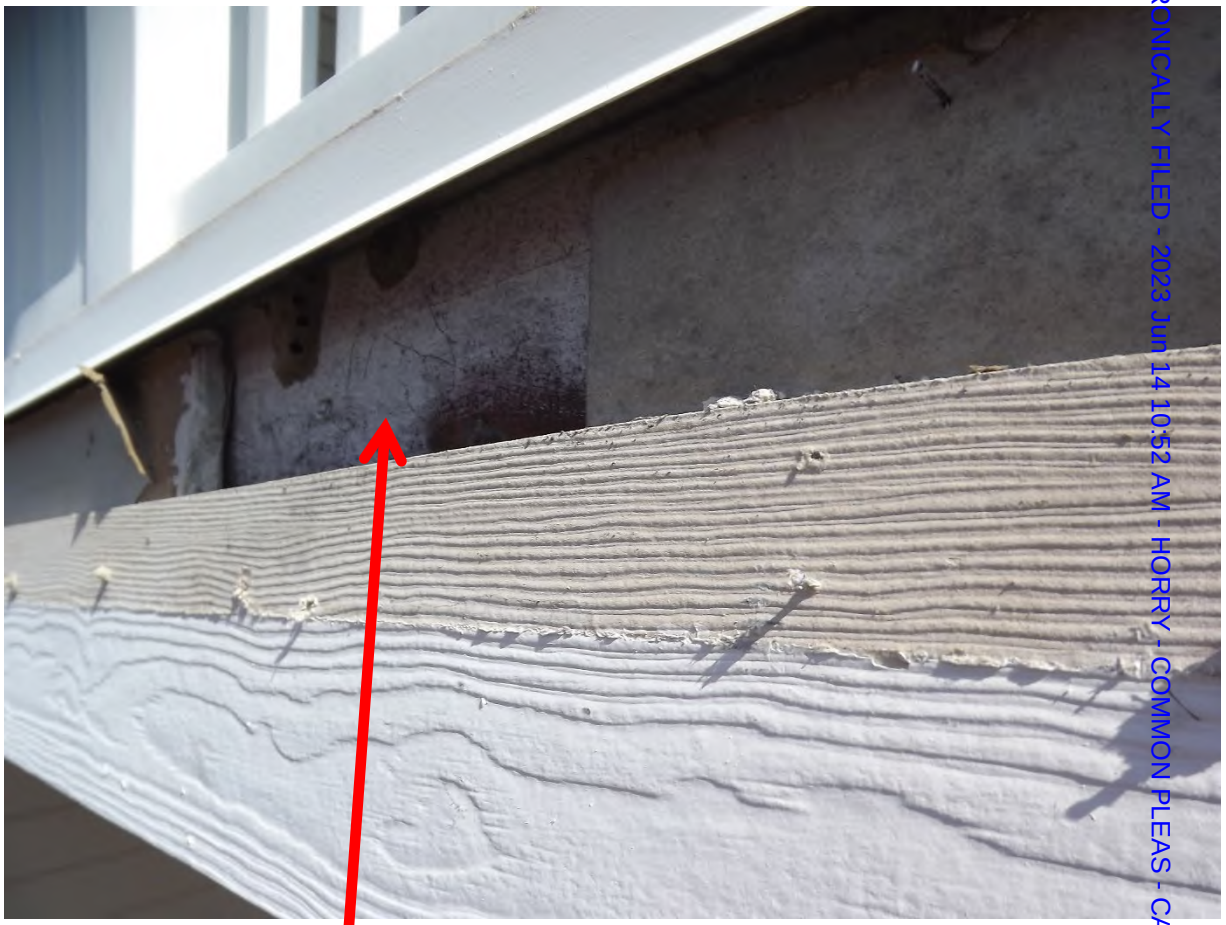
- Exterior Walls
- Roofs
- Walkways
  - Fire Protection
  - Waterproofing

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WALKWAYS: FIRE PROTECTION

As-Built Conditions

- Gypsum board not installed



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WALKWAYS: FIRE PROTECTION

As-Built Conditions

- Gypsum board not installed
- Joints in gypsum board not taped



UPTAPED JOINTS IN GYPSUM BOARD

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WALKWAYS: FIRE PROTECTION

As-Built Conditions

- Gypsum board not installed
- Joints in gypsum board not taped



UPTAPED JOINTS IN GYPSUM BOARD

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WALKWAYS: FIRE PROTECTION

As-Built Conditions

- Gypsum board not installed
- Joints in gypsum board not taped
- Water damaged gypsum board



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WALKWAYS: FIRE PROTECTION

As-Built Conditions

- Gypsum board not installed
- Joints in gypsum board not taped
- Water damaged gypsum board

Requirements

- Standard Building Code

TABLE 600
FIRE RESISTANCE RATINGS
REQUIRED FIRE RESISTANCE IN HOURS

STRUCTURAL ELEMENT	TYPE VI	
	1-Hour Protected	Unprotected
BEAMS, GIRDERS, TRUSSES & ARCHES		
Supporting columns or more than one floor	1	0
Supporting one floor only	1	0
Supporting roofs only	1	0

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WALKWAYS: FIRE PROTECTION

As-Built Conditions

- Gypsum board not installed
- Joints in gypsum board not taped
- Water damaged gypsum board

Requirements

- Standard Building Code
- Gypsum Fire Resistance Design Manual

Unless otherwise specified, the face layers of all systems, except those with predecorated or metal covered surfaces, shall have joints taped (minimum Level 1 as specified in GA-214, *Levels of Gypsum Board Finish*) and fastener heads treated.

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FINDINGS

- Exterior Walls
- Roofs
- Walkways
  - Fire Protection
  - Waterproofing

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WALKWAYS: WATERPROOFING

As-Built Conditions

- Fabric reinforcement not fully embedded



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WALKWAYS: WATERPROOFING

As-Built Conditions

- Fabric reinforcement not fully embedded



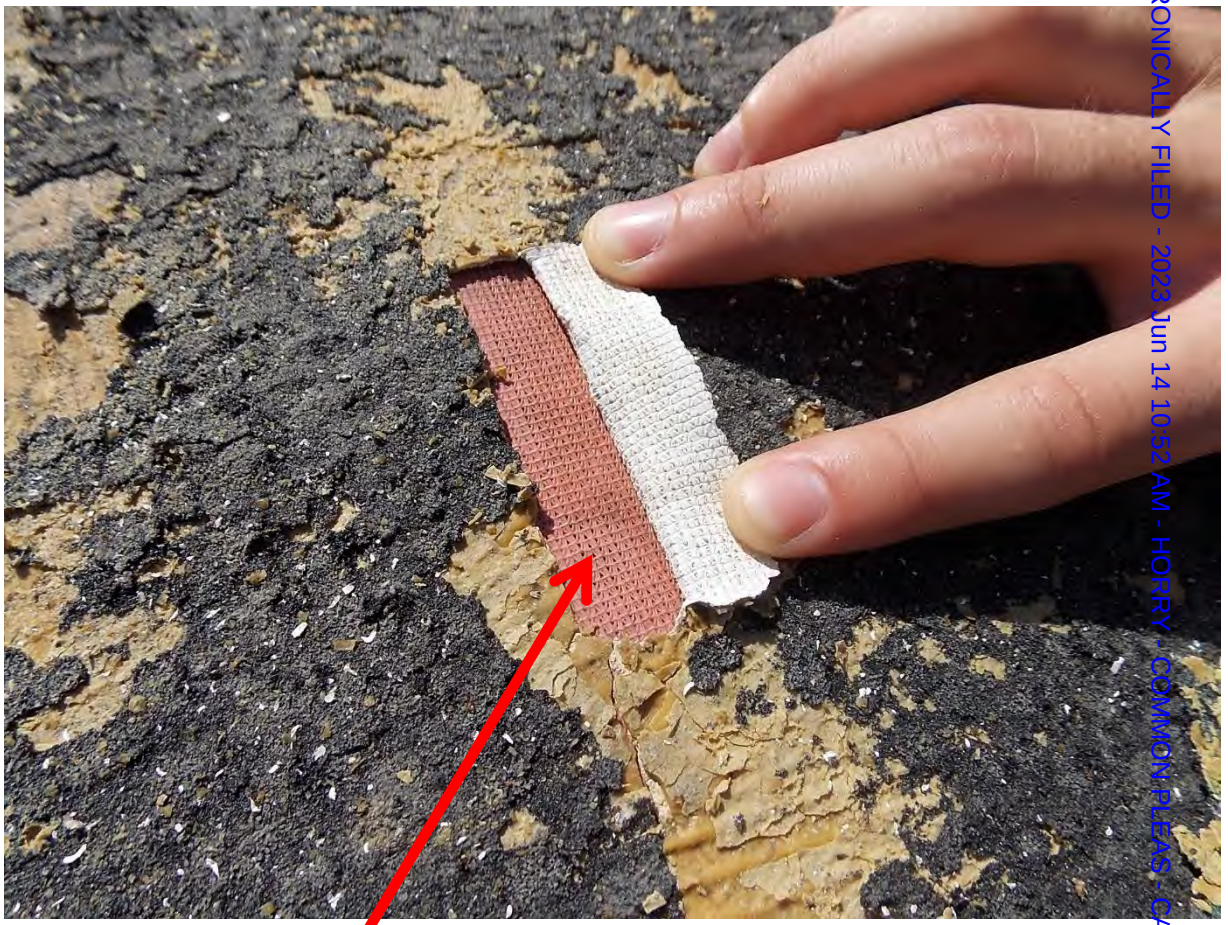
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WALKWAYS: WATERPROOFING

As-Built Conditions

- Fabric reinforcement not fully embedded



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WALKWAYS: WATERPROOFING

As-Built Conditions

- Fabric reinforcement not fully embedded
- Manufacturer requires thickness of 40mils



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WALKWAYS: WATERPROOFING

As-Built Conditions

- Fabric reinforcement not fully embedded
- Manufacturer requires thickness of 40mils
- Missing behind stairs



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WALKWAYS: WATERPROOFING

As-Built Conditions

- Fabric reinforcement not fully embedded
- Manufacturer requires thickness of 40mils
- Missing behind stairs
- Waterproofing did not lap onto vertical surfaces at stairs and missing cant



DID NOT LAP ONTO VERTICAL SURFACE AND MISSING CANT

ROA 466

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WALKWAYS: WATERPROOFING

As-Built Conditions

- Fabric reinforcement not fully embedded
- Manufacturer requires thickness of 40mils
- Missing behind stairs
- Waterproofing did not turn up onto vertical surfaces at stairs and missing cant



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WALKWAYS: WATERPROOFING

As-Built Conditions

- Fabric reinforcement not fully embedded
- Manufacturer requires thickness of 40mils
- Missing behind stairs
- Waterproofing did not turn up onto vertical surfaces at stairs and missing cant
- Damages to waterproofing



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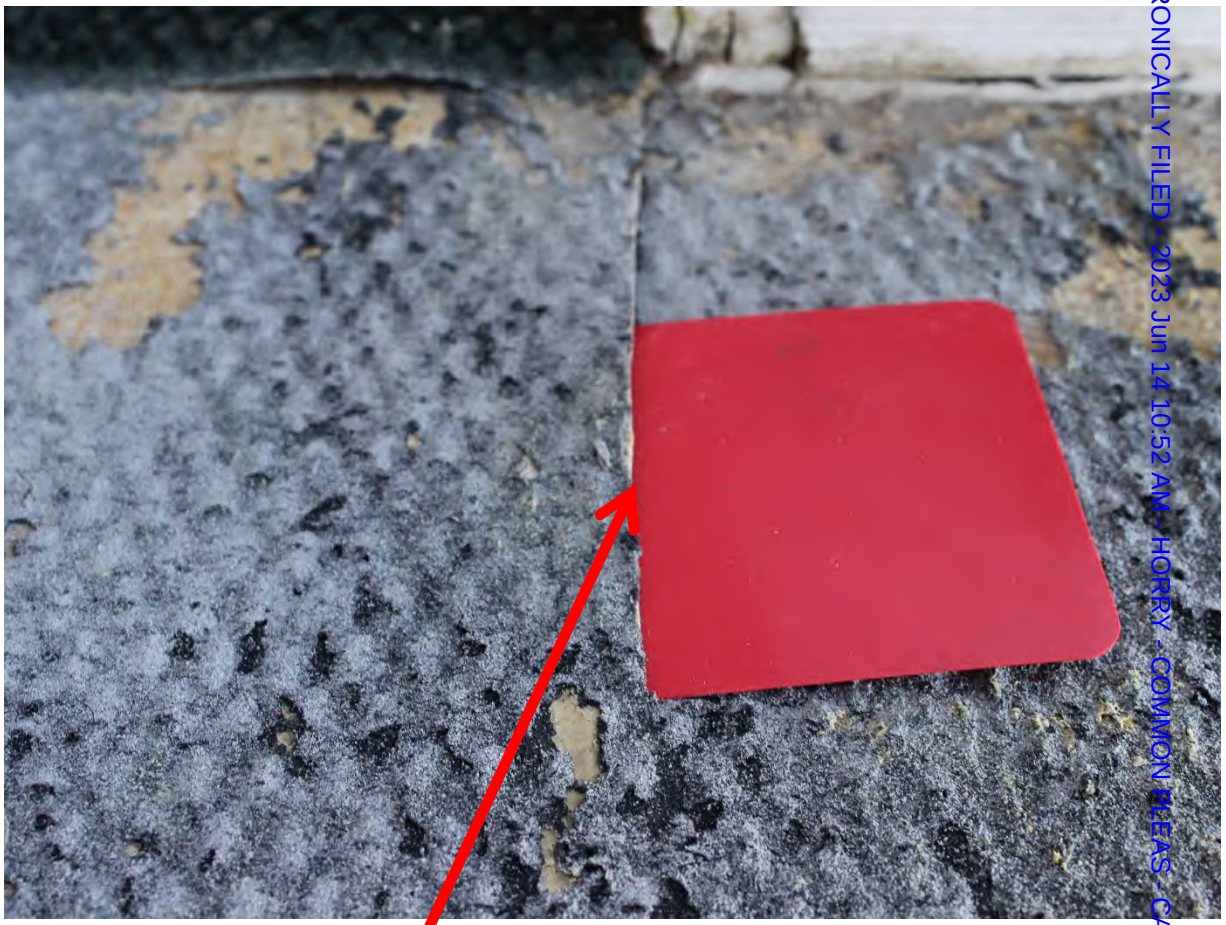
ROA 468

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WALKWAYS: WATERPROOFING

As-Built Conditions

- Fabric reinforcement not fully embedded
- Manufacturer requires thickness of 40mils
- Missing behind stairs
- Waterproofing did not turn up onto vertical surfaces at stairs and missing cant
- Damages to waterproofing



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WALKWAYS: WATERPROOFING

As-Built Conditions

- Fabric reinforcement not fully embedded
- Manufacturer requires thickness of 40mils
- Missing behind stairs
- Waterproofing did not turn up onto vertical surfaces at stairs and missing cant
- Damages to waterproofing
- Hidden damage



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WALKWAYS: WATERPROOFING

As-Built Conditions

- Fabric reinforcement not fully embedded
- Manufacturer requires thickness of 40mils
- Missing behind stairs
- Waterproofing did not turn up onto vertical surfaces at stairs and missing cant
- Damages to waterproofing
- Hidden damage



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WALKWAYS: WATERPROOFING

As-Built Conditions

- Fabric reinforcement not fully embedded
- Manufacturer requires thickness of 40mils
- Missing behind stairs
- Waterproofing did not turn up onto vertical surfaces at stairs and missing cant
- Damages to waterproofing
- Hidden damage



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WALKWAYS: WATERPROOFING

As-Built Conditions

- Fabric reinforcement not fully embedded
- Manufacturer requires thickness of 40mils
- Missing behind stairs
- Waterproofing did not turn up onto vertical surfaces at stairs and missing cant
- Damages to waterproofing
- Hidden damage



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WALKWAYS: WATERPROOFING

As-Built Conditions

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WALKWAYS: WATERPROOFING

As-Built Conditions

- Fabric reinforcement not fully embedded
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WALKWAYS: WATERPROOFING

As-Built Conditions

- Fabric reinforcement not fully embedded
- Manufacturer requires thickness of 40mils
- Missing behind stairs
- Waterproofing did not turn up onto vertical surfaces at stairs and missing cant
- Damages to waterproofing
- Hidden damage



WATER DAMAGED
WOOD BELOW POST

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WALKWAYS: WATERPROOFING

As-Built Conditions

- Fabric reinforcement not fully embedded
- Manufacturer requires thickness of 40mils
- Missing behind stairs
- Waterproofing did not turn up onto vertical surfaces at stairs and missing cant
- Damages to waterproofing
- Hidden damage



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WATER DAMAGED FIREPROOFING

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Requirements

- Standard Building Code

SECTION 1515
LIQUID APPLIED COATINGS

1515.1 General. The use of liquid applied coatings as waterproofing shall be made in accordance with the manufacturer's recommendations. The water barrier coating shall be a single or multiple component system consisting of the number of coats as recommended by the manufacturer, which will cure to form a continuous monolithic film bridging all gaps, seams, splits, joints, etc., totally preventing water from penetrating under the film and into the substrate. The dry mil thickness of the coating shall be compliance with the weather barrier coating manufacturer's specification. In any event, the minimum dry thickness shall be 15 mils (0.38 mm).

1403.1.4 Flashing shall be provided as necessary to prevent the entrance of water at openings in or projections through veneered walls. Flashing shall be provided at intersections of veneered walls of different materials unless such materials provide a self-flashing joint and at other points subject to the entrance of water. Caulking

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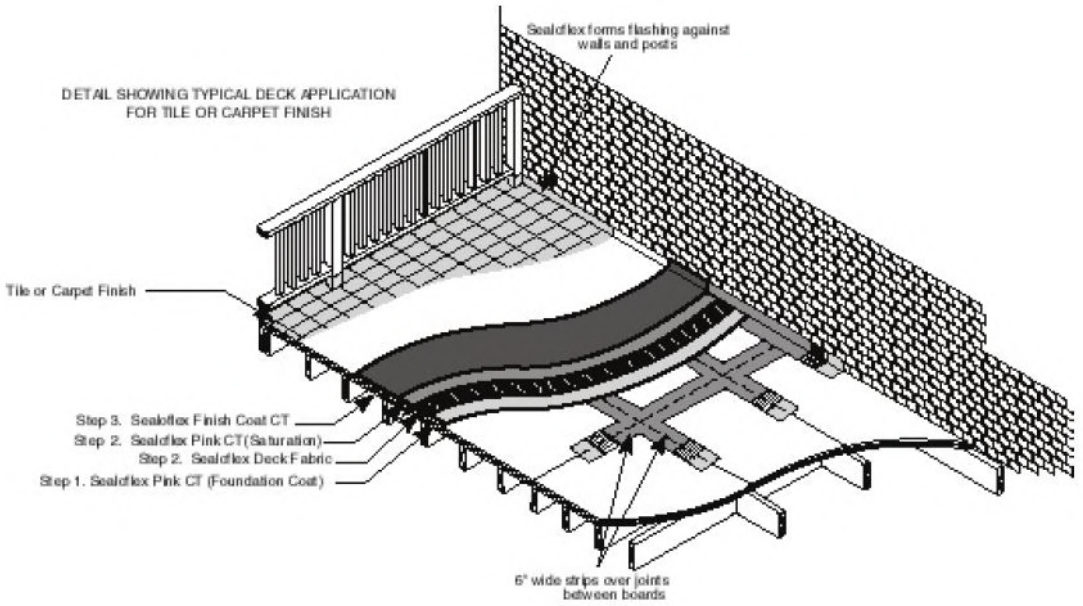
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Requirements

- Standard Building Code
- Sealoflex Specifications and Instructions



Preparation: *Plywood Decks* - Surface irregularities and joints between boards should be skimmed with Sealoflex Buttergrade™ using a trowel or sheetrock knife. Install cant strips at junctions of vertical and horizontal surfaces.

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Requirements

- Standard Building Code
- Sealoflex Specifications and Instructions

Application:

1. Flash junctions between deck and walls, posts and any other adjacent surfaces with 6" wide Sealoflex fabric by applying a heavy layer of Sealoflex Pink CT 3" up the vertical surface and 3" onto the deck and immediately imbedding the fabric into the wet Sealoflex Pink CT working fabric in well with a dry paint brush. Allow to dry. (about 20 min.). Now apply more Pink CT to the surface to fully saturate the fabric from above. In the same way apply the Pink CT/6" Fabric/Pink CT over all seams between plywood boards.

4. Unroll the 10' wide Deck Fabric to cover the entire horizontal surface and tack into position only to prevent wind from lifting the fabric. Once the fabric is in position apply Sealoflex Pink CT generously to the fabric surface with 3/4" nap roller or airless spray equipment. Application rate will be approximately 60 sq.ft./gal. Whether spraying or rolling use roller to apply pressure to ensure good imbedding and saturation of the fabric. Cover the entire horizontal area in this way and allow to dry. Should it be necessary to join the fabric overlap by 3"

M. Total cured thickness of waterproofing to be a minimum of 40 mil (1.0mm).
N. Apply extra thickness of waterproofing material at corners, intersections, angles and overlap joints.
O. Seal watertight items projecting through waterproofing.

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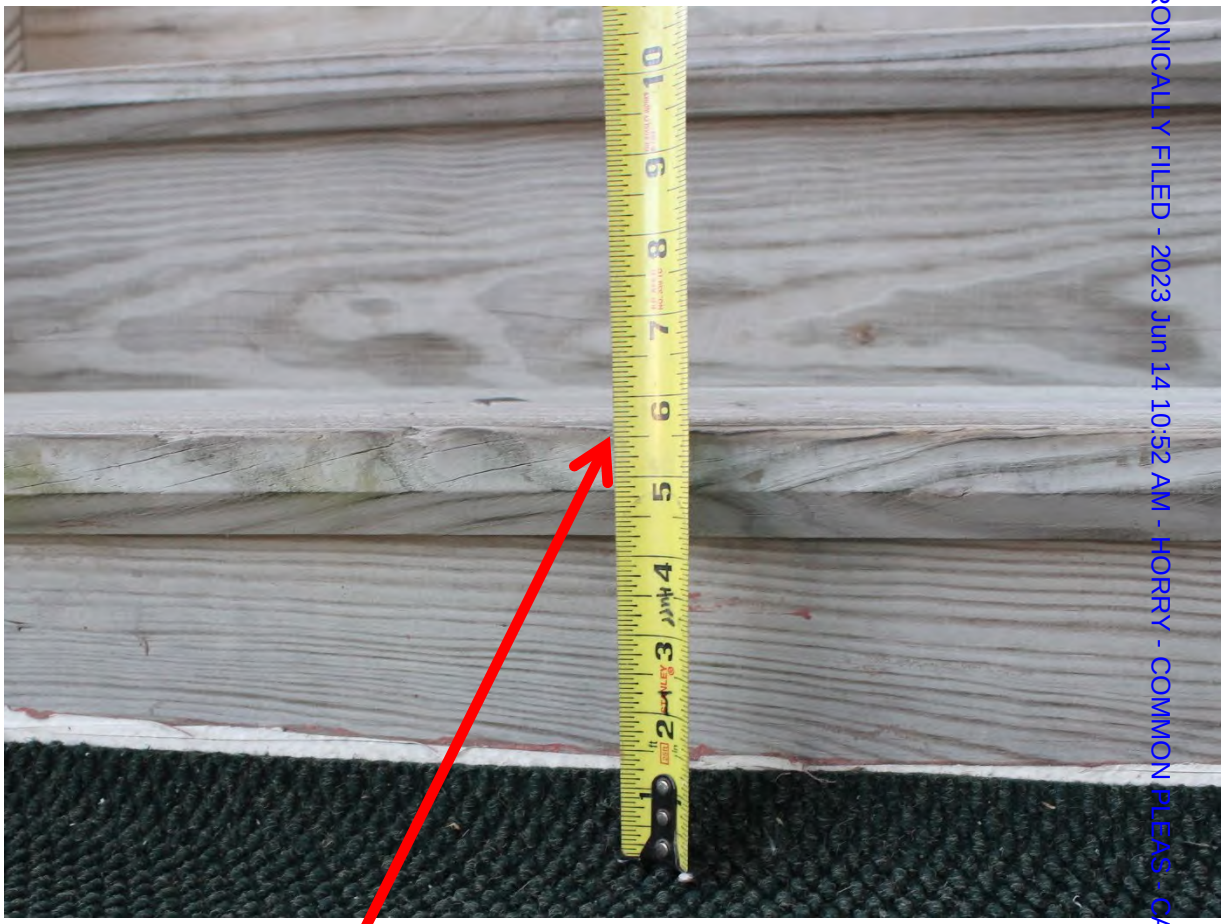
- Exterior Walls
- Roofs
- Walkways
- Stairs
    - Riser Heights and Handrails

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STAIRS: RISER HEIGHTS AND HANDRAILS

As-Built Conditions

- Difference in riser heights within individual stair flights exceeded 3/8" required by building code



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STAIRS: RISER HEIGHTS AND HANDRAILS

As-Built Conditions

- Difference in riser heights within individual stair flights exceeded 3/8" required by building code



RISER HEIGHT OVER 7" – VARIATION EXCEEDS BUILDING CODE

ROA 485

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STAIRS: RISER HEIGHTS AND HANDRAILS

As-Built Conditions

- Difference in riser heights within individual stair flights exceeded 3/8" required by building code
- Clearance at handrails less than 1-1/2" required by building code



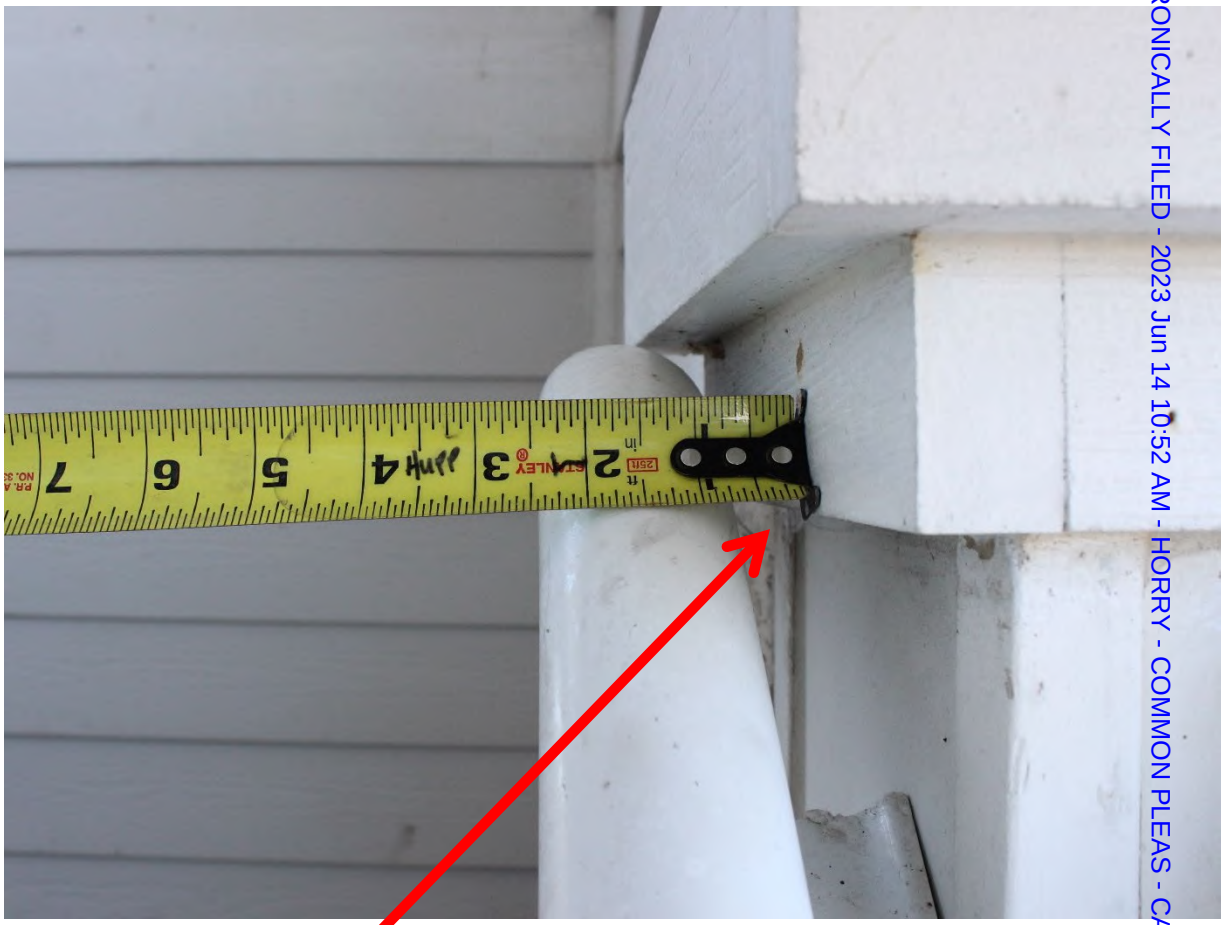
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STAIRS: RISER HEIGHTS AND HANDRAILS

As-Built Conditions

- Difference in riser heights within individual stair flights exceeded 3/8" required by building code
- Clearance at handrails less than 1-1/2" required by building code

Requirements

- Standard Building Code

1007.3.4 Treads shall be of uniform depth and risers of uniform height in any stairway between two floors. There shall be no variation exceeding 3/16 inch (4.8 mm) in the depth of adjacent treads or in the height of adjacent risers and the tolerance between the largest and smallest riser or between the largest and smallest tread shall not exceed 3/8 inch (9.5 mm) in any flight. The uniformity of winders

1007.5.6 Clear space between handrail and wall shall be a minimum of 1 1/2 inches (38 mm).

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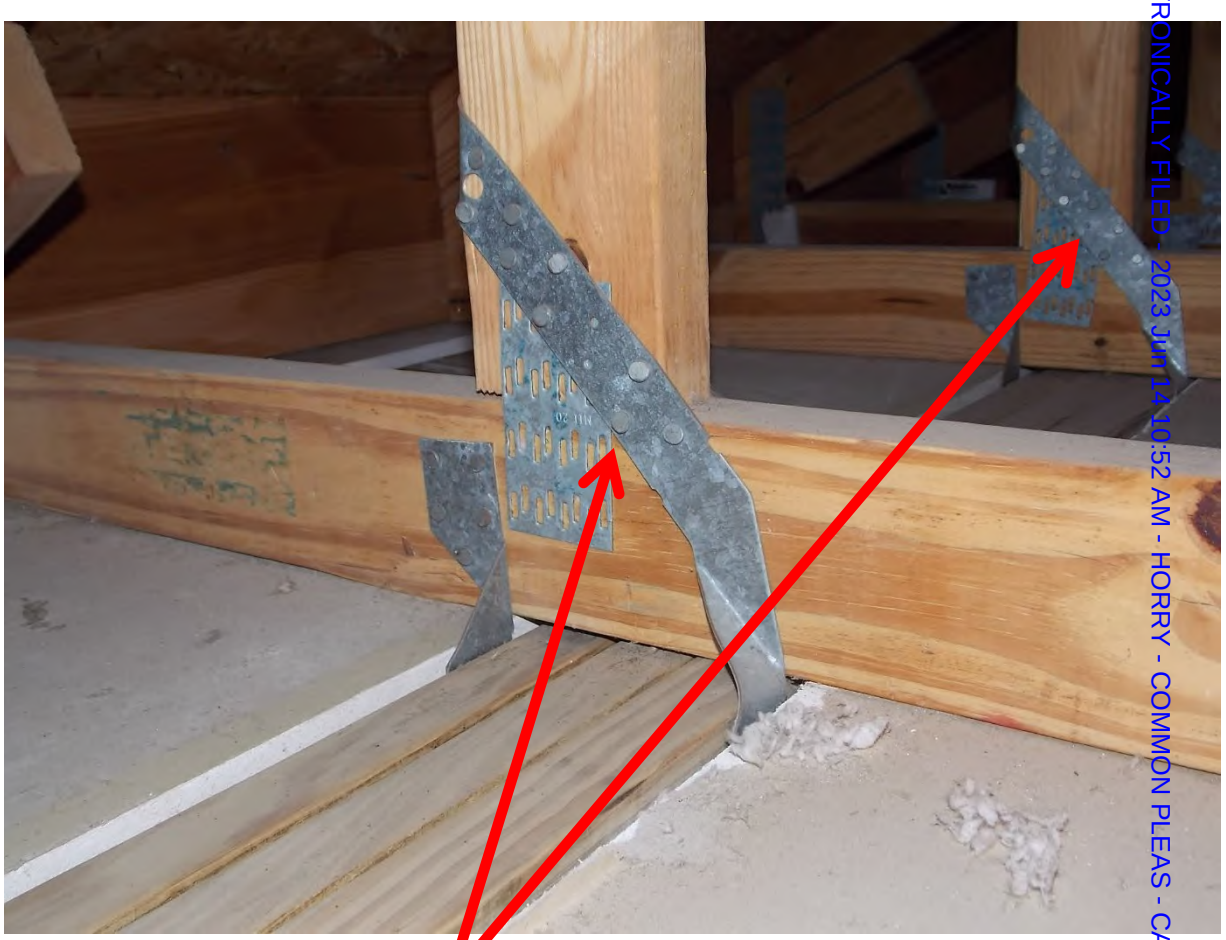
- Exterior Walls
- Roofs
- Walkways
- Stairs
- Attics
  - Framing Connections
  - Truss and Window Framing
  - Fire Protection

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ATTICS: FRAMING CONNECTIONS

As-Built Conditions

- Missing MTS16 anchors



PROPER MTS16 ANCHOR AT BUILDING 6

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