THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 201196386

Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc.,
Respondents,

v.

Professional Plastering & Stucco, Inc., Maria Arias, and Miquel Roasles
Defendants,

Of whom, Professional Plastering & Stucco, Inc. is the Appellant.

Professional Plastering & Stucco, Inc., Appellant,

v.

Maria Ariasm, Miquel Roasles, and APS Enterprises Unlimited, Inc., Third-Party Plaintiffs,

Of whom APS Unlimited, Inc. is Respondent.

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(JURY OUT)

THE COURT: Thank you. Please be seated. Motions and matters?

MR. SEQUI: Your Honor, the fact that we rested, I didn't know if Your Honor wanted to deal with the certification of what I took up to the Bench which was the -- governed by Rule 44, the building code, the adopting and certification. As I understand Rule 44, when -- the only time it needs to have a seal on it -- and I certainly defer to your judgment -- is when you're giving the Court or somebody that's not the custodian of the record. Rule 44(a)(1) domestic, says that only an officer having legal custody of the record or his deputy -- you just need to have something with a certificate or certification. Somebody else that's not in direct custody of the document -- it could be a judge from the court of record, if authenticated by the court or by any public officer having a seal of office.

THE COURT: So, Counsel, what we're talking about is Plaintiffs' proposed exhibit 25?

MR. SEQUI: Yes, Your Honor.

THE COURT: And, Mr. Anderson, you have an objection to that document?

MR. ANDERSON: We do not believe that it was properly -- it does not have the seal as required. And as it has not been presented by a member of that office -- the Code does require that by the Rules. In addition, because it would be interwoven to that, an exhibit that actually goes back.

THE COURT: And why is that, Mr. Anderson?

MR. ANDERSON: Your Honor, it would be like consenting statutes. And if you allow that in, then you may use your jury instructions to give them the law. However, we do not think it would be appropriate as it's not appropriate to give them the statutes, to send that back with them.

MR. SEQUI: We would be fine with Your Honor taking judicial notice of the fact that this goes -- whatever we need to get this information to the jury as an official adoption.

THE COURT: Did Mr. Glick not do

that in his last question, Mr. Sequi?

MR. SEQUI: He may have, Your Honor. I'm just being careful.

THE COURT: I believe that Mr. Glick answered that question on your sole question on redirect. And since there is an objection, I am not going to allow that to go back to the jury room.

MR. ANDERSON: Might we, for the record, not just for argument, Your Honor, he indicated that, I believe, the state and the City case -- in the *Hill v. City of Hanahan*, 281 S.C. 527, indicates that judicial knowledge -- that local ordinances are not subject to judicial notice and must be properly presented. So we would -- Mr. Sequi had made the indication that there should be judicial notice taken.

THE COURT: He's already withdrawn on that one, Mr. Anderson.

MR. ANDERSON: I wanted to add that to my objection.

THE COURT: All right. Thank you.

MR. ANDERSON: Thank you.

THE COURT: We're going to go ahead

and take a short recess. I'll hear from you on motions and matters, and I've got the verdict forms to go over. Let's go ahead and take ten minutes. During that time I would like counsel to make sure that all the exhibit that you believe are entered are appropriately entered and prepared to go back to the jury. Thank you. We're at ease.

(BRIEF RECESS)

THE COURT: Are all the exhibit taken care of, Mr. Anderson?

MR. ANDERSON: Your Honor, I believe that the only two we had a question on was ---

THE COURT: Do you need to have the overhead on?

MR. ANDERSON: We may need it here.

THE COURT: We're not close enough so that I can hear you and my court reporter can hear you -- we're not close enough to do that. Thank you. Mr. Anderson?

MR. ANDERSON: Yes, Your Honor. I would like to move Exhibit 2 and 9 into evidence. Those are the subcontracts of Los

Campos and Florida Framing.

THE COURT: Two and nine. Any objection, Mr. Lucey?

MR. LUCEY: Yes, Your Honor, they were not authenticated. We'd object to them going in.

THE COURT: Let me get two and nine. Your objection is that they're not ---

MR. LUCEY: They're not authenticated.

THE COURT: Thank you. Two and nine?

MR. ANDERSON: Two and nine, Your Honor. If I may approach. Those are the subcontracts that both Mr. Glick and a couple of other witnesses identified as the subcontracts of Los Campos and Florida Framing. They were discussed as far as the scope of work responsibilities of the various subcontractors on the site. And they were also -- they were also mentioned in Tacy McGinty's deposition.

THE COURT: Did anyone review these and authenticate them, because that's Mr. Lucey's objection, is that they may have been

mentioned, but that no one said that those were the correct signatures, et cetera.

MR. ANDERSON: I know that Mr. Glick identified them as the contract for those particular subcontractors. As far as identification of signatures, that was not done.

MR. LUCEY: He actually didn't identify the contract, Your Honor.

THE COURT: He did not?

MR. LUCEY: No. He scanned the document and was told to read and what does it say? Okay, this says Los Campos, subcontractor. He never said this is -- I know this personally to be the sealant subcontract on the jobsite.

THE COURT: Right. So Defendants' 2 and 9, based upon that, I am not going to send these back to the jury. Thank you.

MR. ANDERSON: Thank you.

THE COURT: They are marked as 2 and 9 for the record, but they will not go back.

MR. ANDERSON: Just for the record, may I say that I believe at the time I

handed it to him I said are these -- is this Los Campos's subcontract? That is for the record.

THE COURT: Okay, thank you. So, with that, all I show from the defense is 3, 12 and 41. Is that correct?

MR. ANDERSON: Yes, ma'am, I believe that that is correct.

THE COURT: Is that correct, Madam Court Reporter?

THE COURT REPORTER: Yes, it is.

THE COURT: And for the record, Plaintiffs' 1, 3, 4, 5, 6, 8, 9, 12, 14, 15, 19, 20 and 24. Is that correct?

THE COURT REPORTER: It is.

MR. LUCEY: Yes, Your Honor.

THE COURT: Those are the items that will be going back. Are you planning on you planning on using any of those items in your closing?

MR. LUCEY: Yes, Your Honor.

MR. ANDERSON: Yes, Your Honor.

THE COURT: Thank you. All right. And we have reached the stage where I can hear motions or matters. I'll hear from you first,

Mr. Anderson.

MR. ANDERSON: Your Honor, we would move for a directed verdict as to the allegations of damages as to negligence *per se*.

THE COURT: I'm sorry. Please begin again.

MR. ANDERSON: We would move for a directed verdict on the allegations involving negligence *per se*. We believe that although there was testimony as to the violation of certain ordinances and building codes, those were not related to anything that involved emergency or personal injury, any of the catastrophic things that are required for negligence *per se* to be taken into account in such a case.

THE COURT: Let me hear from -- we'll just hear one at a time. Let me hear from you regarding that. Mr. Kirchner, are you arguing all the directed verdict motions?

MR. KIRCHNER: Yes, I am, Your Honor.

THE COURT: Thank you.

MR. KIRCHNER: Your Honor, with

respect to the negligence *per se*, I actually think the reverse is true. I think we're entitled to a directed verdict on that. Your Honor, the case law is clear that in South Carolina when a municipality adopts a building code, such as the International Building Code here, as was testified to, that those statutes are designed to protect homeowners, such as our clients. If those statutes have been violated, that is negligence *per se* under South Carolina law.

Your Honor, Mr. Glick testified that the IBC 2000 was the appropriate building code. We've had ample testimony, including admissions by the defendant, that the building codes were violated.

THE COURT: Your response, Mr. Anderson?

MR. ANDERSON: Your Honor, it's part of the central purpose of the statute to protect from the kind of harm that the plaintiffs suffered.

COURT REPORTER: I'm sorry?

MR. ANDERSON: And that it's governed by the statute. I'm sorry. I will

stand by my original statement. Your Honor, we also believe that as an element that they would have to establish proximate cause.

THE COURT: I am denying both motions for a directed verdict as to the cause of action for negligence *per se*. Mr. Anderson, your next cause of action?

MR. ANDERSON: Your Honor, we would move for a directed verdict on the issue of punitive damages.

THE COURT: For what purpose? What's your argument?

MR. ANDERSON: Your Honor, although there has been language concerning the negligence as far as -- excuse me, we do not believe that the negligence shown to date or proffered by the class plaintiffs rises to the level of being gross or wanton and therefore is not applicable for punitive damages.

THE COURT: Mr. Kirchner?

MR. KIRCHNER: Your Honor, quite to the contrary again. Violation of a statute, such as a building code which has the force and effect of law, is evidence of

recklessness and gross negligence which all goes toward punitive damages.

THE COURT: I agree. I deny your motion for directed verdict based upon Mr. King's testimony that, one, he did not visit the jobsite and, two, that he had violated at least one of the building codes.

MR. KIRCHNER: Thank you, Your Honor.

MR. ANDERSON: For the record, I would like to note that Mr. King not visiting the jobsite was mentioned. His corporation is the one that's being sued, not him personally.

THE COURT: I understand that. Thank you for making that clear, Mr. Anderson.

MR. ANDERSON: Thank you for letting me correct it. And, Your Honor, we would also move for a directed verdict on the allegations of breach of warranty. I believe that the only one remaining is workmanlike service. They needed to offer proof that it is within a reasonable period of time. And we believe that the period covered under this case exceeds the reasonable period of time for application of workmanlike service. And then

also, Your Honor, that this is clearly built as personal property, as defined by Mr. Glick. And it's not a product that was built for these particular individuals.

THE COURT: Mr. Kirchner?

MR. KIRCHNER: Your Honor, again, we believe that we're actually entitled to a directed verdict on our implied warranty of workmanlike service. Your Honor, if it doesn't matter if this is a commercial structure or a residential structure. The implied warranty of workmanlike service applies no matter what. In fact, if someone holds himself out to be specially qualified to perform work, as did Professional Plastering in this case, being a certified applicator of the stucco system that was applied, there is an implied warranty that the work which he undertakes will be proper and in a workmanlike manner. Clearly, it was not. In terms of the -- I guess what I would call the staleness of the claim, I am aware of no such requirement on the time frame. But in any event, as you can clearly see by these pictures, these are latent defects that are contained behind the

exterior wall cladding. It's not something that you can walk up, look at the building, unless you've got x-ray vision to see. So it's not visible without performing destructive testing that these types of damages were observed.

Our further motion for a direct verdict on the implied warranty of workmanlike service, again, someone who holds himself out as a specialty trade, such as a stucco applicator for a proprietary system, like the Magna Wall system that was installed, impliedly warrants under South Carolina law that that work will be done in a workmanlike manner. Clearly, it was not. Mr. King, again, admitted that there seven violations of Magna Wall's installation instructions and violations of the applicable building code. We believe we are entitled to a directed verdict on that implied warranty of workmanlike service as well.

THE COURT: Mr. Anderson, a brief response and then you have remaining arguments for directed verdicts?

MR. ANDERSON: Just to repeat

that the staleness issue, as Mr. Kirchner referred to it is the main thrust of our argument. And, Your Honor, we would ask that there be a -- it is normally a jury question when this comes up, unless there's a failure of proof. We do not think that they addressed that particular issue. And although I don't have any law right here in front of me, there are a couple of cases on that and we can hand those up to the Court, for the record.

THE COURT: At this time, the Court is concerned with the existence or non-existence of evidence at this time. Based upon the testimony that the Court has heard, I am denying both motions for a direct verdict. That cause of action will go to the jury.

MR. ANDERSON: Your Honor, just as a scheduling matter and to make sure that we all go fast, a time when I need to proffer Mr. Dawkins, again, proffer his expert testimony. We had discussed that earlier. And if you would like to do that after instructions?

THE COURT: Correct.

MR. ANDERSON: Thank you.

MR. KIRCHNER: Your Honor, one last Motion. I'm sorry.

MR. ANDERSON: Your Honor, then we had one last -- we would renew our earlier general request for a directed verdict that we made at the close of the plaintiff's case.

THE COURT: Directed verdict for?

MR. ANDERSON: On the allegations of negligence.

THE COURT: I'm assuming at this point in time, Mr. Kirchner, you'll also renew your Motion for a directed verdict on behalf of the plaintiffs for negligence. Is that correct?

MR. KIRCHNER: I am, Your Honor. And I'd just like to point out that the only thing that hasn't change from when we rested our case until now is that the defendants have had the opportunity to put up evidence that they didn't violate the standard of care, which they didn't do. Accordingly, you haven't heard one witness testify that this stucco system was applied correctly. We believe on that ground we're absolutely

entitled to a directed verdict on negligence.

THE COURT: Any response briefly, Mr. Anderson?

MR. ANDERSON: Yes, Your Honor. Although we have not provided directed contradictory evidence to Mr. Glick, we have presented evidence that the walls of the stucco and other evidence that it is -- were it to be inferred by the jury that it may have been applied correctly. And also not only that it was applied correctly, but that it was applied per directions on the job site by the general contractor. And we believe that under those circumstances it should remain a jury question.

And I believe that Mr. Kirchner, if he's moving for -- on negligence, that he also has to show proximate cause, that the stucco in itself proximately caused the damage shown. The jury could infer from the evidence that has been presented that it is actually a defect in the building wrap that allowed water into the wood structure, and not just the water coming through the stucco and escaping against the wrap. We believe that on that

basis that that leaves open, as a jury question, the issue of proximate cause.

THE COURT: And based upon the testimony that I have heard throughout the trial, specifically the deposition of Ms. McGinty, I agree and the cause of action of negligence will go to the jury. I deny both motions for directed verdicts.

And I believe that should be all of your motions. Is that correct, Mr. Anderson?

MR. ANDERSON: That is correct, Your Honor.

THE COURT: All right. And, Mr. Kirchner, that concludes all your motions as well?

MR. KIRCHNER: Mr. Lucey has one.

MR. LUCEY: We also have a directed verdict motion, Your Honor.

THE COURT: I asked Mr. Kirchner if he was going to argue all the directed verdict Motions and he said yes.

MR. LUCEY: I'll be glad to have Mr. Kirchner argue it.

THE COURT: So what are we moving on now?

MR. KIRCHNER: I believe, Your Honor, we're moving for a directed verdict against all of the defendants' affirmative defenses, except the ninth affirmative defense, which is based on third-party fault. Our directed verdict motion is based on failure of proof. They have failed to put forth any evidence or any witness to confirm their affirmative defenses that they raised in their answer to our complaint.

THE COURT: And, Mr. Kirchner, specifically, if you can, just for the record, go through which ones. And if Mr. Lucey needs to help you, I will allow him to argue.

MR. LUCEY: It'll just go faster if I argue.

THE COURT: Thank you.

MR. KIRCHNER: Thank you, Your Honor.

MR. LUCEY: Your Honor, there are twenty-some affirmative defenses. Again, all by the ninth one, which is the failure to prove by the defendants. The first one is failure to state claim. The second one is statute of limitations and statute of repose.

The third one is ---

THE COURT: Let me do it this way. Mr. Anderson, the plaintiffs have made a motion for a directed verdict as to all of your affirmative defenses. Which ones do you believe you that you can still go forward on -- are you still wishing to go forward on based upon the proof that has been presented?

MR. ANDERSON: Your Honor, we do want to go forward on some of them. I don't have the list right in front of me. This is the first notice we got that they would be raising that. If I could have a moment?

THE COURT: You may. Mr. Lucey, if you could just help the Court out. Number nine was ---

MR. LUCEY: Third-party fault. Third-party negligence, Your Honor.

THE COURT: And you believe that there has been sufficient testimony to get that to the jury. Is that correct?

MR. LUCEY: We believe you'd overrule us if we made that motion, Your Honor.

THE COURT: All right. Thank you.

MR. ANDERSON: Your Honor, I believe that we have submitted jury charges that, I believe, match with the affirmative defenses that we anticipate going forward on.

THE COURT: Mr. Anderson and Mr. Lucey, please approach.

(BENCH CONFERENCE)

THE COURT: Mr. Anderson?

MR. ANDERSON: Yes, Your Honor. I believe that defense number nine, defense number ten, which is our affirmative defense on punitive damages and twelve which is the one we discussed for the mitigation of damages. And then, Your Honor, as far as defense number fifteen, goes to notice. And that would apply to the warranty claims in that under the warranty we should be given notice and an opportunity to correct. And that was not done.

THE COURT: Mr. Lucey, now that we have it narrowed down just a little bit, I'll be happy to hear from you.

MR. LUCEY: Yes, Your Honor.

THE COURT: We agree that number nine, defense number nine is what?

MR. LUCEY: Number nine is third-party negligence as the cause. And we've agreed with the Court to leave that in. In fact, you've already ruled on it. Number ten is punitive damages being unconstitutional. There's been no proof in this case that punitive damages are unconstitutional. Number twelve, failure to mitigate -- there's been absolutely no proof by the defendant that the plaintiffs failed to mitigate or that mitigation was even possible.

THE COURT: All right. Let me hear from you regarding mitigation, Mr. Anderson.

MR. ANDERSON: Your Honor, I believe that the testimony of the president of the board, Mr. Jessup, was that they had performed no maintenance or had taken no action. I believe that that is a clear indication of a failure to mitigate in the face of knowing what -- that they had problems that had been incurred.

THE COURT: Mr. Lucey?

MR. LUCEY: The testimony by the board member, Your Honor, was that it wasn't a maintenance issue. The problem was too big to

attempt to even address with maintenance. And Mr. Glick also, in his testimony, clearly testified it was not a maintenance issue, and it is an issue that could only be addressed by a complete reclad. There's been no evidence by them or by the defendants that any other mitigation would have worked.

THE COURT: And Mr. Lucey, it's your position that there was no duty on behalf of your client to mitigate the damages?

MR. LUCEY: No, ma'am. My position is complete failure of proof by the defendants. We had a duty, but they're the ones that asserted the affirmative defense. And they undertook the burden of proof to prove that affirmative defense. There was a complete absence of proof by the defendants that we failed to mitigate our damages.

THE COURT: Mr. Anderson, what's the proof that you have shown?

MR. ANDERSON: Your Honor, the proof that we've show is just as I stated, the testimony from the president of the board, which I believe would be a jury question.

THE COURT: I will not be including

in the charge the duty to mitigate damages, based upon the arguments that have been presented. And that is affirmative defense number twelve. Is that correct?

MR. ANDERSON: That is correct.

THE COURT: Thank you. That leave us with affirmative defense number fifteen. Mr. Lucey?

MR. LUCEY: Yes, ma'am. They're saying something about notice under a warranty. We're under an implied warranty here. The UCC does not require notice to a subsequent purchaser or a subsequent user, such as we are. The UCC arguably requires notice of a primary contracted party or the original party, which would have been either Summit or the developer, but not us, Your Honor. And then there is also at least three South Carolina cases that says the filing of a lawsuit itself is notice. They've been on notice since we filed this suit in 2008, and a lawsuit itself is proper notice.

THE COURT: I'll be happy to hear from you regarding that, Mr. Anderson.

MR. ANDERSON: Thank you, Your

Honor. We believe also that under the statute that our clients would have been entitled to notice as a contractor and given a requisite period to make repairs or to act otherwise. Your Honor, we do not believe that the UCC is applicable at this point.

THE COURT: I agree to your motion, Mr. Lucey. I will not be including affirmative defense number fifteen. I note your exception for the record, Mr. Anderson. Any other motions, Mr. Lucey or Mr. Kirchner?

MR. LUCEY: No, ma'am.

THE COURT: Mr. Anderson? Ms. Mahon?

MR. ANDERSON: I believe that that is it.

THE COURT: And I have been ---

MR. ANDERSON: Other than our proffer.

THE COURT: I promise you, Mr. Anderson, I'm going to get to it. We will not leave here without you proffering. But it is important that we do what? We get this to jury before I start losing jurors. All right?

MR. ANDERSON: I understand, Your

Honor.

THE COURT: Mr. Dawkins isn't going anywhere and neither is my court reporter or any of us. So we will stay until that is accomplished.

MR. ANDERSON: Thank you, Your Honor.

THE COURT: Thank you. I have been submitted a proposed verdict form by the plaintiffs. Have you had an opportunity to review that, Mr. Anderson?

MR. ANDERSON: Yes, ma'am, I have.

THE COURT: And do you have any objections?

MR. ANDERSON: Yes.

THE COURT: All right. Let me hear that.

MR. ANDERSON: Your Honor, I do not believe that a separate finding of negligence *per se* is appropriate. Normally, we would see it when punitive damages that you aren't going to allow that portion to go. Then on the separate claim on implied warranty, Your Honor, I don't have a specific

problem with that. But this might be a more appropriate case for a general verdict. We definitely think that the issue as far as setoff that they put on a separate page, is not one for the jury, and that that is clearly an equitable remedy. And that we would hope that if there were a verdict, we would move at that time to apply a setoff. And, Your Honor, would then do the application.

THE COURT: But the way it's worded, Mr. Anderson, is this a setoff or -- does it indicate to you that it is a setoff?

MR. ANDERSON: Your Honor, I believe that this is an attempt by them to do away with the setoff. And that the -- and make this just a single-issue case. And the problem with that, Your Honor, is that there is an interfacing between all the trades, as you've heard here, and there is shared responsibility. And the only way for us to get a proper finding in this would be for a verdict that would allow the direct setoff of the amounts that they have collected from other parties.

THE COURT: And I've got two that

stood up.

MR. LEATH: Your Honor, you might recall the problems that we had with this type concept in the other case we tried. What we want to make abundantly clear here, and it absolutely has to be clear, is that this verdict form needs to mirror the case that was tried in this Court. We have conceded the amounts of amount already received -- conceded that in opening and conceded that all the way through. Were the jury to find us a verdict and were some items like this not included or a very, very clear instruction from the Court, this has to be an additional new money, then the jury may very well come to the conclusion that they're making it what we want and the defendants attempt to offset every penny of it, in effect, giving a defendants' verdict when a plaintiffs' verdict was intended. So either this type of form -- and we think this is fine and not prejudicial. It's exactly what's been stated -- needs to be submitted. Or a very clear and concise instruction to the effect that if you find a new award, it must be a new and additional money over and above

what was collected by settlements. This has all been tried to the jury effectively by consent, and this is the way that they need to approach it and need to understand it. Thank you.

THE COURT: And, Mr. Leath, as to your -- as to Mr. Anderson's problem with the negligence and the negligence *per se*, do you agree that there needs to be a finding as to both?

MR. LEATH: No, Your Honor, we don't. We have an alternate form that just says "negligence" and then "implied warranty." Because I think the negligence *per se* can be within that.

THE COURT: Thank you.

MR. ANDERSON: The form in the second line is deleted.

THE COURT: Okay, thank you. Do you have this that you can e-mail? The signature line is -- assuming that I would use this one, could you e-mail me a form?

MR. LEATH: I can certainly do that, yes.

THE COURT: All right. I'll be

happy to hear from you, Mr. Anderson.

MR. ANDERSON: Thank you, Your Honor. I think it's clear that they're trying to bar any type of setoff. They put up their entire measure of damage and is asking the jury to reduce it by the amount of settlement in order to get an award. This bars the Court -- it's something that should be reserved for Your Honor to determine the proper amount of setoff and to make it -- and then to apply it to the verdict that's given. With them having presented their case in full, the $15 Million figure is the only one that they've put up. It would be improper to then ask the jury to apply an equitable remedy that is reserved for the Court. And we would ask that this verdict form definitely not go back to the jury.

THE COURT: Mr. Leath, it's your position that the defendants would be entitled to setoff. Is that correct?

MR. LEATH: The defendants would be entitled to the setoff were we to be trying the $15 Million dollar total fix. We are not trying that. We have never tried that case. What we have told the jury is we are asking

for the differential between that repair and what we've already received which is applicable to the stucco contractor, subcontractor, excuse me. That's what Mr. Gallagher testified to, and that would not be subject to setoff.

THE COURT: With that understanding and that clarification of the verdict form that you have submitted -- the second one with only the claim of negligence and negligence *per se* in it, it does make it clear to the jury as what we have tried, particularly the facts of this case. And if you would, just because I do not like just a signature line on a single page -- if you will e-mail it to my clerk and we'll print it off, or I can have him physically, while y'all are doing your closings, retype it. I prefer you to e-mail it. I'm sure he would too, Mr. Kirchner. And that will be the verdict form that we will use.

I will note your exceptions vehemently to this verdict form, Mr. Anderson.

MR. ANDERSON: Thank you, Your Honor. I need a clarification. According to

what you said, I'd like to get one and two, but is that right?

THE COURT: One and two. It is one and two. There's two causes of action.

MR. ANDERSON: Right, there are two -- you have two findings to be made, one for each cause of action?

THE COURT: Correct.

MR. ANDERSON: And then you are asking -- you are allowing them to put in the settlement amount?

THE COURT: Correct. And I am including punitives. All right. Is there anything further before I allow you a short recess to gather your thoughts for your closing? Is there anything further?

MR. LUCEY: Yes, is the Court's proposed charge available to us before we argue, ma'am?

THE COURT: Is there anything in particular that you would like to go over? We have addressed a number of issues already.

MR. LUCEY: In particular, I would like to confirm that the Court is going to charge that the defendant need not be proved

to be the sole cause of the damage. That as long as they are a material cause of the damage, they are accountable and liable for it. As Mr. Leath, I anticipated the Court would charge that.

THE COURT: That is correct, and that's what I am charging.

MR. LUCEY: Thank you, ma'am.

MS. MAHON: Your Honor, just so we're clear, we do have some objections to their jury charges. Have you included all their requested jury charges that we got this morning at 8:30 into yours?

THE COURT: I have a standard charge. Most of the time when you send charges to me they're some variation. I may not charge word-for-word your charge or the plaintiff's charge. But I do a variation to include -- to encompass both, based upon the law and the facts that have been presented. Is there something specific that you have the objection to? I would be happy to hear you.

MS. MAHON: There is, Your Honor. Specifically -- and I can kind of put them altogether into one. In negligence *per se*, I

have an objection actually -- and that would be for -- do you reference their number or do you know how they numbered them sequentially? Is that the way?

THE COURT: If they're numbered sequentially --

MS. MAHON: They're not numbered. I'm numbering them sequentially.

THE COURT: Your number is not going to be corresponding to anything else. So just tell me what you have an objection to.

MS. MAHON: The builder liability charge that was -- it starts with "I charge you that a contractor may be liable for primary a tort where the contractor has violated a building code. If the contractor has deviated from ..." ---

COURT REPORTER: I'm sorry. Could you slow down?

MS. MAHON: I'm sorry. I was reading. That jury charge, Your Honor, and the next one right after that in the list that I have -- it should be three, sequentially -- "I charge you that a finding of negligence will be available where a contractor has

violated the duty." Is that one going to be included?

THE COURT: But you're objecting to it?

MS. MAHON: I was going to read you all the ones and state the reason for all of them to try to shortcut it. Tell me tell you this, this is our basis, that all the charges -- that various charges on negligence *per se* have one actually correct statement of law, that you have to prove some duty of the breach that causes a harm. The problem there is that they skipped that. They don't actually accurately state the law. I have no problem at all with the jury charge that says -- it's number twenty-three on mine, entitled "negligence *per se*." "I charge you that in order to show that the defendants owes a duty of care arising from a statute, the plaintiffs must show two things." Then they do actually lay out the law of what negligence *per se* is. The problem with all their other proposed jury charges under negligence *per se* and the "builder liability," as they've entitled it, is they skip all of these other steps and

don't accurately state the law. It says -- I have no problem at all with that one, but not the other one.

Also, Your Honor, specifically, on their charge on the damages, twenty-six if you number them sequentially, they've got four measure of damages, cost to repair, depreciation. First of all, no evidence whatsoever of depreciation was presented to the jury. They don't get to charge the jury on that.

Now, the other one is, the third one, the value of loss of use during time. We have already stipulated that loss of use is off the table. They put that into the record, and therefore we think that that should not be included in here.

And, Your Honor, there's one other thing. Let me make sure I've covered it. Punitive damages -- their punitive damages is actually not an accurate statement of the law. If you want to put punitive damages, then you need one that actually sets forth what the law is. That is not what the law is. He's using Anderson's Request to Charge. That really is

not objectionable. But if Your Honor is going to charge punitive damages, that needs to be accurate.

Also, they have in here -- they, one of them on clear and convincing and willful and wanton, but they don't also include a jury charge as to what clear and convincing is and willful and wanton is. And if you're going to include punitive damage, that also would need to be charged.

Your Honor, I think -- I just want to make sure I have the record clear on that. Let me just make sure that I have everything. Now, if Your Honor wants, just for the record, for the negligence *per se*, I can give you all the cases, I can hand them up as to why you have to prove that. We can do that later, if Your Honor will agree to that for the protection of the record. Is that fine, Your Honor?

THE COURT: You are welcome to make a packet. It is correct in the state of South Carolina and based upon the facts as presented I have looked at the charges as presented by the plaintiff and the defendant and crafted a

charge which I believe accurately states the law as well as addresses all of the facts that have been presented.

MS. MAHON: May I -- just for the record, Your Honor, we also object to their jury charge on the unlawful practice of engineering.

THE COURT: That is not included.

MR. SEQUI: We had to withdraw that after he wasn't qualified.

THE COURT: That's why I didn't even consider it. Thank you.

MS. MAHON: Also, Your Honor, for the record, the negligence *per se* on where they're talking about that I charge you that municipalities in South Carolina are charged by the statute with adopting building codes. They go on to say that such statutes are designed to protect the innocent purchaser of a home from the damages of a contractor. That is not -- the statutes that they cite, that is not the law. So we would object to that also. I can hand up the statutes, if you'd like to see those.

I will be glad to hand up all the

cases for you, so I can protect the record, but those are our objections to the charge. Thank you.

THE COURT: Thank you. And there was not major objections to the charges presented and you had no objection to their 17. Is that correct?

MR. LUCEY: We do not object to seventeen, Your Honor.

THE COURT: Thank you. Anything further.

MR. LUCEY: Just so we don't draw an objection in closing ---

THE COURT: Yes, sir.

MR. LUCEY: The stipulation regarding loss of use damages wasn't entirely accurate. The stipulation was we were not making a claim for additional loss of use damages in this case. Because it was at issue. It was a part of this case to explain some of the money that our homeowners have already received. And there's testimony that supported that.

THE COURT: So it's your position that the stipulation that you entered into

would allow the Court to charge loss of use as a consideration of damages or no?

MR. LUCEY: We would be allowed to charge, because it is damages that our clients have already received. And the jury has been told that we've received those loss of use charges. I'm not going to sit here -- I'm not going to stand here and ask the jury to award me more loss of use damages.

THE COURT: All right. That's my question. Thank you. Yes, Mr. Anderson?

MR. ANDERSON: Your Honor, that's something they've already ---

THE COURT: I'm not including it in -- it's been addressed and stipulated they're not requesting it in their laundry list of items for damages.

MS. MAHON: Your Honor, just so I'm clear, is it going to be in the jury charge though?

THE COURT: No, ma'am.

MS. MAHON: Okay, thank you.

MR. ANDERSON: Your Honor, I would also ask the indulgence of the Court to allow me to hand up a case on the issue of

setoff. And that case deals -- it's the *SCDOT* case, Your Honor.

THE COURT: I've addressed that and I have already issued my ruling and how we're going to proceed as to this case with this verdict form.

And that may be appropriate for post-trial motions or anything of that nature. It may not even be applicable, Mr. Anderson. If they come back with a zero, it may not even be applicable -- correct?

MR. ANDERSON: Correct.

THE COURT: Correct. So we will address that when it becomes appropriate, probably right after I let you proffer Mr. Dawkins. All right? Thank you. Is there anything before we -- anything further from the plaintiffs?

MR. KIRCHNER: Nothing from the plaintiffs, Your Honor.

THE COURT: Anything further?

MS. MAHON: No, Your Honor.

THE COURT: And who will be doing the closing?

MR. LUCEY: I will be opening and

Mr. Leath will close, Your Honor.

THE COURT: And, Mr. Anderson? Is it you?

MR. ANDERSON: It is me, Your Honor. And I will do both our opening and closing.

THE COURT: All right. Thank you. Counsel, I please want you to be aware -- I will not limit you, but please be aware of the time constraints. The trial of this has been -- we're into the fifth day of the week. There has not been five full days of testimony. So please make sure that you tender your closing appropriately. We'll take ten minutes. Will that give you sufficient time, Mr. Lucey and Mr. Leath?

MR. LUCEY: Absolutely.

THE COURT: And Mr. Anderson?

MR. ANDERSON: Thank you, Your Honor.

THE COURT: Thank you. We're at ease.

(BRIEF RECESS)

MR. LUCEY: The Defendant is offering to withdraw his objection to the jury

form on the consent to admission of Defendant's 4. We would consent.

THE COURT: Mr. Lucey's asking you to withdraw your objection to the verdict form I've indicated that I would be presenting to the jury. They would allow you to enter into evidence without objection Defendant's 4.

MR. ANDERSON: Your Honor, we would still offer that, but we do not want to withdraw our objections. And, for the record, at the sidebar I had stated that we believe that the verdict form compels the need to put in Defendant's Exhibit 4, which is a comparative stucco-only bid. And since the plaintiffs are going to present a stucco-only case and Your Honor has endorsed that with the verdict form, it makes that particular document admissible. It previously was marked for I.D.

THE COURT: And, Mr. Lucey, you are objecting to the introduction of Defendants' 4. Is that correct?

MR. LUCEY: Yes, we are.

THE COURT: And when you attempted to admit it before, there was substantial

questioning by the witness on the witness stand with this on the overhead. Is that correct?

MR. ANDERSON: Yes, there was.

THE COURT: And I allowed extensive examination and cross examination on this document. I just indicated it was not going back. Is that correct, Mr. Anderson?

MR. ANDERSON: I believe that that is correct.

THE COURT: Is that correct, Mr. Lucey?

MR. LUCEY: Yes, ma'am.

THE COURT: At this time I am not going to admit Defendant's 4. It is marked and on the record. Thank you.

MR. ANDERSON: May I state for the record, Your Honor, that that leaves us with the inability to present a stucco-only defense and requires us to present against their stucco-only defense only a defense that is applicable to the entire exterior skin with the exception of the roof. So the number that they get from us will include siding and everything and is actually going to be in

comparison to their $15 Million.

THE COURT: Mr. Anderson, maybe I'm missing the point. But can you not look at that and put that back up on the overhead. My only thing is it's not going back to the jury. You can argue all with the numbers and put it on the overhead. But it's just not going to go back to the jury as that document.

MR. ANDERSON: I understand that. I understand that's your ruling, Your Honor. We think that that's terribly prejudicial because they do have a stucco-only fix that is going back to the jury. And that will leave us in the position with the jury sitting there with the only document in front of them is from the plaintiffs showing the stucco-only fix.

THE COURT: Well, the reason this wasn't presented was you didn't present it in your discovery. Is that correct? That's what I'm recalling. Mr. Lucey?

MR. LUCEY: That's one of the reasons, yes, Your Honor.

THE COURT: That's the reason why it's not going back to the jury, Mr. Anderson.

MR. ANDERSON: Your Honor, we received their e-mail on Friday. That was to be the response to a late production by them. And there was an agreement with Mr. Leath that we would withdraw our objection and he would withdraw his for that.

THE COURT: Is that correct, Mr. Leath?

MR. LEATH: No, Your Honor. What we said was we presented to them a stucco-only repair in the sense of stucco simply being isolated out of the $15 Million. We did that some time back.

What this does is something entirely different from that. What it does, if you'll recall, is there a number of things in here that are not simply just a stucco fix. There are reductions for the breezeways. There are reductions for the fees. There are fee comparisons. It's nothing like the document that we presented which is for stucco repair. This is a synopsis of the expert's testimony, is what this is. And he's certainly free to argue about it. In fact, the expert spent a considerable amount of time himself explaining

this to the jury.

THE COURT: I agree. You are free to argue. You are free to use that as an exhibit in your closing. But it is not going back into evidence with the jury.

MR. ANDERSON: Thank you, Your Honor.

THE COURT: Thank you. Anything before we bring in the jury? Mr. Anderson? Mr. Anderson, anything before we bring in the jury?

MR. ANDERSON: No, Your Honor. And I won't ask you if I can make my proffer again.

THE COURT: Please remind me, though, at the end. All right?

MR. ANDERSON: Yes, ma'am.

THE COURT: Let's bring in the jury. Please make sure, Mr. Anderson, that it's still marked and the record needs to be complete. So please make sure you don't walk away with it or my court reporter will come and look for you. Thank you.

MR. ANDERSON: Yes, ma'am. I will actually put it on the bar.

about that permits the use -- the use of this product at all under the building code. Installed in violation of the Magna Wall instructions.

And, as testified by Mr. Glick, the local Charleston architect that testified, that took an oath and faced you, provided testimony twice this week -- as testified by him, as explained by him. The building code only permits this product, Magna Wall, to be utilized in Charleston County where we live if it's applied in strict conformance -- and you heard those words repeatedly this week -- strict conformance with the Magna Wall manufacturer's instructions, the third-party testing reports that we call code reports, and the failure to do so constitutes a building code violation. Plain and simple. Couldn't get any more plain and simple.

How plain and simple was it? It was so plain and simple that you heard the president of the now defunct Professional Plaster and Stucco admit to you no less than seven building code violations. That's what we call an admission by a party, a defendant.

They're saying, 'Yeah, I violated the building code. I understand that that code has the force of law in this jurisdiction. And I violated it.'

The third set of facts. The defectively applied stucco has damaged these residences, damaged these homes. We passed all this what used to be wood during testimony and y'all had the opportunity to pass this stuff around. These are structural members. This is supposed to be holding their roofs up.

And the repairs that are required now at this time are expensive and inconvenient and require a move-out and are going to hurt my clients more.

And all that's undisputed.

All those are facts.

You didn't see or hear any evidence from the defendants contradicting those facts. Not one person this week said the stucco was properly applied. Not one person.

All you heard from the defense was three things -- one I can't figure out, but I'm going to give it to you anyway. During opening statement the defendant said to you

Mr. Leath posed in his opening, which we believe, that the judge will pose to you in just a few minutes. That this defendant, Professional Plaster and Stucco -- that this defendant materially caused some of the defects that we've shown you this week. That they materially contributed to that rotten wood.

The only testimony you've heard this week on proximate causation has been by Mr. Glick who testified unequivocally on Monday, during direct examination, Wednesday, during cross examination, and this morning during rebuttal, that it is the defectively-installed stucco system that has proximately caused -- that's a legal term that's saying directly caused the damage, the rot, the problems we've shown you at Twelve Oaks. That is the question.

The next question is -- which we'll get to in a moment -- is damages. How much? What's it going to take to fix it? But before we get there, I'd like to address some other admissions which I wrote down this morning that y'all heard this week -- admissions by

makes his living in this community, representing homeowners and contractors and buildings and advising and sharing his testimony with you. He had as much credibility as any witness in this courtroom, I would submit to you.

Let me talk to you about the damages. We have an estimate in evidence, Plaintiff's Exhibit Number 15, the ProCon estimate, $15.7 Million. This is an older estimate. It applied to everybody who was in the case. You have frankly been told repeatedly this week that the plaintiffs have been paid $8 Million dollars.

In opening, Mr. Leath asked you for the difference. He said he would like for you to award us $15.7 Million less the eight million that we've been paid. That's $7.7 Million.

Just to make sure that everybody was correct about the numbers, Mr. Gallagher also produced what's been admitted into evidence as Plaintiff's Exhibit 14. It itemized the stucco-related-only damages in this case. It totals $8.7 Million, a million dollars more

than what we have remaining on the original estimate.

We're not asking for that extra million. We're still only asking for what we haven't been paid on the total job, even though the total stucco damages are documented by Mr. Gallagher at $8.7 Million.

When the defendants discussed their estimate, Defendant's Exhibit Number 3, they tried to confuse, as best I could tell, what's actually in Mr. Gallagher's estimate by talking about siding, windows and various other things. There is no siding and there is no windows in Mr. Gallagher's $8.7 Million stucco estimate. How do you know that? He actually lists up here the sections out of his original estimate where he took the numbers as being stucco related.

For example, section seven, which has the window replacement is not anywhere referenced on here, and you won't find that money in this estimate. There are no windows. There is no window work in this estimate, even though you heard Mr. Glick tell you on Monday that to repair the substrate, we must remove

MR. LEATH: Thank you, Your Honor. Five minutes. Thank you all very much. I'm proud and I commend you for everything you've done and I'm proud of you for listening to it. It's a big case.

When we started it, we told you we'd prove some things. We proved them. We told you that there were rules and that Professional Plastering broke them. We told you that the breaking of those rules caused significant damages to our two hundred sixteen homeowners. We told you that it was important, critical in the rules, that a stucco applicator had to strictly conform to the manufacturer's specifications and the building code and the rules and regulations. That's been proved.

We've proved to you every aspect of the case that we told you we would do. And now, we also asked you during the opening, that you have two things to decide. One is was Professional Plastering, a, not the, major contributor to these problems? That's not only been proved. That's been admitted. I think you can get beyond that aspect of your

deliberations very quickly. Because the defendants have not put up any witness to contrast that, to contest that. They haven't. You haven't heard it.

All of the evidence is to the effect that they are a major cause of this problem. The real question for deliberations here is what's the appropriate cost that should be allocated to them.

Now, if you'll recall, the analysis done by Mr. Gallagher was that the stucco itself, just that portion of it, repair would cost $8.7 Million. But we're not asking for that. We're asking for less than that, and Mr. Lucey explained that.

And why is that? Because it wouldn't be fair and wouldn't be appropriate for us to ask you for more than the total repair on these buildings, which is $15,778.00 as you'll see in Mr. Gallagher's estimate. And, yes, some of the other folks have paid some part of Professional Plastering's part. You have heard and another thing that we told you in the opening is that the defendants would likely try to blame others. They have

attempted that unsuccessfully. And those others have contributed to resolving the problem. And that, furthermore, they would say that it didn't cost this much to repair as we say it does. And that's not true.

If I could just utilize for a minute -- if I can find it -- the comparison chart, not in evidence -- yes, here it is.

THE COURT: I'm sorry, Mr. Leath, I thought you were done with the overhead. I told her to turn it off. It'll be just a few moments.

MR. LEATH: In this comparison chart, when we pull it up, what you'll find is this, as Mr. Anderson told you and as Mr. Pusheck told you. When he did his comparison of his numbers versus Mr. Gallagher's numbers, there was only an 8.7 percent difference -- only nine percent difference, except for two areas. One was the fees and the other is the interior stucco repair necessity. He took those out of his. And that's how he got to the low number that he got.

Well, we put Mr. Glick back up on the stand to explain that. And, of course,

it's up to you to decide whether you think those are reasonable fees and costs or not. But they are the costs that are routinely utilized in a project of this magnitude that might take sixteen months to actually do the construction and to get an architect and engineers. A bond fee is eight and a half percent. But for something like this, which is very complicated, retrofitting and involves being on the project all the time that the time that the guys are there, it's a ten percent cost.

The other costs are standard. Those are the only big differences. The $3,630,000, big difference? That's the interior breeze-ways. We've explained why those need to be repaired, because they're not safe. They're not built right. Nothing is built right and it's not fair to these homeowners to make them live in a partially-repaired building with interiors that are subject to damage if wind causes them problems. Of course they need to be repaired.

So when you take those two aspects out of this estimate, then basically there's

only a nine percent difference with the $8.7 Million. And if you take nine percent away from the $8.7, it gets pretty darn close to the money we're asking for here, which is the difference between Mr. Gallagher's repairs and what we've received, the 8.25. That number is $7,723,225.00. I'll say it again, $7,723,225.00.

Does that make these homeowners completely whole? No. They have to move out. They're going to be inconvenienced. But what it does do, what it does do, is to try to get it back to what they bought and to what should have been built correctly. And that's the minimum, and that's all we're asking for. Nothing above it.

You do, however, need to consider at least the aspect of punitive damages in this case. And why do you need to consider that? Well, it's considered because of the violation of the law and the violations of the building code which are the law in this state. And the reason for punitive damages for a jury to bring back is to set an example. To simply say, we, the jury, do not believe that in

constructing residences of this size and magnitude, the major investment for people, that it is correct to violate the law. That's the reason that punitive damages are allowed in the law. And it's completely up to you as to all the damages. We ask that you give us that consideration.

You will have the form of the verdict. This is essentially what it's going to look like, although it's going to have a different look because the Court's going to give it to you. But I will walk you through it from our perspective and to suggest how one should fill this verdict form out. On the claim of negligence, we, the jury, find in favor of the plaintiffs or defendant. We believe overwhelmingly the proof is that you should find for the plaintiffs.

On the claim of breach of the implied warranty of workmanlike service we find for either the plaintiffs or the defendants. Again, it's been absolutely clear and uncontradicted that this implied warranty of good work was breached.

And, finally, you get to the real

crux of this matter in the case. This one is written out. And it says if you find for the plaintiffs -- the plaintiffs have received settlements in the amount that we told you already of $8,025,000. And if you find for the plaintiffs, you must find that the plaintiffs are entitled to additional damages. This is damages over and above the $8,000,000. And this is that line we believe the proof requires a finding of the difference between Mr. Gallagher's total repair estimate and what's been received. And that number is $7,723,225.

And that is the reasonable allocation from all of the witnesses, all of the testimony that you've heard in this case.

Had there been a defense to this, if this activity at this level of construction were defensible, if you could defend it, you would have heard it. You didn't, because it is not.

Thank you very much for your attention and your assistance to all parties and to the court.

THE COURT: All right. Ladies and

Gentlemen of the jury, we've reached the point in the trial where I will instruct you on the law applicable to this case. I understand that you've been sitting for awhile. I will give you the option -- my charge is about twenty minutes, so I will give you the option if you would like to go ahead or take a break. Your lunch is also here, however -- so I will give you the option. You can take a short comfort break and return back to the charge and then after the charge you can deliberate and eat your lunch, or we can continue on.

FOREMAN: Your Honor, if it please the Court, we will continue on.

THE COURT: All right. Is that the consensus of all of you -- (affirmative responses from jurors).

All right. Thank you.

Ladies and Gentlemen, I remind you that during this trial you and I have had certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case and I have the duty to rule on the admissibility of the evidence offered during this trial.

You are to consider only the evidence before you. You are to consider only the testimony which has been presented from the witness stand, the exhibits which have been made part of the record in this case, as well as any stipulations of counsel.

I have the additional duty to charge you the law applicable to this case. It is your duty as jurors to accept the law and apply the law as I state it to you now. If you have any ideas as to what you think the law is, or what the law ought to be, and it does not agree with what I am about to tell you, you must abandon your own idea(s) and accept the law as I state it to you now.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts in this case. A trial judge may not make any comments on the facts in this case since you are the sole judge of the facts in this case. Please do not think by anything that I have said or done throughout the process of this trial, or now as I instruct you on the law, that I have any opinion about the facts in this case. The law

does not allow me to have an opinion about the facts.

The burden of prove in this case is by the preponderance of the evidence. The preponderance of the evidence simply means the greater weight of the evidence. It is evidence which as a whole shows that the fact sought to be proved is more likely true than not true.

This can be illustrated by imagining a set of scales. When this case began, the scales are even. After all the evidence has been presented, if the scales remain even or if they tip even slightly in favor of the defendant, then the plaintiff has failed to meet the burden of proof and would not be entitled to recover in this case. If, on the other hand, the scales tip even slightly in favor of the plaintiff, the plaintiff will have met the burden of proof in this case and you should return a verdict for the plaintiff.

The preponderance of the evidence is not determined by the number of witnesses. Instead, it must be determined by the greater weight of all of the evidence.

There are two types of evidence that are generally presented throughout a trial: direct evidence and circumstantial evidence.

Direct evidence is the testimony of a person who claims to have actual knowledge of the facts, such as an eyewitness. It is evidence which immediately establishes the main fact to be proven.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which a main fact may be inferred.

Circumstantial evidence is based on inference and not on personal knowledge of observation. It is proof that does not actually establish the fact in question but asserts or describes something else from which you may either reasonable infer the truth of that fact or at least reasonably infer an increase in the probability that that fact is true.

For circumstantial evidence to be sufficient to warrant the finding of a fact circumstances must lead to that fact with

reasonable certainty.

The facts and circumstances should be considered in light of ordinary experience and common sense. The existence of a fact cannot be left to speculation, surmise or conjecture.

The law makes absolutely no distinction between the weight or value to be given either direct or circumstantial evidence nor is a greater degree of certainty required of circumstantial evidence than that of direct evidence.

Certain testimony has been presented into evidence by deposition. A deposition is testimony taken under oath before trial and preserved in writing or by mechanical means such as video or audio tape. You are to consider that testimony as if that witness had given it here in court.

The rules of evidence ordinarily do not permit witnesses to testify to opinions or to conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who by education and experience has become an expert in some art, science,

profession or calling may state an opinion as to relevant and material matters in which the witness claims to be an expert and may also state the reasons for that opinion.

You should consider any expert opinion received in evidence in this case and, like any other evidence, give it the weight that you think it deserves.

If you decide that the opinion of an expert witness is not based on sufficient education and experience or if you conclude the that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard that opinion entirely. An expert witness' testimony is to be given no greater weight than that of any other witness simply because that witness is an expert.

Further, you are not required to accept an expert's opinion even though it is not contradicted.

Necessarily you must determine the credibility of the witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as

jurors to analyze and to evaluate the evidence and determine which convinces you of its truth.

In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses, or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining parts of the testimony of that same witness.

You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety.

You may consider whether the witness has an interest in the result of this trial, whether the witness is prejudiced towards either the plaintiffs or the defendant, the opportunity for that witness to have seen the matters and things about which the witness testified, as well as the way that the witness acted on the witness stand.

The plaintiff claims that the defendant was negligent and that you should compensate the plaintiff for the injuries that

the plaintiff suffered as a result of the defendant's negligence. The defendant owed a duty of care to the plaintiffs to exercise and to use due care in the construction of the condominium and in the work undertaken by the defendant. Therefore, in order to prove that the defendant was negligent the plaintiff must prove by a preponderance of the evidence or greater weight of the evidence the following things:

The first of these is whether the plaintiff has proven by a preponderance of the evidence or the greater weight of the evidence that the defendant breached the duty of care by a negligent act or omission.

"Negligence" means that a person has done something that a reasonable person would not have done or has failed to do something that a reasonable person would have done in the same situation.

The plaintiff must also prove by the preponderance of the evidence of greater weight of the evidence that he suffered damages as a result of the defendant's breach of duty.

Finally, the plaintiff must prove by preponderance or greater weight of the evidence that the damages were proximately caused by the defendant's breach of duty.

"Proximate cause" is something that produces a natural chain of events which in the end brings about the injury. It is the direct cause of the injury.

To prove that the defendant's negligence proximately caused the plaintiff's injury, the plaintiff must first prove causation in fact. This is proven by showing that the injury would not have occurred but for the defendant's negligence.

The plaintiff must also prove legal cause. Legal cause is proven by showing that the injury was foreseeable. This means that the injury occurred as the natural and probable consequence of the defendant's negligence.

The plaintiff must prove that some injury from the defendant's negligence was foreseeable but does not have to prove that the particular injury that occurred was foreseeable. However, the defendant cannot be

held responsible for things which would not be expected to happen.

Proximate cause does not mean the only cause. The defendant's act can be a proximate cause of the plaintiff's injury if it was at least one of the direct concurring causes of the injury.

I charge you that in order to establish liability that it is not necessary that the person charged with negligence or recklessness should have contemplated the particular event which occurred. It is sufficient that he should have foreseen that his negligence or recklessness would probably cause injury to someone.

A defendant may be held liable for anything which appears to have been a natural and probable consequence of his negligence or recklessness. If the actor's conduct was a substantial factor in the harm to another, the fact that he neither foresaw nor should have foreseen the extent of the harm or the manner in which it occurred does not negate his liability.

A violation of an applicable statute

is negligence *per se*; that is, negligence in and of itself. Proof of violations of the standard building code can be evidence of negligence *per se*, that is evidence in and of itself, if that standard building code has been adopted by a local authority as a statute.

Negligence *per se* simply means that you, the jury, need not decide if the defendant acted as would a reasonable man in the circumstances. The statute fixes the standard of conduct required of the defendant, leaving you merely to decide whether the defendant breached the statute. If it did, its failure to take due care is established as a matter of law.

The only issues then left for you to determine is whether the defendant's conduct proximately caused damage to the plaintiffs. Accordingly, proof of a violation of a statute is in fact proof of negligence, so that your only concern would then be whether such violation of the statute so shown was the proximate cause of the injury and damage.

The violation of a building code is

evidence only of negligence. That is, the violation of a building code establishes only that a legal duty for which a builder can be held liable in tort for proximately-caused losses has been violated.

The party claiming damages must still prove that the violation of the building code in fact led to or was the proximate cause of the claimed damages.

The simple violation of this or any other building regulation or code provision is not enough to permit recovery. The violation must have been the cause or must have contributed to the injury in question.

One who undertakes and agrees to construct buildings is liable for any damage proximately resulting from the negligence or unskillful manner in which he constructs the building. In this regard the defendant owes the duty to exercise and use due care in the construction of the condominium and in the work undertaken by the defendant.

To establish negligent construction, the plaintiff must prove four essential elements:

That there was an undertaking to construct a building by the defendant.

That the defendant was negligent or careless in the performance of that construction work; or, stated another way, that he did not perform the work in a good workmanlike manner.

That the negligence or carelessness of the defendant in performing that construction work was a proximate cause of the damages sustained by the plaintiff.

And the resulting damage must be shown.

It is incumbent upon the plaintiff to prove that the defendant was negligent or careless in some aspect of the construction work which he agreed to do. Otherwise, you would be required to find against the plaintiffs.

The degree of care which the defendant is called upon to exercise in this case is that degree of care which a person or entity of ordinary reason and prudence would exercise under the similar circumstances and conditions in constructing a building of the

kind in question.

If such negligence or carelessness on the part of the defendant did exist -- and that fact is totally for you to determine, -- your next step would be, is the negligence or carelessness of the defendant a proximate cause of the damages sustained by the plaintiffs.

There may be more than one cause of an injury or more than one person may be responsible for an injury. If the negligence of two or more persons combines to cause an injury, each person involved may be held responsible as if that person alone caused the injury.

Causes are concurrent if the individual acts of negligence combine to cause the injury. If an injury occurs throughout the concurrent negligence of two of more persons, it would not have happened without the negligence of either person, the negligence is the proximate cause of the injury and both people are responsible.

If the acts happened one after the other but were not related to each other,

then it would not be concurrent causes. In that case only the person who is negligent, who actually caused the injury, would be responsible.

If the concurrent or successive negligent acts or admissions or two or more persons although acting independently of each are in combination the direct and proximate cause of a single injury to the plaintiffs and it is impossible to determine in what proportion each contributed to the injury, all are said to be responsible for the whole injury; even though one person acting alone may not have caused the entire injury or the same damaged might have resulted from the act of the other tort feasors.

The chain of causation between the defendant's negligence and the injury may be proven by the independent intervening acts or omissions of another person over whom the defendant has no control. In order to decide whether an intervening act breaks the chain of causation you must determine whether the intervening act or omission was reasonably foreseeable by the defendant. If the

intervening act or omission was a probable consequence of the defendant's negligence, the defendant is responsible for the plaintiff's injury. If however you find that the intervening act or omission was not foreseeable, the defendant is not liable unless his actions alone would have caused the plaintiff's injury even without the intervening acts or omission.

The plaintiffs allege that the defendant breached an implied warranty of good and workmanlike service.

To recover from breach of warranty, it is not necessary that the plaintiff prove that the defendant was negligent. It is sufficient that the plaintiff prove that the act or omissions of the defendant breached the warranty that he provided.

The defendant may be liable for a breach of implied warranty even in the absence of any negligence on his part if you find that the warranties that he provided were breached or broken.

I charge that those who participate in the construction of a residential

structure impliedly warrant that the work is performed in a workmanlike manner with suitable materials.

I charge that when one holds himself out as especially qualified to perform work of a particular character, there is implied warranty that the work which he undertakes to do shall be of proper workmanship and reasonably fit for its intended purpose.

I charge you that in every contract for work or services there is an unscripted but legally enforceable obligation to perform the agreement in a workmanlike manner.

This is a duty to perform the contract skillfully, carefully and diligently. The work need not be performed to absolute perfection or to the personal satisfaction of either party but it must be performed to the satisfaction of the contract. The skill required of a person providing services is the same degree of skill, efficiency and knowledge of those of ordinary skill, competence and standing in a particular trade, profession or business in

which the person is working.

If you find that the defendant failed to perform the work in a workmanlike manner, you must return a verdict for the plaintiff for damages resulting from the unskillful and unworkmanlike work.

The supervision of the various subcontractors is the responsibility of the general contractor. Although a person may have no obligation or duty to another, once he undertakes to perform a certain task such as the construction of a house he is charged with the duty of properly planning, coordinating and supervising the work. If he fails in the performance of his duty, he may be held liable for any damages or injuries to persons which proximately result from his failure.

The defendant claims that the plaintiff's injury was not proximately caused by the defendant's negligence but was solely caused by the negligence of another person. The defendant does not have the burden of proving that the negligence of the other person caused the plaintiff's injury.

Instead, the burden remains on the plaintiff to prove that the defendant's negligence was the proximate cause of the plaintiff's injury.

If you decide that the plaintiffs are entitled to a verdict, your next step would be to decide how much money, if any, the defendant should be required to pay. Actual damages are to compensate the plaintiff for the plaintiff's injuries or loss and to put the plaintiff, as near as possible, in the same position that the plaintiffs were in before the incident occurred. In other words, actual damages would be the actual losses and expenses which the plaintiff has suffered because of the defendant's acts or omissions.

The existence of the amount of damages cannot be left to guesswork or speculation. However, proof of the amount of loss with absolute or mathematical certainty is not required. Damages must be proved with a reasonable degree of certainty.

I instruct you that you are not to be governed by the amount of damages asked

for by the parties or their attorneys but you are to be governed exclusively by the evidence in this case under the rules of law which I have given you with respect to the measure of damages.

If you answer this issue in any amount, you should award such damages as you find from the preponderance of the evidence is fair compensation for any damaged that plaintiff has sustained as a proximate result of the negligence of the defendant. Actual damages should only be awarded in satisfaction of or for the loss of injuries sustained. The goal is to restore the injured party as nearly as possible through the payment of money to the same position he was in before the wrongful injury occurred.

If you find that the plaintiff have no losses or injuries for which they are entitled to compensation, then you should not award any damages.

Your award must be fair and just. You should remember that you're not seeking to punish either party and you are not awarding or withholding anything on the basis

of sympathy or pity.

Under the implied warranty of good and workmanlike service, the proximate measure of damages is the actual damages shown to have been sustained so long as those damages are the natural, direct and proximate result of the breach of implied warranty. Incidental damages resulting from the breach of an implied warranty may be recovered. This includes expenses which are reasonably incurred as a direct and proximate result of the breach of the implied warranty.

The applicable measure of damages may be shown by cost of repairs, though the plaintiff is not required to prove that the repairs may have actually been made.

The plaintiff's actual damages may be shown by a competent estimate of the cost of repairs. Damages place the injured party in the same position as he would have enjoyed had the residence been constructed as warranted.

Cost of repair may include the expense necessary to perform the repairs to existing building codes.

The typical measure of damages in this case is the difference in the value of the building or house had it been properly constructed and the value of the house or building in its defective condition.

Items or elements of the damage that may be shown by the plaintiff are such things as the cost of repairs, depreciation and incidental damages and consequential damages.

If you award punitive -- excuse me. If you award actual damages, you may then also consider an award of punitive damages. Punitive damages are intended to punish the defendant for extraordinary and outrageous misconduct and to prevent the defendant and others from committing similar acts in the future.

Punitive damages can only be awarded when the conduct of the defendant has been something more than mere negligence. The evidence must establish that the defendant's acts were reckless, willful and wanton; meaning that there was a conscious failure to exercise due care or a conscious

indifference to the rights and safety or other, or a reckless disregard thereof.

If you find that the defendant's conduct was willful, wanton and reckless, you may award the plaintiff punitive damages. To support an award of punitive damages, the plaintiff must prove by clear and convincing evidence that the conduct complained of included a consciousness of wrongdoing at the time of the conduct.

Clear and convincing is more than just a preponderance or greater weight of the evidence which requires only -- which persuades you that a party's claim is more likely true than not true.

On the other hand, clear and convincing evidence -- clear and convincing is proof. It's not as high a standard as the burden of proof in a criminal case, which is proof beyond a reasonable doubt.

Clear and convincing evidence leaves no substantial doubt in your mind. It means that the evidence is not ambiguous, doubtful or contradictory. Convincing means persuading by proof or argument, causing one

to believe in the truth of what is asserted. Clear and convincing proof establishes in your mind not only that the fact is probable but that it is highly probable.

Before awarding punitive damages, you must consider and weigh four elements which may be pertinent to the facts of this case:

You must first consider the relationship between any punitive damage award and the harm caused. Any penalty imposed should be taken into account the reprehensibility of the conduct, the harm caused, the defendant's awareness of the conduct's wrongfulness, the duration of the conduct and any concealment. Thus, any penalty imposed should bear a relationship to the nature and extent of the conduct and the harm caused, including the compensatory damage award made by you.

Secondly, any penalty imposed should take into account as a mitigating factor any other penalty that may be imposed or which may have been imposed for the conduct involved, including any criminal or

civil penalty or any other punitive damages award arising out of the same conduct.

Next you should consider whether the award of and the amount of any punitive damages award may deprive the defendant of any profits derived from the improper conduct and whether the ill gotten profits should be properly awarded to the plaintiff.

Finally, any award of punitive damages must be limited to punishment and, thus, may not effect economic bankruptcy. To this end, the defendant's ability to pay any punitive damages award should be considered. However, the economic bankruptcy factor is not an absolute bar to the award of punitive damages.

The plaintiff claims that the defendant acted with recklessness, willfulness and wantonness and, therefore, that the plaintiff is entitled to punitive damages from the defendant.

Recklessness means a conscious failure to use reasonable care. A person who is negligent acts carelessly. However, a

person who acts recklessly, willfully and wantonly is not only careless but is aware that he is being careless.

Ladies and Gentlemen, I will now go over the verdict form. I remind you that the verdict must be unanimous, meaning that all twelve of you must agree.

Mr. Foreman, it is your job to write the verdict.

There is no significance in the way that I go over the verdict form. It is simply that something has to go on the paper first.

(Reading):

In the Court of Common Pleas for the Ninth Judicial Circuit. Case Number 2008-CP-10-0049.

Number one, on the claim of negligence we, the jury, find in favor of the ... -- the plaintiff or the defendant. You will simply check one or the other.

On the claim of breach of implied warranty of good and workmanlike service, we the jury find in favor of ... -- the plaintiff or the defendant. Again you will

check one or the other.

The verdict form indicates that the plaintiffs have received a total of $8,025,000 in settlements in this matter from other parties. Therefore, any damages that you award plaintiffs would be in addition to those damages already received.

If you found in favor of the plaintiff on either of the causes of action on the previous page, and this is a two-page verdict form, you would then state the amount of damages, if any, sustained by the plaintiff. There is a blank for actual damages.

Question five: If you awarded any actual damages to the plaintiff, you would then -- if you -- you would state the amount of punitive damages, if any, to be awarded against the defendant. Again, there is a blank for the amount of punitive damages, if any.

Mr. Foreperson, you will certify that this is the unanimous decision, meaning all twelve of you must agree, on all parts of the verdict and you will date it. At that

point, you will alert the bailiff that you have reached a verdict and we will receive you back in the jury (sic) room.

Ladies and Gentlemen, this is the last time that I will say this to you -- do not begin your deliberations, do not discuss this case amongst yourselves. We will be gathering the evidence to go back to you with the verdict form and at that time the bailiff will alert you that you may begin your deliberations.

I ask my two alternates to also abide by those rules. We will put the two of you in a separate room and you will receive further instructions at a later time.

Ladies and Gentlemen, you may begin eating your lunch at this time. And I appreciate your patience. Thank you. Please rise for the jury.

(JURY OUT @ 2:35 P.M.)

THE COURT: Thank you. Please be seated. Any objections or corrections to the charge as read?

MR. LEATH: Your Honor, I only have one observation on behalf of the

plaintiffs, that I feel I need to add in case we should have to go to the Court of Appeals on this issue. The concept of the finding or the plaintiff and awarding damages, if any, I am not sure can be sustained. I think that there has to be some award if there is a finding for the plaintiff. What happened was that we tried a case that resulted ---

THE COURT: Let me stop you there. Is that the only objection to the charge?

MR. LEATH: Yes, all that I have.

THE COURT: Okay.

MR. LUCEY: The only one that we have to the charge but we have a closing Motion, Your Honor.

THE COURT: A closing Motion?

MR. LUCEY: Yes, moving to strike the defendant's representation to the jury that there was a meeting where the general contractor ---

THE COURT: All right. We will address that. I just want to get -- to let the jury start deliberating. So that is your only objection, Mr. Leath?

MR. LEATH: (No verbal response).

THE COURT: Any objection, corrections or additions to the charges read?

MS. MAHON: Yes, Your Honor, for the record I do have a few. We object to the charge on workmanlike in the building trade that you charged on. You specifically qualified that work, and we have an objection to that.

Also Your Honor charged ---

THE COURT: I'm sorry, Ms. Mahon. I know that you are probably tired, as well, but I didn't understand what you said.

MS. MAHON: I'm sorry. I was looking down and reading. We have an objection to the charge where you were talking about the specialty -- where you had especially qualified to perform the work there is an implied warranty. We don't believe that's a correct statement of law.

Also in that same charge you were talking -- you charged that on every contract there is a legally enforceable duty to perform a workmanlike, uh, product. In *Kennedy v. Columbia Lumber* they said that it

was separate between a contract and a tort. What they are seeking here is not a breach of contract but a breach of tort. Therefore, that would not actually be an applicable or proper statement of law in this case.

And also, Your Honor, you did charge on depreciation and there was no evidence of depreciation at all.

THE COURT: All right.

MS. MAHON: And then, just for the record, the cost of repair, we would like to object to that where it says "cost of repair to existing codes." That was not presented in the evidence, nor -- that was an Illinois case, not a case in evidence, in South Carolina.

Also the punitive damages charge, we didn't believe was completely -- you said that there were four elements. Anderson lists about ten, twelve. We object to the completeness of that in that it wasn't a proper punitive damages charge.

Finally, Your Honor, we object -- the easy way to state it for the record, we had submitted a number of other charges that

were not charged to the jury. Would you like for me to go through those or would you like to just preserve for the record that ---

THE COURT: You may put them in. Paperclip them and we will mark them as Court's 4.

(SO ENTERED AS COURT'S EXHIBIT 4)

MS. MAHON: Thank you, Your Honor.

THE COURT: Thank you.

MS. MAHON: And Mr. Anderson is going to address -- yeah.

THE COURT: What are you going to address, Mr. Anderson?

MR. ANDERSON: Your Honor, I am going to go back to the verdict form and the instructions that were given on the verdict form.

THE COURT: Are you responding to Mr. Leath or are you just making an objection?

MR. ANDERSON: I am making an objection and asking for an addition.

THE COURT: All right.

MR. ANDERSON: That would be to

renew our earlier objection but also ask that if you are going to -- since you are using that form, we would ask for an additional charge that informs the jury that if they find that the actual damages are less than the amount of settlement, then they can return a zero verdict. It was implied that anything that they give must be over and above the settlement already received. Under the law, if their actual damages don't reach that number, and there is evidence that their actual damages should only be $4.9 Million, then they would -- they would be required at that point to return a zero verdict because they've already received more than -- and without doing the offset in the court after a verdict is given, I think that's the only way to address this. Is -- that they are essentially asked to give a verdict in excess of $8 Million, we believe that's an improper charge.

THE COURT: Anything further, Mr. Anderson?

MR. ANDERSON: Your Honor, I would ask for some clarification on Mr.

Leath's comment requesting -- I believe that he was requesting an additional charge on the "any damages" issue.

THE COURT: Are you joining in his request, Mr. ---

MR. ANDERSON: I am sure that I am probably not but -- anyway. I would just ask for a clarification from him if that is permissible.

THE COURT: You would ask for clarification from him or from his request?

MR. ANDERSON: As to what he was asking for. I was confused about what he was actually asking for.

THE COURT: He just -- pretty much along the same lines, Mr. Anderson, that it's okay for them to put zero, that they don't have to put anything; correct, Mr. Leath?

MR. LEATH: No, Your Honor. It's sort of the converse of that. We had a case that went to the Court of Appeals some years ago because that is exactly what happened, 'find for the plaintiff zero dollars.' It was held up as an improper verdict. You

could find for the defendant but you couldn't find for the plaintiff nothing. Inconsistent verdict. We had to try the case again. So I think that if we are asking for something here that it is a curative instruction, that if you do find for the plaintiff that you must award something. They could award 'seventy-five cents' or 'a dollar' or they could find for the defendant, but I don't believe that they can find for us and award us zero.

THE COURT: But you would agree that they would have had to have found actual damages, some actual damages -- even if it was seventy-five cents -- in order to award punitives; correct?

MR. LEATH: Oh, yes, Your Honor.

THE COURT: All right.

MR. LEATH: That's clear.

THE COURT: All right. With that, nothing further?

MR. LEATH: No.

THE COURT: All right. Mr. Anderson?

MR. ANDERSON: Your Honor, if

you are using a straight verdict form, then that might be the rule, but I still think that since you have given them a bar and said that 'you need to award something over eight million', or damages in excess of that, they need to be told that it's okay -- that in this case that it would be okay to bring back a verdict of zero.

Because if they find, as in my example, if they find that our proposal was the correct analysis for the damages, then the plaintiffs are already been made whole -- twice.

THE COURT: Your exception is noted for the record. The verdict form clearly says that it would be in addition to those damages already received. I believe that it is very clear. I am striking the "if any" from the actual damages and I believe that addresses all of the concerns.

My staff has been working very hard, so -- and I know that you need Mr. Dawkins to proffer but my staff is going to have a lunch break. So we will take forty-five minutes unless there is something else

of clarification, if punitive damages are awarded in any case, to whom are the proceeds paid?" Signed the jury foreman. How do you wish for the court to answer that, if at all. Mr. Leath?

MR. LEATH: Your Honor, the true answer is that they pay the plaintiffs.

THE COURT: Mr. Anderson?

MR. ANDERSON: That is the true answer, Your Honor. I think maybe just inform them that all damages go to the plaintiff.

THE COURT: All right. I will simply indicate "to the plaintiffs". Thank you -- (tenders note to bailiff to return to jury).

Now we have reached the stage where I will allow you to proffer the testimony of Mr. Dawkins. Mark that as Court's 5.

COURT REPORTER: I need those exhibits ---

CLERK: They are bringing them back now, Your Honor, there was a stack of them, they are brining them back now.

THE COURT: Thank you. Counsel,

before you turn those in to my court reporter, I just want to make sure that we go through -- you're going to represent that those are the ones the you presented to us that we did not include, so I want to make sure that ---

MS. MAHON: Yes, Your Honor, I've got those.

THE COURT: The jury instructions.

MS. MAHON: Yes, ma'am.

THE COURT: I just want to make sure that those are indeed the jury instructions that you did present that we did not include.

MS. MAHON: Yes, Your Honor.

THE COURT: Thank you. Mr. Dawkins, please remember that you are still under oath.

The point of this testimony, Mr. Anderson, just so that I am clear and the record is clear, uh, you disagree with the court's ruling that Mr. Dawkins should not have been qualified as an expert. Is that correct?

MR. ANDERSON: That is correct, Your Honor.

THE COURT: So the point of this proffer is to do what?

MR. ANDERSON: Your Honor, I believe that in order to get a complete record that we need to make a proffer of what his expected testimony would be in order to gauge the prejudice caused by the lack of his testimony. So it would be to ---

THE COURT: All right. And, Mr. Anderson, you would agree that in no way is this testimony, because we had a substantial *voir dire* concerning his qualifications as an expert or not as an expert. This merely goes to the prejudicial prong, is that correct?

MR. ANDERSON: If I understand Your Honor correctly, you are indicating that I should not go back through his ---

THE COURT: We have already had about thirty-five or forty minutes, almost an hour, of going over whether or not he should have been qualified as an expert or not and his qualifications. I believe that the record is abundantly clear.

The purpose of this proffer is, in my opinion, and what I want from you is what his testimony as an expert would have been had he been qualified as an expert only.

MR. ANDERSON: Yes, ma'am.

THE COURT: Thank you.

MR. ANDERSON: If Your Honor please, just note for the record that his earlier proffer would be in conjunction with his testimony at this time. I will not re-run through it, but if it is required on review should that be done, that they be considered together. I think ---

THE COURT: I think the only time -- I don't know that it need be considered together but you've made your contemporaneous objection and this is an appropriate time for you to do your proffer. Thank you.

MR. ANDERSON: Thank you, Your Honor. If I may, ---

THE COURT: You may.

(WITNESS TAKES STAND)

CHRISTOPHER DAWKINS, being duly sworn to tell the truth, the whole truth and nothing but the truth, testified, as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q. Mr. Dawkins, would you please state for the record what investigation that you did at Fenwick?

A. Yes. I did four days of observing cuts conducted by Mr. McGee and his staff, that was from June 8th through June 11th, 2010.

Q. Okay.

A. Now, I revisited this site but no colds were done on that date; December of 2010.

Q. Okay.

A. For about three or four hours.

Q. Would you please tell us what documents, drawings, reports, photographs that you have reviewed in preparation for your investigation or as part of your investigation?

A. If I could summarize, ---

Q. If you would just tell us what you considered, please.

A. I looked at the Glick, the Myles Glick, report and PowerPoints and also reviewed some of his deposition testimony; reports by SME,

Hinkle Martin Associates, G.R. McManus, H2L; a number of correspondence documents that -- it appears during the construction phase and some post-construction phase between Summit Contracting and other parties or from the architects of the project. I've looked at some of the building plan sheets, some of those specification sections; Magna Wall technical literature, brochures; and I've also looked at the Professional Plastering, North Florida Framing, Los Campos and Johnson Roofing at work.

Q. All right. When you talk about the Magna Wall information, does that include the engineering reports?

A. Yes.

Q. I believe that those were put into evidence. What years were those?

A. There was one dated 1997 that I didn't look at too closely and then one dated in 2000 and another in 2002.

Q. Which one of those apply to this job?

A. The one dated in 2003.

Q. From your study of the drawings and review of Glick's reports, visits to the

project, photographs and other documents that you have reviewed and listed for us, are you able to give us an overview of the general conditions of the project?

A. Yes.

Q. And did your observations, the information that you obtained in your investigation, provide you with the necessary information to form opinions concerning the application of the stucco and the causes of water intrusion on the Fenwick project?

A. Yes.

Q. Please tell us what you found as far as the application of the stucco.

A. The application of the stucco was -- it looked to me like it was pretty good. In other words, there was not a lot of cracking or abnormal move that was visible on the walls. As I have already discussed, there was cracking in two places where later we discovered that there was water intrusion. But it seemed like the cracking and the problems with the stucco were closely tied, with water intrusion below -- you know, behind the water intrusion -- systems that

were below the stucco.
Q. When you say below the stucco, what do you mean?
A. I'm talking about between the stucco and the wall sheath.
Q. What significance would that have?
A. Well, any time water starts getting to wood, wood swells. When wood swells, it begins to move -- wood swelling and movement are the same thing. Then of course as the air, natural air, evaporates back out after it has been wetted it shrinks again. When that movement starts occurring, then it starts causing any of the fasteners that are holding the stucco system to the substrate to begin to move and therefore crack -- if that's the right way to put it.
Q. In that scenario, would there have to be water on the -- with the surfaces?
A. At those locations, yes. You could get cracking attributed to some other thing also but that's what I did not see. I did not see cracking in the field areas away from, say, windows, roof wall terminations and ---
Q. And what does -- cracking in the field

areas, what does that signify?
A. That would signify issues with attachments or embedment, some of the issues that were raised in Mr. Glick's reports.
Q. So there are external signs that do show up if you have improper attachment?
A. Yes. You get, uh, the walls sort of "start pulling away", if that's the right way to put it, buckle, buckle and/or crack is probably the right way to say that.
Q. Did you observe that condition at all out at Fenwick?
A. I did not. I only observed issues where there was cracking at water intrusion.
Q. And ---
A. Let me back up. There was one building -- and we found it possibly in another, but there was one building where there was cracking and an obvious trial repair. I believe that it was Building 9, but I'd need to go back, you know, ---
Q. All right.
A. There was -- there were a few minor exceptions but that was the big exception, if that is the right way to put it.

Q. All right. In this condition in Building 9 had been repaired; is that correct?
A. I believe so. And I could be wrong on that building number. I would have to go back to find it, but.
Q. Thank you. Are we dealing with a residential or a commercial project here?
A. We are dealing with a commercial project.
Q. And which code applies, the IBC or the IRC?
A. It would be the International Building Code 2000.
Q. And what is the difference between the International Building Code and the International Residential Code?
A. Well, the residential code applies to the single-family and two-family residences and it also has a limitation on the number of stories.
Q. What is that limitation?
A. What's that?
Q. What is the limitation?
A. I believe two stories but there may --

no, I think it's two but I don't have that committed to memory.

Q. Within the documents concerning the construction of this project, did you review any of the certificates of occupancy?

A. I did not. I did not look at certificates of occupancy.

Q. Assuming that a certificate of occupancy was given on these buildings, what would that signify to you?

A. That the building was substantially complete and ready to live in.

(NOTIFIED OF VERDICT @ 3:54 P.M.)

THE COURT: Mr. Anderson, we have a verdict. We can continue this after we receive the verdict.

MR. ANDERSON: All right.

THE COURT: Mr. Dawkins, I need for you to step down. You may leave your stuff right there. Thank you.

(WITNESS STEPS DOWN)

THE COURT: Anything before we bring in the jury, from the plaintiffs?

MR. LEATH: Nothing from the plaintiffs, Your Honor.

THE COURT: From the defendants?

MR. ANDERSON: No, Your Honor.

THE COURT: Thank you. Let's bring in the jury.

(JURY IN @ 3:56 P.M.)

THE COURT: Thank you, please be seated. You may now publish the verdict.

CLERK: (Reading):

In the State of South Carolina, the County of Charleston, I the Court of Common Pleas for the 9th Judicial Circuit, in the case of Mark Teseniar and Nan Teseniar, on behalf of themselves and others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc., (from December 16th, 2008 to present), who are the Plaintiffs in the case versus Professional Plastering & Stucco, Inc., who are Defendants. The case number is 2008-CP-10-0049.

On the claim of negligence, we, the jury, find in favor of the Plaintiffs.

On the claim of breach of implied warranty of good and workmanlike

service, we, the jury find in favor of the Plaintiffs.

The Plaintiffs received a total of $8,025,000 in settlements of this matter from other parties; therefore, any damages that you award the plaintiffs will be in addition to those damages already received.

If you found in favor of the plaintiffs on either cause of action, please state the amount of damages sustained by the plaintiffs: Seven Million Seven Hundred Twenty-three Thousand Two hundred Twenty-five Dollars ($7,723,225.00) in actual damages.

If you have awarded any actual damages to the plaintiffs, please state the amount of punitive damages, if any, to be awarded against the defendants: zero dollars in punitive damages.

I hereby certify that this decision is the unanimous decision of the court, signed Chris Nelson, Foreperson. Dated May 13th, 2011.

Mr. Foreperson and ladies and gentlemen of the jury, if this is verdict and

this is still your verdict, please raise your right hand -- (unanimous affirmative responses from jurors).

THE COURT: Let the record reflect that all twelve have raised their right hand. You may place your hand down. Thank you.

CLERK: Your Honor, the verdict stands.

THE COURT: Thank you, Mr. Clerk. This is the first verdict that he has received, so I appreciate your patience. Thank you, Mr. Clerk.

Anything further from the plaintiffs?

MR. LEATH: Nothing from the plaintiffs, Your Honor

THE COURT: Anything further from the defendants, of the jury?

MR. ANDERSON: Not from the jury, Your Honor.

THE COURT: Thank you. Ladies and Gentlemen, this concludes your service to this case. It also concludes your service for the week. If you would, please wait for

just a few moments in your jury room, I would like to come in and personally thank you for your service to Charleston County. Please rise for the jury.

(JURY DISMISSED @ 4:00 P.M.)

THE COURT: Anything further from the plaintiffs?

MR. LEATH: Northing further from the plaintiffs, Your Honor.

THE COURT: Anything further, Mr. Anderson, from the defendants?

MR. ANDERSON: Your Honor, we would ask for ten days to make our post-trial Motions.

THE COURT: Mr. Anderson, was it made clear to you that I heard post-trial Motions immediately following the verdict?

MR. ANDERSON: Your clerk informed us of that, Your Honor, however I would make application, uh, and the reason that I am asking for that is due to the duration of this trial and the timeframe that we've been working under. I would ask that we be granted ten days or I would be -- or it would be very beneficial to have ---

THE COURT: Mr. Anderson, here's what I will do. I will go speak to the jury because there's one that needs to go quickly and I like to personally thank them for their service. What I would like for you to do while I'm gone, it'll be about ten minutes, if you would at least articulate the Motions that you would like to make and then I will allow you ten days to brief that, and I will consider that and we will handle it that way.

MR. ANDERSON: Thank you.

THE COURT: We will be at-ease. And, Mr. Anderson, do you need to continue with your proffer of Mr. Dawkins or do you wish to continue that at a later time, as well?

MR. ANDERSON: With him here, I would like to complete ---

THE COURT: All right. Thank you.

(JUDGE EXITS/RETURNS TO COURTROOM)

THE COURT: Please be seated. Mr. Dawkins, let's try this one more time. I appreciate your patience.

(WITNESS TAKES STAND)

CHRIS DAWKINS, having been previously sworn, testified as follows:

EXAMINATION RESUMED

BY MR. ANDERSON:

Q. Mr. Dawkins, to continue here, based on your experience and your investigation and views of the Fenwick project, could you tell us what would be the anticipated life expectancy of the building or the stucco at Fenwick?

A. I would say about twenty to thirty years.

Q. Why do you say twenty to thirty years?

A. Just based on the typical life expectancy of hardcoat stucco systems.

Q. In what capacity have you replaced stucco or performed operations that will allow you to make that opine -- from which you would derive that answer?

A. Just based on experience in facility management-type roles or consulting roles. That's about all. I mean, I haven't been around buildings that have lasted that long because I haven't been there, but that's just based on my knowledge of the system and other

claddings. That's the norm.
Q. Would you define for us what a primary weather barrier is?
A. It's what stops water from getting to the wall cavity or basically the outside of the wall cavity; which in a wood frame system, such as we are looking at here, is the OSB or the sheathing.
Q. Okay. What is the primary weather barrier and waterproofing barrier on the buildings at Fenwick?
A. It's the Tyvek-type building wrap along with its integrated flashings.
Q. How does the -- behind the stucco there is another barrier of paper?
A. That's right.
Q. Is that known as paper-backed lath?
A. It's the paper component of the paper-backed lath.
Q. Where is that in relationship to the primary barrier?
A. It's on the exterior side of that primary barrier.
Q. Is there anything between those two?
A. Just air.

Q. How does the primary -- excuse me -- how does the paper-backed lath fit into the system on this building?
A. It's basically laid over it, would be the best way to put it in layperson's terms. It's laid over the front face of that Tyvek barrier.
Q. So it would be in the same position that the HardiePlank was?
A. It would be -- that's correct, it would be exactly -- it would be on the same base as where the HardiePlank was, correct.
Q. Now, in order for the paper-backed lath to become the primary barrier, what would you have to do with that?
A. It would have to be integrated into the rough openings, integrated behind all the flashings of the -- and the roof, anywhere where the roof and walls come into contact, it would have to be integrated in with the balconies, underside, top side of the balcony-type. I think that's about it.
Q. All right. Would ---
A. It would have to be fully integrated into any opening or any protrusion of the

wall would probably be the right way to say it.

Q. So it would also have to be integrated within the window system?

A. Right, that's correct.

Q. All right. And to make the paper-backed lath the primary weather barrier, would it have to go in before the windows or -- excuse me. In what sequence would the paper-back lath be installed in a window installation?

A. It would have to be installed either at the same time as the window or that would all have to be planned out so that the flashing -- the flashings that are done in the windows separately, so that there was a place left for the lath or the paper of the lath to be lapped under, say, the sill area of a window. That would also entail a lot of additional work because the paper-backed lath is exactly what it says, the lath is on top of the paper and there would be places where you would have to lap paper and then move lath or add extra lath to accommodate all those terminations, such that it would become the primary barrier.

Q. Did you see any evidence at the Fenwick project that the paper-backed lath was acting as the primary barrier?
A. No, it was -- no it -- the answer is no. Sorry.
Q. Okay. All right. What led you to the conclusion that it was not the primary barrier, from looking at the installation?
A. That the windows were integrated or were attempted to be integrated with the Tyvek paper, or the building wrap is a better way to put it, a better term.
Q. Thank you. Could you tell from viewing the -- well, could you tell out at Fenwick the sequence of installation at the windows?
A. It looked like the windows and the building wrap had been done at the same time because they were tied together in some form.
Q. When Professional Stucco arrived at a window or at a wall that had windows already installed, what would they see?
A. It appeared that they would see a building wrap and they would see aluminum tape that had been installed incidental to the window installation, around the

perimeters of the window. They would start from there.

Q. Is there an exhibit that would illustrate that?

A. I believe so.

Q. Could you tell us what that exhibit is?

A. Let me see if I can find it. We looked at it this morning.

MR. ANDERSON: Your Honor, how would you like the exhibit marked? As a court's exhibit?

THE COURT: He's saying he looked at them this morning, was it already marked?

MR. ANDERSON: It was not.

THE COURT: It was not marked.

MR. DAWKINS: It was part of those that we were looking at -- well, I was thinking of photos. Yes, it's depicted in the plans and it is also depicted in the general aluminum installation instructions.

THE COURT: That will be Court's 6.

(SO ENTERED AS COURT'S EXHIBIT 6)

EXAMINATION CONTINUED

BY MR. ANDERSON:

Q. If I could ask you to circle the applicable picture on there, or what looks like the ---
A. It is the one that is labeled "apply head flashing", in sequence with several others.
Q. All right. What was then done by Professional Plastering when they -- well, can you tell us what would be on the wall, work from the OSB out, once the window installation was complete?
A. Not including what was in their scope of work, but everything?
Q. Just bring everything out, yes.
A. (Affirmative nod), everything out. Okay. We start with the OSB sheathing and/or maybe some framing, support lines, and then the building wrap, the white Tyvek-type building wrap at the windows -- that should have been integrated at the windows and there's a whole lot of detail in the -- if you'd like for me to go into that at this point.
Q. I was going to ask you what was the process of integrating the Tyvek or the

building wrap into the window.
A. Okay. At the -- it would be -- the Tyvek would be wrapped into the window, the X-cut that has been discussed already, but then a sill flashing would be added at the sill. This is in accordance with general aluminum instructions. Then the head of the window would actually -- the paper would be pulled up at that location so that the paper covered the top flange and ---
Q. What condition did you actually find at Fenwick?
A. Well, we found that the top -- at the top of the window, that had been just terminated behind the flange of the window. In other words, turned into the rough opening and the window put up against that opening; which is a reverse lath, incorrect installation.
Q. And then was there flashing at the head of the window?
A. Right. There is a flashing that should be -- should be under the paper, should be over the flange, over the vertical flange at the head and then under the paper. We found

that -- we've talked about that earlier as a Z flashing. That Z flashing should have been -- the vertical, like this, should have been under the paper and then coming out from behind the paper over the head of the window. What we found in the cuts was the paper terminated behind the flange rather than outside it. Then the flashing that should be under the paper terminated on the outside of the paper.

Q. What is the result of that configuration?

A. The result of that is that if any water gets to that barrier and it's coming down at the end of the window it's going to be diverted into the rough opening by virtue of the reverse lath with the flange, nailed flange.

Q. Was that configuration created by Professional Plastering?

A. Based on all my document research, no.

Q. Is that after reviewing their scope of work?

A. That's after reviewing their scope of work and North Florida Framing's scope of

work.

Q. And there are specific sections in North Florida Framing's scope of work that set out the application of the Z flashing and the other assembly of the window?

A. I believe that it's like "A" (phonetic) of North Florida's scope, which asked for the Z flashing to be installed in accordance with the manufacturer's instructions. Yes.

Q. And then the peel-and-stick aluminum tape would be applied?

A. Yes, that would be following the general limit on construction.

Q. And then what would be the next trade that would arrive at the window?

A. The next trade would be Professional Plastering.

Q. Would they be able to see the reverse lath?

A. They would not be able to see it because the aluminum tape had been installed in front, you know in front of -- by North Florida Framing. So they wouldn't -- they just needed aluminum tape up at the front of the window and also at the still of the

window. At the sill of the window, they should be seeing that second piece of flashing terminating out in the lower flange inbetween the building wrap and the flange. But that is also covered by tape, so they would not be able to see what either -- either of the wrap installations.

Q. Would they have had notice of an incorrect installation or an error of the work that they were seeing?

A. No, not based on what they could see. Not based on what we could see when we did the cuts. They didn't have that benefit.

Q. Were there any other -- other than the reverse lath, was there anything else about the integration of the building paper that would have -- that would affect the waterproofing of the building?

A. I don't believe so. I mean, we've talked about the reverse lath at the top and the flashing reverse lath also at the top and then the lack of a second sill tape at the bottom. I believe that covers it.

Q. At the bottom, what was the condition about bringing the Tyvek into the opening?

A. It appears that it was nothing. They had just -- a couple of interior cuts that we could see, you could visibly see the X cut of the Tyvek at the interior locations and then some of the exterior cuts. There was no -- nothing but the Tyvek where the lower flange or where the sill flange met the Tyvek. So I could see it.

Q. Does that mean that there was no sill flashing?

A. It means that there was no evidence of it. A window wasn't pulled but from everything that I could see, and multiple cuts, it wasn't there. We were specifically looking, I was specifically looking for it.

Q. But were there any other conditions at the corners of the windows?

A. Just the -- I could tell the Tyvek was cut and the interior locations, where there were interior cuts taken, I could tell that there was an X cut made but I had limited visibility of its locations.

Q. Item number seven talks about tapering of the flashing, do it not?

A. It does.

Q. What is your interpretation after your investigation of the area as to what that means?
A. It appeared to me that that was like a redundant taping of the window that the, uh, that Summit Contracting wanted Professional Plastering to do.
Q. Is that the additional covering that the peel-and-stick called for, the protector wrap?
A. Yes, it's the six-inch wide self-adhering membrane, perm a barrier wall sill tape manufactured by W.R. Grace or approved equal.
Q. Is there any other flashing that could have been installed at that window by Professional Plastering, in the condition that they received the window?
A. Not -- no.
Q. So there was only one alternative for them, would be the application of that tape?
A. The tape and, as I said, I thought that was kind of redundant but it certainly -- redundancy always helps a little bit, but -- but it was redundant.

Q. Were you able to observe how the stucco was embedded within the lath?
A. When we were there doing the cuts, yes.
Q. What did you find?
A. It looked to me like it was embedded generally well.
Q. Now there had been a number of photographs offered by the plaintiffs showing their lath. Can you -- I am going to hand you what is an example or if you see a better example you can certainly go to it. There appears to be bare lath at corners and in other areas of which there are photographs. Have you reviewed those?
A. I've reviewed those. Let me -- I have gotten to review those and I have portions of them here in my file also.

I think that was the second cut that was done. So far I haven't seen any in the first wave.

Q. All right.
A. (Reviewing) -- and there's one on -- it's in destructive test number eight, based on my -- he is not talking embedment there. Sorry.

Q. Does it illustrate the embedment issue?
A. It kinda -- it does to a degree, (affirmative nod).
Q. All right.
A. It shows -- you can see some lath but you've got to realize that a lot of these places, the short summary of this is that -- you see some lath exposed and not embedded at these locations but typically they are occurring where there is a build-out. So there were several layers of lath put up. The stucco is embedded in the outermost lath or even the outermost two laths.

But then all that lath is attached to the wall, so a lot of the places where embedment was raised as an issue were at these build-outs and there were no cracks or any -- or any distortion of the wall, any buckling, anything going on to indicate that there was a problem there. But then you make a cut and, yeah, there is no embedment because you're looking at multiple layers of lath. That's ---
Q. How long have these buildings been there?

A. At the time that I was there, about nine years. I -- I just found couple here of what I've been talking about.
Q. All right.
A. It's in destructive test number nine, pages forty-six, forty-seven and forty-eight. Same with forty-nine and fifty. Those are describing -- there is definitely no embedment in those, in three of those photos. There is embedment in the one that was taken away. And what we are looking at here is the first layer of lath that was not -- it was covered up by some additional layers above it, if that is the right way to put it.
Q. Now, is it required that all -- that any piece of lath that is up there be embedded?
A. No. Because the -- we're talking about a deck or a build-out, not the field area of the wall, so the answer is no.
Q. Now, there were concerns raised about the use of one-inch fasteners and the ability to get them fully embedded, per the instructions.
A. Right. If this was a three-coat system, the, uh, -- which is, you know, everybody

when they think of hardcoat, they all think of that. Fair enough. This is a manufactured proprietary system, so it's different.

Q. What are the requirements -- if you would look at ER4776 July 2000, I believe that it is paragraph 2.1 -- 2.3.1?

A. Right. It requires a one-inch penetration. It basically says that if the plywood or oriented strand board, complying with Section 2.2.A or 2.2.9 of this report is installed as a substrate, which we had in this case, the boards and wood frame members may be combined in determining the one-inch penetration requirement for corrosion-resistant factors. So it allows for a one inch rather than for a common one-and-a-quarter inch or more if you're dealing with a three-coat, seven-eights inch think, system.

Q. What about the fact that it is not in the stud?

A. It should be, it still should be in the stud. It still should be through the sheathing and into the stud. But what this was, we've got half-inch sheathing here, so

half of that -- a half inch of that one inch would be in the stud.

Q. Okay. There were issues raised about the thickness of the stucco. Could you please ---

A. Yes.

Q. --- tell us about that?

A. Yes. Some of the -- and some of the pictures are just stated as facts and they are the facts as they are. They show some measurements even. The -- comments made of varying thickness. Well, yeah, we're three-eighths inch thick at the field area of the wall or maybe half an inch thick and then at the build-out we're an inch-and-a-quarter thick. That's of course varying thicknesses because it was called for in the design.

The other issue with varying thickness is that the plane, the vertical plane of the sheathing was not true. So you could have a board pushed out a little big, towards the exterior, and the board under it not and that would definitely cause a variation in thickness, because Professional Plastering has set three-eighths inch control joints or

casing beads at their wall panels and then got -- they've got to plumb with that, but the sheathing is pushing into that. So you might get a variability in thickness across the panel because the sheathing was not plumb.

Professional Plastering -- with us doing cuts, Mr. McGee doing cuts or Mr. Glick doing cuts -- I've having an opportunity to look at Mr. Glick's photos and to also be there when the other team is doing cuts. I could see that. I could see that after the -- after the ---

Q. Would Professional Plastering be able to see those variations in the sheathing?

A. Not readily because it was covered up by the building wrap.

Q. All right. The person applying the plaster, would -- would he also be hindered by the paper-backed lath?

A. He would be. First -- he'd have an obstructed view when he got there by virtue or the fact that he's looking at, generally, white building wrap and then within a few minutes he's put his paper-backed lath up

over that, so he doesn't have -- you just can't see.

Q. How prevalent did you find the thickness issue to arise in your observations?

A. Discounting the build-outs, because of course we are going to have varying thickness between a build-out and the field area of the wall. So discounting that, it seemed pretty normal -- if that's the right way to put it -- at the cuts, say made below the balconies, or bigger cuts that were made above some of the windows. It seemed pretty normal.

Q. Now, there was -- the stucco integration with the windows, what condition did you find?

A. Stucco integration with the windows. There were typically build-outs around the windows but the stucco integration at the jams and the stucco went into the "U" portion -- you're looking down the face or down from the top of the window, it went into that cavity/opening there at the jams.

It terminated with the heads -- at the heads of the window, it terminated with the Z flashing.

At the base of the window, there may have been a casing bead there or it may have terminated at the flat portion of the sill of the window.

Q. All right. And was there any instruction within the contract that would permit that particular assembly to occur?

A. I believe so. We're talking Professional Plastering's scope?

Q. Yes, sir.

A. Let's see, (reviewing).

Q. I believe that if you look at page twenty, paragraph twenty-two.

A. I am on page twenty at twenty-four, "J molds were installed, all required JB at build-out". And that might have been addressed again ---

Q. Look at item twenty two.

A. Yeah, twenty-two discusses the J molds again, "... install J-mold at all edges of stucco not finished into a wall or jam, including the bottom edge of vertical walls at ground level." So ---

Q. What does that instruction tell you?

A. It tells me that if I come to the inside

corner of a wall that I don't have to put a JV at the inside corner of the wall. If I come to a jam, i.e. as in the jam of a window, I'm not required -- or Professional Plastering is not required to put a J mold at that location.

Q. And can ---

THE COURT: Mr. Anderson, I need for you to wrap this up. If you wish to just go ahead and proffer on the record what you believe the rest of Mr. Dawkins testimony would be.

MR. ANDERSON: I think I've only got a couple of other items.

THE COURT: Well, let's put them on the record, Mr. Anderson. Thank you.

MR. ANDERSON: Thank you.

EXAMINATION RESUMED

BY MR. ANDERSON:

Q. Were you able to do a review of the contract with North Florida Framing and Professional Stucco in relationship to the kickout flashing?

A. Yes. Well, I also looked at Johnson Roofing. I did not see it. I did not see

the kickout flashing in Professional Plastering's scope of work, and I did not see it in North Florida Framing's. It was mentioned in Johnson Roofing's scope, item number six. But then there was a notation that said -- that basically said "provide and install water diverters per drawings."

Then someone, it appeared a sub-contractor with the same initials -- actually both parties initialed it actually. It says "None on drawings." A little statement there.

Q. Okay.

A. Which I surmised means that the kickout flashings were taken out of the scope for Johnson Roofing.

Q. All right. Now, after your review and seeing these conditions, can you state the most probable cause, to a reasonable degree of engineering certainty, what was the -- sorry, Your Honor. Last question.

Can you please state what is the probable cause of the water intrusion that you observed at Fenwick?

A. Sure. There was water intrusion at the

roof-to-wall terminations. The proximate cause was lack of kickout flashings. I mean, they should have been there.

At the windows, water was entering the head area of the windows because of the improper paper installation, compounded by the improper head flashing installation done by North Florida Framing. Then that situation was compounded ever worse by lack of a sill flashing by North Florida framing at the sill of the window because there was no sill flashing installed, based on the evidence and what I could see from anybody's photos plus my own site visit.

There was water intrusion at the balcony-to-wall terminations at the breeze ways, which was also an integration of -- a waterproofing/integration issue.

Q. Did you find any water intrusion which would have been proximately caused by the work done by Professional Plastering?

A. I did not. I did not find that. We did find, of course, that some of the weep screeds did not have holes in them but that would not have caused water into the units,

nor was there any interior damage noted in anybody's report of that being an issue.
Q. So there was no damage that could be -- that would have been proximately caused by the failure to have weep screeds?
A. They had screeds. What is shown in many of the photos is correct, they had holes in them. I did find what he found or showed in his report of some that didn't. But there was no water intrusion or damage caused by that condition.
Q. One final question, did you observe or find any water condition in the hallways or the breezeways other than the front edge of the balconies?
A. No, once you got away from the balconies the -- the damage or rot was right there at that inside corner between the wall and the balcony. As you -- as they cut away the OSB, it was in normal condition away from that.
Q. Did Mr. Glick show you any of that, damage in those halls?
A. Just as I just -- his photos show the same conditions that the cuts in June of 2010 showed, that as you came away from that

corner -- I think that it -- it was dry.

THE COURT: All right. Thank you, Mr. Dawkins. You may step down.

(WITNESS STEPS DOWN)

MR. ANDERSON: Your Honor, I have two more -- may I give those ---

THE COURT: You may.

MR. ANDERSON: Your Honor, he would also testify that the removal of the stucco would be necessary to accomplish the repairs and for other reasons that he just testified about. Obviously he would put in that all opinions were given to a reasonable degree of engineering certainty.

THE COURT: All right. Thank you. Mr. Anderson, I need you to state for the record what your post-trial Motions will be.

MR. ANDERSON: Your Honor, our post-trial Motions would include a Motion for a new trial.

COURT REPORTER: Could you speak up, please, or adjust the mic?

MR. ANDERSON: Our post-trial Motions will include a Motion for a new

trial. The ---

THE COURT: On what basis?

MR. ANDERSON: On the basis of the exclusion of our expert's testimony, the -- and, Your Honor, the use of -- our objections on the verdict form based on the verdict form. Based on the jury charges as previously stated by Ms. Mahon. And, Your Honor, it appeared that there was a general rush to complete this -- to complete this trial and the short time in which the jury deliberated did not appear to give them time to consider all the issues. It appears that they went out at about 2:50 and returned about 3:55.

THE COURT: Mr. Anderson, just for my own edification, what do you feel would have been an appropriate length of time for them to deliberate?

MR. ANDERSON: Your Honor, I felt that it probably would have taken them longer than that, much longer to consider all the evidence and the issues that were presented to them. And also -- knowing that they were eating lunch at the same time, Your

Honor.

THE COURT: All right.

MR. ANDERSON: Your Honor, included within the issues around the verdict form would also be our -- would be the Motion for setoff. To the extent that it is required, we would make the appropriate Motion *in limine* for setoff at this time.

If a setoff were to be found, we would anticipate that there would be no damages award.

We also would make a Motion for JNOV and a Motion for *remittitur*.

COURT REPORTER: The last Motion, please?

MR. ANDERSON: *Remittitur*.

THE COURT: Are those all your post-trial Motions?

MR. ANDERSON: Yes.

THE COURT: Ms. Mahon, do I have a copy of -- hold on. Do I have a copy of the jury charges?

MS. MAHON: Right here, Your Honor. May I approach?

THE COURT: You may.

MS. MAHON: There are the jury charges, (tendering), Your Honor, and these are the cases that I referenced so that it could be marked as an exhibit.

THE COURT: Thank you. Mr. Anderson, anything further?

MR. ANDERSON: No, Your Honor, I think that's it.

THE COURT: Ms. Mahon, just so that I am clear, these are the ones that you feel that I did not charge?

MS. MAHON: Yes, Your Honor. The precise wording was important, specifically the ones on the violation of the building code, the acceptance of work and things like that, Your Honor. I did not hear them. I apologize if they were read.

THE COURT: These are Court's 4, is that correct, Madame Court Reporter?

COURT REPORTER: I am going to make it seven because I skipped one that I am now going ---

THE COURT: These are now Court's 7. Thank you.

(SO ENTERED AS COURT'S EXHIBIT 7)

THE COURT: All right. Mr. Anderson, I will give you ten days from today's date to get that brief to me.

You must also outline the -- the only Motions that you've made are Motion for a new trial, a Motion for JNOV and a Motion for *remittitur*.

You have ten days but you also -- you must present it to the court but you must also provide a copy within ten days. When you provide it to the court, you may e-mail it to the -- all of the opposing parties.

MR. ANDERSON: All the opposing parties, including the ones that have settled? Or just ---

THE COURT: I'm sorry, to counsel who is here.

MR. ANDERSON: To the Elite Team.

THE COURT: I am not going to make that call. For the record, to Mr. Lucey, Mr. Leath, Mr. Chakeris, Mr. Sequi and Mr. Kirchner. All right.

MR. ANDERSON: Yes, ma'am, we will do that.

State of South Carolina) In the Court of Common Pleas
County of Charleston) Ninth Judicial Circuit

Mark F. Teseniar, et al.,) Transcript of Record
Plaintiff,) 2008-CP-10-00049
V.)
Fenwick Plantation Tarragon,)
LLC, et al.,)
Defendant.)

March 20, 2012

Charleston, South Carolina

B E F O R E:

The Honorable Kristi Lea Harrington, Judge

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

Jonathan J. Anderson, Esquire
Attorney for Professional Plastering & Stucco

William A. Scott, Esquire
Attorney for C&N Stucco and Plastering

Jason A. Daigle, Esquire
Attorney for APS Enterprises

SHARON L. VIZER-HANKS
CIRCUIT COURT REPORTER

I N D E X

Tuesday, March 20, 2012

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NO EXHIBITS WERE INTRODUCED

Tuesday, March 20, 2012

THE COURT: This is Mark Teseniar vs. Fenwick Plantation.

State your name, please.

MR. SCOTT: Your Honor, my name is Bill Scott. I represent the defendant, C&N Stucco and Plastering, Inc., a Florida Corporation who is a third tier subcontractor in this matter, and we're here on a motion for summary judgment that we filed against the only defendant that filed a claim against us, APS.

They filed a claim against us for basically indemnification in case they were found responsible for any defects in construction. We filed a complaint for summary judgment asking that we be dismissed because APS is not a licensed contractor.

With that, Your Honor, I'd like to go back and just sort of lay out where all the parties are. This case involves --

THE COURT: Before we do that what I'd like to do, one it's good for me but it's also good for the court reporter, if I could just go ahead and have everyone identify who they are and who they represent.

MR. DAIGLE: Your Honor, my name is Jason Daigle, D-a-i-g-l-e, and I represent APS Enterprises, who is a first party defendant, third party plaintiff.

THE COURT: And, Mr. Scott and Mr. Daigle, you both had filed independently a motion for summary judgment; is that correct?

MR. DAIGLE: Correct, Your Honor. Mr. Scott filed a motion for summary judgment on my third party claims, and I filed a motion for summary judgment on Professional Plastering's cross-claims.

THE COURT: And just for the record, I granted both of your motions; is that correct?

MR. SCOTT: That's correct.

MR. DAIGLE: Yes, ma'am.

THE COURT: All right. Counsel?

MR. ANDERSON: Thank you, Your Honor. J. J. Anderson and Christy Mahon for Professional Plastering and Stucco, and we are a direct defendant, third party defendant and third party plaintiff.

THE COURT: My understanding, we are here for the primary purpose because there was -- we had a hearing May 3rd of 2011 on those two motions for summary judgment, which has been granted. My understanding is you have appealed my ruling on those two matters and attempted pursuant to that appeal to obtain a transcript. The court reporter has informed you that the transcript been unable to be located, lost her notes or something of that nature; is that correct?

MR. ANDERSON: That is correct, Your Honor.

THE COURT: And the Court of Appeals has indicated that the appeal is held in abeyance until a hearing reconstructing that hearing on May 3rd occurs. Is that the purpose of this hearing here today?

MR. ANDERSON: That is the purpose, Your Honor. And just one clarification, we only appealed one of the rulings, and that would be the granting of APS's motion for summary judgment.

THE COURT: So do we need to hear from Mr. Scott at all, Mr. Anderson?

MR. ANDERSON: It does not affect what's appearing before the appellate court and the purpose for the reconstruction.

THE COURT: Okay.

MR. ANDERSON: So we would not be using that part of the transcript.

THE COURT: All right. So, Mr. Scott, I'm going to have you remain with us just in case there's something --

MR. DAIGLE: Your Honor?

THE COURT: Yes, sir.

MR. DAIGLE: I am sort of stuck in the middle here. I'm arguing both sides of this argument.

THE COURT: No, sir. You were the one that said I'm going to go with Mr. Scott's argument in one case and

then against Mr. Scott in another case.

MR. DAIGLE: And I'm the one stuck -- I'm a second tier subcontractor between Professional Plaster and C&N so I'm making a clear argument on both sides.

After you granted both motions for summary judgment Mr. Anderson and I both filed motions to alter or amend. You ruled on Mr. Anderson's but did not rule on mine, so I cannot appeal yet. I'd like to think you did that on purpose so we wouldn't have to appeal and just see how Mr. Anderson's went. So that's the reason that I would like Mr. Scott here to argue and reconstruct the entire record as it was in the event that I do need to appeal this, Your Honor, and come back here a second time, or third time, I suppose.

THE COURT: Any objection to handling it that way? If I am appealed by Mr. Daigle then we need the transcript. We'll just be back here again trying to reconstruct it. So I'm going to allow Mr. Scott -- because what I recall, and it's been almost a year, is that you just echoed Mr. Scott's argument in one case; is that correct?

MR. DAIGLE: Yes, ma'am.

THE COURT: All right. So that's how we'll proceed so that we don't have to reconstruct the record again, in case Mr. Daigle does appeal my motion.

Mr. Daigle, just as an aside, I don't know that I ever received a copy because I typically do not hold -- I either set for a hearing or do a Form 4. So if you would -- you don't have to do it today, but if you would please make sure that I am served with a copy of the motion to reconsider.

MR. DAIGLE: Yes, ma'am. I've actually got the original file stamp right here.

THE COURT: Okay. Thank you.

MR. SCOTT: And, Your Honor, I'll only comment that if we go this way Mr. Daigle is going to be in an unusual position of arguing to the Court of Appeals, possibly, that he's both right and he's both wrong, and that's going to be an interesting argument that he may make, but that's where he may be.

THE COURT: Well, here's what we're going to have to do, because he did make that argument --

MR. SCOTT: Yes, Your Honor.

THE COURT: -- at the hearing on May 3rd. And so the purpose is not to critique one way or the other his argument, because we all know how I'm going to rule based upon my motions, but to preserve the record or reconstruct the record so that the Court of Appeals may determine whether -- in which instance Mr. Daigle is correct. We're hoping that, of course, they say that I

am correct in both, right, but if they are not then we will be back here at some other point.

All right. Mr. Scott, I'm going to hear you on your motion, and just articulate for the purposes of reconstructing the record the argument that you made.

MR. SCOTT: Yes, Your Honor. The only additional part that I may need to make is that in the earlier motion Jesse Kirchner argued and presented basically the argument of where the parties were to the Court before we got in. I'll redo that part so it puts it on the record and then make the argument.

This case involves a claim that was brought -- a class action claim that was brought by the Teseniars relating to defective construction in condominiums at Fenwick Hall on Johns Island. They filed a complaint relating to defective construction against the developers, the contractors and certain of the subcontractors.

My client, C&N Stucco, was not named in the original lawsuit. They did name Professional Plastering, and as I understand it Summit was the original prime contractor. Summit in turn hired Professional Plastering to do certain stucco work. Professional Plastering is not a licensed contractor.

Professional Plastering in turn hired APS, another

unlicensed contractor, both from Florida, and APS in turn hired C&N Stucco and Plastering, another Florida Corporation that is not a licensed contractor in South Carolina.

The claim against -- by APS, the third party complaint by APS against C&N was essentially for indemnification. We filed an answer and we alleged as an affirmative defense that there was no claim because APS was not a licensed contractor, and that sort of puts the parties in perspective here.

The undisputed facts, I think, are that the stucco work at issue here required a license to be performed under South Carolina law and that Summit was a licensed contractor, Professional Plastering was an unlicensed contractor, APS was an unlicensed contractor, and C&N was an unlicensed contractor, and only person that hired my client was APS.

The law in this State in Section 40-11-370(c), which states that an entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity to enforce provisions of a contract, and that's the operative language that we are filing this motion under.

Since APS did not have a valid license as required by this chapter and a license was required to do this

stucco work it may not bring a claim at law or at equity against my client, and the only claim they brought was for indemnification which would be an equitable claim.

I think the other two statutes that are applicable are 40-11-30, licensing requirements, that provides that no entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than $5,000 for general contracting, and that's the statute that requires a license for the work at issue; and then the third statute is 40-11-270(c), which provides that licensees may utilize the services of unlicensed subcontractors to perform work within the limitations of a licensee's group under license classifications or subclassifications provided the licensee provides supervision.

It goes further to say that the licensee is fully responsible for any violations of this chapter resulting from the actions of unlicensed subcontractor performing work for the licensee. And that's sort of the defense that has been presented here, that these are unlicensed subcontractors hired under -- by a licensed contractor, which would have to be Summit.

In fact, the problem is Summit didn't hire us. There's no evidence in the record that Summit provided

any supervision. There's nothing in the record that supports that any part of that provision was applicable.

Our position is the statute is clear and unambiguous. Section 11-40-370, that an unlicensed contractor cannot bring a claim at law or equity, and that's where we are. Your Honor, that's what my argument was. Thank you very much.

MR. DAIGLE: Your Honor, Jason Daigle again for APS. Just to clean up a little bit, our third party action was indemnity but it was contribution as well, and APS has, in fact, paid money in this case, and with our contribution they would be right.

I know you're well familiar with the facts of this case. The scope that APS and C&N had on this was very limited in time and in actual work performed. It was just repair work in the breezeway. We were not the ones who did the original construction. We're not the ones who were in there doing these wholesale stucco repairs.

Going back to Mr. Scott's arguments, specifically Code Section 40-11-370, it says the entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity.

The fact is that the -- neither C&N, nor Professional Plastering, nor APS needed a license in this chapter. The facts that are in the record specifically

from Summit Contractor's depositions, the 30(b)(6) depositions, is that Summit Contractors knew C&N was performing the work. Summit Contractors agreed they are the ones responsible for supervising the work.

In fact, they did supervise the work; therefore, Summit as the licensee was overseeing all the subcontracting work and therefore the language in 40-11-370(c) only applies if you need a license under this chapter, and APS did not need a license under this chapter. Therefore, we believe it is inapplicable in this situation.

THE COURT: Mr. Daigle, how do I know that they don't need a license under this chapter?

MR. DAIGLE: Because if you go back to 270 -- or, first of all, the start of 40-11-30, that's the one that requires the license. There's no dispute that Summit Contractors, the general, had the proper license in South Carolina. There is no dispute to that.

Then if you go to 40-11-270, Licensees may utilize the services of unlicensed subcontractors to perform the work. Summit was the licensed contractor that oversaw all the work done by Professional Plastering, by APS, and by C&N; therefore, none of these subcontractors need a license. They are all working under Summit's license.

THE COURT: So under provision C under 270 that

licensee was providing the supervision so your client did not need to be licensed?

MR. DAIGLE: Correct.

THE COURT: Mr. Anderson?

MR. SCOTT: May I just respond to that?

MR. ANDERSON: I was going to ask Your Honor if maybe they could complete their arguments, and then Mr. Daigle can make his argument against Professional Plaster. Thank you.

THE COURT: Thank you.

MR. SCOTT: Your Honor, in response to Mr. Daigle, the licensee -- well, first off, there's no information in the record in front of the Court here today and the motions that have been provided that shows that supervision was provided by Summit to my client.

And even if it were then the statute is clear that Summit would be responsible, not a party hereto and not someone that sued my client, would be responsible, fully responsible for any problems with the contract of the work. So again, my contractor would not be responsible and it can't be liable for anything when the statute requires that Summit be responsible.

And, Your Honor, then that puts Mr. Daigle in an unenviable position of not only defending this argument but arguing the same argument that I made in his motion.

THE COURT: Anything else, Mr. Daigle?

MR. DAIGLE: No response as to Mr. Scott's motion, Your Honor.

THE COURT: All right. Mr. Anderson?

MR. ANDERSON: Your Honor, it's Mr. Daigle's motion against me.

THE COURT: So you have nothing further, nothing to say as in response to Mr. Scott's motion?

MR. ANDERSON: Correct, Your Honor. It was not filed against me.

THE COURT: I just remember there was a lot of discussion and, of course, there were numerous other parties that were involved. This is going a lot more quickly than I recall the last time, and so I just wanted to place that on the record as well. If I recall, we had scheduled a whole day of motions in this case; is that correct?

MR. DAIGLE: I believe, Your Honor. This was not the only motion that was heard that day, and we also were dealing with the peanut gallery then so...

MR. SCOTT: And, Your Honor, this part really did go pretty quickly, just as we've done so far.

THE COURT: This part, but I recall that this part of the motions we had heard a lots from Mr. Kirchner prior to hearing those, and we had gone -- you all's

motion I guess were later filed and so we had gone in chronological order, I believe.

Mr. Daigle, I believe you were, like, seated over on this side of the room, if I recall.

MR. DAIGLE: This was the open seat so I took it over.

THE COURT: All right. I just want the record -- of course, it's going to be very difficult to completely reconstruct the record to get the feel of what's going on because we have missed about an hour or so of previous motions prior to.

Mr. Daigle?

MR. DAIGLE: Yes, ma'am. Your Honor, again, representing APS Enterprises. APS Enterprises is a first party defendant along with Professional Plastering. Professional Plastering filed cross-claims against APS Enterprises as their subcontractor, and again, we've gone through sort of the background on this, but my argument is essentially the same as Mr. Scott's in that as a third tier unlicensed -- second tier unlicensed subcontractor under Professional Plastering neither Professional Plastering nor APS was licensed in South Carolina. There's no dispute to that. There's also no dispute that Summit Contractors was licensed. They are the general contractor. They were properly licensed under 40-11-30.

Now, if we move to 40-11-270, it says licensees may utilize the services of unlicensed subcontractors. The only licensee in this entire lawsuit, at least from the defendant's -- from the general contractor's side, is Summit Contractors; therefore, Summit is the only entity to whom this statute applies. They are the licensee. So they and only they can use unlicensed subcontractors, and, in fact, they did.

They hired Professional Plastering as their unlicensed subcontractor knowing full well that it was going to be on them if anything went wrong because this statute, 40-11-270(c) -- I'm sorry. The licensee, Summit in this case, is fully responsible for any violations of this chapter resulting from the actions of unlicensed subcontractors, Professional Plastering, performing work for the licensee.

Professional Plastering is not licensed. They are not a licensee; therefore, they cannot hire unlicensed subcontractors. They are required to be licensed if they are going to use unlicensed subcontractors. They are not licensed.

Then if we move to 40-11-370(c), An entity which does not have a valid license as required by this chapter, again that would be Professional Plastering, may not bring an action either in law or in equity to enforce

the provisions of the contract.

So Professional Plastering is unlicensed. They are required to be licensed under this chapter if they are going to use an unlicensed subcontractor. They were not and therefore they cannot bring an action either in law or in equity, in this case their cross-claims for indemnity and contribution against APS. Thank you.

THE COURT: All right. Mr. Anderson?

MR. ANDERSON: Thank you, Your Honor. May it please the Court. One of the sections that was avoided by both these sub subcontractors is the definition section of 40-11-20.

THE COURT: Do you have an extra copy of that?

MR. ANDERSON: I do.

THE COURT: I did not print the definition section.

MR. ANDERSON: Your Honor, I have a copy of the definition section. I also have a complete copy of the act, and then the two other sections.

THE COURT: I've got the two other sections but I'll just keep them in a complete packet.

MR. ANDERSON: Your Honor, when you look at subsection 4 it gives the definition of a contractor as used in the rest of the act. The contractor is specifically limited to general or mechanical contractors. The only general contractor in the case is

Summit; therefore, they are the only ones that are required under this chapter to have a license.

In addition, if you go to subsection 13, Licensed contractor means an entity that is licensed by the South Carolina Contractors Licensing Board to engage in general or mechanical contracting. Professional Plastering did neither of those. They did neither general contracting nor mechanical contracting.

Under the term of subsection 22 subcontractor means an entity who contracts to perform construction services for a prime contractor, which is Summit in this case, or another subcontractor. So it initially says you can -- Summit can use unlicensed subcontractors, and that subcontractor can then subcontract to APS, which we did.

Then there's the definition of unlicensed contractor, which means an entity performing or overseeing general or mechanical construction without a license. Again, it's general contractor and mechanical, as set forth in the statute.

When you use those definitions in reference to 40-11-370(c) the valid license as required by this chapter applies to either mechanical or general contractor s. It does not apply to Professional Plastering.

On the issue of supervision, supervision I would

submit is a defense but is not a prohibition to going forward with an action. So it does not indicate that -- I do not believe that even if there were defenses of lack of supervision that that would be something that would allow a summary judgment in this case but would be something that would have to be determined on the facts.

In addition, in our original submission we did a return to APS's motion and in that motion we submitted deposition testimony from the superintendent, I believe, of Summit Contracting, Tacy McGinty, and in there she described how they had agreed to supervise the work that was actually performed by APS. Now, in her testimony she was referring to the breezeway repairs, and also agreed to take responsibility along with supervision. So there is evidence in the record of that.

Your Honor, we have submitted both a memorandum in opposition to the motion for summary judgment prior to the initial hearing, we then also followed up clarifying our -- and re-presenting our argument in our 59(e) motion. So there are two, basically memorandums of our prior arguments.

THE COURT: But I only had one --

MR. ANDERSON: At the time. At the time that is correct, Your Honor. However, what we argued verbally that was not in the our initial submission we included in

our 59(e) motion.

THE COURT: All right. I just want -- because the purpose of this hearing is for there to be a transcript of what occurred and the information that I had in front of me at the time that I made my ruling. I don't want there to be some confusion that I had another memorandum to look at prior to.

I do recall reviewing all of the memorandums that were presented but I did not review two from you; is that correct, Mr. Anderson?

MR. ANDERSON: That is correct, Your Honor. Yes. And I did not mean to infer that. I was merely indicating that I believe that we have somewhat of an advantage in reconstructing because we did memorialize our oral arguments in the 59(e). That was the only point I was making, and I apologize for any confusion.

The other aspect under 40-11-370(c), the last phrase in that is, To enforce the provisions of the contract. We brought actions in indemnity, negligence and -- claims against APS for negligence, equitable indemnify and breach of implied and expressed warranty. So it was not strictly a contract action.

And we believe that due to the relationship on the worksite that there was not a direct enforcement of the contracts being applied here but there were other duties

that we were trying to enforce, and that would be another reason that perhaps partial summary judgment may be appropriate but not full summary judgment, and that argument is in the alternative.

So in short, Your Honor, Pro Plastering was not required under the chapter to have a license. They are allowed by definition to hire subcontractors who are not required to be licensed, and that we had fulfilled the requirements of this chapter and proceeded properly with our third party action against APS. Thank you.

THE COURT: Thank you.

MR. DAIGLE: Your Honor, very quickly. We are not disputing the definitions of subcontractor, prime contractor and all that. And actually, the definition that's most important here that Mr. Anderson didn't tell you was subsection 12, licensee. Licensee means an entity which has been issued either a general or mechanical contractor's license by the Department. Professional Plastering was not.

And again, the very first word of 40-11-270(c) is licensees may utilize the services of unlicensed subcontractors. So Mr. Anderson's client, Professional Plastering, was not a licensee and therefore could not utilize the work of unlicensed subcontractors.

And going to 40-11-370(c), the language here I

think is pretty clear, that an entity which does not have a valid license cannot bring an action either in law or in equity. All the causes of action Mr. Anderson brought against APS were, in fact, at law and equity. And I believe that to enforce provisions of the contract is simply saying to define the scope of the actual work that was done.

Of course, there's going to be a contract that says APS has to do A, B and C, or Professional Plastering has to do A, B and C. I believe the only reason that language is in there is to describe the scope of the work that was required by each subcontractor in this case. Thank you.

THE COURT: Mr. Anderson?

MR. ANDERSON: Your Honor, again, I think that we have fulfilled the requirements as far as the -- with the definition of subcontractor allowing a subcontractor to hire a second -- or another tier of subcontractors under the provisions of this chapter and really have nothing further. Thank you.

THE COURT: All right. Mr. Anderson, since at this point I'm assuming that whatever happens Mr. Daigle may disagree with my next statement but at this point the purpose was for your appellate record. Do you feel that this hearing has accurately and adequately given you an

opportunity to reconstruct the record so that the appellate court will have a meaningful opportunity to review the appeal?

MR. ANDERSON: I believe so, Your Honor, that the arguments have been appropriately made.

THE COURT: Mr. Scott, is there anything that you recall that happened regarding these two motions that you believe that should be placed upon the record so that there would be a meaningful review of what happened to the best of our ability, and again this happened May of 2011, so approximately 10 months ago? For me lots has happened and over this past 10 months but I believe that the arguments that were made at the time have also been made now, but I'll allow you an opportunity to place anything else on the record to clarify.

MR. SCOTT: No, Your Honor. I think we've probably done a pretty good job of reconstructing the record, and I think it's pretty accurate from what I recall.

THE COURT: Thank you. And thank you for being here, Mr. Scott.

Mr. Daigle?

MR. DAIGLE: I think we got pretty close, Your Honor.

THE COURT: Okay. Great. Thank you.

MR. ANDERSON: Your Honor, my co-counsel pointed

out that I may not have done one thing that I did do during the original hearing, that was to ask you to incorporate our memorandum within our argument.

THE COURT: I'm sorry?

MR. ANDERSON: I probably at the original hearing requested that you take into consideration and incorporate our memorandum into my oral argument, and I would make that request again if I didn't do it originally.

THE COURT: Okay. And I think I had stated when you had made the statement about having the 59(e) motion memo that I had prior to our hearing in May of last year had read all of the memos pertaining. What I recall is that I took all of these matters under advisement, and I don't remember. I know there were more than the two motions that were pending. I took all of the matters under advisement to give myself an opportunity to review your arguments in light of your memorandum.

But thank you, Ms. Mahon, for pointing that out and making sure that that was also part of the record.

Is there anything further? I want to make sure that this is an opportunity -- and again, Mr. Daigle, if you at some future point also need a copy of this transcript that this is an opportunity for you to fill in the gaps, so to speak.

MR. DAIGLE: Your Honor, I think we got really close to what we did back in May.

THE COURT: All right.

MR. SCOTT: Your Honor, the only thing -- what Mr. Anderson said reminded me. The only thing I know that I did then, there was a request to admit that we had submitted to APS, and I know that I re-argued that that request to admit was admitted, and it was, Are you a licensed contractor under South Carolina law. And they admitted they were not. And that's the only thing that I know that I put in the record before that I didn't do earlier. Thank you.

MR. DAIGLE: I believe that's accurate, Your Honor.

THE COURT: Thank you, Mr. Daigle.

All right. Gentlemen and lady, with that you know how I have ruled, but that's not the purpose of this hearing. So with that, this matter is the concluded. Thank you.

(WHEREUPON, the hearing was concluded.)

C E R T I F I C A T E

I, Sharon L. Vizer-Hanks, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 20th day of March 2012.

I do further certify that I am neither of kin, counsel nor have an interest to any party hereto.

May 19, 2012

SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

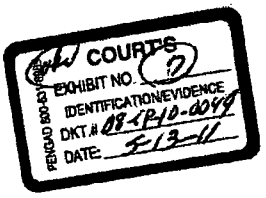
C7

(NEGLIGENCE)

REQUEST TO CHARGE NO. 10

I charge you that the fact that a person received an injury or is damaged, or the fact that an incident occurs, is insufficient to prove negligence.

Gillant v. Peters Dry Cleaning Co., 195 S.C. 417, 11 S.E.2d 857 (1941).



(DAMAGES - DUTY TO MITIGATE)

REQUEST TO CHARGE NO. 12

The Plaintiffs have a duty to exercise reasonable care and diligence to minimize their damages. If the Plaintiffs did not do what was reasonable in order to avoid damage, then the amount of their recovery should be reduced. The Plaintiffs may not recover those damages that could have been avoided with reasonable effort.

Thus, if you believe that, by the use of reasonable care, the Plaintiffs could have reduced their damages, you should determine to what extent, and reduce any damages awarded to that extent.

Genovese v. Bergeron, 327 S.C. 567, 572, 490 S.E.2d 608, 611 (Ct. App. 1997).

Du Bose v. Bultman, 215 S.C. 468, 471, 56 S.E.2d 95, 96 (1949).

BUILDING CODE

REQUEST TO CHARGE NO.

The violation of a Building Code is evidence only of negligence. That is, the violation of a building codes establishes only that a legal duty for which a builder can be held liable in tort for proximately caused losses has been violated. The party claiming damages must still prove that the violation of the building code in fact lead to or was the proximate cause of the claimed damages.

See Kennedy v. Columbia Lumber and Mfg. Co.,Inc. 299 SC 355, 384 S.E.2d 730 (1989); Brigandi v. Piechowicz, 13 A.D. 3d 1105, 1105 (N.Y. 2004)("Violation of the building code constitutes some evidence of negligence and it is for a jury to decide whether that violation proximately caused plaintiff's accident."Elliott v. City of New York, 747 N.E.2d 760, 762 (Ct. App. N.Y. 2001).

REQUEST TO CHARGE NO.

BUILDING CODE

The simple violation of this or any other building regulation or code provision is not enough to permit recovery. The violation must have been the cause or must have contributed to the injury in question.

Harry Portesky & Sons, Inc. v. Hurqitz, 235 F.3d 295, 297 (4th Cir. 1956).

DEFENDANT PROFESSIONAL PLASTERING & STUCCO, INC.'S REQUEST TO CHARGE NO. ____

A party who has suffered injury or damage from the actionable conduct of another is under a duty to make all reasonable efforts to minimize the damages incurred. To the extent that he reasonably could have so minimized those damages and failed to do so, he is not entitled to recover from the other party. In other words, one cannot recover any damages that might have been avoided by the use of reasonable care and diligence. A plaintiff's failure to mitigate damages allows the defendant to avoid only those damages that reasonably could have been avoided by the plaintiff.

An injured party is required to do that which an ordinary, prudent person would do under similar circumstances to mitigate his damages. However, the injured party is not required to unreasonably exert himself or incur substantial expense in an effort to mitigate damages.

The party who claims damages should have been minimized has the burden of proving they could have been avoided or reduced.

Ralph King Anderson, Jr., *South Carolina Requests to Charge – Civil*, § 13-12.

DEFENDANT PROFESSIONAL PLASTERING & STUCCO, INC.'S REQUEST TO CHARGE NO. ___

A party which provides plans, drawings, and/or specifications and requires that another must build according to those plans, drawings, and/or specifications inherently warrants that the plans, drawings and/or specifications provided are sufficient for that purpose. To the extent that these materials are not sufficient, the party who has provided them bears the risk associated with their inadequacy or insufficiency. *Hill v. Polar Pantries*, 219 S.C. 263, 271, 64 S.E.2d 885, 888 (1951); *U.S. v. Spearin*, 248 U.S. 132, 39 S.Ct. 59, 63 L.Ed. 166 (1918).

DEFENDANT PROFESSIONAL PLASTERING & STUCCO, INC.'S REQUEST TO CHARGE NO. ____

A party which accepts goods, including a building, that has defects which are obvious, patent, or otherwise discernable upon a reasonable inspection, waives any right to complain of any claims arising from those defects. *Monroe v. Wood*, 186 S.C. 507, 516, 197 S.E. 39, 43 (1938); *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 658 S.E.2d 80 (2008).

REQUEST TO CHARGE NO.

SOLE NEGLIGENCE OF THIRD PARTY

THE DEFENDANT CLAIMS THAT THE PLAINTIFF'S INJURY WAS NOT PROXIMATELY CAUSED BY THE DEFENDANT'S NEGLIGENCE, BUT WAS SOLELY CAUSED BY THE NEGLIGENCE OF ANOTHER PERSON. THE DEFENDANT DOES NOT HAVE THE BURDEN OF PROVING THAT THE NEGLIGENCE OF THE OTHER PERSON CAUSED THE PLAINTIFF'S INJURY. INSTEAD, THE BURDEN REMAINS ON THE PLAINTIFF TO PROVE THAT THE DEFENDANT'S NEGLIGENCE WAS THE PROXIMATE CAUSE OF THE PLAINTIFF'S INJURY.[3]

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[3] O'Neal v. Carolina Farm Supply of Johnston, Inc., 279 S.C. 490, 309 S.E.2d 776 (Ct. App. 1983).

BUILDER NEGLIGENCE – DUTY OF PLANNING, COORDINATING, AND SUPERVISING WORK

DEFENDANT'S REQUEST TO CHARGE NO.

Although a person may have no obligation or duty to another, once he undertakes to perform a certain task, such as the construction of a house, he is charged with the duty of properly planning, coordinating, and supervising the work. If he fails in the performance of this duty, he may be held liable for any damages or injuries to persons which proximately result from such a failure.

-South Carolina Requests to Charge § 11-5
See Hardy v. Unites States, 187 F. Supp. 756 (D.S.C. 1960); Epps v. United States, 187 F. Sup.. 584 (D.S.C. 1960).

ACCEPTANCE OF IMPERFECT WORK

Where work is accepted with knowledge that it has not been done according to the contract or under such circumstances that knowledge of its imperfect performance may be imputed, the acceptance will generally be deemed a waiver of the defective performance. This rule does not apply to latent defects. The acceptance of work which has been defectively done, the defects being unknown and not discoverable by inspection, does not amount to a waiver of imperfect performance.

South Carolina Electric and Gas v. Combuston Engineering, Inc., 283 S.C. 182, 194 (1984).

EXPERT TESTIMONY

Although the only expert testimony established that the defendant had the ability to conform his conduct to standards of right and wrong, the expert's testimony is not dispositive. The jury may elect to disregard the expert's opinion.
State v. Smith, 304 S.C. 129, 131, 403 S.E.2d 162, 163 (Ct. App. 1991).

The jury is free to believe one portion of a witness's testimony and believe another.
State v. Smith, 304 S.C. 129, 131, 403 S.E.2d 162, 163 (Ct. App. 1991).

NEGLIGENCE AS A MATTER OF LAW- PROXIMATE CAUSE

Even if an expert's uncontradicted testimony establishes the defendant's negligence as a matter of law. This alone does not establish liability. Negligence is actionable only if it is a proximate cause of the injury. It is for the jury to decide whether any alleged negligence on the part of the defendant proximately caused the Plaintiffs damages.

Warren Sauers v. Poulin Brothers, 328 S.C.601, 493 S.E.2d 503, 506 (1997) citing Hanselmann v. McCardle, 275 S.C. 46, 267 S.E.2d 531 (1980); Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996).

SUPERVISION IS RESPONSIBILITY OF GENERAL CONTRACTOR

The supervision of the various subcontractors is the responsibility of the general contractor.

Warren Sauers v. Poulin Brothers, 328 S.C.601, 493 S.E.2d 503, 506 (1997).

(CONFLICT IN TESTIMONY OF EXPERT WITNESSES)

REQUEST TO CHARGE NO. 8

In this case, there has been a conflict in the testimony of expert witnesses. To that end, you must weigh one expert's opinion against that of the other, and you must consider the reasons given by one as compared with those of the other. You should consider the relative credibility and knowledge of the experts who have testified. Thereupon, you should find in favor of that expert testimony which, in your opinion, is entitled to the greater weight.

🕭 *See Strange v. South Carolina Dep't of Hwys. and Pub. Transp.*, 307 S.C. 161, 414 S.E.2d 138 (1992); *Jones v. Grissett*, 258 S.C. 22, 186 S.E.2d 829 (1972).

MAR 2 8 2002

FILE COPY

SUBCONTRACT AGREEMENT

THIS SUBCONTRACT made and entered into this 20 March, 2002 by and between SUMMIT CONTRACTORS, INC., "CONTRACTOR," and NORTH FLORIDA FRAMING, INC., P.O. Box 73, Bostwick, Florida 32177, Office Phone: 904-328-9400, Fax Phone: 904-284-7496 "SUBCONTRACTOR," which shall include SUBCONTRACTOR, its employees, agents, suppliers and SUBCONTRACTORs.

DEFENDANT'S EXHIBIT 69 McGinty 5/30/10

ARTICLE 1: DEFINITION OF SUBCONTRACT TERMS

PROJECT: VINTAGE AT FENWICK PLANTATION
3000 Fenwick Hall Allee
Charleston, South Carolina 29455

BUDDY REEVES
Phone. 407-709-5123

OWNER: *(The term "Owner" as used in the Subcontract Documents shall mean the person or entity referred to below or the Owner's authorized representative.)*

THE VINTAGE AT FENWICK PLANTATION, L.L.C.ROBERT C. ROHDIE, PARTNER
c/o Tarragon Realty Investors
1775 Broadway, 23rd Floor
Phone: 212-949-5000
Fax. 212-949-8001

SUBCONTRACT: The Subcontract is the entire and integrated agreement between the CONTRACTOR and the SUBCONTRACTOR.

SUBCONTRACT AGREEMENT: The Subcontract Agreement is this standard form construction subcontract, identified as Subcontract Agreement No. 01033-16, which forms a part of the Subcontract Documents

SUBCONTRACT WORK: *(As more particularly described in Article 6)*

ARCHITECT: *(Include Business Name, address, telephone and facsimile numbers.)*

FUGLEBERG KOCH ARCHITECTS
2555 Temple Trail
Winter Park, Florida 32789
MIKE WILLIAMS
Phone: 407-629-0595
Fax 407-628-1057

CONTRACTOR: *(Include Federal Employer ID Number, business name, address, telephone and facsimile numbers.)*

Federal I.D.#:
59-2947787
SUMMIT CONTRACTORS, INC.
6877 Phillips Industrial Boulevard
Jacksonville, Florida 32256
TACY MCGINTY
Phone: 904-268-5500
Fax. 904-268-5889

SUBCONTRACTOR: *(Include Federal Employer ID Number, business address, telephone and facsimile numbers.)*

Federal I.D. #:
_____
NORTH FLORIDA FRAMING, INC.
P O Box 73
Bostwick, Florida 32177
DAVID ANDERSON
Phone. 386-328-9400
Fax: 386-284-7496

ARTICLE 2: SUBCONTRACT SUM

CONTRACTOR shall pay SUBCONTRACTOR in current funds for the performance of this work, subject to additions and deductions by written change order as herein provided for, the total sum of ONE MILLION EIGHT HUNDRED DOLLARS AND 00/100 ($1,800,800.00) (Includes $ 18.00 and the first .001% of the Subcontract Sum per Article 14.)

Cost Code: 6-10-02 Amount: $1,800,800.00

ARTICLE 3: PROGRESS PAYMENTS

a. It is the intent of the parties that as an absolute condition precedent to Progress Payments to SUBCONTRACTOR, CONTRACTOR must receive corresponding payment from the OWNER for SUBCONTRACTOR's work. The foregoing takes precedence over any conflicting provision or language appearing in any of the contract documents. In the event of non-payment by OWNER, then SUBCONTRACTOR'S remedies are against the OWNER

b. CONTRACTOR shall pay SUBCONTRACTOR Progress Payments for ~~work performed and~~ authorized material suitably stored and inventoried on the job site in monthly payments.

Contractor Initials: _____ 1 Subcontractor Initials: _____
Summit 00545

ID 5/11/10

DEFENDANT'S EXHIBIT 5 05-22-10 08:55

c. SUBCONTRACTOR to submit invoices for payment no later than the twentieth (20th) day of each month for work completed prior to the twentieth (20th) day of each month, and on the 1st of the month for work completed prior to the 1st day of each month.

d. ~~Five Ten Percent (10%)~~ retainage will be held until SUBCONTRACTOR has satisfied all of its obligations under this Subcontract Agreement, including all punch items, and has delivered to CONTRACTOR all required Releases of Lien and all supplier or written warranties required by Subcontract Documents, and the work has received final approval from OWNER, ARCHITECT and CONTRACTOR and retainage has been received by CONTRACTOR.

e At CONTRACTOR's request SUBCONTRACTOR shall furnish partial unconditional lien waivers through the date of the current request for payment from any of its sub-SUBCONTRACTORs, laborers or materialmen who have served notice to owner or otherwise established potential lien rights against the project or a potential claim against CONTRACTOR's Labor and Material Payment Bond.

f In the event any of SUBCONTRACTOR's sub-SUBCONTRACTORs, materialmen or laborers have established a construction lien on the project property or a claim against CONTRACTOR's Labor and Material Bond, CONTRACTOR shall have the right to withhold from any progress payment otherwise due to SUBCONTRACTOR sufficient monies to satisfy said claim of lien or claim against the bond unless SUBCONTRACTOR shall furnish a bond removing the lien from the property or indemnifying CONTRACTOR and its bonding company from all liability on the claim of lien or the claim against the CONTRACTOR's bond

ARTICLE 4: FINAL PAYMENT

Final Payment shall be due when the Work described in this Subcontract Agreement is fully completed and performed in accordance with the Contract Documents, and is satisfactory to the OWNER, ARCHITECT and CONTRACTOR, and SUBCONTRACTOR has furnished final lien waivers from any of its sub-SUBCONTRACTORs, laborers or materialmen who have served notice to owner or otherwise established potential lien rights against the project or potential claims against CONTRACTOR's Labor and Material Payment Bond.

It is the intent of the parties that as an absolute condition precedent to Final Payment to SUBCONTRACTOR, CONTRACTOR must receive corresponding payment from the OWNER for SUBCONTRACTOR's Work. The foregoing takes precedence over any conflicting provision or language appearing in any of the contract documents. Therefore, SUBCONTRACTOR acknowledges that this Subcontract Agreement has been entered into by CONTRACTOR in reliance upon receiving payment for work performed by SUBCONTRACTOR on the project from OWNER and OWNER shall have the right to approve payment of all CONTRACTOR's pay requests and change order requests. SUBCONTRACTOR agrees that CONTRACTOR'S actual receipt of full payment from the OWNER shall be a condition precedent to CONTRACTOR's obligation to pay SUBCONTRACTOR and to the bringing of any action by SUBCONTRACTOR against CONTRACTOR relating to CONTRACTOR's failure to make payment SUBCONTRACTOR shall not be entitled to receive any progress payment or final payment prior to CONTRACTOR's actual receipt of that payment from OWNER If CONTRACTOR never receives payment from OWNER, then SUBCONTRACTOR shall never be entitled to payment from CONTRACTOR. It is the express intention of the SUBCONTRACTOR to share in the risk of non-payment by OWNER to CONTRACTOR.

SUBCONTRACTOR also agrees that all contracts with its sub-CONTRACTORs, laborers, suppliers, materialmen, or other CONTRACTORs contain a similar or identical requirement of "pay when-and-if paid" to provide that it shall be a condition precedent to SUBCONTRACTOR's payment to its own sub-CONTRACTORs, laborers, suppliers, materialmen, or other CONTRACTORs that payment be received by CONTRACTOR from OWNER. SUBCONTRACTOR further agrees that it will indemnify and hold harmless the CONTRACTOR from any claims of SUBCONTRACTOR's sub-CONTRACTORs, laborers, materialmen, or other CONTRACTORs claiming by, through, or under SUBCONTRACTOR for payment not yet due from or received by CONTRACTOR from OWNER due to non-fulfillment of the above condition precedent that CONTRACTOR first receive payment from OWNER.

In the event of non-payment by OWNER, SUBCONTRACTOR's remedies are against the OWNER. The parties agree that Subcontract Agreement ARTICLE 4: FINAL PAYMENT establishes the exclusive conditions for Final Payment to SUBCONTRACTOR, and SUBCONTRACTOR hereby waives all other terms and conditions regarding Final Payment contained in the Contract Documents

In the event any of SUBCONTRACTOR's sub-SUBCONTRACTORs, materialmen or laborers have established a construction lien on the project property or a claim against CONTRACTOR's Labor and Material Bond, CONTRACTOR shall have the right to withhold from any final payment otherwise due to SUBCONTRACTOR sufficient monies to satisfy said claim of lien or claim against the bond unless SUBCONTRACTOR shall furnish a bond removing the lien from the property or indemnifying CONTRACTOR and its bonding company from all liability on the claim of lien or the claim against the CONTRACTOR's bond.

ARTICLE 5: THE CONTRACT DOCUMENTS

The Contract Documents for this Subcontract consist of this Subcontract Agreement, including Attachment "A"; the Owner-CONTRACTOR Agreement, including the Conditions of the Contract, Drawings, Plans; Specifications, all written Addenda issued prior to and all written Modifications issued subsequent thereto. All of the above documents, which form the

Contract Documents are a part of this Subcontract Agreement and shall be available for inspection by SUBCONTRACTOR upon its request. If anything in the Contract Documents is inconsistent with this Subcontract Agreement, this Subcontract Agreement shall govern and then the highest or fullest level of performance and installation shall govern.

ARTICLE 6: THE WORK

The work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated in such construction. SUBCONTRACTOR agrees to be bound to CONTRACTOR by the terms and conditions of the General Contract between CONTRACTOR and OWNER as well as this Subcontract Agreement and hereby assumes towards the CONTRACTOR all of the duties, obligations and responsibilities applicable to SUBCONTRACTOR's work which the CONTRACTOR owes towards the Owner under the General Contract. The obligations assumed by SUBCONTRACTOR hereunder include, but are not limited to, the technical requirements of the plans, drawings, and specifications in the General Contract which are applicable to SUBCONTRACTOR's work, all warranties and obligations of the CONTRACTOR with respect to defective or nonconforming work which are applicable to SUBCONTRACTOR's work, and all limitations on remedies, claims or time extensions imposed on the CONTRACTOR by the OWNER under the General Contract. SUBCONTRACTOR shall perform all of the following work:

SEE ATTACHMENT "B" FOR SCOPE OF WORK

ARTICLE 7: ASSIGNMENT

SUBCONTRACTOR acknowledges that the services provided under this Subcontract Agreement are in the nature of personal services, which cannot be assigned without CONTRACTOR's express written consent, which consent shall be within the sole discretion of CONTRACTOR. Any assignment of this contract or sums due hereunder without such prior written consent of CONTRACTOR shall constitute a material default, which shall entitle CONTRACTOR to terminate the Subcontract Agreement for cause.

ARTICLE 8: SUBCONTRACTING AGREEMENT

SUBCONTRACTOR shall not subcontract the whole or any portion of this Subcontract Agreement without the prior written consent of CONTRACTOR, which consent shall be within the sole discretion of CONTRACTOR. Any subcontracting of any portion of this subcontract without such prior written consent of CONTRACTOR shall be considered a material default under this Subcontract Agreement and shall entitle CONTRACTOR to terminate SUBCONTRACTOR for cause.

ARTICLE 9: FEES, PERMITS, TAXES, INSURANCE

SUBCONTRACTOR shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Subcontract Agreement, whether or not yet effective. Further, SUBCONTRACTOR shall secure and pay for all permits, fees, licenses and testing necessary for the execution of the Work described in the Contract Documents as applicable to this Subcontract Agreement. SUBCONTRACTOR shall comply with Federal, State and Local tax laws, social security acts, unemployment compensation acts, and workmen's compensation acts insofar as applicable to the performance of this Subcontract Agreement, whether or not yet effective.

Insurance requirements are listed below.

Liability	High Hazard Occupations (Example: Mech.,Plumbing, HVAC, Elect.,Roofing, Framing, Painting, Sitework, Masonry, Stucco, Steel Erection, Utilities, Concrete)	$1,000,000 00 General Aggregate $ 500,000.00 Products $ 500,000.00 Personal & Adv. Injury $ 500,000.00 Each Occurrence $ 50,000.00 Fire Damage $ 1,000 00 Med Exp
	Low Hazard Occupations (Example:Flooring, Tile, Paving, Pool)	$ 500,000.00 General Aggregate $ 500,000.00 Products $ 500,000 00 Personal & Adv Injury $ 500,000.00 Each Occurrence $ 50,000.00 Fire Damage $ 1,000.00 Med Exp
Auto		$ 500,000.00 Combined Single Limit
Workman's Compensation	1st 2nd Employer's Liability Part B	STATUTORY requirements for Each State $ 100,000.00 Bodily Injury by Accident (Each Accident) $ 500,000 00 Bodily Injury by Disease (Policy Limit) $ 100,000.00 Bodily Injury by Disease (Each Person)

(see next page for continuation of insurance instructions)

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Contractor Initials: _____ 3 Subcontractor Initials: _____

Installation Floater - Amount to cover cost of materials not yet installed. Any and all losses of this SUBCONTRACTOR's stored materials are the responsibility of this SUBCONTRACTOR

- Each Insurance Certificate shall contain the wording showing Summit CONTRACTORs, Inc. as "ADDITIONAL INSURED"

ARTICLE 10: NO DAMAGES FOR DELAY OR DISRUPTION

SUBCONTRACTOR shall not be entitled to additional compensation, overtime, extended field of home office overhead or other damages from CONTRACTOR for delays, disruptions, hindrance, constructive acceleration of other schedule and work force impacts. SUBCONTRACTOR's sole remedy shall be an approved extension or adjustment of the contract time. No extension or adjustment of the contract time shall be allowed for the following:

1. Events which were caused by SUBCONTRACTOR'S fault or negligence, by a lower tier SUBCONTRACTOR's fault or negligence, or any other event which is the responsibility of the SUBCONTRACTOR or its lower tier SUBCONTRACTORs or suppliers.
2. Delays which are concurrent with other unexcused delays;
3. Delays which do not affect the critical path of construction;
4. Delays for which the SUBCONTRACTOR has failed to request additional time or has failed to document within the time frames required by the contract documents;
5. Failure of the SUBCONTRACTOR to provide sufficient manpower, materials, facilities and equipment;
6. Failure of the SUBCONTRACTOR to reschedule activities, work weekends, increase equipment or other actions to complete work within the available schedule float or as otherwise required by CONTRACTOR's scheduling and coordination;
7. Delays for normal inclement weather.

In the event this provision is determined by a court or arbitration panel of competent jurisdiction to be unenforceable under the circumstances, SUBCONTRACTOR shall in no event be entitled to recover damages for extended home office overhead, idle labor and equipment, lost profit on other projects, lost bonding capacity, and any consequential damages.

ARTICLE 11: PERFORMANCE OF THE WORK

SUBCONTRACTOR agrees to commence the performance of the aforesaid Work and to continue to perform said work until completion so that SUBCONTRACTOR shall meet the OWNER and CONTRACTOR's construction schedule for completion of the job in accordance with the Contract Documents. SUBCONTRACTOR shall commence performance of the work on the date and time specified by CONTRACTOR and shall continue to proceed in accordance with CONTRACTOR's instructions. Time is of the essence in this Contract and extensions of time for performance of the work will be granted only for reasons as provided in the Contract Documents.

ARTICLE 12: CORRECTION OF WORK

SUBCONTRACTOR shall promptly correct all Work rejected by ARCHITECT or OWNER as defective or failing to conform to the Contract Documents whether observed before or after Substantial Completion. SUBCONTRACTOR shall bear all costs of correcting such rejected work, including compensation for the ARCHITECTS additional services required.

ARTICLE 13: INDEMNIFICATION

SUBCONTRACTOR hereby covenants to defend, indemnify, hold harmless and exonerate CONTRACTOR, CONTRACTOR's surety, OWNER and their respective officers, directors, employees, agents and legal representatives (hereinafter "Indemnitees") from any and all liabilities, claims, lawsuits, arbitrations, fines, or other charges for any property damages, personal injury or economic losses (hereafter "Claims"), which are caused in whole or in part by SUBCONTRACTOR, including the design of systems and installation and operations of same by this SUBCONTRACTOR, its employees, agents, guests, suppliers or SUBCONTRACTORs (including any lower tier suppliers or SUBCONTRACTORs, whether or not in direct privity with SUBCONTRACTOR), or which in any way arise out of or involve any of their work or their acts or omissions. This Indemnity Agreement shall extend to and include the full amount of all Claims whether or not caused in part by Indemnitees, except that SUBCONTRACTOR shall not be liable under this Indemnity Agreement for Claims directly caused by or resulting from the sole fault or negligence of Indemnitees. SUBCONTRACTOR acknowledges consideration for his Indemnification Agreement of Ten ($10.00) Dollars, together with payment of the first .001% (not to exceed $500.00) of the contract price. The SUBCONTRACTOR's obligations under this indemnity agreement for

Contractor Initials: _____ Subcontractor Initials: _____

CONTRACTOR's actions or inactions shall not exceed $1,000,000.00, however SUBCONTRACTOR's obligation for it's actions or inactions or those under his Subcontract whether or not in direct privity with SUBCONTRACTOR shall be unlimited.

The obligation to defend, indemnify and hold harmless includes Claims resulting from injury, sickness or death of any employee of SUBCONTRACTOR or any employee of any lower tier suppliers or SUBCONTRACTORs of SUBCONTRACTOR (whether or not in direct privity with SUBCONTRACTOR), regardless of whether such employee has been paid pursuant to any Worker's Compensation Law or other similar federal or state legislation for the protection of employees SUBCONTRACTOR's Liability Insurance policies shall each contain contractual coverage so as to protect Indemnitees under this Indemnity Agreement.

ARTICLE 14: SUSPENSION OF WORK, DEFAULT AND TERMINATION

a CONTRACTOR May Suspend Work

At any time and without cause, CONTRACTOR may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to SUBCONTRACTOR which will fix the date on which Work will be resumed. SUBCONTRACTOR shall resume the Work on the date so fixed. SUBCONTRACTOR shall be allowed only an adjustment or extension of the contract times directly attributable to any such suspension, provided SUBCONTRACTOR timely makes a claim as allowed by the Contract Documents In no event shall SUBCONTRACTOR be entitled to claim additional compensation for such temporary suspension of work.

b CONTRACTOR Shall Terminate for Cause

i. The occurrence of any one or more of the following events justifies CONTRACTOR's termination of SUBCONTRACTOR for cause.

1. SUBCONTRACTOR fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule).

2. SUBCONTRACTOR disregards Laws, Codes or Regulations of any public body having jurisdiction.

3. SUBCONTRACTOR fails to remain current with payments to its SUBCONTRACTORs or material suppliers

4. SUBCONTRACTOR assigns or subcontracts any portion of the Work without permission of CONTRACTOR as required by the Contract Documents.

5 SUBCONTRACTOR fails to obtain or maintain in effect any of the insurance required under the Contract Documents.

6. SUBCONTRACTOR otherwise violates in any way provisions of the Contract Documents.

ii. CONTRACTOR may, after giving SUBCONTRACTOR (and the surety, if any) forty-eight hours written notice and to the extent permitted by applicable law, terminate the services of SUBCONTRACTOR, exclude SUBCONTRACTOR from the Site and take possession of the Work and of all SUBCONTRACTOR's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by SUBCONTRACTOR (without liability to SUBCONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which CONTRACTOR has paid SUBCONTRACTOR but which are stored elsewhere, and finish the Work as CONTRACTOR may deem expedient. In such case SUBCONTRACTOR shall not be entitled to receive any further payment until the Work is finished. SUBCONTRACTOR shall be liable for any and all damages sustained by the CONTRACTOR because of SUBCONTRACTOR's default and termination. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by CONTRACTOR arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to SUBCONTRACTOR. If such costs, losses and damages exceed such unpaid balance, SUBCONTRACTOR shall pay the difference to CONTRACTOR. Such costs, losses and damages incurred by CONTRACTOR will be incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph CONTRACTOR shall not be required to obtain the lowest price for the Work performed.

iii. Where SUBCONTRACTOR's services have been so terminated by CONTRACTOR, the termination will not affect any rights or remedies of CONTRACTOR against SUBCONTRACTOR then existing or which may thereafter

accrue. Any retention or payment of moneys due SUBCONTRACTOR by CONTRACTOR will not release SUBCONTRACTOR from liability.

iv. In the event that a court or arbitration panel of competent jurisdiction shall determine that CONTRACTOR has wrongfully terminated SUBCONTRACTOR's services for cause, then in such event it shall be conclusively established that CONTRACTOR terminated SUBCONTRACTOR for convenience as hereinafter provided SUBCONTRACTOR shall have no other rights under this Agreement.

c. CONTRACTOR May Terminate for Convenience

Upon forty-eight hours written notice to SUBCONTRACTOR, CONTRACTOR may, without cause and without prejudice to any other right or remedy of CONTRACTOR, elect to terminate the Agreement. In such case, SUBCONTRACTOR shall be paid (without duplication of any items) for:

1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination based upon the unit price for said work, if applicable, or the scheduled value of said work, if applicable. Otherwise, SUBCONTRACTOR shall be paid for the actual and necessary cost of the work together with 10% for overhead and profit on such Work.

2. Actual expenses sustained or paid to SUBCONTRACTORs and suppliers prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus 5% for overhead and profit on such expenses;

3. Amounts reasonably paid in settlement of terminated contracts with SUBCONTRACTORs, Suppliers and others.

4. SUBCONTRACTOR shall not be paid on account of loss of anticipated profits or revenue under this Agreement or any other contract or projects, lost bonding capacity or any other economic losses arising out of or resulting from such termination.

ARTICLE 15: WARRANTY OF THE WORK

SUBCONTRACTOR warrants and guarantees to CONTRACTOR, OWNER, and ARCHITECT (or other applicable design professional) that all Construction will be in strict accordance with the Contract Documents, will be free from all faults and defects, and will be free of all liens and claims of third parties. SUBCONTRACTOR warrants and guarantees to CONTRACTOR that all Construction and materials will be new, of above average quality and in strict compliance with the Contract Documents. SUBCONTRACTOR further warrants and guarantees to CONTRACTOR that all work shall be in compliance with all federal, state and local codes and requirements. SUBCONTRACTOR further agrees to be bound to CONTRACTOR for all warranties and obligations to correct SUBCONTRACTOR's defective or nonconforming work for which CONTRACTOR is bound to OWNER. SUBCONTRACTOR shall further cause all of its SUBCONTRACTORs and suppliers to assign all separate warranties for work performed or materials supplied in connection with the Project directly to CONTRACTOR or, if required by CONTRACTOR, to the OWNER. Such assignment of separate SUBCONTRACTOR and supplier warranties shall be a condition precedent to final payment to SUBCONTRACTOR under this Agreement and shall be in addition to all other required SUBCONTRACTOR Warranties.

ARTICLE 16: RISK OF LOSS

SUBCONTRACTOR expressly agrees to be responsible for and bear any risk of loss to its work until final acceptance by the ARCHITECT, CONTRACTOR, and OWNER. Damaged work shall be replaced by SUBCONTRACTOR at its own expense.

ARTICLE 17: LIQUIDATED DAMAGES FOR DELAY

SUBCONTRACTOR acknowledges that it has read all of the Contract Documents including any liquidated damages provisions for delay. In the event CONTRACTOR is assessed liquidated damages due to the failure of SUBCONTRACTOR to timely perform the Work to CONTRACTOR's satisfaction, then it is agreed between the parties that these damages will be deducted from payment(s) due SUBCONTRACTOR.

ARTICLE 18: CHANGE ORDERS

Before performing additional or changed work involving additional time or expense, **SUBCONTRACTOR** shall obtain from **CONTRACTOR** a written change order describing the change and the amount or method of determining extra compensation. Additional expense will not be allowed without such written Change Order and **SUBCONTRACTOR** hereby waives any claim for additional expense unless such written change order has been issued prior to performance of additional or changed work. In the event **CONTRACTOR** has issued a change order to **SUBCONTRACTOR** and **CONTRACTOR** has not received the signed change order from **SUBCONTRACTOR** within fourteen (14) days from the date of issuance, it shall be considered to be a part of this Subcontract Agreement unless written notice of disagreement is received by **CONTRACTOR** from **SUBCONTRACTOR** within the above stated time.

ARTICLE 19: OTHER CONTRACTS

~~**SUBCONTRACTOR** expressly agrees to allow **CONTRACTOR** the right to retain and offset monies due and owing on any other contracts between **CONTRACTOR** and **SUBCONTRACTOR**.~~

ARTICLE 20: ARBITRATION

Any dispute between Summit and **SUBCONTRACTOR** arising in any manner from this subcontract, or the performance of work on the project, or payment therefor, shall be resolved by arbitration in accordance with the Florida Arbitration Act. The arbitration panel shall consist of three arbitrators. The party requesting arbitration shall request arbitration in writing, by certified mail. The request shall state the name and address of the arbitrator selected by the requesting party. The other party shall select its arbitrator within 20 days after receipt of the request and inform the other party and its selected arbitrator in writing of its selection. The two arbitrators thus selected shall select a third arbitrator. In the event they are unable to agree on a third arbitrator within 30 days, a judge of the Circuit Court of Duval County shall appoint the third arbitrator. The written decision of any two arbitrators will determine the issues. Each party will pay the arbitrator it selects. The expense of the third arbitrator will be shared equally. All other costs, including, without limitation, attorney fees, will be paid by the party incurring such costs.

Notwithstanding the foregoing, if Summit is sued by the owner, or any other person or entity, because of any claim allegedly arising from **SUBCONTRACTOR**'s scope of work or **SUBCONTRACTOR**'s alleged acts or failure to act, then this Article 20 shall not apply to such suit and Summit shall be entitled to make **SUBCONTRACTOR** a party to such suit.

ARTICLE 21: CHOICE OF LAW AND VENUE

This Subcontract shall be construed in accordance with the Laws of the State of Florida. **SUBCONTRACTOR** expressly agrees to be subject to personal jurisdiction in the State of Florida and further waives any right to venue in any action brought under this Subcontract Agreement or against any bond posted by **CONTRACTOR**. **SUBCONTRACTOR** acknowledges that **CONTRACTOR**'s bonding company is an intended third-party beneficiary of this jurisdiction and venue provision. **CONTRACTOR** has the sole option to select venue in Duval County, Florida or the site of the project, for any action it brings under the Subcontract Agreement. In any action brought against **CONTRACTOR** or its bonding company under this Subcontract Agreement, jurisdiction and venue shall be in Duval County, Florida unless and until **CONTRACTOR** stipulates to jurisdiction and venue at the site of the project.

ARTICLE 22: TRASH REMOVAL

It is fully understood that **SUBCONTRACTOR** will be responsible for keeping its part of the job clean and in an orderly fashion subject to the approval of **CONTRACTOR** and **ARCHITECT**. Further, **SUBCONTRACTOR** shall be totally responsible for the clean up and haul off on a daily basis of all debris generated by **SUBCONTRACTOR'S** daily operations. Should it become necessary for **CONTRACTOR** to incur any expenses performing cleanup work ~~or removing debris from site~~ for **SUBCONTRACTOR**, such expense will be deducted from **SUBCONTRACTOR**'s contract amount.

ARTICLE 23: FIELD VERIFICATIONS

SUBCONTRACTOR shall verify all dimensions, inspect the job site and its conditions, and notify **CONTRACTOR** of any problem, which would prevent or hinder performance by **SUBCONTRACTOR**. **SUBCONTRACTOR** will be deemed to have accepted any preceding work and materials and to have waived any and all claims as to non-suitability, unless defects are reported to **CONTRACTOR** in writing and **CONTRACTOR** authorizes **SUBCONTRACTOR** to proceed.

This Subcontract entered into as of the day and year first written above

SUMMIT CONTRACTORS, INC.	NORTH FLORIDA FRAMING, INc.
By:	By: President
	NAME/TITLE
Date: 3/29/02	Date: 3/28/02

Contractor Initials: _____

Summit 00551

Subcontractor Initials: _____

DM Initials:

Contractor Initials:

Summit 00552

Subcontractor Initials:

SUBCONTRACTOR DOCUMENTS ACKNOWLEDGMENT

SUBCONTRACTOR shall complete all work per Plans, Specifications and approved shop drawings

Site Improvement Plans
The below listed Plans were prepared by Hoffman Lester Associates, Inc., Land Planning/Civil Engineering/Landscape Architecture/Wetland Consulting/Land Surveying, 29 Leinbach Drive, Charleston, S C 29407 (843-763-1166.

DOCUMENTS	TITLE	DATED
Cover Sheet	Sheet 1 of 11	Dated 06-26-01, Revised 07-05-01, Revised 07-23-01, Revised 08-07-01, Revised 08-30-01, Revised 08-30-01, Revised 10-15-01
Existing Conditions	Sheet 2 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-30-01
Site Layout Plan	Sheet 3 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-30-01, Rev. #1 dated 10-15-01 Pool & Add Sidewalk
Water Plan	Sheet 4 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-30-01, Revised 10-15-01, Revised 11/02/01, Revised 11/09/01
Grading & Drainage	Sheet 5 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-10-01, Revised 08-29-01, Revised 08-30-01
Grading & Drainage	Sheet 6 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-10-01, Revised 08-29-01, Revised 08-30-01
Sewer Plan & Profile	Sheet 7 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-07-01, Revised 08-30-01
Sewer Plan & Profile	Sheet 8 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-07-01, Revised 08-30-01
Typical Details	Sheet 9 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-14-01, Revised 10-15-01
Typical Details	Sheet 10 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-07-01
Typical Details	Sheet 11 of 11	Dated 09-07-01, Rev.#1 dated 10-10-01
Typical Details	Sheet 11a of 11	Dated 11-09-01

No Site Specification Book was available for the bidding process.

No Landscape Drawings were available for the bidding process.

Architectural Plans:
The Plans listed below were prepared by Fugleberg Koch Architects, 2555 Temple Trail, Winter Park, Florida 32789, Contact. Mike Williams (407) 629-0595, FAX (407) 628-1057

DOCUMENTS	TITLE	DATED
A0.01	Title Sheet	Dated 05-01-01, Revised dated 08-01-01, Revised dated 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01 Rev.#3 dated 1/29/02
A0.02	Index and Code Sheet	Dated 05-01-01, Revised dated 08-01-01, Revised dated 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01 Rev.#3 dated 1/29/02
A1 01	Architectural Site Plan	Dated 05-01-01, Revised dated 08-01-01, Revised dated 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01 Rev #3 dated 1/29/02
S0.00	Cover Sheet	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
S0.01	Concrete Specifications	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev #3 dated 1/29/02, Latest Date 1/30/02
S0.02	General Specifications	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
S0 03	Fastening Schedule	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
S0.04	Shearwall Specifications	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S0 05	Shearwall Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01

Summit 00553

Contractor Initials: _____ 9 Subcontractor Initials: _____

DOCUMENTS	TITLE	DATED
S1.01	Foundation Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
S1.01A	Base Plate and Spread Footings	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01
S1.02	Foundation Plan, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S1.02A	Base Plate and Spread Footings	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.03	Foundation Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
S1.03A	Base Plate and Spread Footings	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
S1 04	Foundation Plan, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S2.01	Foundation Details	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev #3 dated 1/29/02, Latest Date 1/30/02
S2 02	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S2 03	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01, Rev #3 dated 1/29/02
S4 01	Stud Layout Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01
S4.02	Stud Layout, Bldg Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev #3 dated 1/29/02, Latest Date 1/30/02
S4.03	Stud Layout Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01
S4 04	Stud Layout, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S5.01	Framing Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.01A	Framing Plan, Bldg Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01, Rev #3 dated 1/29/02, Latest Date 1/30/02
S5.02	Framing Plan, Bldg. Type 2	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.02A	Framing Plans, Bldg Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev #3 dated 1/29/02, Latest Date 1/30/02
S5.03	Framing Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5 03A	Framing Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.04	Framing Plan, Bldg. Type 4	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
S6 01	Bracing Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S6.02	Bracing Plan, Bldg. Type 2	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S6 03	Bracing Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S6.04	Bracing Plan, Bldg. Type 4	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
S7 01	Roof Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S7.02	Roof Plans, Bldg Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev #3 dated 1/29/02, Latest Date 1/30/02
S7.03	Roof Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S7.04	Roof Plans, Bldg Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
S8.01	Trash Compactor/Pool Pavillion	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01

Contractor Initials: _____

Summit 00554

Subcontractor Initials: _____

DOCUMENTS	TITLE	DATED
S8.02	Trash Compactor/Pool Pavilion	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S9.01	Floor Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S9.02	Floor Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev #3 dated 1/29/02, Latest Date 1/30/02
S9.03	Roof Framing Details	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.04	Roof Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.05	Brace Frame Details	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.06	Brace Frame Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
SC0.01	Concrete Specifications	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
SC0.02	General Specifications	Undated, Rev.#1 dated 09-12-01
SC0.03	Fastening Schedule	Undated, Rev.#1 dated 09-12-01
SC0.04	Shearwall Specifications	Undated, Rev #1 dated 09-12-01
SC0.05	Shearwall Details	Undated, Rev.#1 dated 09-12-01
SC1.01	Foundation Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC2.01	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
SC4.01	Stud Layout Plan Leasing Off.	Undated, Rev.#1 dated 09-12-01
SC4.02	Stud Layout Plan Leasing Off.	Undated, Rev.#1 dated 09-12-01
SC5.01	Framing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC6.01	Bracing Plan Leasing Office	Undated, Rev #1 dated 09-12-01
SC6.02	Bracing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC7.01	Framing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC9.01	Framing Details	Undated, Rev.#1 dated 09-12-01
SC9.02	Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev #3 dated 1/29/02, Latest Date 1/30/02
A2.01A	Building Plan Type "1" First Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.01B	Building Plan Type "1" Second Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.01C	Building Plan Type "1" Third Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.01D	Roof Plan Bldg. Type "1"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.02A	Building Plan Type "2" First Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.02B	Building Plan Type "2" Second Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.02C	Building Plan Type "2" Third Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.02D	Roof Plan Bldg Type "2"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.03A	Building Plan Type "3" First Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.03B	Building Plan Type "3" Second Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.03C	Building Plan Type "3" Third Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

DOCUMENTS	TITLE	DATED
A2 03D	Roof Plan Bldg. Type "3"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.04A	Building Plan Type "4" 1st & 2nd Floor Plans	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
A2 04B	Building Plan Type "4" 3rd Flr. & Roof Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.05A	Leasing Center First Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.05B	Leasing Center Second Flr.Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.05C	Leasing Center Roof Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.01	Flat "A" Floor Plans	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3 02	Flat "B" Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.03	Flat "C" Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3 04	Flat "D" Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
A3 05	Townhouse Unit "E" First, Second & Third Floors	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
A3 06	Garage Plans	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
A4.01	Elevation Views Bldg Type "1"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
A4.02	Elevation Views Bldg. Type "2"	Dated 05-01-01, Revised 08-10-01
A4.03	Elevation Views Bldg Type "3"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev. #1 09-12-01, Rev.#2 12-11-01, Rev #3 dated 1/29/02, Latest Date 1/30/02
A4.04	Elevation Views Bldg. Type "4"	Dated 05-01-01, Revised 08-10-01
A4.05B	Leasing Center Side Elevations	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.01	Building Type 1, Stair Breezeway Building Section	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5 02	Townhome Building Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.03	Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.04B	Garage Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.04	Garage Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
A5 05	Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.06	Garage Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5 07B	Sections and Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
A5.07	Clubhouse Building Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.08	Buildings 4, 5 & 7 Wall Sections & Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
A6.01	Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A6.02	Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
A6 03	Stair Sections & Misc. Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

Contractor Initials: _____

Summit 00556

Subcontractor Initials: _____

DOCUMENTS	TITLE	DATED
A7.01	Door, Window Details & Schedules	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A8.01	Interior Elevations	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01
A8.02	Interior Elevations Leasing Center	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A10.01	Trash Compactor Enclosure And Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
A10 02	Pool Pavillion Plans, Elevations, and Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A10.03	Storage Building #9	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 01-29-02, Latest Date 01-30-02
AF6 01	Firestop Systems Through Penetration	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
AF6.02	Through Penetration Firestop Systems	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01
H3.01	Flat A HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3.02	Flat B HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3.03	Flat C HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3 04	Flat D HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3.05	Town Home Unit HVAC Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
H6 01	HVAC Schedules and Details	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev #3 dated 1-11-02
H6 02	HVAC Schedules and Details	Dated 05-01-01, Revised 08-15-01
H10.01	Leasing Center First Floor HVAC Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
H10 02	Leasing Center Second Floor HVAC Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
H10.03	Bath Pool and Fitness Floor HVAC Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
H10 04	HVAC Schedules and Details	Dated 05-01-01, Rev #1 dated 09-12-01
HE2.01	Building Type 1, 1st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01 Rev.#3 dated 1-11-02
HE2.02	Building Type 1, 2nd & 3rd Floor HVAC & Elec. Plans	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
HE2.03	Building Type 2, 1st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01 Rev.#3 dated 1-29-02
HE2.04	Building Type 2, 2nd & 3rd Floor HVAC & Elec. Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.05	Building Type 3, 1st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 1-11-02
HE2.06	Building Type 3, 2nd Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.07	Building Type 3, 3rd Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.08	Building Type 4, 1st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.09	Building Type 4, 2nd & 3rd Floor HVAC & Elec. Plans	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
E1.01	Electrical Site Plan	Dated 05-01-01, Revised 08-15-01
E3.01	Flat A Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E3.02	Flat B Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
EJ 03	Flat C Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E3 04	Flat D Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01

DOCUMENTS	TITLE	DATED
E3.05	Town Home Unit Elec. Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E6.01	Electrical Schedules & Details	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev #3 dated 01-29-02
E6.02	Electrical Schedules & Details	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 01-11-02
E10.01	Leasing Center First Floor Electrical Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
E10.02	Leasing Center Second Floor Electrical Plan	Dated 05-01-01, Rev #1 dated 09-12-01
E10.03	Bath Pool and Fitness Floor Electrical Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
E10.04	Electrical Schedules & Details	Dated 05-01-01, Rev.#1 dated 09-12-01
P2.01	Building Type 1, 1st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.02	Building Type 1, 2nd & 3rd Floor Plumbing Plans	Dated 05-01-01, Revised 08-15-01
P2.03	Building Type 2, 1st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01, Rev #3 01-29-02
P2.04	Building Type 2, 2nd & 3rd Floor Plumbing Plans	Dated 05-01-01, Revised 08-15-01
P2.05	Building Type 3, 1st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.06	Building Type 3, 2nd Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.07	Building Type 3, 3rd Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.08	Building Type 4, 1st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
P2.09	Building Type 4, 2nd & 3rd Floor Plumbing Plans	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
P3.01	Flat A Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.02	Flat B Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.03	Flat C Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.04	Flat D Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.05	Town Home Unit Plumbing Plans/Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01	
P6.01	Plumbing Schedules and Details	Dated 05-01-01, Revised 08-15-01
P6.02	Plumbing Schedules and Details	Dated 05-01-01, Revised 08-15-01
P6.03	Plumbing Schedules & Details	Dated 05-01-01, Revised 08-15-01, Rev #3 dated 01-29-02
P10.01	Leasing Center First Floor Plumbing Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
P10.02	Leasing Center Second Floor Plumbing Plan	Dated 05-01-01, Rev #1 dated 09-12-01
P10.03	Bath Pool and Fitness Floor Plumbing Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
P10.04	Plumbing Schedules & Details	Dated 05-01-01, Rev #1 dated 09-12-01
P10.05	Plumbing Schedules & Details	Dated 05-01-01, Rev.#1 dated 09-12-01
F1.01	Fire Protection Site Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.01	Building Type 1, 1st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.02	Building Type 1, 2nd & 3rd Flr. Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.03	Building Type 2, 1st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 01-29-02
F2.04	Building Type 2, 2nd & 3rd Flr. Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
F2.05	Building Type 3, 1st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01

DOCUMENTS	TITLE	DATED
F2.06	Building Type 3, 2nd Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.07	Building Type 3, 3rd Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.08	Building Type 4, 1st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
F2.09	Building Type 4, 2nd & 3rd Flr Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F3.01	Flat A – Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.02	Flat B – Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.03	Flat C – Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.04	Flat D – Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.05	Town Home Unit Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F6.01	Fire Sprinkler Schedules And Details	Dated 05-01-01, Revised 08-15-01
F10.01	Leasing Center, First Floor Fire Protection Plan	Dated 05-01-01, Rev #1 dated 09-12-01
F10.02	Leasing Center Second Floor Fire Protection Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
F10.03	Bath Pool and Fitness Floor Fire Protection Plan	Dated 05-01-01, Rev #1 dated 09-12-01
F10.04	Fire Protection Schedules And Details	Dated 05-01-01, Rev.#1 dated 09-12-01
SP1.01	Specifications	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
SP1.02	Specifications	Dated 05-01-01, Revised 08-15-01
SP1.03	Specifications	Dated 05-01-01, Revised 08-15-01
SP1.04	Specifications	Dated 05-01-01, Revised 08-15-01
SP1.05	Specifications	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01

Landscape Design

Hoffman Lester Associates, Inc., 29 Leinbach Drive, Charleston, S.C. 29407, 843-763-1166.

DOCUMENTS	TITLE	DATED
L1 of L4	Landscape Plan	11-12-01
L2 of L4	Landscape Plan	11-12-01
L3 of L4	Landscape Plan	11-12-01
L4 of L4	Landscape Plan	11-12-01

Geotechnical Investigation Report dated August 29, 2001 provided by Wright Christopher Engineering & Construction Services entitled, "Geotechnical Investigation, Vintage at Fenwick Plantation Apartment Complex, John's Island, SC, WPC Project #2001-211"

BY: _____

COMPANY NAME/TITLE: NORTH FLORIDA FRAMING, INC.

DATE: 3/25/02

ATTACHMENT "A"

1. All parties hereby agree that no extra payment will be made for material storage, freight costs, travel expenses, delivery charges, re-inspection fees or any other miscellaneous costs required to install the scope of work included in this subcontract agreement

2. All parties hereby agree that any conflicts between the drawings, specifications and/or any conflicts between pages or details that is discovered by SUBCONTRACTOR shall be brought to the attention of CONTRACTOR immediately. Any work performed by SUBCONTRACTOR with previous knowledge of conflicts will be at the complete liability of SUBCONTRACTOR for its acceptance, and any costs to correct to compliance shall be paid by SUBCONTRACTOR.

3. All parties hereby agree that SUBCONTRACTOR is responsible for maintaining CONTRACTOR's master set of project record drawings on a weekly basis. In the event SUBCONTRACTOR fails to meet this requirement, progress or final payments may be withheld until such time that CONTRACTOR receives updated project record drawings from SUBCONTRACTOR

4 All parties hereby agree that SUBCONTRACTOR has the sole responsibility for compliance with all of the requirements of the Occupational Safety and Health Act of 1970 and agrees to indemnify and hold harmless CONTRACTOR against any legal liability or loss including personal injuries which CONTRACTOR may incur due to SUBCONTRACTOR's failure to comply with the above referenced act In the event any fines or legal costs are assessed against CONTRACTOR by any governmental agency due to noncompliance of safety codes or regulations by SUBCONTRACTOR, such costs will be deducted, by change order, from SUBCONTRACTOR's Subcontract amount

5 All parties hereby agree that control of the Work Schedule, use of the site and coordination of all on-site personnel will be performed under the complete direction of CONTRACTOR's supervisory staff. CONTRACTOR may enforce upon SUBCONTRACTOR any of the following actions in order to expedite or coordinate the work. However, CONTRACTOR does not assume any liability for delays to SUBCONTRACTOR or third parties in connection with coordination of on-site personnel These actions include, but are not limited to, the following:

A) Designated storage, designated unloading and parking areas
B) Require unacceptable materials, equipment or vehicles to be removed from the project.
C) Limit the use of the site by SUBCONTRACTOR's equipment, vehicles, personnel or stored materials.
D) Temporarily or permanently bar specific personnel from the site. Listed below is a partial list of reasons to deny a person access to the project.

1) Drug or alcohol use
2) Fighting, possession of weapons
3) Theft
4) Harassment of anyone on or off the project
5) Personal use of the areas near the project limits for parking, eating, sleeping, etc.
6) Failure to cooperate with CONTRACTOR's supervisory personnel or comply with project documents.

6. All parties hereby agree that CONTRACTOR may provide, in locations determined to be appropriate for the project, temporary electrical, temporary water and temporary toilet services. Further, SUBCONTRACTOR shall make use of the services as provided However, the inability of SUBCONTRACTOR to make use of the services as provided or the temporary unavailability of services, shall not release SUBCONTRACTOR'S obligation to complete the work included in this Subcontract Agreement, on schedule, or by supplying at SUBCONTRACTOR'S own expense any additional utilities or services it may require to perform its scope of work in accordance with the project schedule.

7. All parties hereby agree that all technical questions, submittals, clarifications, schedules and procedures will be submitted, in writing, by SUBCONTRACTOR to CONTRACTOR Further, the cost of any work performed or reliance on information other than in compliance with instructions or information provided by CONTRACTOR, shall be borne by SUBCONTRACTOR and any such cost is included in this Subcontract Agreement.

8. All parties hereby agree that the cost of any testing, re-testing, layout, staking, engineering, inspection fees, reinspection fees, repair work or any other cost associated with any testing, inspections or examinations required by the specifications to determine the acceptability of SUBCONTRACTOR's scope of work will be borne by SUBCONTRACTOR and any such cost is included in this Subcontract Agreement.

9. All parties hereby agree that SUBCONTRACTOR is responsible for all related work, no matter in what sections of the plans and specifications it is detailed, to complete the scope of work as listed in Attachment "B" to this Subcontract Agreement.

10. All parties hereby agree that SUBCONTRACTOR will provide all necessary equipment, manpower and rigging to safely and efficiently unload its materials in the areas assigned or approved by CONTRACTOR's supervisory personnel Further, all material delivery times will be coordinated with suppliers and approved by CONTRACTOR so as not to impede or disrupt the work or schedule of CONTRACTOR or other SUBCONTRACTORs

11. All parties hereby agree that this executed Subcontract Agreement hereby supersedes any prior proposals, both written or verbal, therefore, any prior written or verbal proposals hereby becomes null and void at the signing of this Subcontract Agreement.

12. All parties hereby agree that SUBCONTRACTOR is to submit a detailed "Schedule of Values" for approval by CONTRACTOR prior to the signing of this Subcontract Agreement. In the event of disagreement between the parties then CONTRACTOR'S decision shall govern.

13. All parties hereby agree that SUBCONTRACTOR shall secure and pay for all permits required to install the Scope of Work included in this Subcontract Agreement.

14. All parties hereby agree that weekday overtime work and weekend work will be required to complete this project in accordance with CONTRACTOR's schedule. Further, this weekday overtime work and weekend work will be performed at the sole direction of CONTRACTOR and all costs thereof is included in this Subcontract Agreement.

15. All parties hereby agree that SUBCONTRACTOR shall be responsible that both he and each SUBCONTRACTOR under his control shall pay all State Sales Tax, Consumer Tax, Use and other similar taxes for the work, or portions thereof, provided by this SUBCONTRACTOR, whether or not yet effective.

16 All parties hereby agree that in all cases in which a manufacturer's name, trade name, or their proprietary designation is used in connection with materials or articles to be furnished under this Subcontract Agreement, whether or not the phrase "or equal" is used after such name, SUBCONTRACTOR shall furnish the product of the named manufacturers without substitution, unless a written request for the substitute has been submitted to CONTRACTOR by the SUBCONTRACTOR and approved, in writing, by CONTRACTOR.

17 All parties hereby agree that SUBCONTRACTOR shall employ a competent superintendent and necessary assistants all approved by CONTRACTOR who shall be in attendance at the project site full-time during the progress of the work included in this Subcontract Agreement.

18 All parties hereby agree that SUBCONTRACTOR assures that either he or an authorized representative of his company will attend all jobsite meetings as established by CONTRACTOR's supervisory staff unless their presence is not requested by CONTRACTOR. In the event a representative shall represent SUBCONTRACTOR at these meetings, said representative shall be able to make binding commitments on all matters to be discussed at such meetings, including cost, payments, change orders, time schedules and manpower requirements. This is to include but not limited to, all Project Manager Near Term Meeting and Superintendent Meetings Further, a penalty of $500.00 per meeting will be imposed if SUBCONTRACTOR or SUBCONTRACTOR's representative is not present at these meetings The following person(s) are designated as SUBCONTRACTOR's representatives having the authority as stated herein.

SUBCONTRACTOR Designated Representative. Ernesto Marquez

(Optional Representative) _____

19 All parties hereby agree that by SUBCONTRACTOR approving and submitting shop drawings, product data, and samples, SUBCONTRACTOR hereby represents that he has reasonably determined and verified all dimensions, quantities, field dimensions, relations to the existing work, coordination with work to be installed later, coordination with information on previously accepted shop drawings, product data, or samples and verification of compliance with all of the requirements of the Contract Documents. Further, the accuracy of such information is the sole responsibility of SUBCONTRACTOR In reviewing shop drawings, product data, and samples, CONTRACTOR shall be entitled to rely on SUBCONTRACTOR'S representation that such information is correct and accurate.

20. All parties hereby agree that no portion of the work requiring submission of a shop drawing, product data, or sample shall be commenced until CONTRACTOR has received from SUBCONTRACTOR all required shop drawings, product data, or required samples and all have been approved by the appropriate parties. Further, all such portions of the work shall be furnished and installed by SUBCONTRACTOR in accordance with approved shop drawings, product data, or samples.

Contractor Initials. _____

21. All parties hereby agree this is a Lump Sum Subcontract Agreement, written with the intent that there be no extras if installed in accordance with the Project Plans and Specifications. All prices are firm and includes applicable fees, taxes, licenses, freight, unloading, project distribution, hoisting and any other needed items to complete the scope of work as listed herein.

22. All parties hereby agree that **SUBCONTRACTOR** shall be held responsible and pay all associated cost for repairs to all damages to any buildings or the work of others resulting from his negligence or negligence of a material supplier or **SUBCONTRACTOR** of this **SUBCONTRACTOR**

23 All parties hereby agree that **SUBCONTRACTOR** is responsible for all costs associated with all necessary flagmen, barricades, and safety equipment necessary to install the scope of work as listed in this Subcontract Agreement.

24. All parties hereby agree that the **OWNER**, or **OWNER'S** representative, could request **SUBCONTRACTOR** to do additional work without obtaining the approval of **CONTRACTOR** or **CONTRACTOR's** representative and that there is a possibility that **OWNER** would not pay this claim if **SUBCONTRACTOR** performs said work without **CONTRACTOR's** consent. In the event this happens and **OWNER** does not pay **CONTRACTOR**, **SUBCONTRACTOR** then waives all claims against **CONTRACTOR** for payment of these portions of work

25 All parties hereby agree this Subcontract Agreement shall not be deemed as a commitment, or offer to engage the services of **SUBCONTRACTOR** until such time this Subcontract Agreement is duly executed by an authorized representative of **CONTRACTOR**

26 All parties hereby agree that before work commences, **SUBCONTRACTOR** shall submit an original insurance certificate showing General Liability Coverage and Limits of Worker's Compensation Coverage to **CONTRACTOR'S** home office All parties further agree that no payments will be received by **SUBCONTRACTOR** for any work performed on the project until such time **CONTRACTOR** has received these Insurance Certificates from **SUBCONTRACTOR**.

27 All parties hereby agree that for purposes of this agreement, "hazardous substances"shall mean any contaminants, wastes, substances or other materials which pose violation of any local, state or federal law or regulation or are deemed environmentally hazardous, toxic or harmful by any local, state or federal environmental protection or other agency, including, without limitation, asbestos, polychlorinated biphenyl's, petroleum products, flammable explosives, radioactive materials or infectious substances. **SUBCONTRACTOR** shall not bring any hazardous substance to the jobsite, and hereby agrees to fully defend, indemnify and hold **CONTRACTOR** and **OWNER** harmless from and against any and all liability, claims, losses, penalties, costs, expenses, damages and causes of action suffered or incurred by **CONTRACTOR** or **OWNER** resulting in any manner whatsoever, directly or indirectly, from the presence of any hazardous substance as a result of the actions of **SUBCONTRACTOR** In the event that **SUBCONTRACTOR** encounters any material on the jobsite reasonably believed to be a hazardous substance, **SUBCONTRACTOR** will handle such hazardous substance in accordance with all laws and applicable ordinances.

28 All parties hereby agree that it shall be **SUBCONTRACTOR'S** responsibility to review all plans and specifications, to learn the general policies of the **CONTRACTOR**, and the schedule pace of work and general methods of procedure All parties hereby agree that **SUBCONTRACTOR** is to plan its material and equipment deliveries and the volume of its manpower in order to coordinate all of its work with **CONTRACTOR'S** policies, methods and schedule.

29 All parties hereby agree that all applicable Federal, State and Local Codes take precedence over project plans and specifications and any additional cost to make the required changes to comply with said codes is hereby included in this Subcontract Agreement

30. All parties hereby agree that **SUBCONTRACTOR** and all of its employees and **SUBCONTRACTORs** will only use ingress and egress routes as directed by **CONTRACTOR'S** jobsite superintendent.

31. All parties hereby agree that **SUBCONTRACTOR** acknowledges that other site and building improvements will be in progress during the course of its work, and **SUBCONTRACTOR** will take the necessary steps in the coordination of material handling and in the implementation of its work so as not to loose time on its schedule or interfere with the construction of other improvements

32. All parties hereby agree that in the event temporary electrical service becomes inoperable **SUBCONTRACTOR** will then furnish its own means of project power to install the scope of work included in this Subcontract Agreement

33. All parties hereby agree that **CONTRACTOR** will have final approval of **SUBCONTRACTORS** on site supervision and upon approval of this supervision **SUBCONTRACTOR** hereby agrees not to replace this approved jobsite supervision without **CONTRACTORS** consent.

34. All parties hereby agree that SUBCONTRACTOR fully agrees to comply with all terms and conditions contained within the Immigration Reform and Control Act of 1996

35 All parties hereby agree that SUBCONTRACTOR has visited the project site and is aware of all site conditions that affect its scope of work All parties further agree that no additional compensation will be made due to SUBCONTRACTOR'S failure to familiarize itself with all site conditions prior to the execution of this Subcontract Agreement.

36 All parties hereby agree that SUBCONTRACTOR shall submit a Material Safety Data Sheet (MSDS) notebook to CONTRACTOR'S job site Superintendent prior to commencing work on the project.

37. All parties hereby agree that SUBCONTRACTOR is to furnish and install all necessary heating devices, including fuel for same, necessary for the installation of this scope of work.

38. All parties hereby agree that in the event SUBCONTRACTOR crosses any permanent improvements such as concrete curb or sidewalks, it shall be the responsibility of SUBCONTRACTOR to take the appropriate measures to protect these existing improvements. In the event any areas are damaged, it shall be the SUBCONTRACTOR's responsibility to remove and replace these damaged areas.

39. All parties hereby agree that SUBCONTRACTOR shall have the responsibility of notifying CONTRACTOR seven (7) days prior to any known material shortages on project

40 All parties hereby agree that SUBCONTRACTOR shall furnish and install a jobsite radio for his jobsite foreman capable of communicating with the CONTRACTOR'S Jobsite Superintendent.

41 All parties hereby agree that the trees on the jobsite are of extreme importance to the value of the property. All parties further agree that SUBCONTRACTOR shall be fully liable for any damage caused to these trees by this SUBCONTRACTOR including, but not limited to, consequential damages resulting therefrom.

42. All parties hereby agree that each item required by all Federal, State, and Local governing authorities may not be specifically shown on the Plans and Specifications, however, all requirements imposed by these governing authorities are hereby included in this Subcontract Agreement. Compliance with all governing laws, ordinances, rules, regulations, and lawful orders, inclusive of documentation and/or reporting of occurrences and/or conditions, enacted prior to execution of this Subcontract Agreement for the Work, or portions thereof, provided by this Subcontract, of any governing authority having jurisdiction over the performance of this Work, whether or not yet effective, is hereby included in this Subcontract.

43. All parties hereby agree that all required and necessary submittal data shall be submitted by SUBCONTRACTOR to CONTRACTOR within three (3) days of the signing of this Subcontract Agreement to allow sufficient time for approval

44 All parties hereby agree that SUBCONTRACTOR had in its possession at time of bid all Contract Documents necessary to supply CONTRACTOR a complete turnkey bid for SUBCONTRACTOR's scope of work included herein.

45 All parties hereby agree that SUBCONTRACTOR shall keep at the jobsite on a full-time basis at least one superintendent or foreman who speaks the English Language.

46. All parties hereby agree that all installed items on the project remain the responsibility of SUBCONTRACTOR until accepted by OWNER or OWNER'S representative.

47. All parties hereby agree that any required hoisting, scaffolding, lifts, forklifts or any other machinery of any kind, including labor for same, to unload, store, move around on jobsite, and handle SUBCONTRACTOR's materials to install this scope of work in any nature is included in this Subcontract Agreement. Further, SUBCONTRACTOR agrees to use properly certified personnel to operate equipment while on project site.

48. All parties hereby agree that SUBCONTRACTOR is not authorized to install a SUBCONTRACTOR job sign without written consent of CONTRACTOR.

THE VINTAGE AT FENWICK PLANTATION
ATTACHMENT "B"
SCOPE OF WORK

Rough Carpentry Framing and Structural Hardware Labor

Furnish all labor, materials, accessories, permits, equipment, supervision, services, labor taxes, insurance, licenses, and any other related cost necessary for a complete execution of all Rough Carpentry Framing Labor, Framing Materials, Floor and Roof Trusses, Components, and Structural Hardware all in its entirety and in strict accordance with the Contract Documents enumerated in SUBCONTRACTOR Documents Acknowledgment to this Agreement, and in strict compliance with the requirements of all Federal, State and Local governing authorities. This is to included 10 Apartment Buildings, 1 Clubhouse, 1 Pool Pavilion, and Trash Compactors. This Subcontract Agreement is also to be inclusive of, but not limited to, the following:

1. All parties hereby agree that the general quality of work and performance thereof shall meet the complete satisfaction of CONTRACTOR, Owner and Architect, and at all times complies with Federal, State, Local and County Building Codes.

2. All parties hereby agree that SUBCONTRACTOR's foreman shall inspect the building with CONTRACTOR's Jobsite Superintendent prior to acceptance, and they shall create a punch list as directed by CONTRACTOR. SUBCONTRACTOR shall commence with the timely correction of all punch list items and agrees that the punch crews shall be of sufficient size as directed by CONTRACTOR's Jobsite Superintendent. Said punch crew shall be independent from the production crew framing the buildings; but when required, production workers shall fall back to remedy such punch out that is required to maintain the Completion Schedule as outlined by CONTRACTOR

3 All Component and Truss drawings are to be reviewed by the SUBCONTRACTOR The SUBCONTRACTOR will be responsible if there are issues that are not caught during the submittal review time frame.

4. Install all banding, trim work and varnish as required per plans and specifications

5. Install a 24" band of PT plywood at the perimeter of each building for termite protection.

6. All parties hereby agree that SUBCONTRACTOR has included all labor to install all walls, blocking, bracing, wall sheathing, plates, floor trusses, roof trusses, smoke stops, draft stops, smoke stop framing, pre-fab beams, floor decking, truss bracing both temporary and permanent, roof decking, stairs, flashing, stair treads (if applicable), conventional roof framing, sub-fascia, soffit blocking, blocking for plumbing, signage, lofts, kneewalls, HVAC vent framing, attic accesses, all required fur downs for project, and miscellaneous framing and punch out work as required by CONTRACTOR and per the Plans and Specifications to provide a complete framing scope of work for this project inclusive of, but not limited to, all complete assemblies SUBCONTRACTOR further agrees that Plans may not show all fur downs, draft stops, firestopping, smoke walls, or other incidental framing as may be required, and SUBCONTRACTOR agrees to install these items as part of this scope of work. Additionally, SUBCONTRACTOR agrees to coordinate and replace studs or any material that has been removed for purposes of access by other trades.

7 All parties hereby agree that SUBCONTRACTOR shall furnish and install all of the different types of fasteners required for ~~the project~~ their scope of work.

8 Windows are to be installed by the SUBCONTRACTOR as per manufacturers recommendations and as outlined by the CONTRACTOR This is to included but not limited to the following, set windows in a bed of silicone caulk, fasten with screws, install a single piece of Z flashing at the top of the widow extending over either side by at least 1", wrap housewrap to the interior of the opening prior to installing window, wrap plastic flashing at the sill of the window prior to installation of the window.

9 All parties hereby agree that all nailing patterns, fasteners, and/or fastening systems shall be in accordance with the Structural Engineering Plans and Architectural Drawings, or as required by governing authorities whichever is the more stringent.

10. All parties hereby agree that SUBCONTRACTOR shall furnish lulls and cranes or any needed equipment including labor to unload, and move all materials and supplies related or unrelated to its trade as directed by CONTRACTOR so as not to conflict or impact Schedule including but not limited to windows, interior stair stringers/treads, ceramic tile etc.

11 All parties hereby agree that SUBCONTRACTOR shall verify all slab layouts with the concrete SUBCONTRACTOR and CONTRACTOR's Jobsite Superintendent prior to the pouring of concrete.

12. SUBCONTRACTOR to install all required caulk and "Z" flashing (termite shield) at the perimeter of the building per plans and specifications and at the top of all windows as required by the CONTRACTOR.

13. All parties hereby agree that SUBCONTRACTOR shall use red concrete dye and permanent markers for all layouts of buildings on slab. SUBCONTRACTOR further agrees that all layouts shall be performed from the horizontal and vertical center of the slab and any discrepancies in measurements shall be immediately reported to CONTRACTOR.

14 All parties hereby agree that SUBCONTRACTOR shall shim bottom plates to bring them to a consistently level condition within reason. SUBCONTRACTOR is to secure all bottom plates to slab prior to the installation of floor trusses directly above.

15 Install all decorative louvers and spires as provided by CONTRACTOR per located in the plans.

16. Install all siding and trim associated with the siding per plans.

17. All parties hereby agree that SUBCONTRACTOR shall, upon commencement of the work, provide CONTRACTOR with a new six-foot wooden level without adjustable bubbles, which will be used as the instrument of precedence in inspecting SUBCONTRACTOR's work.

18. All parties hereby agree that SUBCONTRACTOR or its foreman must remain on the jobsite during normal working hours and shall provide adequate supervision to maintain production and quality control throughout the rough framing phase of construction and during the punch out work required prior to insulation and drywall applications.

19. All parties hereby agree that SUBCONTRACTOR shall provide labor for the installation of complete floor and roof truss systems and assemblies. SUBCONTRACTOR shall be responsible for placement of all trusses to provide passageway of piping. SUBCONTRACTOR shall install all roof trusses and roof substrate in strict accordance with the CONTRACTOR's directions, truss shop drawings, and structural plans including all bracing and truss-to-truss connections as required. Further, SUBCONTRACTOR shall install all roof and floor trusses in strict accordance with all governing authorities requirements.

20. Exterior trim nail heads to be flush and will not break the face plane of the material

21. Install all Quick Tie structural hardware system and all required structural hardware in strict accordance with all plans, specifications, submittals, and as required by the Structural Engineer of Record or the governing code system which ever is greater. It is the responsibility of the SUBCONTRACTOR to complete a full hardware package

22. All parties hereby agree that SUBCONTRACTOR shall make all joints in wood members clean, neat, and with full contact. Any cutting with tools other than a saw is strictly prohibited. SUBCONTRACTOR shall install all wood fascias where possible in one continuous piece but not less than 10'. Vertical joints are to end at locations where a sound member shall provide backing.

23 All parties hereby agree that the misalignment of framing between any two floors shall not exceed one-fourth inch.

24. SUBCONTRACTOR shall install all "Dead Wood" for the project as directed by CONTRACTOR's Jobsite Superintendent and for a complete installation per plans and specifications.

25 All parties hereby agree that SUBCONTRACTOR is to install all required dead wood for the project

26. All parties hereby agree that SUBCONTRACTOR is to furnish all nails.

27 All parties hereby agree that roof rakes where gable walls meet roof, attic fire walls and draft stops shall be blocked to provide appropriate nailers for sheathing, flashing, wire lathe, siding, etc. adjacent to roof deck

28. All parties hereby agree that CONTRACTOR shall provide any framing details not shown on the construction drawings. In no instance shall SUBCONTRACTOR assume the appropriate assembly of a given detail when no mention of it being made on the construction drawings. In the event this should happen, SUBCONTRACTOR shall notify CONTRACTOR immediately of any said missing or undesigned details.

29. All parties hereby agree that SUBCONTRACTOR shall install all landings and stairs, simultaneously with the framing of the building. CONTRACTOR shall have the right to stop wall-framing work until landing and stair installations are "current" in progress as they relate to the rest of the work and the Construction Schedule

30. All parties hereby agree that SUBCONTRACTOR shall properly and promptly install blocking at all locations as directed by CONTRACTOR. All parties further agree that this blocking is to include grab bars, water fountains, cabinets, toilet paper holders, towel bars, wall railings, tub skirts, water heaters, fire blocking, and any other areas of required blocking for the project.

31. All parties hereby agree that SUBCONTRACTOR is to remove or straighten all stud framing to ultimately provide services with no more than one-fourth inch variation in a nine-foot plane.

32. All parties hereby agree that staging of materials for subsequent framing of a building shall be accomplished strictly per the instructions of CONTRACTOR.

33 All lumber shall be the size and species directed by the plans and specifications. Any variance from the plans will only be allowed if allowed by the architect or engineer of record.

34. All parties hereby agree that SUBCONTRACTOR shall install framing to the degree that all "substrates" are correctly and completely in place for the siding and exterior trim or stucco nailers. This shall include the framing of all gable end walls to be per plans and specifications.

35. All parties hereby agree that SUBCONTRACTOR shall run all sub-fascias "string line true"

36 All parties hereby agree that SUBCONTRACTOR shall install all horizontal draft stopping at all party walls, and install all inaccessible vertical draft stopping where trusses are perpendicular to party walls.

37. All parties hereby agree that SUBCONTRACTOR shall frame and install all attic scuttle holes and breezeway access holes as required.

38. Plumbing chases and chases will be required and will be installed by the SUBCONTRACTOR as directed by the CONTRACTOR.

39 All parties hereby agree that SUBCONTRACTOR shall install all building flashing in strict accordance with Plans and Specifications and governing authority requirements and all other flashing required by the CONTRACTOR

40. All parties hereby agree that SUBCONTRACTOR shall be responsible for the proper receiving, handling, and installation of all windows SUBCONTRACTOR shall install all window and door rough opening sizes true to size and square to within one-fourth inch of comparable diagonal measurement, and plumb and level to within one-fourth inch per six feet. SUBCONTRACTOR shall install windows in strict compliance with manufacturer's recommendations

41. All parties hereby agree that SUBCONTRACTOR and CONTRACTOR's Jobsite Superintendent shall inspect substrates on each building for repairs prior to installation of siding, trim, and/or exterior finish system Any repairs to the substrate required after commencement of siding and trim installation, or exterior finish system, shall be provided by SUBCONTRACTOR at no additional cost to CONTRACTOR.

42 All parties hereby agree that SUBCONTRACTOR shall be selective in the use of trim boards applied to a building Any poor quality trim boards applied to the construction work shall be promptly removed by SUBCONTRACTOR and appropriately replaced with boards of acceptable quality.

43. All parties hereby agree that SUBCONTRACTOR is to furnish the labor to install all wood stair framing and landing as applicable to this project.

44 All parties hereby agree that SUBCONTRACTOR is to furnish all required storage trailers, temporary fencing, etc. required to install the scope of work included in this Subcontract agreement

45. All parties hereby agree that SUBCONTRACTOR is to notify CONTRACTOR immediately of any damaged roof trusses, floor trusses, or assemblies that would require an Engineering detail for repair of it.

46. All parties hereby agree that SUBCONTRACTOR shall cull all material prior to installation, which is warped, split, or otherwise damaged. SUBCONTRACTOR shall also take care not to split or otherwise damage any material during his installation process.

47 All parties hereby agree that SUBCONTRACTOR shall unload, store on-site, and install all joist, floor trusses, roof trusses, and framing lumber in a method approved by the manufacturers of each product SUBCONTRACTOR shall further

Contractor Initials: _____ 22 Subcontractor Initials: _____

provide and install all fill-ins to roof trusses. SUBCONTRACTOR shall also be responsible for any conventional framing required in roofs SUBCONTRACTOR shall also provide and install all truss clips, metal connectors, expoxy and hangers in accordance with the rough hardware manufacturer's specifications at the locations set forth in the Plans. SUBCONTRACTOR shall further ensure that trusses are not cut during their installation; nor shall metal connectors be damaged SUBCONTRACTOR shall coordinate with inter-related trades to ensure that necessary access is allowed for their installations without damage being caused to the structural integrity of the system.

48. All parties hereby agree that SUBCONTRACTOR shall inspect and repair any damaged or delaminated roof sheathing prior to the installation of felt paper and shingles

49. All parties hereby agree that SUBCONTRACTOR shall construct roof crickets at relocated from the valley chimneys as required as well as install Positive drainage on all roofs above door openings at the direction of CONTRACTOR.

50. All parties hereby agree that SUBCONTRACTOR shall ensure that there is no unnecessary wasting of material and shall stack and move all material forward for reuse throughout the course of its work. SUBCONTRACTOR is directly responsible for all materials purchased for their portion of the project.

51. All windows are to be installed by the SUBCONTRACTOR per specifications of the manufacturer and the CONTRACTOR.

52 All parties hereby agree that all lumber material stored on-site shall be placed at locations designated by CONTRACTOR's Jobsite Superintendent SUBCONTRACTOR shall provide all labor as necessary to ensure that these materials are kept neatly stacked and covered.

53 All parties hereby agree that all chimneys are to be structurally attached to the roof system as detailed in the Architectural Plans Toe nailing the chimneys through the roof deck to the trusses is not considered an acceptable installation. In the event that SUBCONTRACTOR fails to follow the accepted procedure, then SUBCONTRACTOR shall be liable for all cost of all repairs necessary to correct the installation.

54 All parties hereby agree that SUBCONTRACTOR is responsible for the installation of any necessary framing associated with cathedral ceilings.

55 All Parties agree to all balloon framing per the project.

56. All parties hereby agree that SUBCONTRACTOR is to perform all layouts for floor systems in a manner so as not to interfere with plumbing layout and HVAC as the cutting of floor trusses is strictly prohibited.

57 All parties hereby agree that SUBCONTRACTOR is responsible for installing all backing necessary for handicap requirements including backing and blocking necessary for future handicap requirements

58. All parties hereby agree that SUBCONTRACTOR is to install all firewalls and draft stopping to meet all governing authority codes

59. All parties hereby agree that SUBCONTRACTOR is responsible for the removal of all nails in wood balcony areas that are not attached to the material itself.

60. All parties hereby agree that SUBCONTRACTOR is to install all interior plywood shear walls.

61. All parties hereby agree that SUBCONTRACTOR is responsible for installing all draft stop access doors.

62 All parties hereby agree that SUBCONTRACTOR is to provide a minimum of two full-time clean up workmen at all times.

63. All parties hereby agree that SUBCONTRACTOR or SUBCONTRACTOR's employees shall remove no material from jobsite unless pre-approved by CONTRACTOR's Jobsite Superintendent.

64. All parties hereby agree that it is an absolute precedent that prior to SUBCONTRACTOR payment for each draw that CONTRACTOR's punch list must be completed by SUBCONTRACTOR. This completion is also to include satisfactory clean up of the interior and exterior of the buildings.

65 The SUBCONTRACTOR agrees never to cross any permanent improvements such as concrete curb, sidewalks, etc, unless approval has been given by the CONTRACTOR and only after the SUBCONTRACTOR has taken the appropriate

measures to protect these existing improvements. However, any damage to the site improvements subsequent to the SUBCONTRACTOR's ingress and egress shall be the sole responsibility of the SUBCONTRACTOR's notwithstanding that, CONTRACTOR has given the SUBCONTRACTOR permission to cross these areas.

66 All parties hereby agree that all headers and beams are to be assembled using full size OSB or plywood (flitch plates).

67. All parties hereby agree that SUBCONTRACTOR shall provide and use scaffolding if needed of which meets all requirements for appropriate scaffolding as set forth by OSHA. No one shall be allowed to lay walk boards or material across window opening where a window is already installed.

68. All required use of cranes is to be the responsibility of the SUBCONTRACTOR. The SUBCONTRACTOR shall load the HVAC condenser units on the breezeway roofs as directed by the CONTACTOR and assisted by the HVAC SUBCONTRACTOR

69 All parties hereby agree that the labor to install all party wall construction is included in this Subcontract Agreement, and further acknowledges, the studs at the party walls shall be staggered.

70. All parties hereby agrees that certain interior walls of the project may have to be changed from 2" x 4" to 2" x 6" material in some cases due to functional purposes and the labor for this change is included in this Subcontract Agreement

71. All parties hereby agree that it is explicitly understood that the intent of this SUBCONTRACT Agreement is to include any and all required Rough Carpentry and exterior wood trim/complete such as fascia boards etc. Truss systems, labor for this project; and even though it may not be explicitly listed in these line items, it as still included in this Subcontract Agreement Furthermore, this is a guaranteed price for all Rough Carpentry/Trusses labor for the project. SUBCONTRACTOR hereby agrees that this price includes all necessary labor to complete his/her scope of work, in its entirety.

72. All parties hereby agree that SUBCONTRACTOR shall frame all rough openings He shall coordinate with the Supplier and General CONTRACTOR's Job Superintendent to ensure that the rough opening dimensions for the mailboxes, windows, exterior doors, fireplaces, etc are correct.

73. All parties hereby agree that the decision to allow SUBCONTRACTOR to have an on-site office trailer is at the sole discretion of CONTRACTOR's Jobsite Superintendent. In the event the SUBCONTRACTOR office trailer is allowed on the job site, it shall be removed or relocated at the immediate request of CONTRACTOR's Jobsite Superintendent.

74 SUBCONTRACTOR recognizes that a job kept free of debris is necessary to maintain the safety of the people working for the SUBCONTRACTOR and others. And is essential to the project image presented by CONTRACTOR to Owner Therefore, the SUBCONTRACTOR shall remove from his work area daily all debris resulting from his/her work, and place it in dumpsters provided by the CONTRACTOR SUBCONTRACTOR agrees that he shall leave the work area broom clean. Failure to do so within 24 hours notice by the CONTRACTOR's onsite representative will result in automatic approval of SUBCONTRACTOR to CONTRACTOR to employ person/persons, or other to complete the cleaning said SUBCONTRACTOR neglected to achieve. All charges incurred in the cleanup process including a 20% administration fee shall be automatically deducted, via change order, prior to the next scheduled progress payment. Receipt by CONTRACTOR of a signed change order acknowledging said cleaning costs, will be contingent upon release of said progress payment

75 SUBCONTRACTOR shall be held responsible for all damages to property or the work of others resulting from his/her work, including consequential damages resulting therefrom. Where damages to buildings and/or furnishings occur due to faulty workmanship or faulty materials provided by SUBCONTRACTOR, said damages will be back-charged to the SUBCONTRACTOR including any consequential damages resulting therefrom.

76 The CONTRACTOR has the authority to disapprove subletting of work. Sub-sub arrangements done by those that are not directly employed by the SUBCONTRACTOR Shall be considered the SUBCONTRACTOR's responsibility. SUBCONTRACTOR shall supply a complete list of all such SUBCONTRACTORs including names and phone numbers, and proof of insurance, to CONTRACTOR prior to said SUB-sub commencing work onsite.

77 SUBCONTRACTOR fully agrees to comply with all terms and conditions contained within the Immigration Reform and Control Act of 1986.

78. The SUBCONTRACTOR agrees and fully understands that the trees and the tree barricades on the jobsite are of extreme importance to the value of the property. The SUBCONTRACTOR shall be fully liable for any damage caused these trees by the SUBCONTRACTOR including but not limited to consequential damages resulting therefrom. Barricades will have to be worked around as required without removing said barricades and fences.

79. The SUBCONTRACTOR agrees to coordinate his/her installations with those of others, and agrees not to charge the CONTRACTOR for any (minor repairs), alterations, deviations, or changes which may occur in the course of properly installing the work.

80 SUBCONTRACTOR to field rip 2x material for the slope of the breezeway for positive fall as required by the CONTRACTOR

81. The SUBCONTRACTOR acknowledges that other site and building improvements will be in progress during the course of their work, and will take the necessary steps in the coordination of material handling and in the implementation of their work so as not to loose time on the project schedule or interfere with the construction of the other improvements.

82. The SUBCONTRACTOR agrees to use only the ingress and egress routes as directed by the CONTRACTOR. And all SUBCONTRACTOR's employees shall park their vehicles only in those locations as directed by CONTRACTOR.

83 All contract prices are firm and include all applicable fees, permits, taxes, licenses, freight, etc. Insure that all time and material work is approved in writing by the CONTRACTOR on a daily basis. The SUBCONTRACTOR agrees that additional work over and above the original contract shall not be considered without prior written authorization of the CONTRACTOR Additional work shall be commenced only after the execution of an appropriate Change Order utilizing unit prices or lump sums as agreed upon.

84. All parties hereby agree to apply required blocking for all open entrance for application of vinyl by others

85. All parties hereby agree that SUBCONTRACTOR shall submit a detailed Schedule of Values for the project, whereas a line item entitled "Unit Punch Out" will be submitted at $75.00 per unit and a line item entitled "Unit Clean-Up" will be submitted at $75.00 per unit.

86. All parties hereby agree that Dave Anderson or Eico Marquez will personally supervise this project and his presence at the jobsite will be required three (2) days per week. If problems occur it is at the CONTRACTOR's request this can increase until problems are suitably solved per the CONTRACTOR

87. All parties hereby agree that the only way that Fall Protection can be omitted from roof trusses and roof sheathing is for SUBCONTRACTOR to obtain written approval from OSHA and submit this written approval to CONTRACTOR.

88. All parties hereby agree that the Maintenance Building is included in this Subcontract Agreement.

89 All curved and or half round window rough openings are to receive masonite applied to follow the arc that matches the window profile and any other arc required by CONTRACTOR to receive masonite

90 All parties hereby agree that all carpentry work at trash compactor (1) is included in this Subcontract Agreement.

91 All parties hereby agree that all carpentry work associated with the maintenance building is included in this Subcontract Agreement.

92. All parties hereby agree that all required fur downs are included in this Subcontract Agreement.

93. All parties hereby agree that all trim bands are included in this Subcontract Agreement

94. The cutting out and blocking for all roof vents are included in this contract.

95. ALL Structural hardware is the responsibility of the SUBCONTRACTOR This is to included but not limited to all materials, labor, equipment, inspections, supervision to install a complete structural hardware system per plans and per all required applicable codes

96 The SUBCONTRACTOR is to provide the SUBCONTRACTOR'S jobsite foreman with a NEXTEL radio compatible to the CONTRACTOR'S jobsite superintendent.

97. SUBCONTRACTOR is to install all Gypsum wallboard between floor trusses or OSB/plywood and all other details similar to this as well as the gypsum on the roof split truss for the length.

98. Components for exterior windows, doors, corners and tee's will be supplied, used and maintained by the SUBCONTRACTOR.

99. The Subcontract's intent is to provide a turn key labor and all materials with the correct accessories i e fasteners, caulks, clips, epoxy etc to complete framing and associated trim work.

COMPLETE BUILDING HARDWARE & TIE-DOWN SYSTEM

Furnish all labor, material, equipment, supervision, services, labor taxes, material taxes, insurance, licenses, and any other related cost necessary for the installation of **COMPLETE BUILDING HARDWARE & TIE-DOWN SYSTEM** in its entirety and in strict accordance with the Contract Documents enumerated in **SUBCONTRACTOR** Documents Acknowledgment to this Agreement, and in strict compliance with the requirements, and all State and Local governing authorities This Subcontract is to be inclusive of, the Clubhouse, Pool Pavilion, 10 unit buildings.

THIS SUBCONTRACT SHALL INCLUDE BUT IS NOT LIMITED TO THE FOLLOWING PROVISIONS:

1 **SUBCONTRACTOR** shall submit Seven (7) complete sets of submittals for approval within two (2) weeks of execution of the Agreement

2. Before work commences, the **SUBCONTRACTOR** shall submit an original insurance certificate indicating adequate General Liability Coverage and Limits, Automobile Coverage and Worker's Compensation Coverage to the **CONTRACTOR's** home office

3. It shall be the **SUBCONTRACTOR's** responsibility to review all plans and specifications, to learn the general policies of the **CONTRACTOR**, the scheduled pace of work, and general methods of procedure The **SUBCONTRACTOR** shall plan his/her material and equipment deliveries and the volume of his/her manpower in order to coordinate all of his/her work with the **CONTRACTOR's** policies, methods and schedule.

4. **SUBCONTRACTOR** will be responsible for the payment and procurement and approval of all permits for his construction under this Subcontract.

5. **SUBCONTRACTOR** shall be responsible for any and all applicable fees, permits, taxes, licenses, freight, etc.

6 **CONTRACTOR** has the authority to disapprove subletting of work. Sub-sub arrangements done by those that are not directly employed by the **SUBCONTRACTOR** shall be considered the **CONTRACTOR's** responsibility **SUBCONTRACTOR** shall supply a complete list of all such **SUBCONTRACTORs** including names and phone numbers, and proof of insurance, to **CONTRACTOR** prior to said SUB-sub commencing work onsite

7. **SUBCONTRACTOR** agrees that **CONTRACTOR** will have final approval of **SUBCONTRACTORs** on site supervision and upon approval will not be replaced without **CONTRACTOR's** prior written approval, such approval not to be unreasonably withheld.

8 **SUBCONTRACTOR'S** foreman shall inspect the building with **CONTRACTOR'S** representative prior to acceptance, and shall create a punch list as directed by **CONTRACTOR**. The **SUBCONTRACTOR** shall commence with the timely correction of all punch list items within 24 hours, and agrees that the punch crew shall be of sufficient size as requested by the superintendent, but must be a minimum of (3) qualified people to complete said work within 24 hours. Said punch out crew shall be independent from the production crew roughing the buildings but if / when required production workers shall fall back to remedy such punch out that is required to maintain the completion.

9. **SUBCONTRACTOR** shall be responsible for policing his work for deficiencies prior to **CONTRACTOR** or Owner punch lists being generated. Punch personnel shall be available to accompany **CONTRACTOR/OWNER** walk if requested by **CONTRACTOR**

10. **SUBCONTRACTOR** will have several mobilizations required to complete this Scope of Work and all needed mobilizations are included in this Subcontract.

11. **SUBCONTRACTOR** must notify in advance of any intentions to store materials on site. **CONTRACTOR, OWNER** and Lender must approve all of these requests in advance. Stored materials, if approved, shall not exceed that will be installed within 45 days. Payment to **SUBCONTRACTOR** for stored materials is for the **SUBCONTRACTOR's** convenience and shall not create any liability to **CONTRACTOR** for storage, protection, etc. Value of stored materials will be supported with copies of material suppliers/manufacturers invoices

12. **SUBCONTRACTOR** is responsible to protect his work until his work is completed and accepted by

CONTRACTOR/OWNER. SUBCONTRACTOR agrees that the CONTRACTOR will not be held responsible for damages to his work, by others, prior to CONTRACTOR's acceptance.

13. SUBCONTRACTOR agrees to notify CONTRACTOR of any and all damage to SUBCONTRACTOR's work. SUBCONTRACTOR further agrees to diligently research to determine whom the responsible party for damages is and forward this information to CONTRACTOR.

14 SUBCONTRACTOR agrees to repair damaged work in a timely manner not to delay the project schedule in any way. SUBCONTRACTOR further agrees in the event the responsible party cannot be determined, then SUBCONTRACTOR will seek restitution through their insurance company only.

15 SUBCONTRACTOR to supply and install all "Quick Tie" materials as well as and conventional strapping, clips, truss to truss connectors, post and beam connectors, plywood clips, bolts or any connector required by the plans, structural engineer or the City of Charleston to make a complete structural hardware package

16. SUBCONTRACTOR agrees to provide for the complete installation of labor and materials for the Quick Tie System, including Quick Ties, Hurricane Clips, miscellaneous Metal Straps, Hold Downs for shear walls, and Fire Caulk for Quick Tie penetrations through rated assemblies Connections supplied shall be only from the truss to top plate connection and down Post to foundation, post to beam, truss to truss, gable, and gable over-framing connections are not included in this scope of work, all other are to be provided. Quick Tie Products, Inc. to provide sealed shop drawings and sealed field reports of each building installation.

17. SUBCONTRACTOR will provide (7) complete sets of engineered designed and sealed drawings exclusively designed for this project. These drawings must be approved by all governing parties, meeting all City, State and local codes, and the Structural Engineer of Record.

18. The SUBCONTRACTOR's intent is to provide a turn key labor and all materials with the correct accessories i e fastners, caulks, clips, epoxy etc. to complete all required hardware and structural hardware.

Prefabricated Floor and Roof Trusses

Furnish all labor, material, equipment, supervision, services, labor taxes, material taxes, insurance, licenses, permits, and any other related cost necessary to install all Prefabricated Floor and Roof Trusses, and components all in its entirety and in strict accordance with the Contract Documents enumerated in SUBCONTRACTOR Documents Acknowledgment to this Agreement, and in strict compliance with the requirements of all State and Local governing authorities. This Agreement is also to be inclusive of, but not limited to, the following:

1. The intent of this agreement is to install all Prefabricated Floor and Roof Trusses for THE VINTAGE @ FENWICK PLANTATION, including ten (10) apartment buildings (216 Units), one (1) clubhouse building, and one (1) pool pavilion.

2. It is the SUBCONTRACTOR'S responsibility to review all plans and specifications and to learn the general policies of the CONTRACTOR, the schedule of work and general methods of procedure. The SUBCONTRACTOR shall plan its material and equipment deliveries and its manpower in order to comply with the CONTRACTOR'S policies and schedule.

3. All contract prices are lump sum and include all applicable fees, taxes, licenses, freight and incidental costs.

4. CONTRACTOR must approve any extra work in writing.

5 SUBCONTRACTOR shall furnish all materials within the time limits allocated in the Construction Schedule, subject to changes agreed upon by the CONTRACTOR and SUBCONTRACTOR.

6. SUBCONTRACTOR shall comply with all Occupational Safety and Health Act (OSHA) rules and regulations. SUBCONTRACTOR agrees that all equipment utilized on the jobsite shall comply with said (OSHA) requirements

7. The SUBCONTRACTOR agrees that all applicable local, state and national codes shall take precedence over the Plans and Specifications should a conflict occur.

8. The SUBCONTRACTOR agrees to use only the ingress and egress routes as directed by the CONTRACTOR

9. **SUBCONTRACTOR** shall submit seven (7) copies of any required submittal data within 5 calendar days of receipt of this **CONTRACT**. This submittal shall include (7) sets of engineered, designed and sealed drawings exclusively designed for this project. These drawings must be approved by all governing parties, meeting all City, State and local codes, and the Structural Engineer of Record.

10. Under this Agreement, **SUBCONTRACTOR** is solely responsible for satisfying all Charleston County requirements pertaining to design of **Prefabricated Floor and Roof Trusses**. Upon completion of work, **SUBCONTRACTOR** shall furnish certification that work complies with all such requirements.

11. **SUBCONTRACTOR** shall fabricate, supply and deliver all required roof trusses, including truss-to-truss and truss-to-beam hardware necessary for a "complete" trussed roof system. In this sense, "complete" is intended to mean, no conventional framing required even if indicated on drawings. This includes, but is not limited to, all common trusses, drag trusses, beams, LVL's, shearblocking, trussblockingmono trusses, vault trusses, girder trusses, gable ends (studded at 24" o.c.), Boston hip roofs, hip systems, pre-assembled valley trusses/framing, firewall/draft stop trusses, spline trusses, pre-fabricated beams, and miscellaneous framing members required for a "complete" system. Minimum design criteria shall be per applicable codes, Structural Design Engineer and requirements of Charleston County, whichever the greater.

12. **SUBCONTRACTOR** shall fabricate, supply and deliver all required floor trusses with respective truss-to-truss and truss-to-beam hardware, necessary for a "complete" trussed floor system. In this sense, "complete" is intended to mean, no conventional framing required even if indicated on drawings. This includes, but is not limited to, common and patio trusses, stair landings, draft stop floor trusses, prefabricated laminated beams and additional floor trusses as required to avoid Plumbing, Electrical and HVAC conflicts. Minimum design criteria shall be per applicable codes, Design Engineer and requirements of Charleston.

13. All lumber used in fabrication shall be in strict accordance with Truss Manufacturer's approved shop drawings, subject to approval of the Structural Engineer.

14. All gable ends, filler gables, attic wall draft stops, vault fillers and attic firewall trusses shall be studded at 24" o.c., and are included as part of this **PURCHASE ORDER**.

15. This **PURCHASE ORDER** includes all structural and laminated beams with respecive truss to truss hardware located within the floor and roof truss system. All beames shall be above ceiling wherever possible.

16. Within (21) twenty-one calendar days of acceptance of this agreement, **SUBCONTRACTOR** shall provide individual engineered, signed and sealed, Truss designs with complete Roof and Floor Truss layouts for approval by **CONTRACTOR**, Architect, Structural Engineer and Rutherford County. All truss designs and their respective bearing points shall be in strict accordance with bearing points indicated on drawings.

17. **SUBCONTRACTOR** agrees to label, bund and deliver floor and roof trusses as directed by **CONTRACTOR**. Delivery is to be on a building-by-building basis only.

18. **SUBCONTRACTOR** agrees to "Add or Delete" fabricated and delivered products in accordance with approved Schedule of Values.

19. Attach a schedule of value to the signed Purchase Order for invoice and reference.

20. See attached order of construction

21. All LVL beams included in contract price.

22. The contract intent is to provide a turn key labor and all materials with the roof, floor and LVLs and associated framing for the HVAC curbs, and breezeways.

MAR 20 2002

FILE COPY

PURCHASE ORDER

SUMMIT
CONTRACTORS, INC.

VENDOR:	**REMIT TO ADDRESS:**	**ORDER NO.**	**2271**
North Florida Framing, Inc.			
P.O. Box 73		**DATE**	**March 4, 2002**
Bostwick, Florida 32177		**JOB NO.**	**01-033**
		COST CODE:	**06-10-01**
Contact: David Anderson		**JOB NAME:**	**Vintage @ Fenwick Plantation**
PHONE: 904-328-9400		**F.O.B.:**	**Jobsite**
FAX: 904-284-7496			

Sales Tax Registration No _____ State____ Terms Net 30 days
VIA: Supplier

PLEASE DELIVER THE FOLLOWING ORDER TO:

SHIP TO:	Summit Contractors, Inc. 3000 Fenwick Hall Allee Charleston, South Carolina 29455 Contact: Buddy Reeves Phone: 407-709-5123	**BILL TO:**	Summit Contractors, Inc. 6877 Phillips Industrial Blvd Jacksonville, Florida 32256 Phone: 904-268-5500 Fax: 904-268-5889

IT IS AGREED THAT DELIVERY WILL BE MADE *As Required_. PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES. DELIVERY MUST BE MADE IN A TIMELY MANNER OR RIGHT IS RESERVED TO CANCEL THIS ORDER. ALL DELIVERY TICKETS MUST BE SIGNED BY SUMMIT CONTRACTOR PERSONNEL. ** Please attach all delivery Tickets to Invoices **

This Purchase Order Agreement is in the amount of $748,594.00 to provide framing materials as per the attached Scope of Work

Amount of Purchase Order	$706,220.75
State Sales Tax (6%).....	$ 42,373.25
Total Amount of Purchase Order	**$748,594.00**

"It is understood that the amount herein is for a single purchase which may be delivered in multiple shipments".

"Materials Safety Data Sheets are required for all materials ordered. Supplier is to submit them to the jobsite with the shipment."

"Additional materials/services beyond the Purchase Order amounts must be approved in writing by the undersigned (Vendee) prior to ordering or shipment. It is the expressed responsibility of the Vendor to monitor and track materials/services included in this Purchase Order to prohibit costs from exceeding the Purchase Order Sum."

This Purchase Order Agreement entered into on this 4 March, 2002 by and between SUMMIT CONTRACTORS, INC., "Vendee," and NORTH FLORIDA FRAMING, INC "Vendor." By signing this Purchase Agreement, the above named parties affirm that they have read, understand and accept the "Terms and conditions" set out on the reverse side.

SUMMIT CONTRACTORS, INC.
Vendee
By: _____
Name: Tacy McGinty, Project Manager

DM: _____

Contractors Initials: _____

NORTH FLORIDA FRAMING, INC.
Vendor
by Kathleen S. Anderson Secretary (Signature)
Printed Name Title

Summit 00573

Subcontractors Initials KA

PURCHASE ORDER
TERMS & CONDITIONS

1. ENTIRE CONTRACT. The foregoing is the entire Purchase Order [illegible] agreements and there are no representations, promises, warranties or understandings of any kind or nature from either party to the other except as set out herein [illegible] plans, specifications, shop drawings and other provisions which are a part hereof.

2. EQUIPMENT & MATERIALS. VENDOR shall provide the equipment and materials specified in this Purchase Order. VENDOR shall provide such equipment and materials in strict conformity with the plans, specifications and shop drawings. If anything in this Purchase Order is inconsistent with the plans, specifications or shop drawings, this Purchase Order shall govern.

3. SUBMITTALS. VENDOR shall submit shop drawings, submittal data, brochures and samples to VENDEE within ten (10) days of VENDEE's written request and in as many duplicate copies as VENDEE requires. VENDEE's, project Owner's and Architect's approval of all submitted shop drawings, submittal data, brochures and samples is required before VENDOR manufactures or delivers any equipment or materials provided for under this Purchase Order.

4. PATENTS. VENDOR warrants that all equipment, materials, devices, processes or manufactured materials that VENDOR will use or furnish under this Purchase Agreement shall not infringe upon any valid patent, copyright or trademark. If necessary, VENDOR shall secure authorization, pay all royalties and license fees for VENDOR's or VENDEE's sale or furnishing of any patented, copyrighted or trademarked equipment, materials, devices, processes or manufactured materials provided under this Purchase Order. VENDOR further agrees to defend, indemnify, save harmless and exonerate VENDEE from all losses, damages or expenses, including court costs and attorney fees, incurred as a result of any claim relating to VENDOR's or VENDEE's use or furnishing of any patented, copyrighted or trademarked equipment, materials, devices, processes or manufactured materials provided under this Purchase Order.

5. FEES, PERMITS, TAXES, INSURANCE. VENDOR shall give all notices and comply with all laws, ordinances, rules, regulations and codes of any public authority bearing on, and shall secure and pay for all permits, fees, and licenses necessary for its performance under, this Purchase Order. VENDOR shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and workmen's compensation acts insofar as applicable to its performance under this Purchase Order.

6. DELIVERY. VENDOR expressly assumes all responsibility and risk of loss to any and all equipment and materials while in transit and until VENDEE has accepted delivery. VENDOR warrants that it shall procure and maintain insurance sufficient to cover any such loss, and that VENDEE will be listed as an intended beneficiary under such policy.

7. PURCHASE ORDER SUM. VENDEE shall pay VENDOR the total sum as shown in this Purchase Order for the equipment and materials VENDOR is to provide under this Purchase Order. Such sum shall include any and all license or permit fees and state and federal taxes.

8. CONDITIONAL PAYMENT. The parties expressly understand and agree that time is of the essence as to this Purchase Order, and that VENDEE's payment for the equipment and materials described in this Purchase Order is conditioned upon complete and timely performance by VENDOR.

9. DELAY. VENDOR agrees to timely deliver the equipment and materials described in this Purchase Order in strict compliance with the project scheduling. Should VENDOR delay the project, or any portion thereof, in any way, VENDOR shall be liable to VENDEE for any and all damages, expenses and losses incurred as a result of such delay, including any liquidated damages assessed against VENDEE and all consequential damages and costs for continued project supervision, job overhead, insurance, project facilities and other ongoing costs.

10. LIQUIDATED DAMAGES FOR DELAY. VENDOR represents that it has satisfied itself as to any provision in the contract between VENDEE and the project Owner concerning liquidated damages, and agrees that in the event liquidated damages are imposed upon VENDEE as the result, in whole or in part, of the performance or non-performance of VENDOR, such liquidated damages (or an appropriate share thereof) will constitute one element of the damages that VENDEE shall be entitled to recover from VENDOR by withholding payment or otherwise. In addition, VENDOR agrees to reimburse VENDEE for any loss or damage, including damages that may become due to the project Owner, for any extra expenses incurred by VENDEE that result from VENDOR's failure to timely deliver any and all equipment and materials.

11. ACCEPTANCE BY VENDEE. Any payments made under this Purchase Order shall not be construed as VENDEE's acceptance of equipment and materials supplied hereunder. VENDEE reserves the right to reject any nonconforming equipment and materials, or to require VENDOR to comply with the plans, specifications and shop drawings, regardless of whether VENDEE has previously paid VENDOR. VENDEE also reserves the right to issue a joint check to VENDOR and any material supplier of VENDOR who may raise any claims against VENDEE, its surety or the project Owner.

12. ASSIGNMENT. Neither this Purchase Order nor any interest therein may be transferred, voluntarily or involuntarily, without the written consent of VENDEE. VENDOR shall not assign this Purchase Order or any amounts due hereunder.

13. OTHER CONTRACTS. VENDEE expressly retains the right to offset monies owed VENDOR under this Purchase Order from any monies due and owing under any other contracts between VENDEE and VENDOR.

14. WARRANTIES. VENDOR expressly warrants that the equipment and materials provided for under this Purchase Order are new unless otherwise specified, strictly conform to the plans, specifications, shop drawings, samples or other description furnished or adopted by VENDEE, and will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect. VENDEE may deem all equipment and materials not conforming to these requirements to be defective, and may return them to VENDOR at VENDOR's expense. These warranties shall be in addition to, but not limited by, any other warranty or remedy required or permitted by law, and shall run to VENDEE, its successors, assigns, customers, and the users of its products. Warranties will commence on the date VENDEE receives the equipment and materials provided for under this Purchase Order and will continue for a period of 15 months or to the full extent of the manufacturer's warranties, whichever is longer.

15. MATERIALMAN LIENS. VENDOR shall extinguish all liens and claims against the project property, if any, upon payment of this Purchase Order sum. If, at any time, VENDEE, its surety or the project Owner shall become liable on any lien or other claim against the project property chargeable to VENDOR, then VENDEE shall have the right to retain any payment or portion thereof, due or about to become due to VENDOR, which is sufficient to indemnify VENDEE, its surety and the project Owner against such lien or claim, including costs, attorney fees and interest. VENDEE may require, as a condition precedent to payment, that VENDOR provide VENDEE evidence that VENDOR has paid its suppliers for all equipment and materials provided for under this Purchase Order and completed Release and Waiver forms.

16. INDEMNITY. In exchange for ten ($ 10.00) dollars the receipt and sufficiency of which is acknowledged, VENDOR hereby covenants to defend, indemnify, save harmless and exonerate VENDEE and the project Owner as to and from all liability, claims, lawsuits, arbitrators, other claims for damages, and injuries or other losses for property damage, personal injury or economic losses arising out of the equipment or materials provided by or to be provided by Vendor, its employees, agents and suppliers. VENDOR further agrees to indemnify and reimburse VENDEE for VENDEE's legal expenses, including attorney fees, and for other attorney fees and costs assessed against VENDEE in any lawsuit, arbitration or other claims arising from any acts or omissions by VENDOR, its employees, agents or suppliers related to this Purchase Order.

17. CONDITION PRECEDENT TO FILING SUIT. VENDOR expressly agrees as an absolute condition precedent to filing any claim or filing any suit against VENDEE or VENDEE's surety, or the filing of any lien against the project Owner's property, to supply VENDEE with written notice of any breach and provide VENDEE thirty (30) days in which to correct the breach.

18. ATTORNEY FEES. In the event that litigation, or other dispute resolution proceeding is commenced, involving, arising out of or relating to this Purchase Order, then the prevailing party shall be entitled to an award of taxable court costs, other related but non-taxable costs and expenses, and reasonable attorney's fees from the time that the proceeding was commenced until all appeals, if any, are final. This paragraph shall apply where the proceeding seeks a declaration of rights, damages for default, damages for misrepresentation or other legal or equitable remedies.

19. CHOICE OF LAW AND VENUE. This Purchase Order shall be construed in accordance with the laws of the State of Florida. VENDOR expressly waives any right of venue in any action brought under this Purchase Order or against the bond posted by VENDEE. VENDOR agrees that the venue provisions of this Purchase Order shall control venue in any action brought against any bond posted by VENDEE on the project, and the bonding company is an intended third-party beneficiary of this venue provision. VENDEE has the express right to select venue in Duval County, the location of the VENDOR or the site of the project for any actions brought under this Purchase Order. In any action brought by or against VENDEE under this Purchase Order, venue selection is the sole prerogative of VENDEE. In any action brought by or against the bonding company, venue selection is the sole prerogative of VENDEE.

20. TERMINATION. Should VENDOR fail to timely deliver any equipment or materials provided for under this Purchase Order, VENDEE may declare VENDOR to be in breach of, and at VENDEE's option, may terminate this Purchase Order and negotiate and execute a Purchase Order contract with another Vendor to supply the same or similar equipment and materials as provided for in this Purchase Order. In the event that VENDEE executes such a Purchase Order contract with another Vendor, VENDOR shall be liable to VENDEE for any and all damages, expenses and losses incurred as a result thereof, including attorney fees, costs, interest, overhead and lost profit.

Contractors Initials: _____

Summit 00574

Subcontractors Initials KSA

PURCHASE ORDER

ATTACHMENT "A"

INSURANCE REQUIREMENTS

VENDOR shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the service under this Purchase Order. **VENDOR** shall secure and pay for all permits, fees, and licenses necessary for the services described in the Purchase Order. **VENDOR** shall comply with Federal, State and Local tax laws, social security acts, unemployment compensation acts, and workmen's compensation acts insofar as applicable to the performance of this Purchase Order.

Insurance requirements are listed below.

Liability		**$ 500,000.00 General Aggregate**
		$ 500,000.00 Products
		$ 500,000.00 Personal & Adv Injury
		$ 500,000.00 Each Occurrence
		$ 50,000.00 Fire Damage
		$ 1,000.00 Med Exp
Auto		**$ 500,000.00 Combined Single Limit**
Workmans Compensation	1st	**STATUTORY requirements for Each State**
	2nd *Employer's*	**$ 100,000.00 Bodily Injury by Accident (Each Accident)**
	Liability	**$ 500,000.00 Bodily Injury by Disease (Policy Limit)**
	Part D	**$ 100,000.00 Bodily Injury by Disease (Each Person)**

Each Insurance Certificate shall show a Job Name, City and State, along with the wording showing Summit Contractors, Inc. as "Additional Insured."

Contractors Initials: _____

Summit 00575

Subcontractors Initials KSA

THE VINTAGE AT FENWICK PLANTATION
ATTACHMENT "B"
SCOPE OF WORK

Rough Carpentry Framing and Hardware Materials

Furnish all labor, materials, accessories, permits, equipment, supervision, services, labor taxes, insurance, licenses, and any other related cost necessary for a complete execution of all Framing Materials, Siding Materils and Structural Hardware all in its entirety and in strict accordance with the Contract Documents enumerated in VENDER Documents Acknowledgment to this Agreement, and in strict compliance with the requirements of all Federal, State and Local governing authorities. This is to included 10 Apartment Buildings, 1 Clubhouse, 1 Pool Pavilion, and Trash Compactors. This Subcontract Agreement is also to be inclusive of, but not limited to, the following:

1. Provide all banding, trim work and cornish as required per plans and specifications.
2. Provide a 24" band of PT plywood at the perimeter of each building for termite protection.
3. All parties hereby agree that VENDER has included all materials to install all walls, blocking, bracing, wall sheathing, plates, smoke stops, draft stops, smoke stop framing, pre-fab beams, floor decking, truss bracing both temporary and permanent, roof decking, stairs, flashing, stair treads (if applicable), conventional roof framing, sub-fascia, soffit blocking, blocking for plumbing, signage, lofts, kneewalls, HVAC vent framing and curbing, attic accesses, all required fur downs for project, and miscellaneous framing and punch out work as required by CONTRACTOR and per the Plans and Specifications to provide a complete framing scope of work for this project inclusive of, but not limited to, all complete assemblies. VENDER further agrees that Plans may not show all fur downs, draft stops, firestoping, smoke walls, or other incidental framing as may be required, and VENDER agrees to install these items as part of this scope of work.
4. VENDER agrees to coordinate and replace studs or any material that has been removed for purposes of access by other trades.
5. Provide all materials, grade, and species as specified by the Structural Engineer or provide submittals for exchanges to be approved.
6. All parties hereby agree that VENDER shall furnish and install all of the different types of fasteners, flashing, clips, caulks, rods, epoxies etc. as required for the entire project.
7. All parties hereby agree that VENDER shall furnish lulls and cranes or any needed equipment including labor to unload, and move all materials and supplies related or unrelated to its trade as directed by CONTRACTOR so as not to conflict or impact Schedule including but not limited to windows, interior stair stringers/treads, ceramic tile etc.
8. VENDER to provide all required caulk and "Z" flashing (termite shield) at the perimeter of the building per plans and specifications and at the top of all windows as required by the CONTRACTOR.
9. VENDER shall install all "Dead Wood" for the project as directed by CONTRACTOR'S Jobsite Superintendent and for a complete installation per plans and specifications.
10. All parties hereby agree that VENDER is to install all required dead wood for the project.
11. All lumber shall be the size and species directed by the plans and specifications. Any variance from the plans will only be allowed if allowed by the architect or engineer of record.
12. All parties hereby agree that VENDER shall provide all horizontal draft stopping at all party walls, and install all inaccessible vertical draft stopping where trusses are perpendicular to party walls.
13. All parties hereby agree that VENDER is to furnish all wood stair framing and landing as applicable to this project.
14. All parties hereby agree that VENDER is to furnish all required storage trailers, temporary fencing, etc. required to install the scope of work included in this Subcontract agreement.

Summit 00576

Contractors Initials: _____

Subcontractors Initials KSA

15. All parties hereby agree that VENDER shall provide materials for roof crickets at relocated from the valley chimneys as required as well as install Positive drainage on all roofs above door openings at the direction of CONTRACTOR.

16 All parties hereby agree that all lumber material stored on-site shall be placed at locations designated by CONTRACTOR's Jobsite Superintendent. VENDER shall provide all labor as necessary to ensure that these materials are kept neatly stacked and covered

17. All parties hereby agree that VENDER is responsible for the installation of any necessary framing associated with cathedral ceilings.

18. All OSB is to be 15/32nds.

19. All parties hereby agree that VENDER is to provide all interior plywood shear walls.

20 All parties hereby agrees that certain interior walls of the project may have to be changed from 2" x 4" to 2" x 6" material in some cases due to functional purposes and the labor for this change is included in this Subcontract Agreement.

21. The VENDER agrees and fully understands that the trees and the tree barricades on the jobsite are of extreme importance to the value of the property. The VENDER shall be fully liable for any damage caused these trees by the VENDER including but not limited to consequential damages resulting therefrom. Barricades will have to be worked around as required without removing said barricades and fences.

COMPLETE BUILDING HARDWARE & TIE-DOWN SYSTEM

Furnish all material, fire caulks, material taxes, insurance, licenses, and any other related cost necessary for of **COMPLETE BUILDING HARDWARE & TIE-DOWN SYSTEM** in its entirety and in strict accordance with the Contract Documents enumerated in **VENDER** Documents Acknowledgment to this Agreement, and in strict compliance with the requirements, and all State and Local governing authorities. This Subcontract is to be inclusive of, the Clubhouse, Pool Pavilion, 10 unit buildings.

THIS SUBCONTRACT SHALL INCLUDE BUT IS NOT LIMITED TO THE FOLLOWING PROVISIONS:

1. **VENDER** shall submit Seven (7) complete sets of submittals for approval within two (2) weeks of execution of the Agreement.

2 Before work commences, the **VENDER** shall submit an original insurance certificate indicating adequate General Liability Coverage and Limits, Automobile Coverage and Worker's Compensation Coverage to the **CONTRACTOR's** home office

3 It shall be the **VENDER's** responsibility to review all plans and specifications, to learn the general policies of the **CONTRACTOR**, the scheduled pace of work, and general methods of procedure. The **VENDER** shall plan his/her material and equipment deliveries and the volume of his/her manpower in order to coordinate all of his/her work with the **CONTRACTOR's** policies, methods and schedule

4. **VENDER** shall be responsible for any and all applicable fees, permits, taxes, licenses, freight, etc

5. **VENDER** must notify in advance of any intentions to store materials on site **CONTRACTOR, OWNER** and Lender must approve all of these requests in advance. Stored materials, if approved, shall not exceed that will be installed within 45 days. Payment to **VENDER** for stored materials is for the **VENDER's** convenience and shall not create any liability to **CONTRACTOR** for storage, protection, etc. Value of stored materials will be supported with copies of material suppliers/manufacturers invoices.

6. **VENDER** to supply all "Quick Tie" materials as well as and conventional strapping, clips, truss to truss connectors, post and beam connectors, plywood clips, bolts or any connector required by the plans, structural engineer or the City of Charleston to make a complete structural hardware package

7 **VENDER** agrees to provide for the complete installation of materials for the Quick Tie System, including Quick Ties, Hurricane Clips, miscellaneous Metal Straps, Hold Downs for shear walls, and Fire Caulk for Quick Tie penetrations through rated assemblies Connections supplied shall be only from the truss to top plate connection and down. Post to foundation, post to beam, truss to truss, gable, and gable over-framing connections are not included in this scope of work, all other are to be provided Quick Tie Products, Inc. to provide sealed shop drawings and sealed field reports of each building installation.

8. The Subcontract's intent is to provide a turn key materials with the correct accessories i.e. fasteners, caulks, chips, epoxy etc. to complete all required hardware and structural hardware.

Rough Carpentry Materials

1. Lumber all required materials for a complete package for the Clubhouse, Pool Pavilion and 10 unit Buildings shall be provided as "framing packages" and shall be the responsibility of the SUBCONTRACTOR to coordinate all shipments and delivery schedules.

2. All take off materials and all usage of said materials is the responsibility of the SUBCONTRACTOR. Additional monies for building materials is not to be paid.

3. SUBCONTRACTOR will arrange with a local lumber company for small order fill-ins if needed.

4. Terms of payment shall be "Net 15th Prox" based on a 25th of the month cutoff date.

5. All delivery ticket shall be signed and submitted with invoices. The invoices must contain a reference number that can be matched to an individual Delivery Ticket. Non-conforming billings WILL NOT BE PAID and attached to said invoice with a front page explaining attached invoices. **The Subcontract's intent is to provide a turn key labor and all materials associated with framing, trusses, beams, strong wall and fastners, lumber.**

CAROLINA RESTORATION & WATERPROOFING INC.

P.O. BOX 1007 ♦ CREEDMOOR, NORTH CAROLINA 27522
Voice (919) 528-6400 ♦ Fax (919) 528-4170

January 14, 2011
Revised: May 11, 2011

RE: Proposal #NC110101 – Twelve Oaks at Fenwick Plantation Façade Repairs
60 Fenwick Hall Allee – Johns Island, South Carolina 29455

As Requested,

Carolina Restoration and Waterproofing, Inc. (CRW) is pleased to provide you with this proposal to furnish all necessary labor, material, equipment, and supervision to perform the following items of work:

ON BUILDINGS 1, 2, 3, 4, 5, 6, 7, 8 and 9;
*Alternate "A" – Include Buildings 10, 11, 12

At exterior building elevations that have windows:

1. Remove existing stucco or siding, felt and building wrap materials to expose OSB. Limit of removal will be from each window to either closest vertical control joint, or break in plane. Garage doors which are all under windows to be replaced will have all exterior stucco removed, substrate repaired and new stucco installed.
2. In areas where stucco or siding was removed in #1 above, remove damaged OSB, and insulation in the same areas (ALLOWANCE)
3. Spray wall cavity in areas where insulation was removed in #2 above with mold remediation material, and install new insulation and OSB (ALLOWANCE)
4. Remove all window and various layers of moisture protection materials.
5. Install new building wrap, felt and moisture protections materials per the original project specifications.
6. Install new windows to meet current code.
7. Install new stucco and siding per the original project specifications

At breezeway walls:

1. Remove existing stucco or siding, felt and building wrap materials to expose OSB. Limit of removal will be a 15 ft wide vertical strip encompassing the outside edge of the front and rear landing, a total of four (4) strips per breezeway.
2. In areas where stucco or siding was removed in #1 above, remove damaged OSB, and insulation in the same areas (ALLOWANCE).
3. Spray wall cavity in areas where insulation was removed in #2 above with mold remediation material, and install new insulation and OSB (ALLOWANCE).
4. Install new building wrap, felt and moisture protections materials per the original project specifications at the breezeway slab/wall junctions within the work areas outlined in #1 above.

Entered 5-12-11

DEFENDANT'S EXHIBIT 3

5. *Install new stucco and siding per the original project specifications*

At roof/stucco intersections:

1. *Remove existing stucco or siding, felt and building wrap materials to expose OSB, only at locations with a shingle roof abutting a vertical stucco wall. Limit of removal will be to break in plane, control joint.*
2. *In areas where stucco or siding was removed in #1 above, remove damaged OSB, and insulation in the same areas (ALLOWANCE).*
3. *Spray wall cavity in areas where insulation was removed in #2 above with mold remediation material, and install new insulation and OSB (ALLOWANCE).*
4. *Install new building wrap, felt kick out flashing, and moisture protections materials per the original project specifications.*
5. *Install new stucco and siding per the original project specifications.*

Other Item Allowances:

1. *Removal and/or replacement of electrical, mechanical and/or plumbing equipment, lines or conduit and all other miscellaneous appurtenances as necessary (ALLOWANCE).*
2. *Landscaping removal, care, or replacement (ALLOAWANCE).*
3. *Interior repairs, painting, or trim work (ALLOWANCE).*

Additional project UMBRELLA ALLOWANCE:

1. *For unforeseen conditions, or overruns of project allowances listed above.*

EXCLUSIONS:

The following work is to be performed by contractors other than CRW, and/or facilities to be provided by others, the cost of such work or facilities is not included in this proposal:

Immediate Access to work area, including parking for CRW construction vehicles and equipment
No hazardous material removal or abatement
110/220 Volt electric power, available at existing outlets/panels
Potable water source

WORKING CONDITIONS:

All work to be performed by CRW is to be performed without union affiliation. No applicable minimum wage scale (for publicly funded projects or union influenced projects) is included in this proposal, unless specified and attached.

All work is to be performed between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday.

Others will be responsible for ensuring that public access and parking is restricted as necessary. CRW will provide temporary barriers.

ACCEPTANCE OF PROPOSAL:

The conditions, specifications, prices and General Conditions are hereby accepted. CRW is authorized to proceed with this work and payment will be as stated above.

ACCEPTED BY:

_____
Authorized Signature

_____
Printed Name

_____
Title

_____
Date

All debris from demolition and patching operations will be removed from the project site by CRW.

SCHEDULE:

Work will commence approximately 60 days after receipt of written Notice to Proceed, Permit, or written acceptance of the window shop drawings, whichever is last event. The Base Bid work as detailed above will take approximately 16 months, based on access to a minimum of 4 buildings at a time unless a different duration is mutually agreed to.

Owners may remain in their units during the duration of the project. Depending on each's tolerance to noise, dust and draftiness, they may elect to evacuate for approximately 1-2 weeks when their windows are removed and replaced. Typically about 70% of our clients remain throughout the process.

PRICE:

All work shall be paid for in accordance with the following schedule of values:

	Estimated Quantity	Unit Price	Extended Price
1. Buildings 1 – 9 See Attached Sheet for Breakdown		Lump Sum	$4,426,615.05
Add Alternate – Buildings 1 – 12		Lump Sum	$4,978,641.87

PAYMENT OF TERMS:

As applicable an invoice will be submitted monthly or at the completion of the subject work and will be payable within fifteen days from the date on the invoice.

Any late payment will be assessed interest at 1½% month.

EXPIRATION:

This proposal may be withdrawn if not accepted within sixty days.

Sincerely,

Carolina Restoration and Waterproofing, Inc.

Robert G. Pusheck,
President

RGP:kmp

DESCRIPTION **Base Bid- Buildings 1-9**	UNIT MEAS.	QTY	UNIT PRICE	EXTENDED PRICE
Mobilization	ls	1	$175,250.00	$175,250.00
General Conditions	month	16	$11,140.00	$178,240.00
Bond	ls	1	$55,000.00	$55,000.00
Exterior outward facing facades with window penetrations				
Scaffold	sf	136000	$3.50	$476,000.00
Demo existing stucco and siding	sf	136000	$1.50	$204,000.00
ALLOWANCE OSB replacement	sf	25000	$3.50	$87,500.00
ALLOWANCE Stud Replacement	ea	1250	$18.00	$22,500.00
ALLOWANCE insulation replacement	sf	25000	$3.75	$93,750.00
Detail Window perimeters	lf	13264	$4.50	$59,688.00
Install New Windows singlu	ea	229	$950.00	$217,550.00
Install New Windows double	ea	445	$1,350.00	$600,750.00
Install New Windows triple	ea	99	$1,800.00	$178,200.00
Install siding	sf	41000	$4.60	$188,600.00
Install 3 coat Stucco	sf	95000	$10.50	$997,500.00
Stairway (Front and Back Tie In only) 32'h x 15'w each				
Scaffolding	sf	16240	$4.00	$72,960.00
Demo existing stucco and siding	sf	18240	$2.00	$36,480.00
ALLOWANCE OSB replacement	sf	3648	$4.00	$14,592.00
ALLOWANCE Stud Replacement	ea	182	$23.00	$4,186.00
ALLOWANCE insulation replacement	sf	3648	$3.75	$13,680.00
Install 3 coat Stucco	sf	18240	$10.50	$191,520.00
Roof/Stucco vertical joints				
Roof Kick Out Flashing	lf	530	$55.00	$29,150.00
Demo existing stucco and siding	sf	3180	$2.00	$6,360.00
ALLOWANCE OSB replacement	sf	477	$4.00	$1,908.00
ALLOWANCE Stud Replacement	ea	10	$23.00	$230.00
ALLOWANCE insulation replacement	sf	477	$3.75	$1,788.75
Install new 3 coat stucco system	sf	3180	$12.00	$38,160.00
ALLOWANCE Landscaping	bldg	9	$7,500.00	$67,500.00
ALLOWANCE Interior trim and paint touch up	ea	773	$60.00	$46,380.00
ALLOWANCE Mech, Electrical, Lighting and other appurtenances	bldg	9	$7,500.00	$67,500.00
				$0.00
GENERAL ALLOWANCE	ls	1	$150,000.00	$150,000.00
Subtotal				$4,276,922.75
Engineering Fees				$149,692.30
Base Bid- Buildings 1-9 Total				**$4,426,615.05**

DESCRIPTION **Alt. "A"- Buildings 1-12**	UNIT MEAS.	QTY	UNIT PRICE	EXTENDED PRICE
Mobilization	ls	1	$200,000.00	$200,000.00
General Conditions	month	19	$11,140.00	$211,660.00
Bond	ls	1	$61,500.00	$61,500.00
Exterior outward facing facades with window penetrations				
Scaffold	sf	151500	$3.50	$530,250.00
Demo existing stucco and siding	sf	151500	$1.50	$227,250.00
ALLOWANCE OSB replacement	sf	27500	$3.50	$96,250.00
ALLOWANCE Stud Replacement	ea	1500	$18.00	$27,000.00
ALLOWANCE insulation replacement	sf	27500	$3.75	$103,125.00
Detail Window perimeters	lf	13264	$4.50	$59,688.00
Install New Windows single	ea	285	$950.00	$270,750.00
Install New Windows double	ea	480	$1,350.00	$648,000.00
Install New Windows triple	ea	99	$1,800.00	$178,200.00
Install siding	sf	41000	$4.60	$188,600.00
Install 3 coat Stucco	sf	110500	$10.50	$1,160,250.00
Stairway (Front and Back Tie in only) 32'h x 15'w each				
Scaffolding	sf	18240	$4.00	$72,960.00
Demo existing stucco and siding	sf	18240	$2.00	$36,480.00
ALLOWANCE OSB replacement	sf	3648	$4.00	$14,592.00
ALLOWANCE Stud Replacement	ea	182	$23.00	$4,186.00
ALLOWANCE insulation replacement	sf	3648	$3.75	$13,680.00
Install 3 coat Stucco	sf	18240	$10.50	$191,520.00
Roof/Stucco vertical joints				
Roof Kick Out Flashing	lf	596	$55.00	$32,780.00
Demo existing stucco and siding	sf	3255	$2.00	$6,510.00
ALLOWANCE OSB replacement	sf	500	$4.00	$2,000.00
ALLOWANCE Stud Replacement	ea	12	$23.00	$276.00
ALLOWANCE insulation replacement	sf	500	$3.75	$1,875.00
Install new 3 coat stucco system	sf	3255	$12.00	$39,060.00
ALLOWANCE Landscaping	bldg	12	$7,500.00	$90,000.00
ALLOWANCE Interior trim and paint touch up.	ea	864	$60.00	$51,840.00
ALLOWANCE Mech, Electrical, Lighting and other appurtenances	bldg	12	$7,500.00	$90,000.00
				$0.00
GENERAL ALLOWANCE	ls	1	$200,000.00	$200,000.00
Subtotal				$4,810,282.00
Engineering Fees				$168,359.87
Alt Buildings 1-12 Total				**$4,978,641.87**

Building Type	Quant	Items 01, 03, 08, 09 & 11 Stucco Related Scope	Item 11.2 Interior 50%	Item 12 Mold Remediation 50%	Item 13 General Condition 50%	Subtotal w/o 40% "fees"	Item 14 Fees 40%	Total
TYPE 1								
Procon Estimate Bldg 3	01	$519,617.20	$29,466.95	$18,405.00	$60,244.00	$627,733.15	$251,093.26	$878,826.41
CRW Repair Proposal		**$203,510.56**	**$19,990.24**	**$9,270.54**	**$53,743.40**	**$286,514.73**	**$39,335.76**	**$325,850.50**
Procon Este w/o hall, breezewy		$285,789.46	$16,206.82	$10,122.75	$33,134.20	$345,253.23	$138,101.29	$483,354.53
TYPE 2							$1,686,795.74	$5,903,786.16
Procon Estimate Bldg 1, 4, 5, 6, 7, 8, an	07	$3,414,782.00	$220,645.85	$148,887.50	$431,774.07	$4,216,989.42	$304,351.99	$2,519,404.25
CRW Repair Proposal		**$1,572,647.57**	**$154,713.00**	**$71,748.63**	**$415,943.06**	**$2,215,052.26**	$927,737.66	$3,247,081.84
Procon Este w/o hall, breezewy		$1,878,130.10	$121,300.22	$82,438.13	$237,475.74	$2,319,344.18		
TYPE 3							$367,332.40	$1,285,663.42
Procon Estimate Bldg 2	01	$764,378.00	$34,077.02	$28,780.00	$91,096.00	$918,331.02	$64,014.16	$447,747.12
CRW Repair Proposal		**$279,785.32**	**$27,442.49**	**$12,726.54**	**$73,778.62**	**$393,732.96**	$202,032.82	$707,114.88
Procon Este w/o hall, breezewy		$420,407.90	$18,742.36	$15,829.00	$50,102.80	$505,082.06		
BUILDING 1-9 Summary							$2,305,221.40	$8,068,274.99
Procon Estimate		$4,698,777.20	$284,089.82	$197,072.50	$583,114.07	$5,763,053.59	$397,701.91	$3,293,001.87
CRW Repair Proposal		**$2,056,943.44**	**$202,145.73**	**$93,745.70**	**$543,465.08**	**$2,898,299.96**	$1,267,871.77	$4,437,551.24
Procon Este w/o hall, breezewy		$2,584,327.46	$156,249.40	$108,389.88	$320,712.74	$3,169,679.47		difference in same scope ← "fees"
Note. Procons's cost for Hallway, breezeway not in CRW scope	APPROX	**$3,630,723.75**			difference in same scope proposals→	**$274,380**	**$870,170**	
						8.7%	68.6%	
TYPE 4-Bldg 12	01	$232,008.21	$13,269.40	$16,406.00	$50,165.00	$313,847.61	$125,539.04	$439,386.65
CRW		$158,835.22	$4,000.00	$5,500.00	$39,208.81	$205,544.03	$38,115.60	$243,659.63
LEASING CENTER	01	$78,855.66	$4,701.40	$4,651.00	$27,693.50	$115,901.56	$46,360.62	$162,262.18
CRW		$60,400.83	$1,500.00	$750.00	$15,100.21	$77,751.04	$14,417.97	$92,169.01
POOL HOUSE	01	$37,826.30	$2,274.70	$1,986.00	$23,284.50	$65,371.50	$26,148.60	$91,520.10
CRW		$21,451.52	$500.00	$2,000.00	$4,525.00	$28,476.52	$5,280.82	$33,757.14
Procon TOTALS		$5,047,467.37	$304,335.32	$222,114.50	$684,257.07	$6,258,174.26	$2,503,269.67	$8,761,443.93
CRW Total		$2,294,631.02	$208,145.73	$101,995.70	$602,299.10	$3,207,071.55	$455,516.10	$3,662,587.64
Note Procon's cost Bldgs 9-12		**$693,168.94**						
3,630,723+693,168+274,380=870,170		$5,468,442.00		8,761,433-3,662,587	$6,096,856.29			

ID ONLY - 5-12-11

DEFENDANT'S EXHIBIT
CASE NO. 09-76-CC-1449

127906

FILE COPY

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MAR 2 9 2002

SUBCONTRACT AGREEMENT

THIS SUBCONTRACT made and entered into this 11 March, 2002 by and between SUMMIT CONTRACTORS, INC. "CONTRACTOR," and LOS CAMPOS OF GEORGIA, INC., Post Office Box 2628, Loganville, GA 30052, Office Phone: 404-867-4749, Fax Phone: 919-556-0376 "SUBCONTRACTOR," which shall include SUBCONTRACTOR, its employees, agents, suppliers and subcontractors.

ARTICLE 1: DEFINITION OF SUBCONTRACT TERMS

PROJECT: VINTAGE AT FENWICK PLANTATION
3000 Fenwick Hall Allee
Charleston, South Carolina 29455

BUDDY REEVES
Phone: 407-709-5123

OWNER: *(The term "Owner" as used in the Subcontract Documents shall mean the person or entity referred to below or the Owner's authorized representative.)*

THE VINTAGE AT FENWICK PLANTATION, L.L.C.ROBERT C. ROHDIE, PARTNER
c/o Tarragon Realty Investors
1775 Broadway, 23rd Floor
New York, New York 10019
Phone: 212-949-5000
Fax: 212-949-8001

SUBCONTRACT: The Subcontract is the entire and integrated agreement between the Contractor and the Subcontractor.

SUBCONTRACT AGREEMENT: The Subcontract Agreement is this standard form construction subcontract, identified as Subcontract Agreement No. 01033-19, which forms a part of the Subcontract Documents.

SUBCONTRACT WORK: *(As more particularly described in Article 6)*

DEFENDANT'S EXHIBIT 56 McGinty 9/20/10

ARCHITECT: *(Include Business Name, address, telephone and facsimile numbers.)*

FUGLEBERG KOCH ARCHITECTS
2555 Temple Trail
Winter Park, Florida 32789

MIKE WILLIAMS
Phone: 407-629-0595
Fax: 407-628-1057

CONTRACTOR: *(Include Federal Employer ID Number, business name, address, telephone and facsimile numbers.)*

Federal I.D.#: 59-2947787

SUMMIT CONTRACTORS, INC.
6877 Phillips Industrial Boulevard
Jacksonville, Florida 32256

TACY MCGINTY
Phone: 904-268-5500
Fax: 904-268-5889

SUBCONTRACTOR: *(Include Federal Employer ID Number, business address, telephone and facsimile numbers.)*

Federal I.D. #: [redacted] MC 56-2005439

LOS CAMPOS [redacted], INC. MC
[redacted] 890 PARK AVENUE
YOUNGVILLE NC

MILTON CAMPOS 890 MC
Phone: [redacted] 401-2402
Fax: 919-556-0376

ARTICLE 2: SUBCONTRACT SUM

27596

CONTRACTOR shall pay SUBCONTRACTOR in current funds for the performance of this work, subject to additions and deductions by written change order as herein provided for, the total sum of TWO HUNDRED NINETY ONE THOUSAND FOUR HUNDRED SIXTY FOUR DOLLARS AND 00/100 ($291,464.00) (Includes $ 10.00 and the first .001% of the Subcontract Sum per Article 14.)

Cost Code: 09-20-01

Amount: $291,464.00

ARTICLE 3: PROGRESS PAYMENTS

Summit 16162

a. It is the intent of the parties that as an absolute condition precedent to Progress Payments to SUBCONTRACTOR, CONTRACTOR must receive corresponding payment from the OWNER for SUBCONTRACTOR's work. The foregoing takes precedence over any conflicting provision or language appearing in any of the contract documents. In the event of non-payment by OWNER, then SUBCONTRACTOR'S remedies are against the OWNER ONLY TO MC EXTENT AS REQUIRED BY STATE LAW OF SOUTH CAROLINA. AND

Contractor Initials: _____ Subcontractor Initials: MC

CONTRACTOR AGREE TO CO-OPERATE WITH IN PURSUIT OF M

ID 5-11-11

DEFENDANT'S EXHIBIT 61 (9) 08-CP-10-00949

b. CONTRACTOR shall pay SUBCONTRACTOR Progress Payments for work performed and authorized material suitably stored and inventoried on the job site ~~in monthly payments~~.

c. SUBCONTRACTOR to submit invoices for payment ~~no later than the twentieth (20th) day of each month for work completed prior to the twentieth (20th) day of each month~~ for labor bi-weekly and materials monthly

d. Ten Percent (10%) retainage will be held until SUBCONTRACTOR has satisfied all of its obligations under this Subcontract Agreement, including all punch items, and has delivered to CONTRACTOR all required Releases of Lien and all supplier or written warranties required by Subcontract Documents, and the work has received final approval from OWNER, ARCHITECT and CONTRACTOR and retainage has been received by CONTRACTOR.

e. At CONTRACTOR's request SUBCONTRACTOR shall furnish partial unconditional lien waivers through the date of the current request for payment from any of its sub-subcontractors, laborers or materialmen who have served notice to owner or otherwise established potential lien rights against the project or a potential claim against CONTRACTOR's Labor and Material Payment Bond.

f. In the event any of SUBCONTRACTOR's sub-subcontractors, materialmen or laborers have established a construction lien on the project property or a claim against CONTRACTOR's Labor and Material Bond, CONTRACTOR shall have the right to withhold from any progress payment otherwise due to SUBCONTRACTOR sufficient monies to satisfy said claim of lien or claim against the bond unless SUBCONTRACTOR shall furnish a bond removing the lien from the property or indemnifying CONTRACTOR and its bonding company from all liability on the claim of lien or the claim against the CONTRACTOR's bond.

ARTICLE 4: FINAL PAYMENT

Final Payment shall be due when the Work described in this Subcontract Agreement is fully completed and performed in accordance with the Contract Documents, and is satisfactory to the OWNER, ARCHITECT and CONTRACTOR, and SUBCONTRACTOR has furnished final lien waivers from any of its sub-subcontractors, laborers or materialmen who have served notice to owner or otherwise established potential lien rights against the project or potential claims against CONTRACTOR's Labor and Material Payment Bond.

It is the intent of the parties that as an absolute condition precedent to Final Payment to SUBCONTRACTOR, CONTRACTOR must receive corresponding payment from the OWNER for SUBCONTRACTOR's Work. The foregoing takes precedence over any conflicting provision or language appearing in any of the contract documents. Therefore, SUBCONTRACTOR acknowledges that this Subcontract Agreement has been entered into by CONTRACTOR in reliance upon receiving payment for work performed by SUBCONTRACTOR on the project from OWNER and OWNER shall have the right to approve payment of all CONTRACTOR's pay requests and change order requests. SUBCONTRACTOR agrees that CONTRACTOR'S actual receipt of full payment from the OWNER shall be a condition precedent to CONTRACTOR's obligation to pay SUBCONTRACTOR and to the bringing of any action by SUBCONTRACTOR against CONTRACTOR relating to CONTRACTOR's failure to make payment. SUBCONTRACTOR shall not be entitled to receive any progress payment or final payment prior to CONTRACTOR's actual receipt of that payment from OWNER. ~~If CONTRACTOR never receives payment from OWNER, then SUBCONTRACTOR shall never be entitled to payment from CONTRACTOR. It is the express intention of the SUBCONTRACTOR to share in the risk of non-payment by OWNER to CONTRACTOR.~~ ONLY TO EXTENT AS REQUIRED BY STATE LAW OF SOUTH CAROLINA AND CONTRACTOR AGREES TO CO-OPERATE WHOLLY IN PURSUIT OF FULL PAYMENT TO SUBCONTRACTOR SUBCONTRACTOR also agrees that all contracts with its sub-contractors, laborers, suppliers, materialmen, or other contractors contain a similar or identical requirement of "pay when-and-if paid" to provide that it shall be a condition precedent to SUBCONTRACTOR's payment to its own sub-contractors, laborers, suppliers, materialmen, or other contractors that payment be received by CONTRACTOR from OWNER. SUBCONTRACTOR further agrees that it will indemnify and hold harmless the CONTRACTOR from any claims of SUBCONTRACTOR's sub-contractors, laborers, materialmen, or other contractors claiming by, through, or under SUBCONTRACTOR for payment not yet due from or received by CONTRACTOR from OWNER due to non-fulfillment of the above condition precedent that CONTRACTOR first receive payment from OWNER ONLY TO EXTENT AS REQUIRED BY STATE LAW OF SOUTH CAROLINA AND CONTRACTOR AGREES TO CO-OPERATE WHOLLY IN PURSUIT OF FULL PAYMENT TO SUBCONTRACTOR

In the event of non-payment by OWNER, SUBCONTRACTOR's remedies are against the OWNER. The parties agree that Subcontract Agreement ARTICLE 4: FINAL PAYMENT establishes the exclusive conditions for Final Payment to SUBCONTRACTOR, and SUBCONTRACTOR hereby waives all other terms and conditions regarding Final Payment contained in the Contract Documents. SUBCONTRACTOR RETAINS ALL RIGHT CONFERRED BY ANY LAWS OF SOUTH CAROLINA PERTAINING TO RIGHTFUL PAYMENT/COLLECTIONS.

In the event any of SUBCONTRACTOR's sub-subcontractors, materialmen or laborers have established a construction lien on the project property or a claim against CONTRACTOR's Labor and Material Bond, CONTRACTOR shall have the right to withhold from any final payment otherwise due to SUBCONTRACTOR sufficient monies to satisfy said claim of lien or claim against the bond unless SUBCONTRACTOR shall furnish a bond removing the lien from the property or indemnifying CONTRACTOR and its bonding company from all liability on the claim of lien or the claim against the CONTRACTOR's bond.

ARTICLE 5: THE CONTRACT DOCUMENTS

The Contract Documents for this Subcontract consist of this Subcontract Agreement, including Attachment "A"; the Owner-Contractor Agreement, including the Conditions of the Contract; Drawings, Plans; Specifications, all written Addenda issued prior to and all written Modifications issued subsequent thereto. All of the above documents, which form the Contract Documents are a part of this Subcontract Agreement and shall be available for inspection by SUBCONTRACTOR upon its request. If anything in the Contract Documents is inconsistent with this Subcontract Agreement, this Subcontract Agreement shall govern and then the highest or fullest level of performance and installation shall govern. SUBCONTRACTOR REQUIRES A COMPLETE COPY OF ALL ABOVE FOR HIS RECORDS. MC

ARTICLE 6: THE WORK

The work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated in such construction. SUBCONTRACTOR agrees to be bound to CONTRACTOR by the terms and conditions of the General Contract between CONTRACTOR and OWNER as well as this Subcontract Agreement and hereby assumes towards the CONTRACTOR all of the duties, obligations and responsibilities applicable to SUBCONTRACTOR's work which the CONTRACTOR owes towards the Owner under the General Contract. The obligations assumed by SUBCONTRACTOR hereunder include, but are not limited to, the technical requirements of the plans, drawings, and specifications in the General Contract which are applicable to SUBCONTRACTOR's work, all warranties and obligations of the CONTRACTOR with respect to defective or nonconforming work which are applicable to SUBCONTRACTOR's work, and all limitations on remedies, claims or time extensions imposed on the CONTRACTOR by the OWNER under the General Contract. SUBCONTRACTOR shall perform all of the following work:

SEE ATTACHMENT "B" FOR SCOPE OF WORK

ARTICLE 7: ASSIGNMENT

SUBCONTRACTOR acknowledges that the services provided under this Subcontract Agreement are in the nature of personal services, which cannot be assigned without CONTRACTOR's express written consent, which consent shall be within the sole discretion of CONTRACTOR. Any assignment of this contract or sums due hereunder without such prior written consent of CONTRACTOR shall constitute a material default, which shall entitle CONTRACTOR to terminate the Subcontract Agreement for cause.

ARTICLE 8: SUBCONTRACTING AGREEMENT

SUBCONTRACTOR shall not subcontract the whole or any portion of this Subcontract Agreement without the prior written consent of CONTRACTOR, which consent shall be within the sole discretion of CONTRACTOR. Any subcontracting of any portion of this subcontract without such prior written consent of CONTRACTOR shall be considered a material default under this Subcontract Agreement and shall entitle CONTRACTOR to terminate SUBCONTRACTOR for cause. MC

SUBCONTRACTOR SHALL SUBMIT COMPLETE LIST OF ANY SUB-SUB (IF ANY) USED IN PERFORMING THIS PROJECT. ONLY THESE SUB-SUB (IF ANY) WILL BE APPROVED WITHOUT QUESTION.

ARTICLE 9: FEES, PERMITS, TAXES, INSURANCE

SUBCONTRACTOR shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Subcontract Agreement, ~~whether or not yet effective. Further, SUBCONTRACTOR shall secure and pay for all permits, fees, licenses and testing necessary for the execution of the Work described in the Contract Documents as applicable to this Subcontract Agreement.~~ SUBCONTRACTOR shall comply with Federal, State and Local tax laws, social security acts, unemployment compensation acts, and workmen's compensation acts insofar as applicable to the performance of this Subcontract Agreement, whether or not yet effective. MC

Insurance requirements are listed below:

Liability	High Hazard Occupations	$1,000,000.00 General Aggregate.
	(Example: Mech.,Plumbing,	$ 500,000.00 Products
	HVAC, Elect.,Roofing,	$ 500,000.00 Personal & Adv. Injury
	Framing, Painting, Sitework,	$ 500,000.00 Each Occurrence
	Masonry, Stucco, Steel Erection,	$ 50,000.00 Fire Damage
	Utilities, Concrete)	$ 1,000.00 Med Exp.
	Low Hazard Occupations	$ 500,000.00 General Aggregate
	(Example:Flooring, Tile, Paving,	$ 500,000.00 Products
	Pool)	$ 500,000.00 Personal & Adv. Injury
		$ 500,000.00 Each Occurrence
		$ 50,000.00 Fire Damage
		$ 1,000.00 Med Exp
Auto		$ 500,000.00 Combined Single Limit

(see next page for continuation of Insurance Instructions)

Workman's Compensation	1st 2nd Employer's *Liability* *Part D*	STATUTORY requirements for Each State $ 100,000.00 Bodily Injury by Accident (Each Accident) $ 500,000.00 Bodily Injury by Disease (Policy Limit) $ 100,000.00 Bodily Injury by Disease (Each Person)
Installation Floater -		Amount to cover cost of materials not yet installed. Any and all losses of this SUBCONTRACTOR's stored materials are the responsibility of this SUBCONTRACTOR.

- Each Insurance Certificate shall contain the wording showing Summit Contractors, Inc. as " ADDITIONAL INSURED"

ARTICLE 10: NO DAMAGES FOR DELAY OR DISRUPTION

SUBCONTRACTOR shall not be entitled to additional compensation, overtime, extended field of home office overhead or other damages from CONTRACTOR for delays, disruptions, hindrance, constructive acceleration of other schedule and work force impacts. SUBCONTRACTOR's sole remedy shall be an approved extension or adjustment of the contract time. No extension or adjustment of the contract time shall be allowed for the following:

1. Events which were caused by SUBCONTRACTOR'S fault or negligence, by a lower tier subcontractor's fault or negligence, or any other event which is the responsibility of the SUBCONTRACTOR or its lower tier subcontractors or suppliers;
2. Delays which are concurrent with other unexcused delays; ONLY IF PART OF SUBCONTRACTOR. IF CAUSED BY OTHERS, ADDITIONAL CLAIMS MAY BE ENTERED.
3. Delays which do not affect the critical path of construction;
4. Delays for which the SUBCONTRACTOR has failed to request additional time or has failed to document within the time frames required by the contract documents;
5. Failure of the SUBCONTRACTOR to provide sufficient manpower, materials, facilities and equipment;
6. Failure of the SUBCONTRACTOR to reschedule activities, work weekends, increase equipment or other actions to complete work within the available schedule float or as otherwise required by CONTRACTOR's scheduling and coordination; ONLY IF FAULT OF SUBCONTRACTOR. IF CAUSED BY OTHERS, ADDITIONAL CLAIMS MAY BE ENTERED.
7. Delays for normal inclement weather.

In the event this provision is determined by a court or arbitration panel of competent jurisdiction to be unenforceable under the circumstances, SUBCONTRACTOR shall in no event be entitled to recover damages for ~~extended home office overhead, idle labor and equipment~~, lost profit on other projects, lost bonding capacity, and any consequential damages.

ARTICLE 11: PERFORMANCE OF THE WORK

SUBCONTRACTOR agrees to commence the performance of the aforesaid Work and to continue to perform said work until completion so that SUBCONTRACTOR shall meet the OWNER and CONTRACTOR's construction schedule for completion of the job in accordance with the Contract Documents. SUBCONTRACTOR shall commence performance of the work on the date and time specified by CONTRACTOR and shall continue to proceed in accordance with CONTRACTOR's instructions. Time is of the essence in this Contract and extensions of time for performance of the work will be granted only for reasons as provided in the Contract Documents.

ARTICLE 12: CORRECTION OF WORK

SUBCONTRACTOR shall promptly correct all Work rejected by ARCHITECT or OWNER as defective or failing to conform to the Contract Documents whether observed before or after Substantial Completion. SUBCONTRACTOR shall bear all costs of correcting such rejected work, including compensation for the ARCHITECTS additional services required.

ARTICLE 13: INDEMNIFICATION

SUBCONTRACTOR hereby covenants to defend, indemnify, hold harmless and exonerate CONTRACTOR, CONTRACTOR's surety, OWNER and their respective officers, directors, employees, agents and legal representatives (hereinafter "Indemnitees") from any and all liabilities, claims, lawsuits, arbitrations, fines, or other charges for any property damages, personal injury or economic losses (hereafter "Claims"), which are caused in whole or in part by SUBCONTRACTOR, including the design of systems and installation and operations of same by this SUBCONTRACTOR, its employees, agents, guests, suppliers or subcontractors (including any lower tier suppliers or subcontractors, whether or not in direct privity with SUBCONTRACTOR), or which in any way arise out of or involve any of their work or their acts or omissions. This Indemnity Agreement shall extend to and include the full amount of all Claims whether or not caused in part by

Indemnitees, except that SUBCONTRACTOR shall not be liable under this Indemnity Agreement for Claims directly caused by or resulting from the sole fault or negligence of Indemnitees. SUBCONTRACTOR acknowledges consideration for his Indemnification Agreement of Ten ($10.00) Dollars, together with payment of the first .001% (not to exceed $500.00) of the contract price. The SUBCONTRACTOR's obligations under this indemnity agreement for CONTRACTOR's actions or inactions shall not exceed $1,000,000.00; however SUBCONTRACTOR's obligation for it's actions or inactions or those under his Subcontract whether or not in direct privity with SUBCONTRACTOR shall be ~~unlimited~~ limited to contract amount ep SIB

The obligation to defend, indemnify and hold harmless includes Claims resulting from injury, sickness or death of any employee of SUBCONTRACTOR or any employee of any lower tier suppliers or subcontractors of SUBCONTRACTOR (whether or not in direct privity with SUBCONTRACTOR), regardless of whether such employee has been paid pursuant to any Worker's Compensation Law or other similar federal or state legislation for the protection of employees. SUBCONTRACTOR's Liability Insurance policies shall each contain contractual coverage so as to protect Indemnitees under this Indemnity Agreement.

ARTICLE 14: SUSPENSION OF WORK, DEFAULT AND TERMINATION

a. **CONTRACTOR May Suspend Work**

At any time and without cause, CONTRACTOR may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to SUBCONTRACTOR which will fix the date on which Work will be resumed. SUBCONTRACTOR shall resume the Work on the date so fixed. SUBCONTRACTOR shall be allowed only an adjustment or extension of the contract times directly attributable to any such suspension, provided SUBCONTRACTOR timely makes a claim as allowed by the Contract Documents. In no event shall SUBCONTRACTOR be entitled to claim additional compensation for such temporary suspension of work.

b. **CONTRACTOR Shall Terminate for Cause**

i. The occurrence of any one or more of the following events justifies CONTRACTOR's termination of SUBCONTRACTOR for cause:

1. SUBCONTRACTOR fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule).

2. SUBCONTRACTOR disregards Laws, Codes or Regulations of any public body having jurisdiction.

3. SUBCONTRACTOR fails to remain current with payments to its subcontractors or material suppliers.

4. SUBCONTRACTOR assigns or subcontracts any portion of the Work without permission of CONTRACTOR as required by the Contract Documents. EXCEPT AS INCLUDED IN ARTICLE 3B

5. SUBCONTRACTOR fails to obtain or maintain in effect any of the insurance required under the Contract Documents.

6. SUBCONTRACTOR otherwise violates in any way provisions of the Contract Documents.

ii. CONTRACTOR may, after giving SUBCONTRACTOR (and the surety, if any) ~~forty-eight~~ ninety-six hours written notice and to the extent permitted by applicable law, terminate the services of SUBCONTRACTOR, exclude SUBCONTRACTOR from the Site and take possession of the Work and of all SUBCONTRACTOR's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by SUBCONTRACTOR (without liability to SUBCONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which CONTRACTOR has paid SUBCONTRACTOR but which are stored elsewhere, and finish the Work as CONTRACTOR may deem expedient. In such case SUBCONTRACTOR shall not be entitled to receive any further payment until the Work is finished. SUBCONTRACTOR shall be liable for any and all damages sustained by the CONTRACTOR because of SUBCONTRACTOR's default and termination. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by CONTRACTOR arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration of other dispute resolution costs) such excess will be paid to SUBCONTRACTOR. If such costs, losses and damages exceed such unpaid balance, SUBCONTRACTOR shall pay the difference to CONTRACTOR. Such costs, losses and damages incurred by CONTRACTOR will be incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph CONTRACTOR shall not be required to obtain the lowest price for the Work performed.

iii. Where SUBCONTRACTOR's services have been so terminated by CONTRACTOR, the termination will not affect any rights or remedies of CONTRACTOR against SUBCONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due SUBCONTRACTOR by CONTRACTOR will not release SUBCONTRACTOR from liability.

iv. [redacted]

c. CONTRACTOR May Terminate for Convenience

Upon ninety-six hours written notice to SUBCONTRACTOR, CONTRACTOR may, without cause and without prejudice to any other right or remedy of CONTRACTOR, elect to terminate the Agreement. In such case, SUBCONTRACTOR shall be paid (without duplication of any items) for:

1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination based upon the unit price for said work, if applicable, or the scheduled value of said work, if applicable. Otherwise, SUBCONTRACTOR shall be paid for the actual and necessary cost of the work together with 10% for overhead and profit on such Work;

2. Actual expenses sustained or paid to subcontractors and suppliers prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus 5% for overhead and profit on such expenses;

3. Amounts reasonably paid in settlement of terminated contracts with Subcontractors, Suppliers and others.

4. SUBCONTRACTOR shall not be paid on account of loss of anticipated profits or revenue under this Agreement or any other contract or projects, lost bonding capacity or any other economic losses arising out of or resulting from such termination.

ARTICLE 15: WARRANTY OF THE WORK

SUBCONTRACTOR warrants and guarantees to CONTRACTOR, OWNER, and ARCHITECT (or other applicable design professional) that all Construction will be in strict accordance with the Contract Documents, will be free from all faults and defects, and will be free of all liens and claims of third parties. SUBCONTRACTOR warrants and guarantees to CONTRACTOR that all Construction and materials will be new, of above average quality and in strict compliance with the Contract Documents. SUBCONTRACTOR further warrants and guarantees to CONTRACTOR that all work shall be in compliance with ~~all federal, state and local codes and requirements~~. SUBCONTRACTOR further agrees to be bound to CONTRACTOR for all warranties and obligations to correct SUBCONTRACTOR's defective or nonconforming work for which CONTRACTOR is bound to OWNER. SUBCONTRACTOR shall further cause all of its subcontractors and suppliers to assign all separate warranties for work performed or materials supplied in connection with the Project directly to CONTRACTOR or, if required by CONTRACTOR, to the OWNER. Such assignment of separate subcontractor and supplier warranties shall be a condition precedent to final payment to SUBCONTRACTOR under this Agreement and shall be in addition to all other required SUBCONTRACTOR Warranties.

ARTICLE 16: RISK OF LOSS

SUBCONTRACTOR expressly agrees to be responsible for and bear any risk of loss to its work until final acceptance by the ARCHITECT, CONTRACTOR, and OWNER. Damaged work shall be replaced by SUBCONTRACTOR at its own expense, ONLY IF CAUSED BY SUBCONTRACTOR

ARTICLE 17: LIQUIDATED DAMAGES FOR DELAY

SUBCONTRACTOR acknowledges that it has read all of the Contract Documents including any liquidated damages provisions for delay. In the event CONTRACTOR is assessed liquidated damages due to the failure of SUBCONTRACTOR to timely perform the Work to CONTRACTOR's satisfaction, then it is agreed between the parties that these damages will be deducted from payment(s) due SUBCONTRACTOR.

ARTICLE 18: CHANGE ORDERS

Before performing additional or changed work involving additional time or expense, SUBCONTRACTOR shall obtain from CONTRACTOR a written change order describing the change and the amount or method of determining extra compensation. Additional expense will not be allowed without such written Change Order and SUBCONTRACTOR hereby waives any claim for additional expense unless such written change order has been issued prior to performance of additional or changed work. In the event CONTRACTOR has issued a change order to SUBCONTRACTOR and CONTRACTOR has not received the signed change order from SUBCONTRACTOR within fourteen (14) days from the date of issuance, it shall be considered to be a part of this Subcontract Agreement unless written notice of disagreement is received by CONTRACTOR from SUBCONTRACTOR within the above stated time.

ARTICLE 19: OTHER CONTRACTS

~~SUBCONTRACTOR expressly agrees to allow CONTRACTOR the right to retain and offset monies due and owing on any other contracts between CONTRACTOR and SUBCONTRACTOR~~ MC

ARTICLE 20: ARBITRATION

Any dispute between Summit and Subcontractor arising in any manner from this subcontract, or the performance of work on the project, or payment therefor, shall be resolved by arbitration in accordance with the Florida Arbitration Act. The arbitration panel shall consist of three arbitrators. The party requesting arbitration shall request arbitration in writing, by certified mail. The request shall state the name and address of the arbitrator selected by the requesting party. The other party shall select its arbitrator within 20 days after receipt of the request and inform the other party and its selected arbitrator in writing of its selection. The two arbitrators thus selected shall select a third arbitrator. In the event they are unable to agree on a third arbitrator within 30 days, a judge of the Circuit Court of Duval County shall appoint the third arbitrator. The written decision of any two arbitrators will determine the issues. Each party will pay the arbitrator it selects. The expense of the third arbitrator will be shared equally. All other costs, including, without limitation, attorney fees, will be paid by the party incurring such costs.

Notwithstanding the foregoing , if Summit is sued by the owner, or any other person or entity, because of any claim allegedly arising from Subcontractor's scope of work or Subcontractor's alleged acts or failure to act, then this Article 20 shall not apply to such suit and Summit shall be entitled to make Subcontractor a party to such suit.

CONTRACTOR TO SUPPLY SUBCONTRACTOR COMPLETE COPY OF "FLORIDA ARBITRATION ACT" MC

ARTICLE 21: CHOICE OF LAW AND VENUE

This Subcontract shall be construed in accordance with the Laws of the State of Florida. ~~SUBCONTRACTOR expressly agrees to be subject to personal jurisdiction in the State of Florida and further waives any right to recuse in any action brought under this Subcontract Agreement or against any bond posted by CONTRACTOR~~ SUBCONTRACTOR acknowledges that CONTRACTOR's bonding company is an intended third-party beneficiary of this jurisdiction and venue provision. ~~CONTRACTOR has the sole option to select venue in Duval County, Florida or the site of the project, for any action brought under the Subcontract Agreement.~~ In any action brought against CONTRACTOR or its bonding company under this Subcontract Agreement, jurisdiction and ~~venue shall be in Duval County, Florida unless and until CONTRACTOR stipulates to jurisdiction and~~ venue at the site of the project.

ARTICLE 22: TRASH REMOVAL

It is fully understood that SUBCONTRACTOR will be responsible for keeping its part of the job clean and in an orderly fashion subject to the approval of CONTRACTOR and ARCHITECT. Further, SUBCONTRACTOR shall be totally responsible for the clean up and haul off on a daily basis of all debris generated by SUBCONTRACTOR'S daily operations. Should it become necessary for CONTRACTOR to incur any expenses performing cleanup work or removing debris from site for SUBCONTRACTOR, such expense will be deducted from SUBCONTRACTOR's contract amount.

ARTICLE 23: FIELD VERIFICATIONS

SUBCONTRACTOR shall verify all dimensions, inspect the job site and its conditions, and notify CONTRACTOR of any problem, which would prevent or hinder performance by SUBCONTRACTOR. SUBCONTRACTOR will be deemed to have accepted any preceding work and materials and to have waived any and all claims as to non-suitability, unless defects are reported to CONTRACTOR in writing and CONTRACTOR authorizes SUBCONTRACTOR to proceed. ONLY TO THE EXTENT THAT A VISUAL INSPECTION DISCLOSES POTENTIAL PROBLEMS. MC

This Subcontract entered into as of the day and year first written above.

SUMMIT CONTRACTORS, INC.	LOS CAMPOS [redacted], INC. MC
By: DC	By: Milton Campos president
	NAME/TITLE
Date: 4/18/02	Date: 3-23-02
DM Initials: DM	

Summit 1616

Contractor Initials: _____ 7 Subcontractor Initials: MC

SUBCONTRACTOR DOCUMENTS ACKNOWLEDGMENT

SUBCONTRACTOR shall complete all work per Plans, Specifications and approved shop drawings.

Site Improvement Plans
The below listed Plans were prepared by Hoffman Lester Associates, Inc., Land Planning/Civil Engineering/Landscape Architecture/Wetland Consulting/Land Surveying, 29 Leinbach Drive, Charleston, S.C. 29407 (843-763-1166.

DOCUMENTS	TITLE	DATED
Cover Sheet	Sheet 1 of 11	Dated 06-26-01, Revised 07-05-01, Revised 07-23-01, Revised 08-07-01, Revised 08-30-01, Revised 08-30-01, Revised 10-15-01
Existing Conditions	Sheet 2 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-30-01
Site Layout Plan	Sheet 3 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-30-01, Rev. #1 dated 10-15-01 Pool & Add Sidewalk
Water Plan	Sheet 4 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-30-01, Revised 10-15-01, Revised 11/02/01, Revised 11/09/01
Grading & Drainage	Sheet 5 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-10-01, Revised 08-29-01, Revised 08-30-01
Grading & Drainage	Sheet 6 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-10-01, Revised 08-29-01, Revised 08-30-01
Sewer Plan & Profile	Sheet 7 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-07-01, Revised 08-30-01
Sewer Plan & Profile	Sheet 8 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-07-01, Revised 08-30-01
Typical Details	Sheet 9 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-14-01, Revised 10-15-01
Typical Details	Sheet 10 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-07-01
Typical Details	Sheet 11 of 11	Dated 09-07-01, Rev.#1 dated 10-10-01
Typical Details	Sheet 11a of 11	Dated 11-09-01

No Site Specification Book was available for the bidding process.

No Landscape Drawings were available for the bidding process.

Architectural Plans:
The Plans listed below were prepared by Fugleberg Koch Architects, 2555 Temple Trail, Winter Park, Florida 32789, Contact: Mike Williams (407) 629-0595, FAX (407) 628-1057

DOCUMENTS	TITLE	DATED
A0.01	Title Sheet	Dated 05-01-01, Revised dated 08-01-01, Revised dated 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01 Rev.#3 dated 1/29/02
A0.02	Index and Code Sheet	Dated 05-01-01, Revised dated 08-01-01, Revised dated 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01 Rev.#3 dated 1/29/02
A1.01	Architectural Site Plan	Dated 05-01-01, Revised dated 08-01-01, Revised dated 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01 Rev.#3 dated 1/29/02
S0.00	Cover Sheet	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S0.01	Concrete Specifications	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S0.02	General Specifications	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S0.03	Fastening Schedule	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S0.04	Shearwall Specifications	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S0.05	Shearwall Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

Summit 1610

Contractor Initials: _____ 8 Subcontractor Initials: _____

DOCUMENTS	TITLE	DATED
S1.01	Foundation Plan, Bldg. Type I	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.01A	Base Plate and Spread Footings	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.02	Foundation Plan, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S1.02A	Base Plate and Spread Footings	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.03	Foundation Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.03A	Base Plate and Spread Footings	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.04	Foundation Plan, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S2.01	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S2.02	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S2.03	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02
S4.01	Stud Layout Plan, Bldg. Type I	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S4.02	Stud Layout, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S4.03	Stud Layout Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S4.04	Stud Layout, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S5.01	Framing Plan, Bldg. Type I	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.01A	Framing Plan, Bldg. Type I	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.02	Framing Plan, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.02A	Framing Plans, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.03	Framing Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.03A	Framing Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.04	Framing Plan, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S6.01	Bracing Plan, Bldg. Type I	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S6.02	Bracing Plan, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S6.03	Bracing Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S6.04	Bracing Plan, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S7.01	Roof Plan, Bldg. Type I	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S7.02	Roof Plans, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S7.03	Roof Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S7.04	Roof Plans, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S8.01	Trash Compactor/Pool Pavillion	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

DOCUMENTS	TITLE	DATED
S8.02	Trash Compactor/Pool Pavillion	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S9.01	Floor Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S9.02	Floor Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.03	Roof Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.04	Roof Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.05	Brace Frame Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.06	Brace Frame Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
SC0.01	Concrete Specifications	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
SC0.02	General Specifications	Undated, Rev.#1 dated 09-12-01
SC0.03	Fastening Schedule	Undated, Rev.#1 dated 09-12-01
SC0.04	Shearwall Specifications	Undated, Rev.#1 dated 09-12-01
SC0.05	Shearwall Details	Undated, Rev.#1 dated 09-12-01
SC1.01	Foundation Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC2.01	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
SC4.01	Stud Layout Plan Leasing Off.	Undated, Rev.#1 dated 09-12-01
SC4.02	Stud Layout Plan Leasing Off.	Undated, Rev.#1 dated 09-12-01
SC5.01	Framing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC6.01	Bracing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC6.02	Bracing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC7.01	Framing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC9.01	Framing Details	Undated, Rev.#1 dated 09-12-01
SC9.02	Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.01A	Building Plan Type "1" First Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.01B	Building Plan Type "1" Second Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.01C	Building Plan Type "1" Third Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.01D	Roof Plan Bldg. Type "1"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.02A	Building Plan Type "2" First Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.02B	Building Plan Type "2" Second Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.02C	Building Plan Type "2" Third Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.02D	Roof Plan Bldg. Type "2"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.03A	Building Plan Type "3" First Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.03B	Building Plan Type "3" Second Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.03C	Building Plan Type "3" Third Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

DOCUMENTS	TITLE	DATED
A2.03D	Roof Plan Bldg. Type "3"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.04A	Building Plan Type "4" 1st & 2nd Floor Plans	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.04B	Building Plan Type "4" 3rd Flr. & Roof Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.05A	Leasing Center First Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.05B	Leasing Center Second Flr.Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.05C	Leasing Center Roof Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.01	Flat "A" Floor Plans	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.02	Flat "B" Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.03	Flat "C" Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.04	Flat "D" Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.05	Townhouse Unit "E" First, Second & Third Floors	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.06	Garage Plans	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A4.01	Elevation Views Bldg. Type "1"	Dated 05-01-01, Revised 08-10-01
A4.02	Elevation Views Bldg. Type "2"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev. #1 09-12-01, Rev.#2 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A4.03	Elevation Views Bldg. Type "3"	Dated 05-01-01, Revised 08-10-01
A4.04	Elevation Views Bldg. Type "4"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A4.05B	Leasing Center Side Elevations	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.01	Building Type 1, Stair/ Breezeway Building Section	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.02	Townhome Building Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.03	Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.04B	Garage Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.04	Garage Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.05	Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.06	Garage Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.07B	Sections and Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.07	Clubhouse Building Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.08	Buildings 4, 5 & 7 Wall Sections & Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A6.01	Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A6.02	Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A6.03	Stair Sections & Misc. Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

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Contractor Initials: _____ 11 Subcontractor Initials: _____

DOCUMENTS	TITLE	DATED
A7.01	Door, Window Details & Schedules	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A8.01	Interior Elevations	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A8.02	Interior Elevations Leasing Center	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A10.01	Trash Compactor Enclosure And Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A10.02	Pool Pavillion Plans, Elevations, and Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A10.03	Storage Building #9	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 01-29-02, Latest Date 01-30-02
AF6.01	Firestop Systems Through Penetration	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
AF6.02	Through Penetration Firestop Systems	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
H3.01	Flat A HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3.02	Flat B HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3.03	Flat C HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3.04	Flat D HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3.05	Town Home Unit HVAC Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
H6.01	HVAC Schedules and Details	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 1-11-02
H6.02	HVAC Schedules and Details	Dated 05-01-01, Revised 08-15-01
H10.01	Leasing Center First Floor HVAC Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
H10.02	Leasing Center Second Floor HVAC Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
H10.03	Bath Pool and Fitness Floor HVAC Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
H10.04	HVAC Schedules and Details	Dated 05-01-01, Rev.#1 dated 09-12-01
HE2.01	Building Type 1, 1st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 1-11-02
HE2.02	Building Type 1, 2nd & 3rd Floor HVAC & Elec. Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.03	Building Type 2, 1st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 1-29-02
HE2.04	Building Type 2, 2nd & 3rd Floor HVAC & Elec. Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.05	Building Type 3, 1st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 1-11-02
HE2.06	Building Type 3, 2nd Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.07	Building Type 3, 3rd Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.08	Building Type 4, 1st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.09	Building Type 4, 2nd & 3rd Floor HVAC & Elec. Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E1.01	Electrical Site Plan	Dated 05-01-01, Revised 08-15-01
E3.01	Flat A Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E3.02	Flat B Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E3.03	Flat C Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E3.04	Flat D Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01

DOCUMENTS	TITLE	DATED
E3.05	Town Home Unit Elec. Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E6.01	Electrical Schedules & Details	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 01-29-02
E6.02	Electrical Schedules & Details	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 01-11-02
E10.01	Leasing Center First Floor Electrical Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
E10.02	Leasing Center Second Floor Electrical Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
E10.03	Bath Pool and Fitness Floor Electrical Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
E10.04	Electrical Schedules & Details	Dated 05-01-01, Rev.#1 dated 09-12-01
P2.01	Building Type 1, 1st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.02	Building Type 1, 2nd & 3rd Floor Plumbing Plans	Dated 05-01-01, Revised 08-15-01
P2.03	Building Type 2, 1st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01, Rev.#3 01-29-02
P2.04	Building Type 2, 2nd & 3rd Floor Plumbing Plans	Dated 05-01-01, Revised 08-15-01
P2.05	Building Type 3, 1st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.06	Building Type 3, 2nd Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.07	Building Type 3, 3rd Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.08	Building Type 4, 1st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
P2.09	Building Type 4, 2nd & 3rd Floor Plumbing Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
P3.01	Flat A Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.02	Flat B Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.03	Flat C Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.04	Flat D Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.05	Town Home Unit Plumbing Plans/Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01	
P6.01	Plumbing Schedules and Details	Dated 05-01-01, Revised 08-15-01
P6.02	Plumbing Schedules and Details	Dated 05-01-01, Revised 08-15-01
P6.03	Plumbing Schedules & Details	Dated 05-01-01, Revised 08-15-01, Rev.#3 dated 01-29-02
P10.01	Leasing Center First Floor Plumbing Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
P10.02	Leasing Center Second Floor Plumbing Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
P10.03	Bath Pool and Fitness Floor Plumbing Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
P10.04	Plumbing Schedules & Details	Dated 05-01-01, Rev.#1 dated 09-12-01
P10.05	Plumbing Schedules & Details	Dated 05-01-01, Rev.#1 dated 09-12-01
F1.01	Fire Protection Site Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.01	Building Type 1, 1st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.02	Building Type 1, 2nd & 3rd Flr. Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.03	Building Type 2, 1st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 01-29-02
F2.04	Building Type 2, 2nd & 3rd Flr. Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.05	Building Type 3, 1st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01

DOCUMENTS	TITLE	DATED
F2.06	Building Type 3, 2nd Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.07	Building Type 3, 3rd Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.08	Building Type 4, 1st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.09	Building Type 4, 2nd & 3rd Flr. Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F3.01	Flat A – Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.02	Flat B – Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.03	Flat C – Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.04	Flat D – Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.05	Town Home Unit Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F6.01	Fire Sprinkler Schedules And Details	Dated 05-01-01, Revised 08-15-01
F10.01	Leasing Center, First Floor Fire Protection Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
F10.02	Leasing Center Second Floor Fire Protection Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
F10.03	Bath Pool and Fitness Floor Fire Protection Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
F10.04	Fire Protection Schedules And Details	Dated 05-01-01, Rev.#1 dated 09-12-01
SP1.01	Specifications	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
SP1.02	Specifications	Dated 05-01-01, Revised 08-15-01
SP1.03	Specifications	Dated 05-01-01, Revised 08-15-01
SP1.04	Specifications	Dated 05-01-01, Revised 08-15-01
SP1.05	Specifications	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01

Landscape Design

Hoffman Lester Associates, Inc., 29 Leisbach Drive, Charleston, S.C. 29407, 843-763-1166.

DOCUMENTS	TITLE	DATED
L1 of L4	Landscape Plan	11-12-01
L2 of L4	Landscape Plan	11-12-01
L3 of L4	Landscape Plan	11-12-01
L4 of L4	Landscape Plan	11-12-01

Geotechnical Investigation Report dated August 29, 2001 provided by Wright Christopher Engineering & Construction Services entitled, "Geotechnical Investigation, Vintage at Fenwick Plantation Apartment Complex, John's Island, SC, WPC Project #2001-211".

BY: milton Campos

COMPANY NAME/TITLE: LOS CAMPOS [redacted] INC. N C MC

DATE: 3-27-02

Summit 16175

Contractor Initials: _____ 14 Subcontractor Initials: MC

ATTACHMENT "A"

1. All parties hereby agree that no extra payment will be made for material storage, freight costs, travel expenses, delivery charges, re-inspection fees or any other miscellaneous costs required to install the scope of work included in this subcontract agreement.

2. All parties hereby agree that any conflicts between the drawings, specifications and/or any conflicts between pages or details that is discovered by SUBCONTRACTOR shall be brought to the attention of CONTRACTOR immediately. Any work performed by SUBCONTRACTOR with previous knowledge of conflicts will be at the complete liability of SUBCONTRACTOR for its acceptance, and any costs to correct to compliance shall be paid by SUBCONTRACTOR.

3. All parties hereby agree that SUBCONTRACTOR is responsible for maintaining CONTRACTOR's master set of project record drawings on a weekly basis. In the event SUBCONTRACTOR fails to meet this requirement, progress or final payments may be withheld until such time that CONTRACTOR receives updated project record drawings from SUBCONTRACTOR.

4. All parties hereby agree that SUBCONTRACTOR has the sole responsibility for compliance with all of the requirements of the Occupational Safety and Health Act of 1970 and agrees to indemnify and hold harmless CONTRACTOR against any legal liability or loss including personal injuries which CONTRACTOR may incur due to SUBCONTRACTOR's failure to comply with the above referenced act. In the event any fines or legal costs are assessed against CONTRACTOR by any governmental agency due to noncompliance of safety codes or regulations by SUBCONTRACTOR, such costs will be deducted, by change order, from SUBCONTRACTOR's Subcontract amount.

5. All parties hereby agree that control of the Work Schedule, use of the site and coordination of all on-site personnel will be performed under the complete direction of CONTRACTOR's supervisory staff. CONTRACTOR may enforce upon SUBCONTRACTOR any of the following actions in order to expedite or coordinate the work. However, CONTRACTOR does not assume any liability for delays to SUBCONTRACTOR or third parties in connection with coordination of on-site personnel. These actions include, but are not limited to, the following:

A) Designated storage, designated unloading and parking areas.
B) Require unacceptable materials, equipment or vehicles to be removed from the project.
C) Limit the use of the site by SUBCONTRACTOR's equipment, vehicles, personnel or stored materials.
D) Temporarily or permanently bar specific personnel from the site. Listed below is a partial list of reasons to deny a person access to the project.

1) Drug or alcohol use
2) Fighting, possession of weapons
3) Theft
4) Harassment of anyone on or off the project
5) Personal use of the areas near the project limits for parking, eating, sleeping, etc.
6) Failure to cooperate with CONTRACTOR's supervisory personnel or comply with project documents.

6. All parties hereby agree that CONTRACTOR may provide, in locations determined to be appropriate for the project, temporary electrical, temporary water and temporary toilet services. Further, SUBCONTRACTOR shall make use of the services as provided. However, the inability of SUBCONTRACTOR to make use of the services as provided or the temporary unavailability of services, shall not release SUBCONTRACTOR'S obligation to complete the work included in this Subcontract Agreement, on schedule, or by supplying at SUBCONTRACTOR'S own expense any additional utilities or services it may require to perform its scope of work in accordance with the project schedule.

7. All parties hereby agree that all technical questions, submittals, clarifications, schedules and procedures will be submitted, in writing, by SUBCONTRACTOR to CONTRACTOR. Further, the cost of any work performed or reliance on information other than in compliance with instructions or information provided by CONTRACTOR, shall be borne by SUBCONTRACTOR and any such cost is included in this Subcontract Agreement.

8. All parties hereby agree that the cost of any testing, re-testing, layout, staking, engineering, ~~compaction tests~~, reinspection fees, repair work or any other cost associated with any testing, inspections or examinations required by the specifications to determine the acceptability of SUBCONTRACTOR's scope of work will be borne by SUBCONTRACTOR and any such cost is included in this Subcontract Agreement.

9. All parties hereby agree that SUBCONTRACTOR is responsible for all related work, no matter in what sections of the plans and specifications it is detailed, to complete the scope of work as listed in Attachment "B" to this Subcontract Agreement.

10. All parties hereby agree that SUBCONTRACTOR will provide all necessary equipment, manpower and rigging to safely and efficiently unload its materials in the areas assigned or approved by CONTRACTOR's supervisory personnel. Further, all material delivery times will be coordinated with suppliers and approved by CONTRACTOR so as not to impede or disrupt the work or schedule of CONTRACTOR or other subcontractors.

11. All parties hereby agree that this executed Subcontract Agreement hereby supersedes any prior proposals, both written or verbal, therefore, any prior written or verbal proposals hereby becomes null and void at the signing of this Subcontract Agreement.

12. All parties hereby agree that SUBCONTRACTOR is to submit a detailed "Schedule of Values" for approval by CONTRACTOR prior to the signing of this Subcontract Agreement. In the event of disagreement between the parties then CONTRACTOR'S decision shall govern.

13. ~~All parties hereby agree that SUBCONTRACTOR shall secure and pay for all permits required to install the Scope of Work included in this Subcontract Agreement.~~ MC

14. ~~All parties hereby agree that weekday overtime work and weekend work will be required to complete this project in accordance with CONTRACTOR's schedule. Further, this weekday overtime work and weekend work will be performed at the sole direction of CONTRACTOR and all costs thereof is included in this Subcontract Agreement.~~ MC

15. All parties hereby agree that SUBCONTRACTOR shall be responsible that both he and each subcontractor under his control shall pay all State Sales Tax, Consumer Tax, Use and other similar taxes for the work, or portions thereof, provided by this SUBCONTRACTOR, ~~whether or not properly effective.~~ MC

16. All parties hereby agree that in all cases in which a manufacturer's name, trade name, or their proprietary designation is used in connection with materials or articles to be furnished under this Subcontract Agreement, whether or not the phrase "or equal" is used after such name, SUBCONTRACTOR shall furnish the product of the named manufacturers without substitution, unless a written request for the substitute has been submitted to CONTRACTOR by the SUBCONTRACTOR and approved, in writing, by CONTRACTOR.

17. All parties hereby agree that SUBCONTRACTOR shall employ a competent superintendent and necessary assistants all approved by CONTRACTOR who shall be in attendance at the project site full-time during the progress of the work included in this Subcontract Agreement.

18. All parties hereby agree that SUBCONTRACTOR assures that either he or an authorized representative of his company will attend all jobsite meetings as established by CONTRACTOR's supervisory staff unless their presence is not requested by CONTRACTOR. In the event a representative shall represent SUBCONTRACTOR at these meetings, said representative shall be able to make binding commitments on all matters to be discussed at such meetings, including cost, payments, change orders, time schedules and manpower requirements. This is to include but not limited to, all Project Manager Near Term Meeting and Superintendent Meetings. Further, a penalty of $500.00 per meeting will be imposed if SUBCONTRACTOR or SUBCONTRACTOR's representative is not present at these meetings. The following person(s) are designated as SUBCONTRACTOR's representatives having the authority as stated herein.

Subcontractor Designated Representative: Oscar Campos

{Optional Representative} Fredy Gonzalez

19. All parties hereby agree that by SUBCONTRACTOR approving and submitting shop drawings, product data, and samples, SUBCONTRACTOR hereby represents that he has reasonably determined and verified all dimensions, quantities, field dimensions, relations to the existing work, coordination with work to be installed later, coordination with information on previously accepted shop drawings, product data, or samples and verification of compliance with all of the requirements of the Contract Documents. Further, the accuracy of such information is the sole responsibility of SUBCONTRACTOR. In reviewing shop drawings, product data, and samples, CONTRACTOR shall be entitled to rely on SUBCONTRACTOR'S representation that such information is correct and accurate.

20. All parties hereby agree that no portion of the work requiring submission of a shop drawing, product data, or sample shall be commenced until CONTRACTOR has received from SUBCONTRACTOR all required shop drawings, product data, or required samples and all have been approved by the appropriate parties. Further, all such portions of the work shall be furnished and installed by SUBCONTRACTOR in accordance with approved shop drawings, product data, or samples.

21. All parties hereby agree this is a Lump Sum Subcontract Agreement, written with the intent that there be no extras if installed in accordance with the Project Plans and Specifications. All prices are firm and includes applicable ~~fees~~ taxes, licenses, freight, unloading, project distribution, hoisting and any other needed items to complete the scope of work as listed herein.

22. All parties hereby agree that SUBCONTRACTOR shall be held responsible and pay all associated cost for repairs to all damages to any buildings or the work of others resulting from his negligence or negligence of a material supplier or subcontractor of this SUBCONTRACTOR.

23. All parties hereby agree that SUBCONTRACTOR is responsible for all costs associated with all necessary flagmen, barricades, and safety equipment necessary to install the scope of work as listed in this Subcontract Agreement.

24. All parties hereby agree that the OWNER, or OWNER'S representative, could request SUBCONTRACTOR to do additional work without obtaining the approval of CONTRACTOR or CONTRACTOR's representative and that there is a possibility that OWNER would not pay this claim if SUBCONTRACTOR performs said work without CONTRACTOR's consent. In the event this happens and OWNER does not pay CONTRACTOR, SUBCONTRACTOR then waives all claims against CONTRACTOR for payment of these portions of work. UNLESS AN APPROVED CHANGE IS ISSUED BY CONTRACTOR. ALL WORK MUST BE PERFORMED THRU CONTRACT WITH CONTRACTOR.

25. All parties hereby agree this Subcontract Agreement shall not be deemed as a commitment, or offer to engage the services of SUBCONTRACTOR until such time this Subcontract Agreement is duly executed by an authorized representative of CONTRACTOR.

26. All parties hereby agree that before work commences, SUBCONTRACTOR shall submit an original insurance certificate showing General Liability Coverage and Limits of Worker's Compensation Coverage to CONTRACTOR'S home office. All parties further agree that no payments will be received by SUBCONTRACTOR for any work performed on the project until such time CONTRACTOR has received these Insurance Certificates from SUBCONTRACTOR.

27. All parties hereby agree that for purposes of this agreement, "hazardous substances"shall mean any contaminants, wastes, substances or other materials which pose violation of any local, state or federal law or regulation or are deemed environmentally hazardous, toxic or harmful by any local, state or federal environmental protection or other agency, including, without limitation, asbestos, polychlorinated biphenyl's, petroleum products, flammable explosives, radioactive materials or infectious substances. SUBCONTRACTOR shall not bring any hazardous substance to the jobsite, and hereby agrees to fully defend, indemnify and hold CONTRACTOR and OWNER harmless from and against any and all liability, claims, losses, penalties, costs, expenses, damages and causes of action suffered or incurred by CONTRACTOR or OWNER resulting in any manner whatsoever, directly or indirectly, from the presence of any hazardous substance as a result of the actions of SUBCONTRACTOR. In the event that SUBCONTRACTOR encounters any material on the jobsite reasonably believed to be a hazardous substance, SUBCONTRACTOR will handle such hazardous substance in accordance with all laws and applicable ordinances.

28. All parties hereby agree that it shall be SUBCONTRACTOR'S responsibility to review all plans and specifications, to learn the general policies of the CONTRACTOR, and the schedule pace of work and general methods of procedure. All parties hereby agree that SUBCONTRACTOR is to plan its material and equipment deliveries and the volume of its manpower in order to coordinate all of its work with CONTRACTOR'S policies, methods and schedule.

29. All parties hereby agree that all applicable Federal, State and Local Codes take precedence over project plans and specifications and any additional cost to make the required changes to comply with said codes ~~is hereby included in this Subcontract Agreement~~ will require a change order.

30. All parties hereby agree that SUBCONTRACTOR and all of its employees and subcontractors will only use ingress and egress routes as directed by CONTRACTOR'S jobsite superintendent.

31. All parties hereby agree that SUBCONTRACTOR acknowledges that other site and building improvements will be in progress during the course of its work, and SUBCONTRACTOR will take the necessary steps in the coordination of material handling and in the implementation of its work so as not to loose time on its schedule or interfere with the construction of other improvements.

32. All parties hereby agree that in the event temporary electrical service becomes inoperable SUBCONTRACTOR will ~~then furnish its own means of project power to install the scope of work included in this Subcontract Agreement~~ REQUIRE A CHANGE ORDER.

33. All parties hereby agree that CONTRACTOR will have final approval of SUBCONTRACTORS on site supervision and upon approval of this supervision SUBCONTRACTOR hereby agrees not to replace this approved jobsite supervision without CONTRACTORS consent. TO THE EXTENT THAT SUBCONTRACTOR HAS ABILITY TO CONTROL PERSONNEL.

34. All parties hereby agree that SUBCONTRACTOR fully agrees to comply with all terms and conditions contained within the Immigration Reform and Control Act of 1996..

35. All parties hereby agree that SUBCONTRACTOR has visited the project site and is aware of all site conditions that affect its scope of work. All parties further agree that no additional compensation will be made due to SUBCONTRACTOR'S failure to familiarize itself with all site conditions prior to the execution of this Subcontract Agreement.

36. All parties hereby agree that SUBCONTRACTOR shall submit a Material Safety Data Sheet (MSDS) notebook to CONTRACTOR'S job site Superintendent prior to commencing work on the project.

37. All parties hereby agree that SUBCONTRACTOR is to furnish and install all necessary heating devices, including fuel for same, necessary for the installation of this scope of work.

38. All parties hereby agree that in the event SUBCONTRACTOR crosses any permanent improvements such as concrete curb or sidewalks, it shall be the responsibility of SUBCONTRACTOR to take the appropriate measures to protect these existing improvements. In the event any areas are damaged, it shall be the SUBCONTRACTOR's responsibility to remove and replace these damaged areas.

39. All parties hereby agree that SUBCONTRACTOR shall have the responsibility of notifying CONTRACTOR seven (7) days prior to any known material shortages on project.

40. All parties hereby agree that SUBCONTRACTOR shall furnish and install a jobsite radio for his jobsite foreman capable of communicating with the CONTRACTOR'S Jobsite Superintendent.

41. All parties hereby agree that the trees on the jobsite are of extreme importance to the value of the property. All parties further agree that SUBCONTRACTOR shall be fully liable for any damage caused to these trees by this SUBCONTRACTOR including, but not limited to, consequential damages resulting therefrom.

42. All parties hereby agree that each item required by all Federal, State, and Local governing authorities may not be specifically shown on the Plans and Specifications; ~~however, all requirements imposed by these governing authorities are hereby included in this Subcontract Agreement. Compliance with all governing laws, ordinances, rules, regulations, and lawful orders, inclusive of documentation and/or reporting of occurrences and/or conditions, enacted prior to execution of this Subcontract Agreement for the Work, or portions thereof, provided by this Subcontract, of any governing authority having jurisdiction over the performance of this Work, whether or not yet effective, is hereby included in this Subcontract.~~

43. All parties hereby agree that all required and necessary submittal data shall be submitted by SUBCONTRACTOR to CONTRACTOR within three (3) days of the signing of this Subcontract Agreement to allow sufficient time for approval.

44. All parties hereby agree that SUBCONTRACTOR had in its possession at time of bid all Contract Documents necessary to supply CONTRACTOR a complete turnkey bid for SUBCONTRACTOR's scope of work included herein.

45. All parties hereby agree that SUBCONTRACTOR shall keep at the jobsite on a full-time basis at least one superintendent or foreman who speaks the English Language.

46. All parties hereby agree that all installed items on the project remain the responsibility of SUBCONTRACTOR until accepted by OWNER or OWNER'S representative.

47. All parties hereby agree that any required hoisting, scaffolding, lulls, forklifts or any other machinery of any kind, including labor for same, to unload, store, move around on jobsite, and handle SUBCONTRACTOR's materials to install this scope of work in any nature is included in this Subcontract Agreement. Further, SUBCONTRACTOR agrees to use properly certified personnel to operate equipment while on project site.

48. All parties hereby agree that SUBCONTRACTOR is not authorized to install a SUBCONTRACTOR job sign without written consent of CONTRACTOR.

ATTACHMENT "B"
SCOPE OF WORK

Painting

Furnish all labor, material, ~~permits,~~ equipment, supervision, services, labor taxes, material taxes, insurance, licenses, and any other related cost necessary for a complete execution of all Painting of 12 buildings, Clubhouse, Pool Pavilion, all garages, and trash compactor (1), all in its entirety and in strict accordance with the Contract Documents enumerated in Subcontractor Documents Acknowledgment to this Agreement, and in strict compliance with the requirements of all Federal, State and Local governing authorities. This Subcontract Agreement is also to be inclusive of, but not limited to, the following:

1. All parties hereby agree that SUBCONTRACTOR shall submit paint and stain colors for final approval on 6 x 6 actual color cards. (7) sets of submittals to be submitted to the CONTRACTOR within 2 weeks of receiving this subcontract.

2. All parties hereby agree that all surfaces to be painted or finished shall be clean, dry, smooth, and free from dust and all foreign matter, which may adversely affect adhesion or appearance. Further, SUBCONTRACTOR shall perform preparation and cleaning procedures in strict accordance with the coating manufacturer's recommendations.

3. All parties hereby agree that workmanship shall be of a high standard, installed by skilled mechanics. Further, all materials shall be properly applied and shall be free from runs, sags, holidays, clogging and excessive flooding. SUBCONTRACTOR shall not proceed with any additional coats until the preceding coat is thoroughly dry and hard.

4. It is the intent of the this SUBCONTRACT to convey to the SUBCONTRACTOR that the exterior waterproofing of all stucco is the responsibility of the SUBCONTRACTOR. This is to include but not limited to all areas where stucco meets like or unlike surface where paint may or may not be applied.

5. All parties hereby agree that SUBCONTRACTOR is to furnish and install all required caulking, with the specified type of caulking, at all areas of project. These caulked areas are to include, but not be limited to, windows, doors, exterior siding, exterior trim, interior trim, exterior door sills, between exterior trim, tubs and masonry and fascia boards. Further, SUBCONTRACTOR shall use caulking compound in a color to match the building finish or of painted nature.

6. All parties hereby agree that SUBCONTRACTOR shall paint all exterior electrical boxes, roof vents, exposed flashing, lintels, and ~~any other items as directed by CONTRACTOR~~ ALL ITEMS SHOWN ON PLANS TO BE PAINTED

7. Clubhouse to have a minimum of six different colors.

8. All parties hereby agree that "paint" as used herein means all coating systems materials, including primers, emulsions, enamels, stains, elastomeric, sealers and fillers and any other materials whether used as prime, intermediate or finished coats. All parties hereby agree that materials shall be delivered to jobsite factory mixed, ready for application with manufacturing labels attached showing the name, brand, type and color of paint, instructions for thinning and type and percentages of pigment, vehicle and solvent.

9. All parties hereby agree that SUBCONTRACTOR shall store materials not in use in tightly covered containers. Further, SUBCONTRACTOR shall maintain containers used in storage, mixing and application of paint in a clean condition, free of foreign materials and residue.

10. All parties hereby agree that no paint shall be stored in project closets.

11. All parties hereby agree that SUBCONTRACTOR shall remove all oily rags and oil or solvent-soaked waste from building at end of each workday. Further, SUBCONTRACTOR shall take every reasonable precaution to avoid danger of fire.

12. All parties hereby agree that SUBCONTRACTOR shall avoid painting under conditions, which might result in condensation on freshly painted surfaces.

13. All parties hereby agree that no paint will be applied to finishes in spaces where dust is being generated.

14. All parties hereby agree that SUBCONTRACTOR shall provide good ventilation during all painting operations.

15. All parties hereby agree that SUBCONTRACTOR shall examine surfaces scheduled to receive paint or finishes. Further, for conditions that will adversely affect execution, performance or quality of work and which cannot be placed into acceptable condition through preparatory work then SUBCONTRACTOR shall immediately notify CONTRACTOR of such problem.

16. All parties hereby agree that SUBCONTRACTOR shall accept the beginning of any work in any specific area as acceptance of the substrate surfaces to be satisfactory to produce properly finished surfaces this is to include but not limited to metal stairs and railings.

17. All parties hereby agree that SUBCONTRACTOR shall protect all adjacent surfaces not to be painted. Further, before painting, SUBCONTRACTOR shall remove hardware, accessories, plate lighting fixtures and similar items or provide ample protection of such items prior to painting. Upon completion of each space, SUBCONTRACTOR shall replace the above items.

18. All parties hereby agree that SUBCONTRACTOR shall remove doors if necessary to paint all edges. SUBCONTRACTOR shall replace each door removed in the same opening using only skilled mechanics for removing and reinstalling these doors.

19. All parties hereby agree that SUBCONTRACTOR shall use drop cloths or similar temporary covers to protect finished flooring, cabinetwork and other surfaces subject to damage. Further, SUBCONTRACTOR shall protect all windows, sliding glass doors, counter tops and other finished surfaces from paint drops prior to the paint setting. Further, SUBCONTRACTOR shall remove overspray and splattered paint by proper methods of washing and scraping using care not to scratch or otherwise damage finished surfaces.

20. All parties hereby agree that SUBCONTRACTOR shall provide "wet paint" signs as required to protect newly painted finishes.

21. All parties hereby agree that SUBCONTRACTOR shall make edges of paint adjoining other materials or colors sharp and clean with straight lines.

22. All parties hereby agree that SUBCONTRACTOR shall apply primer to adjacent surfaces before glazing or caulking.

23. All parties hereby agree that SUBCONTRACTOR shall furnish and install the painting for all stair stringers, if applicable to this project, stair railings, breezeway railings, balcony railings, exterior door trim, exterior doors, breezeway ceilings, balcony ceilings, ~~and any other miscellaneous exterior painting as directed by CONTRACTOR.~~ per PLAN mC

24. All parties hereby agree that all doors shall be pre-primed by SUBCONTRACTOR prior to installation. This is to include bottom, top, and both sides of door.

25. All parties hereby agree that the interior painting shall include, but not be limited to, all drywall walls and ceilings, interior doors (top and bottom), interior trim, baseboards, window stools, door trim, shoe mold, crown mold, chair rails and mantels, ~~and any other areas as directed by CONTRACTOR.~~ PER PLAN mC

26. All parties hereby agree that all necessary caulking, sanding, and puttying required for a first class quality job as directed by CONTRACTOR is included in this Subcontract Agreement.

27. All parties hereby agree that SUBCONTRACTOR is responsible for the masking of all finished areas and protection from overspray of it. Further, SUBCONTRACTOR shall remove all overspray immediately after request from CONTRACTOR.

28. All parties hereby agree that any and all required painting punch out work is included in this Subcontract Agreement and to included but not limited to minor sheet rock repair.

29. All parties hereby agree that any roof projection to be painted in a color selected by the CONTRACTOR.

30. ~~All parties hereby agree that any required repairs to entry doors is included in this Subcontract Agreement.~~ mC
Minimum of 3 doors over 3 to be compensated. mC

31. All parties hereby agree that SUBCONTRACTOR is to leave an adequate supply of paint for touch-up purposes on site with Property Manager.

32. All parties hereby agree that SUBCONTRACTOR shall provide appropriate personnel to walk with CONTRACTOR's Jobsite Superintendent when units in buildings are being turned to Owner.

33. All parties hereby agree that SUBCONTRACTOR shall fill, sand, and prime all nail holes in the exterior cornice as needed.

34. All parties hereby agree that SUBCONTRACTOR shall mask all project door hinges as they are not to be painted.

35. All parties hereby agree that SUBCONTRACTOR is responsible for the cleaning of all paint from carpets.

36. All parties hereby agree that SUBCONTRACTOR shall remove weather-stripping from exterior doors prior to painting them and SUBCONTRACTOR shall install weather-stripping back after doors have been painted.

37. All parties hereby agree that bi-fold door rollers and pins shall not be painted.

38. All parties hereby agree that SUBCONTRACTOR shall clean brushes and tools only in areas designated by CONTRACTOR's Jobsite Superintendent.

39. All parties hereby agree that paint is not to be poured onto any ground area at any time.

40. Apartment Specifications: Interior
A. Prep all trim work caulk and puddy, sand all trim for finish coats.
B. Apply two coats of flat to all living areas.
C. Apply two coats of semi gloss to all trim and doors.
D. Apply two coats of semi gloss to bathroom walls and ceilings.
a. Application of semi gloss to above area will increase durability because of moisture.
E. Apply caulking to shower units where it meets the G.W.B.
F. Apply caulking at window units after final cleaning of windows.
G. Apply flat white to ceiling

41. Apartment Specifications: Exterior Elastomeric
A. Inspect the exterior substrate for PH in the stucco.
B. Written PH results to be submitted to the CONTRACTOR prior to exterior application.
C. Inspect and fix all metal doors for dings prior to final coat of paint
D. Apply one coat of masonry pigmented surface primer.
E. Apply elastomeric coating to get a total of 20 mils total dry thickness. The number of coats required per manufactures recommendation to get the 20 mils dry total is the responsibility of the SUBCONTRACTOR.
F. Apply specified caulking to exterior.
G. Apply one coat of enamel undercoating to exterior wood trim.
H. Apply trim colors to doors and columns etc. as specified
I. Apply two coats of industrial enamel to all ferrous metals.
a. Handrails on the exterior of buildings.

42. Apartments Clubhouse: Interior
A. Prep all trim work caulk and puddy, sand all trim for finish coats.
B. Apply two finish coats of flat to walls.
C. Apply two finish coats of semi gloss to all trim and doors.
D. Apply two coats of epoxy to pool bathroom walls and ceilings.
E. Paint all ceilings flat white

43. Painting cost to include: Interior and exterior
1. All interior painting specifications.
2. All exterior painting specifications.
3. Interior and exterior of Clubhouse.
4. Exterior trash compactors.

44. The SUBCONTRACTOR is to provide the SUBCONTRACTOR'S jobsite foreman with a NEXTEL radio compatible to the CONTRACTOR'S jobsite superintendent.

SUMMIT
CONTRACTORS, INC.

April 25, 2002

Mr. Terry Smith
Professional Plastering & Stucco, Inc.
2920 Stonewall Place
Sanford, Florida 32773

Re: VINTAGE @ FENWICK PLANTATION
Charleston, South Carolina

Dear Mr. Smith:

Attached please find your duly executed copy of your Subcontract for the above referenced project.

Thank you for returning the above and we look forward to working with you.

Sincerely,

SUMMIT CONTRACTORS, INC.

Diana Bell

Tacy McGinty
Senior Project Manager

Enclosures:

Entered 5-11-11

PP&S 00059

6877 Phillips Industrial Boulevard • Jacksonville, Florida 32256 • (904) 268-5500 • Fax (904) 268-5889
Internet www.summitcontractors.com

MAR 2 8 2002

SUBCONTRACT AGREEMENT

THIS SUBCONTRACT made and entered into this 14 March, 2002 by and between SUMMIT CONTRACTORS, INC., "CONTRACTOR," and PROFESSIONAL PLASTERING & STUCCO, INC., 2920 Stonewall Place, Sanford, Florida 32773, Office Phone: 407-322-4577, Fax Phone: 407-322-3154 "SUBCONTRACTOR," which shall include SUBCONTRACTOR, its employees, agents, suppliers and subcontractors.

ARTICLE 1: DEFINITION OF SUBCONTRACT TERMS

PROJECT: VINTAGE AT FENWICK PLANTATION
3800 Fenwick Hall Allee
Charleston, South Carolina 29455

BUDDY REEVES
Phone: 843-557-8300
Fax: 843-557-8447

OWNER: *(The term "Owner" as used in the Subcontract Documents shall mean the person or entity referred to below or the Owner's authorized representative.)*

THE VINTAGE AT FENWICK PLANTATION, L.L.C.ROBERT C. ROHDIE, PARTNER
c/o Tarragon Realty Investors
1775 Broadway, 23rd Floor
New York, New York 10019
Phone. 212-949-5000
Fax· 212-949-5001

SUBCONTRACT: The Subcontract is the entire and integrated agreement between the Contractor and the Subcontractor.

SUBCONTRACT AGREEMENT· The Subcontract Agreement is this standard form construction subcontract, identified as Subcontract Agreement No. 01033-25, which forms a part of the Subcontract Documents.

SUBCONTRACT WORK: *(As more particularly described in Article 6)*

ARCHITECT: *(Include Business Name, address, telephone and facsimile numbers.)*

FUGLEBERG KOCH ARCHITECTS
2555 Temple Trail
Winter Park, Florida 32789

MIKE WILLIAMS
Phone: 407-629-0595
Fax: 407-628-1057

CONTRACTOR: *(Include Federal Employer ID Number, business name, address, telephone and facsimile numbers.)*

Federal I.D.#:
59-2947787

SUMMIT CONTRACTORS, INC.
6877 Phillips Industrial Boulevard
Jacksonville, Florida 32256

TACY MCGINTY
Phone: 904-268-5500
Fax· 904-268-5889

SUBCONTRACTOR: *(Include Federal Employer ID Number, business address, telephone and facsimile numbers.)*

Federal I D. #·
59-3048193

PROFESSIONAL PLASTERING & STUCCO, INC.
2920 Stonewall Place
Sanford, Florida 32773

TERRY SMITH
Phone: 407-322-4577
Fax: 407-322-3154

ARTICLE 2: SUBCONTRACT SUM

CONTRACTOR shall pay SUBCONTRACTOR in current funds for the performance of this work, subject to additions and deductions by written change order as herein provided for, the total sum of EIGHT HUNDRED THOUSAND DOLLARS AND 00/100 ($800,000.00) (Includes $ 10.00 and the first .001% of the Subcontract Sum per Article 14.)

Cost Code: 09-60-01 Stucco Amount: $800,000.00

ARTICLE 3: PROGRESS PAYMENTS

a. It is the intent of the parties that as an absolute condition precedent to Progress Payments to SUBCONTRACTOR, CONTRACTOR must receive corresponding payment from the OWNER for SUBCONTRACTOR's work. The foregoing takes precedence over any conflicting provision or language appearing in any of the contract documents. In the event of non-payment by OWNER, then SUBCONTRACTOR'S remedies are against the OWNER

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Contractor Initials: _____ Subcontractor Initials: _____

b. CONTRACTOR shall pay SUBCONTRACTOR Progress Payments for work performed and authorized material suitably stored and inventoried on the job site in monthly payments.

c. SUBCONTRACTOR to submit invoices for payment no later than the twentieth (20th) day of each month for work completed prior to the twentieth (20th) day of each month.

d Ten Percent (10%) retainage will be held until SUBCONTRACTOR has satisfied all of its obligations under this Subcontract Agreement, including all punch items, and has delivered to CONTRACTOR all required Releases of Lien and all supplier or written warranties required by Subcontract Documents, and the work has received final approval from OWNER, ARCHITECT and CONTRACTOR and retainage has been received by CONTRACTOR.

e. At CONTRACTOR's request SUBCONTRACTOR shall furnish partial unconditional lien waivers through the date of the current request for payment from any of its sub-subcontractors, laborers or materialmen who have served notice to owner or otherwise established potential lien rights against the project or a potential claim against CONTRACTOR's Labor and Material Payment Bond

f. In the event any of SUBCONTRACTOR's sub-subcontractors, materialmen or laborers have established a construction lien on the project property or a claim against CONTRACTOR's Labor and Material Bond, CONTRACTOR shall have the right to withhold from any progress payment otherwise due to SUBCONTRACTOR sufficient monies to satisfy said claim of lien or claim against the bond unless SUBCONTRACTOR shall furnish a bond removing the lien from the property or indemnifying CONTRACTOR and its bonding company from all liability on the claim of lien or the claim against the CONTRACTOR's bond.

ARTICLE 4: FINAL PAYMENT

Final Payment shall be due when the Work described in this Subcontract Agreement is fully completed and performed in accordance with the Contract Documents, and is satisfactory to the OWNER, ARCHITECT and CONTRACTOR, and SUBCONTRACTOR has furnished final lien waivers from any of its sub-subcontractors, laborers or materialmen who have served notice to owner or otherwise established potential lien rights against the project or potential claims against CONTRACTOR's Labor and Material Payment Bond.

It is the intent of the parties that as an absolute condition precedent to Final Payment to SUBCONTRACTOR, CONTRACTOR must receive corresponding payment from the OWNER for SUBCONTRACTOR's Work. The foregoing takes precedence over any conflicting provision or language appearing in any of the contract documents. Therefore, SUBCONTRACTOR acknowledges that this Subcontract Agreement has been entered into by CONTRACTOR in reliance upon receiving payment for work performed by SUBCONTRACTOR on the project from OWNER and OWNER shall have the right to approve payment of all CONTRACTOR's pay requests and change order requests. SUBCONTRACTOR agrees that CONTRACTOR'S actual receipt of full payment from the OWNER shall be a condition precedent to CONTRACTOR's obligation to pay SUBCONTRACTOR and to the bringing of any action by SUBCONTRACTOR against CONTRACTOR relating to CONTRACTOR's failure to make payment. SUBCONTRACTOR shall not be entitled to receive any progress payment or final payment prior to CONTRACTOR's actual receipt of that payment from OWNER. If CONTRACTOR never receives payment from OWNER, then SUBCONTRACTOR shall never be entitled to payment from CONTRACTOR. It is the express intention of the SUBCONTRACTOR to share in the risk of non-payment by OWNER to CONTRACTOR.

SUBCONTRACTOR also agrees that all contracts with its sub-contractors, laborers, suppliers, materialmen, or other contractors contain a similar or identical requirement of "pay when-and-if paid" to provide that it shall be a condition precedent to SUBCONTRACTOR's payment to its own sub-contractors, laborers, suppliers, materialmen, or other contractors that payment be received by CONTRACTOR from OWNER. SUBCONTRACTOR further agrees that it will indemnify and hold harmless the CONTRACTOR from any claims of SUBCONTRACTOR's sub-contractors, laborers, materialmen, or other contractors claiming by, through, or under SUBCONTRACTOR for payment not yet due from or received by CONTRACTOR from OWNER due to non-fulfillment of the above condition precedent that CONTRACTOR first receive payment from OWNER.

In the event of non-payment by OWNER, SUBCONTRACTOR's remedies are against the OWNER. The parties agree that Subcontract Agreement ARTICLE 4: FINAL PAYMENT establishes the exclusive conditions for Final Payment to SUBCONTRACTOR, and SUBCONTRACTOR hereby waives all other terms and conditions regarding Final Payment contained in the Contract Documents.

In the event any of SUBCONTRACTOR's sub-subcontractors, materialmen or laborers have established a construction lien on the project property or a claim against CONTRACTOR's Labor and Material Bond, CONTRACTOR shall have the right to withhold from any final payment otherwise due to SUBCONTRACTOR sufficient monies to satisfy said claim of lien or claim against the bond unless SUBCONTRACTOR shall furnish a bond removing the lien from the property or indemnifying CONTRACTOR and its bonding company from all liability on the claim of lien or the claim against the CONTRACTOR's bond

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Contractor Initials: _____ 2 Subcontractor Initials: _____

ARTICLE 5: THE CONTRACT DOCUMENTS

The Contract Documents for this Subcontract consist of this Subcontract Agreement, including Attachment "A"; the Owner-Contractor Agreement, including the Conditions of the Contract; Drawings, Plans; Specifications, all written Addenda issued prior to and all written Modifications issued subsequent thereto. All of the above documents, which form the Contract Documents are a part of this Subcontract Agreement and shall be available for inspection by SUBCONTRACTOR upon its request. If anything in the Contract Documents is inconsistent with this Subcontract Agreement, this Subcontract Agreement shall govern and then the highest or fullest level of performance and installation shall govern

ARTICLE 6: THE WORK

The work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated in such construction. SUBCONTRACTOR agrees to be bound to CONTRACTOR by the terms and conditions of the General Contract between CONTRACTOR and OWNER as well as this Subcontract Agreement and hereby assumes towards the CONTRACTOR all of the duties, obligations and responsibilities applicable to SUBCONTRACTOR's work which the CONTRACTOR owes towards the Owner under the General Contract. The obligations assumed by SUBCONTRACTOR hereunder include, but are not limited to, the technical requirements of the plans, drawings, and specifications in the General Contract which are applicable to SUBCONTRACTOR's work, all warranties and obligations of the CONTRACTOR with respect to defective or nonconforming work which are applicable to SUBCONTRACTOR's work, and all limitations on remedies, claims or time extensions imposed on the CONTRACTOR by the OWNER under the General Contract. SUBCONTRACTOR shall perform all of the following work:

SEE ATTACHMENT "B" FOR SCOPE OF WORK

ARTICLE 7: ASSIGNMENT

SUBCONTRACTOR acknowledges that the services provided under this Subcontract Agreement are in the nature of personal services, which cannot be assigned without CONTRACTOR's express written consent, which consent shall be within the sole discretion of CONTRACTOR. Any assignment of this contract or sums due hereunder without such prior written consent of CONTRACTOR shall constitute a material default, which shall entitle CONTRACTOR to terminate the Subcontract Agreement for cause.

ARTICLE 8: SUBCONTRACTING AGREEMENT

SUBCONTRACTOR shall not subcontract the whole or any portion of this Subcontract Agreement without the prior written consent of CONTRACTOR, which consent shall be within the sole discretion of CONTRACTOR. Any subcontracting of any portion of this subcontract without such prior written consent of CONTRACTOR shall be considered a material default under this Subcontract Agreement and shall entitle CONTRACTOR to terminate SUBCONTRACTOR for cause.

ARTICLE 9: FEES, PERMITS, TAXES, [redacted]

SUBCONTRACTOR shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Subcontract Agreement, whether or not yet effective Further, SUBCONTRACTOR shall secure and pay for all permits, fees, licenses and testing necessary for the execution of the Work described in the Contract Documents as applicable to this Subcontract Agreement. SUBCONTRACTOR shall comply with Federal, State and Local tax laws, social security acts, unemployment compensation acts, and workmen's compensation acts insofar as applicable to the performance of this Subcontract Agreement, whether or not yet effective.

[redacted]

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[redacted]

ARTICLE 10: NO DAMAGES FOR DELAY OR DISRUPTION

SUBCONTRACTOR shall not be entitled to additional compensation, overtime, extended field of home office overhead or other damages from **CONTRACTOR** for delays, disruptions, hindrance, constructive acceleration of other schedule and work force impacts. **SUBCONTRACTOR's** sole remedy shall be an approved extension or adjustment of the contract time. No extension or adjustment of the contract time shall be allowed for the following:

1. Events which were caused by **SUBCONTRACTOR'S** fault or negligence, by a lower tier subcontractor's fault or negligence, or any other event which is the responsibility of the **SUBCONTRACTOR** or its lower tier subcontractors or suppliers;
2. Delays which are concurrent with other unexcused delays;
3. Delays which do not affect the critical path of construction;
4. Delays for which the **SUBCONTRACTOR** has failed to request additional time or has failed to document within the time frames required by the contract documents;
5. Failure of the **SUBCONTRACTOR** to provide sufficient manpower, materials, facilities and equipment,
6. Failure of the **SUBCONTRACTOR** to reschedule activities, work weekends, increase equipment or other actions to complete work within the available schedule float or as otherwise required by **CONTRACTOR's** scheduling and coordination;
7. Delays for normal inclement weather.

In the event this provision is determined by a court or arbitration panel of competent jurisdiction to be unenforceable under the circumstances, **SUBCONTRACTOR** shall in no event be entitled to recover damages for extended home office overhead, idle labor and equipment, lost profit on other projects, lost bonding capacity, and any consequential damages.

ARTICLE 11: PERFORMANCE OF THE WORK

SUBCONTRACTOR agrees to commence the performance of the aforesaid Work and to continue to perform said work until completion so that **SUBCONTRACTOR** shall meet the **OWNER** and **CONTRACTOR's** construction schedule for completion of the job in accordance with the Contract Documents. **SUBCONTRACTOR** shall commence performance of the work on the date and time specified by **CONTRACTOR** and shall continue to proceed in accordance with **CONTRACTOR's** instructions. Time is of the essence in this Contract and extensions of time for performance of the work will be granted only for reasons as provided in the Contract Documents.

ARTICLE 12: CORRECTION OF WORK

SUBCONTRACTOR shall promptly correct all Work rejected by **ARCHITECT** or **OWNER** as defective or failing to conform to the Contract Documents whether observed before or after Substantial Completion. **SUBCONTRACTOR** shall bear all costs of correcting such rejected work, including compensation for the **ARCHITECTS** additional services required.

ARTICLE 13: INDEMNIFICATION

SUBCONTRACTOR hereby covenants to defend, indemnify, hold harmless and exonerate **CONTRACTOR, CONTRACTOR's** surety, **OWNER** and their respective officers, directors, employees, agents and legal representatives (hereinafter "Indemnitees") from any and all liabilities, claims, lawsuits, arbitrations, fines, or other charges for any property damages, personal injury or economic losses (hereafter "Claims"), which are caused in whole or in part by **SUBCONTRACTOR**, including the design of systems and installation and operations of same by this **SUBCONTRACTOR**, its employees, agents, guests, suppliers or subcontractors (including any lower tier suppliers or subcontractors, whether or not in direct privity with **SUBCONTRACTOR**), or which in any way arise out of or involve any of their work or their acts or omissions. This Indemnity Agreement shall extend to and include the full amount of all Claims whether or not caused in part by

Contractor Initials: _____ 4 Subcontractor Initials: _____

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Indemnitees, except that SUBCONTRACTOR shall not be liable under this Indemnity Agreement for Claims directly caused by or resulting from the sole fault or negligence of Indemnitees. SUBCONTRACTOR acknowledges consideration for his Indemnification Agreement of Ten ($10.00) Dollars, together with payment of the first .001% (not to exceed $500.00) of the contract price. The SUBCONTRACTOR's obligations under this indemnity agreement for CONTRACTOR's actions or inactions shall not exceed $1,000,000.00, however SUBCONTRACTOR's obligation for it's actions or inactions or those under his Subcontract whether or not in direct privity with SUBCONTRACTOR shall be unlimited.

The obligation to defend, indemnify and hold harmless includes Claims resulting from injury, sickness or death of any employee of SUBCONTRACTOR or any employee of any lower tier suppliers or subcontractors of SUBCONTRACTOR (whether or not in direct privity with SUBCONTRACTOR), regardless of whether such employee has been paid pursuant to any Worker's Compensation Law or other similar federal or state legislation for the protection of employees.

[redacted]

ARTICLE 14: SUSPENSION OF WORK, DEFAULT AND TERMINATION

a. CONTRACTOR May Suspend Work

At any time and without cause, CONTRACTOR may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to SUBCONTRACTOR which will fix the date on which Work will be resumed. SUBCONTRACTOR shall resume the Work on the date so fixed. SUBCONTRACTOR shall be allowed only an adjustment or extension of the contract times directly attributable to any such suspension, provided SUBCONTRACTOR timely makes a claim as allowed by the Contract Documents. In no event shall SUBCONTRACTOR be entitled to claim additional compensation for such temporary suspension of work.

b. CONTRACTOR Shall Terminate for Cause

i. The occurrence of any one or more of the following events justifies CONTRACTOR's termination of SUBCONTRACTOR for cause:

1. SUBCONTRACTOR fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule).

2. SUBCONTRACTOR disregards Laws, Codes or Regulations of any public body having jurisdiction.

3. SUBCONTRACTOR fails to remain current with payments to its subcontractors or material suppliers.

4. SUBCONTRACTOR assigns or subcontracts any portion of the Work without permission of CONTRACTOR as required by the Contract Documents.

5. SUBCONTRACTOR fails to obtain or maintain in effect any of the insurance required under the Contract Documents.

6. SUBCONTRACTOR otherwise violates in any way provisions of the Contract Documents

ii. CONTRACTOR may, after giving SUBCONTRACTOR (and the surety, if any) forty-eight hours written notice and to the extent permitted by applicable law, terminate the services of SUBCONTRACTOR, exclude SUBCONTRACTOR from the Site and take possession of the Work and of all SUBCONTRACTOR's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by SUBCONTRACTOR (without liability to SUBCONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which CONTRACTOR has paid SUBCONTRACTOR but which are stored elsewhere, and finish the Work as CONTRACTOR may deem expedient. In such case SUBCONTRACTOR shall not be entitled to receive any further payment until the Work is finished. SUBCONTRACTOR shall be liable for any and all damages sustained by the CONTRACTOR because of SUBCONTRACTOR's default and termination. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by CONTRACTOR arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to SUBCONTRACTOR. If such costs, losses and damages exceed such unpaid balance, SUBCONTRACTOR shall pay the difference to CONTRACTOR. Such costs, losses and damages incurred by CONTRACTOR will be incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph CONTRACTOR shall not be required to obtain the lowest price for the Work performed

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Contractor Initials: _____ 5 Subcontractor Initials: _____

iii. Where SUBCONTRACTOR's services have been so terminated by CONTRACTOR, the termination will not affect any rights or remedies of CONTRACTOR against SUBCONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due SUBCONTRACTOR by CONTRACTOR will not release SUBCONTRACTOR from liability.

iv. In the event that a court or arbitration panel of competent jurisdiction shall determine that CONTRACTOR has wrongfully terminated SUBCONTRACTOR's services for cause, then in such event it shall be conclusively established that CONTRACTOR terminated SUBCONTRACTOR for convenience as hereinafter provided. SUBCONTRACTOR shall have no other rights under this Agreement.

c. CONTRACTOR May Terminate for Convenience

Upon forty-eight hours written notice to SUBCONTRACTOR, CONTRACTOR may, without cause and without prejudice to any other right or remedy of CONTRACTOR, elect to terminate the Agreement. In such case, SUBCONTRACTOR shall be paid (without duplication of any items) for:

1 Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination based upon the unit price for said work, if applicable, or the scheduled value of said work, if applicable. Otherwise, SUBCONTRACTOR shall be paid for the actual and necessary cost of the work together with 10% for overhead and profit on such Work;

2. Actual expenses sustained or paid to subcontractors and suppliers prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus 5% for overhead and profit on such expenses;

3. Amounts reasonably paid in settlement of terminated contracts with Subcontractors, Suppliers and others.

4 SUBCONTRACTOR shall not be paid on account of loss of anticipated profits or revenue under this Agreement or any other contract or projects, lost bonding capacity or any other economic losses arising out of or resulting from such termination.

ARTICLE 15: WARRANTY OF THE WORK

SUBCONTRACTOR warrants and guarantees to CONTRACTOR, OWNER, and ARCHITECT (or other applicable design professional) that all Construction will be in strict accordance with the Contract Documents, will be free from all faults and defects, and will be free of all liens and claims of third parties. SUBCONTRACTOR warrants and guarantees to CONTRACTOR that all Construction and materials will be new, of above average quality and in strict compliance with the Contract Documents. SUBCONTRACTOR further warrants and guarantees to CONTRACTOR that all work shall be in compliance with all federal, state and local codes and requirements. SUBCONTRACTOR further agrees to be bound to CONTRACTOR for all warranties and obligations to correct SUBCONTRACTOR's defective or nonconforming work for which CONTRACTOR is bound to OWNER. SUBCONTRACTOR shall further cause all of its subcontractors and suppliers to assign all separate warranties for work performed or materials supplied in connection with the Project directly to CONTRACTOR or, if required by CONTRACTOR, to the OWNER. Such assignment of separate subcontractor and supplier warranties shall be a condition precedent to final payment to SUBCONTRACTOR under this Agreement and shall be in addition to all other required SUBCONTRACTOR Warranties.

ARTICLE 16: RISK OF LOSS

SUBCONTRACTOR expressly agrees to be responsible for and bear any risk of loss to its work until final acceptance by the ARCHITECT, CONTRACTOR, and OWNER. Damaged work shall be replaced by SUBCONTRACTOR at its own expense.

ARTICLE 17: LIQUIDATED DAMAGES FOR DELAY

SUBCONTRACTOR acknowledges that it has read all of the Contract Documents including any liquidated damages provisions for delay. In the event CONTRACTOR is assessed liquidated damages due to the failure of SUBCONTRACTOR to timely perform the Work to CONTRACTOR's satisfaction, then it is agreed between the parties that these damages will be deducted from payment(s) due SUBCONTRACTOR.

ARTICLE 18: CHANGE ORDERS

Before performing additional or changed work involving additional time or expense, SUBCONTRACTOR shall obtain from CONTRACTOR a written change order describing the change and the amount or method of determining extra compensation. Additional expense will not be allowed without such written Change Order and SUBCONTRACTOR hereby waives any claim for additional expense unless such written change order has been issued prior to performance of additional or changed work. In the event CONTRACTOR has issued a change order to SUBCONTRACTOR and CONTRACTOR has not

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Contractor Initials: _____ 6 Subcontractor Initials: _____

received the signed change order from SUBCONTRACTOR within fourteen (14) days from the date of issuance, it shall be considered to be a part of this Subcontract Agreement unless written notice of disagreement is received by CONTRACTOR from SUBCONTRACTOR within the above stated time.

ARTICLE 19: OTHER CONTRACTS

SUBCONTRACTOR expressly agrees to allow CONTRACTOR the right to retain and offset monies due and owing on any other contracts between CONTRACTOR and SUBCONTRACTOR.

ARTICLE 20: ARBITRATION

Any dispute between Summit and Subcontractor arising in any manner from this subcontract, or the performance of work on the project, or payment therefor, shall be resolved by arbitration in accordance with the Florida Arbitration Act. The arbitration panel shall consist of three arbitrators. The party requesting arbitration shall request arbitration in writing, by certified mail. The request shall state the name and address of the arbitrator selected by the requesting party. The other party shall select its arbitrator within 20 days after receipt of the request and inform the other party and its selected arbitrator in writing of its selection. The two arbitrators thus selected shall select a third arbitrator. In the event they are unable to agree on a third arbitrator within 30 days, a judge of the Circuit Court of Duval County shall appoint the third arbitrator. The written decision of any two arbitrators will determine the issues. Each party will pay the arbitrator it selects. The expense of the third arbitrator will be shared equally. All other costs, including, without limitation, attorney fees, will be paid by the party incurring such costs.

Notwithstanding the foregoing, if Summit is sued by the owner, or any other person or entity, because of any claim allegedly arising from Subcontractor's scope of work or Subcontractor's alleged acts or failure to act, then this Article 20 shall not apply to such suit and Summit shall be entitled to make Subcontractor a party to such suit.

ARTICLE 21: CHOICE OF LAW AND VENUE

This Subcontract shall be construed in accordance with the Laws of the State of Florida. SUBCONTRACTOR expressly agrees to be subject to personal jurisdiction in the State of Florida and further waives any right to venue in any action brought under this Subcontract Agreement or against any bond posted by CONTRACTOR. SUBCONTRACTOR acknowledges that CONTRACTOR's bonding company is an intended third-party beneficiary of this jurisdiction and venue provision. CONTRACTOR has the sole option to select venue in Duval County, Florida or the site of the project, for any action it brings under the Subcontract Agreement. In any action brought against CONTRACTOR or its bonding company under this Subcontract Agreement, jurisdiction and venue shall be in Duval County, Florida unless and until CONTRACTOR stipulates to jurisdiction and venue at the site of the project.

ARTICLE 22: TRASH REMOVAL

It is fully understood that SUBCONTRACTOR will be responsible for keeping its part of the job clean and in an orderly fashion subject to the approval of CONTRACTOR and ARCHITECT. Further, SUBCONTRACTOR shall be totally responsible for the clean up and haul off on a daily basis of all debris generated by SUBCONTRACTOR'S daily operations. Should it become necessary for CONTRACTOR to incur any expenses performing cleanup work or removing debris from site for SUBCONTRACTOR, such expense will be deducted from SUBCONTRACTOR's contract amount.

ARTICLE 23: FIELD VERIFICATIONS

SUBCONTRACTOR shall verify all dimensions, inspect the job site and its conditions, and notify CONTRACTOR of any problem, which would prevent or hinder performance by SUBCONTRACTOR. SUBCONTRACTOR will be deemed to have accepted any preceding work and materials and to have waived any and all claims as to non-suitability, unless defects are reported to CONTRACTOR in writing and CONTRACTOR authorizes SUBCONTRACTOR to proceed.

This Subcontract entered into as of the day and year first written above.

SUMMIT CONTRACTORS, INC.	PROFESSIONAL PLASTERING & STUCCO, INC.
By:	By:
Date: 4/22/02	Date: 3-20-02
DM Initials:	NAME/TITLE

PP&S 00066

Contractor Initials: _____ 7 Subcontractor Initials: _____

SUBCONTRACTOR DOCUMENTS ACKNOWLEDGMENT

SUBCONTRACTOR shall complete all work per Plans, Specifications and approved shop drawings.

Site Improvement Plans
The below listed Plans were prepared by Hoffman Lester Associates, Inc , Land Planning/Civil Engineering/Landscape Architecture/Wetland Consulting/Land Surveying, 29 Leinbach Drive, Charleston, S.C. 29407 (843-763-1166.

DOCUMENTS	TITLE	DATED
Cover Sheet	Sheet 1 of 11	Dated 06-26-01, Revised 07-05-01, Revised 07-23-01, Revised 08-07-01, Revised 08-30-01, Revised 08-30-01, Revised 10-15-01
Existing Conditions	Sheet 2 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-30-01
Site Layout Plan	Sheet 3 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-30-01, Rev. #1 dated 10-15-01 Pool & Add Sidewalk
Water Plan	Sheet 4 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-30-01, Revised 10-15-01, Revised 11/02/01, Revised 11/09/01
Grading & Drainage	Sheet 5 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-10-01, Revised 08-29-01, Revised 08-30-01
Grading & Drainage	Sheet 6 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-10-01, Revised 08-29-01, Revised 08-30-01
Sewer Plan & Profile	Sheet 7 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-07-01, Revised 08-30-01
Sewer Plan & Profile	Sheet 8 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-07-01, Revised 08-30-01
Typical Details	Sheet 9 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-14-01, Revised 10-15-01
Typical Details	Sheet 10 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-07-01
Typical Details	Sheet 11 of 11	Dated 09-07-01, Rev.#1 dated 10-10-01
Typical Details	Sheet 11a of 11	Dated 11-09-01

No Site Specification Book was available for the bidding process.

No Landscape Drawings were available for the bidding process.

Architectural Plans:
The Plans listed below were prepared by Fugleberg Koch Architects, 2555 Temple Trail, Winter Park, Florida 32789. Contact: Mike Williams (407) 629-0595, FAX (407) 628-1057

DOCUMENTS	TITLE	DATED
A0.01	Title Sheet	Dated 05-01-01, Revised dated 08-01-01, Revised dated 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01 Rev.#3 dated 1/29/02
A0.02	Index and Code Sheet	Dated 05-01-01, Revised dated 08-01-01, Revised dated 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01 Rev.#3 dated 1/29/02
A1.01	Architectural Site Plan	Dated 05-01-01, Revised dated 08-01-01, Revised dated 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01 Rev #3 dated 1/29/02
S0.00	Cover Sheet	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
S0.01	Concrete Specifications	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S0.02	General Specifications	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
S0 03	Fastening Schedule	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
S0.04	Shearwall Specifications	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S0 05	Shearwall Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

PP&S 00067

Contractor Initials: _____ 8 Subcontractor Initials: _____

DOCUMENTS	TITLE	DATED
S1.01	Foundation Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.01A	Base Plate and Spread Footings	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.02	Foundation Plan, Bldg Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S1.02A	Base Plate and Spread Footings	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1 03	Foundation Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.03A	Base Plate and Spread Footings	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
S1 04	Foundation Plan, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev #3 dated 1/29/02, Latest Date 1/30/02
S2.01	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S2.02	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S2.03	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02
S4 01	Stud Layout Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
S4.02	Stud Layout, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S4.03	Stud Layout Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
S4 04	Stud Layout, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S5.01	Framing Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.01A	Framing Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5 02	Framing Plan, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.02A	Framing Plans, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.03	Framing Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev #3 dated 1/29/02, Latest Date 1/30/02
S5.03A	Framing Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.04	Framing Plan, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
S6 01	Bracing Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S6.02	Bracing Plan, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S6.03	Bracing Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S6.04	Bracing Plan, Bldg Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S7.01	Roof Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S7 02	Roof Plans, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S7.03	Roof Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S7 04	Roof Plans, Bldg. Type 4	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
S8.01	Trash Compactor/Pool Pavilion	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

PP&S 00068

Contractor Initials: _____ 9 Subcontractor Initials: _____

DOCUMENTS	TITLE	DATED
S8.02	Trash Compactor/Pool Pavillion	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
S9.01	Floor Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
S9.02	Floor Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.03	Roof Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.04	Roof Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.05	Brace Frame Details	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.06	Brace Frame Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
SC0.01	Concrete Specifications	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
SC0.02	General Specifications	Undated, Rev.#1 dated 09-12-01
SC0.03	Fastening Schedule	Undated, Rev.#1 dated 09-12-01
SC0.04	Shearwall Specifications	Undated, Rev.#1 dated 09-12-01
SC0.05	Shearwall Details	Undated, Rev.#1 dated 09-12-01
SC1.01	Foundation Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC2.01	Foundation Details	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
SC4.01	Stud Layout Plan Leasing Off.	Undated, Rev.#1 dated 09-12-01
SC4.02	Stud Layout Plan Leasing Off.	Undated, Rev.#1 dated 09-12-01
SC5.01	Framing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC6.01	Bracing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC6.02	Bracing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC7.01	Framing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC9.01	Framing Details	Undated, Rev.#1 dated 09-12-01
SC9.02	Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.01A	Building Plan Type "1" First Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
A2.01B	Building Plan Type "1" Second Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.01C	Building Plan Type "1" Third Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
A2.01D	Roof Plan Bldg. Type "1"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.02A	Building Plan Type "2" First Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.02B	Building Plan Type "2" Second Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.02C	Building Plan Type "2" Third Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.02D	Roof Plan Bldg. Type "2"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.03A	Building Plan Type "3" First Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
A2.03B	Building Plan Type "3" Second Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.03C	Building Plan Type "3" Third Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

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Contractor Initials: _____ 10 Subcontractor Initials: _____

DOCUMENTS	TITLE	DATED
A2 03D	Roof Plan Bldg. Type "3"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
A2 04A	Building Plan Type "4" 1st & 2nd Floor Plans	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.04B	Building Plan Type "4" 3rd Flr & Roof Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.05A	Leasing Center First Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
A2.05B	Leasing Center Second Flr.Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.05C	Leasing Center Roof Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.01	Flat "A" Floor Plans	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.02	Flat "B" Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3 03	Flat "C" Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.04	Flat "D" Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01
A3 05	Townhouse Unit "E" First, Second & Third Floors	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.06	Garage Plans	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01
A4 01	Elevation Views Bldg. Type "1"	Dated 05-01-01, Revised 08-10-01
A4.02	Elevation Views Bldg. Type "2"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev. #1 09-12-01, Rev #2 12-11-01, Rev #3 dated 1/29/02, Latest Date 1/30/02
A4.03	Elevation Views Bldg. Type "3"	Dated 05-01-01, Revised 08-10-01
A4.04	Elevation Views Bldg Type "4"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A4.05B	Leasing Center Side Elevations	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
A5 01	Building Type 1, Stair/ Breezeway Building Section	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.02	Townhome Building Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.03	Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
A5 04B	Garage Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.04	Garage Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
A5 05	Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.06	Garage Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.07B	Sections and Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.07	Clubhouse Building Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.08	Buildings 4, 5 & 7 Wall Sections & Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
A6 01	Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A6.02	Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A6 03	Stair Sections & Misc. Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

PP&S 00070

Contractor Initials: _____ 11 Subcontractor Initials: _____

DOCUMENTS	TITLE	DATED
A7.01	Door, Window Details & Schedules	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
A8.01	Interior Elevations	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev #1 dated 09-12-01, Rev.#2 dated 12-11-01
A8.02	Interior Elevations Leasing Center	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A10.01	Trash Compactor Enclosure And Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A10.02	Pool Pavilion Plans, Elevations, and Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
A10.03	Storage Building #9	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 01-29-02, Latest Date 01-30-02
AF6.01	Firestop Systems Through Penetration	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
AF6.02	Through Penetration Firestop Systems	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev #2 dated 12-11-01
H3.01	Flat A HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3.02	Flat B HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3.03	Flat C HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3.04	Flat D HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3.05	Town Home Unit HVAC Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
H6.01	HVAC Schedules and Details	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01 Rev #3 dated 1-11-02
H6.02	HVAC Schedules and Details	Dated 05-01-01, Revised 08-15-01
H10.01	Leasing Center First Floor HVAC Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
H10.02	Leasing Center Second Floor HVAC Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
H10.03	Bath Pool and Fitness Floor HVAC Plan	Dated 05-01-01, Rev #1 dated 09-12-01
H10.04	HVAC Schedules and Details	Dated 05-01-01, Rev.#1 dated 09-12-01
HE2.01	Building Type 1, 1st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01 Rev #3 dated 1-11-02
HE2.02	Building Type 1, 2nd & 3rd Floor HVAC & Elec. Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.03	Building Type 2, 1st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 1-29-02
HE2.04	Building Type 2, 2nd & 3rd Floor HVAC & Elec. Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.05	Building Type 3, 1st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 1-11-02
HE2.06	Building Type 3, 2nd Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
HE2.07	Building Type 3, 3rd Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.08	Building Type 4, 1st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.09	Building Type 4, 2nd & 3rd Floor HVAC & Elec. Plans	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
E1.01	Electrical Site Plan	Dated 05-01-01, Revised 08-15-01
E3.01	Flat A Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E3.02	Flat B Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E3.03	Flat C Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E3.04	Flat D Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01

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Contractor Initials: _____ 12 Subcontractor Initials: _____

DOCUMENTS	TITLE	DATED
E3 05	Town Home Unit Elec Plans	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
E6.01	Electrical Schedules & Details	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 01-29-02
E6.02	Electrical Schedules & Details	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev #3 dated 01-11-02
E10.01	Leasing Center First Floor Electrical Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
E10 02	Leasing Center Second Floor Electrical Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
E10.03	Bath Pool and Fitness Floor Electrical Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
E10.04	Electrical Schedules & Details	Dated 05-01-01, Rev.#1 dated 09-12-01
P2.01	Building Type 1, 1st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.02	Building Type 1, 2nd & 3rd Floor Plumbing Plans	Dated 05-01-01, Revised 08-15-01
P2.03	Building Type 2, 1st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01, Rev.#3 01-29-02
P2.04	Building Type 2, 2nd & 3rd Floor Plumbing Plans	Dated 05-01-01, Revised 08-15-01
P2.05	Building Type 3, 1st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2 06	Building Type 3, 2nd Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2 07	Building Type 3, 3rd Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2 08	Building Type 4, 1st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
P2.09	Building Type 4, 2nd & 3rd Floor Plumbing Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
P3 01	Flat A Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3 02	Flat B Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.03	Flat C Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3 04	Flat D Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3 05	Town Home Unit Plumbing Plans/Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01	
P6 01	Plumbing Schedules and Details	Dated 05-01-01, Revised 08-15-01
P6 02	Plumbing Schedules and Details	Dated 05-01-01, Revised 08-15-01
P6.03	Plumbing Schedules & Details	Dated 05-01-01, Revised 08-15-01, Rev.#3 dated 01-29-02
P10.01	Leasing Center First Floor Plumbing Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
P10 02	Leasing Center Second Floor Plumbing Plan	Dated 05-01-01, Rev #1 dated 09-12-01
P10.03	Bath Pool and Fitness Floor Plumbing Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
P10.04	Plumbing Schedules & Details	Dated 05-01-01, Rev.#1 dated 09-12-01
P10.05	Plumbing Schedules & Details	Dated 05-01-01, Rev.#1 dated 09-12-01
F1.01	Fire Protection Site Plan	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
F2.01	Building Type 1, 1st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2 02	Building Type 1, 2nd & 3rd Flr Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.03	Building Type 2, 1st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev #3 dated 01-29-02
F2.04	Building Type 2, 2nd & 3rd Flr. Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2 05	Building Type 3, 1st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01

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Contractor Initials: _____ 13 Subcontractor Initials: _____

DOCUMENTS	TITLE	DATED
F2.06	Building Type 3, 2nd Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.07	Building Type 3, 3rd Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
F2.08	Building Type 4, 1st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.09	Building Type 4, 2nd & 3rd Flr Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F3.01	Flat A – Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.02	Flat B – Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.03	Flat C – Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.04	Flat D – Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.05	Town Home Unit Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
F6.01	Fire Sprinkler Schedules And Details	Dated 05-01-01, Revised 08-15-01
F10.01	Leasing Center, First Floor Fire Protection Plan	Dated 05-01-01, Rev #1 dated 09-12-01
F10.02	Leasing Center Second Floor Fire Protection Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
F10.03	Bath Pool and Fitness Floor Fire Protection Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
F10.04	Fire Protection Schedules And Details	Dated 05-01-01, Rev.#1 dated 09-12-01
SP1.01	Specifications	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
SP1.02	Specifications	Dated 05-01-01, Revised 08-15-01
SP1.03	Specifications	Dated 05-01-01, Revised 08-15-01
SP1.04	Specifications	Dated 05-01-01, Revised 08-15-01
SP1.05	Specifications	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01

Landscape Design

Hoffman Lester Associates, Inc , 29 Leinbach Drive, Charleston, S.C. 29407, 843-763-1166

DOCUMENTS	TITLE	DATED
L1 of L4	Landscape Plan	11-12-01
L2 of L4	Landscape Plan	11-12-01
L3 of L4	Landscape Plan	11-12-01
L4 of L4	Landscape Plan	11-12-01

Geotechnical Investigation Report dated August 29, 2001 provided by Wright Christopher Engineering & Construction Services entitled, "Geotechnical Investigation, Vintage at Fenwick Plantation Apartment Complex, John's Island, SC, WPC Project #2001-211".

BY:_____

COMPANY NAME/TITLE: PROFESSIONAL PLASTERING & STUCCO, INC.

DATE: 3-20-02

ATTACHMENT "A"

1. All parties hereby agree that no extra payment will be made for material storage, freight costs, travel expenses, delivery charges, re-inspection fees or any other miscellaneous costs required to install the scope of work included in this subcontract agreement

2. All parties hereby agree that any conflicts between the drawings, specifications and/or any conflicts between pages or details that is discovered by SUBCONTRACTOR shall be brought to the attention of CONTRACTOR immediately. Any work performed by SUBCONTRACTOR with previous knowledge of conflicts will be at the complete liability of SUBCONTRACTOR for its acceptance, and any costs to correct to compliance shall be paid by SUBCONTRACTOR.

3. All parties hereby agree that SUBCONTRACTOR is responsible for maintaining CONTRACTOR's master set of project record drawings on a weekly basis In the event SUBCONTRACTOR fails to meet this requirement, progress or final payments may be withheld until such time that CONTRACTOR receives updated project record drawings from SUBCONTRACTOR.

4. All parties hereby agree that SUBCONTRACTOR has the sole responsibility for compliance with all of the requirements of the Occupational Safety and Health Act of 1970 and agrees to indemnify and hold harmless CONTRACTOR against any legal liability or loss including personal injuries which CONTRACTOR may incur due to SUBCONTRACTOR's failure to comply with the above referenced act. In the event any fines or legal costs are assessed against CONTRACTOR by any governmental agency due to noncompliance of safety codes or regulations by SUBCONTRACTOR, such costs will be deducted, by change order, from SUBCONTRACTOR's Subcontract amount.

5. All parties hereby agree that control of the Work Schedule, use of the site and coordination of all on-site personnel will be performed under the complete direction of CONTRACTOR's supervisory staff. CONTRACTOR may enforce upon SUBCONTRACTOR any of the following actions in order to expedite or coordinate the work. However, CONTRACTOR does not assume any liability for delays to SUBCONTRACTOR or third parties in connection with coordination of on-site personnel. These actions include, but are not limited to, the following:

A) Designated storage, designated unloading and parking areas.
B) Require unacceptable materials, equipment or vehicles to be removed from the project.
C) Limit the use of the site by SUBCONTRACTOR's equipment, vehicles, personnel or stored materials
D) Temporarily or permanently bar specific personnel from the site. Listed below is a partial list of reasons to deny a person access to the project.

1) Drug or alcohol use
2) Fighting, possession of weapons
3) Theft
4) Harassment of anyone on or off the project
5) Personal use of the areas near the project limits for parking, eating, sleeping, etc.
6) Failure to cooperate with CONTRACTOR's supervisory personnel or comply with project documents.

6 All parties hereby agree that CONTRACTOR may provide, in locations determined to be appropriate for the project, temporary electrical, temporary water and temporary toilet services. Further, SUBCONTRACTOR shall make use of the services as provided. However, the inability of SUBCONTRACTOR to make use of the services as provided or the temporary unavailability of services, shall not release SUBCONTRACTOR'S obligation to complete the work included in this Subcontract Agreement, on schedule, or by supplying at SUBCONTRACTOR'S own expense any additional utilities or services it may require to perform its scope of work in accordance with the project schedule.

7. All parties hereby agree that all-technical questions, submittals, clarifications, schedules and procedures will be submitted, in writing, by SUBCONTRACTOR to CONTRACTOR. Further, the cost of any work performed or reliance on information other than in compliance with instructions or information provided by CONTRACTOR, shall be borne by SUBCONTRACTOR and any such cost is included in this Subcontract Agreement.

8. All parties hereby agree that the cost of any testing, re-testing, layout, staking, engineering, inspection fees, reinspection fees, repair work or any other cost associated with any testing, inspections or examinations required by the specifications to determine the acceptability of SUBCONTRACTOR's scope of work will be borne by SUBCONTRACTOR and any such cost is included in this Subcontract Agreement.

9. All parties hereby agree that SUBCONTRACTOR is responsible for all related work, no matter in what sections of the plans and specifications it is detailed, to complete the scope of work as listed in Attachment "B" to this Subcontract Agreement

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Contractor Initials: _____ 15 Subcontractor Initials: _____

10 All parties hereby agree that **SUBCONTRACTOR** will provide all necessary equipment, manpower and rigging to safely and efficiently unload its materials in the areas assigned or approved by **CONTRACTOR's** supervisory personnel. Further, all material delivery times will be coordinated with suppliers and approved by **CONTRACTOR** so as not to impede or disrupt the work or schedule of **CONTRACTOR** or other subcontractors.

11. All parties hereby agree that this executed Subcontract Agreement hereby supersedes any prior proposals, both written or verbal, therefore, any prior written or verbal proposals hereby becomes null and void at the signing of this Subcontract Agreement

12. All parties hereby agree that **SUBCONTRACTOR** is to submit a detailed "Schedule of Values" for approval by **CONTRACTOR** prior to the signing of this Subcontract Agreement. In the event of disagreement between the parties then **CONTRACTOR'S** decision shall govern.

13. All parties hereby agree that **SUBCONTRACTOR** shall secure and pay for all permits required to install the Scope of Work included in this Subcontract Agreement.

14. All parties hereby agree that weekday overtime work and weekend work will be required to complete this project in accordance with **CONTRACTOR's** schedule. Further, this weekday overtime work and weekend work will be performed at the sole direction of **CONTRACTOR** and all costs thereof is included in this Subcontract Agreement.

15. All parties hereby agree that **SUBCONTRACTOR** shall be responsible that both he and each subcontractor under his control shall pay all State Sales Tax, Consumer Tax, Use and other similar taxes for the work, or portions thereof, provided by this **SUBCONTRACTOR**, whether or not yet effective.

16 All parties hereby agree that in all cases in which a manufacturer's name, trade name, or their proprietary designation is used in connection with materials or articles to be furnished under this Subcontract Agreement, whether or not the phrase "or equal" is used after such name, **SUBCONTRACTOR** shall furnish the product of the named manufacturers without substitution, unless a written request for the substitute has been submitted to **CONTRACTOR** by the **SUBCONTRACTOR** and approved, in writing, by **CONTRACTOR**.

17 All parties hereby agree that **SUBCONTRACTOR** shall employ a competent superintendent and necessary assistants all approved by **CONTRACTOR** who shall be in attendance at the project site full-time during the progress of the work included in this Subcontract Agreement.

18. All parties hereby agree that **SUBCONTRACTOR** assures that either he or an authorized representative of his company will attend all jobsite meetings as established by **CONTRACTOR's** supervisory staff unless their presence is not requested by **CONTRACTOR**. In the event a representative shall represent **SUBCONTRACTOR** at these meetings, said representative shall be able to make binding commitments on all matters to be discussed at such meetings, including cost, payments, change orders, time schedules and manpower requirements. This is to include but not limited to, all Project Manager Near Term Meeting and Superintendent Meetings. Further, a penalty of $500.00 per meeting will be imposed if **SUBCONTRACTOR** or **SUBCONTRACTOR's** representative is not present at these meetings. The following person(s) are designated as **SUBCONTRACTOR's** representatives having the authority as stated herein.

Subcontractor Designated Representative: Bobby Mark / Bobby McCarthy

(Optional Representative)

19. All parties hereby agree that by **SUBCONTRACTOR** approving and submitting shop drawings, product data, and samples, **SUBCONTRACTOR** hereby represents that he has reasonably determined and verified all dimensions, quantities, field dimensions, relations to the existing work, coordination with work to be installed later, coordination with information on previously accepted shop drawings, product data, or samples and verification of compliance with all of the requirements of the Contract Documents. Further, the accuracy of such information is the sole responsibility of **SUBCONTRACTOR**. In reviewing shop drawings, product data, and samples, **CONTRACTOR** shall be entitled to rely on **SUBCONTRACTOR'S** representation that such information is correct and accurate.

20. All parties hereby agree that no portion of the work requiring submission of a shop drawing, product data, or sample shall be commenced until **CONTRACTOR** has received from **SUBCONTRACTOR** all required shop drawings, product data, or required samples and all have been approved by the appropriate parties. Further, all such portions of the work shall be furnished and installed by **SUBCONTRACTOR** in accordance with approved shop drawings, product data, or samples

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Contractor Initials: _____ 16 Subcontractor Initials: _____

21. All parties hereby agree this is a Lump Sum Subcontract Agreement, written with the intent that there be no extras if installed in accordance with the Project Plans and Specifications. All prices are firm and includes applicable fees, taxes, licenses, freight, unloading, project distribution, hoisting and any other needed items to complete the scope of work as listed herein.

22. All parties hereby agree that SUBCONTRACTOR shall be held responsible and pay all associated cost for repairs to all damages to any buildings or the work of others resulting from his negligence or negligence of a material supplier or subcontractor of this SUBCONTRACTOR.

23. All parties hereby agree that SUBCONTRACTOR is responsible for all costs associated with all necessary flagmen, barricades, and safety equipment necessary to install the scope of work as listed in this Subcontract Agreement.

24. All parties hereby agree that the OWNER, or OWNER'S representative, could request SUBCONTRACTOR to do additional work without obtaining the approval of CONTRACTOR or CONTRACTOR's representative and that there is a possibility that OWNER would not pay this claim if SUBCONTRACTOR performs said work without CONTRACTOR's consent. In the event this happens and OWNER does not pay CONTRACTOR, SUBCONTRACTOR then waives all claims against CONTRACTOR for payment of these portions of work.

25. All parties hereby agree this Subcontract Agreement shall not be deemed as a commitment, or offer to engage the services of SUBCONTRACTOR until such time this Subcontract Agreement is duly executed by an authorized representative of CONTRACTOR.

26. All parties hereby agree that before work commences, SUBCONTRACTOR shall submit an original [redacted] CONTRACTOR'S home office. All parties further agree that no payments will be received by SUBCONTRACTOR for any work performed on the project until such time CONTRACTOR has received these [redacted] from SUBCONTRACTOR.

27. All parties hereby agree that for purposes of this agreement, "hazardous substances" shall mean any contaminants, wastes, substances or other materials which pose violation of any local, state or federal law or regulation or are deemed environmentally hazardous, toxic or harmful by any local, state or federal environmental protection or other agency, including, without limitation, asbestos, polychlorinated biphenyl's, petroleum products, flammable explosives, radioactive materials or infectious substances. SUBCONTRACTOR shall not bring any hazardous substance to the jobsite, and hereby agrees to fully defend, indemnify and hold CONTRACTOR and OWNER harmless from and against any and all liability, claims, losses, penalties, costs, expenses, damages and causes of action suffered or incurred by CONTRACTOR or OWNER resulting in any manner whatsoever, directly or indirectly, from the presence of any hazardous substance as a result of the actions of SUBCONTRACTOR. In the event that SUBCONTRACTOR encounters any material on the jobsite reasonably believed to be a hazardous substance, SUBCONTRACTOR will handle such hazardous substance in accordance with all laws and applicable ordinances.

28. All parties hereby agree that it shall be SUBCONTRACTOR'S responsibility to review all plans and specifications, to learn the general policies of the CONTRACTOR, and the schedule pace of work and general methods of procedure. All parties hereby agree that SUBCONTRACTOR is to plan its material and equipment deliveries and the volume of its manpower in order to coordinate all of its work with CONTRACTOR'S policies, methods and schedule.

29. All parties hereby agree that all applicable Federal, State and Local Codes take precedence over project plans and specifications and any additional cost to make the required changes to comply with said codes is hereby included in this Subcontract Agreement.

30. All parties hereby agree that SUBCONTRACTOR and all of its employees and subcontractors will only use ingress and egress routes as directed by CONTRACTOR'S jobsite superintendent.

31. All parties hereby agree that SUBCONTRACTOR acknowledges that other site and building improvements will be in progress during the course of its work, and SUBCONTRACTOR will take the necessary steps in the coordination of material handling and in the implementation of its work so as not to loose time on its schedule or interfere with the construction of other improvements.

32. All parties hereby agree that in the event temporary electrical service becomes inoperable SUBCONTRACTOR will then furnish its own means of project power to install the scope of work included in this Subcontract Agreement.

33 All parties hereby agree that CONTRACTOR will have final approval of SUBCONTRACTORS on site supervision and upon approval of this supervision SUBCONTRACTOR hereby agrees not to replace this approved jobsite supervision without CONTRACTORS consent.

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Contractor Initials: _____ 17 Subcontractor Initials: _____

34. All parties hereby agree that SUBCONTRACTOR fully agrees to comply with all terms and conditions contained within the Immigration Reform and Control Act of 1996 .

35. All parties hereby agree that SUBCONTRACTOR has visited the project site and is aware of all site conditions that affect its scope of work All parties further agree that no additional compensation will be made due to SUBCONTRACTOR'S failure to familiarize itself with all site conditions prior to the execution of this Subcontract Agreement.

36 All parties hereby agree that SUBCONTRACTOR shall submit a Material Safety Data Sheet (MSDS) notebook to CONTRACTOR'S job site Superintendent prior to commencing work on the project.

37. All parties hereby agree that SUBCONTRACTOR is to furnish and install all necessary heating devices, including fuel for same, necessary for the installation of this scope of work

38. All parties hereby agree that in the event SUBCONTRACTOR crosses any permanent improvements such as concrete curb or sidewalks, it shall be the responsibility of SUBCONTRACTOR to take the appropriate measures to protect these existing improvements. In the event any areas are damaged, it shall be the SUBCONTRACTOR's responsibility to remove and replace these damaged areas.

39. All parties hereby agree that SUBCONTRACTOR shall have the responsibility of notifying CONTRACTOR seven (7) days prior to any known material shortages on project.

40. All parties hereby agree that SUBCONTRACTOR shall furnish and install a jobsite radio for his jobsite foreman capable of communicating with the CONTRACTOR'S Jobsite Superintendent.

41 All parties hereby agree that the trees on the jobsite are of extreme importance to the value of the property. All parties further agree that SUBCONTRACTOR shall be fully liable for any damage caused to these trees by this SUBCONTRACTOR including, but not limited to, consequential damages resulting therefrom.

42 All parties hereby agree that each item required by all Federal, State, and Local governing authorities may not be specifically shown on the Plans and Specifications, however, all requirements imposed by these governing authorities are hereby included in this Subcontract Agreement Compliance with all governing laws, ordinances, rules, regulations, and lawful orders, inclusive of documentation and/or reporting of occurrences and/or conditions, enacted prior to execution of this Subcontract Agreement for the Work, or portions thereof, provided by this Subcontract, of any governing authority having jurisdiction over the performance of this Work, whether or not yet effective, is hereby included in this Subcontract.

43. All parties hereby agree that all required and necessary submittal data shall be submitted by SUBCONTRACTOR to CONTRACTOR within three (3) days of the signing of this Subcontract Agreement to allow sufficient time for approval.

44. All parties hereby agree that SUBCONTRACTOR had in its possession at time of bid all Contract Documents necessary to supply CONTRACTOR a complete turnkey bid for SUBCONTRACTOR's scope of work included herein.

45. All parties hereby agree that SUBCONTRACTOR shall keep at the jobsite on a full-time basis at least one superintendent or foreman who speaks the English Language.

46. All parties hereby agree that all installed items on the project remain the responsibility of SUBCONTRACTOR until accepted by OWNER or OWNER'S representative.

47. All parties hereby agree that any required hoisting, scaffolding, hulls, forklifts or any other machinery of any kind, including labor for same, to unload, store, move around on jobsite, and handle SUBCONTRACTOR's materials to install this scope of work in any nature is included in this Subcontract Agreement. Further, SUBCONTRACTOR agrees to use properly certified personnel to operate equipment while on project site

48. All parties hereby agree that SUBCONTRACTOR is not authorized to install a SUBCONTRACTOR job sign without written consent of CONTRACTOR.

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ATTACHMENT "B"
SCOPE OF WORK

STUCCO

Furnish all labor, material, permits, equipment, supervision, services, labor taxes, material taxes, insurance, licenses, and any other related cost necessary for a complete execution of all Stucco, all in its entirety and in strict accordance with the Contract Documents enumerated in Subcontractor Documents Acknowledgment to this Agreement, and in strict compliance with the requirements of all Federal, State and Local governing authorities. This Subcontract Agreement is also to be inclusive of, but not limited to, the following:

1. All parties hereby agree that SUBCONTRACTOR shall install all materials in strict accordance with manufacturer's recommendations. All parties further agree that manufacturer's representative shall visit the jobsite no less than monthly and certify to CONTRACTOR, in writing, that the work being performed at that time is in strict conformance with manufacturer's recommendations.

2. All parties hereby agree that SUBCONTRACTOR is to ensure that all edges, corners, inserts, and pop outs shall have clean, crisp edges.

3 All parties hereby agree that SUBCONTRACTOR shall repair any sub-standard stucco cracking as declared by a third party inspecting firm selected by CONTRACTOR.

4 All parties hereby agree that SUBCONTRACTOR is to furnish and install all appropriate flashing and tape around window and door openings of the project.

5 All parties hereby agree that SUBCONTRACTOR shall clean up and remove protective materials and covers immediately after stucco is dry to the touch and before tear down of scaffolds and report to CONTRACTOR's Jobsite Superintendent that an area of work has been inspected, punched out, cleaned up and is ready for CONTRACTOR's Jobsite Superintendent or designated representative to inspect and approve the tear down of scaffolding.

6. All parties hereby agree that SUBCONTRACTOR shall inspect all framing, windows, doors, flashings, and any dry-in associated with water tightness prior to the start of lathe work. All parties further agree that SUBCONTRACTOR will report to CONTRACTOR's Jobsite Superintendent any discrepancies or potential concerns that he may have related to water tightness not being sufficient.

7. All parties hereby agree that SUBCONTRACTOR shall furnish and install a 6" wide self-adhering membrane permer-barrier wall seam tape as manufactured by W. R. Grace & Company or approved equal at all windows which are to be stucco encased

8. All parties hereby agree that SUBCONTRACTOR shall perform an inspection of all wood sub-strates and window and door alignment to ensure that each are level and plumb prior to the starting of the lathing operation. All parties further agree that SUBCONTRACTOR shall notify CONTRACTOR, in writing, of any unacceptable conditions prior to the start of SUBCONTRACTOR's work.

9 All parties hereby agree that SUBCONTRACTOR shall furnish and apply an approved protective lubricant film on all aluminum windows, doorframes and thresholds prior to the installation of stucco. All parties further agree that SUBCONTRACTOR shall remove this lubricant and clean these areas immediately after the completion of the stucco process. Further, SUBCONTRACTOR shall be responsible for any scratches to finish surfaces of materials.

10. All parties hereby agree that SUBCONTRACTOR shall hand rake around each building immediately after the completion of the stucco process to ensure the clean up of all stucco debris

11. All parties hereby agree that SUBCONTRACTOR will submit to CONTRACTOR's Jobsite Superintendent, in writing, a list of any broken windows or damaged window frames prior to the starting of the stucco process on any building. All parties further agree that SUBCONTRACTOR is responsible for any broken windows or damaged frames on any building caused by its operations.

12. All parties hereby agree that SUBCONTRACTOR is to furnish and install tape over any exterior electrical receptacles prior to the stucco process in order for stucco not to get inside receptacle.

13. All parties hereby agree that SUBCONTRACTOR shall furnish and install protective coverings over all windows, doors, concrete breezeways, concrete walks, and any other concrete areas prior to the start of the installation of the scope of work

Contractor Initials: _____ 19 Subcontractor Initials: _____

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covered in this Subcontract.

14. All parties hereby agree that SUBCONTRACTOR shall furnish and install a 2" layer of sand over all concrete surfaces that are to receive stucco overhead.

15. All parties hereby agree that SUBCONTRACTOR is to furnish and install all required stucco lath in accordance with Plans and Specifications and all Federal, State, and Local codes.

16 All lath shall be attached to the buildings per codes which includes but not limited to nailing materials into studs.

17 All parties hereby agree that SUBCONTRACTOR is to furnish and install all necessary corner beads, stops, expansion joints, and other miscellaneous trim and accessories necessary to install this scope of work in accordance with applicable codes and manufacturer's recommendations.

18. All parties hereby agree that SUBCONTRACTOR shall install the stucco system where it shall be sealed at the bottom of wall to the foundations this is to include a metal trim piece that wraps the perimeter and leaves no exposed wood edge. Therefore, no gap shall be present to allow rodents and insects to enter.

19. All parties hereby agree that SUBCONTRACTOR shall stucco project chimneys prior to the buildings themselves. All parties further agree that extra mobilizations are required for this work and are included in this Subcontract Agreement.

20. All parties hereby agree that in the event SUBCONTRACTOR does not install stucco on project chimney prior to installing the stucco systems on the building themselves, then SUBCONTRACTOR is responsible for the cleaning of roofs, as well as removal and reinstallation of any shingles that are damaged or ruined from this stucco operation.

21. All parties hereby agree that SUBCONTRACTOR shall furnish and install all required "J"channel and "J" mold for the project

22. All parties hereby agree that SUBCONTRACTOR shall furnish and install "J" mold at all edges of stucco not finished into a wall or jamb including the bottom edge of the vertical walls at the ground level where stucco ends at the edge of the horizontal concrete slab or foundation wall.

23 All parties hereby agree that SUBCONTRACTOR is to furnish and install, per manufacturer's recommendations, all stucco bands in thickness specified on Plans.

24. All parties hereby agree that SUBCONTRACTOR is to furnish and install all required "J" bead at build-outs for project

25. All parties hereby agree that SUBCONTRACTOR is to furnish and install all casing beads where stucco terminates at any dissimilar materials.

26. All parties hereby agree that SUBCONTRACTOR is to stop stucco on concrete at breezeways and balconies on second floors and tool this area as needed to accomplish an acceptable finish.

27. All parties hereby agree that SUBCONTRACTOR shall sequence the installation of stucco to complete gable end walls at areas above roof areas prior to roof shingle installation, the installation of electric house panels, and the installation of stair towers.

28. All parties hereby agree that SUBCONTRACTOR shall furnish and install control joints at minimum intervals of 20 ft. horizontally and 10 ft. vertically, or as shown on Plans.

29 All parties hereby agree that SUBCONTRACTOR is to furnish and install any required additional control joints above what is shown on Plans

30. All parties hereby agree that SUBCONTRACTOR shall install the cover up substrate on any building that is ready for cover up within two weeks of said building's readiness.

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31 All parties hereby agree that SUBCONTRACTOR shall "Fog" all areas of applied product for a period of forty-eight (48) hours after installation.

32. All parties hereby agree that SUBCONTRACTOR shall submit to CONTRACTOR a "Certification Certificate" from the manufacture of the product being installed on this project stating that SUBCONTRACTOR is an approved applicator of their

Contractor Initials: _____ 20 Subcontractor Initials: _____.

National Evaluation Service, Inc.

Participating Members:

BOCA Evaluation Services, Inc. | ICBO Evaluation Service, Inc. | SBCCI Public Safety Testing and Evaluation Services, Inc.

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NATIONAL EVALUATION REPORT

NER-459

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MAGNA WALL FIBER-REINFORCED STUCCO SYSTEM

MAGNA WALL, INC.
POST OFFICE BOX 847
BOERNE, TEXAS 78006

1.0 SUBJECT

Magna Wall Fiber-reinforced Stucco System.

2.0 PROPERTIES FOR WHICH EVALUATION IS SOUGHT

2.1 Weather resistance.

2.2 Exterior wall covering.

2.3 Fire resistance.

2.4 Structural performance.

3.0 DESCRIPTION AND USE

3.1 GENERAL

The Magna Wall finish system is an exterior cementitious stucco wall coating consisting of a proprietary mixture of portland cement, water, sand, chopped fibers, and proprietary admixtures reinforced with wire fabric or metal lath. It is applied over foam plastic, fiberboard, plywood, oriented strand board or gypsum sheathing substrates and attached to wood- or steel-framed exterior wall construction. Magna Wall is applied over concrete masonry units with or without lath.

3.2 MATERIALS

3.2.1 Stucco Mix: The stucco mix consists of a dry cementitious mix combined with water and sand. The dry stucco mix is a factory-prepared mixture of Type I, II or III portland cement complying with ASTM C 150-95, chopped fibers and proprietary admixtures. The dry cementitious mixture is packaged in 80-pound (36.29 kg) bags. Five to seven gallons (18.9 to 26.5 L) of water and 180 to 220 pounds (81.65 to 99.8 kg) or a maximum of $2^1/_2$ cubic feet (0.070 m^3) of sand are mixed with each bag. When needed, color and other additives are added in accordance with the manufacturer's mixing instructions printed on the bag. The finished product is either premixed or field-mixed with sand.

3.2.2 Sand: The sand shall be clean and free from deleterious amounts of loam, clay, silt, soluble salts, and organic matter. Sampling and testing shall comply with ASTM C 144-93. Sand shall be graded within the following limits:

RETAINED ON U.S. STANDARD SIEVE	PERCENT RETAINED BY WEIGHT ± 2 PERCENT	
	Min.	Max.
No. 4	—	0
No. 8	0	10
No. 16	10	40
No. 30	30	65
No. 50	70	90
No. 100	95	100

3.2.3 Insulation Board: Foam plastic insulation shall have a maximum flame-spread rating of 25 and a smoke-developed rating not exceeding 450 when tested in accordance with ASTM E 84-95b in the thickness intended for use.

The insulation boards shall have a minimum nominal density of 1.5 pounds per cubic foot (24.03 kg/m^3). When used over open stud framing, the boards shall be a minimum of 1 inch (25.4 mm) thick and have $^3/_8$-inch (9.53 mm) projecting tongues with compatible grooves for horizontal joints. See Figure 1 for joint detail. Over hard substrates, a lesser thickness and density is permitted.

The insulation board shall be labeled in accordance with Condition of Use 7.8 of this report.

3.2.4 Lath

3.2.4.1 Wire-fabric Lath: Minimum No. 20 gage, 1-inch (25.4 mm) galvanized steel, woven-wire fabric is required. Other laths shall comply with ASTM C 933-80 (welded) and ASTM C 1032-86 (woven). The lath is self-furred or furred when applied over all substrates except unbacked polystyrene. Self-furring lath shall be used in accordance with the following requirements:

1. The maximum overall wall coating thickness, using the minimum wire noted in Section 3.2.4 of this report, shall be $^1/_2$ inch (12.7 mm).
2. Furring crimps shall occur at maximum 6-inch (152.4 mm) intervals each way. Furring crimps shall provide a minimum $^1/_8$-inch (3.18 mm) clearance from the substrate after installation.

3.2.4.2 Metal Lath: The lath shall comply with ASTM C 847-93. Furring and self-furring requirements shall be as set forth for wire-fabric lath. Minimum weight is 1.75 pounds per square yard (0.665 kg/m^2).

3.2.5 Gypsum Sheathing Board: Water-resistant core gypsum sheathing shall comply with ASTM C 79-95.

This report is limited to the specific product and data and test reports submitted by the applicant in its application requesting this report. No independent tests were performed by the National Evaluation Service (NES), and NES specifically does not make any warranty, either expressed or implied, as to any finding or other matter in this report or as to any product covered by this report. This disclaimer includes, but is not limited to, merchantability. This report is also subject to the limitation listed herein.

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PLAINTIFF'S EXHIBIT 1

3.2.6 **Fiberboard:** Minimum $^1/_2$-inch-thick (12.7 mm) asphalt-impregnated fiberboard shall comply with ANSI/AHA A194.1-1985 as a regular-density sheathing.

3.2.7 **Plywood:** Complying plywood substrates shall be minimum $^5/_{16}$-inch-thick (11.1 mm) plywood with exterior glue for studs spaced a maximum of 16 inches (406.4 mm) on center, and minimum $^3/_8$-inch-thick (9.53 mm) plywood with exterior glue for studs spaced a maximum of 24 inches (609.6 mm) on center. Plywood shall comply with US DOC PS 1-95.

3.2.8 **Oriented Strand Board:** Oriented strand board shall comply with American Plywood Association specifications for Exposure 1, performance-rated panels and US DOC PS-2-95, and shall have a minimum thickness of $^7/_{16}$ inch (11.1 mm).

3.2.9 **Caulk:** Acrylic latex sealant material shall comply with ASTM C 834.

3.2.9.1 **Weather-resistive Membrane:** The weather-resistive membrane shall be either minimum Grade D building paper complying with Federal Specification UUB 790a (February 5, 1968) or asphalt-saturated rag felt complying with UL Standard 55-A. A weather-resistive membrane is required over all substrates except for foam plastic board, where the weather-resistive membrane is permitted to be over or under the board as noted in Section 4.1. The weather-resistive membrane application shall comply with the applicable model code. In areas using the Uniform Building Code, when applied over wood-based sheathing, the weather-resistive membrane shall consist of at least two layers of Grade D building paper, or one layer of EPS as described in Section 3.2.3 of this report, over one layer of Grade D building paper having a minimum water resistance of 60 minutes.

3.2.9.2 **Miscellaneous:** All trim, screed, and corner reinforcement shall be corrosion-resistant metal or approved plastic.

4.0 INSTALLATION

The exterior cementitious coating shall be applied by hand-troweling or machine-spraying in one or two coats at minimum $^3/_8$-inch (9.53 mm) thickness. The lath shall be embedded in the coating and shall be completely covered. The second coat, if provided, shall be applied within seven days after the first coat. If the second coat is not installed within seven days, a bonding adhesive, complying with Military Specification MIL-B-19235, shall be brushed or sprayed on the Magna Wall base coat or shall be added to the finish coat mix prior to application. Corrosion-resistant fasteners for lath attachment shall penetrate a minimum of 1 inch (25.4 mm) into wood framing. Flashing, corner reinforcement, metal trim and weep screeds shall be installed as shown in Figure 2 of this report. The coating shall be applied at ambient air temperatures between 35°F and 120°F (1.6°C and 48.9°C) by applicators approved by Magna Wall, Inc. After application, the coating shall be protected from freezing air temperatures during the initial six hours of curing. A weather-resistive membrane is installed as set forth in Section 3.2.10 of this report. Where the coating is job-mixed, an installation card, as noted in Figure 3 of this report, shall be provided on the jobsite with the name of the applicator and the product to be used, before any weather-resistive membrane or exterior sheathing is installed. Also, see Section 7.6 of this report.

4.1 APPLICATION OVER OPEN FRAMING

The weather-resistive membrane described in Section 3.2.10 of this report is placed over open wood or steel framing spaced a maximum of 24 inches (609.6 mm) on center. Wall bracing, in accordance with the applicable code, shall be installed. Square wall corners and parapet corners shall be covered with metal corner reinforcement. For round wall and parapet corners, metal corner reinforcement is optional. See Figure 2 of this report. The foam plastic board described in Section 3.2.3 of this report shall be placed horizontally with the tongue facing upward [2-foot-by-8-foot (609.6 mm by 2438.4 mm) tongue-and-groove board] and temporarily held in place with galvanized staples or roofing nails. Self-tapping screws shall be used to temporarily fasten the board to metal framing. Vertical butt joints shall be staggered a minimum of one framing space from the adjacent courses and occur directly over framing.

The lath shall be applied tightly over the insulation board and shall be fastened through the board to wood framing with minimum 2-inch-long (50.8 mm), No. 11 gage [0.148-inch (3.75 mm) shaft diameter, 0.438-inch (11.1 mm) head diameter], galvanized roofing nails or No. 16 gage [0.0625-inch (1.59 mm) shaft diameter] galvanized staples spaced a maximum of 6 inches (152.4 mm) on center with a minimum 1-inch (25.4 mm) penetration into the wood framing. Staples shall have a minimum $^1/_2$-inch (12.7 mm) crown width. Stapling shall be utilized only in wood species having a minimum specific gravity of 0.42. The lath shall be fastened to all steel framing members [minimum No. 20 gage, 0.0359 inch (0.912 mm) thick] using No. 8-18, S-12, panhead, self-tapping screws spaced a maximum of 6 inches (152.4 mm) on center to all framing. The screws shall penetrate framing at least $^1/_4$ inch (6.35 mm). The wire lath shall be applied with minimum 1-inch (25.4 mm) end laps and sidelaps. The metal lath shall be applied with minimum $^1/_2$-inch (12.7 mm) sidelaps and 1-inch (25.4 mm) end laps.

Weep screeds are installed at the bottom of the wall a minimum of 1 inch below the plate line, and shall comply with the applicable code requirements. The screed shall be located a minimum of 4 inches (101.6 mm) above grade and shall allow trapped water to drain to the building exterior. The lath and weather-resistive membrane cover terminate over the vertical attachment flange. Galvanized metal, $1^3/_8$-inch (34.9 mm), J-shaped trim pieces shall be installed at areas where the foam is exposed. At windows and doors, butting J-trim metal edges (when installed) shall be caulked. Holes for hose bibbs, electrical panels and other penetrations of substrate surfaces, except for fasteners, shall also be caulked.

4.2 APPLICATION OVER SOLID BACKING

4.2.1 **Fiberboard:** Minimum $^1/_2$-inch-thick (12.7 mm) fiberboard sheathing shall be installed directly over wood or steel framing spaced a maximum of 24 inches (609.6 mm) on center. All walls shall be braced in accordance with the applicable code. The fiberboard shall be temporarily held in place with corrosion-resistant staples, roofing nails, or self-tapping screws. A weather-resistive membrane, as described in Section 3.2.10, shall be applied over the fiberboard. The lath shall be attached to the studs through the sheathing with fasteners and spacings as described for insulation boards in Section 4.1 of this report. Exposed sheathing edges shall be protected with screeds. Holes in the substrate surface shall be caulked and the coating applied as described in Section 4.0 of this report. To apply the Magna Wall system over steel framing [minimum No. 20 gage, 0.0359 inch (0.912 mm) thick], lath is secured to framing using No. 8-18, S-12, panhead, self-tapping screws spaced a maximum of 6 inches (152.4 mm) on center.

4.2.2 **Gypsum Sheathing:** Minimum $^1/_2$-inch-thick (12.7 mm), water-resistant core, gypsum sheathing shall be installed directly on wood or steel framing with studs spaced a maximum of 24 inches (609.6 mm) on center. The gypsum sheathing shall be fastened to wood framing with minimum $1^1/_2$-inch-long (38.1 mm), No. 11 gage [0.148-inch (3.75 mm) shaft diameter, 0.438-inch (11.1 mm) head diameter] galvanized roofing nails or No. 16 gage [0.0625-inch (1.59 mm) shaft diameter] galvanized staples spaced a maximum of 6 inches (152.4 mm) on center at the edges and at intermediate supports. For steel framing, the sheathing shall be attached to No. 20 gage [0.0359-inch-thick (0.91 mm)] steel studs with No. 8-18, S-12, panhead, 1-inch-long (25.4 mm), self-tapping screws spaced a maximum of 10 inches (254.0 mm) on center to all framing members. A weather-resistive membrane shall be applied over the gypsum sheathing. The metal lath and coating shall be as described in Sections 4.0 and 4.1 of this report. Foam plastic insulation installed prior to lath installation shall be a minimum $^1/_2$ inch (12.7 mm) thick.

4.2.3 **Plywood:** Plywood as described in Section 3.2.7 of this report shall be applied directly to wood or steel framing. The plywood shall be fastened to wood framing with minimum 6d common nails or minimum No. 16 gage [0.0625-inch (1.59 mm) shaft diameter] staples with $^7/_{16}$-inch (11.1 mm) outside-diameter crowns, spaced a maximum of 6 inches (152.4 mm) on center at the edges and a maximum of 12 inches (304.8 mm) on center at intermediate supports. The plywood is applied to steel framing [minimum No. 20 gage, 0.0359 inch (0.912 mm) thick] in accordance with the applicable code. The weather-resistive membrane shall be as described in Section 3.2.10 of this report, and fabric lath and coating shall be applied as described for fiberboard. From plastic

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board installed over the building paper prior to the lath and coating shall be a minimum of 1/2 inch (12.7 mm) thick.

4.2.4 **Oriented Strand Board (OSB):** The oriented strand board as described in Section 3.2.8 of this report is installed on wood or steel framing. The OSB shall be fastened to wood framing as described in Section 4.2 of this report for plywood. The OSB shall be fastened to steel framing (minimum No. 20 gage, 0.0359 inch (0.912 mm) thick) in accordance with the applicable code. The weather-resistive membrane, lath and coating shall be installed as described in Sections 4.0 and 4.1 of this report.

4.3 FIRE-RESISTIVE ASSEMBLIES

4.3.1 One-hour Load-bearing Fire-resistive Assembly

4.3.1.1 **Interior Face:** One layer of 5/8-inch-thick (15.88 mm) Type X gypsum wallboard complying with ASTM C 36-95b, water-resistant gypsum backing board complying with ASTM C 630-95, or gypsum veneer base complying with ASTM C 588-95, shall be applied horizontally to the interior face of wood studs with nominal dimensions of 2 inches by 4 inches (50.8 mm by 101.6 mm), spaced a maximum of 24 inches (609.6 mm) on center. The wallboard shall be attached with 6d coated nails complying with ASTM C 514-94, 1 7/8 inches (47.6 mm) long and with 1/4-inch-diameter (6.4 mm) heads, at a maximum of 7 inches (177.8 mm) on center to studs, plates and blocking. All wallboard joints shall be backed with minimum nominal 2-inch-by-4-inch (50.8 mm by 101.6 mm) wood framing, and taped and treated with joint compound. Fastener heads shall also be treated with joint compound.

4.3.1.2 **Exterior Face:** One layer of minimum 5/8-inch-thick (15.88 mm), Type X, water-resistant core gypsum sheathing as described in Section 3.2.5 of this report, 48 inches (1219.2 mm) wide, shall be applied parallel to studs and shall be fastened with No. 11 gage [0.148-inch (3.75 mm) shaft diameter, 0.438-inch (11.1 mm) head diameter], galvanized roofing nails, 1 3/4 inches (44.5 mm) long with 7/16-inch- or 1/2-inch-diameter (11.1 mm or 12.7 mm) heads at a maximum of 4 inches (101.6 mm) on center at board edges and a maximum of 7 inches (177.8) on center at intermediate studs and top and bottom plates. The nails shall penetrate a minimum of 1 inch (25.4 mm) into studs. A weather-resistive membrane shall be applied over the sheathing. The lath and wall coating are then applied as described in Sections 4.0 and 4.1 of this report.

4.3.2 One-hour Load-bearing Fire-resistive Assembly

This assembly is permitted to be used on nonload-bearing walls.

4.3.2.1 **Interior Face:** One layer of 5/8-inch-thick (15.88 mm) Type X gypsum wallboard, complying with ASTM C 36-95b, shall be attached to nominal 2-inch-by-4-inch (50.8 mm by 101.6 mm) wood studs with 1 3/8-inch-long (41.3 mm), galvanized steel, cup-head gypsum wallboard nails [0.30-inch (7.62 mm) head diameter, 0.010-inch (0.254 mm) shank diameter] spaced a maximum of 8 inches (203.2 mm) on center on all studs and plates. Stud spacing shall be a maximum of 16 inches (406.4 mm) on center or less and blocked at 5-foot (1524.0 mm) intervals. The joints and nail heads shall be covered with paper tape and gypsum compound as described in Section 4.3.1 of this report for interior face. The stud cavities shall be filled with R-11 rockwool batt insulation having a minimum density of 1.45 pcf (23.23 kg/m³), or R-11 fiberglass insulation having a minimum density of 0.5 pcf (8.01 kg/m³).

4.3.2.2 **Exterior Face:** Any of the following substrates are permitted to be used independently or in combination with each other:

- One layer of 1/2-inch-thick (12.7 mm) water-resistant core gypsum sheathing.
- One layer of 1-inch-thick (25.4 mm) foam plastic insulation.
- One layer of 7/16-inch-thick (11.1 mm) oriented strand board (OSB).
- One layer of 7/16-inch-thick (11.1 mm) plywood.

The material properties are described in Section 3.2 of this report, and the substrates shall be installed on wood framing as described in Section 4.2 of this report. The weather-resistive membrane, lath and Magna Wall coating shall be applied to the substrate as described in Sections 4.0 and 4.1 of this report.

4.3.2.3 **Design:** The wood stud axial stress is limited to 0.78 F'_c and shall not exceed 0.78 F'_c at an le/d ratio of 33. The maximum load on the system described in Section 4.3.2 of this report is 1,100 pounds (499.0 kg) per stud. For purposes of design:

F'_c = Allowable unit stress in compression parallel to the grain adjusted for le/d ratio.

le = Effective length of compression member, inches.

d = Least dimension, inches.

These design details only apply to the assembly described in Section 4.3.2.

4.4 NONCOMBUSTIBLE CONSTRUCTION

The Magna Wall Fiber-reinforced Stucco System is used on walls required to be of noncombustible construction, such as masonry or noncombustible metal frame. When the Magna Wall Fiber-reinforced Stucco System is used on walls required to be of noncombustible frame construction, the walls shall be constructed as follows:

4.4.1 **Interior Finish:** One layer of 5/8-inch-thick (15.9 mm) Type X gypsum wallboard, complying with ASTM C 36-95b, is vertically applied to steel framing with blocked edges. The wallboard shall be fastened to framing with minimum 1-inch-long (25.4 mm), No. 8-18, S-12, self-tapping screws spaced a maximum of 6 inches (152.4 mm) on center. All board joints shall be taped and treated with joint compound. Fastener heads shall be covered with joint compound.

4.4.2 **Steel Framing:** Minimum 3 5/8-inch-deep (92.1 mm), No. 20 gage [0.0359 inch (0.91 mm) thick] steel framing. Studs shall be spaced a maximum of 16 inches (406.4 mm) on center.

4.4.3 **Openings:** Wall openings shall be framed with minimum No. 20 gage [0.0359 inch (0.91 mm)] metal.

4.4.4 **Exterior Finish:** One layer of minimum 1/2-inch-thick (12.7 mm) gypsum sheathing attached to the framing as described in Section 4.2 of this report. Combustible sheathing, such as fiberboard, plywood, oriented strand board and foam plastic, shall not be used.

4.4.5 **Stud Cavity:** R-11 fiberglass or rockwool batt, 3 5/8 inches (92.1 mm) thick, shall be sized to friction-fit between studs.

4.4.6 **Stucco:** One layer of Pyro-Kure 600 vapor retarder, manufactured by Fortifiber, shall be applied over the gypsum sheathing with minimum 2-inch (50.8 mm) horizontal weather laps and maximum 6-inch (152.4 mm) vertical laps. The lath and Magna Wall shall be applied as noted in Sections 4.0 and 4.1 of this report.

4.5 USE ON SHEAR WALLS

The following assembly construction details shall be followed in order to obtain the shear value noted in Section 4.5.3. Other assemblies require that substantiating data be submitted to the building official for approval.

4.5.1 **Interior Face:** Minimum 1/2-inch-thick (12.7 mm) gypsum wallboard, complying with ASTM C 36-95b, is fastened to nominal 2-inch-by-4-inch (50.8 mm by 101.6 mm) wood studs at 16 inches (406.4 mm) on center. Fasteners shall be 1 5/8-inch-long (41.3 mm) barbed gypsum wallboard nails fastened to framing at a maximum of 6 inches (152.4 mm) on center. Gypsum wallboard shall be placed horizontally or vertically, with edges blocked.

4.5.2 **Exterior Face:** The weather-resistive membrane, 1-inch-thick (25.4 mm) foam plastic, lath and coating shall be applied in accordance with Section 4.1 of this report.

4.5.3 **Shear Value:** The allowable shear value is 190 pounds per foot (2772.8 N/m) based on a 1:1 height-to-width ratio. In areas utilizing the Uniform Building Code, for structures in Seismic Zones 3 and 4, the allowable shear is limited to 95 pounds per foot (1313.5 N/m).

4.6 MISCELLANEOUS

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4.6.1 **Inspection Requirements:** Lath inspection shall be conducted when required by the applicable code.

4.6.2 **Control Joints:** Control joints are installed as specified by the architect, designer or builder, in that order. In the absence of details, control joints conforming with conventional three-coat plaster details shall be used, or joints shall be as required by the applicable code.

4.6.3 **Curing:** Moisture curing by fogging the finished wall lightly with water is required for a minimum of 48 hours after coating application. The fogging shall occur as often and as long as necessary to assure cement hydration.

4.6.4 **Soffits:** To apply Magna Wall over soffits, the coating is reinforced with metal lath complying with Section 703.6 of the 1995 One and Two Family Dwelling Code or the applicable model building code. Metal lath fastening shall comply with Section 703.6 of the Dwelling Code, or the applicable model building code, except the fastener length shall be increased by the thickness of the substrates.

4.6.5 **Sills:** For sill depths of 6 inches (152.4 mm) or less, the coating and lath are applied over any substrate, provided the coating, lath, weather-resistive membrane, and substrate are installed in accordance with this report. Sills with depths exceeding 6 inches (152.4 mm) shall have solid wood or plywood substrates. The substrate shall be fastened in accordance with Table 602.3a of the 1995 One and Two Family Dwelling Code or the applicable model building code, over which a double layer of a weather-resistive membrane is applied. The weather-resistive membrane, coating, lath and optional EPS board shall be applied in accordance with Sections 4.0 and 4.1 of this report.

5.0 IDENTIFICATION

5.1 The factory-prepared mix is delivered to the jobsite in water-resistive bags with labels bearing the following information:

5.1.1 Name and address of manufacturer and the National Evaluation Service report number.

5.1.2 Identification of components.

5.1.3 Weight of packaged mix.

5.1.4 Storage instructions.

5.1.5 Maximum amount of water and other components permitted, and conditions that must be considered in determining the actual amounts added.

5.1.6 Curing instructions.

5.1.7 Concentrate or premix.

5.2 Foam plastic insulation shall be identified in accordance with Condition of Use 7.8 of this report.

6.0 EVIDENCE SUBMITTED

6.1 Report of racking load tests in accordance with ASTM E 72, by Testing Consultants, Inc., No. 090-06-053, dated June 27, 1989.

6.2 Report of freezing and thawing tests, by Testing Consultants, Inc., No. 09-06-041, dated June 1, 1989.

6.3 Report of accelerated-weathering tests in accordance with ASTM G 53, by Testing Consultants, Inc., No. 09-07-059, dated July 15, 1989.

6.4 Report of transverse load tests in accordance with ASTM E 72, by Testing Consultants, Inc., No. 09-05-140, dated May 30, 1989.

6.5 Report of full-scale fire-resistance tests in accordance with ASTM E 119, by Omega Point Laboratories, Inc., No. 9071-90722, dated October 15, 1990.

6.6 Report of compressive-strength tests in accordance with ASTM C 109, by Western Technologies, Inc., dated April 26, 1990.

6.7 Installation details and instructions, prepared by Magna Wall.

6.8 Report of carbon-arc weatherometer tests in accordance with ASTM G 23, by Ramtech Laboratories, Inc., No. 9275-91, issued November 11, 1991.

6.9 Report of noncombustibility tests in accordance with ASTM E 136, by Omega Point Laboratories, Inc., No. 9071-93222, dated March 17, 1992.

6.10 Report of fire tests, by Ramtech Laboratories, Inc., No. 9583A-92, dated December 14, 1992, and amended December 21, 1992.

6.11 Report of fire test, by Ramtech Laboratories, Inc., No. 9838-93, dated July 23, 1993.

6.12 Report of fire tests, by Ramtech Laboratories, Inc., No. 9979-93, dated December 10, 1993.

6.13 Reports of full-scale fire-resistance tests in accordance with ASTM E 119, by Omega Point Laboratories, Project No. 9071-99413 and Project No. 9071-99559, dated February 16, 1996, and May 6, 1996, respectively.

6.14 Report of water penetration tests of wall panels conducted in accordance with ASTM E 331, by Southwest Research Institute, SwRI Project 06-7536-229, dated February 1996.

6.15 Letter from Omega Point Laboratories, signed by Deggary Priest, dated November 18, 1996, indicating that extruded or expanded polystyrene, polyurethane or polyisocyanurate insulation can be used with the fire-resistive assemblies noted in Section 4.3.2 of this report.

6.16 Letter from Testing Consultants, Inc., signed by J. Patrick Callahan, dated September 11, 1996, regarding the specific gravity of the lumber and the type of fasteners used in the load tests.

7.0 CONDITIONS OF USE

That the Magna Wall Fiber-reinforced Stucco System described in this report complies with or is an acceptable alternate to systems specified in the BOCA National Building Code/1996, the 1997 Standard Building Code, the 1994 Uniform Building Code with 1996 Accumulative Supplement, and the 1995 CABO One and Two Family Dwelling Code, subject to the following conditions:

7.1 The material and methods of installation shall comply with this report.

7.2 Installation shall be by contractors approved by Magna Wall, Inc.

7.3 The system shall be limited to combustible construction except as noted under Section 4.4 of this report.

7.4 The system is recognized as a one-hour fire-resistive assembly when complying with Section 4.3 of this report. The fire-resistive assemblies, as described in Section 4.3 of this report, have been determined in accordance with ASTM E 119 for fire exposure on the surface to which Magna Wall is applied.

7.5 The building interior shall be separated from the foam plastic boards with a thermal barrier such as $^1/_2$-inch (12.7 mm) gypsum wallboard applied in accordance with the applicable model code.

7.6 An installation card, as shown in Figure 3 of this report, shall be left at the jobsite for the owner and a copy filed with the building department.

7.7 The allowable wind load on the system with wood or steel studs spaced a maximum of 24 inches (609.6 mm) on center is 35 psf (1675.8 Pa) negative and 50 psf (2394.0 Pa) positive. Support framing shall be adequate to resist the required wind loads.

7.8 Foam plastics shall be labeled on units or packaging with the manufacturer's name and address, product name, flame-spread and smoke-developed ratings, density, and the name of the listing agency.

7.9 In areas using the Standard Building Code, foam plastic shall not be placed on exterior walls of wood construction within 6 inches of the ground in areas where hazard of termite damage is very heavy in accordance with Figure 2304.1.4 of the Standard B

MWI 00116

7.10 This report is subject to periodic re-examination. For information on the current status, consult the evaluation report listing or contact one of the participating members of the NES.

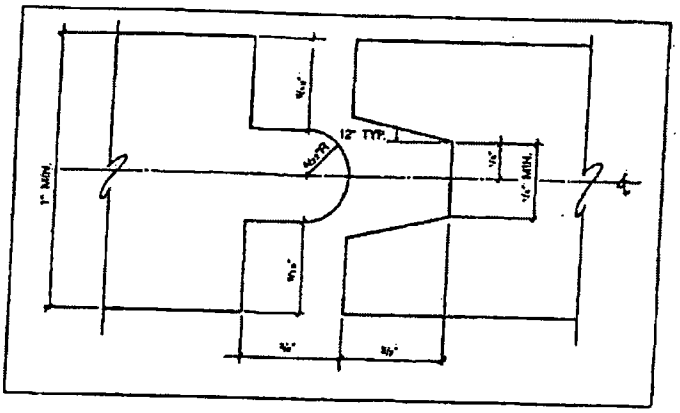
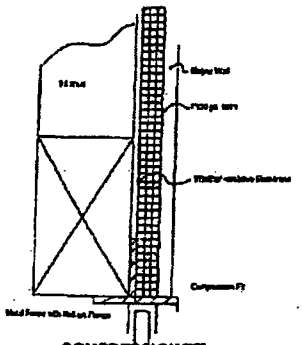


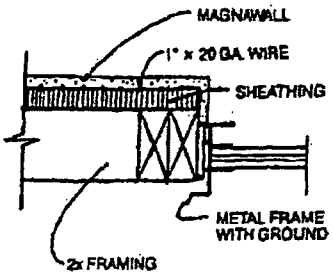
FIGURE 1—TONGUE AND GROOVE*

MVVI 00117

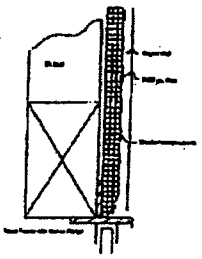
*These drawings are for illustration purposes only. They are not intended for use as construction documents for the purpose of fabrication or erection.



COMPRESSION FIT METAL FRAME

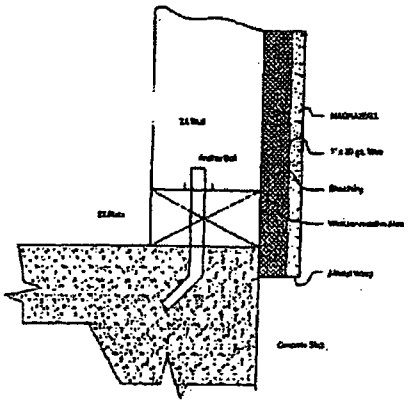


JAMB

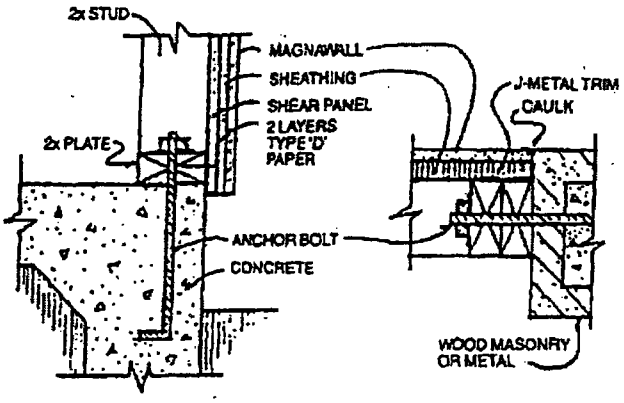


HEAD

SLIDING GLASS DOOR

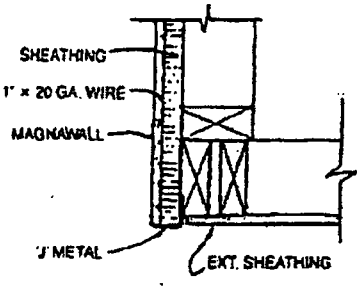


SILL FLASHING

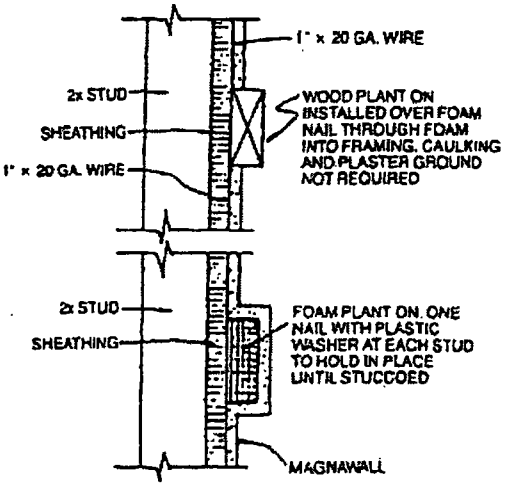


TYPICAL SHEAR WALL

JAMB SHOWN PLASTER GROUND



WOOD SOFFIT DETAIL



PLANT ON DETAILS

NOTE:
SEE NES REPORT FOR
WEATHER MEMBRANE REQUIREMENTS

FIGURE 2—DETAILS FOR MAGNA WALL FIBER-REINFORCED STUCCO*

MWI 00118

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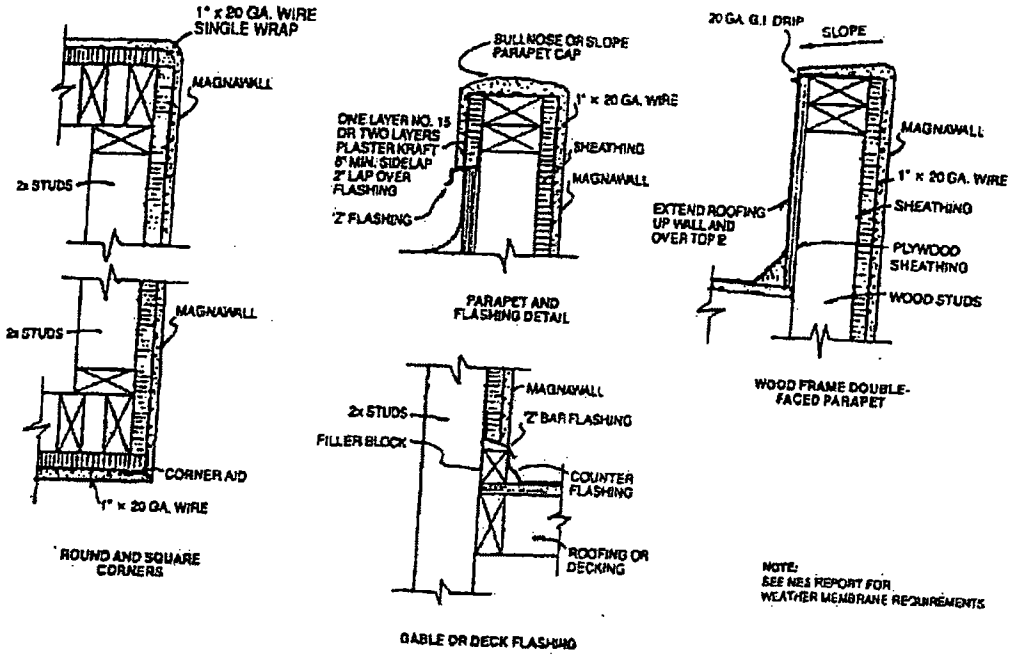

FIGURE 2—DETAILS FOR MAGNA WALL FIBER-REINFORCED STUCCO—(Continued)*

INSTALLATION CARD

Magna Wall Fiber-reinforced Stucco System
Magna Wall, Inc.

Job Address

_____

_____

_____

National Evaluation Service
Report No. _____

Date of Job Completion _____

Plastering Contractor

Name: _____

Address: _____

Telephone No. ( ) _____

Approved contractor number as
issued by the coating manufacturer _____

This is to certify that the exterior coating system on the building exterior at the above address has been installed in accordance with the evaluation report specified above and the manufacturer's instructions.

_____ _____
Signature of authorized representative of plastering contractor Date

This installation card must be presented to the building inspector after completion of work and before final inspection.

FIGURE 3

MWI 00119

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NATIONAL EVALUATION REPORT
Report No. NER-459

Re-Issued July 1, 2002

DIVISION 09 – FINISHES

Section 09220 – Portland Cement Plaster

MANUFACTURER:

MAGNA WALL, INC.
5033 CALLAGHAN ROAD
SAN ANTONIO, TEXAS 78228
1-800-626-4391
www.magnawall.com

EVALUATION SUBJECT:

MAGNA WALL FIBER-REINFORCED STUCCO SYSTEM

LISTEE:

SENERGY
3550 ST. JOHNS BLUFF ROAD SOUTH
JACKSONVILLE, FL 32224
www.senergyelfs.com

SENERGY ONE-COAT STUCCO

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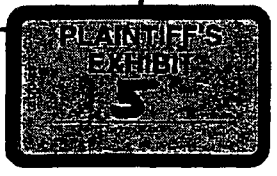

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1.0 SUBJECT

Magna Wall Fiber-reinforced Stucco System (Senergy One-Coat Stucco)

2.0 PROPERTY FOR WHICH EVALUATION IS SOUGHT

2.1 Weather resistance

2.2 Exterior wall covering

2.3 Fire-resistance

2.4 Structural performance

3.0 DESCRIPTION

3.1 General

Magna Wall Fiber-Reinforced Stucco System is an exterior cementitious wall finish consisting of a proprietary mixture of Portland cement, water, sand, synthetic fibers, and proprietary admixtures. The products are applied onto wire fabric or metal lath, that is mechanically fastened to the framing members. The system is intended for application over foam plastic boards, fiber board, plywood, oriented strand board, gypsum sheathing or GP Gypsum Dens-Glass Gold Sheathing substrates and attached to wood- or steel-framed exterior wall construction. The Magna Wall Stucco system is also applied directly over concrete or unit masonry substrates with or without lath.

3.2 Materials

3.2.1 Magna Wall Fiber-Reinforced Stucco: A factory-prepared mixture of Type I, II or III Portland cement complying with ASTM C150, synthetic fibers and proprietary admixtures. The mixture is packaged in 80 pound (36 kg) bags. Five to seven gallons (19 to 27 L) of water and 180 to 220 pounds (82 to 100 kg) of sand are mixed with each bag in the field. The product is also available in a factory-mixed pre-sanded form requiring only the addition of 2 to 4 gallons (8 to 15 L) of water. When required, colors may be added in accordance with the manufacturer's instructions.

As an alternative to 80 pound (36 kg) bags, the stucco mix is also available in bulk containers that are mixed at a manufacturing plant. The bulk products consist of two types, either the dry stucco mix pre-mixed with sand, or the dry stucco mix and sand contained in separate compartments within the bulk container and mixed at the site. The bulk container is delivered to the job site and field-mixed with water. The following conditions shall apply regarding the use of the stucco mix in bulk containers:

3.2.1.1 The bulk container shall bear an identification label information stated in Section 5.0 of this report.

3.2.1.2 A signed certificate from the manufacturing plant for each unit, stating the plant name and address, job site and address, date of manufacture, quantity and curing instructions. The ratio of batched sand amount to be combined with each 80 pounds (37 kg) of stucco mixture shall be stated in the certificate.

3.2.1.3 Procedures shall be provided to prevent tampering with the controls on the amount of product mixture and sand combined.

3.2.1.4 The stucco, sand and water ratios stated in Section 3.2.1 shall be maintained and verified by Magna Wall

3.2.2 Sand: Clean and free from deleterious amounts of loam, clay, silts, soluble salts, and organic matter. Sand gradation shall comply with ASTM C144, as stated in Table 1.

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Table 1

RETAINED ON U.S. STANDARD SIEVE	PERCENT PASSING +/- 2 PERCENT	
	NATURAL SAND	MANUFACTURED SAND
4.75 mm (No. 4)	100	100
2.36 mm (No.8)	95 to 100	95 to 100
1.18 mm (No. 16)	70 to 100	70 to 100
600 mm (No. 30)	40 to 75	40 to 75
300 mm (No. 50)	10 to 35	20 to 40
150 mm (No. 100)	2 to 15	10 to 25
75 mm (No. 200)	0 to 5	0 to 10

3.2.3 Lath

3.2.3.1 Wire-fabric Lath: Minimum No. 20 gage, 1 inch (25.4 mm) galvanized steel, woven-wire fabric. Other laths shall comply with ASTM C933 (welded) and ASTM C1032 (woven). Wire-fabric lath shall be self-furred when applied over all substrates except unbacked polystyrene. Self-furring lath shall be used in accordance with the following requirements:

3.2.3.1.1 The maximum overall wall coating thickness, using the minimum wire noted in Section 3.2.3.1 of this report, shall be 1/2 inch (12.7 mm).

3.2.3.1.2 Furring crimps shall occur at maximum 6 inch (152 mm) intervals each way. Furring crimps shall provide a minimum 1/8 inch (3.2 mm) clearance from the substrate after installation.

3.2.3.2 Metal Lath: Lath shall comply with ASTM C847, with a minimum weight of 1.75 pounds per square yard (0.67 kg/m^2). Furring and self-furring requirements shall be as set forth for wire-fabric lath.

3.2.4 Substrates

3.2.4.1 Foam Plastic Board: Foam plastic formed from expanded polystyrene resin, with a maximum flame spread index of 25 or less and a smoke-developed index not exceeding 450 when tested in accordance with ASTM E84 in the thickness intended for use. The foam boards shall have a minimum nominal density of 1.5 pounds per cubic foot (24.0 kg/m^3). When used over open stud framing, the boards shall be a minimum of 1 inch (25.4 mm) thick and have a 3/8 inch (9.5 mm) projecting tongues with compatible grooves for horizontal joints. See Figure 1 for joint detail. Foam plastic boards installed over solid substrates are permitted to have a minimum thickness of 3/4 inch (16.9 mm). The maximum board thickness shall not exceed 4 inches (25.4 mm). The insulation board shall be labeled in accordance with Condition of Use 7.8 of this report.

3.2.4.2 Exterior Gypsum Sheathing Board: Water-resistant core gypsum sheathing complying with ASTM C79, minimum 1/2 inch (12.7 mm) thick.

3.2.4.3 Dens-Glass Gold Sheathing: Noncombustible, resinous coated, glass-fiber mat faced, water-resistant sheathing, minimum 1/2 inch (12.7 mm) thick, manufactured by G-P Gypsum Corporation (see NER-574).

3.2.4.4 Fiberboard: Asphalt impregnated fiberboard complying with ANSI/AHA A194.1 for regular density sheathing, minimum 7/16 inch (11.1 mm) thick.

3.2.4.5 Plywood: Exterior or Exposure 1 complying with US DOC PS 1. Minimum panel thickness shall be 5/16 inch (7.9 mm) thick for studs spaced a maximum of 16 inches (406 mm) on center, and minimum 3/8 inch (9.5 mm) thick with exterior glue for studs spaced a maximum of 24 inches (610 mm) on center. Plywood shall be installed in accordance with a nominal 1/8 inch (3.2 mm) spacing between sheets at ends and sides.

3.2.4.6 Oriented Strand Board: Exposure 1, performance-rated panels, complying with US DOC PS 2, minimum 3/8 inch (9.5 mm) thick. Panels shall be installed in accordance with a nominal 1/8 inch (3.2 mm) spacing between sheets at ends and sides.

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3.2.5 Sealants: Minimum of an acrylic latex sealant complying with ASTM C834.

3.2.6 Weather-resistive Barrier: A minimum of one layer of a weather-resistive barrier complying with the requirements of Chapter 14 of the applicable Code (Chapter 7 of the *International Residential Code*). E.I. DuPont Tyvek StuccoWrap is also permitted for use as an alternative to the weather-resistive barrier prescribed by the applicable code.

3.2.7 Flashing, trim and accessories: All flashings, trim, weep screeds, and corner reinforcement shall be of corrosion-resistant metal or approved plastic. Flashings shall be designed and installed to direct moisture from behind the system to the exterior of the cladding. Flashings shall be installed at the perimeter of all penetrations of the system. The weather-resistive barrier shall be shingle lapped over the nailing leg of the flashing in a manner to shed water.

4.0 INSTALLATION

4.1 General

All substrates on which the stucco products are intended to be installed shall be covered with a minimum of one layer of the weather-resistive barrier stated in Section 3.2.6 of this report. The weather-resistive barrier is permitted to be omitted when the stucco is installed directly over cast concrete or unit masonry substrates.

Flashing, corner reinforcement, metal trim and weep screeds shall be installed as shown in this report. Weep screeds are installed at the bottom of the wall a minimum of 1 inch (25.4 mm) below the plate line, and a minimum of 4 inches (102 mm) above grade. The screed shall comply with the applicable code requirements and shall allow trapped water to drain to the building exterior.

The weather-resistive barrier, lath, and foam plastic board (when used) shall lap over the nailing leg of flashings and weep screeds as shown in the standard details at the end of this report.

At building corners, the stucco is permitted to be installed with either a square or rounded detail as shown in the details at the end of this report.

Corrosion-resistant fasteners for lath attachment to wood framing members shall penetrate a minimum of 1 inch (25.4 mm) into framing members. When the substrate consists of plywood or oriented strand board as stated in Section 3.2.4.5 or Section 3.2.4.6 of this report, the thickness of the sheathing is permitted to be considered in determining the 1 inch (25.4 mm) fastener penetration requirement. Fasteners for lath attachment to steel framing shall penetrate a minimum of 1/4 inch (6.4 mm) beyond the steel framing. The lath shall be embedded in the coating and shall be completely covered.

The exterior cementitious coating shall be applied by hand-troweling or machine spraying in one or two coats at minimum nominal 3/8 inch (9.5 mm) overall thickness, except where self-furring wire lath is used (see Section 3.2.3.1). The coating shall be applied at ambient air temperatures between 35 and 120 degrees F (2 and 49°C) by applicators approved by Magna Wall, Inc. After application, the coating shall be protected from freezing air temperatures during the initial six hours of curing. The second coat, when provided, shall be applied within seven days after the first coat. If the second coat is not installed within seven days, a bonding adhesive, complying with Military Specification MIL-B-19235, shall be brushed or sprayed on the base coat or a bonding treatment shall be added to the mix of the second coat prior to application over the base coat.

Where the coating is job-mixed, an installation card, as noted in Figure 4 of this report, shall be provided on the job-site with the name of the applicator and the product to be used, before any weather-resistive barrier or exterior sheathing is installed. Also, see Section 7.6 of this report.

4.2 Application Over Open Framing

The weather-resistive barrier described in Section 3.2.6 of this report shall be placed over open wood or steel framing. The framing shall be spaced a maximum of 24 inches (610 mm) on center. Wall bracing, in accordance with the applicable code, shall be installed. The foam plastic board described in Section 3.2.4.1 of this report

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shall be placed horizontally with the tongue facing upward in 2 foot by 8 foot (610 mm by 2438 mm) sections and temporarily held in place with galvanized staples or roofing nails. Self-tapping screws shall be used to temporarily fasten the board to metal framing. Vertical butt joints of the foam boards shall be staggered a minimum of one framing space from the adjacent courses and occur directly over framing. In applications where the foam plastic board abuts a solid substrate, the butt joints in the foam plastic boards shall occur over a vertical framing member. The foam plastic board is permitted to be omitted where a solid substrate occurs. When the foam plastic boards are installed over a solid substrate, the vertical butt joints in the foam plastic are not required to occur over vertical framing or to be staggered.

The lath shall be installed over the foam plastic board and shall be fastened through the board to wood framing with minimum 2 inch (51 mm) long, No. 11 gage [0.148 inch (3.75 mm) shaft diameter], 3/8 inch (9.5 mm) diameter head] galvanized roofing nails or No. 16 gage [0.0625 inch (1.59 mm) shaft diameter, minimum 1/2 inch (12.7 mm) crown width] galvanized staples. Fasteners shall be spaced a maximum of 6 inches (152 mm) on center and shall be of sufficient length to achieve a minimum 1 inch (25.4 mm) penetration into the wood framing. The use of staples shall be limited to installations where the wood species has a minimum specific gravity of 0.42. The lath shall be fastened to steel framing members [minimum No. 20 gage [0.0359 inch (0.912 mm) thick]] using No. 8-18, S-12, panhead, self-tapping screws spaced a maximum of 6 inches (152 mm) on center. The screws shall be of sufficient length to penetrate the steel framing members a minimum of 1/4 inch (6.4 mm). The wire lath shall be applied with a minimum overlap between sheets of 1 inch (25.4 mm) at both ends and sides. The metal lath shall be applied with a minimum overlap of 1/2 inch (12.7 mm) at the sides and 1 inch (25.4 mm) at the ends.

The weather-resistive barrier, lath and foam plastic board shall lap over the nailing leg of the flashing as shown in the standard weep screed details at the end of this report. Corrosion-resistant weep screeds shall be installed at all locations where the horizontal edge of the foam plastic board is exposed after application of the stucco coating. Corrosion-resistant casing beads shall be installed at all locations where the vertical edge of the foam plastic board is exposed after application of the stucco coating. The evaluation of the this system is limited to use where penetrations through and terminations of the system are provided with flashing. The use of the system where sealant is the sole means of sealing penetrations is outside the scope of this report.

At penetration locations, such as windows and doors, the foam plastic board is permitted to be beveled at a 45 degree angle as shown in the details at the end of this report. At building corners, the stucco is permitted to be installed with either a square or rounded detail as shown in the details at the end of this report. When a rounded corner detail is provided, the foam plastic boards shall be held back slightly at each corner and additional corner reinforcement is not required. Where square corners are provided, metal corner reinforcement shall be installed.

4.3 Application Over Solid Substrates

All solid substrates, except for concrete and unit masonry, shall be covered with a minimum of one layer of weather-resistive barrier as described in Section 3.2.6 of this report and the metal lath described in Section 3.2.3 of this report. The installation of foam plastic boards over solid substrates is optional and shall be governed by the conditions stated in this report. When foam plastic boards are installed over solid substrates, the length of the fasteners used to attach the lath shall be increased by the thickness of the foam boards.

The weather-resistive barrier, flashings, accessories, metal lath and coating shall be installed as described in Section 4.0 and Section 4.3 of this report. Foam plastic insulation installed prior to lath installation shall be a minimum 1/2 inch (12.7) thick. When the system is installed over a foam plastic substrate, the weather-resistive barrier shall be installed over the EPS, except in areas adopting the *Standard Building Code* or *Uniform Building Code*, where the barrier is permitted to be installed behind the foam. When Tyvek StuccoWrap is used as the weather-resistive barrier, the barrier is permitted to be installed behind the foam for all applications. The installation of the weather-resistive barrier shall be as stated in Section 4.1 of this report.

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At building corners, the stucco is permitted to be installed with either a square or rounded detail as shown in the details at the end of this report. Both square and rounded corners shall be provided with metal corner reinforcement.

In addition to the requirements stated in this section, Sections 4.3.1 through 4.3.5 of this report contain requirements specific to the use of the coatings over specific substrate types.

4.3.1 Exterior Gypsum Sheathing: Water-resistant core gypsum sheathing, complying with Section 3.2.4.2 of this report, shall be installed directly to wood or steel framing with studs spaced a maximum of 24 inches (610 mm) on center. The gypsum sheathing shall be fastened to wood framing with minimum 1 1/2 inch (38 mm) long, No. 11 gage [0.148 inch (3.75 mm) shaft diameter, 0.498 inch (11.1 mm) head diameter] galvanized roofing nails or No. 16 gage [0.0625 inch (1.59 mm)] shaft diameter]] galvanized staples spaced a maximum of 6 inches (152 mm) on center at the edges and at intermediate supports. For steel framing, the sheathing shall be attached to No. 20 gage [0.0359 inch thick (0.91 mm)]] steel studs with No. 8-18, S-12 panhead, 1 inch long (25.4 mm), self-tapping screws spaced a maximum of 10 inches (254 mm) on center to all framing members.

4.3.2 Dens-Glass Gold Sheathing: Dens-Glass Gold sheathing, complying with Section 3.2.4.3 of this report, shall be installed directly on wood or steel framing with studs spaced a maximum of 24 inches (610 mm) on center. The sheathing shall be fastened to wood or steel framing in accordance with the requirements contained in NER-574.

4.3.3 Fiberboard: Fiberboard sheathing, complying with Section 3.2.4.4 of this report, shall be installed directly to wood or steel framing spaced a maximum of 24 inches (610 mm) on center. The walls shall be braced in accordance with the requirements of the applicable code. The fiberboard shall be temporarily held in place with corrosion-resistant staples, roofing nails, or self-tapping screws. For applications of the coatings over fiberboard attached to steel framing [minimum No. 20 gage, 0.0359 inch (0.912 mm) thick studs], the lath shall be secured to framing using No. 8-18, S-12, panhead, self-tapping screws spaced a maximum of 6 inches (152 mm) on center.

4.3.4 Plywood: Plywood, complying with Section 3.2.4.5 of this report, shall be applied directly to wood or steel framing. The plywood shall be fastened to wood framing with minimum 6d common nails or minimum No. 16 gage [0.0625 inch (1.59 mm) shaft diameter] staples with 7/16 inch (11.1 mm) outside-diameter crowns, spaced a maximum of 6 inches (152 mm) on center at the edges and a maximum of 12 inches (305 mm) on center at intermediate supports. The plywood shall be applied to steel framing [minimum No. 20 gage, 0.0359 inch (0.912 mm) thick] in accordance with the applicable code.

4.3.5 Oriented Strand Board (OSB): The oriented strand board, complying with Section 3.2.4.4 of this report, shall be installed to wood or steel framing. The OSB shall be fastened to wood framing as described in Section 4.3.4 of this report for plywood.

4.3.6 Concrete and unit masonry: Concrete and unit masonry substrates shall comply with the requirements of the applicable code. The stucco and lath shall be applied as stated in Section 4.0 and Section 4.2 of this report, except that the minimum coating thickness is permitted to be 1/4 inch (6.4 mm). Additionally, the weather-resistive barrier is not required for installation over concrete and unit masonry substrates. When the stucco is installed over lath on concrete or masonry substrates, the lath shall be embedded in the coating and shall be completely covered by the stucco coating.

4.4 FIRE-RESISTANCE-RATED ASSEMBLIES

The assemblies listed in Sections 4.4.1 through 4.4.5 and shown in Figure 3 list specific substrates. Any of the following substrates are permitted to be used independently or in combination with each other in any of these assemblies:

- One layer of 1/2 inch (12.7 mm) thick water-resistant core gypsum sheathing.

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- One layer of 1 inch (25.4 mm) thick foam plastic insulation.
- One layer of 7/16 inch (11.1 mm) thick oriented strand board (OSB).
- One layer of 7/16 inch (11.1 mm) thick plywood.

4.4.1 One-hour Load-bearing Wall - Assembly 1:

4.4.1.1 Interior Face: One layer of 5/8 inch (15.9 mm) thick Type X gypsum wallboard, complying with ASTM C36, shall be attached with the long edge parallel to nominal 2 by 4 inch (51×102 mm) wood studs with 1 5/8 inch (41 mm) long galvanized steel, cup-head gypsum wallboard nails [0.30 inch (7.62 mm) head diameter, 0.010 inch (0.254 mm) shank diameter] spaced a maximum of 8 inches (203 mm) on center at all studs and plates. Stud spacing shall be a maximum of 16 inches (410 mm) on center or less. The joints and nail heads shall be covered with paper tape and gypsum compound. The stud cavities shall be filled with R-11 rock wool batt insulation having a minimum density of 1.45 lb/ft^3 (23.2 kg/m^3), or R-11 fiberglass insulation having a minimum density of 0.5 lb/ft^3 (8.0 kg/m^3).

4.4.1.2 Exterior Face: One layer of 1 inch (25.4 mm) thick foam plastic insulation with the material properties described in Section 3.2.4.1 of this report. The substrates shall be installed on wood framing as described in Section 4.1 and Section 4.2 of this report. The weather-resistive barrier, flashings, lath and coating shall be applied to the substrate as described in Section 4.1 and Section 4.2 of this report.

4.4.1.3 Design: The wood stud axial stress is limited to 0.78 F'_c and shall not exceed 0.78 F'_c at an l_e/d ratio of 33. The maximum load on this system shall be limited to 1,100 pounds (4895 N) per stud, where:

F'_c = Allowable unit stress in compression parallel to the grain adjusted for l_e/d ratio.

l_e = Effective length of compression member, inches.

d = Least dimension, inches.

These design details are applicable only to the assembly described in Section 4.4.1.

4.4.2 One-hour Load-bearing Wall - Assembly 2:

4.4.2.1 Interior Face: One layer of 5/8 inch (15.9 mm) thick Type X gypsum wallboard, complying with ASTM C36, shall be attached with the long edge parallel to nominal 2 by 4 inch (51×102 mm) wood studs with 1 5/8 inch (41 mm) long galvanized steel, cup-head gypsum wallboard nails [0.30 inch (7.62 mm) head diameter, 0.010 inch (0.254 mm) shank diameter] spaced a maximum of 8 inches (203 mm) on center at all studs and plates. Stud spacing shall be a maximum of 16 inches (410 mm) on center or less. The joints and nail heads shall be covered with paper tape and gypsum compound. The stud cavities shall be filled with R-11 rock wool batt insulation having a minimum density of 1.45 lb/ft^3 (23.2 kg/m^3), or R-11 fiberglass insulation having a minimum density of 0.5 lb/ft^3 (8.0 kg/m^3).

4.4.2.2 Exterior Face: One layer of 7/16 inch (11.1 mm) thick oriented strand board (OSB) with the material properties described in Section 3.2.4.6 of this report. The substrates shall be installed on wood framing as described in Section 4.1 and Section 4.3 of this report. The weather-resistive barrier, flashings, lath and coating shall be applied to the substrate as described in Section 4.1 and Section 4.3 of this report.

4.4.2.3 Design: The wood stud axial stress is limited to 0.78 F'_c and shall not exceed 0.78 F'_c at an l_e/d ratio of 33. The maximum load on this system shall be limited to 1,100 pounds (4895 N) per stud, where:

F'_c = Allowable unit stress in compression parallel to the grain adjusted for l_e/d ratio.

l_e = Effective length of compression member, inches.

d = Least dimension, inches.

These design details are applicable only to the assembly described in Section 4.4.2.

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4.4.3 One-hour Load-bearing Wall - Assembly 3:

4.4.3.1 Interior Face: One layer of 5/8 inch (15.9 mm) thick Type X gypsum wallboard, complying with ASTM C36, shall be attached with the long edge parallel to nominal 2 by 4 inch (51x102 mm) wood studs with 1 5/8 inch (41 mm) long galvanized steel, cup-head gypsum wallboard nails [0.30 inch (7.62 mm) head diameter, 0.010 inch (0.254 mm) shank diameter] spaced a maximum of 8 inches (203 mm) on center at all studs and plates. Stud spacing shall be a maximum of 16 inches (410 mm) on center or less. The joints and nail heads shall be covered with paper tape and gypsum compound. The stud cavities shall be filled with R-11 rock wool batt insulation having a minimum density of 1.45 lb/ft^3 (23.2 kg/m^3), or R-11 fiberglass insulation having a minimum density of 0.5 lb/ft^3 (8.0 kg/m^3).

4.4.3.2 Exterior Face: One layer of 7/16 inch (11.1 mm) thick plywood with the material properties described in Section 3.2.4.5 of this report. The substrates shall be installed on wood framing as described in Section 4.1 and Section 4.3 of this report. The weather-resistive barrier, flashings, lath and coating shall be applied to the substrate as described in Section 4.1 and Section 4.3 of this report.

4.4.3.3 Design: The wood stud axial stress is limited to 0.78 F'_c and shall not exceed 0.78 F'_c at an l_e/d ratio of 33. The maximum load on this system shall be limited to 1,100 pounds (4895 N) per stud, where:

F'_c = Allowable unit stress in compression parallel to the grain adjusted for l_e/d ratio.

l_e = Effective length of compression member, inches.

d = Least dimension, inches.

These design details are applicable only to the assembly described in Section 4.4.3.

4.4.4 One-hour Load-bearing Wall - Assembly 4:

4.4.4.1 Interior Face: One layer of 5/8 inch (15.9 mm) thick Type X gypsum wallboard, complying with ASTM C36, shall be attached with the long edge parallel to nominal 2 by 4 inch (51x102 mm) wood studs with 1 5/8 inch (41 mm) long galvanized steel, cup-head gypsum wallboard nails [0.30 inch (7.62 mm) head diameter, 0.010 inch (0.254 mm) shank diameter] spaced a maximum of 8 inches (203 mm) on center at all studs and plates. Stud spacing shall be a maximum of 16 inches (410 mm) on center or less. The joints and nail heads shall be covered with paper tape and gypsum compound. The stud cavities shall be filled with R-11 rock wool batt insulation having a minimum density of 1.45 lb/ft^3 (23.2 kg/m^3), or R-11 fiberglass insulation having a minimum density of 0.5 lb/ft^3 (8.0 kg/m^3).

4.4.4.2 Exterior Face: One layer of 1/2 inch (12.7 mm) thick water-resistant core gypsum sheathing with the material properties described in Section 3.2.4.2 of this report. The substrates shall be installed on wood framing as described in Section 4.1 and Section 4.3 of this report. The weather-resistive barrier, flashings, lath and coating shall be applied to the substrate as described in Section 4.1 and Section 4.3 of this report.

4.4.4.3 Design: The wood stud axial stress is limited to 0.78 F'_c and shall not exceed 0.78 F'_c at an l_e/d ratio of 33. The maximum load on this system shall be limited to 1,600 pounds (7117 N) per stud, where:

F'_c = Allowable unit stress in compression parallel to the grain adjusted for l_e/d ratio.

l_e = Effective length of compression member, inches.

d = Least dimension, inches.

These design details are applicable only to the assembly described in Section 4.4.4.

4.4.5 One-hour Non-Load-bearing Wall Assembly:

4.4.5.1 Interior Face: One layer of 5/8 inch (15.9 mm) thick Type X gypsum wallboard complying with ASTM C36, water-resistant gypsum backing board complying with ASTM C630, or gypsum veneer base complying with ASTM C588, shall be applied horizontally to the interior face of wood studs with nominal dimensions of 2 by 4 inches (51x102 mm), spaced a maximum of 24 inches (610

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mm) on center. The wallboard shall be attached with 6d coated nails complying with ASTM C514 [1 7/8 inch (48 mm) long, 1/4 inch (6.4 mm) diameter heads] spaced a maximum of 7 inches (178 mm) on center, at studs, plates and blocking. All wallboard joints shall be backed with minimum nominal 2 by 4 inch (51×102 mm) wood framing, and shall be taped and treated with joint compound. Fastener heads shall also be treated with joint compound.

4.4.5.2 Exterior Face: One layer of minimum 5/8 inch (15.9 mm) thick, Type X, water-resistant core gypsum sheathing as described in Section 3.2.4.2 of this report, 48 inches (1219 mm) wide, shall be applied parallel to studs and shall be fastened with No. 11 gage [0.148 inch (3.75 mm) shaft diameter, 0.438 inch (11.1 mm) head diameter] galvanized roofing nails, 1 3/4 inches (45 mm) long with 7/16 or 1/2 inch (11.1 or 12.7 mm) diameter heads, spaced a maximum of 4 inches (102 mm) on center at board edges and a maximum of 7 inches (178 mm) on center at intermediate studs and top and bottom plates. The nails shall penetrate a minimum of 1 inch (25.4 mm) into studs The weather-resistive barrier, flashings, lath and coating shall be applied to the substrate as described in Section 4.1 and Section 4.3 of this report.

4.5 NONCOMBUSTIBLE CONSTRUCTION

The stucco system is permitted for use on walls required to be of noncombustible construction, when the walls are constructed as follows:

4.5.1 Interior finish: One layer of 5/8 inch (15.9 mm) thick Type X gypsum wallboard, complying with ASTM C36, is vertically applied to steel framing with blocked edges. The wallboard shall be fastened to framing with minimum 1 inch (25.4 mm) long, No. 8-18, S-12, self-tapping screws spaced a maximum of 6 inches (152 mm) on center. All board joints shall be taped and treated with joint compound. Fastener heads shall be covered with joint compound.

4.5.2 Steel Framing: Minimum 3 5/8 inch (92 mm) deep, No. 20 gage [0.0359 inch (0.91 mm) thick] steel framing. Studs shall be spaced a maximum of 16 inches (410 mm) on center.

4.5.3 Openings: Wall openings shall be framed with minimum No. 20 gage [0.0359 inch (0.91 mm)] metal.

4.5.4 Exterior Finish: One layer of minimum 1/2 inch (12.7 mm) thick gypsum sheathing, attached to the framing as described in Section 4.3.1 of this report. Combustible sheathing shall not be permitted.

4.5.5 Stud Cavity: R-11 fiberglass or rock wool batt, 3 5/8 inch (92 mm) thick, sized to friction-fit between studs.

4.5.6 Stucco: One layer of Pyro-Kure 600 vapor retarder, manufactured by Fortifiber, shall be applied over the gypsum sheathing with minimum 2 inch (51 mm) horizontal weather laps and maximum 6 inch (152 mm) vertical laps. The lath and coating shall be applied as noted in Section 4.1 and Section 4.3 of this report.

4.6 USE ON SHEAR WALLS

4.6.1 Interior face: Minimum 1/2 inch (12.7 mm) thick gypsum wallboard, complying with ASTM C36, fastened to nominal 2 by 4 inch (51×102 mm) wood studs at 16 inches (406.4 mm) on center. Fasteners shall be 1 5/8 inch (41.3 mm) long barbed gypsum wallboard nails fastened to framing at a maximum of 6 inches (152 mm) on center. Gypsum wallboard shall be placed horizontally or vertically, with edges blocked.

4.6.2 Exterior Face: The weather-resistive barrier, 1 inch (25.4 mm) thick foam plastic, lath and coating shall be applied in accordance with Section 4.1, Section 4.2 and Section 4.3 of this report.

4.6.3 Shear Value: The allowable shear value is 190 pounds per foot (2773 N/m) based on a 1:1 height-to-width ratio. In areas utilizing the *Uniform Building Code*, for structures in Seismic Zones 3 and 4, the allowable shear is limited to 95 pounds per foot (1314 N/m).

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4.7 MISCELLANEOUS

4.7.1 Inspection Requirements: Lath inspection shall be conducted in accordance with the requirements of the applicable code.

4.7.2 Control Joints: Control joints shall be installed as specified on the construction documents. In the absence of details, control joints shall be detailed and installed in accordance with ASTM C1063 for three-coat plaster, or as required by the applicable code.

4.7.3 Curing: Moisture curing by fogging the finished wall lightly with water shall be provided for a minimum of 48 hours after coating application. The fogging shall occur as often and as long as necessary to assure cement hydration.

4.7.4 Soffits: When applied over soffits, the coating shall be reinforced with metal lath complying with Section 703.6 of the *International Residential Code* or the applicable code. Metal lath fastening shall comply with the applicable model building code, except the fastener length shall be increased by the thickness of the substrates.

4.7.5 Sills: For sill depths of 6 inches (152 mm) or less, the coating and lath are applied over any substrate, provided the coating, lath, weather-resistive barrier, and substrate are installed in accordance with this report. Sills with depths exceeding 6 inches (152 mm) shall have solid wood or plywood substrates. The substrate shall be fastened in accordance with the requirements of the applicable code, and a double layer of a weather-resistive barrier shall be applied over the sill substrate. The weather-resistive barrier, coating, lath and optional foam plastic board shall be applied in accordance with Section 4.1, Section 4.2 and Section 4.3 of this report.

5.0 IDENTIFICATION

5.1 The factory prepared mix is deliverable to the job site in water-resistive bags with labels bearing the following information:

5.1.1 Name and address of manufacturer and the National Evaluation Service report number.

5.1.2 Identification of components.

5.1.3 Weight of packaged mix.

5.1.4 Storage instructions.

5.1.5 Maximum amount of water and other components permitted, and conditions to be considered in determining the actual amounts added.

5.1.6 Curing instructions.

5.1.7 Concentrate or premix.

5.2 Foam plastic insulation shall be identified in accordance with Condition of Use 7.8 of this report.

6.0 EVIDENCE SUBMITTED

6.1 Reports of test, performed by Testing Consultants, Inc.:

6.1.1 Report of racking load tests in accordance with ASTM E72, Report No. 090-06-053, dated June 27, 1989.

6.1.2 Report of freeze-thaw tests, Report No. 09-06-041, dated June 1, 1989.

6.1.3 Report of accelerated weathering tests in accordance with ASTM G53, Report No. 09-07-059, dated July 15, 1989.

6.1.4 Report of transverse load tests in accordance with ASTM E72, Report No. 09-95-140, dated May 30, 1989.

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6.1.5 Letter from Testing Consultants, Inc. signed by J. Patrick Callahan, dated September 11, 1996, regarding the specific gravity of the lumber and the type of fasteners used in the load tests.

6.2 Report of compressive strength tests in accordance with ASTM C109, by Western Technologies, Inc., dated April 26, 1990.

6.3 Installation details and instructions, prepared by Magna Wall.

6.4 Report of tests, performed by Ramtech Laboratories, Inc.:

6.4.1 Report of carbon-arc weatherometer tests in accordance with ASTM G23, Report No. 9275-91, issued November 11, 1991.

6.4.2 Report of fire tests, Report No. 9583A-92 dated December 14, 1992, and amended December 21, 1992.

6.4.3 Report of fire test, Report No. 9838-93, dated July 23, 1993.

6.4.4 Report of fire tests, Report No. 9979-93, dated December 10, 1993.

6.5 Reports of tests, performed by Omega Point Laboratories:

6.5.1 Report of full scale fire-resistance tests in accordance with ASTM E119, Project No. 9071-99413, dated February 16, 1996.

6.5.2 Reports of full scale fire-resistance tests in accordance with ASTM E119, Project No. 9071-99559, May 6, 1996.

6.5.3 Report of full scale fire-resistance tests in accordance with ASTM E119, by Project No. 9071-90722, dated October 15, 1990.

6.5.4 Report of noncombustibility tests in accordance with ASTM E136, by Project No. 9071-93222, dated March 17, 1992.

6.5.5 Reports of full scale fire-resistance tests in accordance with ASTM E119, Project No. 9071-104916, July 27, 1999.

6.5.6 Letter from Omega Point Laboratories, signed by Deggary Priest, dated November 18, 1996, indicating that extruded or expanded polystyrene, polyurethane or polyisocyanurate insulation can be used with the fire-resistance-rated assemblies noted in Section 4.4 of this report.

6.6 Report of water penetration tests of wall panels conducted in accordance with ASTM E331, by Southwest Research Institute, SwRI Project 06-7536-229, dated February 1996.

7.0 CONDITIONS OF USE

The National Evaluation Service Committee finds that Magna Wall Fiber-reinforced Stucco Systems as described in this report comply with or are suitable alternates to those specified in the 2000 *International Building Code* and 2001 Supplement, 2000 *International Residential Code* and 2001 Supplement, *BOCA National Building Code/1999*, the 1999 *Standard Building Code*, the 1997 *Uniform Building Code*, and the 1998 *International One- and Two-Family Dwelling Code*, subject to the following conditions:

7.1 The material and methods of installation shall comply with this report.

7.2 Installation shall be by contractors approved by Magna Wall, Inc.

7.3 The system shall be limited to combustible construction except as noted under Section 4.5 of this report.

7.4 The system is recognized as a component of a one-hour fire-resistive assembly when complying with the assemblies described in Section 4.4 of this report. The fire-resistive assemblies are limited to use on exterior walls where the fire exposure is from the exterior only.

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7.5 When foam plastic boards are used with these products, the foam plastic shall be separated from the building interior with a thermal barrier of 1/2 inch (12.7 mm) thick gypsum wallboard, applied in accordance with applicable code.

7.6 An installation card, as shown in Figure 4 of this report, shall be left at the job site for the owner and a copy filed with the building department.

7.7 The allowable wind load on the system with wood or steel studs spaced a maximum 24 inches (610 mm) on center is 35 lbf/ft² (1.7 kPa) negative and 50 lbf/ft² (2.4 kPa) positive. Support framing shall be designed to resist the required design wind loads.

7.8 Foam plastic boards used with these products shall be labeled on units or packaging with the manufacturer's name and address, product name, flame-spread and smoke-developed indices, nominal density, and the name of the listing agency.

7.9 Foam plastic shall not be placed on exterior walls of wood construction located within 6 inches (152 mm) of the ground in areas where hazard of termite damage is very heavy in accordance with Section 324.4 of the *International Residential Code* Section 2603.3 of the *Standard Building Code*, or Section 323.4 of the *International One- and Two-Family Dwelling Code*.

7.10 In jurisdictions adopting the *International Building Code*, *International Residential Code* or *BOCA National Building Code*, the weather-resistive barrier shall be installed over the foam plastic substrate, except where the foam plastic is installed over open framing or when Tyvek StuccoWrap is used as the weather-resistive barrier.

7.11 This report is subject to periodic re-examination. For information on the current status of this report, consult the NES Product Evaluation Listing or contact the NES.

FOAM PLASTIC INSULATION BOARD

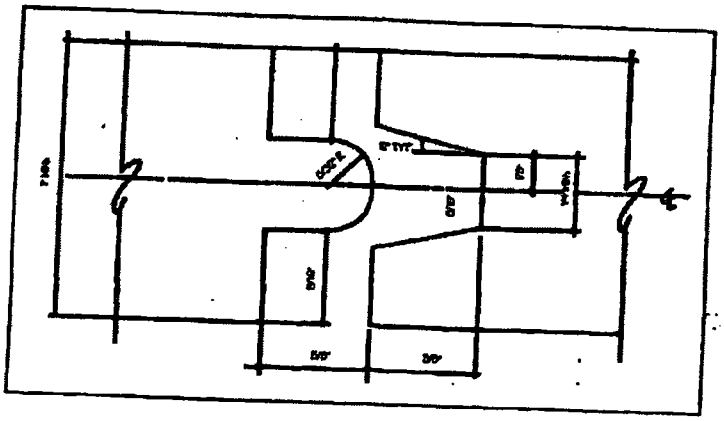
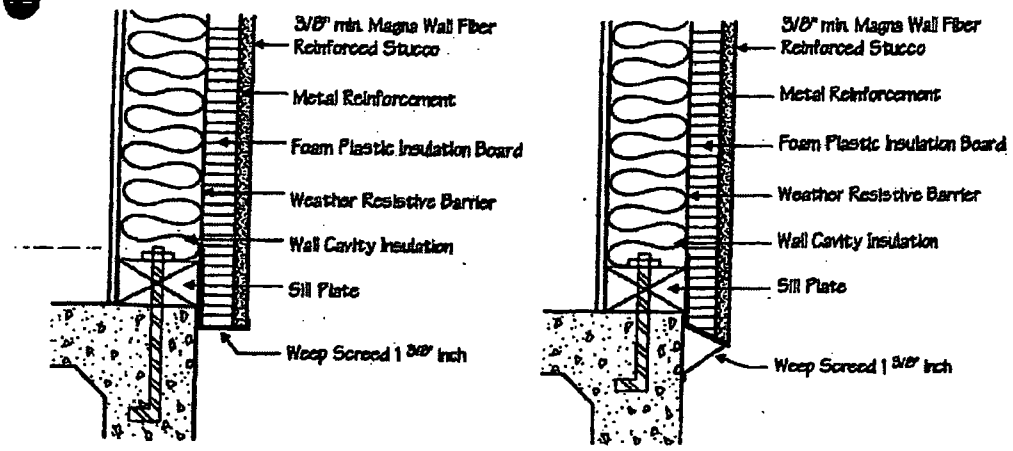


Figure 1* – Tongue and Groove Detail

WEEP SCREED – FOAM SUBSTRATE



WEEP SCREED – SOLID SUBSTRATE

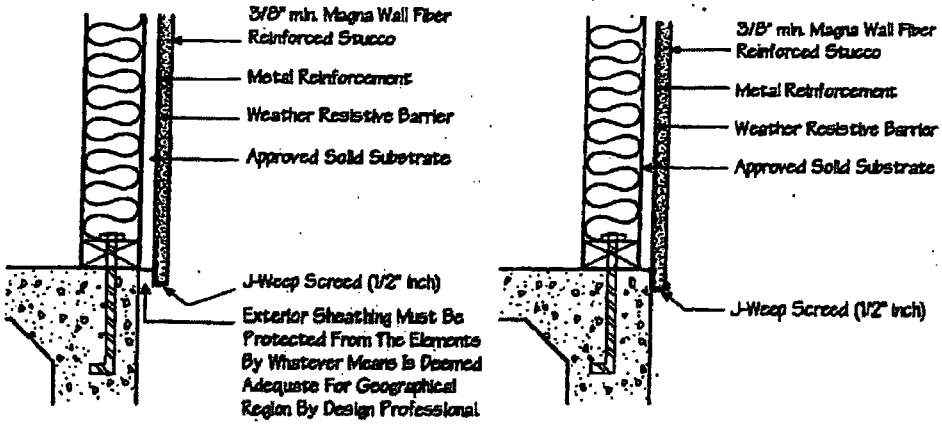


Figure 2* – Typical Installation Details

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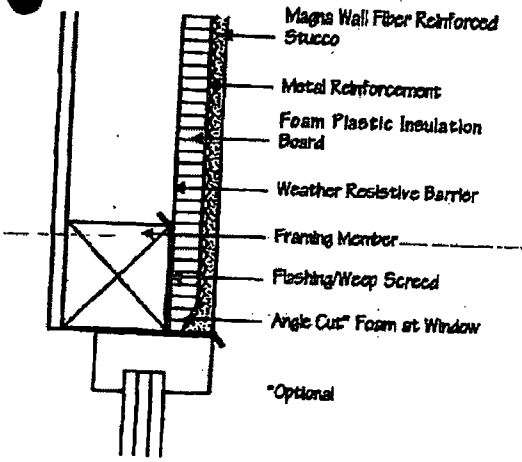
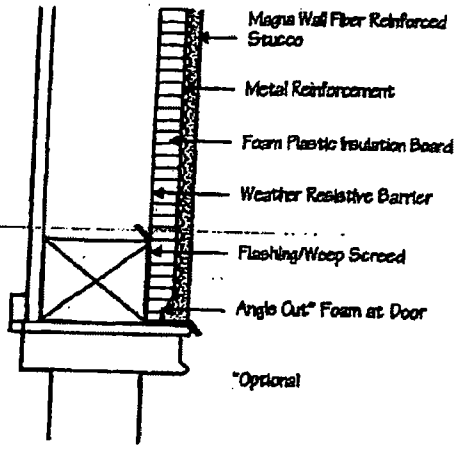
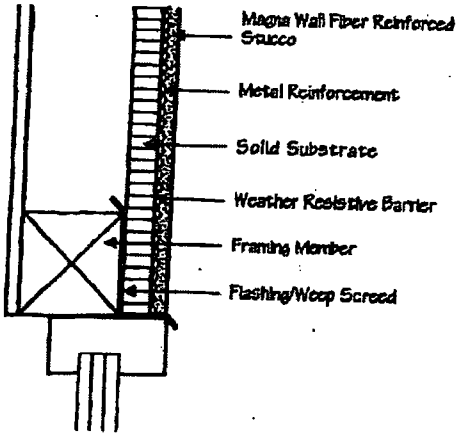
TYPICAL WINDOW – FOAM SUBSTRATE



TYPICAL DOOR – FOAM SUBSTRATE



TYPICAL WINDOW – SOLID SUBSTRATE



TYPICAL DOOR – SOLID SUBSTRATE

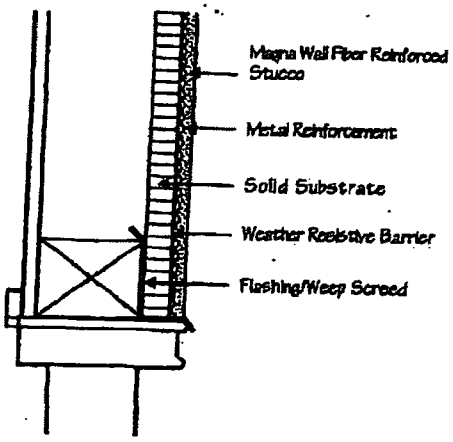


Figure 2* – Typical Installation Details – (Continued)

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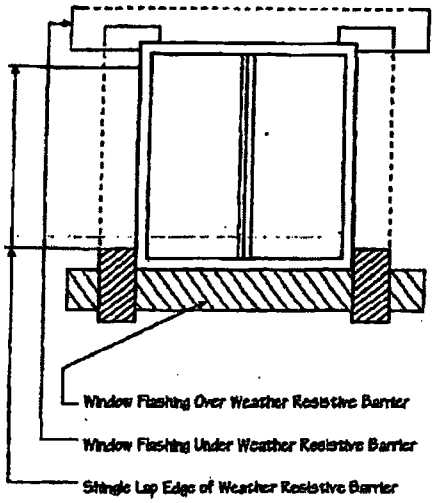
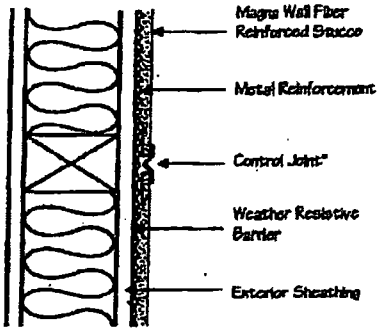
WINDOW/DOOR FLASHING

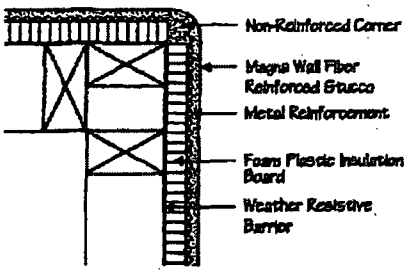


CONTROL JOINT

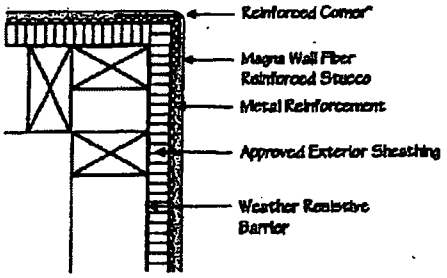


*Control joint may be wired to metal reinforcement if attachment to framing member is not possible.

NON-REINFORCED ROUNDED CORNERS – FOAM SUBSTRATE



REINFORCED ROUNDED CORNERS – FOAM OR SOLID SUBSTRATE



*Reinforced corner may be a second layer of woven wire lath or expanded metal lath with a two inch leg (min) or a galvanized metal or plastic corner bead.

Figure 2* – Typical Installation Details – (Continued)

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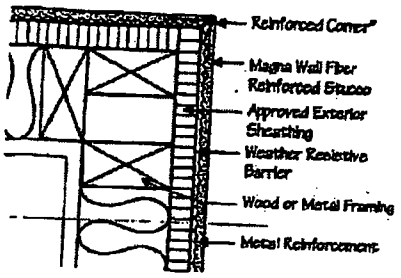
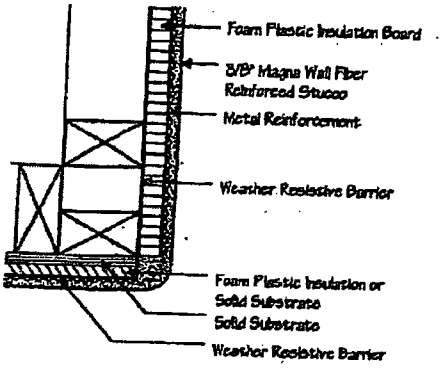
SQUARE CORNER – FOAM OR SOLID SUBSTRATE

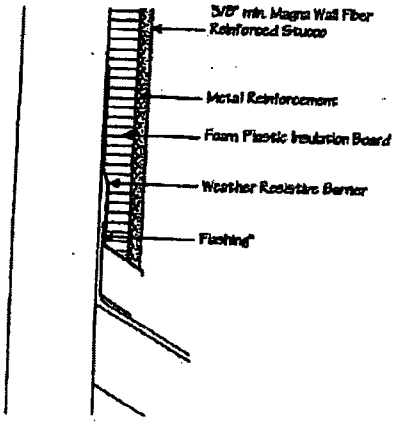


*Reinforced corner may be a second layer of woven wire lath or expanded metal lath with a two inch leg (min) or a galvanized metal or plastic corner bead.

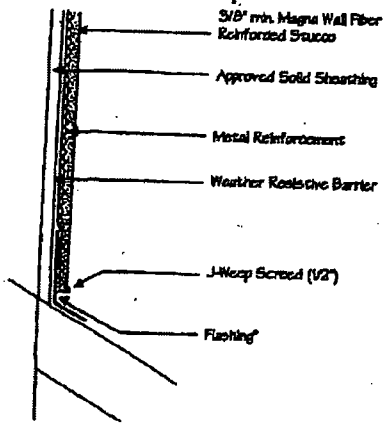
NON-REINFORCED CORNER DETAIL AT TRANSITION FROM OPEN FRAMING TO SOLID SUBSTRATE



TERMINATION AT FLASHING ON ROOF



TERMINATION AT FLASHING ON ROOF – SOLID SUBSTRATE



* Flashing is installed by others. Installation requires only shingle lap of the weather resistive barrier onto the approved flashing. Flashing materials and installation shall be in accordance with the code.

Figure 2* – Typical Installation Details – (Continued)

1.0 SUBJECT
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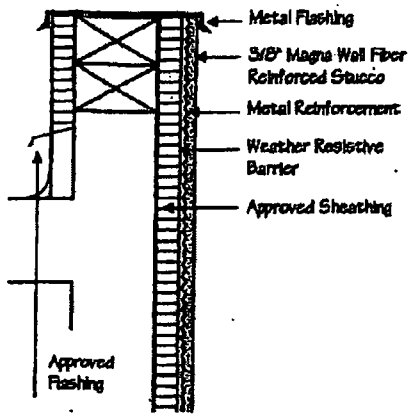
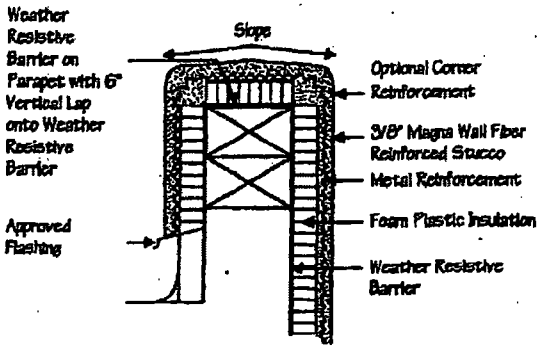
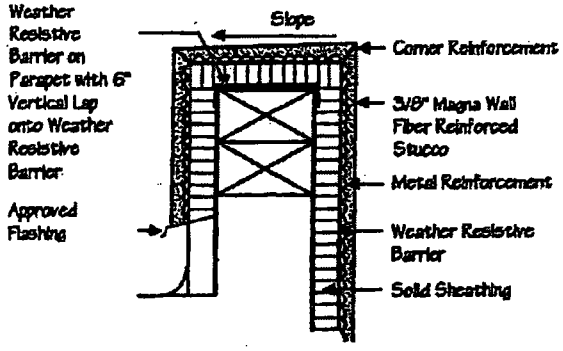
PARAPET WITH METAL CAP FOAM OR SOLID SUBSTRATE



PARAPET WITHOUT METAL CAP FOAM OR SUBSTRATE



PARAPET WITHOUT METAL CAP SOLID SUBSTRATE



DIRECT APPLICATION TO CONCRETE OR CONCRETE MASONRY UNITS

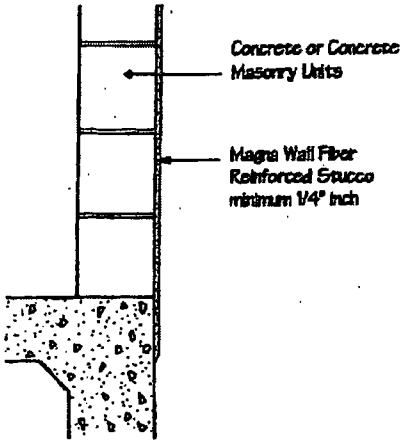


Figure 2* – Typical Installation Details – (Continued)

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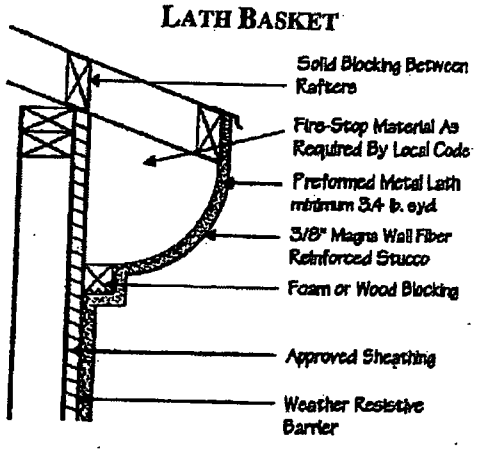
LATH BASKET



Note: Shape and design of Lath Basket may vary

A WEEP SYSTEM FOR ONE-COAT STUCCO INSTALLATIONS

Vinyl tubes 1/2" in diameter are inserted into holes drilled through stucco finish to a keyway formed at edges of concrete slab as shown. Building paper is brought down over sill plates terminating at keyway. Water that may inadvertently find its way behind the plaster assembly is directed downward by building paper to keyway which serves as a receptacle for water. Water then finds its way to the exterior through vinyl tubes spaced 48" o.c. along the open keyway under stucco finish.

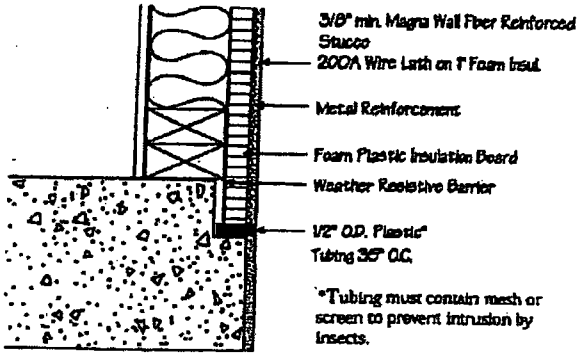


Figure 2* – Typical Installation Details – (Continued)

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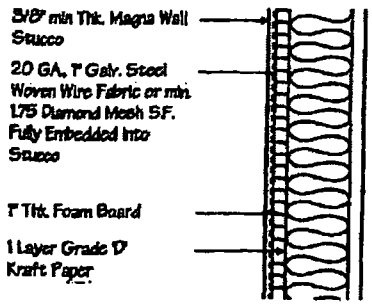
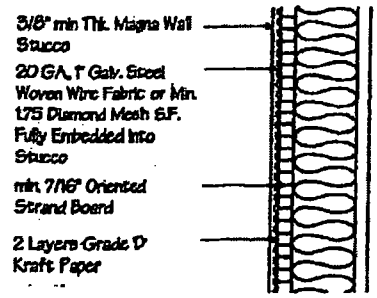


ASSEMBLY 1
4.4.1



ASSEMBLY 2
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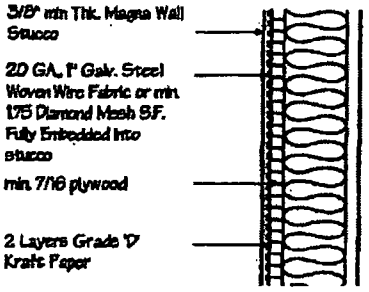
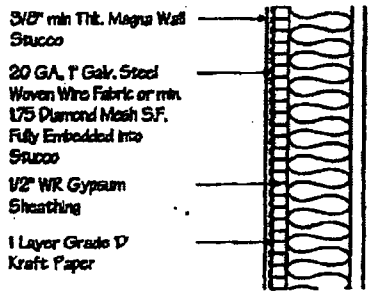
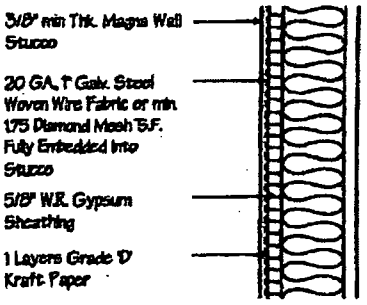


ASSEMBLY 3
4.4.3



ASSEMBLY 4
4.4.4



ASSEMBLY 5
4.4.5

Note: For design limits, and other related information please refer to the section of this report listed on the individual assembly

One-Hour Bearing-Wall, Fire-Resistance-Rated Assemblies
Figure 3*

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EVALUATION REPORT

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ER-4776
Issued July 1, 2000

Filing Category: EXTERIOR COATINGS (060)

MAGNA WALL FIBER-REINFORCED STUCCO PRODUCTS

MAGNA WALL, INC.
POST OFFICE BOX 847
BOERNE, TEXAS 78006

SENERGY, INC.
1550 ST. JOHNS BLUFF ROAD SOUTH
JACKSONVILLE, FLORIDA 32224

1.0 SUBJECT

Magna Wall Fiber-reinforced Stucco Products.

2.0 DESCRIPTION

2.1 General:

Magna Wall Fiber-reinforced Stucco Products are exterior cementitious wall coatings consisting of proprietary mixtures of portland cement, water, sand, fibers and proprietary admixtures. The products are applied onto wire fabric or metal lath, which is mechanically fastened to the framing members. Approved substrates are foam plastic insulation board, Feme CorBoard Lathing Material, exterior gypsum sheathing, Dens Glass Gold Gypsum Board, exterior plywood, oriented strand board (OSB), fiberboard, and ThermoPly exterior sheathing attached to wood or steel construction. Products may also be applied over concrete or concrete masonry units with or without metal reinforcement. When applied directly without metal reinforcement, the minimum thickness of the product is $^1/_4$ inch (6.4 mm). Product may be installed over insulated concrete form (ICF) systems, provided the ICF system is designed to allow mechanical attachment of woven wire or expanded metal lath. Coating applied to ICF systems with lath shall be a minimum of $^3/_8$ inch (9.5 mm) thick.

2.2 Materials:

2.2.1 Magna Wall Fiber-reinforced Stucco: Magna Wall Fiber-reinforced Stucco is a factory-prepared mixture of Type I, II or III portland cement complying with ASTM C 150-94, fibers and proprietary admixtures. The mixtures are packaged in 80-pound (36.29 kg) bags. Five to seven gallons (18.9 to 26.5 L) of clean water and 160 to 240 pounds (81.65 to 99.8 kg) of sand are added to each bag in the field, and the materials are mixed in accordance with the manufacturer's recommendations. Product is also available in a pre-sanded form from the factory, requiring only the addition of 2 to 4 gallons (7.6 to 15.2 L) of clean water. When required, colors may be added in accordance with the manufacturer's instructions for mixing, which are printed on each bag.

An alternative method permits the product to be blended at a batching plant and delivered with sand in a bulk container to the jobsite, where it is field-mixed with water, provided the following conditions are met:

1. The bulk container bears an identification label listing the manufacturer's name and address, the product name and the evaluation report number.
2. A signed certificate from the batching plant accompanies each unit, stating the plant name, jobsite and address, date of manufacture, quantity, and curing instructions. The ratio of batched sand amounts to 80 pounds (36.29 kg) of mixture and must be as stated in this report.
3. Procedures must be in place to prevent tampering with the controls on the amount of product mixture and sand combined.

2.2.2 Sand: Sand must be clean and free from deleterious amounts of loam, clay, silts, soluble salts and organic matter. Sand gradation shall comply with Table 1 or Table 2, which are drawn from ASTM C 144-97 and ASTM C 897-96.

TABLE 1—SAND GRADATION (DRAWN FROM ASTM C 144-97)

SIEVE SIZE	PERCENT PASSING, BY PERCENT	
	Natural Sand	Manufactured Sand
4.75 mm (No. 4)	100	100
2.36 mm (No. 8)	95 to 100	95 to 100
1.18 mm (No. 16)	70 to 100	70 to 100
600 µm (No. 30)	40 to 75	40 to 75
300 µm (No. 50)	10 to 35	20 to 40
150 µm (No. 100)	2 to 15	10 to 25
75 µm (No. 200)	0 to 5	0 to 10

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PLAINTIFF'S EXHIBIT 6

TABLE 2—SAND GRADATION (DRAWN FROM ASTM C 897-96)

U.S. STANDARD SIEVE	PERCENT RETAINED (BY WEIGHT), ± 2 PERCENT			
	Natural Sand		Manufactured Sand	
	Maximum	Minimum	Maximum	Minimum
No. 4 (4.75 mm)	0	0	0	0
No. 8 (2.36 mm)	10	0	10	0
No. 16 (1.18 mm)	40	10	40	10
No. 30 (600 µm)	65	30	65	30
No. 50 (300 µm)	90	70	80	60
No. 100 (150 µm)	100	95	90	75
No. 200 (75 µm)	100	97	100	90

2.2.3 Insulation Board:

2.2.3.1 Expanded Polystyrene Insulation Board: The expanded polystyrene (EPS) foam plastic insulation board shall have a nominal density of 1.5 pounds per cubic foot (24 kg/m³), with a maximum flame-spread rating of 25 and a smoke-developed rating not exceeding 450 when tested in accordance with UBC Standard 8-1 or ASTM E 84-98c1, in the thickness intended for use. Unbacked boards shall have a minimum nominal thickness of 1 inch (25 mm), with $^3/_8$-inch (9.5 mm) projecting tongues and with compatible grooves for horizontal joints. See Figure 1 for joint detail. When foam plastic insulation boards are installed over solid substrates, a lesser thickness, non-tongue-and-groove board is permitted.

All boards must be recognized in a current ICBO ES evaluation report. See Section 2.8 for board identification.

2.2.3.2 R-Guard One Coat Stucco Board: The board is described in ICBO ES evaluation report ER-3414.

2.2.3.3 Extruded Polystyrene (XEPS) Insulation Board: The board has a nominal density of 1.5 pounds per square foot (24 kg/m³). See Section 2.2.3.1 for other details and requirements.

2.2.3.4 Fome-Cor Board Lathing Material: The board consists of a nominal $^1/_4$-inch-thick (6.4 mm) extruded polystyrene (XEPS) foam plastic board and two layers of heavy-duty kraft paper liner board, and is described in ICBO ES evaluation report ER-3335.

2.2.4 Lath:

2.2.4.1 Wire Fabric Lath: Minimum No. 20 gage, 1-inch (25 mm) galvanized steel woven wire fabric. Wire fabric lath shall be self-furred when applied over solid substrates. When applied over open framing with unbacked foam plastic insulation board, the lath is not required to be furred. Self-furring wire fabric lath must comply with the following requirements:

1. The maximum overall wall coating thickness when using the minimum wire lath noted in Section 2.2.4 shall be $^1/_2$ inch (12.7 mm).
2. Furring crimps shall occur in the wire at a maximum of 6-inch (152 mm) intervals each way. Furring crimps shall provide a minimum $^1/_8$-inch (3.2 mm) clearance from the substrate after installation.

2.2.4.2 Metal Lath: Lath shall comply with ASTM C 847-93. Metal lath is minimum 1.75 pounds per square yard (0.67 kg/m²). Furring and self-furring requirements for lath shall be as stated in Section 2.2.4.1.

2.2.5 Gypsum Sheathing Board: Water-resistant core sheathing shall comply with ASTM C 79-82.

2.2.6 Dens-Glass® Gold Gypsum Board: The board is described in ICBO ES evaluation report ER-4305.

2.2.7 Fiberboard: Minimum $^7/_{16}$-inch (1.1 mm) thickness, asphalt-impregnated fiberboard shall comply with ANSI/AHA A194.1 as a regular-density sheathing.

2.2.8 Plywood: Minimum $^5/_{16}$-inch (7.9 mm) thickness with exterior glue is required for studs spaced a maximum of 16 inches (406 mm) on center. For studs spaced at 24 inches (610 mm) on center, $^3/_8$-inch-thick (9.5 mm) plywood with exterior glue shall be used. Plywood shall comply with UBC Standard 23-2 (US DOC PS1-85). Plywood shall be installed in accordance with the code and should be installed in accordance with American Plywood Association recommendations requiring $^1/_8$-inch (3.2 mm) spacing between sheets at ends and sides.

2.2.9 Oriented Strand Board (OSB): OSB shall comply with specifications for Exposure 1, performance-rated panels in UBC Standard 23-3 (US DOC PS2-92), and shall have a minimum thickness of $^3/_8$ inch (9.5 mm). OSB shall be installed in accordance with the code and should be installed in accordance with American Plywood Association recommendations requiring $^1/_8$-inch (3.2 mm) spacing between sheets at ends and sides.

2.2.10 ThermoPly Structural Sheathing: ThermoPly structural sheathing is described in ICBO ES evaluation report ER-1439.

2.2.11 Caulking: Caulking must be, at a minimum, acrylic latex material in compliance with ASTM C 834. Caulking requirements contained in this report refer only to those penetrations that occur directly in the stucco installation as described in this report. Caulking requirements listed are not intended to define all areas in the structure's assembly that may require caulk or sealant, and therefore should not be interpreted to mean that there is just one sealant required.

2.2.12 Weather-resistive Barrier: The weather-resistive barrier shall be minimum Grade "D" kraft building paper complying with UBC Standard 14-1 (Federal Specification UUB 790a); or asphalt-saturated rag felt complying with UL Standard 55-A; or a recognized weather-resistive barrier recognized in a current ICBO ES evaluation report, such as DuPont Tyvek Stucco Wrap (ICBO ES ER-4000), or Simplex Products R-Wrap Protective Housewrap (ICBO ES ER-4449). The weather-resistive barrier is required to be installed over all substrates except for foam plastic insulation boards, where the weather-resistive barrier is permitted to be installed over or under (behind) the foam plastic insulation board. The application of the weather-resistive barrier must comply with Section 1402.1 of the code. When applied over any wood-based sheathing, the weather-resistive barrier shall comply with Section 2506.4 of the code and shall consist of at least two layers of Grade D kraft building paper or one layer of tongue-and-groove EPS or XEPS foam plastic insulation described in Section 2.2.3.1 or Section 2.2.3.3, combined with one layer of Grade D kraft building paper with a minimum water resistance of 60 minutes.

2.2.13 Fibers: Glass, polypropylene, acrylic or nylon fibers are for short-term benefits during initial curing, and reduce sagging of material during application.

2.2.14 Admixtures: Proprietary ingredients are added to improve the quality and performance of the product.

2.2.15 Miscellaneous: All trims, screeds, corner reinforcement, etc., must be corrosion-resistant metal, approved plastic, or vinyl.

2.3 Installation:

2.3.1 General: The exterior cementitious coating shall be applied by hand-troweling or machine-spraying in one or two coats to a minimum $^{3}/_{8}$-inch (9.5 mm) thickness. If application is direct to concrete or concrete masonry units, application shall comply with Section 2508.6 of the code and thickness shall conform to Table 25-D of the code, with the minimum thickness of the coating being $^{1}/_{4}$ inch (6.4 mm). When applied over metal reinforcement, the lath shall be embedded in the coating and completely covered. The second or finish coat, if provided, shall be applied within seven days of application of the base coat. If not applied within seven days, the base coat shall have a bonding adhesive brushed or sprayed onto the base coat or a bonding treatment shall be added to the mix of the second coat prior to application over the base coat. The corrosion-resistant fasteners for the wire fabric lath or metal lath shall penetrate a minimum of 1 inch (25 mm) into wood framing members. If plywood or oriented strand board complying with Section 2.2.8 or 2.2.9 of this report is installed as a substrate, the boards and wood framing members may be combined in determining the 1-inch (25.4 mm) penetration requirement for the corrosion-resistant fasteners. Fasteners installed into steel framing members must penetrate these members a minimum of $^{1}/_{4}$ inch (6.4 mm). Accessory component items such as weep screed and corner reinforcements shall be installed as stated in this report. Details of various components are provided in this report. The weather-resistive barrier shall be as described in Section 2.2.12 of this report. The coating shall be applied at ambient air temperatures between 35°F and 120°F (1.6°C and 49°C) by applicators approved by Magna Wall, Inc. A "sand" or "float" type finish is not recommended by the manufacturer for the single coat of fiber-reinforced stucco. After application, the coating shall be protected from freezing air temperatures during the initial six hours of curing. Where coating is field-mixed, an installation card, as illustrated in Figure 4 of this report, shall be provided on the jobsite by the applicator before the weather-resistive barrier or foam plastic insulation board is installed. This installation card must show the name and address of the applicator and the type of product to be installed.

2.3.2 Application over Open Framing:

2.3.2.1 Insulation Board: The weather-resistive barrier described in Section 2.2.12 of this report is placed over open wood or steel framing spaced a maximum of 24 inches (610 mm) on center, in accordance with Section 1402.1 of the code. Wall bracing in accordance with the code shall be installed. The foam plastic board as described in Section 2.2.3 shall be placed horizontally with the tongue facing upward in 2-foot-by-8-foot (610 mm by 2438 mm) sections and be temporarily held in place with galvanized roofing nails or staples. Code-approved screws shall be used to temporarily fasten the board to metal framing members. Vertical butt joints of this foam plastic board shall be staggered a minimum of one framing space from the adjacent courses and shall occur directly over a framing member. In areas where the foam plastic board meets areas where a solid substrate sheathing has been installed, the resulting nonstaggered butt joints at this intersection are permitted and must also occur over a vertical framing member. Areas that have solid substrates do not require foam plastic boards to be installed. If foam plastic board is installed over solid sheathing, a non-tongue-and-groove board of thickness less than 1 inch (25 mm) and density less than 1.5 pounds per cubic foot (24 kg/m^3) is also permitted to be installed. The butt joints in the foam plastic insulation board that occur over areas where a solid substrate has been installed are not required to occur over vertical framing members, and the vertical joints are not required to be staggered.

The lath shall be installed over the foam plastic insulation board and be fastened through the board to wood framing with minimum 2-inch-long (51 mm), No. 11 gage [0.120 inch (3 mm) shank diameter), $^{3}/_{8}$-inch-head-diameter (9.5 mm), galvanized roofing nails or No. 16 gage galvanized staples spaced at a minimum of 6 inches (152 mm) on center, with a minimum 1-inch (25 mm) penetration into the wood framing. Staples shall have a minimum $^{1}/_{2}$-inch (12.7 mm) crown width. These staples shall be used in wood species with a minimum 0.42 specific gravity. For attachment of the system to wood framing of lesser density, staples with equivalent holding power and penetration to staples specified herein may be used as alternate fasteners to nails. The lath shall be fastened to steel framing members (minimum No. 20 gage) using No. 8 through 18, S-12, panhead, self-tapping screws spaced at a maximum of 6 inches (152 mm) on center. The screws shall penetrate the steel framing members at least $^{1}/_{4}$ inch (6.4 mm). Wire lath over either wood or steel framing shall be applied with minimum 1-inch (25 mm) laps at both the side and the ends of the wire or one mesh, whichever is less. Metal lath shall be 1.75 pounds per square yard (0.67 kg/m^2), minimum, with minimum $^{1}/_{2}$-inch (12.7 mm) laps on the side and a 1-inch (25 mm) end lap.

Weep screeds shall comply with Section 2506.5 of the code and are installed at the foundation/sill junction with the foundation a minimum of 1 inch (25 mm) below the sill plate. The standard weep screed as shown in Figure 2 of this report shows the weather-resistive barrier, metal reinforcement and foam plastic board lap over the vertical attachment flange. Corrosion-resistant metal or plastic, $1^{3}/_{8}$-inch (35 mm) weep screed shall be installed at horizontal areas where the foam plastic insulation board would be exposed after installation of the coating is complete. Areas where vertical edges of foam plastic were to be exposed after coating installation is complete require only a $1^{3}/_{8}$-inch (35 mm) metal or vinyl casing bead; weep holes are not required at these areas. Penetrations in the exterior wall that do not have a flashing system installed require installation of caulk. Examples of areas that require caulk are electrical fixtures, plumbing fixtures, and drains. Fasteners do not require caulking.

At areas such as windows and doors, the foam plastic board may be angled or beveled at a 45-degree angle as shown in Figure 2 of this report, to allow the exterior coating to terminate properly at these areas. Round corners do not require additional corner reinforcement, as shown in Figure 2 of this report. The foam plastic board should be held back slightly at each side of the corner, as shown in the figure. If round corner reinforcement is installed, the foam plastic board is not required to be held back. Square wall and parapet corners shall be covered with metal corner reinforcement. Additional trim items such as decorative reveals in either galvanized metal or vinyl are permitted, and must be installed with grounds of compatible dimensions.

2.3.2.2 R-Guard One Coat Stucco Board: This insulation board incorporates the weather-resistive barrier integrally to the board and, when installed in accordance with ICBO ES evaluation report ER-3414, it eliminates the requirement for a weather-resistive barrier as stated in Section 2.2.12 of this report. All weather aspects of exterior coating installation shall be as stated in Section 2.3.2.1 of this report.

2.3.2.3 Foam-Cor Board: The Fome-Cor Board described in Section 2.2.3.4 of this report shall be fastened temporarily to the wood framing with galvanized staples or roofing nails. Minimum $1^{1}/_{2}$-inch (38 mm) by No. 17 gage woven wire fabric lath is attached through the Foam-Cor Board. Fasteners shall penetrate a minimum of 1 inch (25 mm) into wood framing. Magna Wall fiber-reinforced stucco shall then be applied in a minimum $^{1}/_{2}$-inch-thick (12.7 mm) base coat. A minimum $^{1}/_{8}$-inch-thick (3.2 mm) finish coat is applied over the base coat, resulting in a minimum overall thickness of $^{5}/_{8}$ inch (15.9 mm). The base coat shall be cured in accordance with Section 2.7.3 of this report, prior to installation of the finish coat.

2.3.3 Application over Solid Substrates:

2.3.3.1 General: The substrates described in this section are all recognized for use. All solid substrates require installation of a weather-resistive barrier in compliance with Section 2.2.12, and wire fabric or metal lath in compliance with Sections 2.2.4.1 or 2.2.4.2. The use of foam plastic insulation board over solid substrates is optional. If foam plastic insulation board is utilized over solid substrates, the board may be non-tongue-and-groove end of lesser density and thickness, and the vertical foam joints are not required to be staggered or to occur over vertical framing members. If foam plastic insulation is used, the length of fasteners must be increased by the thickness of the foam board installed. For application over solid substrates, a weep screed is required to be installed at the foundation/sill junction a minimum of 1 inch (25 mm) below the sill plate, and shall comply with Section 2306.5 of the code. Details of this weep screed are shown in Figure 2 of this report. The weather-resistive barrier and metal lath must lap over the horizontal nailing edge of the weep screed and fully cover the solid substrate. Metal reinforcement is required for use on all exterior corners, square or round. All other trim and accessory items should be of compatible dimensions. Caulking requirements are as described in Section 2.2.11 of this report. Lath and coating shall be installed as stated in Section 2.3.1.

2.3.3.2 Exterior Gypsum Sheathing and Dens Glass Gold: Minimum $^1/_2$-inch-thick (12.7 mm), water-resistant core gypsum sheathing or Dens Glass Gold shall be installed directly on wood or steel framing with studs spaced a maximum of 24 inches (610 mm) on center. The sheathing shall be fastened to the wood or metal framing as specified by approved plans and in accordance with all code requirements. A weather-resistive barrier consisting of a minimum of one layer of Grade D building paper shall be applied over the sheathing, or any other barrier complying with Section 2.2.12 of this report. The lath and coating shall be installed as described in Section 2.3.1 of this report. The lath shall be attached through the sheathing to the wood or metal framing members, as described in Section 2.3.1 of this report. Fasteners must penetrate the sheathing at least 1 inch (25 mm) into wood framing member and $^1/_4$ inch (6.4 mm) into steel framing members. Accessory trim items such as weep screeds and corner skis should have compatible ground dimensions.

Metal-reinforced corners are required on exterior gypsum sheathing, round or square. Fasteners for the metal reinforcement must penetrate 1 inch (25 mm) into wood framing members and $^1/_4$ inch (6.4 mm) into steel framing (minimum No. 20 gage studs).

2.3.3.3 Fiberboard: Minimum $^7/_{16}$-inch-thick (11.1 mm) fiberboard sheathing may be installed directly over wood or steel framing spaced at a maximum of 24 inches (610 mm) on center. Walls shall be braced in compliance with the code. The fiberboard shall be temporarily held in place with corrosion-resistant staples, roofing nails, or screws. A weather-resistive barrier complying with Section 2.2.12 for wood-based sheathing must be installed over fiberboard. The lath shall be attached through the sheathing to the wood or metal framing members, as described in Section 2.3.1 of this report. Fasteners must penetrate the sheathing at least 1 inch (25 mm) into wood framing members and $^1/_4$ inch (6.4 mm) into steel framing members. The coating shall be installed as described in Section 2.3.1 of this report. Caulking of penetrations shall be as described in Section 2.2.11 of this report. Metal reinforcement of corners shall comply with Section 2.3.3 of this report.

2.3.3.4 Plywood: Plywood shall comply with Section 2.2.8 of this report and is installed directly to wood or steel framing. The plywood shall be fastened to wood or steel framing as specified by approved plans and in accordance with all code requirements. The weather-resistive barrier shall comply with Section 2.2.12 of this report. Lath and coating shall be installed as described in Section 2.3.1 of this report.

2.3.3.5 Oriented Strand Board (OSB): Board shall be as described in Section 2.2.9 of this report, and shall be installed directly over wood or steel framing or steel framing. The OSB shall be fastened to the wood or steel framing as specified by approved plans and in accordance with all code requirements. The weather-resistive barrier shall comply with Section 2.2.12 of this report. The lath and coating shall be installed as described in Section 2.3.1 of this report.

2.3.3.6 ThermoPly Protective Sheathing: The ThermoPly shall be installed in accordance with ICBO ES evaluation report ER-1439. A weather-resistive barrier complying with Section 2.2.1.2 is required. The lath and coating shall be installed as described in Section 2.3.1 of this report.

2.4 One-hour Bearing-wall Fire-Resistive Assemblies:

2.4.1 General: All substrates individually listed for each of the listed fire-resistive assemblies may be used individually or in combination of these substrates, provided the installation is in compliance with the listed assembly. All of the one-hour bearing-wall fire-resistive assemblies detailed in this section are also permitted for use in nonbearing assemblies.

2.4.2 Assembly 1:

2.4.2.1 Interior Face: One layer of $^5/_8$-inch-thick (15.9 mm), Type X gypsum wallboard, complying with ASTM C 36-92, shall be attached to nominal 2-inch-by-4-inch wood studs with $1^5/_8$-inch (41.3 mm) galvanized steel cuphead gypsum wallboard nails (0.2-inch (7.6 mm) head diameter, 0.010-inch (0.25 mm) shank diameter) spaced at a maximum of 8 inches (203 mm) on center on all studs and plates. Stud spacing shall be a maximum of 16 inches (406 mm) on center. The joints and nail heads shall be covered with paper tape and gypsum compound; fastener heads shall also be treated with gypsum compound. The stud cavities shall be filled with R-11 fiberglass insulation having a minimum density of 0.5 pcf (8 kg/m^3), or R-11 rockwool batt insulation having a minimum density of 1.45 pcf (23 kg/m^3).

2.4.2.2 Exterior Face: One layer of 1-inch-thick (25 mm) EPS or XEPS foam plastic insulation board is required. The material properties are described in Section 2.2.3.1, 2.2.3.2 or 2.2.3.3 of this report, and the substrates shall be installed on wood framing as described in Sections 2.3.2 and 2.3.3 of this report. The weather-resistive barrier, lath and coating shall be applied to the substrate as described in Section 2.3.1 or 2.3.2 of this report.

2.4.2.3 Design: The wood axial stress is limited to 0.78 F'_c and shall not exceed 0.78 F'_c at an ℓ_e/d ratio of 33. The maximum load on the system described in Section 2.4.2 of this report is 1,100 pounds (4895 N) per stud, or 45 percent of the maximum allowable load permitted for the wood species based on calculations in accordance with Chapter 23 of the code, whichever is less per stud.

F'_c = Allowable unit stress in compression parallel to the grain adjusted for ℓ_e/d ratio.

ℓ_e = Effective length of compression member, inches.

d = Least dimension, inches.

These design details only apply to the assembly described in Section 2.4.2.

2.4.3 Assembly 2:

2.4.3.1 Interior Face: One layer of $^5/_8$-inch (15.9 mm), Type X gypsum wallboard, complying with ASTM C 36-92, shall be attached to nominal 2-by-4 wood studs with $1^5/_8$-inch-long (41.3 mm) galvanized steel cuphead gypsum wallboard nails, having 0.2-inch (7.6 mm) head diameter and 0.010-inch (0.25 mm) shank diameter, spaced at a maximum of 8 inches (203 mm) on center on all studs and plates. Stud spacing shall be a maximum of 16 inches (406 mm) on center. The joints and nail heads shall be covered with paper tape and gypsum compound; fastener heads shall also be treated with gypsum compound. The stud cavities shall be filled with R-11 fiberglass insulation having a maximum density of 0.5 pcf (8

kg/m³), or R-11 rockwool batt insulation having a minimum density of 1.45 pcf (23 kg/m³).

2.4.3.2 Exterior Face: One layer of $^{7}/_{16}$-inch-thick (11.1 mm) oriented strand board, with the long side parallel to framing members. The material properties are described in Section 2.2.9 of this report, and the substrates shall be installed on wood framing as described in Section 2.3.3 of this report. The weather-resistive barrier, lath and coating shall be applied to the substrate as described in Section 2.3.1 or 2.3.3 of this report.

2.4.3.3 Design: The wood axial stress is limited to 0.78 F'_c and shall not exceed 0.78 F'_c at an ℓ_e/d ratio of 33. The maximum load on the system described in Section 2.4.3 of this report is 1,100 pounds (4895 N) per stud or 45 percent of the maximum allowable load permitted for the wood species, based on calculations in accordance with Chapter 23 of the code.

F'_c = Allowable unit stress in compression parallel to the grain adjusted for ℓ_e/d ratio.

ℓ_e = Effective length of compression member, inches.

d = Least dimension, inches.

These design details only apply to the assembly described in Section 2.4.3.

2.4.4 Assembly 3:

2.4.4.1 Interior Face: One layer of $^{5}/_{8}$-inch-thick (15.9 mm), Type X gypsum wallboard, complying with ASTM C 36-92, shall be attached to nominal 2-by-4 wood studs with $1^{5}/_{8}$-inch (41.3 mm) galvanized steel cuphead gypsum wallboard nails having 0.3-inch (7.6 mm) head diameter and 0.010-inch (0.25 mm) shank diameter, spaced at a maximum of 6 inches (152 mm) on center on all studs and plates. Stud spacing shall be a maximum of 16 inches (406 mm) on center. The joints and nail heads shall be covered with paper tape and gypsum compound; fastener heads shall also be treated with gypsum compound. The stud cavities shall be filled with R-11 fiberglass insulation having a minimum density of 0.5 pcf (8 kg/m³), or R-11 rockwool batt insulation having a minimum density of 1.45 pcf (23 kg/m³).

2.4.4.2 Exterior Face: One layer of $^{7}/_{16}$-inch-thick (11.1 mm) plywood with the long side parallel to framing members. The material properties are described in Section 2.2.9 of this report, and the substrates shall be installed on wood framing as described in Section 2.3.3 of this report. The weather-resistive barrier, lath and coating shall be applied to the substrate as described in Section 2.3.1 or 2.3.3 of this report.

2.4.4.3 Design: The wood axial stress is limited to 0.78 F'_c and shall not exceed 0.78 F'_c at an ℓ_e/d ratio of 33. The maximum load on the system described in Section 2.4.4 of this report is 1,100 pounds (4895 N) per stud or 45 percent of the maximum allowable load permitted for the wood species, based on calculations in accordance with Chapter 25 of the code:

F'_c = Allowable unit stress in compression parallel to the grain adjusted for ℓ_e/d ratio.

ℓ_e = Effective length of compression member, inches.

d = Least dimension, inches.

These design details only apply to the assembly described in Section 2.4.4.

2.4.5 Assembly 4:

2.4.5.1 Interior Face: One layer of $^{5}/_{8}$-inch-thick (15.9 mm), Type X gypsum wallboard, complying with ASTM C 36-92, shall be attached to nominal 2-by-4 wood studs with $1^{5}/_{8}$-inch-long (41.3 mm), galvanized steel, cuphead gypsum wallboard nails having 0.30-inch (7.6 mm) head diameter and 0.010-inch (0.25 mm) shank diameter, spaced a maximum of 8 inches (203 mm) on center on all studs and plates. Stud spacing shall be a maximum of 16 inches (406 mm) on center. The joints shall be covered with paper tape and gypsum compound. Fastener heads shall also be treated with gypsum compound. The stud cavities shall be filled with R-11 rockwool batt insulation having a minimum density of 1.45 pcf (23 kg/m³), or R-11 fiberglass insulation having a minimum density of 0.5 pcf (8 kg/m³).

2.4.5.2 Exterior Face: One layer of $^{1}/_{2}$-inch-thick (12.7 mm), water-resistant core gypsum sheathing. The material properties are described in Section 2.2 of this report, and the substrates shall be installed on wood framing as described in Section 2.3.3 of this report. The weather-resistive barrier, lath and coating shall be applied to the substrates as described in Section 2.3.1 or 2.3.3 of this report.

2.4.5.3 Design: The wood axial stress is limited to 0.78 F'_c and shall not exceed 0.78 F'_c at an ℓ_e/d ratio of 33. The maximum load on the system described in Section 2.4.5 of this report is 1,600 pounds (7117 N) per stud or 65 percent of the maximum allowable load permitted for the wood species, based on calculations in accordance with Chapter 25 of the code.

F'_c = Allowable unit stress in compression parallel to the grain adjusted for ℓ_e/d ratio.

ℓ_e = Effective length of compression member, inches.

d = Least dimension, inches.

These design details only apply to the assembly described in Section 2.4.5.

2.4.6 Assembly 5:

2.4.6.1 Interior Face: One layer of $^{5}/_{8}$-inch-thick (15.9 mm), Type X gypsum wallboard complying with ASTM C 36-92, water-resistant gypsum backing board complying with ASTM C 630-92, or gypsum veneer base complying with ASTM C 588-92, shall be applied horizontally to the interior face of nominal 2-by-4 wood studs spaced a maximum of 24 inches (610 mm) on center. The wallboard shall be attached with 6d coated nails complying with ASTM C 514-94, measuring $1^{7}/_{8}$ inches (48 mm) long and with $^{1}/_{4}$-inch-diameter (6.4 mm) heads, at a maximum of 7 inches (178 mm) on center to studs, plates and blocking. All wallboard joints shall be backed with minimum nominal 2-by-4 wood framing and taped and treated with joint compound. Fastener heads shall also be treated with joint compound.

2.4.6.2 Exterior Face: One layer of minimum $^{5}/_{8}$-inch-thick (15.9 mm), Type X, water-resistant core gypsum sheathing as described in Section 2.2.5 of this report, 48 inches (1219 mm) wide, shall be applied parallel to studs and shall be fastened with No. 11 gage, 0.48-inch-shaft-diameter, 0.438-inch-head-diameter, galvanized roofing nails, $1^{3}/_{4}$ inches (44.5 mm) long with $^{7}/_{16}$-inch- (11.1 mm) or $^{1}/_{2}$-inch-diameter (12.7 mm) heads, at a maximum of 4 inches (102 mm) on center at board edges and a maximum of 7 inches (17.8 mm) on center at intermediate studs and top and bottom plates. The nails shall penetrate a minimum of 1 inch (25 mm) into studs. The lath and wall coating are then applied as described in Sections 2.3.1 and 2.3.3 of this report.

2.4.6.3 Design: The loads on the studs shall be determined in accordance with Chapter 23 of the code, with additional requirements as noted in Footnote 18, Table 7-B, of the code.

2.5 Noncombustible Construction:

2.5.1 General: The stucco system is permitted to be applied to walls required to be of noncombustible construction, such as solid concrete or masonry or noncombustible metal frame. Installation over concrete or masonry shall comply with Section 2.3.1. When the Magna Wall fiber-reinforced stucco system is used on walls required to be of noncombustible frame construction, the walls shall be constructed as described below:

2.5.2 Interior Finish: One layer of minimum $^{1}/_{2}$-inch-thick (12.7 mm) gypsum wallboard, complying with ASTM C 36-92, is vertically applied to steel framing with blocked edges. The

wallboard shall be fastened to framing with minimum 1-inch-long (12.7 mm), No. 8-18, S-12, self-tapping screws, spaced a maximum of 6 inches (152 mm) on center. All board joints shall be taped and treated with joint compound. Fastener heads shall be covered with joint compound.

2.5.3 Steel Framing: Minimum $3^5/_8$-inch-deep (92 mm), No. 20 gage, 0.0359-inch-thick (0.91 mm) steel framing. Studs shall be spaced a maximum of 24 inches (610 mm) on center.

2.5.4 Openings: Wall openings shall be framed with minimum No. 20 gage [0.0359 inch (0.91 mm)] steel.

2.5.5 Exterior Finish: One layer of minimum $^1/_2$-inch-thick (12.7 mm) gypsum sheathing or Dens Glass Gold attached to the framing as described in Section 2.3.3.1 of this report.

2.5.6 Stud Cavity: R-11 fiberglass with a minimum density of 0.5 pcf (8 kg/m^3) or rockwool batt with a minimum density of 1.45 pcf (23 kg/m^3), $3^5/_8$ inches (92 mm) thick, shall be sized to friction-fit between studs.

2.5.7 Stucco: One layer of Pyro-Kure 600 vapor retarder, manufactured by Fortifiber, shall be applied over the gypsum sheathing with minimum 2-inch (102 mm) horizontal weather laps and maximum 6-inch vertical laps. The lath and Magna Wall coating shall be applied as noted in Sections 2.3.1 or 2.3.3 of this report.

2.6 Shear Wall Applications:

The following assembly construction requirements shall be met in order to obtain the shear value noted in Section 2.6.3.

2.6.1 Interior Face: Minimum $^1/_2$-inch-thick (12.7 mm) gypsum wallboard, complying with ASTM C-36-92, is fastened to nominal 2-by-4 wood studs at 16 inches (406 mm) on center. Fasteners shall be $1^5/_8$-inch-long (41.3 mm) barbed gypsum wallboard nails fastened to framing at a maximum of 6 inches (152 mm) on center. Gypsum wallboard shall be placed horizontally or vertically, with edges blocked.

2.6.2 Exterior Face: The weather-resistive barrier, 1-inch-thick (25 mm) foam plastic, lath and coating, shall be applied in accordance with Section 2.3 of this report.

2.6.3 Shear Value: The allowable shear value is 190 pounds per foot (2774 N/m) based on a 1:1 height-to-width ratio. For structures in Seismic Zones 3 and 4, the allowable shear is limited to 85 pounds per foot (1387 N/m).

2.7 Miscellaneous:

2.7.1 Inspection Requirements: Lath inspections shall be conducted in accordance with Section 106.5.5 of the code.

2.7.2 Control Joints: Control joints are to be installed as specified by the architect, designer, builder or structural engineer. Control joints are allowed to be installed on top of the metal lath or woven wire. Control joint installation does not require the lath or wire to be cut or broken.

2.7.3 Curing: Moisture curing by fogging the finished wall lightly with water is required for a minimum of 48 hours after coating application. The fogging shall occur as often and as long as necessary to assure cement hydration.

2.7.4 Soffits: To apply stucco products on soffit areas greater than 12 inches (305 mm) in width, the coating shall be reinforced with metal lath complying with Section 2.2.4.2 of this report. Soffit areas 12 inches (305 mm) or less in width may utilize a minimum No. 20 gage galvanized wire over any approved substrate. All soffits that have metal lath installed, complying with the above-referenced specification or the code, may be utilized over open framing or any approved substrate, regardless of the soffit dimension. If substrates are installed in soffit areas, fastener lengths shall be increased by the thickness of the substrates as listed by the above-referenced specification, except when plywood or OSB in compliance with Sections 2.2.6 and 2.2.9 of this report are installed at the substrate.

2.7.5 Sills: For all sill depths of 6 inches (152 mm) or less, the coating and lath are applied over any substrate, provided the coating, lath, weather-resistive barrier and substrates are installed in accordance with this report. Sills with depths exceeding 6 inches (152 mm) shall have solid wood, plywood, or oriented strand board substrates. The substrate shall be fastened in accordance with the code, with a layer of weather resistive barrier then being applied as described in Section 2.3.2.1. The weather-resistive barrier, coating, lath and optional foam plastic insulation board shall be installed in accordance with Sections 2.3.1 and 2.3.2 of this report. The coating on sills should always be applied to finish with a gradual slope in the sill surface sloping away from the structure, to allow water to drain out and not pool or collect in these areas.

2.7.6 Projections: Decorative foam plastic shapes and projections may be installed with the size, location, design, and method of attachment to be determined by the design professional and approved by the building official. The foam plastic must comply with Section 2602 of the UBC. If the foam plastic projections are to be covered with metal reinforcement and mechanically fastened to the framing members and then covered with Magna Wall Fiber-reinforced Stucco, the fasteners must penetrate wood framing members a minimum of 1 inch (25 mm) and steel framing members a minimum of $^1/_4$ inch (6.4 mm). If woven wire lath is utilized, the fasteners should be corrosion-resistant large-head or cap-type fasteners. The projections shall be fastened to the framing members at a maximum spacing of 6 inches (152 mm) on center. The foam plastic projections may be prewrapped completely with metal reinforcement then applied to the structure. These pieces may be butt-jointed with no additional reinforcement required. The coating shall then be installed in accordance with Section 2.3.1 of this report. Decorative foam plastic shapes and projections may also be installed over the Magna Wall coating by adhering the projections utilizing products as specified by the design professional or system applicator and approved by the building official. The installation and coating of these adhered foam projections must be in accordance with the current evaluation report and manufacturers instructions for the product specified or chosen for use. The structural capacity of fasteners and adhesives shall comply with the UBC.

2.8 Identification:

The factory-blended mixture is delivered to jobsites in 80-pound (36 kg), water-resistant bags, with labels bearing the following information: name and address of manufacturer, the evaluation report number (ICBO ES ER-4776), identification of components, weight of packaged mix, storage instructions, minimum amounts of water and other components that may be added and conditions that must be considered in determining the actual amount, and curing instructions. The bulk mixer label shall show information as noted in Section 2.2.1.

Foam plastic insulation boards are identified in accordance with their respective ICBO ES evaluation reports. Additionally, the board density must be noted.

3.0 EVIDENCE SUBMITTED

Data in accordance with the ICBO ES Acceptance Criteria for Cementitious Exterior Wall Coatings (AC11), dated January 1997; reports of tests in accordance with UBC Standards 2-1 and 7-1.

4.0 FINDINGS

That the Magna Wall Fiber-reinforced Stucco Products described in this report comply with the 1997 *Uniform Building Code*™, subject to the following conditions:

4.1 The materials and methods of installation comply with this report and the manufacturer's instructions.

4.2 Installation is done by applicators approved by the manufacturer.

4.3 The system may be applied to walls required to be of noncombustible construction in accordance with Section 2.5.

4.4 The system is recognized as a one-hour load-bearing, fire-resistive assembly when installed in accordance with Section 2.4 of this report.

4.5 The interior of the building is separated from the foam plastic insulation board with a thermal barrier complying with Section 2602.4 of the code, such as $^1/_2$-inch-thick (12.7 mm) regular gypsum wallboard applied in accordance with Table 25-G of the code.

4.6 An installation card, as shown in Figure 4 of this report, is left at the jobsite for the owner, and a copy is filed with the building department.

4.7 The allowable wind load on the system with wood or steel studs spaced a maximum of 24 inches (610 mm) on center is 35 psf (1.68 MPa) negative and 50 psf (2.39 MPa) positive. Support framing shall be adequate to resist the required wind loads.

This report is subject to re-examination in two years.

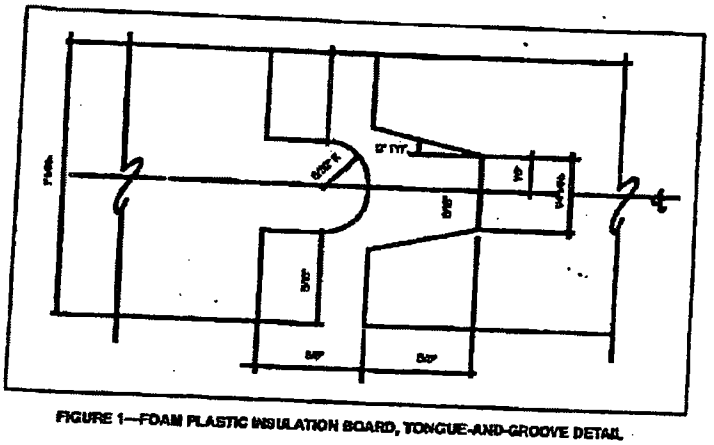
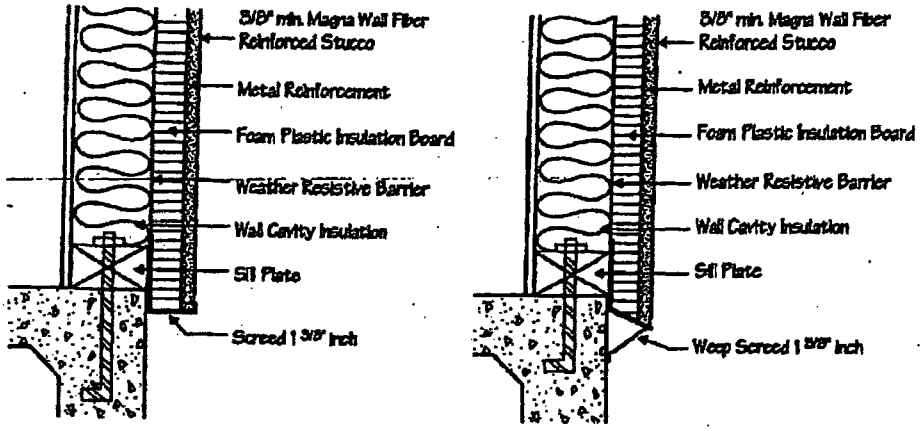


FIGURE 1—FOAM PLASTIC INSULATION BOARD, TONGUE-AND-GROOVE DETAIL

WEEP SCREED – FOAM SUBSTRATE



WEEP SCREED – SOLID SUBSTRATE

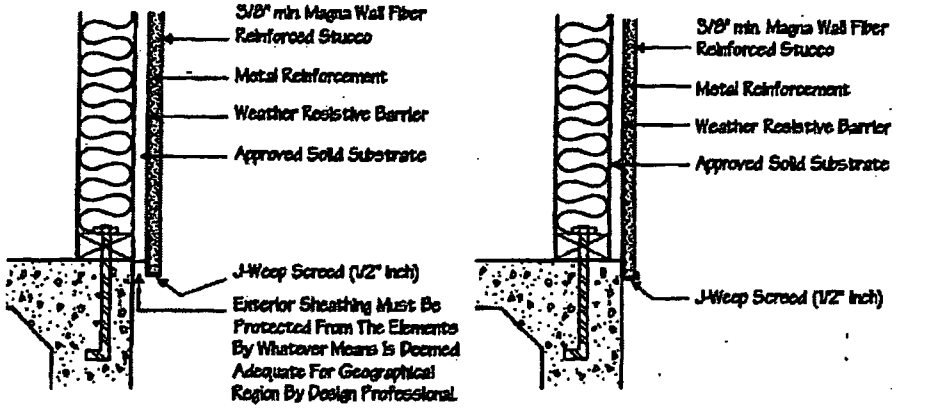
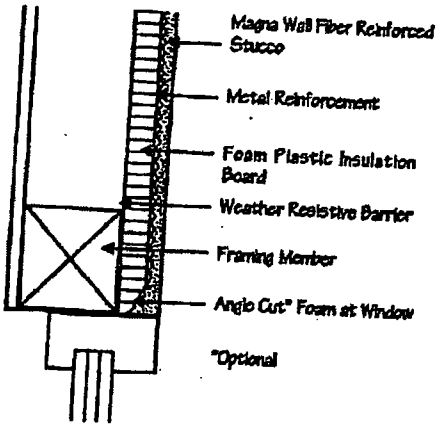
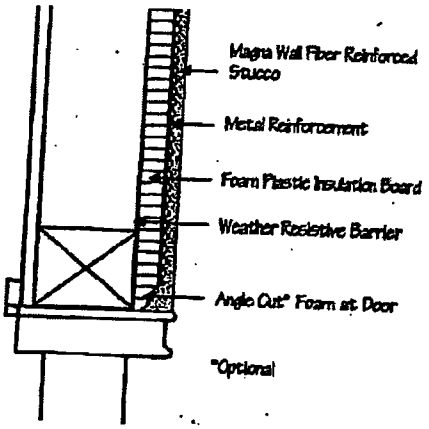


FIGURE 2—TYPICAL INSTALLATION DETAILS

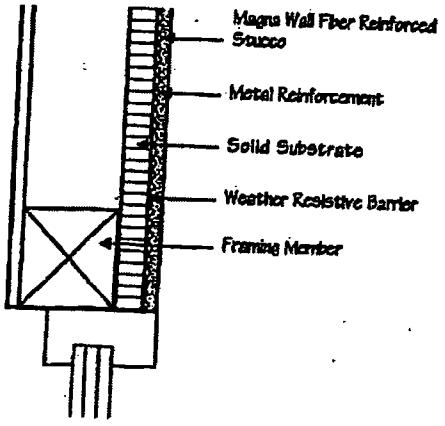
TYPICAL WINDOW – FOAM SUBSTRATE



TYPICAL DOOR – FOAM SUBSTRATE



TYPICAL WINDOW – SOLID SUBSTRATE



TYPICAL DOOR – SOLID SUBSTRATE

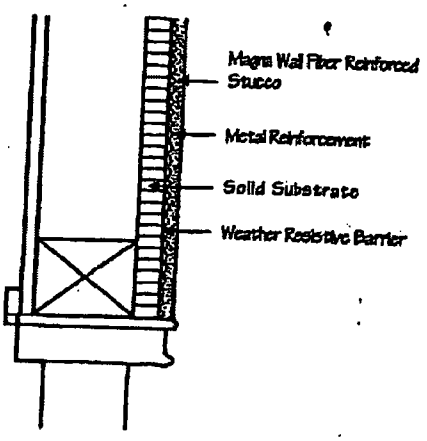
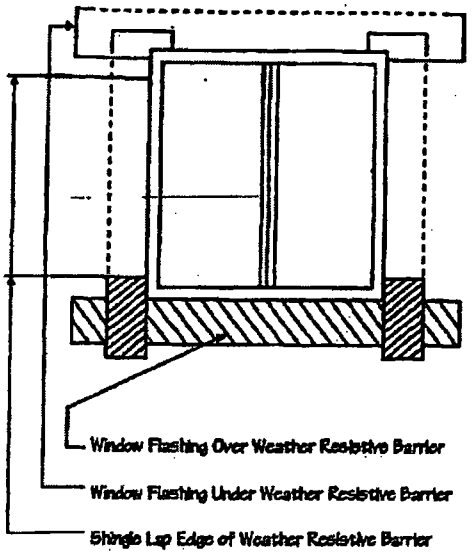


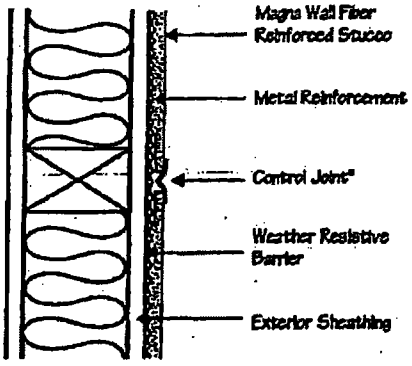
FIGURE 2—TYPICAL INSTALLATION DETAILS—(Continued)

WINDOW/DOOR FLASHING



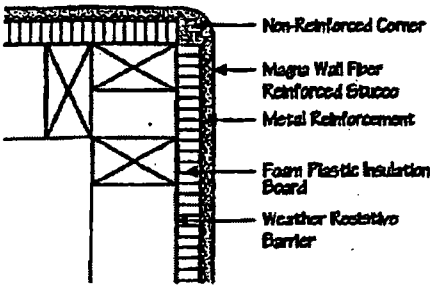
Note: At windows and doors, flashing materials and installation of those materials must be in accordance with section 1402.2 of the UBC.

CONTROL JOINT

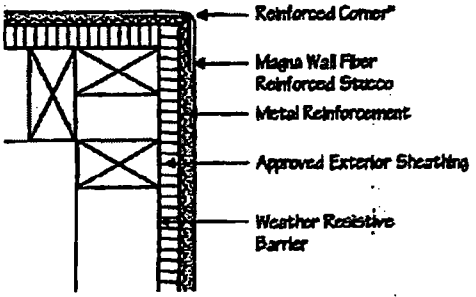


*Control joint may be wired to metal reinforcement if attachment to framing member is not possible.

NON-REINFORCED ROUNDED CORNERS – FOAM SUBSTRATE



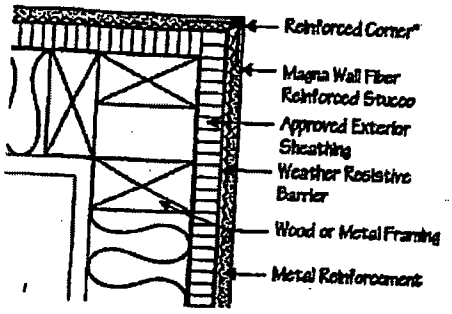
REINFORCED ROUNDED CORNERS – FOAM OR SOLID SUBSTRATE



*Reinforced corner may be a second layer of woven wire lath or expanded metal lath with a two inch leg (min) or a galvanized metal or plastic corner bead.

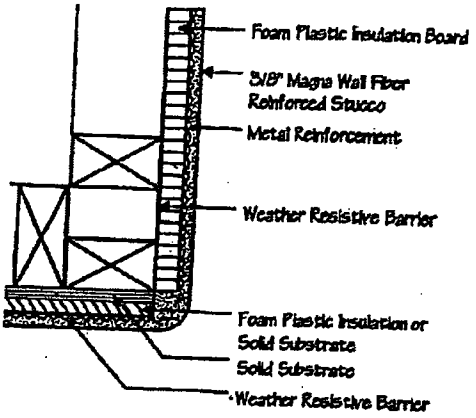
FIGURE 2—TYPICAL INSTALLATION DETAILS—(Continued)

SQUARE CORNER – FOAM OR SOLID SUBSTRATE

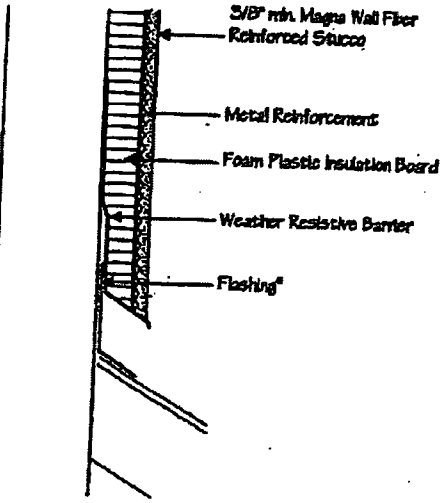


*Reinforced corner may be a second layer of woven wire lath or expanded metal lath with a two inch leg (min) or a galvanized metal or plastic corner bead.

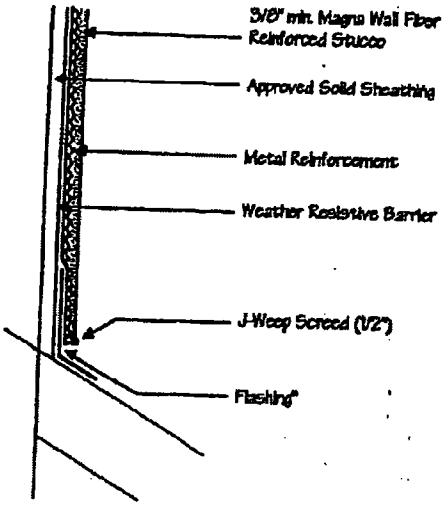
NON-REINFORCED CORNER DETAIL AT TRANSITION FROM OPEN FRAMING TO SOLID SUBSTRATE



TERMINATION AT FLASHING ON ROOF



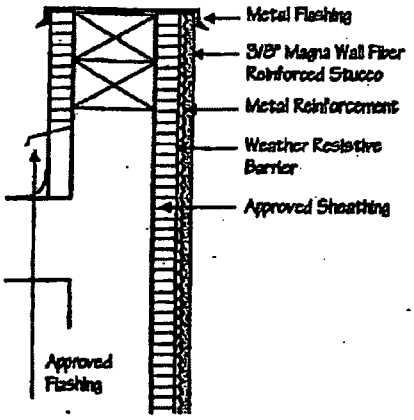
TERMINATION AT FLASHING ON ROOF – SOLID SUBSTRATE



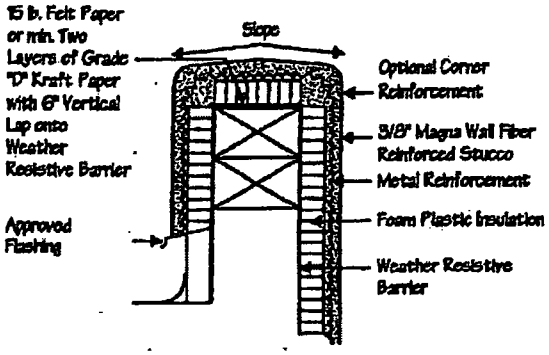
*Flashing is installed by others. Installation requires only shingle lap of the weather resistive barrier onto the approved flashing. Flashing materials and installation should be in accordance with the code.

FIGURE 2—TYPICAL INSTALLATION DETAILS—(Continued)

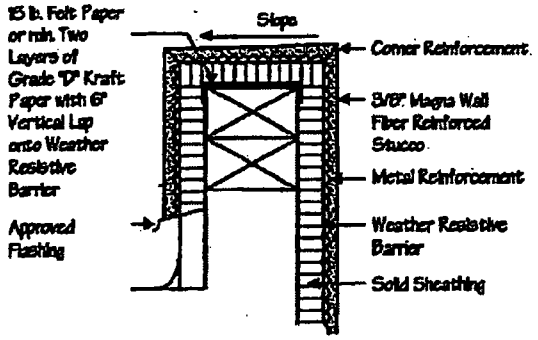
PARAPET WITH METAL CAP FOAM OR SOLID SUBSTRATE



PARAPET WITHOUT METAL CAP FOAM OR SUBSTRATE



PARAPET WITHOUT METAL CAP SOLID SUBSTRATE



DIRECT APPLICATION TO CONCRETE OR CONCRETE MASONRY UNITS

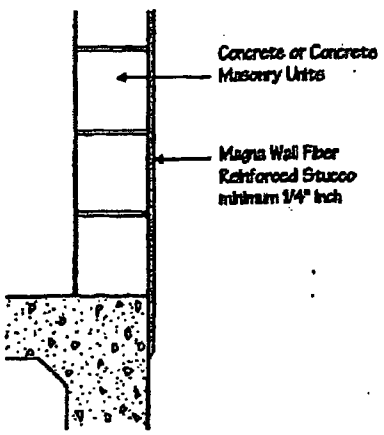
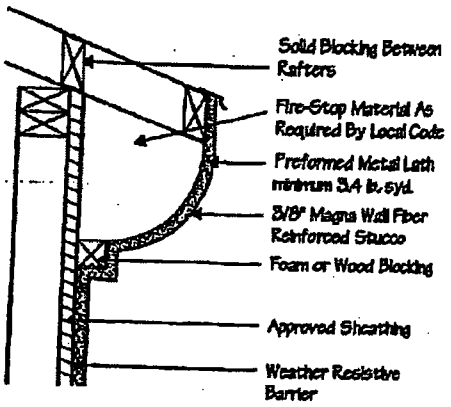


FIGURE 2—TYPICAL INSTALLATION DETAILS—(Continued)

Lath Basket



Note: Shape and design of Lath Basket may vary

A Weep System for One-Coat Stucco Installations

Vinyl tubes 1/2" in diameter are inserted into holes drilled through stucco finish to a keyway formed at edges of concrete slab as shown. Building paper is brought down over sill plates terminating at keyway. Water that may inadvertently find its way behind the plaster assembly is directed downward by building paper to keyway which serves as a receptacle for water. Water then finds its way to the exterior through vinyl tubes spaced 48" o.c. along the open keyway under stucco finish.

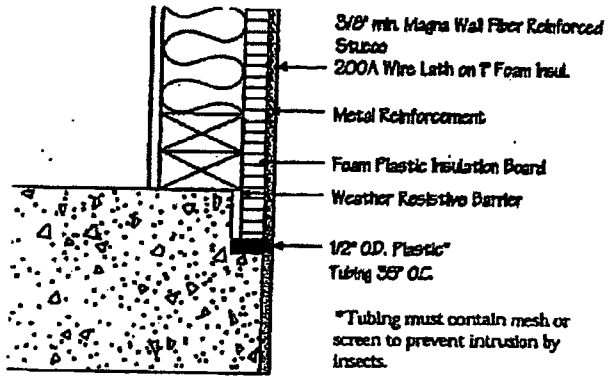
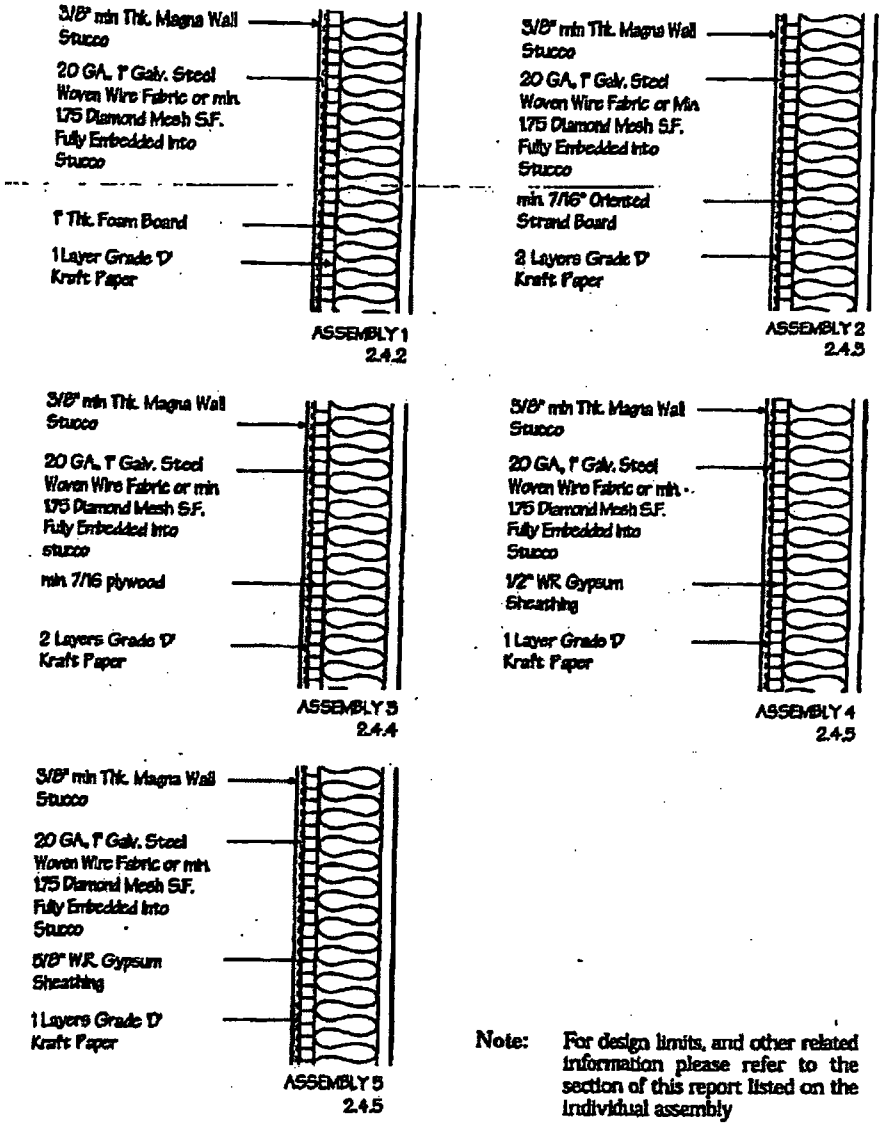


FIGURE 2—TYPICAL INSTALLATION DETAILS—(Continued)

One Hour Load Bearing Fire-Resistive Assemblies



Note: For design limits, and other related information please refer to the section of this report listed on the individual assembly

FIGURE 3—ONE-HOUR BEARING-WALL FIRE-RESISTIVE ASSEMBLIES

INSTALLATION CARD

MagnaWall Fiber Reinforced Stucco System
MagnaWall, Inc.

Job Address

National Evaluation Service
Report No. _____

Date of Job Completion _____

Plastering Contractor

Name: _____

Address: _____

Telephone No. ( ) _____

Approved contractor number as
issued by the coating manufacturer _____

This is to certify that the exterior coating system on the building exterior at the above address has been installed in accordance with the evaluation report specified above and the manufacturer's instructions.

_____ _____
Signature of authorized representative of plastering contractor — Date

This installation card must be presented to the building inspector after completion of work and before final inspection.

FIGURE 4—INSTALLATION CARD

MAGNA WALL®
STUCCO SYSTEMS

Product Specifications

Magna Wall® One-Coat Stucco Plus

Magna Wall® Stucco Systems
16745 West Hardy Road
Houston, Texas 77060
Phone: (281) 821-9487
Fax: (281) 821-9572

Another Performance **ISG Resources** *Building Product*

Magna Wall® One-Coat Stucco Plus

PRODUCT DESCRIPTION

Basic Use:

Magna Wall® One-Coat Stucco Plus is intended for use as a one-coat stucco. It may be trowel or gun applied.

Composition and Materials:

A blend of portland cement, hydrated lime, high performance pozzolan, fibers and additives.

Bag Weight:

80 lb. (36.36kg.)

TECHNICAL DATA

Applicable Standards: (ASTM is currently drafting a standard for one-coat stucco. The standards listed are for plastic cement.)

ASTM C-1328 for Type S

UBC 25-1

A. Fineness:

This is determined by screening the unmixed mortar through a No. 325 mesh sieve.

ASTM C-1328	24% Maximum
Magna Wall® One-Coat Stucco Plus	16%

B. Autoclave Expansion:

This test is used to predict the long-term hydration of unhydrated particles. This in turn predicts long term failure.

ASTM C-1328	1% Maximum
Magna Wall® One-Coat Stucco Plus	0.04%

C. Time of Setting:

Initial time of set must be long enough to allow adequate time to apply and trowel the product. The final set time must be rapid enough not to interfere with production.

	Initial Set, Minimum	Final Set, Maximum
ASTM C-1328	Not Less Than 90 Minutes (1.5 Hours)	Not More Than 24 Hours
Magna Wall® One-Coat Stucco Plus	150 Minutes (2 1/2 Hours)	270 Minutes (4 1/2 Hours)

D. Compressive Strength:

Magna Wall® One-Coat Stucco Plus exceeds ASTM standards and continues to gain strength over time.

	3-day	7-day	28-day	90-day
ASTM C-1328 Minimum	N/A	1300 psi	2100 psi	N/A
Magna Wall® One-Coat Stucco Plus	1560 psi	1910 psi	3200 psi	3500 psi

E. Air Content

Air content affects workability, yield and strength. Plasterers want a high air content to increase workability and yield. However, the higher the air content, the lower the compressive strength. ASTM C-1328 sets the standard for air content in plastic stuccos.

	Requirement
ASTM C-1328 Minimum/Maximum	8/20 %
Magna Wall® One-Coat Stucco Plus	12/16 %

F. Water Retention:

Stucco is affected by water retention in three ways:

a. The greater the water retention, the longer the stucco remains workable. With a longer working time, the plasterer does not have to stop to retemper the stucco. This, in turn, increases efficiency and lowers cost. Magna Wall® One-Coat Stucco Plus is formulated to remain workable.

b. Compressive strength and bond strength are reduced with each retempering. Magna Wall® One-Coat Stucco Plus does not need retempering as often as stuccos made from masonry cements; therefore, it retains its strength better.

c. When plastering over block or brick with a high initial rate of absorption, the block or brick can dehydrate the stucco before it sets chemically. This is especially true if the stucco has low water retention. This can cause the stucco to powder and fail to develop strength.

ASTM C-1328 Minimum	70%
Magna Wall® One-Coat Stucco Plus	82%

G. Water Resistance:

Magna Wall® One-Coat Stucco Plus is formulated to resist water penetration in its finished state. No stucco is waterproof.

PRODUCT USAGE

A. Mixing Instructions:

a. Magna Wall® One-Coat Stucco Plus has been formulated to require only 4 to 6 gallons of water depending on the amount of sand used and the moisture content of the sand.

b. Use 2.5 to 3.0 cubic feet of loose damp sand per bag of Magna Wall® One-Coat Stucco Plus. This is:

19 to 22.5 gallons,
3.5 to 4.0 5-gallon buckets, * or
15 to 18 No. 2 shovelsful. **

* Loose fill and screed off. Most 5-gallon plastic buckets level full hold 5.5 gallons
** Shovel capacity varies with moisture of sand and the operator.

B. Magna Wall® One-Coat Stucco Plus is designed to be gun applied, or to be applied by hand.

C. For consistent results, use a mechanical mixer and measure the sand and the water. Mixing 4 minutes will improve the workability and water retention for hand application. Over mixing will entrain excess air, which will lower the compressive strength.

STORAGE, APPLICATION, AND CURING:
Shelf life is about 6 months. Store in a dry area off the ground.

Do not add air-entraining agents, mortar fat, antifreeze, accelerators, or waterproofing agents, as they may interfere with the chemical integrity of this product. Do not apply at temperatures below 35 degrees F, or when freezing temperatures are anticipated within 12 hours. Apply the scratch coat a minimum of 3/8 inch thick. After it has cured sufficiently, apply the brown coat a minimum of 3/8 inch thick.

All cementitious stuccos require moisture to cure. Moist cure for 48 hours with regular fogging spray after stucco has taken its initial set (2 to 4 hours).

GENERAL GUIDANCE:
Stuccoing is a skilled craft and competent plasterers know the standards of craftsmanship. Work clean and neat. Fewer problems are observed on a clean work site.

WARNINGS
See *MSDS for specifics.*

Si usted no entiende la etiqueta, busque una persona para que se la explique a usted en detalle. (If you do not understand this label, find someone to explain it to you in detail.)

This product contains portland cement and hydrated lime (calcium and magnesium hydroxide). Respirators are required. Use eye protection, gloves, and boots to avoid contact with skin and eyes. Harmful if swallowed.

Products containing portland cement may contain small amounts of crystalline silica, a known carcinogen. Crystalline silica causes silicosis, a disabling and potentially fatal lung disease. Cement and lime dust can cause irritation and burns to eyes and skin upon contact. In case of contact with skin, wash thoroughly with water. In case of contact with eyes, flush with clean water for 15 minutes and seek medical attention.

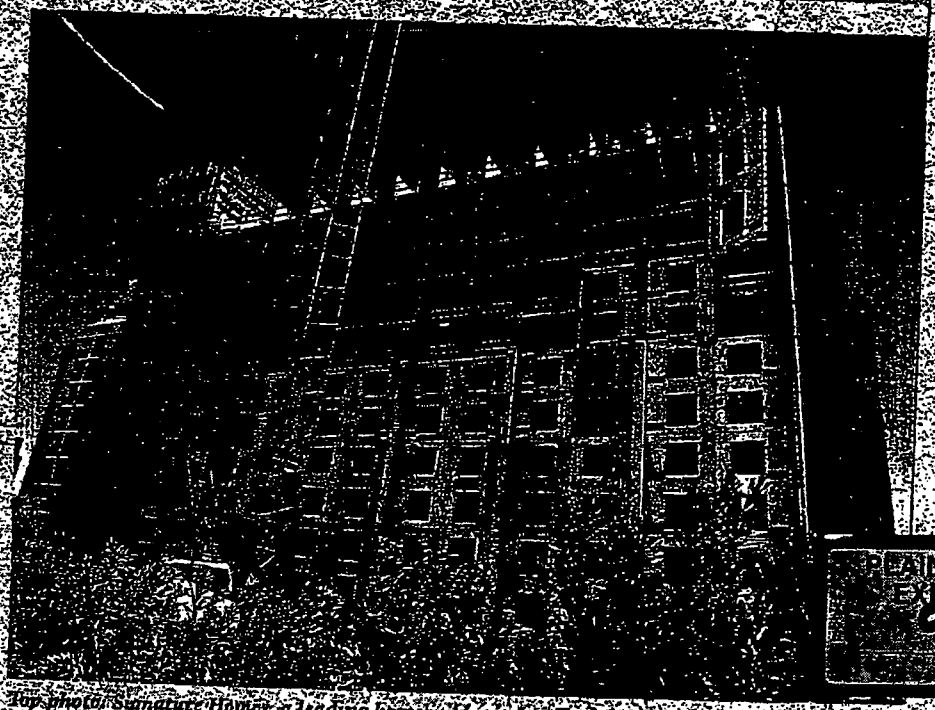
KEEP OUT OF REACH OF CHILDREN / MANTENER LEJOS DE NIÑOS

NOTICE OF LIMITED LIABILITY
Magna Wall® Stucco Systems shall not be liable for incidental and consequential damages, directly or indirectly sustained, nor for any loss caused by application of these goods not in accordance with current printed instructions or for other than the intended use. Magna Wall®'s liability is expressly limited to replacement of defective goods. Any claim shall be deemed waived unless made in writing to Magna Wall® within thirty days from the date it was or reasonably should have been discovered.

AWV

MAGNA WALL, inc.

Fiber Reinforced Stucco



PLAINTIFF'S EXHIBIT 9

Top photo: Signature Homes, a leading homebuilder in Las Vegas, Nevada, insulated Magna Wall Systems by Nichols Construction, Inc., Plastering Contractor. Lower photo: San Remo Hotel, Las Vegas, Nevada, A & E Construction, General Contractor – Gossett Brothers of Albuquerque, Plastering Contractor.

MWI 00037

Magna Wall Warrantee Information

Magna Wall Fiber Reinforced Stucco can be top coated with most stucco top coats that are on the market including paint. cementitious coatings, acrylic coatings, and elastomeric coatings. With time. most stucco develops cracks. Many of these cracks are caused by factors other than the stucco, such as flexing of a wall under wind load, or failure to gap plywood or OSB sheathing. To maintain the integrity of the system, we recommend the Magna Wall elastomeric paint and the Magna Wall elastomeric texture coatings be used as a top coat.

We feel so strong on this matter. We only extend our 10 year materials warrantee to Magna Wall One-Coat Stucco that is applied by a certified applicator

MWI 00038

MAGNA WALL PREMIUM FIBER-REINFORCED STUCCO BROCHURE

SUBSTRATE SPECIFICATIONS

1. General
2. Exterior Gypsum Sheathing
3. Exterior Plywood
4. Foam Plastic Insulation Board
5. Oriented Strand Board (OSB)
6. Fiberboard
7. Concrete Masonry Unit

3

TECHNICAL ASSISTANCE

1. Typical Wall Details
2. MSDS Sheets
3. Product Specifications
   a. Scratch and Brown
   b. Plastic Cement
   c. Magna Wall One Coat

4

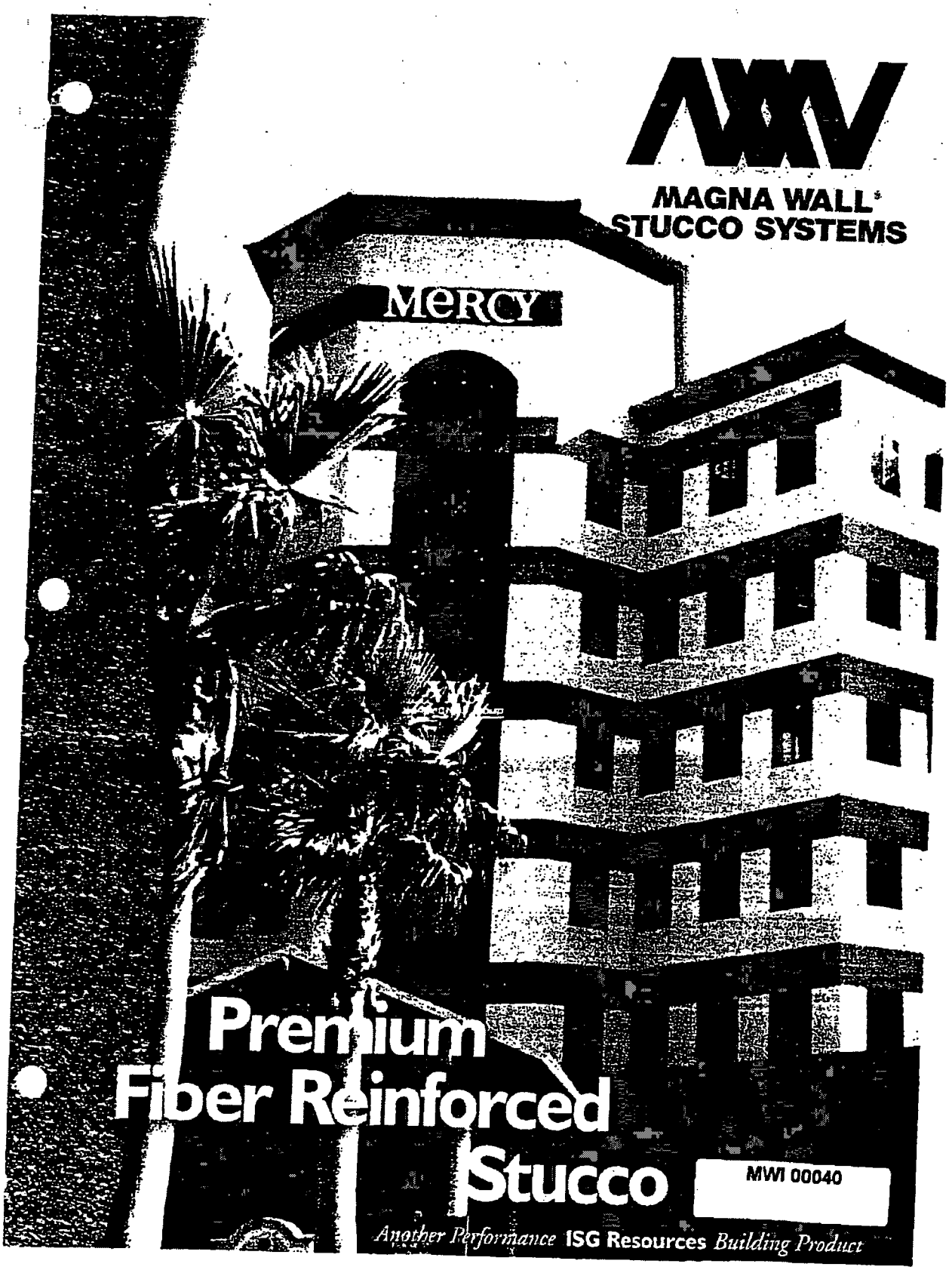
NER-459

ICBO ER-4776

5

STUCCO WRAP

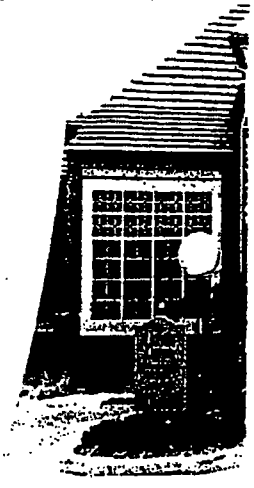
MWI 00039


MAGNA WALL®
STUCCO SYSTEMS
MERCY
Premium
Fiber Reinforced
Stucco
MWI 00040
Another Performance ISG Resources Building Product

Oakmont Brathaw Apartments, Lake Mary, Florida

MAGNA WALL® EASE, DURABILITY AND BEAUTY IN EXTERIOR WALL TREATMENTS

Magna Wall® Premium Fiber Reinforced Stucco – a long-lasting and competitively priced exterior wall treatment – is fast becoming an American favorite. Used across the United States, Magna Wall® has shown its value in a variety of applications, including construction of single-family, multi-family, commercial and industrial structures, as well as retrofitting and rehabilitation of existing projects.



Cover photo: Mercy Hospital, Laredo, Texas

MWI 00041

MAGNA WALL® OFFERS AN ATTRACTIVE, COST EFFECTIVE ALTERNATIVE TO CONVENTIONAL STUCCO.

Wyndhaven Apartments, Austin, Texas

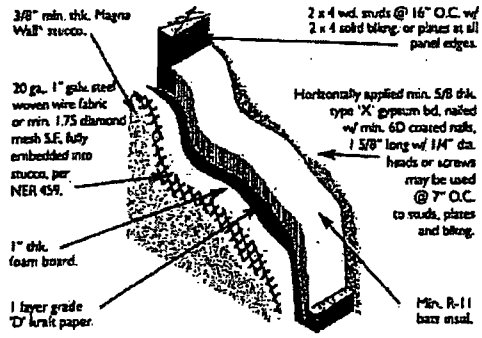
Benefits include:

- **Reduced Application Time.** Magna Wall® cuts the time required for a three-coat stucco process by more than 30 to 40 percent.
- **Lower Overall Project Costs.** Quicker application allows projects to be completed faster, saving time and money.
- **Superior Strength.** Shear values and fire ratings for Magna Wall® are comparable to conventional three-coat stucco. Tensile and flexural strengths for Magna Wall® exceed the strengths of three-coat stucco.
- **Excellent Durability.** Magna Wall® has the same life expectancy as conventional three-coat stucco.
- **Minimal Skrinkage.** Cracking is minimized because of Magna Wall®'s fiber reinforcement.

Jefferson Summit Apartment Clubhouse, Orlando, Florida

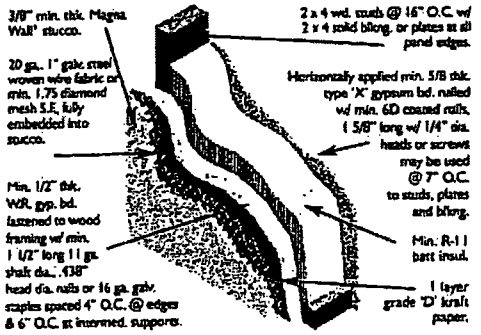
MWI 00042

TYPICAL WALL SECTIONS
CREATING ONE-HOUR FIRED RATED ASSEMBLIES



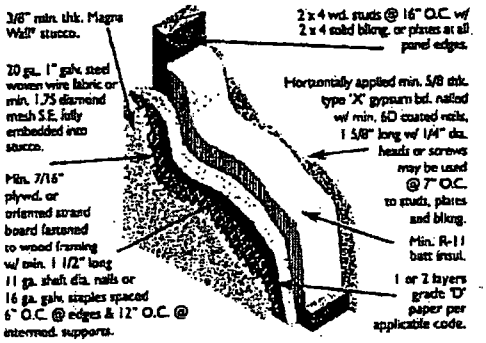
San Moritz Apartments

San Moritz Apartments – Developed by Fairfield Development Company, Las Vegas, Nevada. Architects, Todd & Associates, Phoenix, Arizona. Magna Wall Stucco System applied over wood studs (see detail at left).



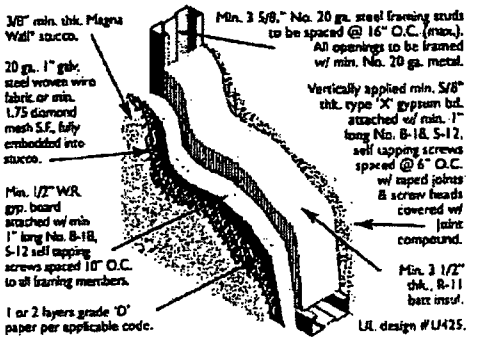
The Vintage at Tomahawk Creek

The Vintage at Tomahawk Creek, Kansas City Missouri – Developed by Knollwood Development, Overland Park, Kansas. Architect, Burch, Arnold & Partners, Dallas Texas. Magna Wall Stucco System applied over wood studs (see detail at left).



The Arbors Apartments at Maitland Summit

The Arbors at Maitland Summit, Maitland Florida – Developed by Zeus Development, Winter Park, Florida. Architect, Charles Brock Associates, Orlando, Florida. Magna Wall Stucco System applied over wood studs (see detail at left).



Vistana Resort

Vistana Resort, Orlando, Florida – Developed by Vistana Development Ltd., Orlando Florida. Architect, Forum Architecture & Interior Design, Inc., Orlando Florida. Magna Wall Stucco System applied over metal studs (see detail at left).

MWI 00043

Marriott Grande Vista, Orlando, Florida
Above left: Residential Construction, Las Vegas, Nevada

DESIGNED WITH THE PLASTERER IN MIND

A blend of portland cement, fibers, chemicals, and fine aggregates, Magna Wall® Premium Fiber Reinforced Stucco can be applied by hand-troweling or machine spraying to almost any wall substrate that has been mechanically fastened to open framing. All foam plastics, insulation board, exterior gypsum sheaching, asphalt impregnated sheathing, plywood and OSB are common substrates. Magna Wall® Premium Fiber Reinforced Stucco can also be used to cover masonry block, concrete and brick without metal reinforcement.

One inch x 20 gauge stucco netting, 1 1/2 inch x 17 gauge stucco netting, and expanded metal lath (1.75 minimum) are used as a reinforcement and mechanical bond for Magna Wall®. All lath covered by UBC, 1988 Edition, may be used, depending on the wall requirement.

Magna Wall® Premium Fiber Reinforced Stucco is available nationwide with manufacturing in more than a dozen locations. Magna Wall® is available in concentrate or pre-sanded mix. Pre-sanded mix is packaged in 100 pound bags, requiring only the addition of potable water at the job site. (See NER Report #459 for mixing and application instructions.)

Magna Wall® is applied in one coat with a thickness from 3/8" to 7/16". The base coat may be textured as soon as it has set sufficiently to accept the finish without the base being disturbed. This can be one hour or longer, depending on the temperature and other conditions.

The Magna Wall® surface should be kept moist for 48 hours following initial application. If adhesives are used, Magna Wall® should be consulted for curing instructions.

Magna Wall® recommends that a quality breathable paint be used to add color and water resistance. Many waterproof synthetic decorative coatings and elastomeric paints are available in a variety of finishes. These will virtually eliminate cracking, other than that caused by stress or wall movement. Magna Wall® Premium Fiber Reinforced Stucco is not a waterproof coating.

MWI 00044

QUALITY TESTED - TIME AND AGAIN

Testing is a way of life for Magna Wall®. Comprehensive strength tests are performed on all products on a regular basis - both at the plant and in the field.

Legacy Villas Apartments, Atlanta, Georgia.

Additionally, the following certification tests have been completed by Magna Wall®:

- **Freeze-thaw test.**
  By Testing Consultants, Report #0906041.
- **Racking load test.**
  By Testing Consultants, Report #0906053.
- **Accelerated weathering test per ASTM G53.**
  By Testing Consultants, Report #0907059.
- **Transverse load tests per ASTM E72.**
  By Testing Consultants, Report #0905140.
- **Fire tests of building construction and materials per ASTM E119-88.**
  By Omega Point Laboratories, #0971-90722.
- **Air infiltration tests per ASTM E283.**
  By Architectural Testing, #ATI 14271, issued July 29, 1994.
- **Carbon-arc weatherometer tests per ASTM G23.**
  By Ramtech Laboratories, #9275-91, issued November 11, 1991.
- **Noncombustibility tests per ASTM E136.**
  By Omega Point Laboratories, #9071-93222, issued March 17, 1992.
- **Fire test.**
  By Ramtech Laboratories, #9583A-92, issued December 14, 1992, and amended December 21, 1992.
- **Fire test.**
  By Ramtech Laboratories, #9838-93, issued July 23, 1993.
- **Fire test.**
  By Ramtech Laboratories, #9979-93, issued December 10, 1993.
- **Full scale fire resistance test per ASTM E119.**
  By Omega Point Laboratories, #9071-99413, issued February 16, 1996.
- **Water penetration tests of wall panels per ASTM E331.**
  By Southwest Research Institute, #06-7536-229, issued February 1996.
- **Fire test per ASTM E119.**
  By Omega Point Laboratories, #9071-99559, issued May 6, 1996.
- **Estimated sound transmission class (STC) ratings test per ASTM E413-87.**
  By Jack Evans & Associates, issued September 1996.

Nationally listed by Omega Point Laboratories, Inc.

MWI 00045

For additional details on Magna Wall®, see National Evaluation Report #459.
Information on tests is available from Magna Wall®.

The Alcazar Apartment Complex, Orlando, Florida
Above right: Stone Oak Center Commercial Building, San Antonio, Texas

MWI 00046

Your Quality Magna Wall® Distributor is:

Selected Magna Wall® Manufacturing Locations Include:

Phoenix, Arizona	Tampa, Florida	Dallas, Texas
Tempe, Arizona	Atlanta, Georgia	El Paso, Texas
Los Angeles, California	Las Vegas, Nevada	San Antonio, Texas
Denver, Colorado	Bayville, New Jersey	Salt Lake City, Utah
Ocala, Florida	Portland, Oregon	

ISG Resources - *Performance Building Materials*

Headquartered in Salt Lake City, ISG Resources is a leading supplier of building materials to industries as diverse as ready mixed concrete, precast concrete fabrication, roofing and carpet manufacturing, and, of course, mortar and stucco construction. Operating coast to coast, ISG Resources offers unparalleled programs for the architects and engineers who specify its products and for contractors who use them. ISG Resources is a Citicorp Venture Capital Portfolio Company.

www.isgproducts.com

For more information on Magna Wall®, contact:

Magna Wall® Stucco Systems
5033 Callaghan Road
San Antonio, TX 78228
1-800-626-4391

MWI 00047

Part 1: GENERAL

1.01 SUMMARY

This specification includes all labor, materials, service equipment and scaffolding required to complete the lath and one-coat stucco installation in accordance with the architectural drawings.

1.02 REFERENCES

A. International Conference of Building Officials Evaluations Services, Inc.
ER-4776

B. National Evaluation Services, Inc.
NER-459

1.03 SYSTEM DESCRIPTION

Exterior wall system to be a fiber reinforced stucco installation over exterior gypsum sheathing substrate. Exterior gypsum sheathing shall be water resistant core and comply with ASTM C 79-95 with a minimum thickness of ½ inch.

1.04 SUBMITALS

A. Product Data: Submit fiber reinforced stucco manufacturer's evaluation report in conformance with recognized model code.
B. Provide certification of approved applicator by fiber reinforced stucco manufacturer.

1.05 QUALITY ASSURANCE

A. Application of stucco system shall be performed by an approved applicator of the manufacturer in accordance with applicable evaluation report.
B. Prior to installation of the fiber reinforced stucco, provide a mock-up panel using materials specified for final work. This panel should demonstrate the texture and workmanship to be expected in the completed work. Obtain architect or owner approval of mock-up panel prior to start of actual work and retain panel for judging completed work.

1.06 DELIVERY, STORAGE AND HANDLING

All stucco products should be delivered in original, unopened bags with labels intact or in approved labeled bulk containers. Product should be stored in such a manner to protect it from rain or moisture.

1.07 PRODUCTION CONDITIONS

A. Fiber reinforced stucco may be applied at ambient air temperatures between 35 degrees F and 120 degrees F.
B. Stucco shall be protected from freezing air temperatures for the first six hours after initial application.
C. Do not apply stucco to frozen surfaces or surfaces containing frost.

1.08 SEQUENCING AND SCHEDULING

A. Obtain any required lath inspections prior to installation of stucco materials.
B. Application of stucco materials should be scheduled after completion of installation of interior sheetrock whenever possible to avoid possible damage to or cracking of the stucco from the impact to the framing members and exterior wall surface resulting from sheetrock installation.
C. Allow adequate time for moist curing of the stucco material prior to the application of paint, elastomeric coating, acrylic plaster finish or colored stucco finish.

1.09 PATCHING AND REPAIR

A. Stucco that was damaged after installation should be inspected to determine if the weather resistive membrane was damaged, if so, then the weather resistive membrane should be cut out and properly repaired prior to the patching of the stucco material.
B. Repairs to damaged or defective stucco shall match adjacent surfaces.

Part 2: PRODUCTS

2.01 MANUFACTURER

A. Furnish fiber reinforced stucco from the following manufacturer:

Magna Wall, Inc. **1-800-626-4391**
5033 Callaghan Road
San Antonio, TX 78228

2.02 MATERIALS

A. Stucco Products
   1. Stucco: Fiber Reinforced Stucco as manufactured by Magna Wall, Inc., ICBO ES-4776 or NER-459.
   2. Water: Clean, fresh, suitable for human consumption and free from mineral and organic substances that could affect the stucco.
   3. Sand: Sand must be clean and free from deleterious amounts of clay, loam, silts, soluble salts and organic matter. Sand gradation shall comply with ASTM C 144-97 or ASTM C 897-96.

B. Lath Products
   1. Weather Resistive Membrane: Shall be a minimum grade "D" kraft building paper complying with Federal Specification UUB 790a or asphalt saturated rag felt complying with UL Standard 55-A or a code approved weather resistive barrier such as DuPont Tyvek Stucco Wrap (ICBO ES ER-4000, SBCCI ER-95105D) or Simplex Products R-Wrap Protective Housewrap (ICBO ES ER-4449, SBCCI ER-94104A). The weather resistive membrane is to be installed over the ½ inch exterior gypsum sheathing in compliance with the code.
   2. Lath may be a wire Fabric Lath minimum 1 inch, 20 gauge galvanized steel or Expanded Metal Lath shall be a minimum 1.75 pounds per square foot, galvanized steel in compliance with ASTM C 847-93. Wire fabric lath and expanded metal lath are required to be a self-furring type lath for installation over exterior gypsum sheathing. Soffits, ceilings and overhang areas over 12 inches in width shall receive 3.4 pounds per square yard rib type metal lath.
   3. Accessory items such as weep screed, corner bead, control joints, etc. shall be code approved corrosion resistant metal, plastic, vinyl or zinc. All components shall be installed as shown and specified by construction documents and in compliance with ICBO ES ER-4776 or NER-459, whichever code is recognized and followed by the local building department.
   4. Caulking shall be a minimum of acrylic latex in compliance with ASTM C 834.

Part 3: EXECUTION

3.01 INSPECTION

A. Examine substrates and any other areas to receive stucco and report any detrimental conditions to the appropriate party.

B. Verify before proceeding with work that required inspections of existing conditions have been completed.

3.02 PREPARATION

Protect adjacent areas and surfaces that could be damaged during installation of lath or fiber reinforced stucco materials.

3.03 INSTALLATION

GENERAL: The installation of the lath and fiber reinforced stucco system shall be performed by an applicator approved by the manufacturer and in compliance with ICBO ES ER-4776 or NER-459. The model code recognized and followed by the local building jurisdiction will determine which report will be followed for the lath and stucco installation.

3.04 CLEANING AND PROTECTION

Remove residue from stucco operations from door frames, windows and any other surfaces that may have been stained or marred.

END OF SECTION

NOTES:
Disclaimer: Information contained in this specification conforms to standard detail and product recommendations for the installation of Magna Wall, Inc. products produced by Magna Wall, Inc., as of the date of publication of this document and is presented in good faith. Magna Wall, Inc. assumes no liability, expressed or implied, as to the architecture, engineering or craftwork of any project. To insure that you are using the latest, most complete information, contact Magna Wall, Inc. at: 5033 Callaghan Road, San Antonio, TX 78228, telephone 800-626-4391 or fax 210-520-7078

Magna Wall, Inc. Fiber Reinforced Stucco
Exterior Gypsum Sheathing Substrate

Part 1: GENERAL

1.01 SUMMARY

This specification includes all labor, materials, service equipment and scaffolding required to complete the lath and one-coat stucco installation in accordance with the architectural drawings.

1.02 REFERENCES

A. International Conference of Building Officials Evaluation Service, Inc. ER-4776.

B National Evaluation Services, Inc. NER-459.

1.03 SYSTEM DESCRIPTION

Exterior wall system to be a fiber reinforced stucco installation over exterior gypsum sheathing substrate. Exterior gypsum sheathing shall be water resistant core and comply with ASTM C 79-95 with a minimum thickness of ½ inch.

1.04 SUBMITTALS

A. Product Data: Submit fiber reinforced stucco manufacturer's evaluation report in conformance with recognized model code.

B. Provide certification of approved applicator by fiber reinforced stucco manufacturer.

1.05 QUALITY ASSURANCE

A. Application of stucco system shall be performed by an approved applicator of the manufacturer in accordance with applicable evaluation report.

B. Prior to installation of the fiber reinforced stucco provide a mock-up panel using materials specified for final work. This panel should demonstrate the texture and workmanship to be expected in the completed work. Obtain architect or owner approval of mock-up panel prior to start of actual work and retain panel for judging completed work.

Twelve Oaks at Fenwick Plantation

5/9/2011, 8:13 AM

Building Type	Quantity	Items 01, 03, 08, 09 & 11 Stucco Related Scope	Item 11.2 Interior 50%	Item 12 Mold Remediation 50%	Item 13 General Condition 50%	Item 14 Fees 40%	Total
TYPE 1	01	$519,617.20	$29,466.95	$18,405.00	$60,244.00	$251,093.26	$878,826.41
TYPE 2	07	$3,414,782.00	$220,545.85	$149,887.50	$431,774.07	$1,686,795.74	$5,903,785.16
		$487,826.00 ea.	$31,506.55 ea.	$21,412.50 ea.	$61,682.01 ea.	$240,970.82 ea.	
TYPE 3	01	$764,378.00	$34,077.02	$28,780.00	$91,096.00	$367,332.40	$1,285,663.42
TYPE 4	01	$232,008.21	$13,269.40	$18,405.00	$50,165.00	$125,539.04	$439,386.65
LEASING CENTER	01	$78,855.66	$4,701.40	$4,651.00	$27,693.50	$46,360.62	$162,262.18
POOL HOUSE	01	$37,826.30	$2,274.70	$1,986.00	$23,284.50	$26,148.60	$91,520.10
		$5,047,467.37	$304,335.32	$222,114.50	$684,257.07	$2,503,269.66	$8,761,443.92

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PLAINTIFF'S EXHIBIT 14

Entered 5-11-11

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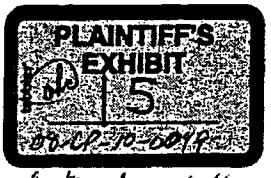

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North Myrtle Beach S.C. 29597-4466
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3319 Bartlett Boulevard, Suite 3319
Orlando, FL 32811
Website: www.proconglobal.com

March 15, 2010

The Board of Directors for Twelve Oaks
at Fenwick Property Owners' Association
c/o Chakeris Law Firm
231 Calhoun Street
Charleston, SC 29401

Subj: Twelve Oaks at Fenwick Plantation

Re: Preliminary Budget Estimate for
Correcting Construction Defects

Dear Mr. Chakeris:

Per your request Procon has developed the enclosed Preliminary Budget Estimate for the Twelve Oaks property.

In preparation of developing our Preliminary Budget Estimate Procon relied upon information contained in the following reports:

- January 31, 2002 – Original Plan Sheets "As Built" titled: Vintage at Fenwick Plantation Plan Sheets A0.01 through SP1.05
- October 15, 2009 – RTM Engineering – Condominium Roofing Installation Deficiencies Investigation
- November 6, 2009 – Orbital Engineering and Consulting, LLC – Investigative Report and Analysis.
- December 15, 2009 – Myles Glick – Preliminary Report – Non Destructive and Destructive Testing

In addition to reviewing the aforementioned reports I also visited the property on February 1, 2010 to become familiar with the property and Work Scope areas as identified in the aforementioned reports.

Procon contacted several subcontractors and suppliers to provide cost estimates for various components of the recommended repair scope. The total Preliminary Cost Estimate to complete the recommended Scope of Work as outlined in the December 15, 2009 preliminary report prepared by Myles Glick is approximately $15,748,225.56 broken down by building as follows:

Cost Per Building:

Type 1	Building #3	$ 1,341,052.12
Type 2	Building #2	$ 1,567,172.69
	Building #4	$ 1,567,172.69
	Building #5	$ 1,567,172.69
	Building #6	$ 1,567,172.69
	Building #7	$ 1,567,172.69
	Building #8	$ 1,567,172.69
	Building #9	$ 1,567,172.69
Type 3	Building #2	$ 2,285,755.69
Type 4	Building #12	$ 752,784.69
Leasing Center		$ 249,987.08
Pool House		$ 148,437.15
Total Recommended Repair Budget		$15,748,225.56

A copy of this Preliminary Budget Estimate was sent to Myles Glick to confirm Work Scope and project recommended allowances before being sent to your office.

In my opinion, the preliminary Budget Estimate outlined in this correspondence represents a fair and reasonable Cost Estimate of the work to be accomplished over an estimated eighteen (18) month period based upon the present preliminary Work Scope recommendations.

Be advised that the Building Code officials will require that the buildings be closed during construction due to the Scope requirement of disconnecting the power for both exterior envelope repairs and electrical repairs. Packing and/or relocating owners/tenants personal property and loss of use of these units has not been included as part of this Preliminary Budget Estimate. Each unit will need to be completely vacated for approximately three (3) months based upon the current Work Scope recommendations.

Please note that once final design documents are developed and dependent upon how much time elapses before work is scheduled to begin, some price changes could occur due to Scope increase/decrease or price changes.

Thank you for allowing Procon to assist you with the development of this Preliminary Budget Estimate. Please call should you have any questions.

Sincerely,

PROCON & ASSOCIATES, INC.

Bob Gallagher

Bob Gallagher
President

BG/caf

PROCON & ASSOCIATES, INC.

PRELIMINARY REPAIR ESTIMATE
Twelve Oaks @ Fenwick Plantation
Charleston, South Carolina
(Building Type 2 - Quantity 7)
- Building Numbers: 1, 4, 5, 6, 7, 8, and 9 -

Repair scope and pricing are based on the preliminary report & repair recommendations prepared by Myles Glick AIA dated 12/15/09

No.	Description	Reference	Unit	Qty.	Unit Cost	Total
01.	***Mobilization of Rental Equipment***					
1.1	Scaffolding delivery in / out	Sunbelt	EA	1	$1,050.00	$1,050.00
1.2	Office / storage trailer set up and delivery in / out	William/Scotsman	EA	1	Inc.	$0.00
1.3	Deliver porta-johns in / out	William/Scotsman	EA	2	Inc.	$0.00
1.4	Deliver forklift in / out	Sunbelt	EA	1	Inc.	$0.00
1.5	Deliver dumpsters in / out	William/Scotsman	EA	2	Inc.	$0.00
	Subtotal for Mobilization of Rental Equipment					**$1,050.00**
02.	***Roofs*** **- Repair Recommendation #1 (Page 13) Reference RTM Engineering Report 10/15/09**					
2.1	Remove existing damaged shingles & felt under layment / install new felt under layment flashings & shingles	Thompson Roofing	L/S	1	$59,500.00	$59,500.00
2.2	Remove existing EPDM membrane and install new	Thompson Roofing	L/S	1	Inc.	$0.00
2.3	Replace moisture-damaged sheathing at roof deck	See Allowance (11.1a)				$0.00
2.4	Replace moisture-damaged wood framing components	See Allowance (11.1c)				$0.00
2.5	Replace moisture-damaged drywall ceilings at breezeways	See Allowance (11.1b)				$0.00
2.6	Provide remediation protocols as directed by (CIE)	See Section 12.				$0.00
2.7	Provide temporary weather protection at flat roofs	Rhino	L/S	1	$2,500.00	$2,500.00
	Subtotal for Roofs					**$62,000.00**
03.	***Magna Wall System*** **- Repair Recommendation #3 (Page 14)**					
3.1	Remove all existing magna wall system stucco to include building wrap, membrane flashing at rough openings and system flashing components to expose all OSB sheathing for inspection	Rhino	S/F	24,000	$2.75	$66,000.00
3.2	Provide temporary weather protection	Rhino		24,000	$1.15	$27,600.00

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3/24/2010 8:12 AM

PLAINTIFF'S EXHIBIT 5

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No.	Description	Reference	Unit	Qty	Unit Cost	Total
3.3	Replace moisture-damaged exterior OSB sheathing	See Allowance (11.1d)				$0.00
3.4	Replace moisture-damaged wood framing components	See Allowance (11.1e)				$0.00
3.5	Replace moisture-damaged exterior wall cavity butt insulation	See Allowance (11.1f)				$0.00
3.6	Install new moisture barrier over exterior walls, 2 layers, 30# felt	Double M Construction	S/F	24,000	$1.06	$25,440.00
3.7	Wrap all rough openings with membrane flashing	Double M Construction	L/F	4,800	$0.72	$3,456.00
3.8	Install zinc accessories at wall penetrations, dissimilar materials, floor lines outside/inside corners and control joints	Sun Beam Stucco	L/F	8,000	Inc.	$0.00
3.9	Install floor line flashing at bottom of wall and floor lines	Double M Construction	L/F	3,000	$2.16	$6,480.00
3.10	Install 3.4 self furring wire lath	Sun Beam Stucco	S/F	24,000	$3.50	$84,000.00
3.11	Apply three-coat hard stucco system (FRP)	Sun Beam Stucco	S/F	24,000	$9.00	$216,000.00
3.12	Apply primer and finish color coat and decorative trim components to match existing architectural building features	Sun Beam Stucco	S/F	24,000	Inc.	$0.00
	Subtotal for Magna Wall System - Stucco Areas					**$428,976.00**
04.	***Siding Materials* - Repair Recommendation #4 (Page 14)**					
4.1	Remove all existing cementitious siding and trim components to include building wrap, membrane flashing at rough openings and flashing components to expose all OSB sheathing for inspection.	Rhino	S/F	6,000	$2.00	$12,000.00
4.2	Provide temporary weather protection	Rhino	S/F	6,000	$1.15	$6,900.00
4.3	Replace moisture-damaged exterior OSB sheathing	See Allowance (11.1g)				$0.00
4.4	Replace moisture-damaged wood framing components	See Allowance (11.1h)				$0.00
4.5	Replace moisture-damaged exterior wall cavity butt insulation	See Allowance (11.1i)				$0.00
4.6	Install new moisture barrier over exterior walls, 2 layers 30# felt	Double M Construction	S/F	6,000	$1.06	$6,360.00
4.7	Wrap all rough openings with membrane flashings	Double M Construction	L/F	912	$0.72	$656.64
4.8	Install new flashing at all siding to stucco band intersections and kick out flashing at gable wall intersections	Double M Construction	L/F	800	$2.22	$1,776.00
4.9	Install new cement board siding and associated trim to match existing architectural building features	Double M Construction	S/F	6,000	$3.20	$19,200.00
4.10	Prime all cement board siding and trim materials prior to installation on building - all sides	D.R. Moore Painting	S/F	6,000	$1.00	$6,000.00
4.11	Provide two (2) top coats of paint over cement board siding and trim materials to match existing color scheme.	D.R. Moore Painting	S/F	6,000	$1.50	$9,000.00
	Subtotal for Siding Materials					**$61,892.64**
06.	***Breezeway Areas* - Repair Recommendation #5 (Page 15)**					
5.1	Clean and prepare surface	D.R. Moore Painting	S/F	2,000	$0.25	$500.00
5.2	Provide new sloping materials to eliminate standing/ponding water	See Allowance (11.1j)				$0.00

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No.	Description	Ref.	Unit	Qty	Unit Cost	Total
5.3	Install new waterproof membrane on breezeway surface turning up onto wall sheathing to include entry door threshold and deck surface detail (2nd & 3rd floors)	D.R. Moore Painting	S/F	2,000	$7.00	$14,000.00
5.4	Install new kick out flashing at breezeway edges	Double M Construction	LOC	16	$24.80	$396.80
5.5	Re-detail new handrail connections through siding and seal	Double M Construction	LOC	32	$26.00	$832.00
5.6	Install WTS detail at ground floor breezeways	D.R. Moore Painting	L/F	434	$4.00	$1,736.00
	Subtotal for Breezeway Areas					$17,464.80
06.	***Balcony Areas*** **- Repair Recommendation (same as breezeway)**					
6.1	Clean and prepare surface	D.R. Moore Painting	S/F	896	$0.25	$224.00
6.2	Provide new sloping materials to eliminate standing/ponding water	NIS	0			$0.00
6.3	Install new waterproof membrane on balcony surface turning up onto wall sheathing to include SGD threshold and deck surface detail, 2nd & 3rd floors	D.R. Moore Painting	S/F	886	$7.00	$6,272.00
6.4	Install new kick out flashing at balcony edges	Double M Construction	LOC	16	$24.80	$396.80
6.5	Re-detail new handrail connections through siding and seal	Double M Construction	LOC	64	$26.00	$1,664.00
6.6	Install WTS detail at ground floor balconies	D.R. Moore Painting	L/F	88	$4.00	$352.00
	Subtotal for Balcony Areas					$8,908.80
07.	***Windows & Flashings*** **- Repair Recommendation #2 (Page 13)** ***Replace all window units with new code compliant units to include replacement of deficient flashings at rough openings***					
7.1	Remove and dispose of all existing window units	Double M Construction	EA	83	$37.50	$3,112.50
7.2	Provide new code compliant window units with appropriate DP rating	Myrtle Beach Building Supply	L/S	1	$57,768.00	$57,768.00
	7.2.1a - Install Type A 3'0 x 6'0 mulled together (Double)	Double M Construction	EA	50	$65.00	$3,250.00
	7.2.1b - Install Type B 3'0 x 6'0 single (Single)	Double M Construction	EA	23	$55.00	$1,265.00
	7.2.1c - Install Type C 3'0 x 6'0 (3) mulled together (Triple)	Double M Construction	EA	10	$85.00	$850.00
7.3	Replace OSB sheathing where gaps exist at window perimeter rough openings	See Allowance (11.1k)				$0.00
7.4	Install window and door head flashing at each R/O	Double M Construction	L/F	460	$2.75	$1,265.00
7.5	Install new peel-n-stick sealing nailing flange to face of wall moisture barrier in water shed lap configuration	Double M Construction	L/F	2,000	$0.72	$1,440.00
7.6	Provide new SGD units - 6'	Myrtle Beach Building Supply	EA	4	$671.88	$2,687.52
7.7	Provide new SGD units - 9'	Myrtle Beach Building Supply	EA	8	$940.63	$7,525.04
7.8	Remove and install new 6' balcony sliding glass doors	Double M Construction	EA	4	$190.00	$760.00

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No.	Description	Reference	Units	Qty.	Unit Cost	Total
7.9	Remove and install new 9' balcony sliding glass doors	Double M Construction	EA	8	$200.00	$1,600.00
	Subtotal for Windows & Flashings					**$81,523.06**

08. *Sealants*

8.1	Install new caulk details @ all fenestrations & areas of dissimilar materials	D.R. Moore Painting	L/F	6,000	$2.25	$13,500.00
8.2	Install new caulk details at stucco and cement siding	D.R. Moore Painting	L/F	2,000	$2.25	$4,500.00
	Subtotal for Sealants					**$18,000.00**

09. *Project Remove/Store and Replace Items*

9.1	Remove, store and replace all breezeway and balcony handrails	Double M Construction	L/F	228	$4.90	$1,117.20
9.2	Remove, store and replace all exterior light fixtures attached to side of building at balconies, garage doors and entry doors	Procon	EA	50	$25.00	$1,250.00
9.3	Remove, store and replace bath and dryer vents attached to exterior walls	Double M Construction	EA	44	$12.50	$550.00
9.4	Remove, store and reinstall steel stairs and rails, steps and stringer	Procon	EA	8	$3,000.00	$24,000.00
9.5	Prepare and paint steps, stringers and handrails	D.R. Moore Painting	L/F	400	$11.00	$4,400.00
9.6	Remove, store and reinstall unit entry doors	Double M Construction	EA	22	$140.00	$3,080.00
9.7	Remove, store and reinstall garage entry and storage room entry doors	Double M Construction	EA	11	$140.00	$1,540.00
9.8	Prepare and paint all entry-type doors	D.R. Moore Painting	EA	33	$40.00	$1,320.00
9.9	Remove, store and reinstall garage roll-up doors	Double M Construction	EA	5	$175.00	$875.00
9.10	Remove, store and reinstall all gutters and downspouts	Double M Construction	L/F	332	$4.45	$1,477.40
9.11	Remove, store and reinstall ground floor balcony screen enclosure frames, provide new screen tight system	Double M Construction	EA	4	$850.00	$3,400.00
9.12	Remove, store and reinstall gable attic vents	Double M Construction	EA	4	$45.00	$180.00
9.13	Remove, store and reinstall meter base and panels	Procon	EA	22	$250.00	$5,500.00
	Subtotal for Project Remove/Store and Replace Items					**$48,689.60**

10. *Electrical and Mechanical* (Orbital Engineering Report Dated 11/6/09)

10.1	Electrical work scope pending (page 4) item-1	Delta	EA	1	$69,773.00	$69,773.00
10.2	Mechanical work scope pending (page 4) item-2	See Allowance 11.2l				$0.00
10.3	Remove interior drywall along path of new cable runs	See Allowance 11.2h				$0.00
	Subtotal for Electrical and Mechanical					**$69,773.00**

11. *Project Allowances for Unknown Quantities*

11.1	*Exterior*					
	11.1a - Replacement of roof deck sheathing (flat roofs only)	Allowance 20%	S/F	114	$1.15	$131.10

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No.	Description	Reference	Unit	Qty.	Unit Cost	Total
	11.1b - Replacement of drywall in exterior breezeways	Allowance 20%	S/F	228	$1.25	$285.00
	11.1c - Replace moisture-damaged wood framing components	Allowance 10%	S/F	114	$8.50	$969.00
	11.1d - Replacement of moisture-damaged OSB wall sheathing at stucco locations	Allowance 20%	S/F	4,800	$1.00	$4,800.00
	11.1e - Replacement of moisture-damaged exterior wall framing at stucco locations	Allowance 10%	S/F	2,400	$5.50	$13,200.00
	11.1f - Replacement of moisture-damaged exterior wall butt insulation at stucco locations	Allowance 20%	S/F	4,800	$0.50	$2,400.00
	11.1g - Replace moisture-damaged exterior OSB sheathing at siding location	Allowance 20%	S/F	1,200	$1.00	$1,200.00
	11.1h -Replace moisture-damaged wood framing components at siding location	Allowance 10%	S/F	600	$5.50	$3,300.00
	11.1i - Replace moisture-damaged exterior wall cavity butt insulation at siding location	Allowance 20%	S/F	1,200	$0.50	$600.00
	11.1j - Install lightweight sloping material at breezeways	Allowance 25%	S/F	500	$7.00	$3,500.00
	11.1k - Replace OSB sheathing where gaps exist at window perimeter rough openings	Allowance 30%	S/F	800	$1.40	$1,120.00
	11.1l - Landscaping allowance - remove, cut back and replant	Allowance	L/S	1	$3,500.00	$3,500.00
11.2	*Interior*					
	11.2a - Replace interior drywall	Allowance 10%	S/F	3,000	$1.25	$3,750.00
	11.2b - Replace interior trim	Allowance 10%	L/F	920	$1.50	$1,380.00
	11.2c - Prime and paint interior drywall	Allowance 10%	S/F	3,000	$0.80	$2,400.00
	11.2d - Prime and paint interior trim	Allowance 10%	L/F	920	$0.90	$828.00
	11.2e - Replace interior drywall at ceilings	Allowance 5%	S/F	1,500	$1.25	$1,875.00
	11.2f - Prime and texture interior ceilings	Allowance 5%	S/F	1,500	$1.85	$2,775.00
	11.2g - Repair drywall nail pops and paint wall	Allowance 50%	S/F	15,000	$1.00	$15,000.00
	11.2h - Remove and replace drywall and finish along new cable runs	Allowance	S/F	6,600	$4.20	$27,720.00
	11.2i - HVAC Scope					
	- Remove/replace roof units	Allowance	EA	22	$350.00	$7,700.00
	- Replace approximately 20% inside units	Allowance	EA	5	$1,500.00	$7,500.00
	Subtotal for Project Allowances for Unknown Quantities					**$105,933.10**
12.	***Environmental Remediation Protocol***					
12.1	Fold back carpet at window rough openings	Rhino	LOC	83	$20.00	$1,660.00
12.2	Construct negative air containments at each R/O	Rhino	LOC	83	$180.00	$14,940.00
12.3	Remove interior trim at each R/O	Rhino	L/F	920	$0.50	$460.00
12.4	Remove contaminated drywall	Rhino	S/F	1,000	$1.10	$1,100.00
12.5	Clean and encapsulate drywall areas	Rhino	S/F	1,000	$1.50	$1,500.00
12.6	Wipe clean all non-porous materials in containment with biocide	Rhino	S/F	2,000	Inc.	
12.7	Hepa-vac and fine clean areas for clearance	Rhino	S/F	2,000	$1.00	$2,000.00
12.8	Run air scrubbers and dehumidifiers prior to final clearance	Rhino	LOC	83	$120.00	$9,960.00

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No.	Description	Cost Reference	Unit	Qty	Unit Cost	Total
12.9	Remove containments	Rhino	LOC	83	$60.00	$4,980.00
12.10	Unfold carpet, stretch and kick-in	Rhino	LOC	83	$75.00	$6,225.00
	**Folding back carpet and then unfolding carpet for kick-in assumes that the carpet is not contaminated. If carpet is contaminated, disposal is recommended.*					
	Subtotal for Environmental Remediation Protocol					**$42,825.00**
13.	***General Conditions***					
13.1	Scaffolding erection / dismantle	Sunbelt	L/S	1	$33,224.00	$33,224.00
13.2	Scaffold rental to include 7.5% sales tax	Sunbelt	EA	3,286	$7,112.00	$23,370.03
13.3	Dumpster fees per building	Express Disposal	EA	6	$120.00	$720.00
13.4	Dumpster & dump fees for const. trash @ 6.2 per building	Express Disposal	EA	6	$300.00	$1,800.00
13.5	Forklift rental	Sunbelt	Months	1.5	$2,350.00	$3,525.00
13.6	Jobsite office / storage trailer	William/Scotsman	Months	1.5	$455.00	$682.50
13.7	Porta-John - 4 units	Access Portable Toilets	EA	1.5	$220.00	$330.00
13.8	Project supervisor	Procon	Months	1.5	$8,000.00	$12,000.00
13.9	Assistant supervisor	Procon	Months	1.5	$7,000.00	$10,500.00
13.10	Building permit	Procon				
	• $2,647.00 ($2.50/1,000)	Procon	L/S	1	$2,647.00	$2,647.00
	• $1,323.00 (plan review @ 1/2)	Procon	L/S	1	$1,323.00	$1,323.00
	• $1,755.00 (first 500K)	Procon	L/S	1	$1,755.00	$1,755.00
13.11	Fine clean units	Procon	Units	22	$300.00	$6,600.00
13.12	Temporary handrails for construction	Procon	L/S	1	$5,000.00	$5,000.00
13.13	Continuous clean-up crew (2 men)	Procon	Months	1.5	$6,625.00	$9,937.50
13.14	Construction fencing (around building)	Procon	L/S	1	$2,000.00	$2,000.00
13.15	Jobsite pick-up truck expense	Procon	Months	1.5	$900.00	$1,350.00
13.16	Project before/after photo documentation of conditions	Procon	Units	22	$300.00	$6,600.00
	Subtotal for General Conditions					**$123,364.03**
	Project Subtotal					**$1,070,400.03**

Appendix 1812

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No.	Description	Reference	Unit	Qty	Unit Cost	Total
14.	***Project Fees***					
14.1	Contractor's Operation and Overhead @ 10%					$107,040.00
	Subtotal					**$1,177,440.04**
14.2	Contractor's Fee @ 10%					$117,744.00
	Subtotal					**$1,295,184.04**
14.3	Project Contingency @ 10%					$129,518.40
	Subtotal					**$1,424,702.44**
14.4	Architectural and Engineering Fees @ 10%					$142,470.24
	Total Estimated Project Cost Per Type 2 Building					**$1,567,172.69**
	Total Cost For All Seven (7) Type 2 Buildings					**$10,970,208.81**

Qualifications

a. This estimate and general conditions are based on an 18 month Construction schedule

Exclusions

a. No pricing to re-direct storm water drainage away from the buildings is included in estimate.
b. No ground floor footing or interior concrete slab work of any kind is included in the estimate.
c. Scope does not address inadequate, improper, or missing hurricane strapping or fire stopping between unit walls or attic spaces required by code.
d. Buildings must be closed for construction; owners are responsible for removing all contents from unit
e. There is no allowance in this estimate for loss of use while buildings are vacated for 3 months of construction

EA = Each
L/F = Linear Feet
LOC = Location
L/S = Lump Sum
S/F = Square Feet

PROJECT SCHEDULE

	General Conditions by Building	Scaffolding Rental by Building
Building #3 and #1	2.5 & 1.5 / 4 Months	3.0 & 3.286 / 6.286 Months
Building #4 and #5	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #6 and #7	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #8 and #9	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #2 and #12	1.5 & 1.5 / 3 Months	4.0 & 3.0 / 7.0 Months
Leasing Center & Pool House	1.0 & 1.0 / 2 Months	2.0 and 1.0 / 3.0 Months
	18 Months	**36 Months**

Complete two (2) buildings at a time (18 Month Custruction Schedule)

Appendix 1813

1777

PROCON & ASSOCIATES, INC.

PRELIMINARY REPAIR ESTIMATE
Twelve Oaks @ Fenwick Plantation
Charleston, South Carolina
(Building Type 1 - Quantity 1)
- Building Number: 3 -

Repair scope and pricing are based on the preliminary report & repair recommendations prepared by Myles Glick AIA dated 12/15/09

No.	Description	Reference	Unit	Qty	Unit Cost	Total
01.	***Mobilization of Rental Equipment***					
1.1	Scaffolding delivery in / out	Sunbelt	EA	1	$1,050.00	$1,050.00
1.2	Office / storage trailer set up and delivery in / out	William/Scotsman	EA	1	$536.00	$536.00
1.3	Deliver porta-johns in / out	William/Scotsman	EA	2	Inc.	$0.00
1.4	Deliver forklift in / out	Sunbelt	EA	1	Inc.	$0.00
1.5	Deliver dumpsters in / out	William/Scotsman	EA	2	Inc.	$0.00
	Subtotal for Mobilization of Rental Equipment					$1,586.00
02.	***Roofs*** **- Repair Recommendation #1 (Page 13) Reference RTM Engineering Report 10/15/09**					
2.1	Remove existing damaged shingles & felt under layment / Install new felt under layment flashings & shingles	Thompson Roofing	L/S	1	$45,750.00	$45,750.00
2.2	Remove existing EPDM membrane and install new	Thompson Roofing	L/S	1	Inc.	$0.00
2.3	Replace moisture-damaged sheathing at roof deck	See Allowance (11.1a)				$0.00
2.4	Replace moisture-damaged wood framing components	See Allowance (11.1c)				$0.00
2.5	Replace moisture-damaged drywall ceilings at breezeways	See Allowance (11.1b)				$0.00
2.6	Provide remediation protocols as directed by (CIE)	See Section 12.				$0.00
2.7	Provide temporary weather protection at flat roofs	Rhino	L/S	1	$2,500.00	$2,500.00
	Subtotal for Roofs					$48,250.00
03.	***Magna Wall System*** **- Repair Recommendation #3 (Page 14)**					
3.1	Remove all existing magna wall system stucco to include building wrap, membrane flashing at rough openings and system flashing components to expose all OSB sheathing for inspection	Rhino	S/F	26,000	$2.75	$71,500.00
3.2	Provide temporary weather protection	Rhino	S/F	26,000	$1.15	$29,900.00

No.	Description	Reference	Unit	Qty.	Unit Cost	Total
3.3	Replace moisture-damaged exterior OSB sheathing	See Allowance (11.1d)				$0.00
3.4	Replace moisture-damaged wood framing components	See Allowance (11.1e)				$0.00
3.5	Replace moisture-damaged exterior wall cavity butt insulation	See Allowance (11.1f)				$0.00
3.6	Install new moisture barrier over exterior walls, 2 layers, 30# felt	Double M Construction	S/F	26,000	$1.06	$27,560.00
3.7	Wrap all rough openings with membrane flashing	Double M Construction	L/F	1,560	$0.72	$1,123.20
3.8	Install zinc accessories at wall penetrations, dissimilar materials, floor lines outside/inside corners and control joints	Sun Beam Stucco	L/F	7,200	Inc.	$0.00
3.9	Install floor line flashing at bottom of wall and floor lines	Double M Construction	L/F	2,800	$2.16	$6,048.00
3.10	Install 3.4 self furring wire lath	Sun Beam Stucco	S/F	26,000	$3.50	$91,000.00
3.11	Apply three-coat hard stucco system (FRP)	Sun Beam Stucco	S/F	26,000	$9.00	$234,000.00
3.12	Apply primer and finish color coat and decorative trim components to match existing architectural building features	Sun Beam Stucco	S/F	26,000	Inc.	$0.00
	Subtotal for Magna Wall System - Stucco Areas					**$461,131.20**
04.	***Siding Materials*** **- Repair Recommendation #4 (Page 14)**					
4.1	Remove all existing cementitious siding and trim components to include building wrap, membrane flashing at rough openings and flashing components to expose all OSB sheathing for inspection.	Rhino	S/F	2,000	$2.00	$4,000.00
4.2	Provide temporary weather protection	Rhino	S/F	2,000	$1.15	$2,300.00
4.3	Replace moisture-damaged exterior OSB sheathing	See Allowance (11.1g)				$0.00
4.4	Replace moisture-damaged wood framing components	See Allowance (11.1h)				$0.00
4.5	Replace moisture-damaged exterior wall cavity butt insulation	See Allowance (11.1i)				$0.00
4.6	Install new moisture barrier over exterior walls, 2 layers 30# felt	Double M Construction	S/F	2,000	$1.06	$2,120.00
4.7	Wrap all rough openings with membrane flashings	Double M Construction	L/F	432	$0.72	$311.04
4.8	Install new flashing at all siding to stucco band intersections and kick out flashing at gable wall intersections	Double M Construction	L/F	600	$2.22	$1,332.00
4.9	Install new cement board siding and associated trim to match existing architectural building features	Double M Construction	S/F	2,000	$3.20	$6,400.00
4.10	Prime all cement board siding and trim materials prior to installation on building - all sides	D.R. Moore Painting	S/F	2,000	$1.00	$2,000.00
4.11	Provide two (2) top coats of paint over cement board siding and trim materials to match existing color scheme.	D.R. Moore Painting	S/F	2,000	$1.50	$3,000.00
	Subtotal for Siding Materials					**$21,463.04**
05.	***Breezeway Areas*** **- Repair Recommendation #5 (Page 15)**					
5.1	Clean and prepare surface	D.R. Moore Painting	S/F	2,000	$0.25	$500.00
5.2	Provide new sloping materials to eliminate standing/ponding water	See Allowance (11.1j)				$0.00

Appendix 1815

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No.	Description	Reference	Unit	Qty.	Unit Cost	Total
5.3	Install new waterproof membrane on breezeway surface turning up onto wall sheathing to include entry door threshold and deck surface detail (2nd & 3rd floors)	D.R. Moore Painting	S/F	2,000	$7.00	$14,000.00
5.4	Install new kick out flashing at breezeway edges	Double M Construction	LOC	16	$24.80	$396.80
5.5	Re-detail new handrail connections through siding and seal	Double M Construction	LOC	32	$26.00	$832.00
5.6	Install WTS detail at ground floor breezeways	D.R. Moore Painting	L/F	434	$4.00	$1,736.00
	Subtotal for Breezeway Areas					**$17,464.80**

06. *Balcony Areas* - Repair Recommendation (same as breezeway)

6.1	Clean and prepare surface	D.R. Moore Painting	S/F	896	$0.25	$224.00
6.2	Provide new sloping materials to eliminate standing/ponding water	NIS	0			$0.00
6.3	Install new waterproof membrane on balcony surface turning up onto wall sheathing to include SGD threshold and deck surface detail, 2nd & 3rd floors	D.R. Moore Painting	S/F	896	$7.00	$6,272.00
6.4	Install new kick out flashing at balcony edges	Double M Construction	LOC	16	$24.80	$396.80
6.5	Re-detail new handrail connections through siding and seal	Double M Construction	LOC	64	$26.00	$1,664.00
6.6	Install WTS detail at ground floor balconies	D.R. Moore Painting	L/F	44	$4.00	$176.00
	Subtotal for Balcony Areas					**$8,732.80**

07. *Windows & Flashings* - Repair Recommendation #2 (Page 13)
Replace all window units with new code compliant units to include replacement of deficient flashings at rough openings

7.1	Remove and dispose of all existing window units	Double M Construction	EA	70	$37.50	$2,625.00
7.2	Provide new code compliant window units with appropriate DP rating	Myrtle Beach Building Supply	L/S	1	$45,157.00	$45,157.00
	7.2.1a - Install Type A 3'0 x 6'0 mulled together (Double)	Double M Construction	EA	26	$65.00	$1,690.00
	7.2.1b - Install Type B 3'0 x 6'0 single (Single)	Double M Construction	EA	32	$55.00	$1,760.00
	7.2.1c - Install Type C 3'0 x 6'0 (3) mulled together (Triple)	Double M Construction	EA	12	$85.00	$1,020.00
7.3	Replace OSB sheathing where gaps exist at window perimeter rough openings	See Allowance (11.1K)				$0.00
7.4	Install window and door head flashing at each R/O	Double M Construction	L/F	360	$2.75	$990.00
7.5	Install new peel-n-stick, sealing nailing flange to face of wall moisture barrier in water shed lap configuration	Double M Construction	L/F	1,560	$0.72	$1,123.20
7.6	Provide new SGD units - 6'	Myrtle Beach Building Supply	EA	4	$671.88	$2,687.52
7.7	Provide new SGD units - 9'	Myrtle Beach Building Supply	EA	6	$940.63	$5,643.78
7.8	Remove and install new 6' balcony sliding glass doors	Double M Construction	EA	4	$190.00	$760.00

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1780

No.	Description	Reference	Unit	Qty	Unit Cost	Total
7.9	Remove and install new 9' balcony sliding glass doors	Double M Construction	EA	6	$200.00	$1,200.00
	Subtotal for Windows & Flashings					$64,656.50
08.	***Sealants***					
8.1	Install new caulk details @ all fenestrations & areas of dissimilar materials	D.R. Moore Painting	L/F	5,400	$2.25	$12,150.00
8.2	Install new caulk details at stucco and cement siding	D.R. Moore Painting	L/F	1,600	$2.25	$3,600.00
	Subtotal for Sealants					$15,750.00
09.	***Project Remove/Store and Replace Items***					
9.1	Remove, store and replace all breezeway and balcony handrails	Double M Construction	L/F	228	$4.90	$1,117.20
9.2	Remove, store and replace all exterior light fixtures attached to side of building at balconies, garage doors and entry doors	Procon	EA	37	$25.00	$925.00
9.3	Remove, store and replace bath and dryer vents attached to exterior walls	Double M Construction	EA	44	$12.50	$550.00
9.4	Remove, store and reinstall steel stairs and rails, steps and stringer	Procon	EA	8	$3,000.00	$24,000.00
9.5	Prepare and paint steps, stringers and handrails	D.R. Moore Painting	L/F	400	$11.00	$4,400.00
9.6	Remove, store and reinstall unit entry doors	Double M Construction	EA	22	$140.00	$3,080.00
9.7	Remove, store and reinstall garage entry and storage room entry doors	Double M Construction	EA	0	$140.00	$0.00
9.8	Prepare and paint all entry-type doors	D.R. Moore Painting	EA	22	$40.00	$880.00
9.9	Remove, store and reinstall garage roll-up doors	Double M Construction	EA	5	$175.00	$875.00
9.10	Remove, store and reinstall all gutters and downspouts	Double M Construction	L/F	276	$4.45	$1,228.20
9.11	Remove, store and reinstall ground floor balcony screen enclosure frames, provide new screen tight system	Double M Construction	EA	2	$850.00	$1,700.00
9.12	Remove, store and reinstall gable attic vents	Double M Construction	EA	3	$45.00	$135.00
9.13	Remove, store and reinstall meter base and panels	Procon	EA	22	$250.00	$5,500.00
	Subtotal for Project Remove/Store and Replace Items					$44,390.40
10.	***Electrical and Mechanical*** **(Orbital Engineering Report Dated 11/6/09)**					
10.1	Electrical work scope pending (page 4) Item-1	Delta	EA	11	$100.00	$1,100.00
10.2	Mechanical work scope pending (page 4) Item-2	See Allwance 11.2i				$0.00
10.3	Remove interior drywall along path of new cable runs	See Allowance 11.2h				$0.00
	Subtotal for Electrical and Mechanical					$1,100.00
11.	***Project Allowances for Unknown Quantities***					
11.1	*Exterior*					
	11.1a - Replacement of roof deck sheathing (flat roofs only)	Allowance 20%	S/F	114	$1.15	$131.10

Appendix 1817
1781

No.	Description	Reference	Unit	Qty.	Unit Cost	Total
	11.1b - Replacement of drywall in exterior breezeways	Allowance 20%	S/F	228	$1.25	$285.00
	11.1c - Replace moisture-damaged wood framing components	Allowance 10%	S/F	114	$8.50	$969.00
	11.1d - Replacement of moisture-damaged OSB wall sheathing at stucco locations	Allowance 20%	S/F	5,200	$1.00	$5,200.00
	11.1e - Replacement of moisture-damaged exterior wall framing at stucco locations	Allowance 10%	S/F	2,600	$5.50	$14,300.00
	11.1f - Replacement of moisture-damaged exterior wall butt insulation at stucco locations	Allowance 20%	S/F	5,200	$0.50	$2,600.00
	11.1g - Replace moisture-damaged exterior OSB sheathing at siding location	Allowance 20%	S/F	400	$1.00	$400.00
	11.1h -Replace moisture-damaged wood framing components at siding location	Allowance 10%	S/F	200	$5.50	$1,100.00
	11.1i - Replace moisture-damaged exterior wall cavity butt insulation at siding location	Allowance 20%	S/F	400	$0.50	$200.00
	11.1j - Install lightweight sloping material at breezeways	Allowance 25%	S/F	500	$7.00	$3,500.00
	11.1k - Replace OSB sheathing where gaps exist at window perimeter rough openings	Allowance 30%	S/F	672	$1.40	$940.80
	11.1l - Landsceping allowance - remove, cut back and replant	Allowance	L/S	1	$3,500.00	$3,500.00
11.2	*Interior*					
	11.2a - Replace interior drywall	Allowance 10%	S/F	2,800	$1.25	$3,500.00
	11.2b - Replace interior trim	Allowance 10%	L/F	720	$1.50	$1,080.00
	11.2c - Prime and paint interior drywall	Allowance 10%	S/F	2,800	$0.80	$2,240.00
	11.2d - Prime and paint interior trim	Allowance 10%	L/F	720	$0.90	$648.00
	11.2e - Replace interior drywall at ceilings	Allowance 5%	S/F	1,400	$1.25	$1,750.00
	11.2f - Prime and texture interior ceilings	Allowance 5%	S/F	1,400	$1.85	$2,590.00
	11.2g - Repair drywall nail pops and paint wall	Allowance 50%	S/F	14,000	$1.00	$14,000.00
	11.2h - Remove and replace drywall and finish along new cable runs	Allowance	S/F	N/A	$0.00	$0.00
	11.2i - HVAC Scope					
	- Remove and replace roof units	Allowance	EA	22	$350.00	$7,700.00
	- Replace approximately 20% inside units	Allowance	EA	5	$1,500.00	$7,500.00
	Subtotal for Project Allowances for Unknown Quantities					$74,133.90
12.	***Environmental Remediation Protocol***					
12.1	Fold back carpet at window rough openings	Rhino	LOC	70	$20.00	$1,400.00
12.2	Construct negative air containments at each R/O	Rhino	LOC	70	$180.00	$12,600.00
12.3	Remove interior trim at each R/O	Rhino	L/F	720	$0.50	$360.00
12.4	Remove contaminated drywall	Rhino	S/F	1,000	$1.10	$1,100.00
12.5	Clean and encapsulate drywall areas	Rhino	S/F	1,000	$1.50	$1,500.00
12.6	Wipe clean all non-porous materials in containment with biocide	Rhino	S/F	2,000	Inc.	
12.7	Hepa-vac and fine clean areas for clearance	Rhino	S/F	2,000	$1.00	$2,000.00
12.8	Run air scrubbers and dehumidifiers prior to final clearance	Rhino	LOC	70	$120.00	$8,400.00

Appendix 1818
1782

No.	Description	Reference	Unit	Qty	Unit Cost	Total
12.9	Remove containments	Rhino	LOC	70	$60.00	$4,200.00
12.10	Unfold carpet, stretch and kick-in	Rhino	LOC	70	$75.00	$5,250.00
	Folding back carpet and then unfolding carpet for kick-in assumes that the carpet is not contaminated. If carpet is contaminated, disposal is recommended					
	Subtotal for Environmental Remediation Protocol					**$36,810.00**
13.	***General Conditions***					
13.1	Scaffolding erection / dismantle	Sunbelt	L/S	1	$33,224.00	$33,224.00
13.2	Scaffold rental to include 7.5% sales tax	Sunbelt	EA	3	$7,112.00	$21,336.00
13.3	Dumpster fees per building	Express Disposal	EA	6	$120.00	$720.00
13.4	Dumpster & dump fees for const. trash @ 6.2 per building	Express Disposal	EA	6	$300.00	$1,800.00
13.5	Forklift rental	Sunbelt	Months	1.5	$2,350.00	$3,525.00
13.6	Jobsite office / storage trailer	William/Scotsman	Months	1.5	$455.00	$682.50
13.7	Porta-John - 4 units	Access Portable Toilets	EA	1.5	$220.00	$330.00
13.8	Project supervisor	Procon	Months	1.5	$8,000.00	$12,000.00
13.9	Assistant supervisor	Procon	Months	1.5	$7,000.00	$10,500.00
13.10	Building permit	Procon				$0.00
	• $2,085.00 ($2.50/1,000)	Procon	L/S	1	$2,085.00	$2,085.00
	• $1,043.00 (plan review @ 1/2)	Procon	L/S	1	$1,043.00	$1,043.00
	• $1,755.00 (first 500K)	Procon	L/S	1	$1,755.00	$1,755.00
13.11	Fine clean units	Procon	Units	22	$300.00	$6,600.00
13.12	Temporary handrails for construction	Procon	L/S	1	$5,000.00	$5,000.00
13.13	Continuous clean-up crew (2 men)	Procon	Months	1.5	$6,625.00	$9,937.50
13.14	Construction fencing (around building)	Procon	L/S	1	$2,000.00	$2,000.00
13.15	Jobsite pick-up truck expense	Procon	Months	1.5	$900.00	$1,350.00
13.16	Project before/after photo documentation of conditions	Procon	Units	22	$300.00	$6,600.00
	Subtotal for General Conditions					**$120,488.00**
	Project Subtotal					**$915,956.64**
14.	***Project Fees***					
14.1	Contractor's Operation and Overhead @ 10%					$91,595.66
	Subtotal					**$1,007,552.30**
14.2	Contractor's Fee @ 10%					$100,755.23
	Subtotal					**$1,108,307.53**
14.3	Project Contingency @ 10%					$110,830.75
	Subtotal					**$1,219,138.29**
14.4	Architectural and Engineering Fees @ 10%					$121,913.83
	Total Estimated Project Cost					**$1,341,052.12**

Appendix 1819
1783

No.	Description	Reference	Unit	Qty.	Unit Cost	Total

Qualifications

a. This estimate and general conditions are based on an 18 month Construction schedule

Exclusions

a. No pricing to re-direct storm water drainage away from the buildings is included in estimate.
b. No ground floor footing or interior concrete slab work of any kind is included in the estimate.
c. Scope does not address inadequate, improper, or missing hurricane strapping or fire stopping between unit walls or attic spaces required by code.
d. Buildings must be closed for construction; owners are responsible for removing all contents from unit
e. There is no allowance in this estimate for loss of use while buildings are vacated for 3 months of construction

EA = Each
L/F = Linear Feet
LOC = Location
L/S = Lump Sum
S/F = Square Feet

PROJECT SCHEDULE

	General Conditions by Building	Scaffolding Rental by Building
Building #3 and #1	2.5 & 1.5 / 4 Months	3.0 & 3.286 / 6.286 Months
Building #4 and #5	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #6 and #7	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #8 and #9	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #2 and #12	1.5 & 1.5 / 3 Months	4.0 & 3.0 / 7.0 Months
Leasing Center & Pool House	1.0 & 1.0 / 2 Months	2.0 and 1.0 / 3.0 Months
	18 Months	36 Months

Complete two (2) buildings at a time (18 Month Custruction Schedule)

PROCON & ASSOCIATES, INC.

PRELIMINARY REPAIR ESTIMATE
Twelve Oaks @ Fenwick Plantation
Charleston, South Carolina
(Building Type 3 - Quantity 1)
- Building Number: 2 -

Repair scope and pricing are based on the preliminary report & repair recommendations prepared by Myles Glick AIA dated 12/15/09

No.	Description	Reference	Unit	Qty	Unit Cost	Total
01.	***Mobilization of Rental Equipment***					
1.1	Scaffolding delivery in / out	Sunbelt	EA	1	$1,200.00	$1,200.00
1.2	Office / storage trailer set up and delivery in / out	William/Scotsman	EA	1	Inc.	$0.00
1.3	Deliver porta-johns in / out	William/Scotsman	EA	2	Inc.	$0.00
1.4	Deliver forklift in / out	Sunbelt	EA	1	Inc.	$0.00
1.5	Deliver dumpsters in / out	William/Scotsman	EA	2	Inc.	$0.00
	Subtotal for Mobilization of Rental Equipment					$1,200.00
02.	***Roofs*** **- Repair Recommendation #1 (Page 13) Reference RTM Engineering Report 10/15/09**					
2.1	Remove existing damaged shingles & felt under layment / install new felt under layment flashings & shingles	Thompson Roofing	L/S	1	$88,950.00	$88,950.00
2.2	Remove existing EPDM membrane and install new	Thompson Roofing	L/S	1	Inc.	$0.00
2.3	Replace moisture-damaged sheathing at roof deck	See Allowance (11.1a)				$0.00
2.4	Replace moisture-damaged wood framing components	See Allowance (11.1c)				$0.00
2.5	Replace moisture-damaged drywall ceilings at breezeways	See Allowance (11.1b)				$0.00
2.6	Provide remediation protocols as directed by (CIE)	See Section 12.				$0.00
2.7	Provide temporary weather protection at flat roofs	Rhino	L/S	1	$2,500.00	$2,500.00
	Subtotal for Roofs					$91,450.00
03.	***Magna Wall System*** **- Repair Recommendation #3 (Page 14)**					
3.1	Remove all existing magna wall system stucco to include building wrap, membrane flashing at rough openings and system flashing components to expose all OSB sheathing for inspection	Rhino	S/F	38,000	$2.75	$104,500.00
3.2	Provide temporary weather protection	Rhino	S/F	38,000	$1.15	$43,700.00

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No.	Description	Reference	Unit	Qty.	Unit Cost	Total
3.3	Replace moisture-damaged exterior OSB sheathing	See Allowance (11.1d)				$0.00
3.4	Replace moisture-damaged wood framing components	See Allowance (11.1e)				$0.00
3.5	Replace moisture-damaged exterior wall cavity butt insulation	See Allowance (11.1f)				$0.00
3.6	Install new moisture barrier over exterior walls, 2 layers, 30# felt	Double M Construction	S/F	38,000	$1.06	$40,280.00
3.7	Wrap all rough openings with membrane flashing	Double M Construction	L/F	6,400	$0.72	$4,608.00
3.8	Install zinc accessories at wall penetrations, dissimilar materials, floor lines outside/inside corners and control joints	Sun Beam Stucco	L/F	11,000	Inc.	$0.00
3.9	Install floor line flashing at bottom of wall and floor lines	Double M Construction	L/F	4,000	$2.16	$8,640.00
3.10	Install 3.4 self furring wire lath	Sun Beam Stucco	S/F	38,000	$3.50	$133,000.00
3.11	Apply three-coat hard stucco system (FRP)	Sun Beam Stucco	S/F	38,000	$9.00	$342,000.00
3.12	Apply primer and finish color coat and decorative trim components to match existing architectural building features	Sun Beam Stucco	S/F	38,000	Inc.	$0.00
	Subtotal for Magna Wall System - Stucco Areas					**$676,728.00**
04.	***Siding Materials* - Repair Recommendation #4 (Page 14)**					
4.1	Remove all existing cementitious siding and trim components to include building wrap, membrane flashing at rough openings and flashing components to expose all OSB sheathing for inspection.	Rhino	S/F	4,000	$2.00	$8,000.00
4.2	Provide temporary weather protection.	Rhino	S/F	4,000	$1.15	$4,600.00
4.3	Replace moisture-damaged exterior OSB sheathing	See Allowance (11.1g)				$0.00
4.4	Replace moisture-damaged wood framing components	See Allowance (11.1h)				$0.00
4.5	Replace moisture-damaged exterior wall cavity butt insulation	See Allowance (11.1i)				$0.00
4.6	Install new moisture barrier over exterior walls, 2 layers 30# felt	Double M Construction	S/F	4,000	$1.06	$4,240.00
4.7	Wrap all rough openings with membrane flashings	Double M Construction	L/F	528	$0.72	$380.16
4.8	Install new flashing at all siding to stucco band intersections and kick out flashing at gable wall intersections	Double M Construction	L/F	1,066	$2.22	$2,366.52
4.9	Install new cement board siding and associated trim to match existing architectural building features	Double M Construction	S/F	4,000	$3.20	$12,800.00
4.10	Prime all cement board siding and trim materials prior to installation on building - all sides	D.R. Moore Painting	S/F	4,000	$1.00	$4,000.00
4.11	Provide two (2) top coats of paint over cement board siding and trim materials to match existing color scheme.	D.R. Moore Painting	S/F	4,000	$1.50	$6,000.00
	Subtotal for Siding Materials					**$42,386.68**
05.	***Breezeway Areas* - Repair Recommendation #5 (Page 15)**					
5.1	Clean and prepare surface	D.R. Moore Painting	S/F	3,000	$0.25	$750.00
5.2	Provide new sloping materials to eliminate standing/ponding water	See Allowance (11.1j)				$0.00

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No.	Description	Reference	Unit	Qty	Unit Cost	Total
5.3	Install new waterproof membrane on breezeway surface turning up onto wall sheathing to include entry door threshold and deck surface detail (2nd & 3rd floors)	D.R. Moore Painting	S/F	3,000	$7.00	$21,000.00
5.4	Install new kick out flashing at breezeway edges	Double M Construction	LOC	24	$24.80	$595.20
5.5	Re-detail new handrail connections through siding and seal	Double M Construction	LOC	48	$26.00	$1,248.00
5.6	Install WTS detail at ground floor breezeways	D.R. Moore Painting	L/F	651	$4.00	$2,604.00
	Subtotal for Breezeway Areas					$26,187.20
06.	***Balcony Areas*** **- Repair Recommendation (same as breezeway)**					
6.1	Clean and prepare surface	D.R. Moore Painting	S/F	1,344	$0.25	$336.00
6.2	Provide new sloping materials to eliminate standing/ponding water	NIS	0			$0.00
6.3	Install new waterproof membrane on balcony surface turning up onto wall sheathing to include SGD threshold and deck surface detail, 2nd & 3rd floors	D.R. Moore Painting	S/F	1,344	$7.00	$9,408.00
6.4	Install new kick out flashing at balcony edges	Double M Construction	LOC	24	$24.80	$595.20
6.5	Re-detail new handrail connections through siding and seal	Double M Construction	LOC	96	$26.00	$2,496.00
6.6	Install WTS detail at ground floor balconies	D.R. Moore Painting	L/F	88	$4.00	$352.00
	Subtotal for Balcony Areas					$13,187.20
07.	***Windows & Flashings*** **- Repair Recommendation #2 (Page 13)** ***Replace all window units with new code compliant units to include replacement of deficient flashings at rough openings***					
7.1	Remove and dispose of all existing window units	Double M Construction	EA	110	$37.50	$4,125.00
7.2	Provide new code compliant window units with appropriate DP rating	Myrtle Beach Building Supply	L/S	1	$77,037.00	$77,037.00
	7.2.1a - Install Type A 3'0 x 6'0 mulled together (Double)	Double M Construction	EA	62	$65.00	$4,030.00
	7.2.1b - Install Type B 3'0 x 6'0 single (Single)	Double M Construction	EA	32	$55.00	$1,760.00
	7.2.1c - Install Type C 3'0 x 6'0 (3) mulled together (Triple)	Double M Construction	EA	16	$85.00	$1,360.00
7.3	Replace OSB sheathing where gaps exist at window perimeter rough openings	See Allowance (11.1k)				$0.00
7.4	Install window and door head flashing at each R/O	Double M Construction	L/F	1,040	$2.75	$2,860.00
7.5	Install new peel-n-stick, sealing nailing flange to face of wall moisture barrier in water shed lap configuration	Double M Construction	L/F	2,544	$0.72	$1,831.68
7.6	Provide new SGD units - 6'	Myrtle Beach Building Supply	EA	6	$671.88	$4,031.28
7.7	Provide new SGD units - 9'	Myrtle Beach Building Supply	EA	10	$940.63	$9,406.30
7.8	Remove and install new 8' balcony sliding glass doors	Double M Construction	EA	6	$190.00	$1,140.00

No.	Description	Reference	Unit	Qty.	Unit Cost	Total
7.9	Remove and install new 9' balcony sliding glass doors	Double M Construction	EA	10	$200.00	$2,000.00
	Subtotal for Windows & Flashings					**$109,581.26**
08.	***Sealants***					
8.1	Install new caulk details @ all fenestrations & areas of dissimilar materials	D.R. Moore Painting	L/F	6,000	$2.25	$18,000.00
8.2	Install new caulk details at stucco and cement siding	D.R. Moore Painting	L/F	3,000	$2.25	$6,750.00
	Subtotal for Sealants					**$24,750.00**
09.	***Project Remove/Store and Replace Items***					
9.1	Remove, store and replace all breezeway and balcony handrails	Double M Construction	L/F	354	$4.90	$1,734.60
9.2	Remove, store and replace all exterior light fixtures attached to side of building at balconies, garage doors and entry doors	Procon	EA	80	$25.00	$2,000.00
9.3	Remove, store and replace bath and dryer vents attached to exterior walls	Double M Construction	EA	64	$12.50	$800.00
9.4	Remove, store and reinstall steel stairs and rails, steps and stringer	Procon	EA	12	$3,000.00	$36,000.00
9.5	Prepare and paint steps, stringers and handrails	D.R. Moore Painting	LF	600	$11.00	$6,600.00
9.6	Remove, store and reinstall unit entry doors	Double M Construction	EA	32	$140.00	$4,480.00
9.7	Remove, store and reinstall garage entry and storage room entry doors	Double M Construction	EA	22	$140.00	$3,080.00
9.8	Prepare and paint all entry-type doors	D.R. Moore Painting	EA	52	$40.00	$2,080.00
9.9	Remove, store and reinstall garage roll-up doors	Double M Construction	EA	10	$175.00	$1,750.00
9.10	Remove, store and reinstall all gutters and downspouts	Double M Construction	L/F	482	$4.45	$2,144.90
9.11	Remove, store and reinstall ground floor balcony screen enclosure frames, provide new screen tight system	Double M Construction	EA	4	$850.00	$3,400.00
9.12	Remove, store and reinstall gable attic vents	Double M Construction	EA	4	$45.00	$180.00
9.13	Remove, store and reinstall meter base and panels	Procon	EA	32	$250.00	$8,000.00
	Subtotal for Project Remove/Store and Replace Items					**$72,249.50**
10.	***Electrical and Mechanical*** **(Orbital Engineering Report Dated 11/6/09)**					
10.1	Electrical work scope pending (page 4) item-1	Delta	L/S	1	$133,546.00	$133,546.00
10.2	Mechanical work scope pending (page 4) item-2	See Allowance 11.2l				$0.00
10.3	Remove interior drywall along path of new cable runs	See Allowance 11.2h				$0.00
	Subtotal for Electrical and Mechanical					**$133,546.00**
11.	***Project Allowances for Unknown Quantities***					
11.1	*Exterior*					
	11.1a - Replacement of roof deck sheathing (flat roofs only)	Allowance 20%	S/F	171	$1.15	$196.65

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No.	Description	Reference	Unit	Qty	Unit Cost	Total
	11.1b - Replacement of drywall in exterior breezeways	Allowance 20%	S/F	342	$1.25	$427.50
	11.1c - Replace moisture-damaged wood framing components	Allowance 10%	S/F	171	$8.50	$1,453.50
	11.1d - Replacement of moisture-damaged OSB wall sheathing at stucco locations	Allowance 20%	S/F	7,600	$1.00	$7,600.00
	11.1e - Replacement of moisture-damaged exterior wall framing at stucco locations	Allowance 10%	S/F	3,800	$5.50	$20,900.00
	11.1f - Replacement of moisture-damaged exterior wall butt insulation at stucco locations	Allowance 20%	S/F	7,600	$0.50	$3,800.00
	11.1g - Replace moisture-damaged exterior OSB sheathing at siding location	Allowance 20%	S/F	800	$1.00	$800.00
	11.1h -Replace moisture-damaged wood framing components at siding location	Allowance 10%	S/F	400	$5.50	$2,200.00
	11.1i - Replace moisture-damaged exterior wall cavity butt insulation at siding location	Allowance 20%	S/F	800	$0.50	$400.00
	11.1j - Install lightweight sloping material at breezeways	Allowance 25%	S/F	750	$7.00	$5,250.00
	11.1k - Replace OSB sheathing where gaps exist at window perimeter rough openings	Allowance 30%	S/F	1,056	$1.40	$1,478.40
	11.1l - Landscaping allowance - remove, cut back and replant	Allowance	L/S	1	$3,500.00	$3,500.00
11.2	*Interior*					
	11.2a - Replace interior drywall	Allowance 10%	S/F	4,200	$1.25	$5,250.00
	11.2b - Replace interior trim	Allowance 10%	L/F	1,220	$1.50	$1,830.00
	11.2c - Prime and paint interior drywall	Allowance 10%	S/F	4,200	$0.80	$3,360.00
	11.2d - Prime and paint interior trim	Allowance 10%	L/F	1,220	$0.90	$1,098.00
	11.2e - Replace interior drywall at ceilings	Allowance 5%	S/F	2,100	$1.25	$2,625.00
	11.2f - Prime and texture interior ceilings	Allowance 5%	S/F	2,100	$1.85	$3,885.00
	11.2g - Repair drywall nail pops and paint wall	Allowance 50%	S/F	2,100	$1.00	$2,100.00
	11.2h - Remove and replace drywall and finish along new cable runs	Allowance	S/F	9,600	$4.20	$40,320.00
	11.2i - HVAC Scope:					
	- Remove/replace roof units	Allowance	EA	32	$350.00	$11,200.00
	- Replace approximately 20% inside units	Allowance	EA	7	$1,500.00	$10,500.00
	Subtotal for Project Allowances for Unknown Quantities					**$130,174.05**
12.	***Environmental Remediation Protocol***					
12.1	Fold back carpet at window rough openings	Rhino	LOC	110	$20.00	$2,200.00
12.2	Construct negative air containments at each R/O	Rhino	LOC	110	$180.00	$19,800.00
12.3	Remove interior trim at each R/O	Rhino	L/F	1,220	$0.50	$610.00
12.4	Remove contaminated drywall	Rhino	S/F	1,500	$1.10	$1,650.00
12.5	Clean and encapsulate drywall areas	Rhino	S/F	1,500	$1.50	$2,250.00
12.6	Wipe clean all non-porous materials in containment with biocide	Rhino	S/F	3,000	Inc.	$0.00
12.7	Hepa-vac and fine clean areas for clearance	Rhino	S/F	3,000	$1.00	$3,000.00
12.8	Run air scrubbers and dehumidifiers prior to final clearance	Rhino	LOC	110	$120.00	$13,200.00

No.	Description	Reference	Unit	Qty.	Unit Cost	Total
12.9	Remove containments	Rhino	LOC	110	$60.00	$6,600.00
2.10	Unfold carpet, stretch and kick-in	Rhino	LOC	110	$75.00	$8,250.00
	***Folding back carpet and then unfolding carpet for kick-in assumes that the carpet is not contaminated. If carpet is contaminated, disposal is recommended**					
	Subtotal for Environmental Remediation Protocol					**$57,550.00**
3.	***General Conditions***					
13.1	Scaffolding erection / dismantle	Sunbelt	L/S	1	$43,287.00	$43,287.00
13.2	Scaffold rental to include 7.5% sales tax	Sunbelt	EA	4	$9,266.00	$37,064.00
13.3	Dumpster fees per building	Express Disposal	EA	8	$120.00	$960.00
13.4	Dumpster & dump fees for const. trash @ 6.2 per building	Express Disposal	EA	8	$300.00	$2,400.00
13.5	Forklift rental	Sunbelt	Months	2.5	$2,350.00	$5,875.00
13.6	Jobsite office / storage trailer	William/Scotsman	Months	2.5	$455.00	$1,137.50
13.7	Porta-John - 4 units	Access Portable Toilets	EA	2.5	$220.00	$550.00
13.8	Project supervisor	Procon	Months	2.5	$8,000.00	$20,000.00
13.9	Assistant supervisor	Procon	Months	2.5	$7,000.00	$17,500.00
3.10	Building permit	Procon				
	• $4,434.00($2.50/1,000)	Procon	L/S	1	$4,434.00	$4,434.00
	• $2,217.00 (plan review @ 1/2)	Procon	L/S	1	$2,217.00	$2,217.00
	• $1,755.00 (first 500K)	Procon	L/S	1	$1,755.00	$1,755.00
3.11	Fine clean units	Procon	Units	32	$300.00	$9,600.00
3.12	Temporary handrails for construction	Procon	L/S	1	$5,000.00	$5,000.00
3.13	Continuous clean-up crew (2 men)	Procon	Months	2.5	$6,625.00	$16,562.50
3.14	Construction fencing (around building)	Procon	L/S	1	$2,000.00	$2,000.00
3.15	Jobsite pick-up truck expense	Procon	Months	2.5	$900.00	$2,250.00
3.16	Project before/after photo documentation of conditions	Procon	Units	32	$300.00	$9,600.00
	Subtotal for General Conditions					**$182,192.00**
	Project Subtotal					**$1,581,201.89**

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No.	Description	Reference	Unit	Qty.	Unit Cost	Total
14.	***Project Fees***					
14.1	Contractor's Operation and Overhead @ 10%					$156,120.19
	Subtotal					$1,717,322.08
14.2	Contractor's Fee @ 10%					$171,732.21
	Subtotal					$1,889,054.29
14.3	Project Contingency @ 10%					$188,905.43
	Subtotal					$2,077,959.72
14.4	Architectural and Engineering Fees @ 10%					$207,795.97
	Total Estimated Project Cost					$2,285,755.69

Qualifications

a. This estimate and general conditions are based on a 18 month Construction schedule

Exclusions

a. No pricing to re-direct storm water drainage away from the buildings is included in estimate.
b. No ground floor footing or interior concrete slab work of any kind is included in the estimate.
c. Scope does not address inadequate, improper, or missing hurricane strapping or fire stopping between unit walls or attic spaces required by code.
d. Buildings must be closed for construction; owners are responsible for removing all contents from unit
e. There is no allowance in this estimate for loss of use while buildings are vacated for 4 months of construction

EA = Each
L/F = Linear Feet
LOC = Location
L/S = Lump Sum
S/F = Square Feet

PROJECT SCHEDULE

	General Conditions by Building	Scaffolding Rental by Building
Building #3 and #1	2.5 & 1.5 / 4 Months	3.0 & 3.286 / 6.286 Months
Building #4 and #5	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #6 and #7	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #8 and #9	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #2 and #12	1.5 & 1.5 / 3 Months	4.0 & 3.0 / 7.0 Months
Leasing Center & Pool House	1.0 & 1.0 / 2 Months	2.0 and 1.0 / 3.0 Months
	18 Months	**36 Months**

Complete two (2) buildings at a time (18 Month Custruction Schedule)

PROCON & ASSOCIATES, INC.

PRELIMINARY REPAIR ESTIMATE
Twelve Oaks @ Fenwick Plantation
Charleston, South Carolina
(Building Type 4 - Quantity 1)
- Building Number: 12 -

Repair scope and pricing are based on the preliminary report & repair recommendations prepared by Myles Glick AIA dated 12/15/09

No.	Description	Ref./Reference	Unit	Qty	Unit Cost	Total
01.	***Mobilization of Rental Equipment***					
1.1	Scaffolding delivery in / out	Sunbelt	EA	1	$600.00	$600.00
1.2	Office / storage trailer set up and delivery in / out	William/Scotsman	EA	1	Inc.	$0.00
1.3	Deliver porta-johns in / out	William/Scotsman	EA	2	Inc.	$0.00
1.4	Deliver forklift in / out	Sunbelt	EA	1	Inc.	$0.00
1.5	Deliver dumpsters in / out	William/Scotsman	EA	2	Inc.	$0.00
	Subtotal for Mobilization of Rental Equipment					**$600.00**
02.	***Roofs*** **- Repair Recommendation #1 (Page 13) Reference RTM Engineering Report 10/16/09**					
2.1	Remove existing damaged shingles & felt under layment / install new felt under layment flashings & shingles	Thompson Roofing	L/S	1	$12,250.00	$12,250.00
2.2	Remove existing EPDM membrane and install new	Thompson Roofing	L/S	N/A	$0.00	$0.00
2.3	Replace moisture-damaged sheathing at roof deck	See Allowance (11.1a)				$0.00
2.4	Replace moisture-damaged wood framing components	See Allowance (11.1c)				$0.00
2.5	Replace moisture-damaged drywall ceilings at breezeways	See Allowance (11.1b)				$0.00
2.6	Provide remediation protocols as directed by (CIE)	See Section 12.				$0.00
2.7	Provide temporary weather protection at flat roofs	Rhino	L/S	1	$2,500.00	$2,500.00
	Subtotal for Roofs					**$14,750.00**
03.	***Magna Wall System*** **- Repair Recommendation #3 (Page 14)**					
3.1	Remove all existing magna wall system stucco to include building wrap, membrane flashing at rough openings and system flashing components to expose all OSB sheathing for inspection	Rhino	S/F	12,000	$2.75	$33,000.00
3.2	Provide temporary weather protection	Rhino	S/F	12,000	$1.15	$13,800.00

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No.	Description	Reference	Unit	Qty.	Unit Cost	Total
3.3	Replace moisture-damaged exterior OSB sheathing	See Allowance (11.1d)				$0.00
3.4	Replace moisture-damaged wood framing components	See Allowance (11.1e)				$0.00
3.5	Replace moisture-damaged exterior wall cavity butt insulation	See Allowance (11.1f)				$0.00
3.6	Install new moisture barrier over exterior walls, 2 layers, 30# felt	Double M Construction	S/F	12,000		$0.00
3.7	Wrap all rough openings with membrane flashing	Double M Construction	L/F	1,883	$1.06	$12,720.00
3.8	Install zinc accessories at wall penetrations, dissimilar materials, floor lines outside/inside corners and control joints	Sun Beam Stucco	L/F	3,600	$0.72	$1,355.76
3.9	Install floor line flashing at bottom of wall and floor lines	Double M Construction	L/F	1,120	Inc.	$0.00
3.10	Install 3.4 self furring wire lath	Sun Beam Stucco	S/F	12,000	$2.16	$2,419.20
3.11	Apply three-coat hard stucco system (FRP)	Sun Beam Stucco	S/F	12,000	$3.50	$42,000.00
3.12	Apply primer and finish color coat and decorative trim components to match existing architectural building features	Sun Beam Stucco	S/F	12,000	$9.00	$108,000.00
	Subtotal for Magna Wall System - Stucco Areas				Inc.	$0.00
)4.	***Siding Materials* - Repair Recommendation #4 (Page 14)**					**$213,294.96**
4.1	Remove all existing cementitious siding and trim components to include building wrap, membrane flashing at rough openings and flashing components to expose all OSB sheathing for inspection.	Rhino	S/F	N/A	$0.00	$0.00
4.2	Provide temporary weather protection	Rhino	S/F	N/A	$0.00	$0.00
4.3	Replace moisture-damaged exterior OSB sheathing	See Allowance (11.1g)				$0.00
4.4	Replace moisture-damaged wood framing components	See Allowance (11.1h)				$0.00
4.5	Replace moisture-damaged exterior wall cavity butt insulation	See Allowance (11.1i)				$0.00
4.6	Install new moisture barrier over exterior walls, 2 layers 30# felt	Double M Construction	S/F	N/A	$0.00	$0.00
4.7	Wrap all rough openings with membrane flashings	Double M Construction	L/F	N/A	$0.00	$0.00
4.8	Install new flashing at all siding to stucco band intersections and kick out flashing at gable wall intersections	Double M Construction	L/F	N/A	$0.00	$0.00
4.9	Install new cement board siding and associated trim to match existing architectural building features	Double M Construction	S/F	N/A	$0.00	$0.00
4.10	Prime all cement board siding and trim materials prior to installation on building - all sides	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
4.11	Provide two (2) top coats of paint over cement board siding and trim materials to match existing color scheme.	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
	Subtotal for Siding Materials					$0.00
)5.	***Breezeway Areas* - Repair Recommendation #5 (Page 15)**					
5.1	Clean and prepare surface	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
5.2	Provide new sloping materials to eliminate standing/ponding water	See Allowance (11.1j)				$0.00

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No.		Description	Reference	Unit	Qty	Unit Cost	Total
5.3		Install new waterproof membrane on breezeway surface turning up onto wall sheathing to include entry door threshold and deck surface detail (2nd & 3rd floors)	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
5.4		Install new kick out flashing at breezeway edges	Double M Construction	LOC	N/A	$0.00	$0.00
5.5		Re-detail new handrail connections through siding and seal	Double M Construction	LOC	N/A	$0.00	$0.00
5.6		Install WTS detail at ground floor breezeways	D.R. Moore Painting	L/F	N/A	$0.00	$0.00
		Subtotal for Breezeway Areas					**$0.00**
16.		***Balcony Areas*** **- Repair Recommendation (same as breezeway)**					
6.1		Clean and prepare surface	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
6.2		Provide new sloping materials to eliminate standing/ponding water	NIS	0			$0.00
6.3		Install new waterproof membrane on balcony surface turning up onto wall sheathing to include SGD threshold and deck surface detail, 2nd & 3rd floors	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
6.4		Install new kick out flashing at balcony edges	Double M Construction	LOC	N/A	$0.00	$0.00
6.5		Re-detail new handrail connections through siding and seal	Double M Construction	LOC	N/A	$0.00	$0.00
6.6		Install WTS detail at ground floor balconies	D.R. Moore Painting	L/F	N/A	$0.00	$0.00
		Subtotal for Balcony Areas					**$0.00**
17.		***Windows & Flashings*** **- Repair Recommendation #2 (Page 13)** ***Replace all window units with new code compliant units to include replacement of deficient flashings at rough openings***					
7.1		Remove and dispose of all existing window units	Double M Construction	EA	64	$37.50	$2,400.00
7.2		Provide new code compliant window units with appropriate DP rating	Myrtle Beach Building Supply	L/S	1	$32,908.00	$32,908.00
		7.2.1a - Install Type A 3'0 x 6'0 mulled together (Double)	Double M Construction	EA	26	$65.00	$1,690.00
		7.2.1b - Install Type B 3'0 x 6'0 single (Single)	Double M Construction	EA	2	$55.00	$110.00
		7.2.1c - Install Type C 3'0 x 6'0 (3) mulled together (Triple)	Double M Construction	EA	N/A	$0.00	$0.00
		7.2.1d - Install Type D 2'8" x 6'0" (Hung)	Double M Construction	EA	12	$55.00	$660.00
		7.2.1e - Install Type E 2'8" x 4'0" (Hung)	Double M Construction	EA	12	$55.00	$660.00
		7.2.1f - Install Type K 2'8" x 4'0" (Fixed)	Double M Construction	EA	12	$55.00	$660.00
7.3		Replace OSB sheathing where gaps exist at window perimeter rough openings	See Allowance (11.1k)				$0.00
7.4		Install window and door head flashing at each R/O	Double M Construction	L/F	453	$2.75	$1,245.75
7.5		Install new peel-n-stick, sealing nailing flange to face of wall moisture barrier in water shed lap configuration	Double M Construction	L/F	1,883	$0.72	$1,355.76
7.6		Provide new SGD units - 6'	Myrtle Beach Building Supply	EA	N/A	$0.00	$0.00

No.	Description	Price Reference	Unit	Qty	Unit Cost	Total
7.7	Provide new SGD units - 9'	Myrtle Beach Building Supply	EA	N/A	$0.00	$0.00
7.8	Remove and install 6' balcony sliding glass doors	Double M Construction	EA	N/A	$0.00	$0.00
7.9	Remove and install 9' balcony sliding glass doors	Double M Construction	EA	N/A	$0.00	$0.00
	Subtotal for Windows & Flashings					**$41,689.51**
8.	***Sealants***					
8.1	Install new caulk details @ all fenestrations & areas of dissimilar materials	D.R. Moore Painting	L/F	1,883	$2.25	$4,236.75
8.2	Install new caulk details at stucco and cement siding	D.R. Moore Painting	L/F	3,517	$2.25	$7,913.25
	Subtotal for Sealants					**$12,150.00**
9.	***Project Remove/Store and Replace Items***					
9.1	Remove, store and replace all breezeway and balcony handrails	Double M Construction	L/F	N/A	$0.00	$0.00
9.2	Remove, store and replace all exterior light fixtures attached to side of building at balconies, garage doors and entry doors	Procon	EA	25	$25.00	$625.00
9.3	Remove, store and replace bath and dryer vents attached to exterior walls	Double M Construction	EA	24	$12.50	$300.00
9.4	Remove, store and reinstall steel stairs and rails, steps and stringer	Procon	EA	N/A	$0.00	$0.00
9.5	Prepare and paint steps, stringers and handrails	D.R. Moore Painting	EA	N/A	$0.00	$0.00
9.6	Remove, store and reinstall unit entry doors	Double M Construction	EA	6	$140.00	$840.00
9.7	Remove, store and reinstall garage entry and storage room entry doors	Double M Construction	EA	7	$140.00	$980.00
9.8	Prepare and paint all entry-type doors	D.R. Moore Painting	EA	13	$40.00	
9.9	Remove, store and reinstall garage roll-up doors	Double M Construction	EA	12	$175.00	$2,100.00
9.10	Remove, store and reinstall all gutters and downspouts	Double M Construction	L/F	284	$4.45	$1,263.80
9.11	Remove, store and reinstall ground floor balcony screen enclosure frames, provide new screen tight system	Double M Construction	EA	N/A	$0.00	$0.00
9.12	Remove, store and reinstall gable attic vents	Double M Construction	EA	2	$45.00	$90.00
9.13	Remove, store and reinstall meter base and panels	Procon	EA	6	$250.00	$1,500.00
	Subtotal for Project Remove/Store and Replace Items					**$7,698.80**
10.	***Electrical and Mechanical*** **(Orbital Engineering Report Dated 11/6/09)**					
10.1	Electrical work scope pending (page 4) Item-1	Delta	EA	3	$100.00	$300.00
10.2	Mechanical work scope pending (page 4) Item-2	See Allowance 11.2i				$0.00
10.3	Remove interior drywall along path of new cable runs	See Allowance 11.2h				$0.00
10.4	Remove interior drywall at first floor to replace second floor duct and returns - only applies to Building #12 (Type 4)	See Allowance 11.2i				

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No.	Description	Reference	Unit	Qty	Unit Cost	Line Total
	Subtotal for Electrical and Mechanical					**$300.00**
11.	***Project Allowances for Unknown Quantities***					
11.1	*Exterior*					
	11.1a - Replacement of roof deck sheathing (flat roofs only)	Allowance 20%	S/F	N/A	$0.00	$0.00
	11.1b - Replacement of drywall in exterior breezeways	Allowance 20%	S/F	N/A	$0.00	$0.00
	11.1c - Replace moisture-damaged wood framing components	Allowance 10%	S/F	N/A	$0.00	$0.00
	11.1d - Replacement of moisture-damaged OSB wall sheathing at stucco locations	Allowance 20%	S/F	2,400	$1.00	$2,400.00
	11.1e - Replacement of moisture-damaged exterior wall framing at stucco locations	Allowance 10%	S/F	1,200	$5.50	$6,600.00
	11.1f - Replacement of moisture-damaged exterior wall butt insulation at stucco locations	Allowance 20%	S/F	2,400	$0.50	$1,200.00
	11.1g - Replace moisture-damaged exterior OSB sheathing at siding location	Allowance 20%	S/F	N/A	$0.00	$0.00
	11.1h -Replace moisture-damaged wood framing components at siding location	Allowance 10%	S/F	N/A	$0.00	$0.00
	11.1i - Replace moisture-damaged exterior wall cavity butt insulation at siding location	Allowance 20%	S/F	N/A	$0.00	$0.00
	11.1j - Install lightweight sloping material at breezeways	Allowance 25%	S/F	N/A	$0.00	$0.00
	11.1k - Replace OSB sheathing where gaps exist at window perimeter rough openings	Allowance 30%	S/F	672	$1.40	$940.80
	11.1l - Landscaping allowance - remove, cut back and replant	Allowance	L/S	1	$3,500.00	$3,500.00
11.2	*Interior*					
	11.2a - Replace interior drywall	Allowance 10%	S/F	1,200	$1.25	$1,500.00
	11.2b - Replace interior trim	Allowance 10%	L/F	720	$1.50	$1,080.00
	11.2c - Prime and paint interior drywall	Allowance 10%	S/F	1,200	$0.80	$960.00
	11.2d - Prime and paint interior trim	Allowance 10%	L/F	720	$0.90	$648.00
	11.2e - Replace interior drywall at ceilings	Allowance 5%	S/F	600	$1.00	$600.00
	11.2f - Prime and texture interior ceilings	Allowance 5%	S/F	600	$1.85	$1,110.00
	11.2g - Repair drywall nail pops and paint wall	Allowance 50%	S/F	6,000	$1.00	$6,000.00
	11.2h - Remove and replace drywall and finish along new cable runs	Allowance	S/F	N/A	$0.00	$0.00
	11.2i - Remove drywall at first floor ceiling, replace HVAC duct work and returns	Allowance	EA	6	$10,000.00	$60,000.00
	Subtotal for Project Allowances for Unknown Quantities					**$86,538.80**
12.	***Environmental Remediation Protocol***					
12.1	Fold back carpet at window rough openings	Rhino	LOC	70	$20.00	$1,400.00
12.2	Construct negative air containments at each R/O	Rhino	LOC	70	$180.00	$12,600.00
12.3	Remove interior trim at R/O	Rhino	L/F	720	$0.50	$360.00

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No.	Description	Reference	Unit	Qty	Unit Cost	Total
12.4	Remove contaminated drywall	Rhino	S/F	1,000	$1.10	$1,100.00
12.5	Clean and encapsulate drywall areas	Rhino	S/F	1,000	$1.50	$1,500.00
12.6	Wipe clean all non-porous materials in containment with biocide	Rhino	S/F	2,000	Inc.	$0.00
12.7	Hepa-vac and fine clean areas for clearance	Rhino	S/F	2,000	$1.00	$2,000.00
12.8	Run air scrubbers and dehumidifiers prior to final clearance	Rhino	LOC	70	$120.00	$8,400.00
12.9	Remove containments	Rhino	LOC	70	$60.00	$4,200.00
2.10	Unfold carpet, stretch and kick-in	Rhino	LOC	70	$75.00	$5,250.00
	Folding back carpet and then unfolding carpet for kick-in assumes that the carpet is not contaminated. If carpet is contaminated, disposal is recommended					
	Subtotal for Environmental Remediation Protocol					**$36,810.00**
3.	***General Conditions***					
13.1	Scaffolding erection / dismantle	Sunbelt	L/S	1	$22,284.00	$22,284.00
13.2	Scaffold rental to include 7.5% sales tax	Sunbelt	EA	3.0	$4,771.00	$14,313.00
13.3	Dumpster fees per building	Express Disposal	EA	6	$120.00	$720.00
13.4	Dumpster & dump fees for const. trash @ 2 per bldg.	Express Disposal	EA	6	$300.00	$1,800.00
13.5	Forklift rental	Sunbelt	Months	1.5	$2,350.00	$3,525.00
13.6	Jobsite office / storage trailer	William/Scotsman	Months	1.5	$455.00	$682.50
13.7	Porta-John - 4 units	Access Portable Toilets	EA	1.5	$220.00	$330.00
13.8	Project supervisor	Procon	Months	1.5	$8,000.00	$12,000.00
13.9	Assistant supervisor	Procon	Months	1.5	$7,000.00	$10,500.00
3.10	Building permit	Procon				$0.00
	• $622.00 ($2.50/1,000)	Procon	L/S	1	$622.00	$622.00
	• $311.00 (plan review @ 1/2)	Procon	L/S	1	$311.00	$311.00
	• $1,755.00 (first 500K)	Procon	L/S	1	$1,755.00	$1,755.00
3.11	Fine clean units	Procon	Units	22	$300.00	$6,600.00
3.12	Temporary handrails for construction	Procon	L/S	1	$5,000.00	$5,000.00
3.13	Continuous clean-up crew (2 men)	Procon	Months	1.5	$6,625.00	$9,937.50
3.14	Construction fencing (around building)	Procon	L/S	1	$2,000.00	$2,000.00
3.15	Jobsite pick-up truck expense	Procon	Months	1.5	$900.00	$1,350.00
3.16	Project before/after photo documentation of conditions	Procon	Units	22	$300.00	$6,600.00
	Subtotal for General Conditions					**$100,330.00**
	Project Subtotal					**$514,162.07**
14.	***Project Fees***					
14.1	Contractor's Operation and Overhead @ 10%					$51,416.21
	Subtotal					$565,578.28
14.2	Contractor's Fee @ 10%					$56,557.83

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No.	Description	Reference	Unit	Qty	Unit Cost	Total
	Subtotal					**$622,136.10**
14.3	Project Contingency @ 10%					$62,213.61
	Subtotal					**$684,349.72**
14.4	Architectural and Engineering Fees @ 10%					$68,434.97
	Total Estimated Project Cost					**$752,784.69**

Qualifications

a. This estimate and general conditions are based on a 18 month Construction schedule

Exclusions

a. No pricing to re-direct storm water drainage away from the buildings is included in estimate.
b. No ground floor footing or interior concrete slab work of any kind is included in the estimate.
c. Scope does not address inadequate, improper, or missing hurricane strapping or fire stopping between unit walls or attic spaces required by code.
d. Buildings must be closed for construction; owners are responsible for removing all contents from unit
e. There is no allowance in this estimate for loss of use while buildings are vacated for 3 months of construction

EA = Each
L/F = Linear Feet
LOC = Location
L/S = Lump Sum
S/F = Square Feet

PROJECT SCHEDULE

	General Conditions by Building	Scaffolding Rental by Building
Building #3 and #1	2.5 & 1.5 / 4 Months	3.0 & 3.286 / 6.286 Months
Building #4 and #5	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #6 and #7	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #8 and #9	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #2 and #12	1.5 & 1.5 / 3 Months	4.0 & 3.0 / 7.0 Months
Leasing Center & Pool House	1.0 & 1.0 / 2 Months	2.0 and 1.0 / 3.0 Months
	18 Months	**36 Months**

Complete two (2) buildings at a time (18 Month Custruction Schedule)

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PROCON & ASSOCIATES, INC.

PRELIMINARY REPAIR ESTIMATE
Twelve Oaks @ Fenwick Plantation
Charleston, South Carolina
Leasing Center - Quantity 1

Repair scope and pricing are based on the preliminary report & repair recommendations prepared by Myles Glick AIA dated 12/15/09

NO.	Description	Reference	Unit	Qty	Unit Cost	Total
11.	***Mobilization of Rental Equipment***					
1.1	Scaffolding delivery in / out	Sunbelt	EA	1	$300.00	$300.00
1.2	Office / storage trailer set up and delivery in / out	William/Scotsman	EA	1	Inc.	$0.00
1.3	Deliver porta-johns in / out	William/Scotsman	EA	2	Inc.	$0.00
1.4	Deliver forklift in / out	Sunbelt	EA	1	Inc.	$0.00
1.5	Deliver dumpsters in / out	William/Scotsman	EA	2	Inc.	$0.00
	Subtotal for Mobilization of Rental Equipment					$300.00
12.	***Roofs*** **- Repair Recommendation #1 (Page 13) Reference RTM Engineering Report 10/15/09**					
2.1	Remove existing damaged shingles & felt under layment / install new felt under layment flashings & shingles	Thompson Roofing	L/S	1	$8,250.00	$8,250.00
2.2	Remove existing EPDM membrane and install new	Thompson Roofing	L/S	N/A	$0.00	$0.00
2.3	Replace moisture-damaged sheathing at roof deck	See Allowance (11.1a)				$0.00
2.4	Replace moisture-damaged wood framing components	See Allowance (11.1c)				$0.00
2.5	Replace moisture-damaged drywall ceilings at breezeways	See Allowance (11.1b)				$0.00
2.6	Provide remediation protocols as directed by (CIE)	See Section 12.				$0.00
2.7	Provide temporary weather protection at flat roofs	Rhino	L/S	N/A	$0.00	$0.00
	Subtotal for Roofs					$0.00
13.	***Magna Wall System*** **- Repair Recommendation #3 (Page 14)**					$8,250.00
3.1	Remove all existing magna wall system stucco to include building wrap, membrane flashing at rough openings and system flashing components to expose all OSB sheathing for inspection	Rhino	S/F	4,200	$2.75	$11,550.00
3.2	Provide temporary weather protection	Rhino	S/F	4,200	$1.15	$4,830.00

No.	Description	Reference	Unit	Qty.	Unit Cost	Total
3.3	Replace moisture-damaged exterior OSB sheathing	See Allowance (11.1d)				$0.00
3.4	Replace moisture-damaged wood framing components	See Allowance (11.1e)				$0.00
3.5	Replace moisture-damaged exterior wall cavity butt insulation	See Allowance (11.1f)				$0.00
3.6	Install new moisture barrier over exterior walls, 2 layers, 30# felt	Double M Construction	S/F	4,200	$1.06	$4,452.00
3.7	Wrap all rough openings with membrane flashing	Double M Construction	L/F	400	$0.72	$288.00
3.8	Install zinc accessories at wall penetrations, dissimilar materials, floor lines outside/inside corners and control joints	Sun Beam Stucco	L/F	1,400	Inc.	$0.00
3.9	Install floor line flashing at bottom of wall and floor lines	Double M Construction	L/F	476	$2.16	$1,028.16
3.10	Install 3.4 self furring wire lath	Sun Beam Stucco	S/F	4,200	$3.50	$14,700.00
3.11	Apply three-coat hard stucco system (FRP)	Sun Beam Stucco	S/F	4,200	$9.00	$37,800.00
3.12	Apply primer and finish color coat and decorative trim components to match existing architectural building features	Sun Beam Stucco	S/F	4,200	Inc.	$0.00
	Subtotal for Magna Wall System - Stucco Areas					**$74,648.16**
4.	***Siding Materials* - Repair Recommendation #4 (Page 14)**					
4.1	Remove all existing cementitious siding and trim components to include building wrap, membrane flashing at rough openings and flashing components to expose all OSB sheathing for inspection.	Rhino	S/F	N/A	$0.00	$0.00
4.2	Provide temporary weather protection	Rhino	S/F	N/A	$0.00	$0.00
4.3	Replace moisture-damaged exterior OSB sheathing	See Allowance (11.1g)				$0.00
4.4	Replace moisture-damaged wood framing components	See Allowance (11.1h)				$0.00
4.5	Replace moisture-damaged exterior wall cavity butt insulation	See Allowance (11.1i)				$0.00
4.6	Install new moisture barrier over exterior walls, 2 layers 30# felt	Double M Construction	S/F	N/A	$0.00	$0.00
4.7	Wrap all rough openings with membrane flashings	Double M Construction	L/F	N/A	$0.00	$0.00
4.8	Install new flashing at all siding to stucco band intersections and kick out flashing at gable wall intersections	Double M Construction	L/F	N/A	$0.00	$0.00
4.9	Install new cement board siding and associated trim to match existing architectural building features	Double M Construction	S/F	N/A	$0.00	$0.00
4.10	Prime all cement board siding and trim materials prior to installation on building - all sides	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
4.11	Provide two (2) top coats of paint over cement board siding and trim materials to match existing color scheme.	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
	Subtotal for Siding Materials					**$0.00**
5.	***Breezeway Areas* - Repair Recommendation #5 (Page 15)**					
5.1	Clean and prepare surface	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
5.2	Provide new sloping materials to eliminate standing/ponding water	See Allowance (11.1j)				$0.00

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No.	Description	Reference	Unit	Qty	Unit Cost	Total
5.3	Install new waterproof membrane on breezeway surface turning up onto wall sheathing to include entry door threshold and deck surface detail (2nd & 3rd floors)	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
5.4	Install new kick out flashing at breezeway edges	Double M Construction	LOC	N/A	$0.00	$0.00
5.5	Re-detail new handrail connections through siding and seal	Double M Construction	LOC	N/A	$0.00	$0.00
5.6	Install WTS detail at ground floor breezeways	D.R. Moore Painting	L/F	N/A	$0.00	$0.00
	Subtotal for Breezeway Areas					**$0.00**
6.	***Balcony Areas*** **- Repair Recommendation (same as breezeway)**					
6.1	Clean and prepare surface	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
6.2	Provide new sloping materials to eliminate standing/ponding water	NIS	0	N/A	$0.00	$0.00
6.3	Install new waterproof membrane on balcony surface turning up onto wall sheathing to include SGD threshold and deck surface detail, 2nd & 3rd floors	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
6.4	Install new kick out flashing at balcony edges	Double M Construction	LOC	N/A	$0.00	$0.00
6.5	Re-detail new handrail connections through siding and seal	Double M Construction	LOC	N/A	$0.00	$0.00
6.6	Install WTS detail at ground floor balconies	D.R. Moore Painting	L/F	N/A	$0.00	$0.00
	Subtotal for Balcony Areas					**$0.00**
7.	***Windows & Flashings*** **- Repair Recommendation #2 (Page 13)** ***Replace all window units with new code compliant units to include replacement of deficient flashings at rough openings***					
7.1	Remove and dispose of all existing window units	Double M Construction	EA	17	$37.50	$637.50
7.2	Provide new code compliant window units with appropriate DP rating	Myrtle Beach Building Supply	L/S	1	$7,748.00	$7,748.00
	7.2.1a - Install Type A 3'0 x 6'0 mulled together (Double)	Double M Construction	EA	4	$65.00	$260.00
	7.2.1b - Install Type B 3'0 x 6'0 single (Single)	Double M Construction	EA	8	$55.00	$440.00
	7.2.1c - Install Type C 3'0 x 6'0 (3) mulled together (Triple)	Double M Construction	EA	0	$0.00	$0.00
	7.2.1d - Install Type H 2'6" x 8'0" (Hung)	Double M Construction	EA	2	$55.00	$110.00
	7.2.1e - Install Type J 6'0" x 8'0" (Double Door)	Double M Construction	EA	3	$65.00	$195.00
7.3	Replace OSB sheathing where gaps exist at window perimeter rough openings	See Allowance (11.1k)				$0.00
7.4	Install window head flashing at each R/O	Double M Construction	L/F	90	$2.75	$247.50
7.5	Install new peel-n-stick, sealing nailing flange to face of wall moisture barrier in water shed lap configuration	Double M Construction	L/F	284	$0.72	$204.48
7.6	Provide new SGD units - 6'	Myrtle Beach Building Supply	EA	N/A	$0.00	$0.00

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No.		Description	Reference	Unit	Qty	Unit cost	Total cost
7.7		Provide new SGD units - 9'	Myrtle Beach Building Supply	EA	N/A	$0.00	$0.00
7.8		Remove and install new 6' balcony sliding glass doors	Double M Construction	EA	N/A	$0.00	$0.00
7.9		Remove and install new 9' balcony sliding glass doors	Double M Construction	EA	N/A	$0.00	$0.00
		Subtotal for Windows & Flashings					**$9,842.48**
8.		***Sealants***					
8.1		Install new caulk details @ all fenestrations & areas of dissimilar materials	D.R. Moore Painting		600	$2.25	$1,125.00
8.2		Install new caulk details at stucco and cement siding	D.R. Moore Painting		150	$2.25	$337.50
		Subtotal for Sealants					**$1,462.50**
9.		***Project Remove/Store and Replace Items***					
9.1		Remove, store and replace all breezeway and balcony handrails	Double M Construction	L/F	N/A	$0.00	$0.00
9.2		Remove, store and replace all exterior light fixtures attached to side of building at balconies, garage doors and entry doors	Procon	EA	6	$25.00	$150.00
9.3		Remove, store and replace bath and dryer vents attached to exterior walls	Double M Construction	EA	4	$12.50	$50.00
9.4		Remove, store and reinstall steel stairs and rails, steps and stringer	Procon	EA	N/A	$0.00	$0.00
9.5		Prepare and paint steps, stringers and handrails	D.R. Moore Painting	EA	N/A	$0.00	$0.00
9.6		Remove, store and reinstall unit entry doors and Leasing Center door	Double M Construction	EA	3	$140.00	$420.00
9.7		Remove, store and reinstall garage entry and storage room entry doors	Double M Construction	EA	N/A	$0.00	$0.00
9.8		Prepare and paint all entry-type doors	D.R. Moore Painting	EA	3	$40.00	$120.00
9.9		Remove, store and reinstall garage roll-up doors	Double M Construction	EA	N/A	$0.00	$0.00
9.10		Remove, store and reinstall all gutters and downspouts	Double M Construction	L/F	128	$4.45	$569.60
9.11		Remove, store and reinstall ground floor balcony screen enclosure frames, provide new screen tight system	Double M Construction	EA	N/A	$0.00	$0.00
9.12		Remove, store and reinstall gable attic vents	Double M Construction	EA	2	$45.00	$90.00
9.13		Remove, store and reinstall meter base and panels	Procon	EA	3	$250.00	$750.00
		Subtotal for Project Remove/Store and Replace Items					**$2,148.60**
10.		***Electrical and Mechanical*** **(Orbital Engineering Report Dated 11/6/09)**					
10.1		Electrical work scope pending (page 4) item-1	NIS	N/A	N/A	$0.00	$0.00
10.2		Mechanical work scope pending (page 4) item-2	NIS	N/A	N/A	$0.00	$0.00
10.3		Remove interior drywall along path of new cable runs	See Allowance 11.2h				$0.00
		Subtotal for Electrical and Mechanical					**$0.00**

Appendix 1838
1802

No.	Description	Reference	Unit	Qty	Unit Cost	Total
1.	***Project Allowances for Unknown Quantities***					
11.1	*Exterior*					
	11.1a - Replacement of roof deck sheathing (flat roofs only)	Allowance	S/F	N/A	$0.00	$0.00
	11.1b - Replacement of drywall in exterior breezeways	Allowance	S/F	N/A	$0.00	$0.00
	11.1c - Replace moisture-damaged wood framing components	Allowance	S/F	N/A	$0.00	$0.00
	11.1d - Replacement of moisture-damaged OSB wall sheathing at stucco locations	Allowance 20%	S/F	840	$1.00	$840.00
	11.1e - Replacement of moisture-damaged exterior wall framing at stucco locations	Allowance 10%	S/F	420	$5.50	$2,310.00
	11.1f - Replacement of moisture-damaged exterior wall butt insulation at stucco locations	Allowance 20%	S/F	840	$0.50	$420.00
	11.1g - Replace moisture-damaged exterior OSB sheathing at siding location	Allowance	S/F	N/A	$0.00	$0.00
	11.1h -Replace moisture-damaged wood framing components at siding location	Allowance	S/F	N/A	$0.00	$0.00
	11.1i - Replace moisture-damaged exterior wall cavity butt insulation at siding location	Allowance	S/F	N/A	$0.00	$0.00
	11.1j - Install lightweight sloping material at breezeways	Allowance	S/F	N/A	$0.00	$0.00
	11.1k - Replace OSB sheathing where gaps exist at window perimeter rough openings	Allowance 30%	S/F	172	$1.40	$240.80
	11.1l - Landscaping allowance - remove, cut back and replant	Allowance	L/S	1	$1,500.00	$1,500.00
11.2	*Interior*					
	11.2a - Replace interior drywall	Allowance 10%	S/F	420	$1.25	$525.00
	11.2b - Replace interior trim	Allowance 10%	L/F	200	$1.50	$300.00
	11.2c - Prime and paint interior drywall	Allowance 10%	S/F	420	$0.80	$336.00
	11.2d - Prime and paint interior trim	Allowance 10%	L/F	200	$0.90	$180.00
	11.2e - Replace interior drywall at ceilings	Allowance 5%	S/F	210	$1.25	$262.50
	11.2f - Prime and texture interior ceilings	Allowance 5%	S/F	210	$1.85	$388.50
	11.2g - Repair drywall nail pops and paint wall	Allowance 50%	S/F	2,100	$1.00	$2,100.00
	11.2h - Remove and replace drywall and finish along new cable runs	Allowance	S/F	N/A	$0.00	$0.00
	Subtotal for Project Allowances for Unknown Quantities					$9,402.80
2.	***Environmental Remediation Protocol***					
12.1	Fold back carpet at window rough openings	Rhino	LOC	18	$20.00	$360.00
12.2	Construct negative air containments at each R/O	Rhino	LOC	18	$180.00	$3,240.00
12.3	Remove interior trim at each R/O	Rhino	L/F	200	$0.50	$100.00
12.4	Remove contaminated drywall	Rhino	S/F	220	$1.10	$242.00
12.5	Clean and encapsulate drywall areas	Rhino	S/F	220	$1.50	$330.00
12.6	Wipe clean all non-porous materials in containment with biocide	Rhino	S/F	440	Inc.	$0.00
12.7	Hepa-vac and fine clean areas for clearance	Rhino	S/F	440	$1.00	$440.00

Appendix 1839

1803

No	Description	Reference	Unit	Qty	Unit Cost	Total
12.8	Run air scrubbers prior to final clearance	Rhino	LOC	18	$120.00	$2,160.00
12.9	Remove containments	Rhino	LOC	18	$60.00	$1,080.00
12.10	Unfold carpet, stretch and kick-in	Rhino	LOC	18	$75.00	$1,350.00
	Folding back carpet and then unfolding carpet for kick-in assumes that the carpet is not contaminated. If carpet is contaminated, disposal is recommended					
	Subtotal for Environmental Remediation Protocol					**$9,302.00**
13.	***General Conditions***					
13.1	Scaffolding erection / dismantle	Sunbelt	L/S	1	$11,933.00	$11,933.00
13.2	Scaffold rental	Sunbelt	EA	2	$7,112.00	$14,224.00
13.3	Dumpster per building	Express Disposal	EA	1	$120.00	$120.00
13.4	Dumpster & dump fees for const. trash @ 2 per building	Express Disposal	EA	2	$300.00	$600.00
13.5	Forklift rental	Sunbelt	Months	1	$2,350.00	$2,350.00
13.6	Jobsite office / storage trailer	William/Scotsman	Months	1	$455.00	$455.00
13.7	Porta-John - 2 units	Access Portable Toilets	EA	1	$220.00	$220.00
13.8	Project supervisor	Procon	Months	1	$8,000.00	$8,000.00
13.9	Assistant supervisor	Procon	Months	1	$7,000.00	$7,000.00
13.10	Building permit	Procon				
	• $497.00 ($3.35/1,000)	Procon	L/S	1	$497.00	$497.00
	• $248.00 (plan review @ 1/2)	Procon	L/S	1	$248.00	$248.00
	• $415.00 (first 500K)	Procon	L/S	1	$415.00	$415.00
13.11	Fine clean units	Procon	Units	3	$300.00	$900.00
13.12	Temporary handrails for construction	Procon	L/S	0	$0.00	$0.00
13.13	Continuous clean-up crew (2 men)	Procon	Months	1	$6,625.00	$6,625.00
13.14	Construction fencing (around building)	Procon	N/A	0	$0.00	$0.00
13.15	Jobsite pick-up truck expense	Procon	Months	1	$900.00	$900.00
13.16	Project before/after photo documentation of conditions	Procon	Units	3	$300.00	$900.00
	Subtotal for General Conditions					**$55,387.00**
	Project Subtotal					**$170,744.54**

Appendix 1840

1804

	Description	Reference	Unit	Qty	Unit Cost	Total
	Project Fees					
4.1	Contractor's Operation and Overhead @ 10%					$17,074.45
	Subtotal					**$187,818.99**
4.2	Contractor's Fee @ 10%					$18,781.90
	Subtotal					**$206,600.89**
4.3	Project Contingency @ 10%					$20,660.09
	Subtotal					**$227,260.98**
4.4	Architectural and Engineering Fees @ 10%					$22,726.10
	Total Estimated Project Cost					**$249,987.08**

Qualifications

a. This estimate and general conditions are based on a 18 month Construction schedule

Exclusions

a. No pricing to re-direct storm water drainage away from the buildings is included in estimate.
b. No ground floor footing or interior concrete slab work of any kind is included in the estimate.
c. Scope does not address inadequate, improper, or missing hurricane strapping or fire stopping between unit walls or attic spaces required by code.
d. Buildings must be closed for construction; owners are responsible for removing all contents from unit
e. There is no allowance in this estimate for loss of use while buildings are vacated for 2 months of construction

EA = Each
L/F = Linear Feet
LOC = Location
L/S = Lump Sum
S/F = Square Feet

PROJECT SCHEDULE

General Conditions

	by Building	Scaffolding Rental by Building
Building #3 and #1	2.5 & 1.5 / 4 Months	3.0 & 3.286 / 6.286 Months
Building #4 and #5	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #6 and #7	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #8 and #9	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #2 and #12	1.5 & 1.5 / 3 Months	4.0 & 3.0 / 7.0 Months
Leasing Center & Pool House	1.0 & 1.0 / 2 Months	2.0 and 1.0 / 3.0 Months
	18 Months	36 Months

Complete two (2) buildings at a time (18 Month Custruction Schedule)

1805

Appendix 1841

PROCON & ASSOCIATES, INC.

PRELIMINARY REPAIR ESTIMATE
Twelve Oaks @ Fenwick Plantation
Charleston, South Carolina
Pool House - Quantity 1

Repair scope and pricing are based on the preliminary report & repair recommendations prepared by Myles Glick AIA dated 12/15/09

No.		Description	Reference	Unit	Qty	Unit Cost	Total
1.		***Mobilization of Rental Equipment***					
1.1		Scaffolding delivery in / out	Sunbelt	EA	1	$300.00	$300.00
1.2		Office / storage trailer set up and delivery in / out	William/Scotsman	EA	1	Inc.	$0.00
1.3		Deliver porta-johns in / out	William/Scotsman	EA	2	Inc.	$0.00
1.4		Deliver forklift in / out	Sunbelt	EA	1	Inc.	$0.00
1.5		Deliver dumpsters in / out	William/Scotsman	EA	2	Inc.	$0.00
		Subtotal for Mobilization of Rental Equipment					**$300.00**
2.		***Roofs*** **- Repair Recommendation #1 (Page 13) Reference RTM Engineering Report 10/15/09**					
2.1		Remove existing damaged shingles & felt under layment / install new felt under layment flashings & shingles	Thompson Roofing	L/S	1	$3,500.00	$3,500.00
2.2		Remove existing EPDM membrane and install new	Thompson Roofing	L/S	N/A	$0.00	$0.00
2.3		Replace moisture-damaged sheathing at roof deck	See Allowance (11.1a)				$0.00
2.4		Replace moisture-damaged wood framing components	See Allowance (11.1c)				$0.00
2.5		Replace moisture-damaged drywall ceilings at breezeways	See Allowance (11.1b)				$0.00
2.6		Provide remediation protocols as directed by (CIE)	See Section 12				$0.00
2.7		Provide temporary weather protection at flat roofs	Rhino	L/S	N/A	$0.00	$0.00
		Subtotal for Roofs					**$3,500.00**
3.		***Magna Wall System*** **- Repair Recommendation #3 (Page 14)**					
3.1		Remove all existing magna wall system stucco to include building wrap, membrane flashing at rough openings and system flashing components to expose all OSB sheathing for inspection	Rhino	S/F	2,000	$2.75	$5,500.00
3.2		Provide temporary weather protection	Rhino	S/F	2,000	$1.15	$2,300.00

No.	Description	Reference	Unit	Qty.	Unit Cost	Total
3.3	Replace moisture-damaged exterior OSB sheathing	See Allowance (11.1d)				$0.00
3.4	Replace moisture-damaged wood framing components	See Allowance (11.1e)				$0.00
3.5	Replace moisture-damaged exterior wall cavity butt insulation	See Allowance (11.1f)				$0.00
3.6	Install new moisture barrier over exterior walls, 2 layers, 30# felt	Double M Construction	S/F	2,000	$1.06	$2,120.00
3.7	Wrap all rough openings with membrane flashing	Double M Construction	L/F	190	$0.72	$136.80
3.8	Install zinc accessories at wall penetrations, dissimilar materials, floor lines outside/inside corners and control joints	Sun Beam Stucco	L/F	1,000	Inc.	$0.00
3.9	Install floor line flashing at bottom of wall and floor lines	Double M Construction	L/F	200	$2.16	$432.00
3.10	Install 3.4 self furring wire lath	Sun Beam Stucco	S/F	2,000	$3.50	$7,000.00
3.11	Apply three-coat hard stucco system (FRP)	Sun Beam Stucco	S/F	2,000	$9.00	$18,000.00
3.12	Apply primer and finish color coat and decorative trim components to match existing architectural building features	Sun Beam Stucco	S/F	2,000	Inc.	$0.00
	Subtotal for Magna Wall System - Stucco Areas					$35,488.80

04. *Siding Materials* - Repair Recommendation #4 (Page 14)

4.1	Remove all existing cementitious siding and trim components to include building wrap, membrane flashing at rough openings and flashing components to expose all OSB sheathing for inspection.	Rhino	S/F	N/A	$0.00	$0.00
4.2	Provide temporary weather protection	Rhino	S/F	N/A	$0.00	$0.00
4.3	Replace moisture-damaged exterior OSB sheathing	See Allowance (11.1g)				$0.00
4.4	Replace moisture-damaged wood framing components	See Allowance (11.1h)				$0.00
4.5	Replace moisture-damaged exterior wall cavity butt insulation	See Allowance (11.1i)				$0.00
4.6	Install new moisture barrier over exterior walls, 2 layers 30# felt	Double M Construction	S/F	N/A	$0.00	$0.00
4.7	Wrap all rough openings with membrane flashings	Double M Construction	L/F	N/A	$0.00	$0.00
4.8	Install new flashing at all siding to stucco band intersections and kick out flashing at gable wall intersections	Double M Construction	L/F	N/A	$0.00	$0.00
4.9	Install new cement board siding and associated trim to match existing architectural building features	Double M Construction	S/F	N/A	$0.00	$0.00
4.10	Prime all cement board siding and trim materials prior to installation on building - all sides	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
4.11	Provide two (2) top coats of paint over cement board siding and trim materials to match existing color scheme.	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
	Subtotal for Siding Materials					$0.00

05. *Breezeway Areas* - Repair Recommendation #5 (Page 15)

5.1	Clean and prepare surface	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
5.2	Provide new sloping materials to eliminate standing/ponding water	See Allowance (11.1j)				$0.00

Appendix 1843

1807

No.	Description	Reference	Unit	Qty	Unit Cost	Total
5.3	Install new waterproof membrane on breezeway surface turning up onto wall sheathing to include entry door threshold and deck surface detail (2nd & 3rd floors)	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
5.4	Install new kick out flashing at breezeway edges	Double M Construction	LOC	N/A	$0.00	$0.00
5.5	Re-detail new handrail connections through siding and seal	Double M Construction	LOC	N/A	$0.00	$0.00
5.6	Install WTS detail at ground floor breezeways	D.R. Moore Painting	L/F	N/A	$0.00	$0.00
	Subtotal for Breezeway Areas					**$0.00**

06. ***Balcony Areas*** - **Repair Recommendation (same as breezeway)**

6.1	Clean and prepare surface	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
6.2	Provide new sloping materials to eliminate standing/ponding water	NIS	0	N/A	$0.00	$0.00
6.3	Install new waterproof membrane on balcony surface turning up onto wall sheathing to include SGD threshold and deck surface detail, 2nd & 3rd floors	D.R. Moore Painting	S/F	N/A	$0.00	$0.00
6.4	Install new kick out flashing at balcony edges	Double M Construction	LOC	N/A	$0.00	$0.00
6.5	Re-detail new handrail connections through siding and seal	Double M Construction	LOC	N/A	$0.00	$0.00
6.6	Install WTS detail at ground floor balconies	D.R. Moore Painting	L/F	N/A	$0.00	$0.00
	Subtotal for Balcony Areas					$0.00

07. ***Windows & Flashings*** - **Repair Recommendation #2 (Page 13)**
Replace all window units with new code compliant units to include replacement of deficient flashings at rough openings

7.1	Remove and dispose of all existing window units	Double M Construction	EA	8	$37.50	$300.00
7.2	Provide new code compliant window units with appropriate DP rating	Myrtle Beach Building Supply	L/S	1	$3,702.30	$3,702.30
	7.2.1a - Install Type A 3'0 x 6'0 mulled together (Double)	Double M Construction	EA	2	$65.00	$130.00
	7.2.1b - Install Type B 3'0 x 6'0 single (Single)	Double M Construction	EA	6	$55.00	$330.00
	7.2.1c - Install Type C 3'0 x 6'0 (3) mulled together (Triple)	Double M Construction	EA	0	$0.00	$0.00
7.3	Replace OSB sheathing where gaps exist at window perimeter rough openings	See Allowance (11.1k)				$0.00
7.4	Install window and door head flashing at each R/O	Double M Construction	L/F	33	$2.75	$90.75
7.5	Install new peel-n-stick, sealing nailing flange to face of wall moisture barrier in water shed lap configuration	Double M Construction	L/F	156	$0.72	$112.32
7.6	Provide new SGD units - 6'	Myrtle Beach Building Supply	EA	N/A	$0.00	$0.00

Appendix 1844
1808

No.		Description	Reference	Unit	Qty	Unit Cost	Total
7.7		Provide new SGD units - 9'	Myrtle Beach Building Supply	EA	N/A	$0.00	$0.00
7.8		Remove and install new 6' balcony sliding glass doors	Double M Construction	EA	N/A	$0.00	$0.00
7.9		Remove and install new 9' balcony sliding glass doors	Double M Construction	EA	N/A	$0.00	$0.00
		Subtotal for Windows & Flashings					**$4,666.37**
08.		***Sealants***					
8.1		Install new caulk details @ all fenestrations & areas of dissimilar materials	D.R. Moore Painting		300	$2.25	$675.00
8.2		Install new caulk details at stucco and cement siding	D.R. Moore Painting		150	$2.25	$337.50
		Subtotal for Sealants					**$1,012.50**
09.		***Project Remove/Store and Replace Items***					
9.1		Remove, store and replace all breezeway and balcony handrails	Double M Construction	L/F	N/A	$0.00	$0.00
9.2		Remove, store and replace all exterior light fixtures attached to side of building at balconies, garage doors and entry doors	Procon	EA	2	$25.00	$50.00
9.3		Remove, store and replace bath and dryer vents attached to exterior walls	Double M Construction		N/A	$0.00	$0.00
9.4		Remove, store and reinstall steel stairs and rails, steps and stringer	Procon	EA	N/A	$0.00	$0.00
9.5		Prepare and paint steps, stringers and handrails	D.R. Moore Painting	EA	N/A	$0.00	$0.00
9.6		Remove, store and reinstall unit entry doors	Double M Construction	EA	1	$140.00	$140.00
9.7		Remove, store and reinstall storage room entry doors	Double M Construction	EA	1	$140.00	$140.00
9.8		Prepare and paint all entry-type doors	D.R. Moore Painting	EA	2	$40.00	$80.00
9.9		Remove, store and reinstall garage roll-up doors	Double M Construction	EA	N/A	$0.00	$0.00
9.10		Remove, store and reinstall all gutters and downspouts	Double M Construction	L/F	150	$4.45	$667.50
9.11		Remove, store and reinstall ground floor balcony screen enclosure frames, provide new screen tight system	Double M Construction	EA	N/A	$0.00	$0.00
9.12		Remove, store and reinstall gable attic vents	Double M Construction	EA	N/A	$0.00	$0.00
9.13		Remove, store and reinstall meter base and panels	Procon	EA	1	$250.00	$250.00
		Subtotal for Project Remove/Store and Replace Items					**$1,327.50**
10.		***Electrical and Mechanical*** **(Orbital Engineering Report Dated 11/6/09)**					
10.1		Electrical work scope pending (page 4) Item-1	NIS	N/A	N/A	$0.00	$0.00
10.2		Mechanical work scope pending (page 4) Item-2	NIS	N/A	N/A	$0.00	$0.00
10.3		Remove interior drywall along path of new cable runs	See Allowance 11.2h				$0.00
		Subtotal for Electrical and Mechanical					**$0.00**

Appendix 1845

1809

No.	Description	Reference	Unit	Qty.	Unit Cost	Total
11.	***Project Allowances for Unknown Quantities***					
11.1	*Exterior*					
	11.1a - Replacement of roof deck sheathing (flat roofs only)	Allowance 20%	S/F	N/A	$0.00	$0.00
	11.1b - Replacement of drywall in exterior breezeways	Allowance 20%	S/F	N/A	$0.00	$0.00
	11.1c - Replace moisture-damaged wood framing components	Allowance 10%	S/F	N/A	$0.00	$0.00
	11.1d - Replacement of moisture-damaged OSB wall sheathing at stucco locations	Allowance 20%	S/F	400	$1.00	$400.00
	11.1e - Replacement of moisture-damaged exterior wall framing at stucco locations	Allowance 10%	S/F	200	$5.50	$1,100.00
	11.1f - Replacement of moisture-damaged exterior wall butt insulation at stucco locations	Allowance 20%	S/F	400	$0.50	$200.00
	11.1g - Replace moisture-damaged exterior OSB sheathing at siding location	Allowance 20%	S/F	N/A	$0.00	$0.00
	11.1h -Replace moisture-damaged wood framing components at siding location	Allowance 10%	S/F	N/A	$0.00	$0.00
	11.1i - Replace moisture-damaged exterior wall cavity butt insulation at siding location	Allowance 20%	S/F	N/A	$0.00	$0.00
	11.1j - Install lightweight sloping material at breezeways	Allowance 25%	S/F	N/A	$0.00	$0.00
	11.1k - Replace OSB sheathing where gaps exist at window perimeter rough openings	Allowance 30%	S/F	76	$1.40	$106.40
	11.1l - Landscaping allowance - remove, cut back and replant	Allowance	L/S	1	$1,000.00	$1,000.00
11.2	*Interior*					
	11.2a - Replace interior drywall	Allowance 10%	S/F	200	$1.25	$250.00
	11.2b - Replace interior trim	Allowance 10%	L/F	20	$1.50	$30.00
	11.2c - Prime and paint interior drywall	Allowance 10%	S/F	200	$0.80	$160.00
	11.2d - Prime and paint interior trim	Allowance 10%	L/F	20	$0.90	$18.00
	11.2e - Replace interior drywall at ceilings	Allowance 5%	S/F	100	$1.00	$100.00
	11.2f - Prime and texture interior ceilings	Allowance 5%	S/F	100	$1.85	$185.00
	11.2g - Repair drywall nail pops and paint wall	Allowance 50%	S/F	1,000	$1.00	$1,000.00
	11.2h - Remove and replace drywall and finish along new cable runs	Allowance	S/F	N/A	$0.00	$0.00
	Subtotal for Project Allowances for Unknown Quantities					$4,549.40
12.	***Environmental Remediation Protocol***					
12.1	Fold back carpet at window rough openings	Rhino	LOC	8	$20.00	$160.00
12.2	Construct negative air containments at each R/O	Rhino	LOC	8	$180.00	$1,440.00
12.3	Remove interior trim at each R/O	Rhino	L/F	20	$0.50	$10.00
12.4	Remove contaminated drywall	Rhino	S/F	70	$1.10	$77.00
12.5	Clean and encapsulate drywall areas	Rhino	S/F	70	$1.50	$105.00
12.6	Wipe clean all non-porous materials in containment with biocide	Rhino	S/F	140	Inc.	$0.00
12.7	Hepa-vac and fine clean areas for clearance	Rhino	S/F	140	$1.00	$140.00

Appendix 1846
1810

No.		Description	Reference	Units	Qty	Unit Cost	Total
12.8		Run air scrubbers prior to final clearance	Rhino	LOC	8	$120.00	$960.00
12.9		Remove containments	Rhino	LOC	8	$60.00	$480.00
12.10		Unfold carpet, stretch and kick-in	Rhino	LOC	8	$75.00	$600.00
		*Folding back carpet and then unfolding carpet for kick-in assumes that the carpet is not contaminated. If carpet is contaminated, disposal is recommended					
		Subtotal for Environmental Remediation Protocol					**$3,972.00**
13.		***General Conditions***					
13.1		Scaffolding erection / dismantle	Sunbelt	L/S	1	$11,933.00	$11,933.00
13.2		Scaffold rental	Sunbelt	EA	1	$7,112.00	$7,112.00
13.3		Dumpster per building	Express Disposal	EA	1	$120.00	$120.00
13.4		Dumpster & dump fees for const. trash @ 2 per building	Express Disposal	EA	2	$300.00	$600.00
13.5		Forklift rental	Sunbelt	Months	1	$2,350.00	$2,350.00
13.6		Jobsite office / storage trailer	William/Scotsman	Months	1	$455.00	$455.00
13.7		Porta-John - based on 2 service weekly - 4 units	Access Portable Toilets	EA	1	$220.00	$220.00
13.8		Project supervisor	Procon	Months	1	$8,000.00	$8,000.00
13.9		Assistant supervisor	Procon	Months	1	$7,000.00	$7,000.00
13.10		Building permit	Procon				
		• $159.00 ($3.35/1,000)	Procon	L/S	1	$159.00	$159.00
		• $80.00 (plan review @ 1/2)	Procon	L/S	1	$80.00	$80.00
		• $415.00 (first 100K)	Procon	L/S	1	$415.00	$415.00
13.11		Fine clean units	Procon	Units	1	$300.00	$300.00
13.12		Temporary handrails for construction	Procon	L/S	0	$0.00	$0.00
13.13		Continuous clean-up crew (2 men)	Procon	Months	1	$6,625.00	$6,625.00
13.14		Construction fencing (around building)	Procon	N/A	0	$0.00	$0.00
13.15		Jobsite pick-up truck expense	Procon	Months	1	$900.00	$900.00
13.16		Project before/after photo documentation of conditions	Procon	Units	1	$300.00	$300.00
		Subtotal for General Conditions					**$46,569.00**
		Project Subtotal					**$101,384.57**

Appendix 1847

1811

No.	Description	Reference	Unit	Qty.	Unit Cost	Total
14.	***Project Fees***					
14.1	Contractor's Operation and Overhead @ 10%					$10,138.46
	Subtotal					**$111,623.03**
14.2	Contractor's Fee @ 10%					$11,162.30
	Subtotal					**$122,676.33**
14.3	Project Contingency @ 10%					$12,267.53
	Subtotal					**$134,942.86**
14.4	Architectural and Engineering Fees @ 10%					$13,494.29
	Total Estimated Project Cost					**$148,437.15**

Qualifications

a. This estimate and general conditions are based on a 18 month Construction schedule

Exclusions

a. No pricing to re-direct storm water drainage away from the buildings is included in estimate.
b. No ground floor footing or interior concrete slab work of any kind is included in the estimate.
c. Scope does not address inadequate, improper, or missing hurricane strapping or fire stopping between unit walls or attic spaces required by code.
d. Buildings must be closed for construction; owners are responsible for removing all contents from unit
e. There is no allowance in this estimate for loss of use while buildings are vacated for 1 month of construction

EA = Each
L/F = Linear Feet
LOC = Location
L/S = Lump Sum
S/F = Square Feet

PROJECT SCHEDULE

	General Conditions by Building	Scaffolding Rental by Building
Building #3 and #1	2.5 & 1.5 / 4 Months	3.0 & 3.286 / 6.286 Months
Building #4 and #5	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #6 and #7	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #8 and #9	1.5 & 1.5 / 3 Months	3.286 & 3.286 / 6.572 Months
Building #2 and #12	1.5 & 1.5 / 3 Months	4.0 & 3.0 / 7.0 Months
Leasing Center & Pool House	1.0 & 1.0 / 2 Months	2.0 and 1.0 / 3.0 Months
	18 Months	**36 Months**

Complete two (2) buildings at a time (18 Month Custruction Schedule)

Appendix 1848
1812

12 Oaks at Fenwick Plantation

Repair Estimate Comparisons

CA Lindman VS Procon

6/11/10

ITEM #	DESCRIPTION	UNIT MEAS.	QTY	CA Lindman TOTAL	CA Lindman BID UNIT PRICE	PROCON TOTAL ITEM AMOUNT	PROCON UNIT PRICE
	Buildings 1, 4, 5, 6, 7, 8 and 9						
1	Mobilization of Rental Equipment						
1.1	Scaffolding delivery in / out	LS	1	$3,771	$3,771.00	$1,150.00	$1,150.00
2	Roofs - Repair recommendation #1 (Page 13) Reference RTM Engineering Report 10/1509						
2.1	Remove existing damaged shingles & felt under layment / Install new felt felt layment flashings & shingles	LS	1	$385,679	$385,679.00	$416,500.00	$416,500.00
2.7	Provide temporary weather protection at flat roofs	LS	1	$17,141	$17,141.00	$17,500.00	$17,500.00
3	Magna Wall System - Repair recommendation #3 (Page 14)						
3.1	Demo of stucco, building wrap, membrane flashing at rough openings and system flashing components to expose OSB sheathing for inspection						
3.1	Adj Quantity to excluded window SF	SF	168000	$369,600	$2.20	$462,000.00	$2.75
3.2	Provide Temporary weather protection	SF	-37300	($82,060)	$2.20	$0.00	$0.00
3.6	Install new moisture barrier over exterior walls, 2 layers, 30# felt	SF	168000	$137,760	$0.82	$193,200.00	$1.15
3.7	Wrap all rough openings with membrane flashing	SF	168000	$248,640	$1.48	$176,064.00	$1.05
3.8	Install zinc accessories at: wall penetrations, dissimilar materials, floor lines outside and inside corners and control joints	LF	33600	$36,960	$1.10	$34,182.00	$1.02
3.9	Install floor line flashing at bottom of wall and floor lines	LF	56000	$53,200	$0.95	$0.00	$0.00
3.10	Install 3.4 self-furring wire lath	LF	21000	$35,910	$1.71	$42,000.00	$2.00
3.1	Adj Quantity to excluded window SF	SF	168000	$347,760	$2.07	$588,000.00	$3.50
3.11	Apply three coat hard stucco system	SF	-37300	($77,211)	$2.07	$0.00	$0.00
3.1	Adj Quantity to excluded window SF	SF	168000	$1,428,000	$8.50	$1,512,000.00	$9.00
3.12	Apply primer and finish color and decorative trim components to match existing architectural building features	SF	-37300	($317,050)	$8.50	$0.00	$0.00
4	Siding Materials						
4.1	Remove all existing cementitious siding and trim components to include building wrap, membrane flashing at rough openings and system flashing components to expose OSB sheathing for inspection	SF	168000	$215,040	$1.28	$0.00	$0.00
4.2	Provide Temporary weather protection	SF	42000	$74,340	$1.77	$84,000.00	$2.00
4.6	Install new moisture barrier over exterior walls, 2 layers, 30# felt	SF	42000	$34,440	$0.82	$48,300.00	$1.15
4.7	Wrap all rough openings with membrane flashing	SF	42000	$62,160	$1.48	$44,520.00	$1.06
4.8	Install new flashing at all siding to stucco band intersections and kick out flashing at the gable wall intersection	LF	6384	$7,022	$1.10	$4,596.48	$0.72
4.9	Install new cement board siding and associated trim to match existing architectural building features	LF	5600	$26,208	$4.68	$12,432.00	$2.22
4.10	Prime all cement board siding and trim materials prior to installation on buildings - all sides.	SF	42000	$148,680	$3.54	$134,400.00	$3.20
4.11	Apply two coats of paint over cement board siding and trim materials to match existing color scheme	SF	42000	$25,200	$0.60	$42,000.00	$1.00
5	Breezeway Areas - Repair Recommendation #5 (Page 15)						
5.1	Clean and prepare surface	SF	42000	$52,080	$1.24	$63,000.00	$1.50
5.3	Install new waterproof membrane on breezeway surface turning up onto wall sheathing to include entry door threshold and deck surface detail (2nd and 3rd Floors)	SF	14000	$10,360	$0.74	$3,500.00	$0.25
5.4	Install new kickout flashing at breezeway edges	SF	14000	$59,780	$4.27	$56,000.00	$4.00
5.5	Re-detail new handrail connections through siding and seal	EA	112	$4,853	$43.33	$7,728.80	$69.00
5.6	Install WTS detail at ground floor breezeways	EA	224	$7,401	$33.04	$24,864.00	$111.00
6	Balcony Areas - Repair Recommendation (same as breezeway)	LF	3038	$24,760	$8.15	$12,152.00	$4.00
6.1	Clean and prepare surface	SF	6272	$4,641	$0.74	$7,526.00	$1.20
6.2	Provide new sloping materials to eliminate standing and ponding water (NIC)	NIC	0	$0	$0.00	$0.00	$0.00
6.3	Install new waterproof membrane on balcony surface turning up onto wall sheathing to include SGD threshold and deck surface detail (2nd and 3rd Floors)	SF	6272	$26,781	$4.27	$43,904.00	$7.00
6.4	Install new kickout flashing at balcony edges	EA	112	$4,853	$43.33	$7,728.80	$69.00
6.5	Re-detail new handrail connections through siding and seal	EA	448	$14,802	$33.04	$11,648.00	$26.00
6.6	Install WTS detail at ground floor balconies	LF	616	$5,020	$8.15	$2,464.00	$4.00
7	Window & Flashings - Repair Recommendation #2 (Page 13) Replace all window units with new code compliant units to include replacement of deficient flashings at rough openings						
7.1	Remove and dispose of all existing window units	EA	581	$19,655	$33.83	$21,787.50	$37.50
7.2	Provide new code compliant window units with appropriate DP rating						
7.2.1A	Install Type A 3'0 x 6'0 Mulled together (Double)	EA	350	$376,499	$1,075.71	$266,350.00	$761.00
7.2.1B	Install Type B 3'0 x 6'0 single (Single)	EA	161	$85,736	$532.52	$120,911.00	$751.00
7.2.1C	Install Type C 3'0 x 6'0 (3) mulled together (Triple)	EA	70	$108,957	$1,556.53	$154,630.00	$761.80
7.4	Install window and door head flashing at each R/O	LF	3220	$50,393	$15.65	$18,855.00	$2.75
7.5	Install peel-n-stick, sealing nailing flange to face of wall moisture barrier in water shed lap configuration	LF	14000	$105,140	$7.51	$10,080.00	$0.72
7.6	Provide, remove and install new SGD units - 6'	EA	28	$37,543	$1,340.82	$14,102.64	$503.66
7.7	Provide, remove and install new SGD units - 9'	EA	56	$106,196	$1,896.36	$83,875.20	$1,497.77
8	Sealants					$7,150.00	$2.50
8.1	Install new caulk details @ all fenestrations & areas of dissimilar materials	LF	42000	$199,500	$4.75	$94,500.00	$2.25
8.2	Install new caulk details at stucco and cement siding	LF	14000	$66,500	$4.75	$31,500.00	$2.25
9	Remove and Store and Replace Items						
9.1	Remove, store and replace all breezeway and balcony handrails	LF	1596	$7,709	$4.83	$7,220.40	$4.52
9.2	Remove, store and replace all exterior light fixtures attached to side of building at balconies, garage doors and entry doors	EA	350	$11,998	$34.28	$8750.00	$25.00
9.3	Remove, store and replace bath and dryer vents attached to exterior walls	EA	308	$5,279	$17.14	$1,540.00	$5.00

PLAINTIFF'S EXHIBIT

12 Oaks at Fenwick Plantation

Repair Estimate Comparisons

CA Lindman VS Procon

6/11/10

ITEM #	DESCRIPTION	UNIT MEAS.	QTY	CA Lindman TOTAL	CA Lindman BID UNIT PRICE	PROCON TOTAL ITEM AMOUNT	PROCON UNIT PRICE
9.4	Remove, store, reinstall steel stairs and rails, steps and stringers	EA	56	$177,584	$3,171.14	$168,000.00	$3,000.00
9.5	Prepare and paint steps, stringers and handrails	LF	2800	$18,032	$6.44	$50,400.00	$18.00
9.6	Remove, store and reinstall unit entry doors	EA	154	$16,687	$108.36	$23,100.00	$150.00
9.7	Remove, store and reinstall garage entry and storage room entry doors	EA	77	$8,343	$108.35	$10,780.00	$140.00
9.8	Prepare and paint all entry-type doors	EA	231	$15,539	$67.27	$19,240.00	$40.00
9.9	Remove, store, reinstall garage roll-up doors	EA	35	$7,532	$215.20	$6,125.00	$175.00
9.10	Remove, store, and reinstall all gutters and downspouts	LF	2324	$12,131	$5.22	$11,241.80	$4.84
9.11	Remove, store,a nd reinstall ground floor balcony screen enclosure frames, provide new screen tight system	EA	28	$0	$0.00	$23,800.00	$850.00
9.12	Remove, store and reinstall gable attic vents	EA	28	$1,395	$49.82	$1,260.00	$45.00
9.13	Remove, store and reinstall meter base and panels	EA	154	$30,356	$197.12	$38,500.00	$250.00
10	Electrical and Mechanical (Orbital Engineering Report Dated 11/6/09)						
10.1	Electrical work scope pending (page 4) Item 1	LS	1	$0	$0.00	$488,413.00	$488,413.00
11	Project Allowances for Unknown Qtys						
11.1	Exterior						
11.1a	Replacement of roof deck sheathing (flat roofs only)	SF	798	$2,578	$3.23	$917.70	$1.15
11.1b	Replacement of drywall in exterior breezeways	SF	1598	$10,087	$6.32	$1,993.00	$1.25
11.1c	Replace moisture-damaged wood framing components	SF	798	$6,392	$8.01	$6,783.00	$8.50
11.1d	Replacement of moisture damaged OSB wall sheathing at stucco locations	SF	33600	$55,104	$1.64	$33,600.00	$1.00
11.1e	Replacement of moisture damaged exterior wall framing at stucco	SF	16800	$14,784	$0.88	$52,920.00	$3.15
11.1f	Replacement of moisture damaged exterior wall batt insulation at stucco	SF	33600	$32,592	$0.97	$16,800.00	$0.50
11.1g	Replace moisture damaged exterior OSB sheathing at siding location	SF	8400	$254,688	$30.32	$8,400.00	$1.00
11.1h	Replace moisture damaged wood framing components at siding locations	SF	4200	$24,570	$5.85	$23,100.00	$5.50
11.1i	Replace moisture damaged exterior wall cavity batt insulation at siding	SF	8400	$8,148	$0.97	$4,200.00	$0.50
11.1j	Install lightweight sloping materials at breezeways	SF	3500	$29,120	$8.32	$3,500.00	$1.00
11.1k	Replace OSB sheathing where gaps exist at window perimeter rough	SF	5600	$9,968	$1.78	$11,648.00	$2.08
11.1l	Landscaping Allowance - remove, cut-back, replant	LS	1	$24,500	$24,500.00	$24,500.00	$24,500.00
11.2	Interior						
11.2a	Replace interior drywall	SF	21000	$50,400	$2.40	$26,250.00	$1.25
11.2b	Replace interior trim	LF	6440	$12,235	$1.90	$9,660.00	$1.50
11.2c	Prime and Paint interior drywall	SF	21000	$18,900	$0.90	$16,800.00	$0.80
11.2d	Prime and Paint interior trim	LF	6440	$6,569	$1.02	$5,796.00	$0.90
11.2e	Replace interior drywall at ceilings	SF	10500	$53,130	$5.06	$10,710.00	$1.02
11.2f	Prime and texture interior ceilings	SF	10500	$23,205	$2.21	$10,920.00	$1.04
11.2g	Repair drywall nail pops and paint wall	SF	105000	$120,750	$1.15	$115,500.00	$1.10
11.2h	Remove and replace drywall and finish along new cable runs	SF	46200	$187,572	$4.06	$184,800.00	$4.00
11.2i	HVAC Scope						
	Remove/ replace roof units	EA	154	$46,195	$299.97	$53,900.00	$350.00
	Replace approx. 20% inside units	EA	35	$50,895	$1,457.00	$52,500.00	$1,500.00
12	Environmental Remediation Protocol						
12.1	Fold back carpet at window rough openings	EA	581	$0	$0.00	$11,620.00	$20.00
12.2	Construct negative air containments at each R/O	EA	581	$0	$0.00	$104,580.00	$180.00
12.3	Remove interior trim at each R/O	LF	6440	$0	$0.00	$3,220.00	$0.50
12.4	Remove contaminated drywall	SF	7000	$0	$0.00	$7,700.00	$1.10
12.5	Clean and encapsulate drywall areas	SF	7000	$0	$0.00	$35,000.00	$5.00
12.7	Hepa-Vac and fine clean areas for clearance	SF	14000	$0	$0.00	$14,000.00	$1.00
12.8	Run air scrubbers and dehumidifiers prior to final clearance	EA	581	$0	$0.00	$52,290.00	$90.00
12.9	Remove containments	EA	581	$0	$0.00	$34,860.00	$60.00
12.10	Unfold carpet, stretch and kick-in	EA	581	$0	$0.00	$43,575.00	$75.00
13	General Conditions						
13.1	Scaffolding Erection /Dismantle	LS	7	$149,895	$21,426.57	$211,564.00	$31,224.00
13.2	Scaffold Rental to include 7.5% Sales Tax	EA	23	$130,115	$5,656.68	$163,530.00	$7,112.00
13.3	Dumpster fees per bldg	EA	42	$0	$0.00	$5,040.00	$120.00
13.4	Dumpster & dump fees for construction trash @ 6.2 per building	EA	42	$0	$0.00	$12,600.00	$300.00
13.5	Forklift Rental	MO	11	$0	$0.00	$24,915.00	$2,265.00
13.6	Jobsite office/ storage Trailer	MO	11	$0	$0.00	$47,777.00	$4,343.00
13.7	Porta John Units - 4 units	EA	11	$0	$0.00	$2,310.00	$210.00
13.8	Project Supervisor	MO	11	$0	$0.00	$84,000.00	$16,000.00
13.9	Assistant Supervisor	MO	11	$0	$0.00	$33,500.00	$3,000.00
13.10	Building Permit						
	$2.50/ 1K	LS	7	$0	$0.00	$18,928.00	$2,704.00
	Plan Review @ 1/2	LS	7	$0	$0.00	$9,261.00	$1,323.00
	First (500K)	LS	7	$0	$0.00	$21,245.00	$3,035.00
13.11	Fine Clean units	UNITS	154	$0	$0.00	$46,200.00	$300.00
13.12	Temporary Handrails for construction	LS	7	$0	$0.00	$35,000.00	$5,000.00
13.13	Continuos clean up crew (2 men)	MO	11	$0	$0.00	$89,362.50	$8,125.00
13.14	Construction Fencing (around building)	LS	7	$0	$0.00	$14,000.00	$2,000.00
13.15	Jobsite pickup truck expense	MO	11	$0	$0.00	$9,350.00	$850.00
13.16	Project before and after photo documentation	UNITS	154	$0	$0.00	$15,400.00	$100.00
14	Project Fees						
14.1	O/H @ 10%	LS	1	$0	$0.00	$719,280.00	$719,280.00
14.2	Fees @ 10%	LS	1	$0	$0.00	$791,208.00	$791,208.00
14.3	Contingency @ 10%	LS	1	$0	$0.00	$790,678.80	$790,678.80
14.4	Architectural and Engineering Fees @ 10%	LS	1	$0	$0.00	$869,745.68	$869,745.68

12 Oaks at Fenwick Plantation

Repair Estimate Comparisons

CA Lindman VS Procon

6/11/10

ITEM #	DESCRIPTION	UNIT MEAS.	QTY	CA Lindman TOTAL	CA Lindman BID UNIT PRICE	PROCON TOTAL ITEM AMOUNT	PROCON UNIT PRICE
	Buildings 1, 4, 5, 6, 7/8, and 9						
	Building 2						
1	Mobilization of Rental Equipment						
1.1	Scaffolding delivery in / out	LS	1	$0	$0.00	$1,200.00	$1,200.00
	Roofs - Repair recommendation #1 (Page 13) Reference RTM						
2	Engineering Report 10/15/09						
	Remove existing damaged shingles & felt under layment / install new felt felt						
2.1	layment flashings & shingles	LS	1	$51,709	$61,709.00	$88,950.00	$88,950.00
2.7	Provide temporary weather protection at flat roofs	LS	1	$17,141	$17,141.00	$2,500.00	$2,500.00
3	Magna Wall System - Repair recommendation #3 (Page 14)						
	Demo of stucco, building wrap, membrane flashing at rough openings and						
3.1	system flashing components to expose OSB sheathing for inspection	SF	38000	$83,600	$2.20	$10,500.00	$0.28
3.2	Provide Temporary weather protection	SF	38000	$31,160	$0.82	$43,300.00	$1.14
3.6	Install new moisture barrier over exterior walls, 2 layers, 30# felt	SF	38000	$26,980	$0.71	$40,280.00	$1.06
3.7	Wrap all rough openings with membrane flashing	LF	6400	$14,720	$2.30	$4,500.00	$0.70
	Install zinc accessories at wall penetrations, dissimilar materials, floor lines						
3.8	outside and inside corners and control joints	LF	11000	$10,450	$0.95	$0.00	$0.00
3.9	Install floor line flashing at bottom of wall and floor lines	LF	4000	$8,560	$2.14	$8,640.00	$2.16
3.10	Install 3.4 self furring wire lath	SF	38000	$78,660	$2.07	$13,000.00	$0.34
3.11	Apply three coat hard stucco system	SF	38000	$323,000	$8.50	$342,000.00	$9.00
	Apply primer and finish color and decorative trim component to match existing						
3.12	architectural building features	SF	38000	$22,420	$0.59	$0.00	$0.00
4	Siding Materials						
	Remove all existing cementitious siding and trim components to include						
	building wrap, membrane flashing at rough openings and system flashing						
4.1	components to expose OSB sheathing for inspection	SF	4000	$7,080	$1.77	$8,000.00	$2.00
4.2	Provide Temporary weather protection	SF	4000	$1,880	$0.47	$4,600.00	$1.15
4.6	Install new moisture barrier over exterior walls, 2 layers, 30# felt.	SF	4000	$5,920	$1.48	$1,240.00	$0.31
4.7	Wrap all rough openings with membrane flashing	LF	528	$581	$1.10	$380.16	$0.72
	Install new flashing at all siding to stucco bacnd intersections and kick out						
4.8	flashing at the gable wall intersection	LF	1066	$4,989	$4.68	$2,366.52	$2.22
	Install new cement board siding and associated trim to match existing						
4.9	architectural building features	SF	4000	$14,160	$3.54	$12,000.00	$3.00
	Prime all cement board siding and trim materials prior to installation on						
4.10	buildings - all sides.	SF	4000	$2,400	$0.60	$4,000.00	$1.00
	Apply two coats of paint over cement board siding and trim materials to match						
4.11	existing color scheme	SF	4000	$4,960	$1.24	$6,000.00	$1.50
5	Breezeway Areas - Repair Recommendation #5 (Page 15)						
5.1	Clean and prepare surface	SF	3000	$2,220	$0.74	$750.00	$0.25
	Install new waterproof membrane on breezeway surface turning up onto wall						
	sheathing to include entry door threshold and deck surface detail (2nd and 3rd						
5.3	Floors)	SF	3000	$12,810	$4.27	$21,000.00	$7.00
5.4	Install new kickout flashing at breezeway edges	EA	24	$1,040	$43.33	$595.20	$24.80
5.5	Re-detail new handrail connections through siding and seal	EA	48	$1,586	$33.04	$2,248.00	$46.83
5.6	Install WTS detail at ground floor breezeways	LF	651	$5,306	$8.15	$4,884.00	$7.50
6	Balcony Areas - Repair Recommendation (same as breezeway)						
6.1	Clean and prepare surface	SF	1344	$995	$0.74	$336.00	$0.25
	Install new waterproof membrane on balcony surface turning up onto wall						
	sheathing to include SGD threshold and deck surface detail (2nd and 3rd						
6.3	Floors)	SF	1344	$5,739	$4.27	$29,400.00	$21.88
6.4	Install new kickout flashing at balcony edges	EA	24	$1,040	$43.33	$595.20	$24.80
6.5	Re-detail new handrail connections through siding and seal	EA	96	$3,171	$33.03	$2,496.00	$26.00
6.6	Install WTS detail at ground floor balconies	LF	88	$717	$8.15	$352.00	$4.00
	Window & Flashings - Repair Recommendation #2 (Page 13) Replace all						
	window units with new code compliant units to include replacement of						
7	deficient flashings at rough openings						
7.1	Remove and dispose of all existing window units	EA	110	$3,721	$33.83	$4,125.00	$37.50
7.2	Provide new code compliant window units with appropriate DP rating						
7.2.1A	Install Type A 3'0 x 6'0 Mulled together (Double)	EA	52	$66,695	$1,075.73	$14,450.16	$166.33
7.2.1B	Install Type B 3'0 x 6'0 single (Single)	EA	32	$17,040	$532.50	$24,079.68	$752.49
7.2.1C	Install Type C 3'0 x 6'0 (3) mulled together (Triple)	EA	16	$24,905	$1,556.56	$12,565.22	$785.33
7.4	Install window and door head flashing at each R/O	LF	1040	$13,603	$13.08	$2,850.00	$2.74
	Install peel-n-stick; sealing nailing flange to face of wall moisture barrier in						
7.5	water shed lap configuration	LF	2544	$19,105	$7.51	$1,830.96	$0.72
7.6	Provide, remove and install new SGD units - 6'	EA	6	$8,044	$1,340.67	$5,677.29	$861.86
7.7	Provide, remove and install new SGD units - 9'	EA	10	$18,963	$1,896.30	$11,406.30	$1,140.63
8	Sealants						
8.1	Install new caulk details @ all fenestrations & areas of dissimilar materials	LF	8000	$38,000	$4.75	$18,000.00	$2.25
8.2	Install new caulk details at stucco and cement siding	LF	3000	$14,250	$4.75	$6,750.00	$2.25
9	Remove and Store and Replace Items						
9.1	Remove, store and replace all breezeway and balcony handrails	LF	354	$1,710	$4.83	$1,770.00	$5.00
	Remove, store and replace all exterior light fixtures attached in side of						
9.2	building at balconies, garage doors and entry doors	EA	80	$2,743	$34.29	$2,000.00	$25.00
9.3	Remove, store and replace bath and dryer vents attached to exterior walls	EA	64	$1,097	$17.14	$800.00	$12.50
9.4	Remove, store, reinstall steel stairs and rails, steps and stringers	EA	12	$38,054	$3,171.17	$36,000.00	$3,000.00
9.5	Prepare and paint steps, stringers and handrails	LF	600	$3,864	$6.44	$6,600.00	$11.00
9.6	Remove, store and reinstall unit entry doors	EA	32	$3,468	$108.38	$4,480.00	$140.00

12 Oaks at Fenwick Plantation

Repair Estimate Comparisons

CA Lindman VS Procon

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ITEM #	DESCRIPTION	UNIT MEAS.	QTY	CA Lindman TOTAL	CA Lindman BID UNIT PRICE	PROCON TOTAL ITEM AMOUNT	PROCON UNIT PRICE
9.7	Remove, store and reinstall garage entry and storage room entry doors	EA	22	$2,383	$108.32	$3,300.00	$150.00
9.8	Prepare and paint all entry-type doors	EA	52	$3,489	$67.29	$7,280.00	$140.00
9.9	Remove, store, reinstall garage roll-up doors	EA	10	$2,153	$215.30	$1,950.00	$195.00
9.10	Remove, store, and reinstall all gutters and downspouts	LF	482	$2,516	$5.22	$2,171.00	$4.50
9.11	Remove, store and reinstall ground floor balcony screen enclosure frames, provide new screen tight system	EA	4	$0	$0.00	$1,400.00	$350.00
9.12	Remove, store and reinstall gable attic vents	EA	4	$199	$49.75	$260.00	$65.00
9.13	Remove, store and reinstall meter base and panels	EA	32	$6,308	$197.13	$16,000.00	$500.00
10	Electrical and Mechanical (Orbital Engineering Report Dated 11/6/09)						
10.1	Electrical work scope pending (page 4) Item 1	LS	1	$0	$0.00	$731,540.00	$731,540.00
11	Project Allowances for Unknown Qtys						
11.1	Exterior						
11.1a	Replacement of roof deck sheathing (flat roofs only)	SF	171	$552	$3.23	$427.50	$2.50
11.1b	Replacement of drywall in exterior breezeways	SF	342	$2,161	$6.32	$1,140.00	$3.33
11.1c	Replace moisture-damaged wood framing components	SF	171	$1,370	$8.01	$1,140.00	$6.67
11.1d	Replacement of moisture damaged OSB wall sheathing at stucco locations	SF	7600	$12,464	$1.64	$7,600.00	$1.00
11.1e	Replacement of moisture damaged exterior wall framing at stucco	SF	3800	$3,344	$0.88	$1,900.00	$0.50
11.1f	Replacement of moisture damaged exterior wall batt insulation at stucco	SF	7600	$7,372	$0.97	$3,800.00	$0.50
11.1g	Replace moisture damaged exterior OSB sheathing at siding location	SF	800	$24,258	$30.32	$2,400.00	$3.00
11.1h	Replace moisture damaged wood framing components at siding locations	SF	400	$2,344	$5.86	$2,000.00	$5.00
11.1i	Replace moisture damaged exterior wall cavity batt insulation at siding	SF	800	$776	$0.97	$4,000.00	$5.00
11.1j	Install lightweight sloping materials at breezeways	SF	750	$6,240	$8.32	$2,250.00	$3.00
11.1k	Replace OSB sheathing where gaps exist at window perimeter rough	SF	1056	$1,880	$1.78	$1,760.00	$1.67
11.1l	Landscaping Allowance - remove, cut-back, replant	LS	1	$5,999	$5,999.00	$5,000.00	$5,000.00
11.2	Interior						
11.2a	Replace interior drywall	SF	4200	$10,080	$2.40	$5,250.00	$1.25
11.2b	Replace interior trim	LF	1220	$2,318	$1.90	$1,830.00	$1.50
11.2c	Prime and Paint interior drywall	SF	4200	$3,780	$0.90	$3,780.00	$0.90
11.2d	Prime and Paint interior trim	LF	1220	$1,244	$1.02	$1,098.00	$0.90
11.2e	Replace interior drywall at ceilings	SF	2100	$10,626	$5.06	$2,625.00	$1.25
11.2f	Prime and texture interior ceilings	SF	2100	$4,641	$2.21	$3,885.00	$1.85
11.2g	Repair drywall nail pops and paint wall	SF	2100	$2,415	$1.15	$2,100.00	$1.00
11.2h	Remove and replace drywall and finish along new cable runs	SF	9600	$38,976	$4.06	$19,200.00	$2.00
11.2i	HVAC Scope						
	Remove/ replace roof units	EA	32	$9,599	$299.97	$10,200.00	$318.75
	Replace approx. 20% inside units	EA	7	$10,199	$1,457.00	$10,500.00	$1,500.00
12	Environmental Remediation Protocol						
12.1	Fold back carpet at window rough openings	EA	110	$0	$0.00	$2,200.00	$20.00
12.2	Construct negative air containments at each R/O	EA	110	$0	$0.00	$19,800.00	$180.00
12.3	Remove interior trim at each R/O	LF	1220	$0	$0.00	$610.00	$0.50
12.4	Remove contaminated drywall	SF	1500	$0	$0.00	$1,650.00	$1.10
12.5	Clean and encapsulate drywall areas	SF	1500	$0	$0.00	$2,250.00	$1.50
12.6	Wipe clean all non-porous materials in containment with biocide	SF	3000	$0	$0.00	$600.00	$0.20
12.7	Hepa-Vac and fine clean areas for clearance	SF	3000	$0	$0.00	$3,000.00	$1.00
12.8	Run air scrubbers and dehumidifiers prior to final clearance	EA	110	$0	$0.00	$13,200.00	$120.00
12.9	Remove containments	EA	110	$0	$0.00	$6,600.00	$60.00
12.10	Unfold carpet, stretch and kick-in	EA	110	$0	$0.00	$8,250.00	$75.00
13	General Conditions						
13.1	Scaffolding Erection /Dismantle	LS	1	$38,568	$38,568.00	$41,287.00	$41,287.00
13.2	Scaffold Rental to include 7.5% Sales Tax	EA	4	$37,711	$9,427.75	$38,064.00	$9,516.00
13.3	Dumpster fees per bldg	EA	8	$0	$0.00	$960.00	$120.00
13.4	Dumpster & dump fees for construction trash @ 6.2 per building	EA	8	$0	$0.00	$2,400.00	$300.00
13.5	Forklift Rental	MO	3	$0	$0.00	$8,850.00	$2,950.00
13.6	Jobsite office/ storage Trailer	MO	3	$0	$0.00	$14,437.50	$4,812.50
13.7	Porta John Units - 4 units	EA	3	$0	$0.00	$3,550.00	$1,183.33
13.8	Project Supervisor	MO	3	$0	$0.00	$30,000.00	$10,000.00
13.9	Assistant Supervisor	MO	3	$0	$0.00	$21,000.00	$7,000.00
13.10	Building Permit						
	$2.50/ 1K	LS	1	$0	$0.00	$14,434.00	$14,434.00
	Plan Review @ 1/2	LS	1	$0	$0.00	$9,217.00	$9,217.00
	First (500K)	LS	1	$0	$0.00	$1,755.00	$1,755.00
13.11	Fine Clean units	UNITS	32	$0	$0.00	$9,600.00	$300.00
13.12	Temporary Handrails for construction	LS	1	$0	$0.00	$5,000.00	$5,000.00
13.13	Continuos clean up crew (2 men)	MO	3	$0	$0.00	$16,087.50	$5,362.50
13.14	Construction Fencing (around building)	LS	1	$0	$0.00	$12,000.00	$12,000.00
13.15	Jobsite pickup truck expense	MO	3	$0	$0.00	$14,250.00	$4,750.00
13.16	Project before and after photo documentation	UNITS	32	$0	$0.00	$16,000.00	$500.00
14	Project Fees						
14.1	O/H @ 10%	LS	1	$0	$0.00	$156,420.19	$156,420.19
14.2	Fees @ 10%	LS	1	$0	$0.00	$171,862.21	$171,862.21
14.3	Contingency @ 10%	LS	1	$0	$0.00	$188,586.43	$188,586.43
14.4	Architectural and Engineering Fees @ 10%	LS	1	$0	$0.00	$207,785.07	$207,785.07
	Building 2						
1	Mobilization of Rental Equipment						

12 Oaks at Fenwick Plantation

Repair Estimate Comparisons

CA Lindman VS Procon

6/11/10

ITEM #	DESCRIPTION	UNIT MEAS.	QTY	CA Lindman TOTAL	CA Lindman BID UNIT PRICE	PROCON TOTAL ITEM AMOUNT	PROCON UNIT PRICE
	Buildings 1, 4, 5, 6, 7, 8, and 9						
	Roofs - Repair recommendation #1 (Page 13) Reference RTM Engineering Report 10/15/09						
2	Remove existing damaged shingles & felt under layment / Install new felt; felt layment flashings & shingles						
2.1	Remove existing EPDM membrane and install new	LS	1	$11,142	$11,142.00	$12,250.00	$12,250.00
2.2	Provide temporary weather protection at flat roofs	LS	0	$0	$0.00	$0.00	$0.00
2.7	**Magna Wall System - Repair recommendation #3** (Page 14)	LS	1	$1,714	$1,714.00	$2,500.00	$2,500.00
3	Demo of stucco, building wrap, membrane flashing at rough openings and system flashing components to expose OSB sheathing for inspection						
3.1	Provide Temporary weather protection	SF	12000	$26,400	$2.20	$33,000.00	$2.75
3.2	Install new moisture barrier over exterior walls, 2 layers, 30# felt	SF	12000	$9,840	$0.82	$13,800.00	$1.15
3.6	Wrap all rough openings with membrane flashing	SF	12000	$17,760	$1.48	$12,720.00	$1.06
3.7	Install zinc accessories at wall penetrations, dissimilar materials, floor lines outside and inside corners and control joints	LF	1883	$2,071	$1.10	$1,355.76	$0.72
3.8	Install floor line flashing at bottom of wall and floor lines	LF	3500	$3,420	$0.95	$0.00	$0.00
3.9	Install 3.4 self furring wire lath	LF	1120	$1,915	$1.71	$2,419.20	$2.16
3.10	Apply three coat hard stucco system	SF	12000	$24,840	$2.07	$42,000.00	$3.50
3.11	Apply primer and finish color and decorative trim component to match existing architectural building features	SF	12000	$102,000	$8.50	$96,000.00	$8.00
3.12	**Siding Materials N/A**					$0.00	$0.00
4	**Window & Flashings - Repair Recommendation #2 (Page 13) Replace all window units with new code compliant units to include replacement of deficient flashings at rough openings**	SF	12000	$15,360	$1.28		
7	Remove and dispose of all existing window units						
7.1	Provide new code compliant window units with appropriate DP rating	EA	64	$2,165	$33.83	$2,400.00	$37.50
7.2	Install Type A 3'0 x 6'0 Mulled together (Double)	EA	26	$27,969	$1,075.73	$15,053.68	$578.18
7.2.1A	Install Type B 3'0 x 6'0 single (Single)	EA	2	$1,066	$533.00	$1,136.36	$568.18
7.2.1B	Install Type C 3'0 x 6'0 (3) mulled together (Triple)	EA	0	$0	$0.00	$0.00	$0.00
7.2.1C	Install Type D 2'8" x 6'0 Mulled together Hung	EA	12	$7,540	$628.33	$6,820.16	$568.18
7.2.1D	Install Type E 2'8" x 4'0 single Hung	EA	12	$8,427	$702.25	$6,820.16	$568.18
7.2.1E	Install Type F 2'8" x 4'0 (3) mulled together Fixed	EA	12	$6,461	$538.42	$6,820.16	$568.18
7.2.1F	Install window and door head flashing at each R/O	LF	453	$7,089	$15.65	$1,245.75	$2.75
7.4	Install pool-n-stick, sealing nailing flange to face of wall moisture barrier in water shed lap configuration	LF	1883	$14,141	$7.51	$1,455.75	$0.77
7.5	**Sealants**					$4,216.75	$2.25
8	Install new caulk details @ all fenestrations & areas of dissimilar materials	LF	1883	$8,944	$4.75	$7,951.25	$4.25
8.1	Install new caulk details at stucco and cement siding	LF	3517	$16,706	$4.75		
8.2	**Remove and Store and Replace Items**						
9	Remove, store and replace all exterior light fixtures attached in side of building at balconies, garage doors and entry doors	EA	25	$857	$34.28	$700.00	$28.00
9.2	Remove, store and replace bath and dryer vents attached to exterior walls	EA	24	$411	$17.13	$300.00	$12.50
9.3	Remove, store and reinstall unit entry doors	EA	6	$650	$108.33	$840.00	$140.00
9.6	Remove, store and reinstall garage entry and storage room entry doors	EA	7	$759	$108.43	$980.00	$140.00
9.7	Prepare and paint all entry-type doors	EA	13	$874	$67.23	$0.00	$0.00
9.8	Remove, store, reinstall garage roll-up doors	EA	12	$2,581	$215.08	$2,700.00	$225.00
9.9	Remove, store, and reinstall all gutters and downspouts	LF	284	$1,482	$5.22	$1,136.00	$4.00
9.10	Remove, store and reinstall gable attic vents	EA	2	$101	$50.50	$90.00	$45.00
9.12	Remove, store and reinstall meter base and panels	EA	6	$1,183	$197.17	$1,500.00	$250.00
9.13	**Electrical and Mechanical (Orbital Engineering Report Dated 11/6/08)**						
10	Electrical work scope pending (page 4) item 1						
10.1	**Project Allowances for Unknown Qtys**	LS	3	$0	$0.00	$300.00	$100.00
11	**Exterior**						
11.1	Replacement of moisture damaged OSB wall sheathing at stucco locations	SF	2400	$3,936	$1.64	$2,400.00	$1.00
11.1d	Replacement of moisture damaged exterior wall framing at stucco	SF	1200	$1,056	$0.88	$6,600.00	$5.50
11.1e	Replacement of moisture damaged exterior wall batt insulation at stucco	SF	2400	$2,328	$0.97	$1,200.00	$0.50
11.1f	Replace OSB sheathing where gaps exist at window perimeter rough	SF	672	$1,196	$1.78	$940.80	$1.40
11.1k	Landscaping Allowance - remove, cut-back, replant	LS	1	$3,500	$3,500.00	$3,500.00	$3,500.00
11.1l	Interior						
11.2	Replace interior drywall	SF	1200	$2,880	$2.40	$1,500.00	$1.25
11.2a	Replace interior trim	LF	720	$1,361	$1.89	$1,080.00	$1.50
11.2b	Prime and Paint interior drywall	SF	1200	$1,080	$0.90	$960.00	$0.80
11.2c	Prime and Paint interior trim	LF	720	$734	$1.02	$1,440.00	$2.00
11.2d	Replace interior drywall at ceilings	SF	600	$3,036	$5.06	$600.00	$1.00
11.2e	Prime and texture interior ceilings	SF	600	$1,326	$2.21	$1,110.00	$1.85
11.2f	Repair drywall nail pops and paint wall	SF	6000	$6,900	$1.15	$4,800.00	$0.80
11.2g	Remove drywall at first floor ceiling, replace HVAC duct work and returns	EA	6	$22,627	$3,771.17	$10,000.00	$1,666.67
11.2i	**Environmental Remediation Protocol**						
12	Fold back carpet at window rough openings	EA	70	$0	$0.00	$1,400.00	$20.00
12.1	Construct negative air containments at each R/O	EA	70	$0	$0.00	$12,600.00	$180.00
12.2	Remove interior trim at each R/O	LF	720	$0	$0.00	$360.00	$0.50
12.3	Remove contaminated drywall	SF	1000	$0	$0.00	$1,100.00	$1.10
12.4	Clean and encapsulate drywall areas	SF	1000	$0	$0.00	$1,500.00	$1.50
12.5	Hepa-Vac and fine clean areas for clearance	SF	2000	$0	$0.00	$2,000.00	$1.00
12.7	Run air scrubbers and dehumidifiers prior to final clearance	EA	70	$0	$0.00	$8,400.00	$120.00
12.8	Remove containments	EA	70	$0	$0.00	$4,550.00	$65.00
12.9							

12 Oaks at Fenwick Plantation

Repair Estimate Comparisons

CA Lindman VS Procon

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ITEM #	DESCRIPTION	UNIT MEAS.	QTY	CA Lindman TOTAL	CA Lindman BID UNIT PRICE	PROCON TOTAL ITEM AMOUNT	PROCON UNIT PRICE
	Buildings 1, 3, 4, 5, 6, 7, 8 and 9						
12.10	Unfold carpet, stretch and kick-in	EA	70	$0	$0.00	$ 28,000.00	$ 400.00
13	General Conditions						
13.1	Scaffolding Erection /Dismantle	LS	1	$0	$0.00	$ 22,000.00	$ 22,000.00
13.2	Scaffold Rental to include 7.5% Sales Tax	EA	3	$0	$0.00	$ 14,574.00	$ 4,524.00
13.3	Dumpster fees per bldg	EA	6	$0	$0.00	$ 7,200.00	$ 1,200.00
13.4	Dumpster & dump fees for construction trash @ 6.2 per building	EA	6	$0	$0.00	$ 25,800.00	$ 4,300.00
13.5	Forklift Rental	MO	2	$0	$0.00	$ 5,700.00	$ 2,850.00
13.6	Jobsite office/ storage Trailer	MO	2	$0	$0.00	$ 2,912.00	$ 1,456.00
13.7	Porta John Units - 4 units	EA	2	$0	$0.00	$ 1,320.00	$ 660.00
13.8	Project Supervisor	MO	2	$0	$0.00	$ 12,000.00	$ 6,000.00
13.9	Assistant Supervisor	MO	2	$0	$0.00	$ 16,500.00	$ 8,000.00
13.10	Building Permit						
	$2.50/ 1K	LS	1	$0	$0.00	$ 5,622.00	$ 5,622.00
	Plan Review @ 1/2	LS	1	$0	$0.00	$ 3,311.00	$ 3,311.00
	First (500K)	LS	1	$0	$0.00	$ 11,250.00	$ 11,250.00
13.11	Fine Clean units	UNITS	22	$0	$0.00	$ 6,600.00	$ 300.00
13.12	Temporary Handrails for construction	LS	1	$0	$0.00	$ 15,000.00	$ 15,000.00
13.13	Continuos clean up crew (2 men)	MO	2	$0	$0.00	$ 19,000.00	$ 9,500.00
13.14	Construction Fencing (around building)	LS	1	$0	$0.00	$ 2,000.00	$ 2,000.00
13.15	Jobsite pickup truck expense	MO	2	$0	$0.00	$ 3,300.00	$ 1,650.00
13.16	Project before and after photo documentation	UNITS	22	$0	$0.00	$ 5,500.00	$ 250.00
14	Project Fees						
14.1	O/H @ 10%	LS	1	$0	$0.00	$ 51,916.23	$ 51,916.23
14.2	Fees @ 10%	LS	1	$0	$0.00	$ 56,957.83	$ 56,957.83
14.3	Contingency @ 10%	LS	1	$0	$0.00	$ 62,213.56	$ 62,213.56
14.4	Architectural and Engineering Fees @ 10%	LS	1	$0	$0.00	$ 68,434.92	$ 68,434.92
	Building 2 Leasing Center						
1	Mobilization of Rental Equipment						
1.1	Scaffolding delivery in / out	LS	1	$3,771	$3,771.00	$ 4,300.00	$ 4,300.00
2	Roofs - Repair recommendation #1 (Page 13) Reference RTM Engineering Report 10/15/09						
2.1	Remove existing damaged shingles & felt under layment / install new felt felt layment flashings & shingles	LS	1	$5,571	$5,571.00	$ 8,250.00	$ 8,250.00
3	Magna Wall System - Repair recommendation #3 (Page 14)						
3.1	Demo of stucco, building wrap, membrane flashing at rough openings and system flashing components to expose OSB sheathing for inspection	SF	4200	$9,240	$2.20	$ 11,550.00	$ 2.75
3.2	Provide Temporary weather protection	SF	4200	$3,444	$0.82	$ 4,830.00	$ 1.15
3.6	Install new moisture barrier over exterior walls, 2 layers, 30# felt	SF	4200	$6,216	$1.48	$ 24,192.00	$ 5.76
3.7	Wrap all rough openings with membrane flashing	LF	400	$444	$1.11	$ 1,200.00	$ 3.00
3.8	Install zinc accessories at wall penetrations, dissimilar materials, floor lines outside and inside corners and control joints	LF	1400	$1,330	$0.95	$ 4,200.00	$ 3.00
3.9	Install floor line flashing at bottom of wall and floor lines	LF	476	$814	$1.71	$ 1,428.00	$ 3.00
3.10	Install 3.4 self furring wire lath	SF	4200	$8,694	$2.07	$ 21,000.00	$ 5.00
3.11	Apply three coat hard stucco system	SF	4200	$35,700	$8.50	$ 21,000.00	$ 5.00
3.12	Apply primer and finish color and decorative trim component to match existing architectural building features	SF	4200	$5,376	$1.28	$ 420.00	$ 0.10
7	Window & Flashings - Repair Recommendation #2 (Page 13) Replace all window units with new code compliant units to include replacement of deficient flashings at rough openings						
7.1	Remove and dispose of all existing window units	EA	17	$574	$33.76	$ 587.50	$ 34.56
7.2	Provide new code compliant window units with appropriate DP rating						
7.2.1A	Install Type A 3'0 x 6'0 Mulled together (Double)	EA	4	$4,302	$1,075.50	$ 2,080.00	$ 520.00
7.2.1B	Install Type B 3'0 x 6'0 single (Single)	EA	8	$4,261	$532.63	$ 4,086.40	$ 510.80
7.2.1C	Install Type C 3'0 x 6'0 (3) mulled together (Triple)	EA	0	$0	$0.00	$ 0.00	$ 0.00
7.2.1H	Install Type D 2'6" x 8'0 Mulled together (HUNG)	EA	2	$1,405	$703.00	$ 1,023.84	$ 511.92
7.2.1J	Install Type E 6'0 x 8'0 single (Double Door)	EA	3	$2,388	$796.00	$ 1,522.79	$ 507.60
7.4	Install window and door head flashing at each R/O	LF	90	$1,409	$15.66	$ 0.00	$ 0.00
7.5	Install peel-n-stick, sealing nailing flange to face of wall moisture barrier in water shed lap configuration	LF	284	$2,133	$7.51	$ 781.00	$ 2.75
8	Sealants						
8.1	Install new caulk details @ all fenestrations & areas of dissimilar materials	LF	500	$2,375	$4.75	$ 1,125.00	$ 2.25
8.2	Install new caulk details at stucco and cement siding	LF	150	$713	$4.75	$ 337.50	$ 2.25
9	Remove and Store and Replace Items						
9.2	Remove, store and replace all exterior light fixtures attached in side of building at balconies, garage doors and entry doors	EA	6	$206	$34.33	$ 150.00	$ 25.00
9.3	Remove, store and replace bath and dryer vents attached to exterior walls	EA	4	$69	$17.25	$ 50.00	$ 12.50
9.6	Remove, store and reinstall unit entry doors and Leasing Center Door	EA	3	$326	$108.67	$ 420.00	$ 140.00
9.8	Prepare and paint all entry-type doors	EA	3	$202	$67.33	$ 120.00	$ 40.00
9.10	Remove, store, and reinstall all gutters and downspouts	LF	128	$669	$5.23	$ 566.08	$ 4.42
9.12	Remove, store and reinstall gable attic vents	EA	2	$101	$50.50	$ 90.00	$ 45.00
9.13	Remove, store and reinstall meter base and panels	EA	3	$591	$197.00	$ 750.00	$ 250.00
11	Project Allowances for Unknown Qtys						
	Exterior						
11.1							
11.1d	Replacement of moisture damaged OSB wall sheathing at stucco locations	SF	840	$1,386	$1.65	$ 1,680.00	$ 2.00
11.1e	Replacement of moisture damaged exterior wall framing at stucco	SF	420	$370	$0.88	$ 2,100.00	$ 5.00

Point of clarification

If punitive damages are awarded in any case, to whom are the proceeds paid?

Chris Snelson
Jury Foreman

To the Plaintiffs.

Judge Haney

CERTIFICATION

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

Respectfully submitted,

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January 17, 2013.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 201196386

Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc., Respondents,

v.

Professional Plastering & Stucco, Inc., Maria Arias, and Miquel Roasles Defendants,

Of whom, Professional Plastering & Stucco, Inc. is the Appellant.

Professional Plastering & Stucco, Inc., Appellant,

v.

Maria Ariasm, Miquel Roasles, and APS Enterprises Unlimited, Inc., Third-Party Plaintiffs,

Of whom APS Unlimited, Inc. is Respondent.

SUPPLEMENTAL RECORD ON APPEAL
(Pages 1 – 5)

Professional Plastering, when they did the work, did it under the guidance and direction of the general contractor. Working on a construction site, as some of you may know, is a lot like being in the army. You've got a general contractor, who sets the tone and tells everybody else what they can do, what they can't do, when they're going to do it, and basically how to do it. And part of that is negotiated out early in a contract between the general contractor and the subcontractors. And there is such a contract in this case. You will be seeing it. You'll be seeing it in quite a bit of detail.

And there is also a contract between the general contractor and the owner. There's also another group involved. And the owner has hired an architect. And the architect in this case did the design of the building, did the pricing on the building, and helped the general contractor in the cost and what materials to use.

The materials that are used were selected either by the owner, the architect, or the general contractor in this case. In this case the subcontractor did not select what type of stucco to put up. They were merely hired to put up the Magna Wall and were told that that would was the system that they would be

SUPP. 1

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using.

Now, I'm telling you this in anticipation so that you know that each one of these -- this different levels, you've got the -- you've got the owners. We also have another one, and those are the bankers, the people who financed the project. And you have the architects, you have the general contractor, and you have the manufacturer, Magna Wall.

When Professional Plastering was doing its job, it was inspected by the architects, it was inspected by the general contractor, it was inspected by the inspectors for the banks, and it was inspected by Magna Wall. And you will see and hear testimony about those inspections. And they were told in those inspections that what they were doing was exactly what they were supposed to be doing, they were putting it up in accordance with the manufacturer, in accordance with the plans and specifications, in accordance with the contract documents.

Now, some of you may scratch your head and say, well, how did we end up with this, then, if that is, in fact, the case. And that's one of the things that is very important to Professional Plastering is that you pay attention and listen very carefully as to where the water came from. And in a case like this,

SUPP. 2

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it's following the water. That will give you an idea as to where the problem is, if you follow the water. And you need to know what the source of the water is, and that information is going to be given to you. Some of you will be able to look at a picture, some of the pictures that we have and say, ah, ha, that's where it is. You then, then we would ask, would determine who was responsible for that water, who was the contractor or the subcontractor that was responsible for that particular water.

Now, this particular construction project had one thing that was a little bit different than a lot of the stucco projects that are done. The sealant or the caulk that was used on the stucco in the joints around the windows and the doors and so forth was not applied by Professional Plastering. It was not in their contract to do that. It was applied through -- by someone else. And it was their -- another contractor, subcontractor's job, who were -- called LosCompos [phonetic], who were tasked with, you know, putting in the sealant.

So the stucco subcontractor completes his work. He leaves or moves on to the next building and then LosCompos comes in and does the sealant work. Now, I give you that as kind of a clue and ask you to follow

SUPP. 3

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-628-6013

that when you're tracing the water through this case.

So Professional Plastering has the five different levels of inspections going on, from the manufacturer, the architect, the general contractor, the owners, and the -- excuse me -- the various levels of that. I'm sorry. I lost track of my counting. But, anyway, the various levels. And everybody is telling them, you're doing a good job, you're doing it correctly. So they did not have a clue at the times that they -- or nine years later were going to be said -- told, you didn't do it correctly. And that's what's happening.

So they complete their work in 2002 and then in 2008, 2009, other people were brought out to investigate it, and nine years later here we are in a court and we're asking you to make the determination as to whether or not at the time that they performed the job in 2002, was it done to the satisfaction of the owners and pursuant to the contract that they had with Summit.

Now, Mr. Leath was kind enough to preview some of the rules in the case. And there are some that are important to us. In order for them to prove liability, they have to show that they have damages. All right? And you can see from the initial previews

SUPP. 4

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

that there's something wrong in that building, that there is damage to that building.

Well, the other part of it is they have to show that Professional Plastering was negligent in their work and that the product that they produced was improper. And the final connection is they have to show that that particular negligence or that particular defect, if that's an easier word to deal with, caused the damages that you're seeing. And you have to be able to make that connection of their work causing that damage.

So as you listen to the evidence, we would ask you to keep in mind the question is the damage that's being claimed the result of the defendant's applying the stucco incorrectly, is what you're seeing out there actually a result of that or is it a result of the faulty roof, the faulty window installation, the faulty ceilings, and any of the other areas that are incorrect or may have been incorrect.

You are going to get to go on a little journey of dissecting a project estimate in the construction project. And it's a math exercise. I didn't do well in math and I didn't find it particularly -- you know, it's a painful process for me. We'll get it streamlined down so it's not quite as painful as it

SUPP. 5

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 201196386

Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc., Respondents,

v.

Professional Plastering & Stucco, Inc., Maria Arias, and Miquel Roasles Defendants,

Of whom, Professional Plastering & Stucco, Inc. is the Appellant.

Professional Plastering & Stucco, Inc., Appellant,

v.

Maria Ariasm, Miquel Roasles, and APS Enterprises Unlimited, Inc., Third-Party Plaintiffs,

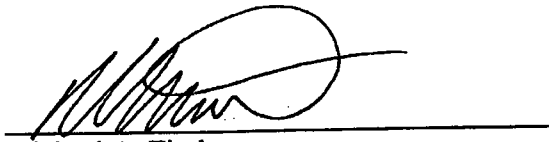
Of whom APS Unlimited, Inc. is Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by all parties and not any other material.

****Signature Page of Counsel to Follow****

Respectfully submitted,



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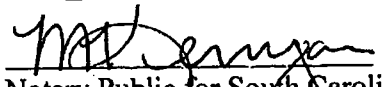
Sworn to and subscribed before me
This 15th day of March, 2013.



Notary Public for South Carolina
My Commission Expires 11/16/2020.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2011196386

Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc.,
Respondents,

v.

Professional Plastering & Stucco, Inc., Maria Arias, and Miquel Rosales,
Defendants,

Of whom Professional Plastering & Stucco, Inc. is the Appellant.

Professional Plastering & Stucco, Inc., Appellant

v.

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FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN FAILING TO QUALIFY CHRIS DAWKINS, P.E. AS AN EXPERT WITNESS AND ERR IN FAILING TO PROPERLY APPLY RULE 702, SOUTH CAROLINA RULES OF EVIDENCE?

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VII. DID THE TRIAL COURT ERR IN GRANTING RESPONDENT APS' MOTION FOR SUMMARY JUDGMENT?

STATEMENT OF THE CASE

This is an alleged construction defect lawsuit involving the Twelve Oaks at Fenwick Plantation condominium complex located on Johns Island, South Carolina. Professional Plastering served as a stucco subcontractor during the construction of the project as apartments. The apartments were completed in 2002, and then converted to condominiums in 2006. On or about January 4, 2008, Respondents Mark F. and Nan M. Teseniar, on behalf of themselves and others similarly situated, ("Teseniar") filed a civil action alleging design and construction defects, and resulting water intrusion damages, within the buildings comprising the Twelve Oaks at Fenwick Plantation Horizontal Property Regime ("the project"). (R pp. 73-105). Teseniar filed the civil action initially against the developers but thereafter amended their complaint to include numerous other parties involved in the design and construction of the buildings, including the architect, general contractor, Summit Contractors, Inc. ("Summit") and subcontractors. Professional Plastering & Stucco, Inc. ("Professional Plastering") was one of those subcontractors. On March 28, 2008, the Twelve Oaks Property Owners Association (the "POA") filed a separate lawsuit alleging design and construction defects, and resulting water intrusion damages to the buildings' commonly held areas. The two suits by Teseniar and the POA (collectively "Respondents") were consolidated on October 10, 2008. (R. p. 4). Professional Plastering was the only defendant who had not settled at the time of trial.

The consolidated cases of the Respondents against Professional Plastering were tried by jury before Judge Harrington on May 9, 11, 12, and 13, 2011. The jury returned a verdict in favor of the Respondents on the two surviving causes of action, negligence and breach of warranty of workmanlike service in the amount of Seven Million Seven

Hundred Twenty-Three Thousand Two Hundred Twenty-Five and no/100's Dollars ($7,723,225.00) actual damages. (R. pp. 65-66); (R. p. 1549, line 9 - p. 1550, line 22). Following the return of the jury verdict, Professional Plastering made an oral Motion for New Trial Absolute, Motion for Set-Off, Motion for Judgment Notwithstanding the Verdict, and Motion for New Trial Nisi Remittitur. (R. p. 1579, line 24 - p. 1581, line 13). Written Motions, Memoranda, and Reply in support of these motions were filed by Professional Plastering. (R. pp. 288-706); (R. pp. 733-748). The motions were denied by Judge Harrington in an order filed on June 17, 2011. (R. p. 68). Professional Plastering subsequently filed a Motion to Alter or Amend the Judgment (R. pp. 749-773) which was denied by Judge Harrington in an order filed July 19, 2011. (R. p. 69).

On April 1, 2010, Professional Plastering filed a Cross-Claim against its subcontractor APS Enterprises, Inc. (hereinafter "APS") asserting claims for negligence, breach of warranties, breach of contract, and indemnity. (R. pp. 202-222). APS filed a motion for Summary Judgment against Professional Plastering on the basis that Professional Plastering was not a licensed stucco installer, and therefore could not maintain these claims. (R. pp. 223-225). Judge Harrington granted APS' Motion for Summary Judgment on May 11, 2011. (R. p. 64). Professional Plastering subsequently filed a Motion to Alter or Amend the Judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. This motion was denied by Judge Harrington on July 19, 2011. (R. p. 69). Professional Plastering appeals the jury verdict and the judgment entered following the jury verdict, the denial of the Motion for New Trial Absolute, Motion for Judgment Notwithstanding the Verdict, Motion for Set-Off, Motion for New Trial Nisi Remittitur, and the denial of the Rule 59(e) Motions to Alter or Amend each of

the above denials. Professional Plastering appeals the order granting APS's Motion for Summary Judgment and the order denying Professional Plastering's Rule 59(e) Motion to Alter or Amend the Judgment. The Notice of Appeal was filed and served on opposing counsel on July 20, 2011.

FACTS OF THE CASE

The primary issues at trial in this case were whether the stucco installer had properly installed the stucco, whether any errors in installation of the stucco proximately caused the Respondents' damage, and the cost to repair any proximately caused damage to the project. Respondents presented two experts, Myles Glick, AIA, a "forensic architect," and Robert Gallagher, estimator and repair contractor. Mr. Glick provided a detailed analysis of the alleged defects in the stucco application that included the application of stucco before flashing was installed at roof to wall intersections, the application of stucco was too thin in some areas and too thick in others, the use of termination devices at dissimilar materials and the base of the wall was not in accordance with the manufacturer's instruction, and the wire mesh and paper backing of the paperback lath were not integrated properly. Mr. Glick then testified that these defects in the application of the stucco allowed water intrusion that resulted in damage to the building. Mr. Glick opined that a proper repair would require the complete removal and replacement of the entire building envelope including HardiPlank siding, stucco, and windows. Mr. Gallagher provided written estimates for the total repair of the project and an estimate for the repair of the stucco and stucco related structures. The total cost of repair for the project was $15,748,225 while the total cost for the stucco related repairs was $8,761,443. (R. pp. 921-991).

In the case presented for Professional Plastering, the testimony of Mr. McNabb, vice president for new development for Tarragon, the developer/owner of the original apartment complex, and an onsite representative and inspector was given. Mr. McNabb testified to the inspections he performed of the stucco and his observations of the stucco operations and application at the project. Mr. McNabb testified that the stucco application was proper and passed his inspections. (R. p. 1121, line 1 - p. 1150, line 8). Tacy McGinty, the project manager for Summit, the general contractor on the project testified to the work performed by Professional Plastering and the scope of responsibility for each subcontractor involved in the wall assembly. In addition, the approval and inspection process by the general contractor, owner, architect, and manufacturer of the stucco was explained. Tacy McGinty testified the work performed by Professional Plastering was properly done in accordance with the contract documents. (R. p. 1266, line 21 - p. 1358, line 19).

Mr. Robert Puschek, Professional Plastering's expert estimator provided an estimate for repair of the entire project in the amount of $4,978,000.00. In addition, Mr. Puschek testified that he had analyzed Mr. Gallagher's stucco-only estimate as applied to nine buildings. Mr. Gallagher's total repair for the nine buildings was $8,068,000.00, and Mr. Puschek's comparative price was $3,293,000.00. In addition, Mr. Puschek prepared Defendant Exhibit 4 (R. p. 1664) which was a stucco related repair estimate for all 12 buildings in the amount of $3,662,587.64. The exhibit displayed the estimate as a comparison between Mr. Gallagher's stucco-only repair and Mr. Puschek's stucco-only repair. (R. p. 1169, line 1 - p. 1265, line 8). Defendant's Exhibit 4 was not admitted into evidence.

Mr. Christian Dawkins, P.E. was offered by Professional Plastering as an expert in construction and engineering but was not allowed to testify as an expert. Mr. Dawkins was offered to testify to his forensic inspection of the buildings, the application of the building codes, whether the work of Professional Plastering met the code requirements, whether the work met the manufacturer's specification, the requirements of the contract documents, and that the work of Professional Plastering was not a proximate cause of the Respondents' damages. He was only allowed to testify to his personal observations during his investigation of the buildings but could not give any opinions.

The Respondents objected to Mr. Dawkins being qualified as an expert. (R. p. 1083, lines 19-21). Voir dire of the witness was performed and following an overnight recess, the court ruled that Mr. Dawkins was not qualified as an expert. Motions for directed verdict were heard and denied. The requested jury charges were reviewed. The Respondents' proposed verdict form was accepted by the court over the Appellant's objections. The jury returned a verdict in favor of the Respondents on the negligence and breach of warranty causes of action in the amount of $7,723,225.00 actual damages. (R. pp. 65-66); (R. p. 1549, line 9 – p. 1550, line 22). No punitive damages were awarded.

APS' MOTION FOR SUMMARY JUDGMENT

Professional Plastering hired APS as a sub-subcontractor for the stucco installation during the repairs of the breezeways in 2003-2004 (R. p. 1600, line 9 - p. 1601, line 24). APS filed a motion for Summary Judgment against Professional Plastering on the basis that Professional Plastering was not a licensed stucco installer, and therefore could not maintain an action against APS. (R. pp. 223-225). APS cited South Carolina Code Ann. Sections §§40-11-270 and 40-11-370 in support of its motion.

Professional Plastering argued that the licensing requirements under the statute only applied to general or mechanical contractors, therefore Professional Plastering was not required to hold a South Carolina license. (R. p. 1600, line 9 - p. 1601, line 24). Further, Professional Plastering was not enforcing the provisions of a contract but bringing an action for negligence. (R. p. 1603, lines 17-22). Judge Harrington ruled that because Professional Plastering did not have a license, it may not maintain its claims against APS and summary judgment was granted. (R. p. 64).

ARGUMENT

I. DID THE TRIAL COURT ERR IN FAILING TO QUALIFY CHRIS DAWKINS, P.E. AS AN EXPERT WITNESS AND ERR IN FAILING TO PROPERLY APPLY RULE 702, SOUTH CAROLINA RULES OF EVIDENCE?

A. Standard of Review.

The qualification of an expert witness and the admissibility of his or her opinion are matters resting within the discretion of the trial judge. *Manning v. City of Columbia*, 297 S.C. 451, 453, 377 S.E.2d 335, 336-37 (1989); *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 423, 717 S.E.2d 765 (Ct. App. 2011). On appeal, the trial court's ruling will not be disturbed absent an abuse of that discretion and a showing of prejudice. *Strange v. S.C. Dep't of Highways & Pub. Trans.*, 307 S.C. 161, 163, 414 S.E.2d 138, 139 (1992). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." *Fields v. Reg'l. Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005). "A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair." *Id.* Prejudice is "a reasonable probability

that the jury's verdict was influenced by the challenged evidence or lack thereof." *Fields v. Haynes*, 376 S.C. 545, 557, 658 S.E.2d 80, 86 (2008).

As discussed below, the exclusion of Professional Plastering's only liability expert was an abuse of discretion and the ruling was manifestly arbitrary, unreasonable and unfair.

B. Qualifications of Expert.

The Court abused its discretion in failing to qualify Chris Dawkins, P.E. as an expert witness. The Judge stated: "The question was whether or not Mr. Dawkins would be qualified as an expert at this time based upon my review of the voir dire – in camera voir dire as well as the background of the case. I am declining to grant your request to have Mr. Dawkins qualified as an expert in the areas of engineering and construction. I am not relying solely on the fact that he is not licensed in South Carolina. I am taking all of the information as a whole, in its entirety, in order to make my decision." (R. p. 1372, line 21 - p. 1373, line 7).

During voir dire, Mr. Dawkins testified that he holds a bachelor's degree in Civil Engineering from North Carolina State University and a master's degree in Civil Engineering with a construction management specialty from Georgia Tech. (R. p. 1065, lines 15-21). He is a licensed Professional Engineer in the states of Georgia and North Carolina. (R. p. 1066, lines 3-4). He has been qualified as an expert four times by courts in the state of Georgia and has never been refused qualification. (R. pp. 1087-1088). Additionally, he has nearly thirty years of experience in civil engineering and building construction systems. (R. p. 1066, line 1). Mr. Dawkins further testified that he has been involved with more than fifty projects involving stucco cladding, one of which included

more than 100 stucco-clad buildings. (R. p. 1068, lines 18-23). His involvement with these projects included diagnosing issues with the stucco cladding itself as well as water intrusion behind the stucco. (R. p. 1069, lines 6-8). He has done work in the coastal areas of Georgia and has participated in approximately thirty projects in South Carolina. (R. p. 1098, lines 1-6).

Mr. Dawkins testified that he had reviewed Mr. Glick's reports, photographs, and PowerPoint presentation. He reviewed the reports of the following engineering firms: S&ME, Engle Martin, G.R. McManus, and H2L Engineers concerning their investigations of the project. He reviewed the building plans, specifications, Magna Wall stucco system literature including the engineering reports and technical literature, and the manufacturer's installation document by General Aluminum for the windows. (R. p. 1070, line 15 - p. 1072, line 22). In addition, Mr. Dawkins reviewed the National Evaluation Service, Incorporated report, NER459, April 1997; NER459, July 2002; and the ICDO Evaluation Services, Incorporated report NER 4776, July 2000 (R. p. 1073, lines 9-24); (R. pp. 1707-1747). Plaintiff's exhibits 4, 5, and 6 provided evaluations of the Magna Wall fiber-reinforced stucco system.

The Court inquired as to Mr. Dawkins' "particular skills and understanding of South Carolina licensure and building codes." (R. p. 1096, lines 3-6). In response, Mr. Dawkins testified that the International Building Code of 2000 is applicable to the project. He is familiar with the requirements of the International Building Code of 2000 as it has been adopted by the states of Georgia and South Carolina. (R. p. 1097, lines 3-17). He further testified that there would be no distinction between an analysis that he

would perform in Georgia and the one performed in South Carolina. (R. p. 1097, lines 18-25).

The Respondents provided the following as reasons why Mr. Dawkins should not be qualified: 1) Mr. Dawkins is from Georgia; 2) Mr. Dawkins has no office in South Carolina; 3) Mr. Dawkins has never designed a multi-family project; 4) Mr. Dawkins has never designed a building in Charleston or in South Carolina; 5) Mr. Dawkins has never been qualified as an expert in South Carolina; 6) Mr. Dawkins is not a licensed architect; 7) Mr. Dawkins is not a licensed general contractor; 8) Mr. Dawkins is not a licensed engineer in South Carolina 9) Mr. Dawkins performed none of his own testing, only observed testing by others[1]; 10) Mr. Dawkins investigated buildings and offered a scope of repair in violation of statute; 11) Mr. Dawkins is not a certified construction consultant; and 12) Mr. Dawkins did not know of any local variations in the IRC[2] (R. p. 1074, line 18 - p. 1083, line 18). The issues addressed by Plaintiffs in their voir dire of Mr. Dawkins are not part of the qualification requirements of an expert under Rule 702 but merely factors that may affect the weight but not the admissibility of his testimony. The reasons stated are primarily that he is not from Charleston, South Carolina and not

[1] It was established that his protocol for testing was the same as the Respondents' expert (R. p. 1092, line 13 – p. 1094, line 19).

[2] The IRC did not apply to this project. Plaintiffs' expert Myles Gick was asked what the appropriate building code was for the project, and the following exchange occurred:

Q. What was the appropriate building code?
A. It's 2000 IBC, which is the International Building Code.
Q. And it would be IBC rather than the IRC. Is that not correct?
A. Correct.
Q. The IRC is the International Residential Code?
A. That's correct.
Q. So these would be considered commercial buildings?
A. Correct. The IRC is for one and two- family dwellings.

(R. p. 1431, lines 10-22)

licensed in South Carolina as a professional engineer. The trial court's focus on whether Mr. Dawkins was licensed in South Carolina is demonstrated in the following exchange between defense counsel and the court in relation to the objection that Mr. Dawkins was not qualified because he did not make his own investigative cuts but observed with other engineers the cuts performed by a contractor:

> "So his observation of the cuts is identical to the observation made by Mr. Glick.
>
> THE COURT: Except Mr. Glick's licensed in South Carolina; isn't he, Mr. Anderson?"

In determining a witness's qualifications as an expert, the trial court should not have a solitary focus, but rather should make an inquiry broad in scope. *Fields v. Haynes*, 376 S.C. 545, 555, 658 S.E.2d 80, 85 (2008). To be competent to testify as an expert, "a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony." *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 253, 487 S.E.2d 596, 598 (1997). Being licensed as a professional engineer in South Carolina is not something that a witness must have acquired before being found to be competent to testify as an expert in this State. *Fields v. Haynes*, *supra* ("holding that trial court abused its discretion in failing to qualify unlicensed home inspector as an expert"); *State v. Inman*, 395 S.C. 539, 563, 720 S.E.2d 31 (2011) (out-of-state expert witness's failure to comply with South Carolina licensing requirements does not preclude witness testimony). In *Baggerly v. CSX Transportation, Inc.*, 370 S.C. 362, 374-75, 635 S.E.2d 97, 103-04 (2006), the Court addressed the conflict between Rule 702 of the South Carolina Rules of Evidence qualifications for

experts and the statute which includes the offering of expert technical testimony within the practice of engineering. Similar to the situation in this case, the trial court in *Baggerly* had excluded the Defendant's expert on the basis that he was not a licensed South Carolina professional engineer. In reversing the trial court's decision to exclude the expert, the Supreme Court held that it would not interpret S.C. Code Ann. § 40-22-200 to require a person offering expert testimony in the field of engineering to be licensed as a professional engineer. *Baggerly v. CSX Transportation, Inc., supra at* 374-75. The Court determined that the suggestion that only professional engineers licensed in South Carolina are permitted to give expert engineering testimony in this state "could not have reasonably been intended by the Legislature." *Id.*

The Court went on to say that the "primary purposes of Section 40-22-30 is to shield South Carolina consumers from those who are not properly credentialed pursuant to this State's standards, but who nevertheless hold themselves out to be professional engineers." *Id.* However, the services of an expert witness are "being offered to a South Carolina jury, not to the State's citizens seeking traditional professional engineering services." *Id.* The Court in *Baggerly* went on to find that if they "held that the exclusion of an out-of-state professional engineering expert is proper under the statute, the result would be to limit the truth-seeking duty of the courts of this State." *Id.* at 375. The Court "refuse[d] to endorse an interpretation of the professional engineer licensing statute which has the potential of either preventing out-of-state experts from testifying in South Carolina courts or imposing the unreasonable burden of getting licensed in this State simply to be permitted to provide forensic testimony." *Id.*

To exclude Mr. Dawkins as an expert was contrary to Rule 702 of the South Carolina Rules of Evidence (SCRE), which states that if "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. Mr. Dawkins has sufficient knowledge, skill, experience, education and training to be qualified as an expert in this case.

It is clear from Mr. Dawkins' credentials that he has the requisite level of knowledge and skill and is better qualified than the jury to form an opinion on the subject matter. Any issue concerning the amount of Mr. Dawkins training and experience affects the weight, not the admissibility of his testimony. *Wilson v. Rivers*, 357 S.C. 447, 453, 593 S.E.2d 603, 605 (2004); *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 254 (1997); *Watson v. Ford Motor Co.*, 389 S.C. 434, 447, 699 S.E.2d 169 (2010); *Lee v. Suess*, 318 S.C. 283, 286, 457 S.E.2d 344, 346 (1995)(finding trial court erred in failing to qualify plastic surgeon as an expert in the field of family practice because surgeon's "limited exposure to the field of family practice merely goes to the weight of his testimony and not its admissibility.") The trial court erred in refusing to qualify Mr. Dawkins as an expert in construction and engineering.

C. Prejudicial Effect.

The specialized knowledge in engineering and construction that Mr. Dawkins has would certainly assist the jury in this case, and his expert testimony was critical to the defense of this action. It is clear from the proffered testimony of Mr. Dawkins that his exclusion as an expert was highly prejudicial to Professional Plastering. As demonstrated

by his proffered testimony, if Mr. Dawkins were qualified as an expert, he would testify that the work of Professional Plastering was not a proximate cause of the water intrusion at the project. (R. p. 1541, line 22 – p. 1548, line 12; p. 1554, line 1 – p. 1579, line 14). In his proffered testimony, Mr. Dawkins spoke in great detail as to the sources of water intrusion at the project, none of which were caused by the work of Professional Plastering. (R. p. 1576, line 25 – p. 1577, line 18). Mr. Dawkins provided the following testimony:

Q. Can you please state what is the probable cause of the water intrusion that you observed at Fenwick?

A. Sure. There was water intrusion at the roof-to-wall terminations. The proximate cause was lack of kickout flashings. I mean, they should have been there.
At the windows, water was entering the head area of the windows because of the improper paper installation, compounded by the improper head flashing installation done by North Florida Framing. Then that situation was compounded ever worse by lack of a sill flashing by North Florida framing at the sill of the window because there was no sill flashing installed, based on the evidence and what I could see from anybody's photos plus my own site visit.
There was water intrusion at the balcony-to-wall terminations at the breeze ways, which was also an integration of -- a waterproofing/integration issue.

Q. Did you find any water intrusion which would have been proximately caused by the work done by Professional Plastering?

A. I did not. I did not find that.

(R. p. 1576, line 22 - p. 1577, line 22). The proffered testimony of Mr. Dawkins reveals the prejudice to Professional Plastering by excluding him as an expert. His testimony

reveals that the work by others on the project, not Professional Plastering, was the cause of the water intrusion. He provided the essential link to the current condition of the building and the testimony of Tacy McGinty who inspected the work performed by Professional Plastering during the construction of the project and found the work to be in compliance with the contract documents. (See the testimony of Ms. McGinty at R. p. 1332, line 8 - p. 1336, line 25).

In *Fields v. Haynes*, the Court held that the trial court abused its discretion in failing to qualify the Plaintiff's home inspector as an expert because he was not licensed in South Carolina. *Fields v. Haynes*, 376 S.C. 545, 557, 658 S.E.2d 80 (2008). The Court in *Fields*, however, found this to be harmless error because the expert's testimony would have been cumulative. *Id.* at 558. At trial, the Fields presented testimony of a repair contractor, who was qualified as an expert in residential homebuilding, and a forensic architect, who was qualified as an expert in the standard of care and in the area of forensic examination and repair of residential construction. *Id.* The Court determined that the testimony of the excluded expert would be cumulative of the testimony of the repair contractor and forensic architect. *Id.* In fact, Fields agreed that the forensic architect would testify to essentially the same topics found in the excluded expert's report. *Id.*

Unlike *Fields*, there was no cumulative evidence in this case. Because Mr. Dawkins' opinion was not allowed, no expert testimony was presented from an engineer or an architect on Professional Plastering's behalf. In *Bramlette v. Charter - Medical Columbia*, 302 S.C. 68, 74, 393 S.E.2d 914 (1990), the Court determined that the defendant was prejudiced by the exclusion of their expert witness, as the testimony of

plaintiff's expert remained uncontradicted. Professional Plastering was prevented from presenting any expert testimony that would contradict the testimony of Respondents' expert Myles Glick, a forensic architect.

The exclusion of Mr. Dawkins' expert testimony was highly prejudicial to Professional Plastering. This prejudice was further exemplified by the Respondents' closing argument when it was stated that Professional Plastering had not put up any witnesses to contest that Professional Plastering was a major cause of the problems. (R. p. 1496, lines 1-4). By excluding Mr. Dawkins as an expert, the defense was denied the ability to present expert testimony on the following issues: 1) whether the stucco application was in substantial accordance with the plans and specification, manufacturer's instruction, and otherwise correct; 2) whether any defects in the stucco were a proximate cause of the alleged damages; 3) whether the building code violations were a proximate cause of the alleged damages; 4) what the proximate causes of the alleged damages were; 5) rebuttal to the testimony of the Respondents' expert; and 6) what a proper scope of repair would entail for the twelve buildings at Fenwick.

The Court's error in excluding Chris Dawkins as an expert in this case was highly prejudicial to Professional Plastering and therefore warrants reversal.

D. Discovery Issue.

The Respondents argued in trial and in their Memorandum in Opposition to Professional Plastering's Post-Trial Motions that the Court could exclude Chris Dawkins for a discovery violation. (R. p. 1099, line 19 - p. 1101, line 11); (R. p. 714). The alleged discovery violation was a failure on the part of Professional Plastering to produce Mr. Dawkins' file.

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, a party is required to turn over documents in response to a request for production "which are in the possession, custody, or control of the party upon whom the request is served." Rule 34, SCRCP; *Reiland v. Southland Equipment Service*, 330 S.C. 617, 500 S.E.2d 145 (1998) (finding that plaintiff did not violate discovery rules when there was no evidence that he had received any of the disputed documents. The defendant could have deposed the individual to gain access to his documents). Counsel for Professional Plastering informed the Court that they had never received documents from the file of Mr. Dawkins. (R. p. 1101, lines 16-21). In addition, the discovery request issued by Respondents and identified as unanswered by Respondents were answered on August 20, 2010 with an invitation to come to Defense Counsels' office and review all non-privileged documents.[3] Mr. Dawkins was initially called as the first witness at 9:00 a.m. on May 12, 2011. During Mr. Dawkins' qualification as a witness, the failure to produce documents was raised for the first time by the Respondents. The file and all its contents were turned over to Respondents on the morning of May 12, 2011. The court postponed Mr. Dawkins' testimony and Professional Plastering proceeded with other witnesses. The court took Mr. Dawkins' qualification under advisement and recessed for the night on May 12, 2011. Prior to the recess, Respondents were given the opportunity to depose Mr. Dawkins. The offered deposition was not taken and instead Respondents' counsel requested and was given an interview of Mr. Dawkins. Upon a review of the contents of

[3] The Plaintiff's Memorandum quoted their discovery request, however, it failed to quote the Defendant's discovery response to Request for Production 9. The Defendant's discovery responses as to Respondents' Request for Production 9 dated August 20, 2010 stated: "The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, all non-privileged items, which may be responsive to this request, will, upon request, be made available for review at a mutually agreeable time at the offices of Sweeny, Wingate & Barrow, located at 1515 Lady Street, Columbia, South Carolina 29211." (R. p. 736).

the file, it was determined that there were some charts that paired comments to photographs Mr. Dawkins had reviewed. The comments to the photographs were notes as to whether there was visible moisture damage and things like that. It appears the photographs were from Mr. Glick and the notes relate to Mr. Glick's photographs. (R. p. 1104, lines 1-9). There was also a list of test cuts observed by Mr. Dawkins. The Respondents attempted to use the list in cross examination of Mr. Dawkins when he testified as a non-expert witness. Respondents' question was withdrawn upon objection. Respondents were in possession of Mr. Dawkins' entire file from the morning of May 12, 2011 until the court reconvened on May 13, 2011.

"The sanction of excluding a witness should never be lightly invoked." *Jenkins v. Few*, 391 S.C. 209, 219, 705 S.E.2d 457 (Ct. App. 2011). Before excluding a witness as a sanction for violating the continuing duty to disclose information, the trial court should ascertain (1) the type of witness involved, (2) the content of the evidence, (3) the explanation for the failure to name the witness in answer to the interrogatory, (4) the importance of the witness's testimony, and (5) the degree of surprise to the other party. *Id.* (quoting and applying *Bensch v. Davidson*, 354 S.C. 173, 182, 580 S.E.2d 128 (2003)).

In *Bensch*, the Court found that by not naming an expert, there was a degree of surprise since the respondents were prevented from hiring their own expert. That is clearly not the case here. The Respondents have articulated absolutely no surprise, and in fact, they were not surprised as the witness was named a year prior to the trial. There was no bad faith, and the Respondents have not alleged any. In *Jenkins v. Few*, *supra*, Few argued that the trial court erred in allowing Stokes to testify as an expert witness because

he lacked the necessary qualifications and Few was not provided with notice that Jenkins intended to call Stokes as an expert. The Court found that the trial court made the appropriate considerations before declining to exclude Stokes as an expert witness. The trial court determined Jenkins was calling Stokes as an expert witness although named as a fact witness. Jenkins's counsel explained he first listed Stokes as a fact witness but reserved the right to make a later determination about calling him as an expert witness. However, after deciding to call Stokes as an expert witness, Jenkins's counsel inadvertently failed to supplement his interrogatory answer. The trial court found this mistake was not the result of bad faith. Finally, the trial court found the degree of surprise and prejudice to Few was low because Stokes testified to the same thing during his deposition and Few's counsel had the opportunity to cross-examine him during an *in camera* proffer of his testimony. Accordingly, the Court concluded that the trial court did not abuse its discretion in admitting Stokes as an expert witness.

The Respondents were aware prior to trial that Mr. Dawkins had been retained as an expert in this case. As noted by Professional Plastering's discovery responses, Mr. Dawkins was identified as an expert witness for Professional Plastering on April 1, 2010, over a year prior to trial. (R. pp. 740-748). Respondents also had and presented their own expert witnesses, Mr. Glick and Mr. Gallagher. Mr. Dawkins was Professional Plastering's liability expert, and the content of his testimony was critical to their case. The Respondents never contacted defense counsel to arrange a review of documents pursuant to Professional Plastering's discovery response. There was no motion to compel filed by Respondents or other follow up action pursuant to Rule 37, SCRCP. Respondents did not issue any subpoenas, or notice the deposition of Mr.

Dawkins. Respondents had more than one year in which to depose Mr. Dawkins and to discover his opinions. Professional Plastering agreed not to use the photographs taken by Mr. Dawkins in direct examination of Mr. Dawkins but made the photographs available to the Respondents (R. p. 1091, line 15).

There was no discovery violation, and furthermore, there was no prejudice to Respondents resulting from Professional Plastering's alleged discovery violation, and therefore Mr. Dawkins should not be excluded as an expert on this basis. In addition, this matter was not timely raised to the trial court and not the basis for the trial court's ruling, and it is not preserved for review or properly before this Court.

II. DID THE TRIAL COURT ERR IN NOT ADMITTING APPELLANT'S STUCCO-ONLY ESTIMATE INTO EVIDENCE AND EXCLUDING DEFENDANT'S EXHIBIT 4 FROM JURY DELIBERATIONS?

A. Standard of Review.

"To warrant reversal based on the admission or exclusion of evidence, the appealing party must show both the error of the ruling and prejudice." *Fields v. Haynes*, 376 S.C. 545, 557, 658 S.E.2d 80, 86 (2008) (citing *Fields v. Reg. Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506 (2005)).

In the present case, there was both error and prejudice from the exclusion of the evidence.

B. Trial Court's Error by the Exclusion of the Estimate.

It was error for the Court to exclude Professional Plastering's stucco-only cost estimate when the Respondents were allowed to present a stucco-only estimate as evidence to the jury, and the trial court instructed the jury to make a stucco-only verdict. The trial court stated that the cost of repair estimate prepared by Professional Plastering's

expert Robert Puschek was not going back to the jury because it was not presented in discovery. (R. p. 1489, lines 2-25). Respondents' stucco-only estimate was produced on May 5, 2011, only three days prior to the start of trial. The previous repair estimate produced by Respondents was not an estimate of the damages related only to the stucco. It was a repair estimate for the entire project. When Professional Plastering received the new $8 million stucco-only repair estimate, it was necessary for Professional Plastering's expert Robert Puschek to analyze Respondents' new estimate and to produce a comparable estimate which included only the stucco and related items. (R. p. 1192, lines 14-18).

As Professional Plastering's stucco-only estimate was prepared in response to Plaintiff's stucco-only estimate, it is appropriate rebuttal evidence and should be admissible. "When a party introduces evidence about a particular matter, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even if the evidence had been incompetent or irrelevant if offered initially." *State v. McEachern*, 399 S.C. 125, 137, 731 S.E.2d 604 (Ct. App. 2012). Respondents' stucco-only estimate, which was produced only on the Thursday before trial, was admitted by the trial court, so Professional Plastering's stucco-only estimate should be admitted as well in order to rebut Respondents' contention that their stucco-only estimate is reasonable.

In *Bramlette v. Charter Medical Columbia, supra* the appellate court found that the trial court erred in excluding the testimony of an undisclosed expert witness whose testimony would have rebutted that of plaintiff's expert. The principle enunciated in *Bramlette* is applicable to Professional Plastering's stucco-only estimate as its exclusion allows the Respondents' expert testimony and exhibit to remain uncontradicted.

In *Fields v. Haynes*, the Court addressed an issue regarding the admission of repair costs. Similar to the argument by Respondents in this case, Fields argued that the report of the Builder's estimating expert should have been excluded because it was first provided to them on the day that the builder was to testify. *Fields v. Haynes*, 376 S.C. at 568. In response, the Builder argued that the report was based solely on a comparison of the invoices of the Plaintiffs' repair estimate which was only received by them on the Friday before trial. *Id.* In determining that the introduction of the Builder's report was not prejudicial, the Court explained that Fields "had the opportunity to cross-examine [the expert] regarding his report and conclusions, recall their experts in rebuttal, and also could have asked for a short recess or overnight continuance to prepare for cross-examination." *Id.*

Additionally, in its decision to allow the Fields' repair contractor's costs into evidence, the Court determined that the critical issue in regard to whether or not the repair costs were admitted "was the reasonableness and necessity of those costs." *Fields supra* at 567. The relevant question is not whether the Respondents believed that their repair costs were reasonable, but whether the costs were in fact reasonable. *Id.*

The admission of Professional Plastering's stucco-only estimate was necessary for a proper analysis of Respondents' estimate to determine if it was reasonable. Prior to the time of the stucco-only estimate, Professional Plastering had given Respondents an estimate with a breakdown of the costs. An analysis of Professional Plastering's stucco-only estimate was required to determine the reasonableness and necessity of Respondents' estimate.

C. Prejudicial Effect.

Allowing the Respondents' stucco-only repair estimate into evidence, while excluding the Defendant's stucco-only repair estimate was extremely prejudicial to Professional Plastering. Prejudice is "a reasonable probability that the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields v. Haynes*, *supra* at 557. Here, the jury was not provided with an estimate by the Defendant to compare to the Respondents' stucco-only estimate. The only written estimate provided to the jury relating only to the stucco was Respondents' repair estimate. By having no other estimate related to the stucco besides the Respondents' stucco-only estimate, there is a reasonable probability that the jury's verdict was influenced by the lack of a comparable written estimate by Professional Plastering.

The exclusion of Professional Plastering's stucco-only estimate coupled with the trial court's endorsement, through the verdict form, of the Respondents' settlements as being non-stucco related is highly prejudicial to Professional Plastering. In essence, the trial court and the Respondents required the jury to make a determination as to the "stucco only" repairs and then deprived Professional Plastering of the ability to provide a comparative "stucco-only" repair estimate. This excluded Professional Plastering's analysis of the repair costs and any comparative estimate. The numbers provided by Respondents were the only numbers in the jury room. Professional Plastering was harmed by the lack of an exhibit to which the jury could refer or use to perform an analysis of what a reasonable cost of repair for the Respondents would be. Allowing Professional Plastering's expert to only testify to the numbers on Exhibit 4 and display the exhibit 4 on the overhead was insufficient in light of the jury being able to hold and handle and study the estimate exhibit of the Respondents in the jury room.

When the trial court excluded Professional Plastering's repair estimate it provided an endorsement by the trial court of the Respondents' estimate and damages amount. Excluding the Defendant's repair estimate for the stucco, which was necessary to the defense of the case, was highly prejudicial to Professional Plastering and warrants reversal.

III. DID THE TRIAL COURT ERR IN DENYING APPELLANT'S MOTION FOR SET-OFF AND MOTION FOR A NEW TRIAL NISI REMITTITUR?

A. Standard of Review.

Professional Plastering is entitled to a set-off, and the trial court erred in not granting the Motion for Set-Off of the settlement received by Plaintiffs from the verdict, or the Motion for a New Trial Nisi Remittitur.

"The trial court's jurisdiction to set off one judgment against another is equitable in nature and should be exercised when necessary to provide justice between the parties." *Rutland v. South Carolina Department of Transportation*, 390 S.C. 78, 86, 700 S.E.2d 451, 455 (Ct. App. 2010) (citing *Welch v. Epstein*, 342 S.C. 279, 313, 536 S.E.2d 408, 425 (Ct. App. 2000)). "A set-off is not necessarily founded upon any statute or fixed rule of court but grows out of the inherent equitable jurisdiction of the court." *Id.* (citing *Rookard v. Atlanta & Charlotte Air Line Ry.*, 89 S.C. 371, 376, 71 S.E. 992, 995 (1911)). Therefore, a motion for set-off is addressed to the discretion of the court, and this discretion should not be arbitrarily or capriciously exercised. *Id.*

B. Error in Denying Motion for Set-Off.

At the conclusion of the trial, Professional Plastering made a motion for set-off which was denied by the trial court without a hearing. (R. p. 1581, lines 3-8). The trial court erred in denying Professional Plastering's Motion for Set-Off.

"A non-settling defendant is entitled to credit for the amount paid by another defendant who settles." *Rutland v. South Carolina Department of Transportation*, 390 S.C. 78, 86, 700 S.E.2d 451 (Ct. App. 2010) (citing *Smalls v. S.C. Dept. of Educ.*, 339 S.C. 208, 219, 528 S.E.2d 682, 688 (Ct. App. 2000); *Powers v. Temple*, 250 S.C. 149, 156 S.E.2d 759 (1967). "The reason for allowing such a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained which has already been paid to him." *Smalls v. South Carolina Dept. of Educ., supra* at 219 (quoting *Hawkins v. Pathology Assocs. of Greenville, P.A.*, 330 S.C. 92, 113, 498 S.E.2d 395 (Ct. App. 1998)); *Welch v. Epstein*, 342 S.C. 279, 313 (Ct. App. 2000) ("there can be only one satisfaction for an injury or wrong"). The court's jurisdiction "to set-off one judgment against another is equitable in nature and should be exercised when necessary to provide justice between the parties." *Id.* "Before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury." *Smith v. Widener*, 397 S.C. 468, 471-472, 724 S.E.2d 188 (Ct. App. 2012) (citing *Hawkins*, 330 S.C. at 118, 498 S.E.2d at 406-07 (Ct. App. 1998)). "When the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law." *Id.*; *Ellis v. Oliver*, 335 S.C. 106, 112-13, 515 S.E.2d 268, 271-72(Ct. App. 1999) (when a prior settlement involves compensation for the same injury for which the jury awarded damages, the right to set-off arises as an operation of law.) In *Smith*, the appellate court determined that the prior settlement by the defendants was for the same injury, and "[t]herefore, the right to setoff arises as an operation of law, and the circuit court must award a setoff." *Id.*

Additionally, in *Ellis*, the appellant argued that the trial court erred in applying the set-off because she did not present to the jury the medical expenses attributable to the settling defendant's negligence, and therefore, the jury's verdict was not taking into account her settlement with the other defendant. *Ellis*, *supra* at 113. However, the Court determined that the application of the settlement credit was mandated and gave the court "no discretion in determining the equities involved in applying a set-off once a release has been executed in good faith between a plaintiff and one of several joint tortfeasors." *Id.*

The trial court erred when it required the jury to find damages that would be over and above the settlement already received by the Respondents as set forth on the verdict form. The trial court's actions were without precedence or warning to Professional Plastering. There was no indication from the trial court that it would nullify the right to set-off in the guise of a jury determination. The jury should have been tasked with determining what, if any, damages the Respondents suffered and then the set-off should have been performed by the Court.

Even accepting the method used by the Court in requiring the jury to award damages over and above the amount Respondents had received in settlement, which Professional Plastering does not accept, Professional Plastering is entitled to a set-off.

Professional Plastering is entitled to a set-off of the entire settlement received by Respondents. The buildings at Twelve Oaks have a highly integrated wall system, and in looking at the damages, it is impossible to isolate the damages and separate them by building trade or subcontractor. Any attempt to do so is exercising a non-existent discretion for determining the equities involved. *Ellis*, *supra* at 113. As an example of

such an attempt the settlement received from all of the subcontractors, suppliers and building trades that were involved in building envelope is $7,975,000.00. [4]

The allegations in the Complaint against all of the construction defendants were exactly the same, as were the alleged damages. [5] Professional Plastering is entitled to a set-off of all monies paid by the settling defendants.

Alternatively, Professional Plastering is entitled to a set-off by the amounts Respondents have already received pursuant to settlement. In particular, this includes the settlements paid by APS and Chartis. APS was Professional Plastering's subcontractor on the project during the 2003-2004 repairs to the breezeways, and Chartis is one of

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[4] The following settlement amounts have been received by the Respondents in this action:

Summit Contractors	$5,000,000.00
Fugelberg Koch Architects	$ 500,000.00
Los Campos	$ 100,000.00
APS	$ 100,000.00
Chartis, an insurer of Professional Plastering	$ 100,000.00
North Florida Framing and Marquez	$ 400,000.00
H2L	$ 350,000.00
Johnson Roofing	$ 175,000.00
Neo	$ 65,000.00
All South Vinyl	$ 75,000.00
AM Jacobs	$ 35,000.00
Development Compliance & Inspection	$ 100,000.00
Best Masonry, Successor in Interest to Magna Wall	$ 637,500.00
Nava Guzman	$ 137,500.00
General Aluminum	$ 12,500.00
KMAC	$ 87,500.00
Fenwick HOA/Ferguson et al.	$ 100,000.00

(R. pp. 640-699).

[5] The Complaint stated as a direct and proximate result of the Defendants' negligence, gross negligence, carelessness, willfulness and wantonness, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expense associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair, and restore the buildings and units to make them safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing, and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that has intruded into the subject buildings and units causing and resulting in damage to walls, rot, deterioration and other damages to the finish and structural elements.

(R. pp. 126-198).

Professional Plastering's insurance carriers. Professional Plastering should receive a set-off by the total amount paid in settlement by APS and Chartis as their work and payment was for the exact same damages alleged against Professional Plastering.

Professional Plastering's damages should also be set-off against the full amount of the settlement received from Fugelberg Koch Architects. Attached to the Respondents' Fourth Amended Complaint is the Affidavit of Myles Glick. As outlined in Mr. Glick's affidavit, the architect Fugleberg Koch is directly responsible for the damages associated with the stucco system.[6] Mr. Glick testified that the architect "bore responsibility and was accountable" for the stucco issues. (R. p. 1024, lines 2-10).

Professional Plastering is also entitled to a set-off by the full amount of the settlement paid by H2L. As set forth in Respondents' Fourth Amended Complaint, H2L investigated water intrusion at breezeways and worked with the defendants Summit and Fugelberg Koch Architects to develop a breezeway repair. (R. p. 145, ¶ 47). H2L recommended a remediation of the "hard coat stucco wall system" to allow drainage of the system which was accomplished, partially, in the breezeway areas of the buildings only. However, no attention was paid to the overall stucco system of the buildings, having the identical design and construction deficiencies. (R. p. 145, ¶ 47).

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[6] In his Affidavit, Mr. Glick states that:

> the construction of the buildings at issue with a Magna-Wall system installed as a barrier system, and consequently causing the problems above stated was not in accordance with the Contract documents, was not in accordance with the design concept, and any such certification to the Owner to the contrary contained in the architect certified pay applications, was incorrect. That in his opinion Fugelberg Koch was negligent in failing to exercise its duties to ensure that the actual construction of the buildings at issue met the design concept it had designed, in failing to ensure that such construction was in accordance with the contract documents, and in certifying to the Owner that in fact such construction was in conformity with the Construction documents, when it was not. That as a result of this negligence, an improper building envelope was installed on the subject buildings, requiring extensive demolition and repair.

(R. pp. 591-593).

Professional Plastering is also entitled to a set-off from the settlements received from Los Campos, North Florida Framing, and Johnson Roofing. Los Campos was tasked with applying sealant at the project as well as the final layer of the stucco system, the elastomeric paint. (R. p. 1300, line 20 - p. 1301, line 7). The contract between Summit and Los Campos provides that Los Campos "is to furnish and install all required caulking, with the specified type of caulking at all areas of the project. These caulked areas to include, but not limited to, windows, doors, exterior siding, exterior trim, interior trim, exterior door sills, between exterior trim, tubs and masonry and fascia boards." (R. p. 1683, ¶ 5). Additionally, the subcontract states that "the exterior waterproofing of all stucco is the responsibility of the subcontractor [Los Campos]. This is to include but not limited to all areas where stucco meets like or unlike surface where paint may or may not be applied." (R. p. 1683, ¶ 4).

North Florida Framing was responsible for the reverse laps in building wrap and flashing at the windows and the other reverse laps in the weather barrier. The contract between North Florida Framing and Summit provides that North Florida Framing "shall furnish and install all of the different types of fasteners, flashing, clips, caulks, rods, epoxies, etc. as required for the entire project." (R. p. 1655, ¶ 6). Additionally, the subcontract required North Florida Framing "to provide all required caulk and 'Z' flashing (termite shield) at the perimeter of the building per plans and specifications and at the top of all windows as required by the Contractor." (R. p. 1644, ¶ 12). This section of the subcontract refers to flashing at the head of the windows and treatment at the base of the wall.

Johnson Roofing was the roofer for the project, and according to the contract between Johnson Roofing and Summit, Johnson Roofing was "to provide and install water diverters per the drawings."[7] (R. p. 638, ¶ 6). The subcontract further provided that Johnson Roofing "shall install all products in accordance with manufacturer's recommendations." (R. p. 639, ¶ 19). The result of these two sections is that if kickout flashings were required then Johnson Roofing was required to install the "kickout flashings" at the wall to roof intersections as described by Mr. Glick in his testimony. The scope of work performed by these subcontractors encompassed and impacted the work performed by Professional Plastering, and Professional Plastering is entitled to a set-off of the amounts paid by these subcontractors related to the stucco.

Magna Wall, the manufacturer of the stucco, settled the claims the Respondents made against it which were based, almost completely on the fact that the Magna Wall, as the manufacturer of the stucco, should have properly inspected the work of Professional Plastering [8]

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[7] See testimony from Tacy McGinty that kickout flashing was not included on the drawings or required by the architect. (R. p. 1306, line 13 - p. 1308, line 8)

[8] Plaintiffs' Fourth Amended Complaint provides that Magna Wall was negligent

a. In failing to warn all potential users, consumers, sellers and installer of potentials for defect in its products and in the installation instructions;
b. In failing to design, manufacture, market, sell and distribute a product free from potential defects when put to its intended reasonable and foreseeable uses;
c. In failing to adequately and competently supervise and/or train the applicators, vendors, subcontractor or specialty contractors that sold, used and installed its products; and
d. In failing to provide adequate installation instructions;
e. In failing to warn;
f. In failing to properly inspect the improper application of the stucco and notify the contractor and/or owner of the application deficiencies; and
g. Other deficiencies or failures will be proved at trial.

(R. pp. 167-168).

Additionally, Professional Plastering is entitled to a set-off from the settlement paid by Summit. As the general contractor, Summit was responsible for supervising as well as approving the installation of the stucco at the project. The Settlement and Release Agreement between Respondents and Summit provides that the settlement was:

> to forever settle all past or present claims made or capable of being made in the lawsuit against Releasees and all future claims no matter when arising (resulting in past, present, and future damages) or any other claims now existing or arising in the future against Releasees: (a) relating to any and all construction deficiencies or Code violations, whether known or unknown, from original construction and subsequent repairs as well as any resulting damages.

(R. p. 643). It is evident by the settlement agreement between Summit and Respondents that the settlement paid by Summit was to include damages related to the stucco system. Therefore, Professional Plastering should be entitled to a set-off of the settlement proceeds paid by Summit.

The trial court's error in failing to grant Professional Plastering's Motion for Set-Off is highly prejudicial and warrants reversal. In addition, the trial court could have resolved the matter by granting Professional Plastering's Motion for New Trial Nisi Remittitur for the reasons stated above.

IV. DID THE TRIAL COURT ERR BY INCLUDING THE SETTLEMENT AMOUNT RECEIVED BY PLAINTIFFS ON THE VERDICT FORM AND IN ITS JURY CHARGE REGARDING THE VERDICT FORM?

A. Standard of Review.

The trial court committed reversible error in submitting to the jury the special verdict form, which included the amount that had previously been paid in settlement to the Respondents.

"A special verdict question may be so defective in its formulation that its submission results in a prejudicial effect which constitutes reversible error." *SCDOT v.*

First Carolina, 372 S.C. 295, 303, 641 S.E.2d 903 (2007). In evaluating the prejudicial effect of a defective special verdict question or special interrogatory, the court must consider the question or interrogatory along with the instructions given to the jury. *Fortune v. Gibson*, 304 S.C. 279, 282, 403 S.E.2d 674, 675 (Ct. App. 1991) (finding that special interrogatories and instructions must be considered together).

B. Error in Verdict Form and Court's Instructions.

Where there are no questions of fact concerning the settlement agreement for the jury's determination, evidence thereof should be excluded from consideration of the jury, and credit (set off) shall be applied by the court. *Powers v. Temple*, 250 S.C. 149, 155, 156 S.E.2d 759 (1967). In analyzing the rule set forth in *Powers*, the Court in *McCombs v. Stephens*, 252 S.C. 442, 166 S.E.2d 814 (1969) stated, "The foregoing rule has as its purpose the elimination of possible prejudice to the litigants and certainly in the allowance of proper credit to the defendant. We think, as a general rule, that this can best be assured by leaving to the jury the assessment of the damages and to the court the duty of allowing credit for any amount received by plaintiff under a covenant not to sue. Ordinarily, submission of the issue to the jury will constitute reversible error." *McCombs v. Stephens*, 252 S.C. 442, 445, 166 S.E.2d 814 (1969).

The trial court committed reversible error in submitting to the jury the special verdict form, which included the amount that had previously been paid in settlement to the Respondents. The verdict form used in this case required the jury, in determining its damage award, to only award damages which were in addition to money already received by the Respondents in settlement, improperly attempting to remove the Defendant's right to set-off and allowing the jury to consider the amount of settlement received by the

Respondents in their determination of damages without any evidentiary basis. (R. pp. 65-66). The Court instructed the jury, "The verdict form indicates that Respondents have received a total of $8,025,000 in settlements in this matter from other parties. Therefore, any damages that you award plaintiffs would be in addition to those damages already received." (R. p. 1528, lines 2-7). The form and charge regarding the verdict form were a comment on the facts, unduly suggestive and misleading. As counsel for the plaintiff stated "Were the jury to find us a verdict and were some items like this not included or a very, very clear instruction from the Court, this has to be an additional new money . . . So either this type of form - - and we think this is fine and not prejudicial. It's exactly what's been stated - - needs to be submitted. Or a very clear and concise instruction to the effect that if you find a new award, it must be new and additional money over and above what was collected in settlements." (R. p. 1472, line 11 - p. 1473, line 1). The trial court then ruled as follows: "With that understanding and that clarification of the verdict form that you have submitted - - the second one with on the claim of negligence and negligence per se in it, it does make it clear to the jury what we have tried, particularly the facts of this case. . . ." (R. p. 1475, lines 7-13).

Generally a "trial [court] should not intimate to the jury any opinion on the facts of a case, whether intentionally or unintentionally." *Sierra v. Skelton*, 307 S.C. 217, 225, 414 S.E.2d 169, 174 (Ct. App. 1992). In a case tried before a jury, the jury is the judge of the facts in the case. *Day v. Kilgore*, 314 S.C. 365, 444 S.E. 2d 515 (1994).

The error in the verdict form was not cured but exacerbated by the trial court's charge, as the trial court repeated the language of the defective verdict form in her instructions to the jury. It was error in the Court's instruction to require the jury, in their

verdict, find over and above the amount received by Respondents in settlement. The amount of damages to which the Plaintiff is entitled is a question of fact for the jury and unrelated to any prior settlement. *McCombs v. Stephens*, 252 S.C. 442, 445, 166 S.E.2d 814 (1969).

C. Prejudicial Effect.

By including the amount that Respondents have received in settlement on the verdict form, the court improperly provided approval to the Respondents' cost of repair estimate and endorsed Respondents' position that the settlement proceeds were not stucco related and not adequate compensation for the damages alleged. The Court's actions in including the settlement amount on the verdict form were erroneous and had a highly prejudicial effect on Professional Plastering.

It should have been a question for the jury to determine whether the cost of repair was less than the amount stated by Respondents. Over the objection of Professional Plastering, the Court struck the words "if any" from the verdict form, as it related to actual damages. (R. p. 1537, lines 14-20). The jury instruction and special verdict form required the jury to find over and above the eight million dollars Respondents had received in settlement. This took away from the province of the jury, any consideration of the question of whether the Respondents had been fully compensated for their damages.

Evidence was presented by Professional Plastering's expert Rob Puschek that Respondents' actual damages totaled only $4.9 million. (R. p. 1193, line 11). Even if the jury were to accept Mr. Puschek's $4.9 million proposal as the correct analysis of damages in this case, the jury was prevented from taking this evidence into consideration

in their award because they were required by the verdict form and instructions by the Court to award damages in addition to the settlement.

The issue of total damages should have been a question for the jury, and the set-off performed by the Court. The verdict form and instructions from the Court have nullified Professional Plastering's right to set-off and precluded a defendant from being protected from a plaintiff's double recovery.

The erroneous inclusion of the settlement amount on the verdict form coupled with the Court's charge concerning the verdict form were highly prejudicial to Professional Plastering and warrant a reversal.

V. DID THE TRIAL COURT ERR IN ITS INSTRUCTIONS TO THE JURY?

A. Standard of Review.

"A trial court must charge the current and correct law." *Wells v. Halyard*, 341 S.C. 234, 237, 533 S.E.2d 341, 343 (Ct. App. 2000). "To entitle an Appellant to reversal, the trial court's instructions must be not only erroneous, but also prejudicial." *Burroughs v. Worsham*, 352 S.C. 382, 392, 574 S.E.2d 215 (Ct. App. 2002)(citing *Arkwright Mills v. Clearwater Mfg. Co.*, 217 S.C. 530, 61 S.E.2d 165 (1950)). The errors in the instructions given to the jury were highly prejudicial to Professional Plastering and as such warrant a reversal.

B. Breach of Implied Warranty of Workmanlike Service.

The Court erred in its instructions given to the jury on the implied warranty of workmanlike service. During the trial, Appellant moved for a directed verdict on the claim for breach of warranty of workmanlike service on the basis that the warranty only applied to residential construction and this was a commercial project. (R. p. 1053, lines 6-

19); (R. p. 1456, line 16 – p. 1457, line 4). However, the motion was denied by the Court. (R. p. 1062, line 25 - p. 1063, line 4); (R. p. 1459, lines 15-16).

It was error for the jury to be charged on the warranty of workmanlike service, as it is inapplicable to the present case. The warranty of workmanlike service applies only to residential construction. *Kennedy v. Columbia Lumber*, 299 S.C. 335, 384 S.E.2d 730 (1989); *Sapp v. Ford Motor Company*, 386 S.C. 143, 150, 687 S.E.2d 47 (2009) ("Courts have recognized that the transaction between a builder and a buyer for the sale of a home largely involves inherently unequal bargaining power between the parties. For these reasons, we created this narrow exception to the economic loss rule to apply solely in the residential home context.") The Court in *Sapp* explained "[a]t the time of our decision in *Kennedy*, we had no intention of the exception extending beyond residential real estate construction and into commercial real estate construction. Such a progression was in error and we now correct that expansion." *Sapp*, 386 S.C. at 150. The project at issue was originally constructed as an apartment complex, which is a commercial project. Respondents' expert acknowledged that the project was a commercial undertaking and buildings were commercial buildings. (R. p. 1431, lines 19-21). Therefore, under the law set forth in *Sapp* and *Kennedy*, the warranty of workmanlike service should not apply to the present action and to give this instruction to the jury was in error and requires a new trial.

C. Cost to Repair to Existing Code.

In the instructions to the jury regarding damages, the Court charged the jury that the "cost of repair may include the expense necessary to perform the repairs to the existing building codes." (R. p. 1522, lines 23-25). There was no evidence presented

that this was necessitated. Additionally, there is no law in South Carolina which provides this.

Actual damages are properly called compensatory damages, meaning to compensate, to make the injured party whole, to put him in the same position that he was in prior to the damages received insofar as this is monetarily possible. *See Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000). The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he was in before the wrongful injury occurred. *Id.* The basic measure of actual damages is the amount needed to compensate the plaintiff for the losses proximately caused by the defendant's wrong so that the plaintiff will be in the same position he would have been in if there had been no wrongful injury. *Id.* (citing *Rogers v. Florence Printing Co.*, 233 S.C. 567,578, 106 S.E.2d 258, 264 (1958); *Hutchinson v. Town of Summerville*, 66 S.C. 442, 448 45 S.E. 8, 10 (1903)).

This charge was incorrect and requires reversal since it does not reflect an accurate measure of how damages can be awarded. The charge did not place the Respondents in a same or similar position but instead placed the Respondents in a better position. The jury was charged to award the Respondents betterments, and that is not a recognized measure of damages in South Carolina. This was error and requires reversal.

D. Depreciation.

Included in the instruction on damages, the jury was also charged that "items or elements of the damage that may be shown by the plaintiff are such things as the cost of repairs, depreciation, and incidental damages and consequential damages." (R. p. 1523, lines 6-10). Instructing the jury that the damages could include depreciation was error.

The Respondents presented no evidence of depreciation. The jury cannot and should not have been allowed to consider any depreciation since there was no evidence presented of any such alleged element of damages. Jury instructions 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). Therefore, the errors in the Court's instruction regarding damages require a new trial.

E. Negligence

The trial court committed reversible error in failing to instruct the jury on Professional Plastering's requested instructions regarding negligence.[9] Professional Plastering requested the following instructions be given to the jury on negligence which the Court failed to include in its charge:

> NEGLIGENCE AS A MATTER OF LAW- PROXIMATE CAUSE
> Even if an expert's uncontradicted testimony establishes the defendant's negligence as a matter of law. This alone does not establish liability. Negligence is actionable only if it is a proximate cause of the injury. It is for the jury to decide whether any alleged negligence on the part of the defendant proximately caused the Plaintiffs damages.
>
> *Warren Sauers v. Poulin Brothers*, 328 S.C.601, 493 S.E.2d 503, 506 (1997) citing *Hanselmann v. McCardle*, 275 S.C. 46, 267 S.E.2d 531 (1980); *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996).

(R. p. 1621).

The trial court committed reversible error in failing to include Professional Plastering's requested instructions on negligence. It was important for the jury to understand that even though expert testimony, which is uncontradicted, may demonstrate negligence on the part of the defendant, the jury must still decide whether that negligence was a proximate cause of the injury. *See Sauers v. Poulin Bros.*, 328 S.C. 601, 607, 493

[9] The Court's instruction on Negligence is contained at R. p. 1508, line 23 –p. 1511, line 24.

S.E.2d 503 (1997). In *Poulin*, the general contractor's expert testified in an action against the stucco subcontractor that the application of the stucco system violated industry standards as well as the building code causing water intrusion into the home. *Poulin*, 328 S.C. at 605. However, the stucco subcontractor did not present any expert testimony to refute these allegations. The only testimony offered was that of the subcontractor's owner, who testified only about how the stucco was applied to the home. *Id.* The Court determined that "even if the expert's uncontradicted testimony establishes [subcontractor's] negligence as a matter of law, it did not establish [subcontractor's] liability as a matter of law. Negligence is actionable only if it is a proximate cause of the injury." *Id.*

Omitting the requested charge aggravated the error committed in not allowing Professional Plastering's expert to testify as an expert. In *Bramlette v. Charter Medical Columbia*, 302 S.C. 68, 74, 393 S.E.2d 914 (1990), the appellate court found that the trial court erred in excluding the testimony of an undisclosed expert witness whose testimony would have rebutted that of plaintiff's expert. The Court further determined that defendant was prejudiced by the exclusion of the expert, as the testimony of plaintiff's expert remained uncontradicted. *Id.* The failure to give the charge was highly prejudicial to Professional Plastering and requires reversal and a new trial.

The Court's instructions to the jury were inadequate and did not apprise the jury of the law applicable to this action, which is highly prejudicial to Professional Plastering. By failing to include these requested charges in the instructions to the jury, the Court committed reversible error and reversal is warranted.

VI. DID THE TRIAL COURT ERR IN NOT GRANTING APPELLLANT'S MOTION FOR DIRECTED VERDICT ON RESPONDENTS' CLAIM OF BREACH OF WARRANTY OF WORKMANLIKE SERVICE AND MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT?

The Court erred in its denial of Professional Plastering's motion for directed verdict on the breach of warranty of workmanlike service cause of action. At the close of all evidence, Professional Plastering moved for a directed verdict on the claim for breach of warranty of workmanlike service on the basis that the warranty only applied to residential construction and the project was a commercial project. (R. p. 1053, lines 6-19); (R. p. 1456, line 16 - p. 1457, line 4). The motion was denied by the Court. (R. p. 1062, line 25 – p. 1063, line 4); (R. p. 1459, lines 15-16).

The implied warranty of workmanlike service was addressed by the Court in *Kennedy v. Columbia Lumber.* According to *Kennedy;* "A builder who contracts to construct a dwelling impliedly warrants that the work undertaken will be performed in a careful, diligent, workmanlike manner." *Kennedy v. Columbia Lumber*, 299 S.C. 335, 344, 384 S.E.2d 730, 736 (1989); *Smith v. Breedlove*, 377 S.C. 415, 422, 661 S.E.2d 67 (2008). The Court in *Kennedy* was specifically addressing theories of liability in new, residential housing. *Kennedy*, 299 S.C. 335 at 341. The Court in *Kennedy* stated:

> "In summation we hold that . . .B. An implied warranty of service attaches to a builder's construction of new **residential** housing. A home buyer purchasing from a party not the builder may ordinarily sue the builder on this warranty despite the lack of contractual privity." [*emphasis added*].

Looking at the history of the implied warranty of workmanlike service in *Rutledge v. Dodenhoff*, 254 S.C. 407, 175 S.E.2d 792 (1970), a purchaser of a home may hold the builder-vendor liable on the theory of breach of an implied warranty of workmanship. *Rutledge v. Dodenhoff*, 254 S.C. 407, 413, 175 S.E.2d 792 (1970). "The

rationale of the decisions which hold the builder-vendor of a new house liable on the basis of an implied warranty is that the seller and buyer are not on an equal footing in such a transaction." *Id.* at 413-414; *Smith v. Breedlove*, 317 S.C. 415, 422 (2008) ("The rationale behind this implied warranty is based on the relative bargaining positions of the parties.") "[T]he primary purpose of the transaction is to provide the purchaser with a habitable dwelling and the transfer of the land is secondary." *Id.*

The Court in *Sapp v. Ford Motor Company*, 386 S.C. 143, 687 S.E.2d 47 (2009) clarified that the holding in *Kennedy* is applicable only in the residential context. The Court in *Sapp v. Ford Motor, supra* at 148 stated the following: "Courts have recognized that the transaction between a builder and a buyer for the sale of a home largely involves inherently unequal bargaining power between the parties. For these reasons, we created this narrow exception to the economic loss rule to apply solely in the residential home context." The Court went on to explain "At the time of our decision in *Kennedy*, we had no intention of the exception extending beyond residential real estate construction and into commercial real estate construction. Such a progression was in error and we now correct that expansion." *Sapp, supra* at 150. As the application of the warranty of workmanlike service arises out of *Kennedy*, it is applicable solely to residential real estate.

The project at issue was originally constructed as an apartment complex by a large commercial developer working with a large commercial builder. The relationship of the owner and builder was one of equal bargaining power. Respondents' expert, Myles Glick stated in cross-examination that the project was considered commercial and governed by the commercial code (2000 IBC). *See* footnote 2 above.

Therefore, the warranty of workmanlike service should not apply to the present action. The trial court erred in failing to grant Professional Plastering's directed verdict motion on the breach of warranty of workmanlike service cause of action. In addition, the trial court erred in not granting Professional Plastering's Motion for Judgment Notwithstanding the verdict for the same reasons.

VII. DID THE TRIAL COURT ERR IN GRANTING RESPONDENT APS' MOTION FOR SUMMARY JUDGMENT?

A. Standard of Review.

In reviewing the grant of a summary judgment motion, the appellate court applies "the same standard which governs the trial court under Rule 56(c), SCRCP: 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." *Osborne v. Adams*, 346 S.C. 4, 7, 550 S.E.2d 319 (2001) (quoting *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537 (1991)).

B. Court's error in granting summary judgment.

The trial court erred in its ruling that Professional Plastering could not maintain cross-claims against APS on the basis that Professional Plastering did not hold a valid contractor's license for stucco installation. (R. p. 64).

Professional Plastering served as a stucco subcontractor for the general contractor Summit at the project. Professional Plastering, in turn, subsequently contracted with APS to perform stucco repair work at the project's breezeways. At the hearing on the motion for summary judgment, counsel for APS argued that because Professional Plastering was not a licensee, they could not hire unlicensed subcontractors. (R. p. 1599, lines 17-21).

However, the fact that Professional Plastering is not licensed in South Carolina does not bar it from asserting claims against APS.

Chapter 11 of Title 40, South Carolina Code of Laws, the "Definitions" section of this statute, "contractor" is defined as "a general or mechanical contractor regulated under this chapter." S.C. Code Ann. § 40-11-20(4) (2011). S.C. Code Ann. § 40-11-20(9) defines "general contractor" as "an entity which performs or supervises or offers to perform or supervise general construction." "General construction" is defined as "the installation, replacement, or repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property." S.C. Code Ann. § 40-11-20(8).

The statute further defines a "licensed contractor" as "an entity that is licensed by the South Carolina Contractor's Licensing Board to engage in general or mechanical contracting within the State." S.C. Code Ann. § 40-11-20 (13). An "unlicensed contractor" is defined as "an entity performing or overseeing general or mechanical construction without a license." S.C. Code Ann. § 40-11-20 (24). Professional Plastering did not act as either a general or mechanical contractor, and therefore was not required under the statute to hold a license.

S.C. Code Ann. § 40-11-270(C) provides:

> Licensees may utilize the services of unlicensed subcontractors to perform work within the limitations of the licensee's license group and license classification or subclassification; provided, the licensee provides supervision. The licensee is fully responsible for any violations of this chapter resulting from the actions of unlicensed subcontractors performing work for the licensee.

S.C. Code Ann. § 40-11-270(C). Summit, acting as general contractor, was the license holder for the Twelve Oaks project. There is no dispute between the parties that

Summit was a licensed general contractor. (R. p. 1598, lines 23-25). As such, any subcontractors on the project, including Professional Plastering and APS, performed work at the project as "unlicensed subcontractors" as permitted under S.C. Code Ann. § 40-11-270(C).

APS was a subcontractor that provided labor for work performed on the stucco in the breezeways. Tacy McGinty, the Rule 30(b)(6), SCRCP representative of Summit, admitted that Summit had agreed to provide material and supervision for work done at the breezeway, and to accept responsibility for obtaining engineering approval for the work. (R. p. 245, line 17 - p. 246, line 11).

S.C. Code Ann. § 40-11-370(C) provides that "an entity which does not have a valid license **as required by this chapter** may not bring an action either at law or in equity to enforce the provisions of a contract. ..." S.C. Code Ann. § 40-11-370(C) (Emphasis added). However, Professional Plastering was not required to have a license under this chapter. Professional Plastering lawfully operated as an unlicensed subcontractor under the license of Summit as provided for in S.C. Code Ann. § 40-11-270(C), and is therefore not barred from maintaining an action at law or in equity against APS pursuant to S.C. Code Ann. § 40-11-370(C). APS has failed to make a showing under the statute that Professional Plastering was required to hold a license, as it was never established that Professional Plastering was a contractor which fell under the definition set forth in the statute. The Court erred in making that determination, and in doing so prejudiced Professional Plastering by dismissing their claims against APS.

The Court erred in granting APS' Motion for Summary Judgment, which was highly prejudicial to Professional Plastering. For the reasons stated above, the trial court should be reversed on this ground.

CONCLUSION

For the reasons set forth above, Appellant Professional Plastering & Stucco, Inc. respectfully requests that the Court to reverse the decisions of Judge Harrington, and grant a new trial.

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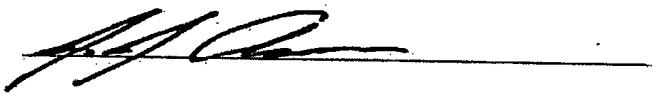

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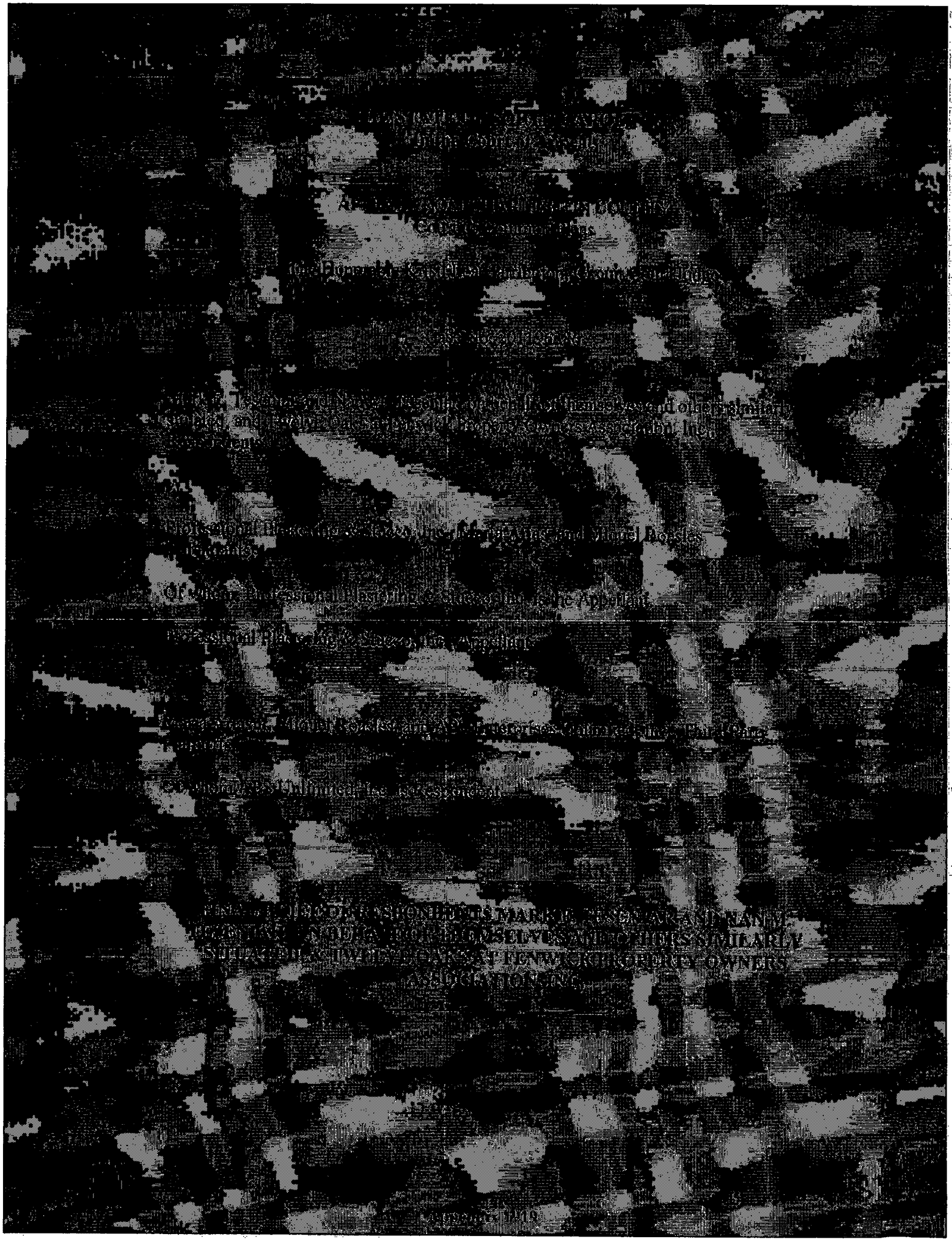

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STATEMENT OF THE CASE

Mark F. and Nan M. Teseniar, on behalf of themselves and others similarly situated ("Teseniar"), commenced this action on January 4, 2008, alleging construction defects caused damages to the buildings comprising the Twelve Oaks at Fenwick Plantation Horizontal Property Regime ("Fenwick"). (R. p. 75). The suit began against the developers, but Teseniar later amended the Complaint to add the architect, general contractor, and various subcontractors, such as Professional Plastering & Stucco, Inc. ("Professional Plastering"). The Twelve Oaks Property Owners Association ("POA") (together with Teseniar, the "Respondents") later asserted claims alleging design and construction defects caused damages to the common areas of Fenwick. (R. p. 129). All pending actions were consolidated for trial pursuant to an Order dated October 20, 2008. (R. p. 4). The case was certified as a class action on October 20, 2008. (R. p. 50). Professional Plastering was the only defendant not to settle prior to trial.

The Honorable Kristi L. Harrington conducted the jury trial on May 9, 11, 12, and 13, 2011.[1] The jury found in favor of Respondents on the two surviving causes of action, negligence and breach of warranty of workmanlike service, awarding $7,723,225.00 in actual damages. (R. pp. 65, 1549:6-1550:22). Punitive damages were included on the verdict form and inquired about by the jury during deliberations, but none were awarded. (R. pp. 65, 1819).

After the verdict, Professional Plastering made oral Motions for New Trial Absolute, Motion for Set-Off, Motion for Judgment Notwithstanding the Verdict, and Motion for New Trial Nisi Remittitur. (R. pp. 1579:15-1581:19). Written Motions and

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[1] No court was held on May 10, 2011.

related materials were later filed by Professional Plastering. (R. pp. 288, 506, 700, 703, 733). These post-trial motions were denied by an Order filed June 17, 2011. (R. p. 68). Professional Plastering then filed Motions to Alter or Amend the Judgment, which were denied in an Order filed July 19, 2011. (R. pp. 749, 69).[2] This appeal follows.

STATEMENT OF FACTS

Respondents represent the interests of the POA and, in a representative capacity, the individual homeowners of the Fenwick condominium community. (R. pp. 1027:19-25, 1047:1-15). There are 216 residential condominium units contained within 12 buildings at Fenwick. (R. pp. 1027:19-25, 1033:8-12). Respondents retained Miles Glick, an expert[3] in the fields of architecture, forensic architecture, and construction, to investigate the various problems discovered in the buildings. Glick performed destructive testing to evaluate the cause and extent of the damages. (R. pp. 806:8-808:8). Glick determined numerous deficiencies existed in the overall construction, which pervaded many different construction trades. (R. p. 808:3-8). Hence, the lawsuit originally involved numerous defendants. However, after all other trades settled with Respondents, the trial focused solely on the exterior stucco installed by Professional Plastering and damages resulting therefrom.

Professional Plastering was a subcontractor for the original construction,[4] but that

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[2] Professional Plastering filed a Cross-Claim against its subcontractor APS Enterprises, Inc. ("APS") (R. p. 210). APS moved for and was granted summary judgment as to Professional Plastering's claims. (R. p. 223, 64). Professional Plastering has appealed from that decision as well. Respondents take no position insofar as the appeal of APS's grant of summary judgment is concerned.

[3] Glick was qualified without objection. (R. p. 805:2-6).

[4] Professional Plastering later returned to Fenwick in 2003 to address various leaks that had been reported. (R. p. 868:12-16).

entity ceased doing business the same year this lawsuit was filed. (R. pp. 859:6-869:16). Professional Plastering installed roughly one-quarter million square feet of stucco at Fenwick. (R. pp. 824:15-19, 964:2-12). The product installed by Professional Plastering was the Magna Wall system.[5] Magna Wall is a proprietary stucco system that must be installed per the manufacturer's installation instructions, and Professional Plastering was certified by the manufacturer to install the system. (R. pp. 809:19-810:10). Donnie King, who owned Professional Plastering, testified his company had a duty to conform its work to the building code, the Magna Wall installation instructions, and the project's contractual requirements. (R. pp. 859:1-873:7, 876:18-880:13).

Glick testified the Magna Wall system is a water management system, as opposed to a barrier system.[6] (R. pp. 819:10-821:5). According to Glick, a water management system, like Magna Wall, should allow any water that enters to exit the wall, as it is designed, to prevent damage. (R. pp. 822:15-823:15).

With regard to the work of Professional Plastering, Glick testified to the building codes, installation instructions, and industry standards that applied to the stucco installation. (R. pp. 808:18-814:13, 822:15-824:6, 834:10-23, 1707, 1714, 1733, 1748, 1752). He found numerous deficiencies in Professional Plastering's work in violation of these applicable requirements. (R. pp. 806:8-856:23, 1412:9-1426:17, 1445:5-22). Among other things, Glick testified to flashing deficiencies and improper lapping, which allowed water to damage the underlying sheathing and studs in the wall, among other

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5 The architectural plans called for a traditional three-coat stucco application, but a substitution allowed for the use of the Magna Wall system. Repair estimates called for a return to the traditional stucco application. (R. pp. 1212:9-1213:8).

6 A barrier system does not allow water behind the cladding. A water management system is designed to control water that gets behind the cladding so it escapes before damaging the building. (R. pp. 819:10-821:5).

things. (R. pp. 822:15-823:15). "Now, just because water gets in a system, it still should be able to get out. And that is the purpose of the proper lapping." (R. p. 827:1-3). Glick discovered missing weep screeds, which should have been installed to allow water entering the system to drain from the wall before causing damage. (R. pp. 824:5-827:10).

Glick testified Professional Plastering failed to install sealant joints, or "j-beads," at the edges to prevent water intrusion, again violating the installation instructions and causing the water management system to fail. (R. pp. 833:24-834:23). Professional Plastering argued others were at fault for the missing caulk joints, but Glick opined it was "impossible" for anyone to install caulking because Professional Plastering did not first install a casing bead. (R. pp. 833:18-23, 846:16-23). According to Glick, Professional Plastering did not install flashing around the windows, although flashing was called for in its contract. (R. pp. 841:6-842:14). Glick also testified Professional Plastering covered up defective work of other tradesmen, exacerbating the problems. (R. pp. 843:5-844:5).

Everywhere Glick tested, he found the buildings at Fenwick were rotting. (R. pp. 840:24-841:5). In fact, Glick testified, "I didn't find any place that didn't have improper installation of the stucco system or rotted wood." (R. pp. 848:4-19, 851:2-5). At tested locations, the moisture content of the wood was frequently as high as fifty percent (50%) and reached 100% in at least one test site. (R. pp. 833:7-16, 837:9-21, 840:6-15).

Glick also opined about the scope of repairs needed to remedy the defects and resulting damages at Fenwick. (R. pp. 848:25-852:6). Glick's investigation related to all trades and their respective defects, but only the claims against Professional Plastering remained unsettled at trial. Respondents presented Robert Gallagher, who was qualified as an expert in the fields of general contracting and estimating without objection. (R. p. 928:11-24). Gallagher offered opinions about the cost associated with Glick's scope of

repairs. Gallagher first prepared a $15,748,225.00 estimate to remedy 100% of the problems, including the stucco defects. (R. pp. 929:7-937:5, 1769). Because Professional Plastering was the sole remaining defendant at trial, Gallagher also prepared a "stucco-only" estimate for the cost to repair just the stucco related damages, which he said would cost $8,761,443.00. (R. pp. 954:23-961:18, 1768). Gallagher further testified the homeowners at Fenwick would have to move out of their homes while the repairs were made due to safety concerns. (R. pp. 964:2-965:18).

In opposition to the evidence presented by Respondents, Professional Plastering offered the testimony, via deposition, of Claude McNabb and Tacy McGinty. McNabb was the Vice President of the developer of Fenwick when it was constructed. According to McNabb, Professional Plastering's stucco application was proper and passed his inspections. (R. pp. 1121:1-1150:10). McGinty, the project manager for the general contractor during the construction, testified the work performed by Professional Plastering was properly done in accordance with the contract documents. (R. p. 1266:21-1358:20).

On the other hand, Donnie King, the owner and president of Professional Plastering, testified that its stucco installation at Fenwick violated the building code and the Magna Wall manufacturer's installation instructions in numerous particulars. (R. pp. 869:9-899:11). King further testified that he never visited the Fenwick project to check the company's work, neither during original construction nor when repairs were later needed. (R. pp. 867:24-868:20).

Robert Pusheck, an expert in construction and restoration, also testified for Professional Plastering. He did not find any evidence Professional Plastering's work proximately caused damages to the Fenwick buildings. (R. pp. 1221:1-17, 1461:4-

1462:2). Pusheck also opined the cost to repair the stucco work was less than the $8,761,443.00 figure presented by Gallagher. The jury found in favor of Respondents, awarding damages correlating with Gallagher's total damages estimate.

ARGUMENT AND CITATION OF AUTHORITY

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DISQUALIFYING CHRIS DAWKINS AS AN EXPERT BECAUSE HE FAILED TO QUALIFY AS AN EXPERT UNDER RULE 702, SCRE

Professional Plastering offered Chris Dawkins ("Dawkins") as an expert in the areas of engineering and construction. (R. p. 1074:8-13). The trial court found Dawkins was not qualified, citing a number of reasons. (R. pp. 1074:20-1105:9, 1372:21-1374:10). Professional Plastering has failed to identify any reversible error in the trial court's decision.

A. The Applicable Standard of Review

"The qualification of an expert witness and the admissibility of his or her opinion are matters within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion and a showing of prejudice." *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 423, 717 S.E.2d 765, 775 (Ct. App. 2001). *See also Manning v. City of Columbia*, 297 S.C. 451, 377 S.E.2d 335 (1989); *McDill v. Mark's Auto Sales, Inc.*, 367 S.C. 486, 626 S.E.2d 52 (Ct. App. 2006). "An abuse of discretion occurs when there is an error of law or a factual conclusion that is without evidentiary support." *Nelson v. Taylor*, 347 S.C. 210, 214, 553 S.E.2d 488, 490 (Ct. App. 2001) (*citing Lee v. Suess,* 318 S.C. 283, 457 S.E.2d 344 (1995)). To demonstrate prejudice, there must be "a reasonable probability the jury's verdict was influenced by the

challenged evidence or the lack thereof." *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005).

It is also true "the trial courts of this state have a gatekeeping role with respect to all evidence sought to be admitted under Rule 702, SCRE whether the evidence is scientific or non-scientific." *State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009). While executing the gatekeeping role in determining admissibility, the trial court must assess the foundational requirements of qualifications and reliability and further find that the testimony will assist the trier of fact. *Id.* at 275, 676 S.E.2d at 689.

> [t]he familiar tenet of evidence law that a continuing challenge to evidence goes to "weight, not admissibility"[7] has never been intended to supplant the gatekeeping role of the trial court in the first instance in assessing the admissibility of expert testimony, including the threshold determination of reliability. Nonscientific expert testimony must satisfy Rule 702 both in terms of expert qualifications and reliability of the subject matter.

Id. at 273, 676 S.E.2d at 688.

B. Dawkins Failed to Satisfy the Expert Qualification Requirements of Rule 702, SCRE

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. Regardless of "whether an expert's testimony is scientific or nonscientific, the trial court has a gatekeeping role with respect

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[7] Professional Plastering never argued at trial that Dawkins' shortcomings went to the weight of his testimony, not its admissibility. This argument first appeared in the *Reply* brief filed in support of its post-trial motions. (R. p. 733). A party cannot use a Rule 59(e) motion (much less a Reply supporting that motion) to present an issue to the court for the first time. *Fields v. Reg'l Med. Ctr.*, 363 S.C. at 27, 609 S.E.2d at 510.

to all evidence sought to be admitted under Rule 702." *Pope*, 395 S.C. at 424, 717 S.E.2d at 775 (*citing State v. White*, 382 S.C. at 274, 676 S.E.2d at 689). As a gatekeeper,

> [t]he trial court must make three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony. First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. Next, while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. Finally, the trial court must evaluate the substance of the testimony and determine whether it is reliable.
>
> Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability. Thus, only after the trial court has found that expert testimony is necessary to assist the jury in resolving factual questions, the expert is qualified in the particular area, and the testimony is reliable, may the trial court admit the evidence and permit the jury to assign it such weight as it deems appropriate.

Watson v. Ford Motor Co., 389 S.C. 434, 446-447, 699 S.E.2d 169, 175 (2010) (internal citations omitted). Applying the foregoing analysis to the instant case, Dawkins' proffered testimony failed to meet the requirements for admissibility under Rule 702.

1. Dawkins Lacked the Requisite Knowledge, Skill and Experience to Qualify as an Expert in Engineering and Construction

Whether an individual qualifies as an expert is dependent upon the particular witness's reference to the subject in question. *Watson*, 389 S.C. at 447, 699 S.E.2d at 175. During *voir dire*, Respondents' counsel exposed the following shortcomings with regard to Dawkins' experience as it related to Fenwick and the construction defects and damages discovered therein:

- He never designed a project such as the one at issue – a twelve building, multi-family condominium project;

- He performed no actual testing of his own at the Fenwick complex at issue in this litigation;
- He never designed any kind of building in Charleston, South Carolina;
- He never designed any kind of building in Coastal South Carolina or anywhere else in South Carolina;
- He had never been qualified as an expert on any subject matter by any court of law in South Carolina;
- He has never held a license as a professional engineer in the state of South Carolina and has no knowledge of South Carolina licensure requirements;
- He was not a licensed architect in any state;
- He was not a licensed general contractor in any state; and
- He had no certifications whatsoever to support his title of "Construction Consultant," which he admits is a title he gave to himself.

(R. pp. 1075:4-1078:3). Considering Dawkins' lack of experience and scant investigation into the construction issues actually involved in this case, Respondents objected to his qualification as an expert, citing the litany of concerns articulated above. (R. pp. 1083:19-21, 1090:2-12, 1370:24-1371:2).

On appeal, Professional Plastering couches the issue as though the trial court refused to qualify Dawkins **solely** because he was not licensed in South Carolina. Framing its argument in this manner, Professional Plastering oversimplifies the issue, ignores the balance of the record, and completely distorts the trial court's actual ruling. Respondents relied on numerous grounds when objecting to Dawkins' qualification as an expert. Respondents never relied solely on the fact that Dawkins was not licensed in South Carolina. (R. pp. 1370:24-1371:2). Likewise, the trial court specifically acknowledged *Baggerly v. CSX Transportation, Inc.*, 370 S.C. 362, 374-375, 635 S.E.2d 97, 103-104 (2006), and noted:

> The request was whether or not Mr. Dawkins would be qualified as an expert at this time based upon my review the voir dire – *in camera voir dire* as well as the background of the case. I am declining to grant your request to have Mr. Dawkins qualified as expert in the areas of engineering and construction. **I am not relying solely on the fact that he is not licensed in South Carolina. I am taking all of the information as a whole, in its entirety, in order to make my decision.**

(R. pp. 1095:14-24, 1372:21-1373:7) (emphasis added). The trial court's disqualification of Dawkins was a proper exercise of its wide discretion. The decision followed lengthy examination of Dawkins by both parties and ample arguments on the issue. Further, due to the necessity of calling certain witnesses out of order, the trial record was essentially complete by the time the trial court made a final determination. Under these circumstances, the trial court completed a "broad inquiry" as envisioned by *Fields v. Haynes Waters Builders, Inc.*, 376 S.C. 545, 558, 658 S.E.2d 80, 87 (2008), and therefore, should be affirmed.

2. Dawkins' Testimony was Unreliable

For Dawkins' expert opinions to be admissible, the trial court had to find not only that he possessed the requisite knowledge, skill, experience, training or education, but also the substance of his testimony was reliable. *Watson*, 389 S.C. at 447, 699 S.E.2d at 176. Based on Professional Plastering's Brief, Dawkins presumably would have testified none of the damages at Fenwick were proximately caused by Professional Plastering's work. (App. Br.). This testimony was properly excluded because it is unreliable. Respondents incorporate the points above about Dawkins' lack of knowledge, skill, and experience necessary to qualify as an expert in the first place. Further, the record reveals Dawkins performed no destructive testing of his own. (R. pp. 1075:20-1076:9). This evidence from the trial is sufficient to support a determination that Dawkins' testimony

about the proximate cause of any damage at the Fenwick complex was unreliable. Moreover, Donnie King's numerous admissions at trial further undercut the reliability of Dawkins' opinion that Professional Plastering correctly performed the work. Accordingly, the trial court properly applied Rule 702, SCRE, and did not err in disqualifying Dawkins as an expert.

C. Any Error by the Trial Court in Refusing to Qualify Dawkins as an Expert was Harmless

Even assuming, *arguendo*, the trial court erred in failing to qualify Dawkins as an expert, Professional Plastering must establish resulting prejudice to warrant reversal. *See Owners Ins. Co. v. Clayton,* 364 S.C. 555, 563, 614 S.E.2d 611, 615 (2005) ("Error without prejudice does not warrant reversal."); *Fields,* v. *Reg.'l Med. Ctr.,* 363 S.C. at 26, 609 S.E.2d at 509 ("To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, *i.e.*, that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof."). Because any alleged error by the trial court was harmless in light of the record before this Court, the decision of the trial court must be affirmed.

According to the record, had Dawkins been qualified as an expert, he generally would have opined: (1) the work performed by Professional Plastering at the subject project was in accordance with construction documents; and (2) others were responsible for the damages at Fenwick. Respondents address these in turn.

1. Proffered Opinions About Professional Plastering's Compliance with the Contract Documents Are Both Cumulative and Contradictory to the Admissions in the Record

In Professional Plastering's opening statement, it argued that other trades were to blame for the problems at Fenwick. Professional Plastering claimed it was a small

player, merely doing what it was told to do. (Supp. ROA. pp. 1:1-2:19. Counsel told the jury to "follow the water." (Supp. ROA. pp. 3:22-4:1). Professional Plastering theorized its work was not the proximate cause of the damages. (Supp. ROA. p. 5:3-11).

Pusheck, Professional Plastering's expert in both construction[8] and restoration, acknowledged external wall damage existed underneath the stucco. However, when asked if he agreed the damage was caused, "at least in some part, by the improper application of stucco at Fenwick...," Pusheck responded, "No." (R. pp. 1221:1-17, 1461:4-1462:2). This opinion, from a qualified expert, is the same opinion Dawkins sought to convey, *to wit*, the damages were not proximately caused by Professional Plastering's work. For Dawkins to reiterate this point is cumulative. *Fields v. Haynes*, 376 S.C. at 558, 658 S.E.2d at 87; *State v. Pipkin*, 359 S.C. 322, 327-28, 597, S.E.2d 831, 834 (Ct. App. 2004); Rule 61, SCRCP.

Professional Plastering also presented the deposition testimony of Tacy McGinty. McGinty was employed by Summit Contractors, a one-time defendant in the case and the general contractor that hired Professional Plastering to install the stucco exterior. (R. pp. 1267:3-1269:2). McGinty, whose experience and background in construction were communicated to the jury, testified Professional Plastering's work was inspected during the course of the project and accepted during the submission process for payment requests. She did not recall any deficiencies in the work. (R. pp. 1269:6-1283:24, 1332:8-1358:19). This testimony plainly suggests Professional Plastering correctly performed the work. In this vein, Dawkins would have offered the same evidence the jury heard from McGinty, rendering it cumulative. Curiously, however, McGinty's

[8] This is one of the same fields of expertise in which Professional Plastering sought to qualify Dawkins, highlighting the duplicitous nature of their proffered qualifications.

testimony and Dawkins' presumed testimony cannot be reconciled with Donnie King's clear admissions to numerous defects in the work.

King admitted Professional Plastering had a duty to ensure its work conformed to all applicable building codes, and he also admitted its work failed to meet code in several respects. (R. pp. 869:9-873:7, 876:18-880:13). Dawkins would have attributed various deficiencies in the stucco to the building substrate in an effort to shield Professional Plastering. (R. pp. 1571:3-1573:12). But, King admitted Professional Plastering had a duty to inspect the building substrate prior to installing the stucco to ensure the underlying work was proper. (R. pp. 880:8-881:5). King also admitted Professional Plastering's work concealed underlying defects, such as the absence of kickout flashing. (R. pp. 881:6-882:23). Dawkins suggested Professional Plastering would have no notice of missing flashing or other underlying defects discussed frequently at trial. (R. pp. 1563:10-1564:13). King, on the other hand, testified he could visually recognize the presence of kickout flashing on a building given his lifetime of experience. (R. pp. 903:16-904:5).

The admissions from King did not stop there:

- He admitted Professional Plastering should have installed casing beads, but that they were not installed as required;
- He admitted Professional Plastering should have installed weep screeds to prevent wood rot by allowing the stucco system to drain water that entered the wall, but weep screeds were missing;
- He admitted Professional Plastering should have installed j-molds in appropriate locations but failed to do so;
- He admitted it was a violation of the manufacturer's installation instructions for stucco to be in contact with the roofing shingles, a condition that was shown to exist in photographs from the site;

- He conceded it was improper for Professional Plastering not to have removed excess paper between the laths, preventing the lapped stucco layers from integrating as required, which is a building code violation; and

- He admitted various aspects of Professional Plastering's work failed to comply with the NER report, which constitutes a building code violation.

- He admitted that Professional Plastering warranted and guaranteed its work would be free from all faults and defects.

(R. pp. 889:10-898:20, 915:25-917:16). In fact, King conceded one or more aspects of Professional Plastering's work violated the applicable building code. (R. pp. 898:13-899:11, 1492:20-25). King then confessed:

> Q: The only question for the jury is **how many violations and how much**, correct?
>
> A: **Yes sir.**

(R. p. 899:12-14) (emphasis added).

Considering these admissions, it strains credibility to suggest the verdict would have been any different had Dawkins been allowed to take the stand and essentially disagree with the admissions of the party who hired him to testify. King's admissions also undermine any supposed reliability of Dawkins' opinion that Professional Plastering correctly performed the stucco installation. Accordingly, any error in refusing to qualify Dawkins was harmless. *Cf. Powers v. Temple*, 250 S.C. 149, 156 S.E.2d 759 (1967) (where the verdict of any fair jury would have been the same even if no error had been committed, the error is harmless and not prejudicial).

2. Proffered Opinions That Others Contributed to the Damages at Fenwick are Cumulative to the Evidence in the Record

Respondents conceded throughout the trial that **numerous** trades were at fault in causing the estimated $15,748,225.00 in damages at Fenwick. (R. pp. 798:2-25, 1769).

In opening statements, Respondents said, "We had many other issues and many defendants. They had roofing problems, framing problems, windows, and mechanical problems, and happily we've been able to resolve those problems with these other defendants. And that's why [the other defendants are] not here right now." (R. p. 798:10-19). Glick testified: "There were a lot of construction deficiencies in many categories. Russell Meese was there to investigate the roof. Mr. Lenny Greene was a mechanical engineer looking at mechanical problems. And Mr. Tom Carlson, with CalLite (sic) Construction, who's assisting me with the crews, to cut these holes...." (R. p. 808:3-8). Professional Plastering questioned Glick extensively about the problems he found in the work of other tradesmen. (R. pp. 999:3-1026:8). Glick admitted others were responsible for some of the problems and pointed out that those trades were accountable to Respondents for their mistakes. (R. pp. 1025:1-1026:6).

Jeffrey Jessup testified the POA got involved in the suit to protect its interest in damaged common elements. (R. p. 1034:5-21). Jessup admitted to problems with many aspects of the work, not just the defective stucco. (R. pp. 1042:15-1043:18). For example, there were building deficiencies in the areas of the complex where HardiPlank (as opposed to stucco) was used on the exterior. (R. pp. 999:24-1000:10). Interestingly, the rot was more severe under Professional Plastering's stucco than was observed beneath the HardiPlank, an observation Professional Plastering's expert made as well. (R. pp. 1001:1-4, 1213:12-19).

Respondents **never** argued Professional Plastering was the sole cause of all of the problems. In fact, the entire trial was conducted so as to repeatedly inform the jury of numerous other defendants who had already reached a settlement (to the tune of

$8,025,000.00) with Respondents for their part of the more than $15 Million in damages at Fenwick. Respondents' clear theme at trial was to seek damages from Professional Plastering for the difference between the $15,748,225.00 repair estimate Gallagher presented and the $8,025,000.00 Respondents received in settlement funds from all other parties. Professional Plastering consented to this presentation of the case, never once objecting during opening statements, the testimony at trial, and Respondent's summation, all of which followed this theme. To the extent Dawkins intended to tell the jury other tradesmen caused damages at Fenwick, Respondents repeatedly accomplished this task for him. Additional testimony by Dawkins that others were at fault would have been cumulative to the undisputed evidence presented at trial. *Fields v. Haynes*, 376 S.C. at 558, 658 S.E.2d at 87; Rule 61, SCRCP.

3. Any Prejudice Claimed by Professional Plastering was Preventable Because it Designated Multiple Experts in Discovery

Any prejudice Professional Plastering claims as a result of Dawkins' disqualification was preventable had it elected to call additional experts designated for trial. Professional Plastering's Expert Witness Designation identifies Wade Anderson, a professional engineer licensed in the State of South Carolina, as a proposed expert witness. The designation also identifies Professional Plastering's owner, Donnie King, as an expert to testify "within the scope of his expertise." (R. p. 713, 723). Despite identifying these "experts," Professional Plastering chose not to elicit opinions from either of them at trial. Consequently, Professional Plastering caused any prejudice it claims to have suffered at trial.

The gravamen of Professional Plastering's argument relating to Dawkins' disqualification boils down to its belief that the jury was forced to accept Glick's

testimony because his opinions were not challenged by a competing expert. This theory ignores the trial court's instructions regarding experts. The trial court advised, "That does not mean that you must accept the [expert's] opinion. It is simply evidence for you to use in any way that you see fit." (R. p. 805:7-21). Before the jury began deliberations, the trial court also instructed, "An expert witness' testimony is to be given no greater weight than that of any witness simply because that witness is an expert. Further, you are not required to accept an expert's opinion even though it is not contradicted." (R. pp. 1506:13-1507:21). Even if one presumes Glick's testimony was "uncontradicted," such does not render his testimony "undisputed." *See Black v. Hodge*, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991) (addressing this very issue and plainly stating that a jury need not believe uncontradicted testimony).

Here, Professional Plastering certainly disputed Respondents' evidence at trial. (R. pp. 1221:1-17, 1461:4-1462:2). The jury was free to decide what testimony to accept. Considering King's numerous admissions to code violations in Professional Plastering's work, there is abundant evidence in the record to support the verdict. No reasonable jury would have reached a different verdict, even if Dawkins had testified. Accordingly, the trial court should be affirmed.

D. As an Additional Sustaining Ground, Dawkins' Testimony was Properly Excluded Due to Professional Plastering's Discovery Violations

During *voir dire* of Dawkins, it was discovered he maintained a file of his work, at least some of which he said had been provided to counsel for Professional Plastering. (R. pp. 1082:25-1083:18). Respondents had previously served written discovery requests, the scope of which required Professional Plastering to produce copies of any such files kept by Dawkins. (R. pp. 1090:14-22, 1100:21-1101:11). However, the only

item ever produced by Professional Plastering was a copy of Dawkins' *curriculum vitae.* (R. pp. 1090:14-22, 1100:21-1101:11, 1104:14-1105:3). Respondents were never provided with any of Dawkins' actual work, including his field notes from whatever investigations he undertook. This was not an isolated occurrence during the trial.[9]

There is a continuing duty on the part of a party from whom information is sought through discovery to supplement its responses to discovery with documents or information. *Bensch v. Davidson*, 354 SC 173, 182, 580 S.E.2d 128, 133 (2003). A party's disclosure of information before trial is designed to avoid surprise and to promote decisions on the merits after a full and fair hearing. *Id.* (*citing Reed v. Clark*, 277 S.C. 310, 286 S.E.2d 384 (1982)). "When it appears a violation of [discovery] has occurred, it lies within the discretion of a trial court to decide what sanction, if any, should be imposed." *Bensch,* 354 SC at 182, 580 S.E.2d at 133.

In its Brief, Professional Plastering offers inconsistent and contradictory explanations for why the materials were never provided to Respondents. In one breath, Professional Plastering blames Respondents because, "Respondents never contacted defense counsel **to arrange a review of documents" possessed** by them. (App. Br.) (emphasis added). Inexplicably, Professional Plastering then also claims in its Brief, just as it did at trial, that "Counsel for Professional Plastering informed the Court that they had **never received documents** from the file of Mr. Dawkins." (App. Br.) (R. pp. 1101:16-20, 1102:6-11). These assertions cannot coexist, and Professional Plastering has yet to explain how Respondents could have made arrangements with its counsel to review documents its counsel never received.

Viewing the record as a whole, Professional Plastering proffered an expert who

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[9] An additional discovery violation is discussed in Section II of this Brief.

lacked material qualifications, performed no destructive testing, had never designed any structure in South Carolina, was unlicensed in South Carolina, would have offered cumulative testimony, and failed to produce material documents relating to his opinions until the third day of trial. The trial court was well within its broad discretion to exclude Dawkins as an expert in the case under these circumstances.

II. THERE WAS NO REVERSIBLE ERROR IN THE TRIAL COURT'S EXCLUSION OF PROFESSIONAL PLASTERING'S "STUCCO-ONLY" ESTIMATE WHERE THE DOCUMENT WAS CUMULATIVE TO THE TESTIMONY AT TRIAL, WAS NOT PRODUCED IN DISCOVERY, AND WAS NOT A "STUCCO-ONLY" ESTIMATE

Professional Plastering offered into evidence a purported "stucco only" repair estimate prepared by Pusheck. (R. p. 1664). Just before Pusheck testified, Professional Plastering handed Respondents' counsel a "thumb-drive" containing material documents prepared by Pusheck that were not produced in discovery. Respondents objected, seeking to prevent Pusheck from testifying about his unproduced findings. When Respondents called this additional discovery violation to the trial court's attention, Professional Plastering explained: "The only thing I can say, Your Honor, is it was our understanding that this material had been produced. If it hasn't been, then –[.]" The discussion was cut short by the trial court's immediate demand to see all counsel in chambers. (R. pp. 1151:18-1153:4). Following the chambers conference, Respondents were permitted to *voir dire* Pusheck about the materials in his file. (R. pp. 1153:18-1167:19). Thereafter, Respondents renewed their objection to the newly presented estimate. (R. pp. 1167:15-1168:4).

Importantly, Respondents objected only to the admissibility of **the document**. Thus, Pusheck went on to testify at length about the **substance** of his expert opinions about the cost of repair from Professional Plastering's point of view. (R. pp. 1169:1-

1210:25). Pusheck's testimony included a thorough explanation of the basis for his purported "stucco-only" estimate. (R. pp. 1192:14-1194:15, 1199:21-1210:25). Further, Pusheck's stucco-only estimate was displayed on the court's overhead projection system for the jury's view during his testimony. When Professional Plastering sought once more to admit the document, Respondents renewed their objection. Following a bench conference,[10] the trial court sustained the objection and excluded the document from evidence.

A. The Applicable Standards of Review

Rulings on the admission or exclusion of evidence lie within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion resulting in prejudice to the appealing party." *Fields v. Reg'l Med. Ctr.*, 363 S.C. at 25, 609 S.E.2d at 509. *See also Pike v. S.C. Dept. of Transp.*, 343 S.C. 224, 234, 540 S.E.2d 87, 92 (2000); *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997); *Hanahan v. Simpson*, 326 S.C. 140, 156, 485 S.E.2d 903, 911 (1997); *Timmons v. S.C. Tricentennial Commn.*, 254 S.C. 378, 405, 175 S.E.2d 805, 819 (1970); *Powers v. Temple*, 250 S.C. at 160, 156 S.E.2d at 764; *Means v. Gates*, 348 S.C. 161, 166, 558 S.E.2d 921, 923 (Ct. App. 2001). A trial court's exercise of its discretionary powers with respect to sanctions imposed in discovery matters will be interfered with by the Court of Appeals only if an abuse of discretion has occurred. *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987); *Clark v. Ross*, 284 S.C. 543, 328 S.E.2d 91 (Ct. App. 1985). The burden is upon the appealing party to demonstrate the

[10] It does not appear that the precise arguments raised by the parties during this bench conference nor all of the grounds for the trial court's decision were ever completely placed on the record. *See York v. Conway Ford, Inc.*, 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997) (arguments raised during an off the record bench conference which are not made a part of the record are not preserved for review). (R. p. 1210:20-25).

abuse of discretion. *Clark*, 284 S.C. at 570, 328 S.E.2d at 107. In addition to demonstrating an abuse of discretion, the appealing party must also demonstrate prejudice resulting therefrom in order to establish an error of law. *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989).

B. The Exclusion of Professional Plastering's Purported "Stucco-Only" Document was a Proper Exercise of the Court's Discretion on Matters of Evidence and Discovery Violations

A discovery sanction should be aimed at the specific misconduct of the party sanctioned. *Balloon Plantation v. Head Balloons*, 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990). Furthermore, whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules of Civil Procedure. *Downey*, 294 S.C. at 45, 362 S.E.2d at 318. *See also Kershaw Co. Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990). The trial court allowed Pusheck to testify completely about his "stucco-only" estimate, and the jury was allowed to see the actual document during Pusheck's testimony as a demonstrative exhibit. Because Professional Plastering did not produce the document until immediately prior to calling Pusheck as a witness, the trial court had discretion exclude the document while allowing Pusheck to testify fully to its subject matter. This is especially true where the document was published to the jury during Pusheck's testimony. The trial court's ruling had the effect of a carefully tailored sanction against the failure to produce the document, protecting the Respondents' rights to receive requested discovery. *Balloon Plantation,* 303 S.C. at 154, 399 S.E.2d at 440; *Downey*, 294 S.C. at 45, 362 S.E.2d at 318.[11]

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[11] Professional Plastering suggests it was treated unfairly because Respondents were allowed to admit a "stucco-only" estimate produced prior to trial. This argument is unavailing. Professional Plastering's only objections to Respondents' "stucco-only"

Additional grounds support the exclusion of Pusheck's "stucco-only" estimate. Professional Plastering mischaracterizes the document as a "stucco-only" comparison—it is nothing of the sort. Rather, the document itemizes repair costs associated with several items that are unrelated to stucco, such as windows and doors. (R. pp. 1163:8-21, 1664). Further, the document categorizes certain costs as "betterments," such that the document effectively "argues" points for the defense. (R. p. 1162:2-10). While Professional Plastering may have desired an "apples to apples" comparison, that is not what its exhibit represented.[12] In addition to addressing trades that were not "stucco-only," the document had the effect of pitting the party's experts against one another. *See State v. Kelsey*, 331 SC 50, 502 S.E.2d 63 (1998) (improper "pitting" constitutes reversible error). Because Professional Plastering's exhibit was not truly a "stucco-only" estimate, it was not proper rebuttal evidence, regardless Professional Plastering's urging on appeal. *Compare State v. McEachern*, Op. No. 4981 (Ct. App. 2012) (holding when a party introduces evidence about a particular matter, the other party is entitled to introduce evidence in explanation or rebuttal thereof).

C. Any Error in Excluding the "Stucco-Only" Estimate was Harmless

Perhaps the best reason Professional Plastering's argument fails is that any

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estimate were for lack of foundation and that the damages were speculative. These very same objections were made to Respondents' total repair estimate, produced long before trial. (R. pp. 955:6-17, 992:12-993:5). As evidenced by Pusheck's preparation of his own "stucco-only" estimate prior to trial, Professional Plastering cannot (and did not) complain it was somehow prejudiced by the production date of Respondents' stucco-only estimate. The same is not true of Respondents, who were utterly surprised at trial by Pusheck's new document. Professional Plastering's argument is a red hearing that has no merit.

12 Pusheck had already prepared and submitted a "line-by-line breakdown" to compare to Gallagher's $15 Million repair estimate, which would have included the stucco repairs. (R. pp. 1154:8-1155:6; 1813).

alleged error was harmless. Professional Plastering cannot show prejudice resulting from the exclusion of the document embodying Pusheck's "stucco-only" estimate. *See Owners Ins. Co. v. Clayton,* 364 S.C. at 563, 614 S.E.2d at 615 ("Error without prejudice does not warrant reversal."); *Fields v. Reg'l Med Ctr.,* 363 S.C. at 26, 609 S.E.2d at 509 (noting an appellant must prove both the error of the ruling and the resulting prejudice, *i.e.*, that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof).

As mentioned, the exclusion of the exhibit in no way precluded Pusheck from testifying at length about his opinions as the cost to repair the stucco and resulting damages. Therefore, it is patently incorrect for Professional Plastering to suggest that it was denied the ability to present its "stucco-only" estimate. This is especially true where Pusheck's "stucco-only" estimate was displayed to the jury and discussed in detail. In addition to Pusheck's testimony, counsel for Professional Plastering republished the exhibit during closing arguments. (R. pp. 1487:20-1491:5). In the Court of Appeals' decision from the case of *Clark v. Cantrell,* 332 S.C. 433, 504 S.E.2d 605 (Ct. App. 1998) (aff'd by *Clark v. Cantrell,* 339, S.C. 369, 529 S.E.2d 528 (2000)), this Court found no error in the exclusion of a diagram prepared by an expert where the information in the diagram had already been provided to the jury, rendering the diagram cumulative. *Id.* at 450, 504 S.E.2d at 614. Footnote 9 of this Court's analysis in *Clark v. Cantrell* is directly on point with the facts of this case, stating: "The trial court allowed Cantrell's expert to use the diagram as a demonstrative exhibit, but did not allow the jury to use the diagram during deliberations." *Id.* Citing Rule 61, SCRCP, the exclusion of the diagram was harmless. The same result applies here.

In addition, prior to offering its "stucco-only" estimate, Professional Plastering

admittedly provided Respondents with "an estimate with a breakdown of the costs" associated with the various repairs at Fenwick. Professional Plastering could have offered this breakdown into evidence, but chose not to do so. (App. Br. p. 27).

Finally, Professional Plastering's primary argument revolves around the alleged prejudice Professional Plastering suffered due to "the lack of an exhibit to which the jury could refer or use to perform an analysis of what a reasonable cost of repair ... would be." (App. Br.). The jurors viewed the very exhibit in question during Pusheck's testimony and were allowed to take notes during the course of the trial. (R. pp. 1487:20-1491:5). Professional Plastering fully explained Pusheck's methodologies. (R. pp. 1174:22-1194:15, 1199:21-1216:21, 1253:13-1257:10). It also fully cross-examined Respondents' repair expert about his own estimate. (R. pp. 965:25-991:13). Unquestionably, the jury had ample opportunity to hear and weigh the positions of each party's experts on the issue of damages as well as each party's counsel during summation. Under these circumstances, it is mere conjecture to suggest the inability of the jurors to hold Professional Plastering's "stucco-only" exhibit in their hands during deliberations somehow prejudicially affected the outcome of the trial. Accordingly, the trial court should be affirmed. *Fields v. Haynes*, 376 S.C. at 558, 658 S.E.2d at 87; *Clark v. Cantrell*, 332 S.C. at 450, 504 S.E.2d at 614; Rule 61, SCRCP.

III. THE TRIAL COURT COMMITTED NO ERROR IN DENYING PROFESSIONAL PLASTERING'S MOTIONS FOR SET-OFF AND A NEW TRIAL WHERE THE ENTIRE TRIAL WAS DEVELOPED AROUND RESPONDENTS' REQUEST FOR DAMAGES IN ADDITION TO THE SETTLEMENT AMOUNTS ALREADY PAID BY OTHERS, WHICH THE JURY AWARDED UPON CLEAR INSTRUCTIONS AND WITH COMPLETE KNOWLEDGE OF THE PRIOR SETTLEMENTS

The trial court correctly denied Professional Plastering's Motion for Set-Off and Motion for a New Trial Remittitur. The evidence firmly demonstrates the damages

awarded were intended by the jury to be in addition to the total settlement previously received from the settling defendants.

A. The Record Supports the Trial Court's Decision to Deny Professional Plastering's Motion for Set Off

"A set-off is not necessarily founded upon any statute or fixed rule of court but grows out of the inherent equitable jurisdiction of the court." *Rutland v. S.C. Dep't of Transp.*, 390 S.C. 78, 85-86, 700 S.E.2d 451, 454-55 (Ct. App. 2011) (*citing Welch v. Epstein*, 342 S.C. 279, 313, 536 S.E.2d 408, 425 (Ct. App. 2000)). As noted by Professional Plastering, the purpose of a set-off "is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained which has already been paid him." *Smalls v. S.C. Dep't of Educ.*, 339 S.C. 208, 219, 528 S.E.2d 682, 688 (Ct. App. 2000). However, a set-off is not required in all circumstances. "The trial court's jurisdiction to set-off one judgment against another is equitable in nature and should be exercised **when necessary to provide justice between the parties.**" *Rutland*, 390 S.C. at 86, 700 S.E.2d at 456 (emphasis added). "Therefore, such motions [for set off] are addressed to the discretion of the court—a discretion which should not be arbitrarily or capriciously exercised." *Welch*, 342 S.C. at 313, 536 S.E.2d at 426. A trial court's reallocation of prior settlements "must yield to fairness and justice." *Id.*

Respondents conducted the trial, from start to finish, according to one simple theme: (i) inform the jury of the **total** amount of damages suffered; (ii) inform the jury of how much was received in settlements from other defendants for their own respective fault; and (iii) ask the jury to find Professional Plastering **responsible for the difference** between those two figures. Professional Plastering never objected to Respondents' factual development of this theme at trial.

During opening statements, Respondents told the jury about the nature of the case and, specifically, that the overall repairs to the project would cost in excess of $15,000,000.00. (R. pp. 798:10-799:8). Without objection, Respondents further explained the settling defendants had already paid approximately $8 Million of the total $15 Million cost of repair, leaving Professional Plastering responsible for the difference. "That's what we are here about." (R. p. 799:1-24). This theme permeated the trial, without objection.

Gallagher's two damages estimates were entered into evidence. (R. pp. 1768, 1769). First, Gallagher presented his **total cost** to repair **all** of the various deficiencies and resulting damages. His total figure came to $15,748,225.56, accounting for the alleged negligence of all defendants. (R. pp. 929:2-930:8, 932:13-954:22, 1769). After all other defendants settled, Gallagher prepared for trial his "stucco-only" estimate, representing the estimated costs to correct the defects and resulting damages caused by Professional Plastering. (R. pp. 954:23-955:17). Gallagher's "stucco-only" estimate found Professional Plastering responsible for $8,716,443.00 in repair costs to remedy the defective stucco and resulting damages. (R. pp. 955:24-965:20).

Jeffrey Jessup testified in his capacity as a Fenwick homeowner and the POA board president. (R. p. 1027:7-25). Jessup told the jury about the $15.7 Million in repair costs that Respondents were facing due to all of the construction defects. (R. pp. 1035:18-1036-16). Jessup then testified, still without objection, about the $8,025,000.00 in settlements Respondents had already received from others before the trial proceeded against Professional Plastering. (R. pp. 1036:17-1037:14). Jessup's testimony was followed by Respondent and class representative Mark Teseniar. Teseniar asked the jury

to find Professional Plastering responsible for its share of the damages due to the defective stucco application, per Respondents' theme. (R. pp. 1046:1-1048:18). Again, there was no objection to this method of trial.

During summation, Respondents quite candidly reminded the jury:

> Let me talk to you about the damages. We have an estimate in evidence, Plaintiff's Exhibit Number 15, the ProCon estimate, $15.7 Million. This is an older estimate. It applied to everybody who was in the case. You have frankly been told repeatedly this week that the plaintiffs have been paid $8 Million dollars.
>
> In opening, Mr. Leath asked you for the difference. **He said he would like for you to award us $15.7 Million less the eight million that we've been paid. That's $7.7 Million.** Just to make sure everybody was correct about the numbers, Mr. Gallagher also produced what's been admitted into evidence as Plaintiff's Exhibit No. 14. It itemized the stucco-related-only damages in this case. It totals $8.7 Million, **a million dollars more than what we have remaining on the original estimate.**
>
> **We're not asking for that extra million. We're still only asking for what haven't been paid of the total job, even though the total stucco damages are documented by Mr. Gallagher at $8.7 Million.**

(R. pp. 1494A:7-1494B:7) (emphasis added). There is no confusion in what was asked of the jury. Respondents further explained:

> Now, if you'll recall, the analysis done by Mr. Gallagher was that the stucco itself, just that portion of it, repair would cost $8.7 Million. But we're not asking for that. We're asking for less than that, and Mr. Lucey explained that.
>
> **And why is that? Because it wouldn't be fair and wouldn't be appropriate for us to ask you for more than the total repair on these buildings, which is $15,778,000.00 as you'll see in Mr. Gallagher's estimate. And, yes, some of the other folks have paid some of Professional Plastering's part.**

(R. p. 1496:10-22) (emphasis added). Respondents boiled it down even further, asking the jury to award the difference between Gallagher's total repair estimate and the monies received in settlement—in other words, Respondents requested the precise amount of

$7,723,225.00. "I'll say it again, $7,723,225.00." (R. p. 1499:2-8). Again, there was no objection. The verdict clearly demonstrates the jury understood and accepted Respondent's theme of the case: (i) $15,748,225.00 in total damages, less (ii) $8,025,000.00 in settlements received, equals (iii) $7,723,225.00, the exact amount requested, and the exact amount awarded. (R. p. 65). There simply is no basis for a set-off where the evidence overwhelmingly demonstrates the damages found by the jury are in **addition to** the settlements previously received.

The simplest and only logical interpretation of the verdict reveals the jury accepted Gallagher's $15,748,225.00 total damages assessment, as requested in closing arguments. A set-off for the prior settlements was then applied by the jury on the verdict form, to the penny.[13] It is illogical to suggest Respondents have somehow recovered twice for the same damages under these conditions. The evidence presented, the arguments of counsel in summation, the instructions to the jury, and the clear language of the verdict form all were consistent with the conduct of the trial and resulting verdict. (R. pp. 1472:2-1473:5, 1474:18-1475:21). Professional Plastering has already received the set-off it seeks. To apply yet another set-off would be to ignore the jury's clear verdict and the overwhelming evidence in the record.

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[13] Professional Plastering's reliance on cases that require a set-off as a matter of law is misplaced. (App. Br. p. 30). As stated in *Powers v. Temple*, "[w]here there are **no** questions of fact concerning settlement agreement[s] for the jury's determination, evidence thereof should be excluded from the consideration of the jury, and [set-off] shall be applied by the court. 250 S.C. 149, 155, 156, S.E.2d 759 (1967) (emphasis added). Thus, only where there are no questions of fact as to settlement agreements, will the right of set-off arise as an operation of law. *Id.* Stated differently, the right to set-off does not arise as an operation of law where, in cases such as here, questions of fact exist as to the exact injury the settlement funds were paid to compensate.

Although the above discussion is dispositive of the issue raised on appeal, certain of Professional Plastering's contentions demand a response. First, and contrary to Professional Plastering's baseless assertion, the trial court did not "require" the jury to award damages in excess of the settlement amount already received by Respondents (App. Br. p. 31). The trial court instructed, "The verdict form indicates that [Respondents] have received a total of $8,025,000 in settlements in this matter from other parties. Therefore, **any** damages that you award [Respondents] would be in addition to those damages already received." (R. pp. 1527:4-1528:14) (emphasis added). The trial court further twice instructed that if the jury found in favor of Respondents on either cause of action, "you would then state the amount of damage, **if any**, sustained by the plaintiff." (R. pp. 1520:5-8, 1528:8-14) (emphasis added). The instructions did not stop there. "**If** you answer this issue in any amount, you should award such damages as you find from the preponderance of the evidence is a fair compensation for **any** damage that plaintiff has sustained as a proximate result of the negligence of the defendant." (R. p. 1521:6-11) (emphasis added). For sake of argument, the jury could have found in favor of Professional Plastering. The evidence obviously convinced the jury otherwise. However, nothing from the trial, jury instructions, or verdict form "required" the jury to award damages of any particular amount or even at all.

Assuming, *arguendo,* Professional Plastering was entitled to any set-off other than that which was provided for on the Verdict Form, it has already received one. Gallagher testified the cost to repair damage related to the stucco deficiencies would cost $8,761,443.92. Because the verdict was only $7,723,225.00, Professional Plastering has effectively received a set-off of $1,038,218.92. This is just what Respondents explained

in closing, informing the jury they were not seeking the full amount of the "stucco-only" damages because it would not be fair to Professional Plastering for Respondents to recover more than was necessary to cover total cost of repair, and other settling defendants had already paid for part of Professional Plastering's share of the "stucco-only" costs. (R. p. 1496:10-22). Fairness and justice lie therein.

Finally, Professional Plastering argues outside the trial record in its Brief by presenting a list of settlement details specific to other defendants who settled prior to trial. (App. Br. pp. 32-36). The details of this information were never presented as evidence during the trial of the case and should not be considered now. *See Cobb v. Benjamin*, 325 S.C. 573, 581, 482 S.E.2d 589, 593 (Ct. App. 1997) (noting materials not included at the trial will not be considered on review).

B. The Record Supports the Trial Court's Decision to Deny Professional Plastering's Motion for New Trial Remittitur

As an initial observation, Professional Plastering has abandoned this argument. Professional Plastering references its Motion for New Trial Remittitur in the title of the third issue presented on appeal, but gives no analysis to this particular motion in its Brief. Instead, Professional Plastering's Brief focuses only on the motion for set-off. Only a single sentence, without any authority or analysis, is contained in Professional Plastering's Brief relative to the Motion for New Trial Remittitur. (App. Br. p. 36). *See Hollis v. Stonington Development, LLC*, 394 S.C. 383, 406-07, 714 S.E.2d 904, 916 (Ct. App. 2011) (noting argument is abandoned where the appellant fails to cite any case law and only conclusory statements are made). *See also* Rule 208(b)(1)(D), SCACR (requiring discussion and citations of authority for each issue on appeal). Regardless, there was no error in denying Professional Plastering's motion.

The grant or denial of a motion for new trial *nisi remittitur* rests within the discretion of the trial judge, whose decision will not be disturbed on appeal unless the findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. *Proctor v. D.H.E.C.*, 368 S.C. 279, 628 S.E.2d 496 (Ct. App. 2006). Compelling reasons must be given to justify invading the jury's province by granting a new trial *nisi remittitur*. *Id.* (*citing Pelican Bldg. Ctrs. v. Dutton,* 311 S.C. 56, 61, 427 S.E.2d 673, 676 (1993)). The consideration for a motion for a new trial *nisi remittitur* requires the trial judge to consider the adequacy of the verdict **in light of the evidence presented**. *Id.* (emphasis added).

The record plainly supports the jury's verdict. The damages awarded represent the exact difference between the $15,748,225.00 in total damages suffered by Respondents (as supported by the testimony and Plaintiffs' Exhibit No. 15) and the $8,025,000.00 in settlements received from other parties. There was evidence that the verdict is $1,038,218.92 **less than** the amount cost to correct Professional Plastering's defective work and damages it caused. The jury's determination of damages "is entitled to substantial deference." *Proctor*, 368 S.C. at 321, 628 S.E.2d at 519 (*citing Harrison v. Bevilacqua,* 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003). Professional Plastering's disappointment with the jury's acceptance of Respondents' repair estimates does not render the verdict excessive.

Based upon the foregoing, the trial court did not abuse its discretion in denying Professional Plastering's Motion for Set-Off and Motion for a New Trial Remittitur, and this Court should affirm the decision of the trial court.

IV. THE TRIAL COURT COMMITTED NO REVERSIBLE ERROR BY INCLUDING THE SETTLEMENT AMOUNT RECEIVED BY RESPONDENTS ON THE VERDICT FORM AND IN ITS RELATED JURY CHARGE, BECAUSE THE VERDICT FORM AND THE CHARGE CONFORM TO THE EVIDENCE AT TRIAL

"The determination of whether a special verdict should be submitted to the jury is within the sound discretion of the trial judge, and an appellate court will only reverse upon a finding of an abuse of that discretion. An abuse of discretion occurs when a ruling is based on an error of law or a factual conclusion without evidentiary support." *SC DOT v. First Carolina Corporation of SC*, 372 S.C. 295, 300, 641 S.E.2d 903, 907 (2007) (internal citations omitted).

Respondents incorporate the discussion and analysis above in Section III inasmuch as it also supports the inclusion of the settlement amounts on the verdict form and the instructions given to the jury relating thereto. As discussed above, Professional Plastering consented to Respondents' theme of the case, having never objected to the jury being repeatedly informed of the prior settlements. Having consented to this method of trial, Professional Plastering cannot complain at this late stage. *Cf. State v. Benton*, 338 S.C. 151, 526 S.E.2d 228 (2000) (holding an issue conceded in the trial court cannot be argued on appeal); *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998) (same). Professional Plastering never objected as the jury was repeatedly reminded of the prior settlements. It also never objected when the jury was asked during the testimony and in closing to award damages for the difference between the total damages figure and the prior settlements. The verdict form and instructions conform to this evidence and method of trial. Professional Plastering cannot complain of this result, after the fact.

Viewed differently, Professional Plastering has suffered no prejudice, because Respondents effectively conceded Professional Plastering's request for set-off and conducted the trial in a manner ensuring the set-off was applied by the jury if damages were awarded at all. Both the verdict form and the trial court's instructions were consistent with one another and conform to the evidence at trial. Thus, the verdict form was neither confusing nor misleading. *See State v. Covert*, 368 S.C. 188, 214, 628 S.E.2d 482 (Ct. App. 2006) (the prejudicial effect of a defective verdict form is cured where the trial court provides clear and cogent jury instructions). Such was the case in *SC DOT v. First Carolina Corp.*, where the Supreme Court held, "Reading the verdict form in conjunction with the jury instructions, we find that any possible confusion or misapprehension caused by the verdict form was remedied by the instructions from the court." *Id.* at 304, 641 S.E.2d at 908. This case demands a similar finding.

V. THE TRIAL COURT'S JURY CHARGES ON BREACH OF IMPLIED WARRANTY OF WORKMANLIKE SERVICE, COST TO REPAIR TO EXISTING CODE, DEPRECIATION AND NEGLIGENCE WERE NOT ERRONEOUS OR, IN THE ALTERNATIVE, WERE HARMLESS

The trial court is required to charge only the current and correct law of South Carolina. *Clark v. Cantrell,* 339 S.C. at 389, 529 S.E.2d at 539. In reviewing jury charges for error, this court must consider the trial court's jury charge as a whole in light of the evidence and issues presented at trial. *Welch,* 342 S.C. at 311, 536 S.E.2d at 425. A jury charge that is substantially correct and covers the law does not require reversal. *Id.* at 496, 514 S.E.2d at 574. "To warrant reversal on appeal, the trial court's instructions must be not only erroneous, but must also be prejudicial." *Fields v. Haynes,* 376 S.C. at 560, 658 S.E.2d at 88 (internal citations omitted). Jury instructions should be considered as a whole and, if as a whole, they are free from error, any isolated portions which may

be misleading do not constitute reversible error. *State v. Aleksey*, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000); *Keaton ex rel. Foster v. Greenville Hosp. Sys.*, 334 S.C. 488, 497-98, 514 S.E.2d 570, 575 (1999).

The trial court's charges, when read as a whole, were correct and adequately covered the current law in South Carolina. The charges were neither erroneous nor prejudicial, and an isolated error, if one occurred, was harmless.

A. The Trial Court did Not Err in its Instruction to the Jury as to Breach of Implied Warranty of Workmanlike Service

The trial court charged the jury as to Respondents' claim for breach of the implied warranty of workmanlike service. (R. pp. 1518:11-1519:6). Taken as a whole, this charge was proper in light of the evidence presented at trial and, further, was a correct statement of the law in South Carolina.

As an initial observation, Professional Plastering does not argue the charge was an incorrect statement of the elements necessary to set forth a claim for breach of the implied warranty of workmanlike service. Rather, Professional Plastering simply argues the cause of action does not apply to the Fenwick condominiums and, therefore, should not have been submitted to the jury in the first place. Thus, Professional Plastering has abandoned any argument that the **substance** of the charge was incorrect. The only question is whether the implied warranty applies in this setting. It does.

Just recently, this Court affirmed the grant of a directed verdict **in favor of the plaintiffs** on their claim for breach of the implied warranty of workmanlike service in *Magnolia North Property Owners Association, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 357, 725 S.E.2d 112, 117 (Ct. App. 2012). *Magnolia North* concerned a condominium project in Horry County, South Carolina, consisting of at least 21

buildings, each containing 12, 13, or 15 condominium units, along with a complete infrastructure and four pools. *Id.* at 356, 725 S.E.2d at 117. As here, the contractor admitted to the existence of defects. Professional Plastering's suggestion that the cause of action does not apply to a condominium such as Fenwick is fatally flawed and cannot be reconciled with the analysis and result in *Magnolia North*. Fenwick is smaller in scale and scope than the *Magnolia North* project, where the cause of action was embraced by the trial court affirmed on appeal. Here, the facts are no different. Donnie King admitted Professional Plastering's code violations. The only distinction is that the trial court in the instant case allowed the jury to decide whether Professional Plastering was liable, rather than directing a verdict in the plaintiffs' favor as occurred in *Magnolia North*.

Respondents also incorporate the arguments below in Section VI of this Brief as they relate to their claim for breach of implied warranty of workmanlike service. In sum, there was nothing misleading about the trial court's charges to the jury and the charges were the correct statement of the law.

B. The Trial Court did Not Err in its Instruction to the Jury as to the Cost to Repair to Existing Code in its Charge on Damages for Breach of Implied Warranty of Workmanlike Service

There were two causes of action presented to the jury, one for negligence and one for breach of the implied warranty of workmanlike service. The trial court's charge regarding recoverable damages for negligence made **no reference** to the existing code or costs related thereto. (R. pp. 1521:6-1522:1). Reference to the damages to perform repairs to the existing building code is found only within the charge on damages for breach of the implied warranty. (R. p. 1522:2-25). Although the jury found in favor of Respondents on both claims, the verdict form does not distinguish between the damages

awarded for the negligence claim as opposed to the claim for breach of warranty. (R. p. 65). Accordingly, it is impossible to determine from this record whether the jury actually awarded (or even considered) any damages for the cost to meet the current code. *Harkins v. Greenville County*, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000) (Appellant has the requirement to develop a record sufficient for review on appeal). *Cf. Auto Owners Ins. Co. v. Newman*, 385 S.C. 187, 198, 684 S.E.2d 541, 547 (2008) (affirming damages award because it was impossible to tell from the record what portion of the award was attributable to the issue on appeal). Professional Plastering's entire argument hinges on its bare presumption that the jury awarded damages for the cost to repair to the existing code. It is just as possible that the claim for negligence supports the jury's award of damages in its entirety, which charge made no mention of the building code. Therefore, Professional Plastering cannot demonstrate any prejudice resulting from the charge, even if it was error.

In any event, there is no error because the charge was correct. The cost of repair may include the expense necessary to perform the repairs to existing building codes. *See Peluso v. Singer General Precision, Inc., Link Division*, 47 Ill.App.3d 842 (1977). Contrary to Professional Plastering's contention, Respondents assert there is simply no betterment whatsoever to them in adhering to the existing law and code requirements when they repair the defects and resulting damages caused by Professional Plastering's failure to discharge its duties when it installed the stucco at Fenwick.

C. The Trial Court Did Not Err in Passively Referencing Depreciation in its Charge on Damages for Breach of Implied Warranty of Workmanlike Service

Like the charge above, the only mention of damages for depreciation is found in the charge for breach of the implied warranty of workmanlike service. Respondents incorporate the argument above, showing that the negligence cause of action, which has no such reference, is sufficient, standing alone, to support the entire verdict.

Moreover, there is but a single reference, using just one word, to recovery of "depreciation." (R. p. 1523:8). This isolated reference is insufficient to serve as a basis to reverse the judgment on appeal. In the same vein, Professional Plastering cannot demonstrate any prejudice resulting from this passing reference. The jury awarded Respondents the exact dollar figure of its actual damages as calculated from Gallagher's total cost of **repair**, less settlements previously received. There was no value for depreciation in Gallagher's repair estimate. (R. p. 1769).

D. The Trial Court did not Err in its Instruction on Negligence

The trial court gave complete and proper instructions to the jury on the applicable law of negligence. (R. pp. 1508:23-1517:9). Taken as whole, the charge adequately covers the current law of South Carolina. The requested charge desired by Professional Plastering is materially the same as the instructions given. (App. Br. p. 43). The trial court charged the jury that even if the testimony of an expert is uncontradicted, the jury was not required to accept his opinion. (R. pp. 1506:13-1507:21). The trial court also correctly charged the jury as to proximate cause and Respondents' burden to establish such by the preponderance of the evidence. (R. pp. 1510:1-1511:24). These instructions required Respondents to prove proximate cause as a condition of liability. Even if the

charges are not word-for-word as requested by Professional Plastering, they are nevertheless a correct statement of the applicable law. Professional Plastering's argument on appeal presupposes the jury ignored or somehow failed to follow the trial court's correct instructions. This is mere conjecture and cannot sustain the argument advanced by Professional Plastering.

This Court's reasoning in *Magnolia North* is applicable here. The jury in *Magnolia North* received the following charge, in pertinent part, on negligence:

> Now I charge you that as a matter of law, I have determined that the defendants were negligent and breached the implied warranty of workmanlike services in the construction of these condominiums and as a result of [sic] you must award the plaintiff property owners['] association damages proximately caused by the negligent construction.

Magnolia North, 397 S.C. at 363, 725 S.E.2d at 120. On appeal, the defense in *Magnolia North* argued the instruction impermissibly suggested the court had already determined the plaintiff had established the element of proximate cause as well. This Court disagreed. "The trial court's statement sufficiently qualified the requirement to award damages by describing the damages as those proximately caused by the negligent construction." *Id.* (*citing Stevens v. Allen,* 342 S.C. 47, 51, 536 S.E.2d 663, 665 (2000) (setting forth the prerequisites to an award of damages on a negligence claim). Because the challenged jury instruction accurately reflected all elements required to be established for a damages award on the plaintiff's negligence claim in *Magnolia North*, the trial court did not err in its charge. *Magnolia North*, 397 S.C. at 364, 725 S.E.2d at 120-21. *See also Stewart v. Richland Mem'l Hosp.*, 350 S.C. 589, 595, 567 S.E.2d 510, 513 (Ct. App. 2002) (stating a jury charge that is substantially correct does not require reversal).

The same is true here. The trial court properly charged the jury as to Respondents' burden to prove proximate cause, which essentially is a reiteration of the charge requested by Professional Plastering.

VI. THE TRIAL COURT PROPERLY DENIED PROFESSIONAL PLASTERING'S MOTION FOR DIRECTED VERDICT ON RESPONDENTS' CLAIM OF BREACH OF WARRANTY OF WORKMANLIKE SERVICE AND ITS MOTION FOR JNOV

When ruling on motions for directed verdict and judgment notwithstanding the verdict ("JNOV"), the trial court is required to view the evidence, and the inferences reasonably drawn therefrom, in the light most favorable to the party opposing the motions and to deny the motions when either the evidence yields more than one inference or its inference is in doubt. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006); *Sabb v. S.C. State Univ.*, 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). In essence, the court must determine whether a verdict for the opposing party would be reasonably possible under the facts as liberally construed in his or her favor. *Proctor*, 368 S.C. at 293, 628 S.E.2d at 503. The appellate court may reverse a trial court's ruling on a directed verdict or JNOV motion only when there is no evidence to support the ruling or when the ruling is controlled by an error of law. *McMillan v. Oconee Memorial Hosp.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006).

Relying on *Kennedy v. Columbia Lumber*, 299 S.C. 335, 384 S.E.2d, 730, 736 (1989) and *Sapp v. Ford Motor Co.*, 386 S.C. 143, 150, 687 S.E.2d 47 (2009), Professional Plastering avers the trial court erred in denying its Motions for Directed Verdict and JNOV as to Respondents' claim of breach of warranty of workmanlike service, contending the warranty does not apply to commercial construction. Professional Plastering's argument is fatally flawed and must fail.

A. The "Two-Issue" Rule Bars Consideration of this Issue

The special verdict form provided for two separate causes of action: (i) the negligence claim, and (ii) the claim for breach of implied warranty that is the subject of this issue on appeal. But, the verdict form provided a single line for the assessment of damages resulting from either cause of action, or both, as the case may be. The jury awarded damages of $7,723,225.00. It is impossible to determine whether those damages were attributed by the jury, in whole or in part, to any particular cause of action. Thus, the entire award is supportable by the negligence claim.

Professional Plastering argues the breach of implied warranty does not apply to the Fenwick community, but has never argued the negligence claim was inappropriate. Professional Plastering's **only** challenge to Respondents' negligence claim relates to the failure, in Professional Plastering's mind, of Respondents to prove proximate cause. (Professional Plastering's Mot. for JNOV). To be certain, neither Professional Plastering's motions for directed verdict during the trial, nor its post-trial motions, allege Respondents' negligence claim was barred as a matter of law in the same vein as Professional Plastering challenged the implied warranty claim.[14] Because the negligence claim stands independently of the claim for breach of implied warranty, and because there was no assignment of damages between these separate causes of action, the verdict must stand. Even if the cause of action for breach of implied warranty is removed from consideration, the damages remain wholly supported by the negligence claim, which was

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[14] The only argument raised by Professional Plastering via directed verdict in reference to the negligence claim was that there had been a "failure of proof," *i.e.*, a lack of evidence. That argument is measured by the "any evidence" standard at the directed verdict stage of the trial, and was properly rejected by the trial court. (R. p. 1460:4-10). *See McMillan*, 367 S.C. at 564, 626 S.E.2d at 886 (applying the "any evidence" standard of review).

decided in favor of Respondents. For that reason, the two issue rule applies, barring review of any assigned error in connection the independent claim for breach of implied warranty. *See Atlantic Coast Builders and Contractors, LLC v. Lewis*, 398 S.C. 323, 328-29, 730 S.E.2d 282, 284-85 (2012) (noting two-issue rule prevents review where master-in-equity awarded damages for three causes of action, but only two were appealed); *Cole v. Raut*, 378 S.C. 398, 407, 663 S.E.2d 30, 34 (2008) (upholding verdict under the two-issue rule where the jury's general verdict was supported by a proper negligence charge, even if charge for assumption of the risk was erroneous).

B. The Implied Warranty of Workmanlike Service Applies to the Work in Question and the Record Contains Abundant Evidence that Professional Plastering Breached the Warranty

The implied warranty of workmanlike service is applicable to Fenwick because the buildings at issue are **residential**. In reviewing a case involving a twelve-story condominium tower in Myrtle Beach, the Court of Appeals stated that, "[t]his is an action for damages for alleged defects in the construction of a **residential** building." *Carolina Winds Owners Association, Inc. v. Joe Hardin Builders, Inc.*, 297 S.C. 74, 75, 374 S.E.2d 897, 898 (Ct. App. 1998) (*overruled by Kennedy*, 299 S.C. at 341, 384 S.E.2d at 734) (emphasis added). Indeed, an apartment or condominium building is simply a multi-family residence (as opposed to a house, which is a single-family residence). When faced with whether the conversion of apartments to condominiums violated zoning ordinances, this Court has held the conversion of apartments to condominiums is a change of ownership rather than a change in use. In so ruling, the Court stated, "[a]fter conversion, the property would still be used for **residential purposes** as it was before."

Baker v. Town of Sullivan's Island, 279 S.C. 581, 585, 310 S.E.2d 433, 434 (Ct. App. 1983) (emphasis added).

In discussing the *Kennedy* exception in *Sapp,* the Supreme Court stated,

> ... the economic loss rule does not preclude a homebuyer from recovering in tort against the developer or builder where the builder violates an applicable building code, deviates from industry standards, or constructs a house that he knows or should know will pose a serious risk of physical harm. Such an exception was and still remains necessary to protect **homeowners**.

Sapp, 386 S.C. at 147-148, 687 S.E.2d at 49 (emphasis added). Such an exception remains necessary to protect the two hundred sixteen (216) homeowners at Fenwick. And there is more.

Sapp is a traditional products liability action,[15] arising from a defective cruise control switch in Ford F-150 trucks, which are without question a "product" manufactured by Ford. *Sapp*, 386 S.C. at 145-46, 687 S.E.2d at 48. Here, the issue concerned Professional Plastering's provision of services, not a product. Our Supreme Court has stated:

> In determining whether certain types of vendors or professionals offer services or products within the meaning of the strict liability statute, this Court has focused on the character of the underlying transaction, the law regarding similar transactions in other jurisdictions, and the policy arguments in favor of imposing strict liability in a given situation. ... In our view, a general contractor building a home performs a service and does not sell a product. **Professors Prosser and Keeton have recognized that "[t]he transaction of the building contractor has generally been regarded as a transaction involving the rendition of a service," and that for these reasons, strict liability is generally inapplicable to a general contractor.** W. Keeton et al., Prosser and Keeton on the Law of Torts § 104A (5th ed. 1984). **The professors note that this is true "even though the result**

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15 The issue in *Sapp* is the application of the economic loss rule, which "is a creation of the modern law of products liability." *Sapp*, 386 S.C. at 147, 687 S.E.2d at 49.

> **of the [contractor's] service is to supply a structure or building to the owner." *Id.***

Fields v. Haynes, 376 at 565, 658 S.E.2d at 91. Because *Sapp* involves a products liability action against the seller of a product, and this case involves an action against a contractor providing services, *Sapp* has no application to the case at bar. In fact, the Court in *Fields v. Haynes* observed that a contractor's implied warranties offer protection to the homeowner in the absence of strict liability, which does not apply to the rendition of services. *Id.* at 566, 658 S.E.2d at 91. Further, there are resulting damages at Fenwick to both individual homeowners and, separately, the common elements of the community. (R. p. 1034:5-21). Damage to a single, and singularly owned, "product," as in *Sapp*, is factually and logically distinguishable from the present case.

Moreover, *Magnolia North* confirms that a claim for breach of the implied warranty of workmanlike services is valid, even in the context of a condominium project. "At the close of all evidence, the trial court granted the POA's motions for a directed verdict as to liability on the causes of action for negligence and **breach of the warranty of workmanlike services**. The jury returned a verdict in favor of the POA for $6.5 million in actual damages and $2 million in punitive damages." *Magnolia North*, 397 S.C. at 357, 725 S.E.2d at 117 (emphasis added). The result in *Magnolia North*, is fatal to Professional Plastering's contention that the claim does not apply.

Alternatively, even if this Court were to find these twelve buildings containing 216 residences should be considered commercial structures, the implied warranty of workmanlike service nonetheless applies to Professional Plastering's work. First, Donnie King plainly admitted Professional Plastering warranted and guaranteed its work would be free from all faults and defects. (R. pp. 915:25-917:16). Further, "It seems to be well

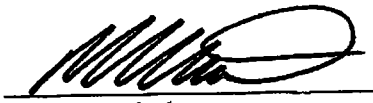
settled that where a person holds himself out as specially qualified to perform work of a particular character, there is an implied warranty that the work which he undertakes shall be of proper workmanship ... ." *Hill v. Polar Pantries*, 219 S.C. 263, 64 S.E.2d 885 (1951). Notably, *Hill* involved what was unquestionably a commercial structure—a walk-in freezer facility. Nonetheless, the Supreme Court held an implied warranty attached to the work. Here, the record shows Professional Plastering was specially certified by Magna Wall as qualified to perform stucco plastering work, specifically for Magna Wall applications. (R. pp. 809:16-810:10). McGinty testified the subcontractors who constructed the Fenwick community were all "skilled in the tasks assigned to them." (R. pp. 1298:24-1299:7). As such, Professional Plastering impliedly warranted that its work would be of proper workmanship, and Respondents' claim for breach of this implied warranty was proper.

CONCLUSION

For the reasons articulated herein and as further set forth in the materials contained in the Record on Appeal, Respondents respectfully request that This Honorable Court affirm the judgment below.

Respectfully submitted,

THURMOND KIRCHNER TIMBES & YELVERTON, P.A.



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March 15, 2013
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 201196386

Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc.,
Respondents,

v.

Professional Plastering & Stucco, Inc., Maria Arias, and Miquel Roasles
Defendants,

Of whom, Professional Plastering & Stucco, Inc. is the Appellant.

Professional Plastering & Stucco, Inc., Appellant,

v.

Maria Ariasm, Miquel Roasles, and APS Enterprises Unlimited, Inc., Third-Party Plaintiffs,

Of whom APS Unlimited, Inc. is Respondent.

CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that the Final Brief of the Respondents complies with Rule 211(b), SCACR.

****Signature Page of Counsel to Follow****

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Sworn to and subscribed before me
This 5th day of March, 2013.

Notary Public for South Carolina
My Commission Expires 11/16/2020.