

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Court of Common Pleas
For Charleston County
Honorable Roger M. Young, Circuit Judge
Civil Action No.: 2009-CP-10-267

3 Chisolm Street Homeowners Association, Inc., Plaintiff-Appellant,

v.

Chisolm Street Partners, LLC, Murray School Partners, LLC,
Genoa Construction Services, Inc., Masterpiece Millwork, Inc.,
Allen Roper, Jr. d/b/a Masonry Brickwork and Stucco, John Doe #1,
John Doe #2, and Brock Green Architects and Planners, LLC, Defendants

Of whom Genoa Construction Services, Inc., Masterpiece
Millwork, Inc., and Brock Green Architects and Planners, LLC,
are the Respondents.

Genoa Construction Services, Inc., Third-Party Plaintiff,

v.

The Fox Steel Company, Carolina Services, Inc., Lesco
Restoration, Inc., Ferst Plastering, Inc., Charleston Glass &
Mirror Company, 3d Renovations, Williams Mechanical,
Mastercraft Interior & Exterior, Coastal Glass and Block,
Adams Davis & Partners, and Troy Pardee Heating and Air
Conditioning (d/b/a Pardee Heating and Air), CT Windows
Limited, and Architectural Materials & Systems,
Third-Party Defendants,

Lesco Restoration, Inc., Fourth-Party Plaintiff,

v.

Coastal Waterproofing, Inc. n/d/b/a Wards Waterproofing, Inc.,
Fourth-Party Defendants.

RECORD ON APPEAL
VOLUME I

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) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-10-267

1) CASE NO.: 2009-CP-10-267

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**ORDER DENYING SUMMARY JUDGMENT
AS TO BROCK GREEN ARCHITECTS AND
PLANNERS, LLC**

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JULIE J ARMSTRONG
CLERK OF COURT
BY _____

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CHISOLM STREET PARTNERS, LLC,	)
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Third-Party Plaintiff,	)
	)
vs.	)
	)
THE FOX STEEL COMPANY, CAROLINA	)
SERVICES, INC., LESCO RESTORATION,	)
INC., FERST PLASTERING, INC.,	)
CHARLESTON GLASS & MIRROR	)
COMPANY, 3D RENOVATIONS,	)
WILLIAMS MECHANICAL,	)
MASTERCRAFT INTERIOR & EXTERIOR,	)
BONIFAY MASONRY, COASTAL GLASS	)
AND BLOCK, ADAMS DAVIS &	)
PARTNERS, and TROY PARDEE HEATING	)
AND AIR CONDITIONING (d/b/a PARDEE	)
HEATING AND AIR),	)
	)
Third-Party Defendants.	)
	)
LESCO RESTORATION, INC.,	)
	)
Fourth-Party Plaintiff,	)
	)
vs.	)
	)
COASTAL WATERPROOFING, INC., n/d/b/a	)
WARDS WATERPROOFING, INC.,	)
	)
Fourth-Party Defendants.	)
	)

On March 28, 2011, this Court heard oral arguments from counsel for various Defendants and Third Party Defendants regarding their respective motions for summary judgment. Plaintiff's counsel presented oral arguments in opposition to the same. Based on the reasons set forth below, this Court hereby DENIES Brock Green Architects and Planners, LLC's Motion for Summary Judgment.

Findings of Fact

This lawsuit involves a condominium complex located at 3 Chisolm Street in the Historic District of Charleston, South Carolina. The property was originally opened in 1923 as the Andrew B. Murray Vocational School. A renovation project was undertaken in the 2000-2001 time period to transform the school facility into luxury condominiums. The 3 Chisolm Street property consists of three separate buildings: the former three-story classroom facility ("Main Building"), the former gymnasium ("Gym Building"), and the former caretaker's cottage ("Cottage"). The developers for the renovation were Chisolm Street Partners, LLC and Murray School Partners, LLC (hereinafter collectively "Developers"). Genoa Construction Services, Inc. ("Genoa") served as the general contractor and Brock Green Architects and Planners, LLC ("Brock Green") provided architectural services for the renovation project. Construction was completed and the Certificate of Occupancy was issued in approximately July 2002.

Evidence has been presented to the Court that unit owners began experiencing water intrusion issues and condensation on the windows in their units around the time of completion of construction. In response to these issues, in late 2002 or early 2003, the 3 Chisolm Street Homeowners Association, Inc. ("HOA" or "Plaintiff") commissioned a forensic architect, Myles Glick, AIA of Glick/Boehm & Associates, Inc., to investigate possible building failures. Mr. Glick conducted an inspection of the property on January 30, 2003 and issued a written report dated April 11, 2003 to the HOA detailing his findings and recommendations ("Glick Report"). The Glick Report cited numerous significant and pervasive deficiencies at the property, including water intrusion at the windows, condensation on the inside of the glass window panes, problems with the roof, and cracks in the stucco in the courtyard area. The Glick Report recommended that the HOA undertake further forensic examinations, including destructive

testing, to further investigate the issues in the report, as well as other potential issues at the property. The Glick Report also recommended that the HOA retain legal counsel. The HOA elected not to pursue additional investigations or institute legal action at that time.

Instead, as stated by Plaintiff's counsel at the hearing, the HOA sought assistance from the Developers and Genoa in repairing the issues, which included caulking and sealing efforts related to the windows. Plaintiff's counsel explained at the hearing that the repair efforts alleviated some of the window leaks temporarily. Brock Green did not participate in those repair efforts. Additionally, evidence has been presented that the repair efforts never eliminated the condensation issues with the windows.

Plaintiff filed a lawsuit on January 16, 2009 against the Developers, Genoa, and several construction subcontractors. Plaintiff did not name Brock Green as a Defendant until its Second Amended Complaint filed on April 8, 2010, nearly seven years after Plaintiff's receipt and discussion of the Glick Report.

Standard for Summary Judgment

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citing Bankers Trust of S.C. v. Benson, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976)). "A grant of 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." Town of Summerville v. City of N. Charleston, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008) (citing Rule 56(c), SCRCP). "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be



the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996)(citation omitted).

The exercise of reasonable diligence means that the injured party "must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on *notice* that a claim against another party might exist." Id. at 363-64, 468 S.E.2d at 647 (citing Snell v. Columbia Gun Exch., 276 S.C. 301, 278 S.E.2d 333 (1981)). The statute of limitations is triggered at that point, not when the plaintiff develops a "full blown theory of recovery." Berry v. McLeod, 328 S.C. 435, 445, 492 S.E.2d 794, 799 (Ct. App. 1997) (citations omitted). "[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial." Dean, 321 S.C. at 364, 468 S.E.2d at 647 (citation omitted). Indeed, "South Carolina's statute of limitations requires 'very little to start the clock.'" Maher v. Tietex Corp., 331 S.C. 371, 380, 500 S.E.2d 204, 208 (Ct. App. 1998) (quoting Roe v. Doe, 28 F.3d 404, 407 (4th Cir. 1994)).

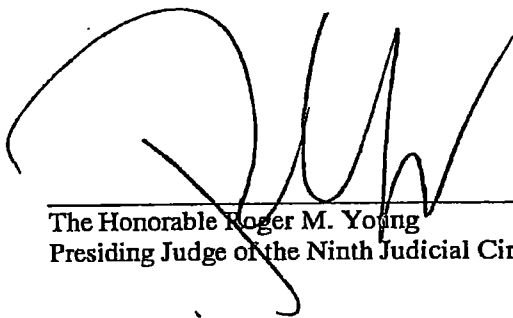
Conclusions of Law

Here, Plaintiff filed its action against Brock Green on April 8, 2010, nearly seven years after receiving and discussing the Glick Report. Taking the evidence in the light most favorable to the Plaintiff, the Glick report does not identify any design defects that would place the HOA on notice of design defects applicable to the architect, Defendant Brook Green Architects and Planners, LLC.

For this reason, genuine issues of material fact exist rendering summary judgment inappropriate, and the Defendant Brook Green Architects and Planners LLC's motion for summary judgment based on the statute of limitations must be DENIED.

WHEREFORE, this Court hereby DENIES Brock Green Architects and Planners, LLC's Motion for Summary Judgment.

IT IS SO ORDERED!



The Honorable Roger M. Young
Presiding Judge of the Ninth Judicial Circuit

Dated: _____

Charleston, South Carolina

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CHISOLM STREET PARTNERS, LLC,)
)
 Third-Party Plaintiff,)
)
 vs.)
)
 THE FOX STEEL COMPANY, CAROLINA)
 SERVICES, INC., LESCO RESTORATION,)
 INC., FERST PLASTERING, INC.,)
 CHARLESTON GLASS & MIRROR)
 COMPANY, 3D RENOVATIONS,)
 WILLIAMS MECHANICAL,)
 MASTERCRAFT INTERIOR & EXTERIOR,)
 BONIFAY MASONRY, COASTAL GLASS)
 AND BLOCK, ADAMS DAVIS &)
 PARTNERS, and TROY PARDEE HEATING)
 AND AIR CONDITIONING (d/b/a PARDEE)
 HEATING AND AIR),)
)
 Third-Party Defendants.)
)
 _____)
 LESCO RESTORATION, INC.,)
)
 Fourth-Party Plaintiff,)
)
 vs.)
)
 COASTAL WATERPROOFING, INC., n/d/b/a)
 WARDS WATERPROOFING, INC.,)
)
 Fourth-Party Defendants.)
 _____)

This matter came before the Court for a hearing on March 28, 2011, on the motions filed by various Defendants and Third-Party Defendants (hereinafter collectively referred to as "Defendants" for ease of reference) for summary judgment pursuant to Rule 56, SCRPC, based on the three-year statute of limitations under S.C. Code Ann. § 15-3-530. Specifically, the Defendants contend that the Plaintiff (the "HOA") filed this lawsuit more than three years from the date of

architect Miles Glick's report dated April 8, 2003 (the "Glick report"), which identified some construction defects in one of the HOA's three buildings.

Background

In the present matter, the affidavits and deposition testimony submitted by the HOA in opposition to the motions, which must be viewed in the light most favorable to the HOA, indicate as follows:

At the time of the Glick report, the Developer (i.e., Defendants Chisolm Street Partners, LLC and Murray School Partners, LLC) had recently transferred control of condominiums to the HOA. A number of units had not been sold, and the Developer still owned and was marketing the unsold units. The HOA hired Glick to perform a preliminary assessment because of concerns about potential leaks at roof parapets.

The HOA condominiums consist of three buildings, the "main building," which has metal frame windows, and the "gym building" and "caretaker cottage," which have wood windows. Mr. Glick only examined the main building, and his report states that the comments in the report "are specific to the main . . . building" and "[t]he other two buildings were not reviewed.

The HOA delivered the Glick's report to the Developer's representative, and the Developer had the general contractor, Defendant Genoa Construction Services, Inc. ("Genoa"), repair the problems identified by Mr. Glick on the main building, including installing caulk and seals to address water leaks at the metal windows, repairing roof leaks, and repairing cracks in the stucco. After the Glick report was issued, Genoa's workers were off and on the site for over a year performing repair work to address the issues raised in the report.

In addition to the repair performed by Genoa, the Developer paid another contractor to perform repair work, including repairing windows and cleaning, bleaching, and painting mold

accumulations in unoccupied units. The Developer also paid the contractor to install temporary dehumidifiers and run fans to stop water accumulation from condensation on the metal windows in the main building that was occurring because of lack of air conditioning circulation in the unoccupied units. The moisture accumulation problems in those units stopped once the empty units were sold and the occupants began operating the air conditioning systems.

When Genoa and the Developer completed the repair work, the HOA was informed and believed that the water intrusion issues and other issues referenced in the Glick report had been repaired.

Several years later, in 2007 or 2008, the wood windows in gym building began rotting, which prompted the HOA to hire Applied Buildings Sciences, Inc. ("ABS") to investigate the cause of the rotting wood windows. The HOA filed this lawsuit after the Developer and Genoa refused to repair the problems with the wood windows on the gym building.

Thereafter, in or around 2009, while ABS was on the site looking at the firewalls and wood windows in the gym building, ABS looked at the metal windows in the main building. During those observations ABS noted staining and deterioration around some of the metal windows. Based on those observations ABS recommended that portions of the walls under the metal windows in the main building be cut open so that ABS could survey the wall cavities for evidence of water intrusion. The HOA authorized ABS to conduct destructive cuts, at which point ABS cut open walls and observed water in the walls under one of the metal windows in the main building. At this point the HOA learned that the repair work performed by the Developer and Genoa on the main building in response to the Glick report had not been properly and completely performed to eliminate water intrusion issues in the main building.

Contrary to the Defendants' assertion that the HOA took no action to address the issues raised in the Glick report, the HOA took affirmative action by forwarding the report to the Developer and Genoa to repair the problems. The Developer and Genoa responded by repairing the problems and indicated that the problems had been fixed.

When viewed in the light most favorable to the HOA, as the Court must for purposes of a summary judgment motion, these facts indicate that the HOA did not learn that repairs performed by the Developer and Genoa to address the items in the Glick report were not properly and completely performed until ABS examined the main building in 2009 while it was onsite examining problems with the wood windows on the other two buildings.

Standard of review

Summary judgment is appropriate only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). "The burden of establishing the bar of the statute of limitations rests upon the one interposing it and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide." Brown v. Finger, 240 S.C. 102, 113, 124 S.E.2d 781, 786 (1962) (internal citations omitted). "Summary judgment should not be granted even when there is no dispute as to

evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts.”

Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000).

South Carolina law imposes a three-year statute of limitations on actions concerning damage to real property, general negligence claims, and claims arising out of “a contract, obligation, or liability, express or implied.” S.C. Code § 15-3-530 (2010). The discovery rule determines when the applicable statute of limitations begins to run. S.C. Code Ann. § 15-3-535. “[U]nder the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct.” True v. Monteith, 327 S.C. 116, 119, 489 S.E. 2d 615, 616 (1997).

Having considered the evidence in the light most favorable to the non-moving parties, this Court finds that South Carolina’s three-year statute of limitations on any claims Plaintiff could have brought relating to Genoa Construction Services’ original stucco work on the conversion project has tolled. However, this Court finds there is a genuine issue of material fact regarding the repair work Genoa Construction Services’ was contracted to complete in response to the Glick report. When viewed in the light most favorable to the HOA, as the Court must for purposes of a summary judgment motion, the facts indicate that the HOA did not learn that repairs performed by the Developer and Genoa to address the items in the Glick report were not properly and completely performed until ABS examined the main building in 2009 while it was onsite examining problems with the wood windows on the other two buildings.

Additionally, Defendant Genoa Construction Services has moved for summary judgment regarding any and all claims relating to Unit 305 and 306 (a double unit), owned by Jack and Sandra Burnett. In July of 2002, the developer of the project, Chisholm Street Partners, LLC brought an action against Sandra Burnett in the Charleston County Court of Common Pleas. Mrs.

Burnett filed her Answer and Counterclaim on or about September 17, 2002. Burnett's Counterclaim contained causes of action for breach of warranty, negligence, gross negligence, and negligent misrepresentation arising out of the construction and her subsequent purchase of unit 305 and 306 at the 3 Chisholm Street property. Her answer and counterclaim specifically sought damages arising out of, among other things, "leaking windows." Burnett subsequently settled the lawsuit resulting in a resolution of any and all claims between Burnett and the developer, including all claims related to the design, construction, application, manufacture, installation, inspection, disclosure, and marketing, and/or sale of the condominium and any of its components and claims, known and unknown, relating in any way to alleged construction problems and defects in the interior of the condominium.

The Burnetts were on notice of potential claims arising out of the design and construction of their unit (305 and 306) when they asserted counterclaims in their lawsuit. Consequently, the three year statute of limitations bars any claims against Genoa arising out of these defects in Units 305 and 306.

The Court notes that Plaintiff was required pursuant to Rule 56(e), SCRCP, to present factual evidence refuting Genoa's motion for summary judgment in regards to Units 305 and 306, but that Plaintiff failed to present any such evidence. If any defective repairs to windows in units 305 and 306 were made, Plaintiff had the burden of presenting factual evidence showing that was the case.

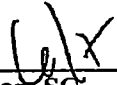
Based on the foregoing, this Court finds that there is no genuine issue of material fact supporting Plaintiff's claims relating to units 305 and 306, and that Genoa is entitled to summary judgment as a matter of law.

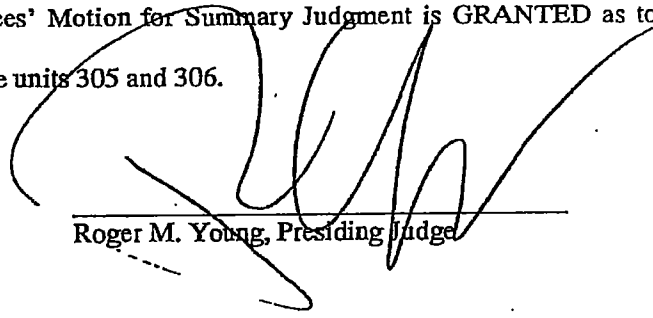
For the reasons set forth above, the Defendant Genoa Construction Services' Motion for Summary Judgment under Rule 56(c) of the South Carolina Rules of Civil Procedure is GRANTED IN PART and DENIED IN PART.

ORDERED, ADJUDGED AND DECREED that:

1. Genoa Construction Services' Motion for Summary Judgment is GRANTED as claims relating to the original construction work on the conversion project;
2. Genoa Construction Services' Motion for Summary Judgment is DENIED as claims relating to the repair work conducted in 2003;
3. Genoa Construction Services' Motion for Summary Judgment is GRANTED as to all claims as they pertain to the units 305 and 306.

SO ORDERED.


_____, 2011
Charleston, SC



Roger M. Young, Presiding Judge

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 Chisolm Street Homeowners
Association, Inc.,

Plaintiff,

vs.

Chisolm Street Partners, LLC, Murray
School Partners, LLC, Genoa
Construction Services, Inc. Masterpiece
Millwork, Inc., Ferst Plastering, Inc.
Carolina Roofing Systems, Inc. and
Lacy Painting,

Defendants.

Genoa Construction Services, Inc.,

Third-Party Plaintiff,

vs.

The Fox Steel Company, Carolina
Services, Inc., Lesco Restoration, Inc.,
Ferst Plastering, Inc., Charleston Glass
& Mirror Company, 3D Renovations,
Williams Mechanical, Mastercraft
Interior & Exterior, Bonifay Masonry,
Coastal Glass and Block, Adams Davis
& Partners, Troy Pardee Heating and
Air Conditioning (d/b/a Pardee Heating
and Air) and Brock Green Architects
and Planners, Metro Waterproofing, Inc.,
CT Windows Limited, and Architectural
Materials and Systems,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

**ORDER GRANTING LACY
PAINTING'S MOTION FOR
SUMMARY JUDGMENT**

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

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FILED

This matter comes before the Court pursuant to numerous Motions for Summary Judgment filed by various Defendants and Third Party Defendants in the above referenced case.

Findings of Fact

The case involves alleged construction deficiencies at 3 Chisolm Street arising out of the conversion of a vocational school to luxury condominiums which took place between 2000 and 2002. Three buildings were included in the conversion: the main building, the gym, and the cottage. The three buildings are in close proximity to each other and are all adjacent to a small common parking area. Genoa Construction Services, Inc. (Genoa) acted as the general contractor for the project. Genoa contracted with Lacy Painting on or about January 24, 2001, for Lacy Painting to provide painting services including, but not limited to, the painting of the windows on the Gym. Lacy Painting last worked on the project during June, 2002. The Certificate of Occupancy was issued in approximately July, 2002.

After construction was completed, the Plaintiff, 3 Chisolm Street Homeowners Association, Inc., began experiencing water intrusion and other problems with the buildings. They hired Myles Glick, a forensic architect, to investigate the problems. On January 30, 2003, Mr. Glick conducted a visual inspection of the property while accompanied by Joe Dapore, Esquire, the HOA's attorney, and Tom and Brett Carlson, who were representatives of a local contractor, Calibogue Construction.

Mr. Glick issued a report dated April 8, 2003, which cited numerous, significant and pervasive deficiencies at the property, including water intrusion and sealant failures

at the windows, condensation on the inside of the glass window panes, problems with the roof, and cracks in the stucco in the courtyard area. It also cited that there was an extensive amount of mold and mildew in the units and that the mold and mildew presented a clear and present danger in terms of health for the individuals that occupy the units. He went on to say, "The removal of mold and mildew within the wall cavities is extremely important, because without the removal of mold and mildew, the problem will persist and grow." He recommended that a full investigation be made, which included destructive testing.

He concluded:

All of the above issues are significant and were persuasive throughout the entire building. I would recommend that these concerns be confirmed and documented through a program of destructive testing so that decisions can be made for corrections. Without correction, the issue of sales of unsold units and resales will come into play. **I recommend that the board seek legal counsel relative to the impacts of the above issues as well as, pursuing a forensic report documenting and recording the above issues.** This report only represents observations during a limited site visit and other construction deficiencies may exist. [Emphasis added]

A copy of the Glick report was sent to Jack Burnett, the President of the HOA. The report was discussed on at least two different occasions by the Board of Directors for the HOA as reflected by the meeting minutes on May 6, 2003 and June 10, 2003. In those meetings, the Board discussed the steps that they needed to take for additional investigation and destructive testing in all three buildings. Nevertheless, no additional investigation was performed and no legal action was taken.

Water intrusion problems continued and the possibility of legal action was again addressed as reflected in the meeting minutes of February 6, 2006. At that time, Joe

Dapore, the HOA's lawyer, advised the HOA that they had until April, 2006, to file suit over the water intrusion and other possible construction related issues. Notwithstanding multiple Board meetings in which the Board discussed known construction issues, the need for additional investigation, advice from Joe Dapore, their lawyer, and Myles Glick, their forensic architect, the Board did not take legal action until January, 2009. This is nearly six years after the Board of the HOA was put on notice of the problems by Myles Glick. It is also nearly six years after the Board discussed the need to further investigate all three buildings renovated by Genoa, including the gym and the cottage, to determine the full extent of the damage.

On April 8, 2010, Plaintiff filed a Second Amended Complaint alleging negligence, negligence per se, breach of implied and express warranties and violation of the South Carolina Unfair Trade Practices Act as to Genoa, Chisolm Street Partners (CSP), Lacy Painting, and others not relevant here. Genoa answered and filed Cross Claims against several parties, including Lacy Painting, for contractual and equitable indemnity, negligence, negligent misrepresentation, breach of contract and contribution. CSP also answered and filed Cross Claims against several parties, including Lacy Painting, for contractual and equitable indemnity, negligence, and breach of contract.

Conclusions of Law

South Carolina law imposes a three-year statute of limitations on actions concerning damage to real property, general negligence claims, and claims arising out of "a contract, obligation, or liability, express or implied." S.C. Code § 15-3-530 (2010). In each of those instances, Plaintiff benefits from the "discovery



rule" of S.C. Code § 15-3-535 that tolls the limitations period until such time that a plaintiff reasonably ought to have known that it had a cause of action against another party. *Barr v. City of Rock Hill*, 330 S.C. 640, 644 (Ct. App. 1998). Under the discovery rule, the Statute of Limitations runs from the date the injured party either knew or should have known by the exercise of reasonable diligence that a cause of action had arisen from the wrongful conduct of the tortfeasor. *True v. Monteith*, 327 S.C. 116, 119, 489 S.E.2d 615, 616 (1997). The fact that the injured party may not comprehend the full extent of damage or appreciate the exact nature of the wrong is immaterial to the discovery rule analysis. *Christensen v. Mikell*, 324 S.C. 70, 73, 476 S.E.2d 692, 694 (1996). See also *Dean v. Ruscon Corp.*, 321 S.C. 360, 365 (1996). In this instance, the Board of the HOA had actual knowledge of leaking windows and sealant failures identified in the Myles Glick report, but also, in May and June of 2003, acknowledged the need to investigate all three buildings to determine the full extent of the damage. This acknowledgment starts the statute running.

Plaintiff maintains that repairs performed by Genoa and/or the Developer following the Glick Report temporarily "fixed" the problems until they resurfaced some years later. Thus, Plaintiff argues that its claims are not barred by the statute of limitations because its claims are for "defective repairs" rather than original work. This argument does not apply to Lacy Painting, as Lacy Painting did not participate in any of those repairs and did not perform any work on the project at any time after January, 2003, the time when Myles Glick, Tom Carlson, and Joe Dapore inspected the property.

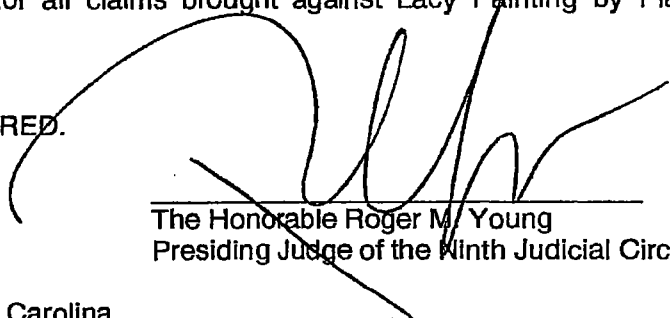
Accordingly, the Court hereby finds that South Carolina's three year statute of

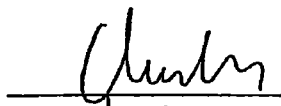
limitations on any claims Plaintiff could have brought against Lacy Painting began to run in 2003 when Myles Glick placed Plaintiff on notice of potential issues with Lacy Painting's scope of work on the project, and the Plaintiff acknowledged the need to investigate further to determine the full extent of the damage. Because Plaintiff did not file a lawsuit until January 16, 2009, the statute of limitations bars Plaintiff's action as it concerns Lacy Painting's scope of work. This Court concludes that there is no genuine issue as to any material fact and Lacy Painting is entitled to judgment as a matter of law.

In addition, Genoa and CSP have filed cross claims against Lacy Painting. The Court hereby finds that Genoa and CSP are entitled to Summary Judgment as it concerns Lacy Painting's scope of work on the project because Plaintiff is barred by the three year statute of limitations under SC Code § 15-3-530. As a result, Genoa and CSP do not have indemnification actions against Lacy Painting, and Lacy Painting is likewise entitled to Summary Judgment in full.

WHEREFORE, this Court hereby grants Lacy Painting's Motion for Summary Judgment in full for all claims brought against Lacy Painting by Plaintiff, Genoa, and CSP.

IT IS SO ORDERED.


The Honorable Roger M. Young
Presiding Judge of the Ninth Judicial Circuit


_____, South Carolina
April 6, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Civil Action No. 2009-CP-10-267

Plaintiff,

vs.

**ORDER GRANTING DEFENDANT,
WILLIAMS MECHANICAL
CORPORATION'S MOTION FOR
SUMMARY JUDGMENT**

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES,
INC., MASTERPIECE MILL WORK,
INC., ALLEN ROPER, JR. d/b/a R
MASONRY BRICKWORK, CAROLINA
ROOFING SYSTEMS, INC., LACY
PAINTING and BROCK GREEN
ARCHITECTS AND PLANNERS,

Defendants.

GENOA CONSTRUCTION SERVICES,
INC.,

Third-Party Plaintiff,

vs.

THE FOX STEEL COMPANY,
CAROLINA SERVICES, INC., LESCO
RESTORATION, INC., FERST
PLASTERING, INC., CHARLESTON
GLASS & MIRROR COMPANY, 3D
RENOVATIONS, WILLIAMS
MECHANICAL, MASTERCRAFT
INTERIOR & EXTERIOR, COASTAL
GLASS AND BLOCK, ADAMS DAVIS &
PARTNERS, TROY PARDEE HEATING
AND AIR CONDITIONING (d/b/a
PARDEE HEATING AND AIR), METRO
WATER-PROOFING, INC., CT
WINDOWS LIMITED, AND
ARCHITECTURAL MATERIALS &
SYSTEMS,

Third-Party Defendants.

FILED
2011 JUN -9 PM 12:18
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

19

CHISOLM STREET PARTNERS, LLC,	)
Third-Party Plaintiff,	)
vs.	)
THE FOX STEEL COMPANY,	)
CAROLINA SERVICES, INC., LESCO	)
RESTORATION, INC., FERST	)
PLASTERING, INC., CHARLESTON	)
GLASS & MIRROR COMPANY, 3D	)
RENOVATIONS, WILLIAMS	)
MECHANICAL, MASTERCRAFT	)
INTERIOR & EXTERIOR, BONIFAY	)
MASONRY, COASTAL GLASS AND	)
BLOCK, ADAMS DAVIS & PARTNERS,	)
TROY PARDEE HEATING AND AIR	)
CONDITIONING (d/b/a PARDEE	)
HEATING AND AIR) and	)
MASTERPIECE MILLWORK, INC.	)
<u>Third-Party Defendants,</u>	)
LESCO RESTORATION, INC.	)
Fourth-Party Plaintiff,	)
vs.	)
COASTAL WATERPROOFING, INC.	)
n/d/b/a WARDS WATERPROOFING,	)
INC.	)
<u>Fourth-Party Defendant.</u>	)

On March 28, 2011, this Court heard numerous motions for summary judgment from several first party and third party defendants based on South Carolina's three year statute of limitations. Based on the reasons set forth below, this Court hereby grants Williams Mechanical Corporation's Motion for Summary Judgment.

Factual Findings

This lawsuit arises out of alleged construction defects at 3 Chisolm Street Condominiums in Charleston, South Carolina. In approximately 2000, Genoa Construction Services, Inc. (Genoa) contracted to serve as the general contractor to convert the Murray Vocational School into condominiums. On or around February 15, 2001, Genoa contracted with Williams

Mechanical, Inc. (Williams) for Williams to serve as a subcontractor and perform the HVAC and plumbing scope of work in this project. Original construction was completed and the Certificate of Occupancy was issued in approximately July 2002.

After construction was completed, Plaintiff 3 Chisolm Street Homeowners Association began experiencing problems with the buildings and hired Myles Glick, a forensic architect, to investigate these problems. The Court finds that Glick specifically identified problems with the HVAC individual size units and unit orientation, which Glick believed could contribute to condensation issues with the windows on the project. Also, Glick opined that the units were not tied down properly to the roof. Glick also found several other issues unrelated to Williams' scope of work.

The Court was also presented evidence that Glick issued a report on April 8, 2003, to inform Plaintiff of deficiencies on the project. Specifically, Glick informed Plaintiff that the HVAC issues were significant and pervasive throughout the entire building. Glick also recommended destructive testing be performed to investigate the issues, and suggested that Plaintiff retain an attorney.

Plaintiff filed this lawsuit against Genoa, Chisolm Street Partners (developer), and several other Defendants on January 16, 2009. Genoa filed an Answer to Plaintiff's Complaint and also filed a Third-Party Complaint against several subcontractors, including Williams, for contractual indemnity, common law indemnification (equitable indemnification), breach of express warranties, breach of implied warranties, negligence, negligent misrepresentation, breach of contract and contribution. Also, Chisolm Street Partners (CSP), answered and filed a Third-Party Complaint against several parties, including Williams, asserting causes of action of breach of warranty, negligence, contractual indemnification, and equitable indemnification.

As it concerns HVAC issues on the project, Plaintiff's counsel admitted at the hearing that the pending lawsuit does not concern HVAC issues and that the 2003 Glick report placed Plaintiff on notice of HVAC issues that existed at that time. Plaintiff's expert Scott Harvey of Applied Building Sciences has also testified that he did not investigate any HVAC issues and did not have an opinion concerning the HVAC system on the project. Also, Plaintiff's counsel stated at the hearing that issues with the main building solely concerned repairs made after the 2003 Glick report was issued, and Plaintiff was not claiming any damages for work performed by Genoa's original subcontractors during the original conversion project. Williams was only involved in the original project and did not perform any repair work on the project after the Glick report was issued in 2003.

Conclusions of Law

South Carolina law imposes a three-year statute of limitations on actions concerning damage to real property, general negligence claims, and claims arising out of "a contract, obligation, or liability, express or implied." S.C. Code § 15-3-530 (2010). In each of those instances, plaintiffs benefit from the "discovery rule" of S.C. Code § 15-3-535 that tolls the limitations period until such time that a plaintiff reasonably ought to have known that it had a cause of action against another party. *Barr v. City of Rock Hill*, 330 S.C. 640, 644 (Ct. App. 1998). Under the discovery rule, the Statute of Limitations runs from the date the injured party either knew or should have known by the exercise of reasonable diligence that a cause of action had arisen from the wrongful conduct of the tortfeasor. *True v. Monteith*, 327 S.C. 116, 119, 489 S.E.2d 615, 616 (1997). The fact that the injured party may not comprehend the full extent of damage or appreciate the exact nature of the wrong is immaterial to the discovery rule analysis. *Christensen v. Mikell*, 324 S.C.

70, 73, 476 S.E.2d 692, 694 (1996). *See also Dean v. Ruscon Corp.*, 321 S.C. 360, 365 (1996).

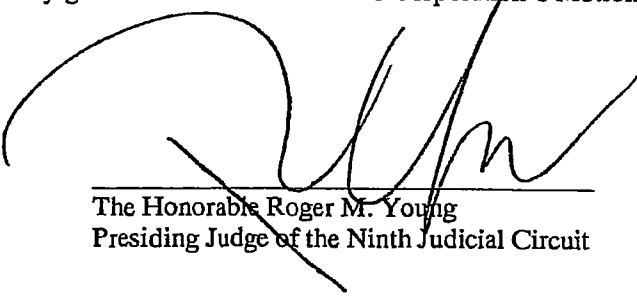
The Court hereby finds that South Carolina's three year statute of limitations on any claims Plaintiff could have brought against Williams Mechanical began to run in 2003 when Myles Glick placed Plaintiff on notice of potential issues with Williams' scope of work on the project as well as other problems with the project's original renovation work. Because Plaintiff did not file a lawsuit until January 16, 2009, the statute of limitations bars Plaintiff's action as it concerns Williams' scope of work.

As a practical matter, Plaintiff has admitted that Williams' scope of work is not at issue in this case. Also, Plaintiff's expert has not investigated HVAC issues and does not have an opinion as to the HVAC systems on the project.

Plaintiff has not filed a first party action against Williams. Instead, Genoa and CSP have filed third party actions for indemnification against Williams. The Court hereby finds under separate Order that Genoa and CSP are entitled to Summary Judgment as it concerns Williams' scope of work on the project because Plaintiff is barred by the three year statute of limitations under SC Code § 15-3-530. As a result, Genoa and CSP do not have indemnification actions against Williams, and Williams is likewise entitled to Summary Judgment in full.

WHEREFORE, this Court hereby grants Williams Mechanical Corporation's Motion for Summary Judgment.

IT IS SO ORDERED.



The Honorable Roger M. Young
Presiding Judge of the Ninth Judicial Circuit

Dated: 6/7/11

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiffs,

vs.

CHISOLM STREET PARTNERS, LLC, MURRAY
SCHOOL PARTNERS, LLC, GENOA
CONSTRUCTION SERVICES, INC., MASTERPIECE
MILL WORK, INC., ALLEN ROPER, JR., D/B/A R
MASONRY BRICKWORK, CAROLINA ROOFING
SYSTEMS, INC. AND LACY PAINTING,

Defendants.

GENOA CONSTRUCTION SERVICES, INC.,

Third-Party Plaintiff,

vs.

THE FOX STEEL COMPANY, CAROLINA SERVICES,
INC, LESCO RESTORATION, INC., FERST
PLASTERING, INC., CHARLESTON GLASS &
MIRROR COMPANY, 3D RENOVATIONS,
WILLIAMS MECHANICAL, MASTERCRAFT
INTERIOR & EXTERIOR, BONIFAY MASONRY,
COASTAL GLASS AND BLOCK, ADAMS DAVIS &
PARTNERS, TROY PARDEE HEATING AND AIR
CONDITIONING (D/B/A PARDEE HEATING & AIR),
METRO WATER-PROOFING, INC., CT WINDOWS
LIMITED, AND ARCHITECTURAL MATERIALS &
SYSTEMS,

Third-Party Defendants.

LESCO RESTORATION, INC.,

Fourth-Party Plaintiff,

vs.

COASTAL WATERPROOFING, INC.,
n/d/b/a WARDS WATERPROOFING, INC.,

Fourth-Party Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 09-CP-10-0267

**ORDER GRANTING DEFENDANT
ARCHITECTURAL MATERIAL &
SYSTEMS INC.'S MOTION FOR
SUMMARY JUDGMENT**

FILED
2011 JUN -9 AM 11:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter comes before the court pursuant to Motions for Summary Judgment filed by numerous Defendants and Third-Party Defendants in the above-referenced case.

This case involves alleged construction defects at 3 Chisolm Street. The case arises out of a conversion project ("Project") that occurred between 2000 and 2002, wherein a vocational school was converted into luxury condominiums. The Project involved the renovation of three buildings: a main building, a gym building and a cottage.

Architectural Materials & Systems, Inc. (AM&S) is the manufacturer's representative company that introduced Fox Steel Company to the Chisolm Street Project, recommending the use and presentation of Crittal Windows, a steel window that is used in many historic renovation projects. It was decided by Fox Steel and Genoa Construction Services, that the Crittal Window would not work for this application, and introduced another window, CT Windows. AM&S had no experience with this window, nor knew of its applications, and therefore had to leave the determination to Fox Steel Company and Genoa Construction Services.

AM&S joins in Defendant Fox Steel Motion for Summary judgment as to all claims asserted by the Plaintiff, as AM&S had no part in the scope of services as alleged in the complaint, it did not furnish labor, material, equipment, shop drawings, or supervision regarding this project. AM&S is entitled to judgment as a matter of law as there are no issues of material fact in contention as it relates to the statute of limitations, and AM&S was not involved in any of the aspects stated herein.

Factual Background

AM&S relies on the factual and procedural background as presented by Fox Steel's Memorandum in Support of Summary Judgment, as AM&S had no information about the issues, the status of the HOA or other parties who were involved in the determination of issues with this

project.

AM&S's first knowledge of any kind was the filing of Defendant Genoa Construction Services' Third Party Complaint for claims of Contractual Indemnification, Common Law Indemnification, Breach of Express Warranties, Breach of Implied Warranties, Negligence, Negligent Misrepresentation, Breach of Contract, and contribution against AM&S as well as approximately twelve other Third Party Defendants.

Defendant Fox Steel states the time frame and the requirements in their Memorandum in Support of Summary Judgment, and AM&S, have no knowledge of the details, relies on their statement for the record regarding product determination and time elements as related to the completion of this project and the filing of the Master Deed, and certificate of occupancy.

Summary Judgment Standard

The Supreme Court has held that the standard which governs the trial court under Rule 56(c), SCRP, makes summary judgment 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." Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. Sumner v. Carpenter, 328 S.C. 36, 43, 492 S.E.2d 55, 59 (1997). Rule 56, SCRPC, requires the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which the party will bear the burden of proof at trial." Etheredge v. Richland Sch. Dist. 1, 330 S.C. 447 (Ct. App. 1998).

Statute of Limitations

Section 15-3-350 of the S.C. provides for a three-year statute of limitations in actions

based on "a contract, obligation, or liability, express or implied." S.C. Code § 15-3-350. "A statute of limitation generally begins to run on the date a cause of action accrues, and a breach of contract action usually accrues at the time a contract is breached or broken." State v. McClinton, 369 S.C. 167, 631 S.E.2d 895 (2006).

In South Carolina, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. Dean v. Ruscon Corp., 468 S.E.2d 645 (1996). The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. Young v. South Carolina Dept. of Correction, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999). The date on which discovery of the cause of action should be made is an objective, rather than subjective question.

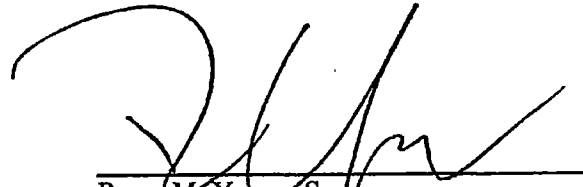
AM&S has had no involvement with the project since its initial contacts between 1999 and 2002. AM&S provided no service of any kind toward the design, development, construction and/or installation of materials for this project.

AM&S relies on the Fox Steel Memorandum for Summary Judgment as to the sequence of events, and incorporates the reciting of the sequence of events, as AM&S has had no involvement, nor has any information regarding the disclosures and statements submitted in the Memorandum by Fox Steel. Because AM&S has had no contact regarding this project from anyone since 2002, and accordingly, any and all claims against AM&S are barred and AM&S is entitled to summary judgment.

Conclusion

For the reasons set forth above, the Defendant Architectural Materials & Services' Motion for Summary Judgment under Rule 56(c) of the South Carolina Rules of Civil Procedure is GRANTED.

IT IS SO ORDERED.



Roger M. Young, Sr.
Presiding Judge, Charleston County

Charleston, South Carolina

6/7, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES,
INC., MASTERPIECE MILL WORK, INC.,
ALLEN ROPER, JR. d/b/a R. MASONRY-
BRICKWORK, CAROLINJA ROOFING
SYSTEMS, INC., LACY PAINTING and
BROCK GREEN ARCHITECTS AND
PLANNERS,

Defendants.

GENOA CONSTRUCTION SERVICES,
INC.,

Third-Party Plaintiff,

vs.

THE FOX STEEL COMPANY, CAROLINA
SERVICES, INC., LESCO RESTORATION,
INC., FERST PLASTERING, INC.,
CHARLESTON GLASS & MIRROR
COMPANY, 3D RENOVATIONS, WILLIAMS
MECHANICAL, MASTERCRAFT INTERIOR
& EXTERIOR, BONIFAY MASONRY,
COASTAL GLASS AND BLOCK, ADAMS
DAVIS & PARTNERS, TROY PARDEE
HEATING AND AIR CONDITIONING (d/b/a
PARDEE HEATING AND AIR),

Third-Party Defendants,

CHISOLM STREET PARTNERS, LLC

Third-Party Plaintiff,

vs.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 09-CP-10-0267

**ORDER GRANTING DEFENDANT
FERST PLASTERING, INC.'S
MOTION FOR SUMMARY JUDGMENT**

FILED
2011 JUN -9 AM 11:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

R

THE FOX STEEL COMPANY, CAROLINA
SERVICES, INC., LESCO RESTORATION,
INC., FERST PLASTERING, INC.,
CHARLESTON GLASS AND MIRROR
COMPANY, 3D RENOVATIONS,
WILLIAMS MECHANICAL, MASTERCRAFT
INTERIOR & EXTERIOR, BONIFAY
MASONRY, COASTAL GLASS AND
BLOCK, ADAMS DAVIS & PARTNERS,
TROY PARDEE HEATING AND AIR
CONDITIONING, (d/b/a PARDEE HEATING
AND AIR) and MASTERPIECE MILLWORK,
INC.,

Third-Party Defendants,

LESCO RESTORATION, INC.,

Fourth-Party Plaintiff,

vs.

COASTAL WATERPROOFING, INC. n/d/b/a
WARDS WATERPROOFING, INC.,

Fourth Party Defendant.

This matter came before the Court on March 28, 2011 on Defendant Ferst Plastering, Inc.'s, ("Ferst") Motion for Summary Judgment as to all causes of action asserted by Genoa Construction Services, Inc. ("Genoa") and all claims asserted by Chisolm Street Partners, LLC ("CSP") in case number 2009-CP-10-267. Based on the following findings of fact and conclusions of law, this Court hereby GRANTS Ferst's Motion for Summary Judgment.

BACKGROUND

This is a construction defect case involving the 3 Chisolm Street condominium complex located in Charleston, South Carolina. Collectively, 3 Chisolm Street comprises of three separate structures denoted in the plans prepared by Brock Green Architects and Planners, LLC as a School Building, Gymnasium and a Cottage. Chisolm Street Partners, LLC ("CSP") and



Murray School Partners, LLC ("Murray") purchased, converted and developed the property into luxury condominium units between 2000 and 2002. Genoa Construction Services, Inc. ("Genoa") acted as the general contractor for the conversion project. Ferst entered into a subcontract agreement with Genoa in October 2000 to install exterior stucco on the courtyard of the School Building. Ferst last worked as a subcontractor for Genoa in February 2002. There is no evidence before the Court that Ferst performed any work at the project after February 2002. A Certificate of Occupancy was issued for the project in July of 2002.

After the conversion was completed various units owners experienced water intrusion and condensation on windows in the School Building. Upon the advice of Michael Parades, the property manager, and their attorney Joseph Edwin Dapore, Esquire, the Plaintiff, 3 Chisolm Street Homeowners Association, Inc. ("HOA") subsequently engaged a forensic architect – Myles Glick, AIA of Glick Boehm & Associates ("Glick") – to investigate these issues. Glick subsequently performed an investigation of the School Building on January 30, 2003 and published his findings in a report dated April 8, 2003. Thomas J. Carlson of Calibogue Construction Co., Inc. and Attorney Dapore were also present during Glick's investigation of the School Building.

Relative to Ferst's scope of work, Glick reported that there were new walls built at the rear of the courtyard of the main building and that the walls appeared to be metal studs with a three-coat masonry stucco finish. Glick observed that the intersections of the metal stud walls with the original masonry building were beginning to show cracks due to construction defects associated with the installation of the stucco. Glick discerned that other areas of the exterior system also exhibited deviations of ASTM standards and the standard of care for stucco application, which are in turn called for in the building code, including the absence of weep assemblies. Glick expressly cautioned the HOA that "[s]tucco cracks will allow water to enter the building envelope."

Glick ultimately recommended that these issues be confirmed and documented through destructive testing so that repairs could be initiated. Glick further recommended the HOA seek

B3

legal counsel and pursue a forensic report documenting and recording the issues identified in his report, which Glick characterized as "significant and pervasive throughout the entire building." The Court was also presented evidence that in February 2006 the HOA was advised by Attorney Dapore that it had until April 2006 to take action against the developer.

Nevertheless, the HOA did not initiate this litigation to recover for damages to the School Building until January 16, 2009 – nearly six years after receiving Glick's report. The HOA filed an Amended Complaint on January 20, 2009, alleging various claims against the developers, builder, and a host of material suppliers and subcontractors. Genoa subsequently filed a Third-Party Complaint against Ferst on or about May 5, 2009. Likewise, CSP answered and filed a Third-Party Complaint against numerous subcontractors, including Ferst. Genoa and numerous other Defendants and Third-Party Defendants thereafter moved for summary judgment based upon the statute of limitations.

STANDARD OF REVIEW

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."¹ The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact.² However, "when a motion for summary judgment is made and supported as provided by the rule, an adverse party may not rest upon the mere allegations or denials of his pleadings. Rather, the non-moving party must come forward with specific facts showing that there is a genuine issue for trial."³

¹ Rule 56(c), S.C.R.C.P.

² Boone v. Sunbelt Newspapers, Inc., 347 S.C. 571, 578-79, 556 S.E.2d 732, 736 (Ct. App. 2001); Regions Bank v. Schumauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003).

³ Regions Bank, 582 S.E.2d at 438.



Because, "... a complete failure of proof concerning an essential element of a non-moving party's case necessarily renders all other facts immaterial," there can be no genuine issue as to any material fact where, "a party fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial."⁴

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Under the South Carolina Rules of Civil Procedure, an action is commenced, and the statute of limitations tolled, by filing and serving the summons and complaint.⁵ Two statutes of limitation in South Carolina limit civil actions arising from the construction process. South Carolina Code § 15-3-530(1) applies to contracts, either express or implied. South Carolina Code § 15-3-505(5) applies to all torts, *i.e.*, injury to the person, property, or rights of another not arising under contract. Both statutes require that the action be brought within three years of the event giving rise to the cause of action.⁶ The Complaint in this action was served on Genoa on or around January 16, 2009. Thus, if the HOA was aware of its claims prior to January 16, 2006, the HOA is barred from bringing the current case.

The statute of limitations on a negligence or contractual claim accrues at the time of the wrongful conduct or when facts and circumstances would put a person of common knowledge on notice that he might have a claim against another party.⁷ The date on which discovery should have been made is an objective, not subjective, question.⁸

⁴ Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537, 545 (1991).

⁵ SCRCP, Rule 3(b).

⁶ S.C. Code Ann. § 15-3-530.

⁷ S.C. Code Ann. § 15-3-535; Kreutner v. David, 320 S.C. 283, 465 S.E.2d 88 (1995); Strong v. University of South Carolina School of Medicine, 316 S.C. 189, 447 S.E.2d 850 (1994).

⁸ Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994).



Under the discovery rule, an action accrues when the injury is discovered or, by the exercise of reasonable diligence, should have been discovered.⁹ The Supreme Court has stated:

The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of the injury would put a person of common knowledge on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full blown theory of recovery is developed.¹⁰

It is immaterial that the injured party may not comprehend the full extent of damage or the exact nature of the wrong.¹¹

During the hearing on March 28, 2011, the HOA - through its attorney David Parrish - stipulated that the issues raised in its Complaint concerning the School Building were the consequence of deficient repairs performed by or on behalf of Genoa and / or the developer. The HOA argued that Genoa and /or the developer attempted to correct the issues involving the stucco installed in the courtyard of the School Building in response to Glick's report. According to the HOA, these repair attempts failed. Thus, the HOA is not seeking damages attributable to any work performed by Genoa's original subcontractors during the conversion project on the School Building, including that of Ferst; rather, the HOA is seeking to recover damages resulting from deficient repairs performed on behalf of Genoa and / or the developer after Glick's report was published.

There is no evidence before the Court that Genoa or the developer hired Ferst to perform any work after April 2003. Indeed, the indisputable evidence confirms that Ferst's work at the project ended roughly one-year prior to Glick's investigation in 2003. Because the issues raised

⁹ Strong, 447 S.E.2d at 852-53; Peterson v. Richland County, 335 S.C. 135, 515 S.E.2d 553 (Ct.App. 1999).

¹⁰ Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 278 S.E.2d 333, 334 (1981).

¹¹ Dilmar Oil Co., Inc. v. Federated Mut. Ins. Co., 986 F.Supp. 959 (D.S.C. 1997), aff'd, 129 F.3d 116 (4th Cir. 1998); Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996). See also Peterson v. Richland County, Op. No. 2966 (S.C.Ct.App., filed March 22, 1999) (Adv. Sh. 12).

in the HOA's Complaint concerning the School Building relate solely to alleged deficient repairs performed by or on behalf of Genoa and / or the developer after the publication of the Glick report, Ferst should be dismissed from this action as a matter of law.

To the extent the HOA's claims relate to original stucco work performed by Ferst as opposed to repairs performed by others, those claims are barred by the three year statute of limitations, as the HOA had notice of stucco deficiencies upon receipt of the Glick report more than three-years prior to the filing of the instant action.

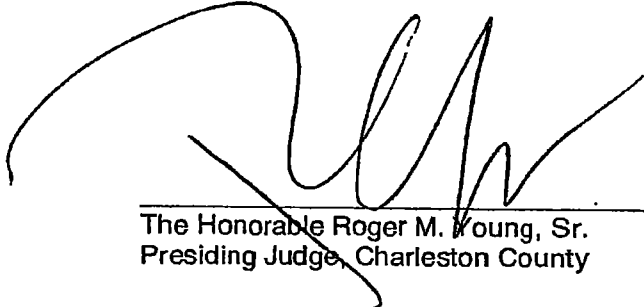
Genoa and CSP's causes of action against Ferst relate to work performed during the original conversion project. For the reasons set forth above, and because Genoa and CSP's claims against Ferst are derivative of the HOA claims, they fail as a matter of law.

CONCLUSION

Based on the foregoing arguments and authorities, Ferst's Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

April 6/7, 2011
Charleston, South Carolina



The Honorable Roger M. Young, Sr.
Presiding Judge, Charleston County

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiffs,

vs.

CHISOLM STREET PARTNERS, LLC, MURRAY
SCHOOL PARTNERS, LLC, GENOA
CONSTRUCTION SERVICES, INC., MASTERPIECE
MILL WORK, INC., ALLEN ROPER, JR., D/B/A R
MASONRY BRICKWORK, CAROLINA ROOFING
SYSTEMS, INC. AND LACY PAINTING,

Defendants

GENOA CONSTRUCTION SERVICES, INC.,

Third-Party Plaintiff,

vs.

THE FOX STEEL COMPANY, CAROLINA SERVICES,
INC., LESCO RESTORATION, INC., FERST
PLASTERING, INC., CHARLESTON GLASS &
MIRROR COMPANY, 3D RENOVATIONS,
WILLIAMS MECHANICAL, MASTERCRAFT
INTERIOR & EXTERIOR, BONIFAY MASONRY,
COASTAL GLASS AND BLOCK, ADAMS DAVIS &
PARTNERS, TROY PARDEE HEATING AND AIR
CONDITIONING (D/B/A PARDEE HEATING & AIR),
METRO WATER-PROOFING, INC., CT WINDOWS
LIMITED, AND ARCHITECTURAL MATERIALS &
SYSTEMS,

Third-Party Defendants.

LESCO RESTORATION, INC.,

Fourth-Party Plaintiff,

vs.

COASTAL WATERPROOFING, INC.,
n/d/b/a WARDS WATERPROOFING, INC.,

Fourth-Party Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 09-CP-10-0267

**ORDER GRANTING SUMMARY
JUDGMENT TO CHARLESTON
GLASS & MIRROR COMPANY, INC.;
METRO WATER-PROOFING, INC.;
AND THE FOX STEEL COMPANY**

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2011 JUN -9 PM 12:19

FILED

This matter comes before the court pursuant to Motions for Summary Judgment filed by numerous Defendants and Third-Party Defendants in the above-referenced case.

This case involves alleged construction defects at 3 Chisolm Street. The case arises out of a conversion project ("Project") that occurred between 2000 and 2002, wherein a vocational school was converted into luxury condominiums. The Project involved the renovation of three buildings: a main building, a gym building and a cottage.

The Plaintiff in this action is the 3 Chisolm Street Homeowners Association, Inc. ("Plaintiff"). Plaintiff filed suit against numerous parties in this action, including Genoa Construction Services, Inc., ("Genoa") on January 20, 2009. Genoa was hired as the general contractor for this project by the developer for the project, Chisolm Street Partners ("CSP"). Genoa hired numerous subcontractors to work on the Project, including, Charleston Glass & Mirror Company, Inc.; and Metro Water-Proofing, Inc. Genoa ordered steel windows and doors from The Fox Steel Company. Genoa filed a Third Party Complaint against these subcontractors, material suppliers and manufacturers on or about May 5th 2009. Genoa added Metro Waterproofing as a party in an amended pleading dated October 15, 2010.

A hearing on these multiple motions for summary judgment was held on Monday, March 28, 2011, in the Charleston Court of Common Pleas. The following Order *solely* involves Motions for Summary Judgment filed by Third-Party Defendants Charleston Glass & Mirror Company, Inc.; Metro Water-Proofing, Inc.; and The Fox Steel Company.

Charleston Glass & Mirror Company, Inc. was hired by Genoa to install and glaze steel windows and install steel doors on the main building on the project. Charleston Glass & Mirror last worked on this project in either late 2001 or early 2002.

Metro Water-Proofing was hired by Genoa to provide glazing and sealant work on the steel windows and doors in the main building in 2001. Metro Water-Proofing last worked as a

subcontractor for Genoa in the main building in May 2002. There is no evidence before the court that Metro Water-Proofing performed any work on this project after May 2002.

The Fox Steel Company and Genoa executed a series of Purchase Orders and Purchase Order Change Orders between September of 2000 and September of 2001 to "(f)urnish labor, materials, equipment, services, shop drawings, supervision, and other incidentals necessary to fabricate and ship F.O.B. to jobsite all steel windows (and doors) in strict accordance with the complete plans and specifications prepared by the Architect and dated March 24, 2000." The Fox Steel Company distributed steel windows, doors, and associated hardware and materials that were installed by Charleston Glass & Mirror Company and Metro-Waterproofing into the Main Building of the Project. The Fox Steel Company performed no original installation work at the project. In addition, no repair work was performed by Fox Steel following early 2002. Fox Steel did not perform any repairs or work associated with the repairs performed by Genoa after April 2003 and following the Glick Report.

A Certificate of Occupancy was issued for the project in July of 2002. Prior to that, some residents had already moved into units, and had already complained of problems with their units. Moreover, residents continued to complain of problems with their units well after the Certificate of Occupancy was granted. Ultimately, the Homeowners Association for the Plaintiff contacted a forensic architect named Myles Glick to inspect the building. Mr. Glick inspected the building on January 30, 2003. During that inspection, Mr. Glick was accompanied by Tom Carlson, a general contractor; and the HOA attorney, Joe DaPore. Mr. Glick ultimately issued a written report to Jack Burnett, then President of the HOA on or about April 8, 2003. In that report, Glick noted:

The indications of water intrusion into the main building were in the following areas: windows, window ledges, condensation buildup on the inside of the glass, and a strong possibility that the roof parapet is leaking . . .

In almost every case, the window system is a steel window with fixed panels of glass and an opening panel that does not close. Therefore, the windows do not stop water from intruding into the building. Water has accumulated on window sills as a result of water intrusion through the gaps created in the operable window areas. It also appears that water is coming through the frames (mullions) and the fixed panes as well.

Mr. Glick outlined the potential results of his findings of water intrusion:

It can be seen in some of the units that are occupied, mostly in the first floor units that are not occupied, that there is an extensive amount of mold and mildew. Mold and mildew presents a clear and present danger in terms of health of the individuals that occupy the spaces. The removal of mold and mildew within the wall cavities is extremely important, because without the removal of mold and mildew, the problem will persist and grow.

Because of the sealant failure at the windows and the fact that the opening portion of the windows did not close properly to stop the water intrusion, there is an extreme amount of rust showing up on the steel windows. The steel windows that are subject to rust will eventually be a maintenance problem if those problems are not stopped.

Sealant failures – in a lot of cases there was evidence that water was coming through fixed mullions of the steel windows. There were indications of added sealant to stop the water intrusion from coming through the window panes/mullion intersections. A full investigation of these areas needs to be made.

Mr. Glick concluded:

All of the above issues are significant and were persuasive throughout the entire building. I would recommend that these concerns be confirmed and documented through a program of destructive testing so that decisions can be made for correction. Without correction, the issue of sales of unsold units and re-sales will come into play. I recommend that the Board seek legal counsel relative to the impact of the above issues as well as, pursuing a forensic report documenting and recording the above issues.

Plaintiff did not file suit in this action until January of 2009, nearly six years after receiving the Glick report. As a result, Genoa and numerous other Defendants and Third-Party Defendants moved for summary judgment based upon the statute of limitations.

During the hearings on Monday, March 28, 2011, Plaintiff's counsel, David Parrish, stipulated to the court the issues in the main building for which Plaintiff seeks recovery in this action arise solely as a result of alleged faulty repair work that was performed by or on behalf of Genoa, and/or the developer, pursuant to the HOA's receipt of the Glick report. Plaintiff maintained that in response to the Glick report, Genoa and/or the developer addressed issues of water intrusion in and around the steel windows and doors, as well as issues involving cracks in the exterior stucco in the main building. Plaintiff maintained that the HOA understood these issues had been resolved pursuant to Genoa's and the developer's subsequent work. Therefore, Parrish stipulated that Plaintiffs were not claiming damages from any of the work performed by Genoa's original subcontractors in the original conversion project. Plaintiff was merely claiming problems with the main building that resulted from Genoa's and/or the developers' failed repairs that were performed after the HOA received Glick's report.

There is no evidence before the court that Charleston Glass & Mirror, Fox Steel or Metro Water-Proofing were hired by Genoa or the developer to perform any work at the project after April of 2003. In fact, these parties' work at the project ended long before Glick's inspection. Pursuant to the Plaintiff's stipulation, the damages to the main building for which they seek recovery in this action arise solely as a result of alleged faulty repair work performed by or on behalf of Genoa or the developer *after* the HOA received the Glick report.

Therefore, all causes of action in Genoa's Third-party complaint against Charleston Glass & Mirror, Metro Water-Proofing and The Fox Steel Company must fail as a matter of law. Based upon the stipulation by Plaintiff's counsel that no damages to the main building alleged by the Plaintiffs were a result of any original conversion work, but rather, arose solely from the post-April 2003 work performed by or on behalf of Genoa and/or the developer, Genoa's claims

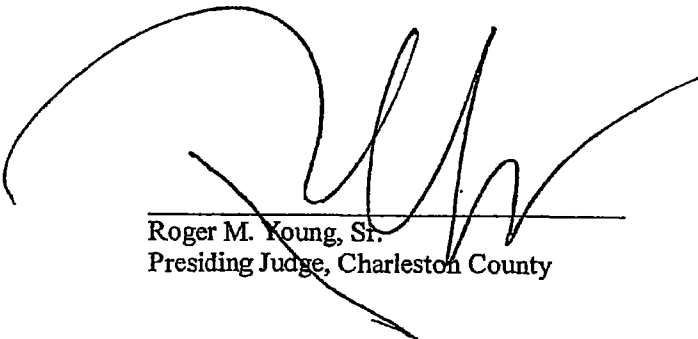
against Charleston Glass & Mirror, Metro Water-Proofing and The Fox Steel Company fail as a matter of law.

Additionally based on the stipulations of Plaintiff, Plaintiff is not claiming any damages associated with the manufacturing, design, drawings, warranties, sale, contract, distribution, representations, or consultation regarding the original purchase, fabrication, shipment, or work associated with the steel windows and doors prior to April 2003 as all related issues were known by the Plaintiff as relayed by the Glick Report and would not be affected by repairs performed by Genoa following April 2003. Accordingly, Genoa's claims against The Fox Steel Company also fail as a matter of law.

Based upon the oral arguments before the court, the materials provided by counsel as part of their arguments, the arguments of the parties and the stipulations by Plaintiff's counsel, it is hereby,

ORDERED, ADJUDGED AND DECREED that under Rule 56(c) of the South Carolina Rules of Civil Procedure, Motion for Summary Judgment is granted per Third-Party Defendants Charleston Glass & Mirror Company, Inc.; Metro Water-Proofing, Inc.; and The Fox Steel Company.

IT IS SO ORDERED.



Roger M. Young, Sr.
Presiding Judge, Charleston County

Charleston, South Carolina
April 6, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

3 Chisolm Street Homeowners Association,
Inc.,

C/A No.: 2009-CP-10-00267

Plaintiff,

v.

Chisolm Street Partners, LLC, Murray
School Partners, LLC, Genoa Construction
Services, Inc., Masterpiece Millwork, Inc.,
Allen Roper, Jr. d/b/a R. Masonry -
Brickwork and Stucco, Carolina Roofing
Systems, Inc. and Lacy Painting,

Defendants.

Genoa Construction Services, Inc.,

Third-Party Plaintiff,

v.

The Fox Steel Company, Carolina Services,
Inc., Lesco Restoration, Inc., Ferst Plastering,
Inc., Charleston Glass & Mirror Company,
3D Renovations, Williams Mechanical,
Mastercraft Interior & Exterior, Bonifay
Masonry, Coastal Glass and Block, Adams
Davis & Partners, Troy Pardee Heating and
Air Conditioning (d/b/a Pardee Heating and
Air), Metro Water-Proofing, Inc., CT
Windows Limited and Architectural
Materials & Systems,

Third-Party Defendants.

Lesco Restoration, Inc.

Fourth-Party Plaintiff,

v.

Coastal Waterproofing, Inc. n/d/b/a Wards
Waterproofing, Inc.,

Fourth-Party Defendant.

**ORDER GRANTING PARDEE SERVICE
EXPERTS' MOTION FOR SUMMARY
JUDGMENT AGAINST GENOA
CONSTRUCTION SERVICES, INC. AND
CHISOLM STREET PARTNERS, LLC**

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2011 JUN -9 AM 11:58

FILED

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On March 28, 2011, this Court heard numerous Motions for Summary Judgment from several First-Party and Third-Party Defendants based on South Carolina's three-year statute of limitations. For the reasons set forth below, this Court hereby grants Pardee Service Expert's, incorrectly identified as Troy Pardee Heating and Air Conditioning (d/b/a Pardee Heating and Air) (hereinafter "Pardee") Motion for Summary Judgment against Genoa Construction Services, Inc. ("Genoa") and Chisolm Street Partners, LLC ("CSP").

FACTUAL FINDINGS

This litigation involves alleged construction deficiencies and resulting damages arising out of the conversion of an old school in downtown Charleston, South Carolina into luxury condominiums ("the Project"). Chisolm Street Partners was the project developer. Third-Party Plaintiff Genoa Construction served as general contractor for the construction project. Genoa contracted with multiple subcontractors to assist in the construction project. Construction took place between 2000 and 2002, with the Certificate of Occupancy being issued in or around July of 2002.

Third-Party Defendant Pardee did not contract with Genoa and had no involvement in the construction project. Pardee's work at Chisolm Street was, and has been, limited to the maintenance of the mechanical systems in the common areas and the maintenance of the mechanical systems for some individual homeowners.

Evidence presented to the Court reveals that immediately after the Project, homeowners began experiencing problems with moisture intrusion and condensation in and around the steel windows at the 3 Chisolm Street property. In January of 2003, Plaintiff hired Myles Glick, a forensic architect, to investigate the problems the homeowners were experiencing with moisture intrusion and condensation. On January 30, 2003, Mr. Glick performed a visual site inspection of the main building. During the inspection, Mr. Glick observed several conditions that he believed were contributing to the moisture intrusion and condensation. One of these conditions involved the design and sizing of the mechanical systems (hereinafter "HVAC" or "mechanical").

On April 8, 2003, Mr. Glick issued a report to the Plaintiff, which outlined his findings of construction deficiencies. The 2003 report stated in pertinent part:

"The goal of the visit was to . . . see what appeared to be some very obvious building failures.

The indications of water intrusion into the main building were in the following areas: windows, window ledges, [and] condensation buildup on the inside of the glass . . .

Problems associated with the mechanical systems will fall into two categories. The first category would be capacity of the unit relative to specific unit sizes and unit orientation. The other concern is air distribution within the actual spaces. The air distribution system is not adjacent to the glass areas and therefore, this begins to contribute to the extremes in temperature differentials causing condensation."

As to all of the construction deficiencies observed during his site inspection, Mr. Glick stated, "[a]ll of the above issues are significant and were pervasive throughout the entire building." In his conclusion, Mr. Glick recommended that Plaintiff perform additional testing and investigations and seek legal counsel to protect its interests.

Plaintiff did not initiate a lawsuit concerning construction deficiencies at 3 Chisolm Street until January 16, 2009—nearly eight years after homeowners became aware of problems with condensation, and nearly six years after Myles Glick's report identified problems with the mechanical systems that could be contributing to the condensation problems.

In response to Plaintiff's Complaint, Genoa filed an Answer and a Third-Party Complaint against several parties, including Pardee, for common law indemnification (equitable indemnification), breach of express warranties, breach of implied warranties, negligence, and contribution. In addition, Chisolm Street Partners answered and filed cross-claims against several parties, including Pardee, asserting causes of action for breach of warranty, negligence, contractual indemnification, and equitable indemnification.

As to mechanical issues at 3 Chisolm Street, Plaintiff's counsel admitted at the March 28, 2011 hearing that the pending lawsuit does not concern mechanical issues and acknowledged that the 2003 Glick Report placed Plaintiff on notice of mechanical issues and condensation issues that

existed at that time. In fact, Plaintiff's counsel stated during the hearing that issues relating to the mechanical systems were addressed after receiving the Glick Report. Furthermore, Plaintiff's counsel stipulated that Plaintiff's claims as to the main building and steel windows arise solely out of failed repairs to the windows by Genoa or the Developer; specifically, relating to the application of sealants, of which Pardee had no involvement.

The absence of any claims by Plaintiff relating to the mechanical systems is further supported by the testimony of Plaintiff's expert Scott Harvey of Applied Building Sciences, who recently testified that he did not investigate any mechanical issues and did not have an opinion concerning the mechanical systems at 3 Chisolm Street. Additionally, Plaintiff's experts and repair contractor did not recommend any repairs to the mechanical systems to address problems with condensation.

Considering the foregoing, this Court finds that the only basis for Third-Party Defendant Pardee's inclusion in this lawsuit is Myles Glick's 2003 report, which identified problems with mechanical systems and suggested the problems were contributing to the condensation issues.

CONCLUSIONS OF LAW

The applicable statute of limitations for actions concerning damage to real property, general negligence claims, and claims arising out of a contract, obligation or liability is three (3) years. S.C. Code Ann. § 15-3-530 (2010). The discovery rule determines when the applicable statute of limitations begins to run. S.C. Code Ann. § 15-3-535. And, the discovery rule is applicable to construction defect cases. See *Brown v. Sandwood Development Corp.*, 277 S.C. 581, 583, 291 S.E.2d 375, 376 (1982). "[U]nder the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct." *True v. Monteith*, 327 S.C. 116, 119, 489 S.E.2d 615, 616 (1997).

To satisfy the requirement of reasonable diligence, "an injured party must act with some promptness where the facts and circumstances of an injury put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party

might exist." *Snell v. Columbia Gun Exchange, Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). Further, the fact that the injured party may not comprehend the full extent of damage or appreciate the exact nature of the wrong is immaterial to the discovery rule analysis. *Christiansen v. Mikell*, 324 S.C. 70, 73, 476 S.E.2d 692, 694 (1996).

Having considered the evidence in the light most favorable to the non-moving parties, this Court hereby finds that South Carolina's three-year statute of limitations on any claims Plaintiff could have brought relating to the mechanical systems and their causal relationship to the condensation issues began to run no later than April 2003 when Myles Glick formally placed Plaintiff on notice of these issues.

Because Plaintiff did not file a lawsuit within three (3) years of receiving this notice, Plaintiff's claims as to these issues are barred as a matter of law.

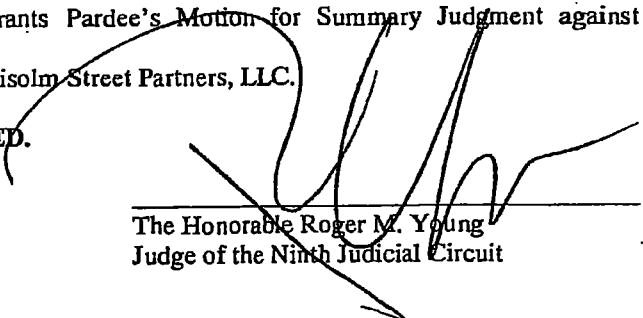
As a practical matter, Plaintiff admitted during the March 28, 2011 hearing that the mechanical systems are not an issue in this case. Also, Plaintiff's expert has not investigated mechanical issues and does not have an opinion as to the mechanical systems on the project.

Plaintiff has not filed a first-party action against Pardee. Instead, Genoa and CSP have filed third-party actions for indemnification against Pardee. Therefore, Genoa and CSP's claims against Third-Party Defendant Pardee are derivative in nature. Because Plaintiff's claims relating to mechanical systems and condensation are barred by the three year statute of limitations under SC Code § 15-3-530, Genoa and CSP's third-party claims against Pardee are likewise barred. As a result, Pardee is entitled to summary judgment as a matter of law.

WHEREFORE, this Court hereby finds that Pardee is entitled to summary judgment as a matter of law and, therefore, grants Pardee's Motion for Summary Judgment against Genoa Construction Services, Inc. and Chisolm Street Partners, LLC.

AND, IT IS SO ORDERED.

April 6/7, 2011
Charleston, South Carolina.


The Honorable Roger M. Young
Judge of the Ninth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES,
INC., MASTERPIECE MILLWORK,
INC., ALLEN ROPER, JR. D/B/A R
MASONRY BRICKWORK, CAROLINA
ROOFING SYSTEMS, INC., AND
LACY PAINTING,

Defendants.

GENOA CONSTRUCTION SERVICES,
INC.,

Third Party Plaintiff,

v.

THE FOX STEEL COMPANY,
CAROLINA SERVICES, INC., LESCO
RESTORATION, INC., FERST
PLASTERING, INC., CHARLESTON
GLASS & MIRROR COMPANY, 3D
RENOVATIONS, WILLIAMS
MECHANICAL, MASTERCRAFT
INTERIOR & EXTERIOR, COASTAL
GLASS AND BLOCK, ADAMS DAVIS
& PARTNERS, TROY PARDEE
HEATING AND AIR CONDITIONING
(d/b/a PARDEE HEATING AND AIR),
METRO WATER-PROOFING, INC., CT
WINDOWS LIMITED, AND
ARCHITECTURAL MATERIALS &
SYSTEMS,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT
LESCO RESTORATION INC.'S
MOTION FOR SUMMARY JUDGMENT**

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2011 JUN -9 AM 11:59

FILED

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This matter came before the court on March 28, 2011 pursuant to Motions for Summary Judgment filed by Defendants and Third-Party Defendants in the above referenced case. The motions were based on South Carolina's three year statute of limitations. Counsel for all parties were present, and this Court entertained and considered oral arguments as well as memorandums of law and affidavits submitted by the parties.

BACKGROUND AND PROCEDURAL HISTORY

This is a construction defect case arising out of a conversion project (the "Project") that took place between 2000 and 2002 at 3 Chisolm Street, Charleston, South Carolina. The Project involved the renovation of three buildings: a main building, a gymnasium building and a caretaker's cottage.

The Plaintiff in this action is the 3 Chisolm Street Homeowners Association, Inc. ("Plaintiff"). Plaintiff filed suit against numerous parties in this action, including Genoa Construction Services, Inc., ("Genoa") on January 20, 2009. Genoa served as the general contractor for the Project. Chisolm Street Partners ("CSP") served as the developer for the Project.

Genoa hired Lesco Restoration, Inc. ("Lesco") to clean and perform limited repairs to the stucco and clean and repair the terra cotta on the main building, perform limited brick tuck pointing and apply an elastomeric coat of paint on the gymnasium building and pressure wash and clean the brick on the caretaker's cottage. The Project received its Certificate of Occupancy in July of 2002.

Prior to the issuance of the Certificate of Occupancy, some residents had already moved into units, and had already complained of problems with their units. Moreover, residents continued to complain of problems with their units well after the Certificate of Occupancy was

granted. Ultimately, the Homeowners Association for the Plaintiff contacted a forensic architect named Myles Glick to inspect the building. Mr. Glick inspected the building on January 30, 2003. During that inspection, Mr. Glick was accompanied by Tom Carlson, a general contractor, and the HOA attorney, Joe DaPore. Mr. Glick ultimately issued a written report to Jack Burnett, then President of the HOA on or about April 8, 2003. In that report, Glick noted:

The indications of water intrusion into the main building were in the following areas: windows, window ledges, condensation buildup on the inside of the glass, and a strong possibility that the roof parapet is leaking . . .

In almost every case, the window system is a steel window with fixed panels of glass and an opening panel that does not close. Therefore, the windows do not stop water from intruding into the building. Water has accumulated on window sills as a result of water intrusion through the gaps created in the operable window areas. It also appears that water is coming through the frames (mullions) and the fixed panes as well.

Mr. Glick outlined the potential results of his findings of water intrusion:

It can be seen in some of the units that are occupied, mostly in the first floor units that are not occupied, that there is an extensive amount of mold and mildew. Mold and mildew presents a clear and present danger in terms of health of the individuals that occupy the spaces. The removal of mold and mildew within the wall cavities is extremely important, because without the removal of mold and mildew, the problem will persist and grow.

Because of the sealant failure at the windows and the fact that the opening portion of the windows did not close properly to stop the water intrusion, there is an extreme amount of rust showing up on the steel windows. The steel windows that are subject to rust will eventually be a maintenance problem if those problems are not stopped.

Sealant failures — in a lot of cases there was evidence that water was coming through fixed mullions of the steel windows. There were indications of added sealant to stop the water intrusion from coming through the window panes/mullion intersections. A full investigation of these areas needs to be made.

Mr. Glick concluded:

All of the above issues are significant and were persuasive throughout the entire building. I would recommend that these concerns be confirmed and documented through a program of destructive testing so that decisions can be made for correction. Without correction, the issue of sales of unsold units and re-sales will come into play. I recommend that the Board seek legal counsel relative to the impact of the above issues as well as, pursuing a forensic report documenting and recording the above issues.

In March of 2003, Genoa contacted Lesco, based on the concerns of the Plaintiffs raised in the Glick report, to provide temporary repairs to the courtyard of the main building. Lesco subcontracted the temporary repairs to its 4th party defendant and the repairs were performed for a total of approximately \$5,208.00.

After the temporary repairs were performed, Lesco and Genoa executed a letter on September 11, 2003, confirming the temporary waterproofing repairs at the 3rd floor balcony area in the courtyard (of the main building) and that the repairs were to be considered temporary and investigations need to be done to properly flash and seal these areas. Lesco did not perform any other work on the Plaintiffs' property after the September 11, 2003 letter to Genoa.

Several years later, in 2007 or 2008, the wood windows in gym building began rotting, which prompted the HOA to hire Applied Buildings Sciences, Inc. ("ABS") to investigate the cause of the rotting wood windows. The HOA filed this lawsuit after the Developer and Genoa refused to repair the problems with the wood windows on the gym building.

Thereafter, in or around 2009, while ABS was on the site looking at the firewalls and wood windows in the gym building, ABS looked at the metal windows in the main building. During those observations ABS noted staining and deterioration around some of the metal windows. Based on those observations ABS recommended that portions of the walls under the metal windows in the main building be cut open so that ABS could survey the wall cavities for evidence of water intrusion. The HOA authorized ABS to conduct destructive cuts, at which point ABS cut open walls and observed water in the walls under one of the metal windows in the main building. At this point the HOA learned that the repair work performed by the Developer and Genoa on the main building in response to the Glick report had not been properly and

completely performed to eliminate water intrusion issues in the main building.

Plaintiff did not file suit in this action until January 20, 2009, nearly six years after receiving the Glick report. Plaintiff did not file suit against Lesco. Genoa filed its Third Party Complaint against Lesco and other third party defendants on October 15th 2010.

During the hearings on Monday, March 28, 2011, Plaintiff's counsel, David Parrish, stipulated to the court the issues in the main building for which Plaintiff seeks recovery in this action arise solely as a result of alleged faulty repair work that was performed by or on behalf of Genoa, and/or the developer, pursuant to the HOA's receipt of the Glick report. Plaintiff maintained that in response to the Glick report, Genoa and/or the developer addressed issues of water intrusion in and around the steel windows and doors, as well as issues involving cracks in the exterior stucco in the main building. Plaintiff's attorney referred to Lesco as one of the entities that performed "repairs." Plaintiff maintained that the HOA understood these issues had been resolved pursuant to Genoa's and the developer's subsequent work. Plaintiff was merely claiming problems with the main building that resulted from Genoa's and/or the developers' failed repairs that were performed after the HOA received Glick's report. Genoa knew Lesco's repairs were temporary and additional investigations needed to be performed to properly flash and seal the areas Genoa contracted with Lesco to provide temporary repairs.

CONCLUSIONS OF LAW.

Summary judgment is appropriate only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803

(2009). "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). "The burden of establishing the bar of the statute of limitations rests upon the one interposing it and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide." Brown v. Finger, 240 S.C. 102, 113, 124 S.E.2d 781, 786 (1962) (internal citations omitted). "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts." Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000).

South Carolina law imposes a three-year statute of limitations on actions concerning damage to real property, general negligence claims, and claims arising out of "a contract, obligation, or liability, express or implied." S.C. Code § 15-3-530 (2010). The discovery rule determines when the applicable statute of limitations begins to run. S.C. Code Ann. § 15-3-535. "[U]nder the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct." True v. Monteith, 327 S.C. 116, 119, 489 S.E. 2d 615, 616 (1997).

Having considered the evidence in the light most favorable to the non-moving parties, this Court finds that South Carolina's three-year statute of limitations on any claims Genoa could have brought relating to Lesco's original stucco work on the conversion project has tolled. However, this Court finds there is a genuine issue of material fact regarding the repair work Lesco Restoration Inc. was contracted to complete in response to the Glick report. When viewed

in the light most favorable to the HOA, as the Court must for purposes of a summary judgment motion, the facts indicate that the HOA did not learn that repairs performed by the Developer and Genoa to address the items in the Glick report were not properly and completely performed until ABS examined the main building in 2009 while it was onsite examining problems with the wood windows on the other two buildings.

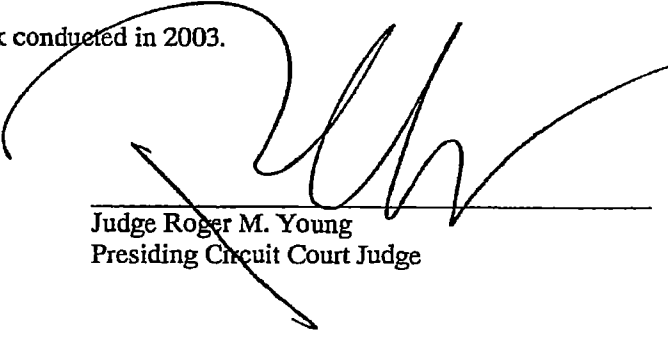
For the reasons set forth above, the Defendant Lesco Restoration LLC's Motion for Summary Judgment under Rule 56(c) of the South Carolina Rules of Civil Procedure is GRANTED IN PART and DENIED IN PART.

ORDERED, ADJUDGED AND DECREED that:

1. Lesco Restoration Inc.'s Motion for Summary Judgment is GRANTED as claims relating to the original construction work on the conversion project;
2. Lesco Restoration Inc.'s Motion for Summary Judgment is DENIED as claims relating to the repair work conducted in 2003.

IT IS SO ORDERED!

6/7, 2011
Charleston, South Carolina



Judge Roger M. Young
Presiding Circuit Court Judge

THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES, INC.,
MASTERPIECE MILLWORK, INC., ALLEN
ROPER, JR. d/b/a MASONRY-BRICKWORK
AND STUCCO, JOHN DOE #1, JOHN DOE
#2, AND BROCK GREEN ARCHITECTS
AND PLANNERS, LLC,

Defendants.

GENOA CONSTRUCTION SERVICES, INC.,

Third-Party Plaintiff,

vs.

THE FOX STEEL COMPANY, CAROLINA
SERVICES, INC., LESCO RESTORATION,
INC., FERST PLASTERING, INC.,
CHARLESTON GLASS & MIRROR
COMPANY, 3D RENOVATIONS,
WILLIAMS MECHANICAL,
MASTERCRAFT INTERIOR & EXTERIOR,
COASTAL GLASS AND BLOCK, ADAMS
DAVIS & PARTNERS, TROY PARDEE
HEATING AND AIR CONDITIONING (d/b/a
PARDEE HEATING AND AIR), METRO
WATER-PROOFING, INC., CT WINDOWS
LIMITED, AND ARCHITECTURAL
MATERIALS & SYSTEMS,

Third-Party Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-10-267

ORDER GRANTING BROCK GREEN
ARCHITECTS AND PLANNERS, LLC'S
MOTION TO RECONSIDER AND MOTION
FOR SUMMARY JUDGMENT

2012 JAN 10 AM 11:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED



CHISOLM STREET PARTNERS, LLC,

Third-Party Plaintiff,

vs.

THE FOX STEEL COMPANY, CAROLINA
SERVICES, INC., LESCO RESTORATION,
INC., FERST PLASTERING, INC.,
CHARLESTON GLASS & MIRROR
COMPANY, 3D RENOVATIONS,
WILLIAMS MECHANICAL,
MASTERCRAFT INTERIOR & EXTERIOR,
BONIFAY MASONRY, COASTAL GLASS
AND BLOCK, ADAMS DAVIS &
PARTNERS, and TROY PARDEE HEATING
AND AIR CONDITIONING (d/b/a PARDEE
HEATING AND AIR),

Third-Party Defendants.

LESCO RESTORATION, INC.,

Fourth-Party Plaintiff,

vs.

COASTAL WATERPROOFING, INC., n/d/b/a
WARDS WATERPROOFING, INC.,

Fourth-Party Defendants.

On August 12, 2011, this Court heard oral arguments from counsel for Genoa Construction Services, Inc. ("Genoa"), Brock Green Architects and Planners, LLC ("Brock Green"), and Plaintiff regarding Brock Green's Motion to Reconsider, Alter, and/or Amend the Order denying its Motion for Summary Judgment (originally filed on June 23, 2011). Based on the reasons set forth below, this Court hereby grants Brock Green's Motion and hereby grants Brock Green's Motion for Summary Judgment.



Findings of Fact

This lawsuit involves a condominium complex located at 3 Chisolm Street in the Historic District of Charleston, South Carolina. The property was originally opened in 1923 as the Andrew B. Murray Vocational School. A renovation project was undertaken in the 2000-2001 time period to transform the school facility into luxury condominiums. The 3 Chisolm Street property consists of three separate buildings: the former three-story classroom facility ("Main Building"), the former gymnasium ("Gym Building"), and the former caretaker's cottage ("Cottage"). The developers for the renovation were Chisolm Street Partners, LLC and Murray School Partners, LLC (hereinafter collectively "Developers"). Genoa served as the general contractor and Brock Green provided architectural services for the renovation project. Construction was completed and the Certificate of Occupancy was issued in approximately July 2002.

Evidence has been presented to the Court that unit owners began experiencing water intrusion issues and condensation on the windows in their units around the time of completion of construction.¹ In response to these issues, in late 2002 or early 2003, the 3 Chisolm Street Homeowners Association, Inc. ("HOA" or "Plaintiff") commissioned a forensic architect, Myles Glick, AIA of Glick/Boehm & Associates, Inc., to investigate possible building failures. Mr. Glick conducted an inspection of the property on January 30, 2003 and issued a written report dated April 11, 2003 to the HOA detailing his findings and recommendations ("Glick Report"). The Glick Report cited numerous significant and pervasive deficiencies at the property, including water intrusion at the windows, condensation on the inside of the glass window panes,

¹ The owner of Unit 305/306 (a double unit) filed counterclaims against the Developer Chisolm Street Partners, LLC on or about September 2002 arising out of alleged deficiencies with the unit, including leaking windows. The claims were ultimately settled.

problems with the roof, and cracks in the stucco in the courtyard area. The Glick Report recommended that the HOA undertake further forensic examinations, including destructive testing, to further investigate the issues in the report, as well as other potential issues at the property. The Glick Report also recommended that the HOA retain legal counsel. The HOA elected not to pursue additional investigations or institute legal action at that time.

Instead, as stated by Plaintiff's counsel at the hearing on Genoa's and Brock Green's motions for summary judgment on March 28, 2011, the HOA sought assistance from the Developers and Genoa in repairing the issues, which included caulking and sealing efforts related to the windows. Plaintiff's counsel explained at the hearing that the repair efforts alleviated some of the window leaks temporarily. Brock Green did not participate in those repair efforts. Evidence has been presented that the repair efforts never eliminated the condensation issues with the windows.

Plaintiff filed a lawsuit on January 16, 2009 against the Developers, Genoa, and several construction subcontractors. Plaintiff did not name Brock Green as a Defendant until its Second Amended Complaint filed on April 8, 2010, nearly seven years after Plaintiff's receipt and discussion of the Glick Report.

Standard for Motion to Reconsider

A motion to reconsider, alter, and/or amend may be brought pursuant to Rule 59(e), SCRCP. A denial of a motion for summary judgment does not establish the law of the case, and the issues can be considered later in the case by a motion to reconsider the summary judgment motion. Brown v. Pearson, 326 S.C. 409, 416-17, 483 S.E.2d 477, 481 (Ct. App. 1997)(citations omitted). "It is not error for the trial court to change its mind and reconsider a motion for

summary judgment.” Abu-Shawareb v. S.C. State Univ., 364 S.C. 358, 363, 613 S.E.2d 757, 760 (Ct. App. 2005)(citations omitted).

Standard for Summary Judgment

“A grant of 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.” Town of Summerville v. City of N. Charleston, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008) (citing Rule 56(c), SCRPC). “When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” Hansson v. Scalise Builders of S.C., 374 S.C. 352, 355, 650 S.E.2d 68, 70 (2007) (citation omitted).

When a properly supported motion for summary judgment is presented, the nonmoving party must establish specific facts showing that there is a genuine issue of material fact for trial, or the court must grant summary judgment. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). “[S]ummary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” Guinan v. Tenet Healthsystems of Hilton Head, 383 S.C. 48, 53, 677 S.E.2d 32, 35 (Ct. App. 2009)(quoting David v. McLeod Reg ’l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006)).

Legal Authority

The statute of limitations is designed “to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights” and “to protect potential defendants from protracted fear of litigation.” Logan v. Cherokee Landscaping and Grading Co., 389 S.C. 611,

618, 698 S.E.2d 879, 883 (Ct. App. 2010)(quoting Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996)). In South Carolina, the statute of limitations provides a three year window from the date of accrual for the filing of a civil action such as the instant action against Brock Green. See S.C. CODE ANN. § 15-3-530 (2010). The "discovery rule" applies to professional negligence causes of action. See, e.g., Republic Contracting Corp. v. S.C. Dep't of Highways and Pub. Transp., 332 S.C. 197, 207, 503 S.E.2d 761, 766 (Ct. App. 1998)(citing Mills v. Killian, 273 S.C. 66, 254 S.E.2d 556 (1979)); see also S.C. CODE ANN. § 15-3-535 (2010). Under the discovery rule, "the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996)(citation omitted).

The exercise of reasonable diligence means that the injured party "must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on *notice* that a claim against another party might exist." Id. at 363-64, 468 S.E.2d at 647 (citing Snell v. Columbia Gun Exch., 276 S.C. 301, 278 S.E.2d 333 (1981)). The statute of limitations is triggered at that point, not when the plaintiff develops a "full blown theory of recovery." Berry v. McLeod, 328 S.C. 435, 445, 492 S.E.2d 794, 799 (Ct. App. 1997) (citations omitted). "[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial." Dean, 321 S.C. at 364, 468 S.E.2d at 647 (citation omitted). Indeed, "South Carolina's statute of limitations requires 'very little to start the clock.'" Maher v. Tietex Corp., 331 S.C. 371, 380, 500 S.E.2d 204, 208 (Ct. App. 1998) (quoting Roe v. Doe, 28 F.3d 404, 407 (4th Cir. 1994)).

In South Carolina, "the focus is upon the date of discovery of the **injury**, not the date of discovery of the wrongdoer." Wiggins v. Edwards 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994)(emphasis added). On discovery of an injury, "the statute of limitations begins to run for **all claims** based on that injury." Id. (citing Tollison v. B & J Machinery Co., Inc., 812 F. Supp. 618, 620 (D.S.C. 1993))(emphasis added). In Wiggins, the plaintiff argued that the statute of limitations began to run "at the time she was actually able to investigate her case, discover a cause of action existed, and determine who or what caused her injury." Id. at 128, 442 S.E.2d at 170. The court disagreed, holding that such a test would be "subjective," rather than objective. Id. The court granted summary judgment to the defendant, holding that the statute started to run as to all possible claims related to plaintiff's injury at the time she knew she was injured. Id. at 128-29, 442 S.E.2d at 170; see also Cline v. J.E. Faulkner Homes, Inc., 359 S.C. 367, 371, 597 S.E.2d 27, 28 (Ct. App. 2004); Gillman v. City of Beaufort, 368 S.C. 24, 28, 627 S.E.2d 746, 748 (Ct. App. 2006)(holding that the date when a plaintiff learns of a potential new defendant has absolutely no bearing on the timing of the statute of limitations).

Conclusions of Law

Here, Plaintiff filed its action against Brock Green on April 8, 2010—nearly seven years after receiving and discussing the Glick Report. Taking the evidence in the light most favorable to the Plaintiff, this Court finds that the Plaintiff clearly knew—or in the exercise of reasonable diligence should have known—of a potential cause of action against Brock Green at the latest in 2003 when the Glick Report and its recommendations for additional forensic testing were discussed by the HOA. This Court finds that the Glick Report put Plaintiff on notice of deficiencies at the property in 2003. The statute of limitations was triggered at that point, regardless of whether Plaintiff comprehended the full extent of the damage or had developed a

full blown theory of recovery, as Plaintiff either knew or should have known by the exercise of reasonable diligence that it had a potential cause of action against Brock Green.

As noted above, it is immaterial that the injured party may not comprehend the full extent of damage or the exact nature of the wrong. This Court finds that the Glick Report put the Plaintiff on notice of specific injuries (i.e., moisture intrusion, condensation, stucco cracks, etc.) and triggered the statute of limitations. Thus, pursuant to Wiggins, the statute was triggered as to all claims based on those injuries, whether those injuries were related to design, construction, or installation. Furthermore, to the extent the Plaintiff had not developed a "full blown theory of recovery" at the time of the Glick Report, it unquestionably could have developed its theory of recovery by the exercise of reasonable diligence in pursuing further investigations and destructive testing as specifically recommended in the Glick Report. The evidence shows that the Plaintiff discussed undertaking further investigations of all three buildings, but decided not to do so.

Plaintiff maintains that repairs performed by the Developer and Genoa following the Glick Report temporarily "fixed" the problems until they resurfaced some years later. Thus, Plaintiff argues that its claims are not barred by the statute of limitations because its claims are for "defective repairs" rather than original work. This argument does not apply to Brock Green, as the evidence shows that Brock Green did not participate in any of those repairs.

Finally, this Court further finds that Plaintiff's claims against Brock Green are barred by the statute of limitations to the extent said claims include claims related to Unit 305/306 (a double unit) owned by Jack and/or Sandra Burnett. This Court finds that the Burnetts were on notice of potential claims arising out of the design and construction of their unit when they

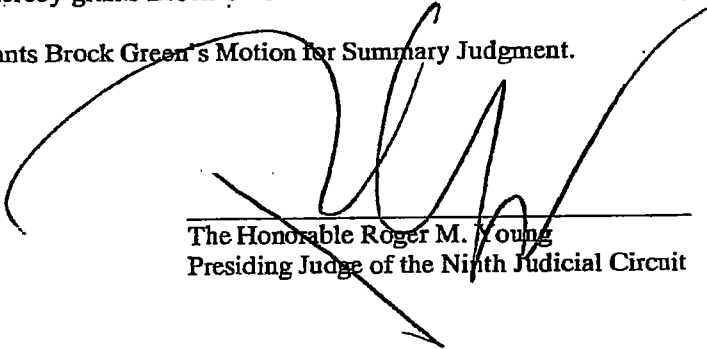
asserted counterclaims in their lawsuit against the Developer in 2002. Thus, any of Plaintiff's claims in this action arising out of the design and construction of Unit 305/306 are barred by the statute of limitations.

Conclusion

This Court finds that Plaintiff is barred from pursuing its claims against Brock Green pursuant to the applicable statute of limitations. This Court concludes that there is no genuine issue as to any material fact and Brock Green is entitled to judgment as a matter of law.

WHEREFORE, this Court hereby grants Brock Green's Motion to Motion to Reconsider, Alter, and/or Amend and hereby grants Brock Green's Motion for Summary Judgment.

IT IS SO ORDERED.



The Honorable Roger M. Young
Presiding Judge of the Ninth Judicial Circuit

Dated: 1/4/12 ✓

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES,
INC., MASTERPIECE MILLWORK,
INC., ALLEN ROPER, JR. D/B/A R
MASONRY BRICKWORK, CAROLINA
ROOFING SYSTEMS, INC., AND
LACY PAINTING,

Defendants.

GENOA CONSTRUCTION SERVICES,
INC.,

Third Party Plaintiff,

v.

THE FOX STEEL COMPANY,
CAROLINA SERVICES, INC., LESCO
RESTORATION, INC., FERST
PLASTERING, INC., CHARLESTON
GLASS & MIRROR COMPANY, 3D
RENOVATIONS, WILLIAMS
MECHANICAL, MASTERCRAFT
INTERIOR & EXTERIOR, COASTAL
GLASS AND BLOCK, ADAMS DAVIS
& PARTNERS, TROY PARDEE
HEATING AND AIR CONDITIONING
(d/b/a PARDEE HEATING AND AIR),
METRO WATER-PROOFING, INC., CT
WINDOWS LIMITED, AND
ARCHITECTURAL MATERIALS &
SYSTEMS,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

ORDER GRANTING DEFENDANT
GENOA CONSTRUCTION SERVICES,
INC.'S MOTION FOR SUMMARY
JUDGMENT

2012 JAN 10 AM 11:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

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This matter came before the Court upon Plaintiff 3 Chisolm Street Homeowners Association, Inc.'s ("Plaintiff") Motion to Reconsider, Alter or Amend this Court's Order Granting Genoa Construction Services, Inc.'s Partial Summary Judgment pursuant to Rule 59(e), SCRPC. A hearing was conducted on August 12, 2011. Franklin H. Turner III appeared on behalf of Genoa Construction Services, Inc. ("Genoa"). David J. Parrish appeared on behalf of Plaintiff.

Upon careful consideration of the pleadings, deposition testimony, additional documentation provided by counsel, oral arguments advanced and the law of South Carolina, this Court denies Plaintiff's Motion to Reconsider, Alter, or Amend its Judgment Granting Genoa Partial Summary Judgment ("Motion to Reconsider"), filed June 24, 2011.

BACKGROUND

I. Procedural History

Genoa, the general contractor on the Project, filed its Motion for Summary Judgment on February 1, 2011, on the grounds that the Statute of Limitations had run on all of Plaintiff's claims relating to the conversion into condominiums of three buildings (Main, Gymnasium, and Cottage) located in the Historic District of Charleston (hereinafter collectively the "Project"). Various subcontractors filed motions on the same grounds. The subcontractors included those that performed work on only the Main Building, on all three buildings, and on only the Cottage and Gymnasium Buildings.

This Court heard oral arguments on the various motions for summary judgment on March 28, 2011. By Order filed June 9, 2011, this Court granted Genoa's Motion for Summary Judgment as to original work performed at the Project, but denied it as to any defective repair work in which Genoa was involved. Likewise, the Court granted the motions of the



subcontractors as to any original work they had performed on the Project, but denied them as to any repair work in which they were involved.

Plaintiff filed a Motion to Reconsider on June 24, 2011. The Court heard oral arguments on the Motion to Reconsider on August 12, 2011.

II. Previous Grants of Summary Judgment and Statements

To fully consider Plaintiff's Motion for Reconsideration as to Genoa, the Court must look to the rulings it made on the various subcontractors' motions for summary judgment, which were largely made on the same grounds as that of Genoa's, and which involved the same facts and circumstances. Of particular note is the Order granting Lacy Painting's Motion for Summary Judgment.

Lacy Painting was a subcontractor that performed original painting work on only the gym and cottage buildings. In granting Lacy's Motion for Summary Judgment this Court found that the statute of limitations began running on all three buildings in June of 2003 at the latest. No motion was made to reconsider that decision and the decision was not appealed. Consequently, as will be discussed below, the Order Granting Lacy Painting's Motion for Summary Judgment on the grounds that the statute of limitations began running on Plaintiff's claims in June of 2003 is the law of the case.

The Court also notes that Plaintiff asserted at oral arguments on March 28, 2011, that it was making no claim related to original work, and that its claims related only to defective repairs made after the Glick Report was produced to the Board of the Homeowner's Association ("HOA") on May 6, 2003.

FINDING OF FACTS

A certificate of occupancy was issued for the Project on June 28, 2002. Complaints

B3

regarding the Project began by at least 2002 and continued into 2003 and beyond. As a result of these issues, which included complaints about condensation on the windows and moisture intrusion, one unit owner, the Burnets, filed a counterclaim against the Developer on September 18, 2002. Jack Burnet was the first president of Plaintiff, and served as its President from 2002 to 2008. In March of 2003, the developer turned over control of the HOA to the unit owners. In late 2002 or early 2003, the HOA hired a forensic architect (Myles Glick), a general contractor (Thomas Carlson of Calibogue Construction), and an attorney (Joe Dapore) to investigate alleged construction defects at the Project. That inspection was performed on January 30, 2003.

On April 8, 2003, Myles Glick issued a report (the "Glick Report") on the results of his investigation. The Glick Report noted, among other things, significant and pervasive construction deficiencies at the property, including condensation on the windows, moisture intrusion at the windows, and stucco cracks in the courtyard, and it recommended documenting the issues through destructive testing and obtaining a more complete forensic report. It also suggested that Plaintiff seek legal counsel regarding the issues. On April 10, 2003, Williamson & Associates produced a report finding stucco cracks, condensation, and caulking and sealant issues.

On May 6, 2003, the Glick Report was presented to Plaintiff. At that time Plaintiff's Property Manager, Mike Parades, informed the Board that it should inspect all three buildings and perform further testing. Genoa left the Project in February of 2004.

Almost three years later, on February 6, 2006, Plaintiff inquired of counsel as to its deadline for filing litigation relating to the Project and was told that the deadline was in April of 2006. After almost another full three years, on January 16, 2009, Plaintiff filed this suit to recover for alleged construction deficiencies at the Project. Contrary to the recommendations of



its own forensic architect, which was informed by input from a general contractor, and its property manager, Plaintiff waited over four years to have any of the buildings inspected. It waited six and a half years to have the Main Building re-inspected (almost a year after it filed its Complaint), and it waited over seven years to have the stucco issues visually re-examined (almost two years after filing its Complaint). In October of 2010, George Davidson, President of the HOA, testified that the current complaints made by the unit owners in the main building were consistent with those noted in the 2003 Glick Report.

On March 28, 2011, at oral arguments on the subject motion, Plaintiff asserted on numerous occasions that it was not seeking damages for original work, but was merely seeking to recover damages related to defective repairs.

CONCLUSIONS OF LAW

On the basis of the foregoing, the Court makes the following Conclusions of Law:

I. Standard for Motions to Reconsider

The South Carolina Rules of Civil Procedure dealing with motions to reconsider are based upon the Federal Rules of Civil Procedure. *See* Notes to Rule 59, SCRPC ("This Rule 59 is substantially the Federal Rule"). Under federal case law, a motion to reconsider is limited to correcting errors of law or fact or to present newly discovered evidence. *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3rd Cir. 1985).

Plaintiff presented no newly discovered evidence in support of its Motion to Reconsider. The factual situation has not changed since the Court heard oral arguments on March 28, 2011. Likewise, the Court is aware of no substantive error of fact or law requiring reconsideration. Genoa moved for summary judgment as to all causes of action brought by Plaintiff, which necessarily included Plaintiff's claims relating to the Gymnasium and Cottage



Buildings as well as to the Main Building. Subcontractors performing work on all three buildings on the Project moved likewise. These issues were fully briefed and argued. Consequently, Plaintiff's Motion to Reconsider must be denied.

II. Standard for Summary Judgment

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC.

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citing *Bankers Trust of South Carolina v. Benson*, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976)). "[S]ummary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

III. Statute of Limitations

Section 15-3-530 of the South Carolina Code sets forth a three-year statute of limitations for actions based in negligence and contract. See S.C. CODE ANN. § 15-3-530(1) (providing for a three-year statute of limitations for "an action upon a contract"); § 15-3-530(5) (providing for a three-year statute of limitations for "any injury to the person or rights of another, not arising on contract and not enumerated by law").

"A statute of limitations reduces the interval between the accrual and commencement of a right of action to a fixed period, thereby putting to rest claims after the passage of time." *City of N. Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 230, 599 S.E.2d 462, 464 (Ct. App. 2004).

Statutes of limitations "are not simply technicalities," but instead "have long been respected as fundamental to a well-ordered judicial system." Id. at 231, 599 S.E.2d at 465. "Unless an action is commenced before expiration of the limitations period, the plaintiff's claim is normally barred." Id. at 231, 599 S.E.2d at 464.

The courts of South Carolina have adopted the "discovery rule" in determining when a cause of action accrues. *Dillon County School Dist. v. Lewis Sheet Metal Works*, 286 S.C. 207, 215, 332 S.E.2d 555, 559 (Ct. App. 1985) (overruled on other grounds). Under the discovery rule, the statutory period begins to run from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence. *Cline v. J.E. Faulkner Homes, Inc.*, 359 S.C. 367, 371-72, 597 S.E.2d 27, 29 (Ct. App. 2004). Under this objective test, one is charged with discovery when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim might exist. *Cline*, at 372, 597 S.E.2d at 29 (citing *Austin v. Conway Hosp., Inc.*, 292 S.C. 334, 339, 356 S.E.2d 153, 156 (Ct. App. 1987)) (emphasis added.).

Regarding the discovery rule and construction defect cases, an owner can be put on notice that some claim might exist when the owner observes a construction defect and retains a consultant who warns that the defect may continue to worsen. See *Dean v. Ruscon Corp.*, 321 S.C. 360, 366, 468 S.E.2d 645, 647 (1996) (holding that there was no question of fact for the jury to decide and the claim was barred by the statute of limitations because the cause of action arose when the owner first observed a building crack and retained a consultant). Further, a party's actual ignorance of a defect is irrelevant if a person exercising reasonable care under similar circumstances would have been aware of the injury. See *Christensen v. Mikell*, 324 S.C. 70, 73, 476 S.E.2d 692, 694 (1996) (stating that "[t]he statutory limitations period begins to run when a



person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor.”). Likewise, the statute is triggered when a reasonable person is placed on notice that it might have a claim against another party, and not when they develop a fill blown theory of recovery. *Berry v. McLeod*, 328 S.C. 435, 445, 492 S.E.2d 794, 799 (Ct. App. 1997). In South Carolina, very little is required to start the statute of limitations running. *Maher v. Tietex Corp.*, 331 S.C. 371, 380, 500 S.E.2d 204, 208 (Ct. App. 1998) (quoting *Roe v. Doe*, 28 F.3d 404, 407 (4th Cir. 1994)).

IV. Law of the Case

As a general rule, an unchallenged ruling, right or wrong, is the law of the case. *Ulmer v. Ulmer*, 369 S.C. 486, 490, 632 S.E.2d 858, 861 (2006) (“A portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case.” (citing *Austin v. Specialty Transp. Servs.*, 358 S.C. 298, 320, 594 S.E.2d 867, 878 (Ct. App. 2004))); *Robinson v. Estate of Harris*, 391 S.C. 114, 127, 705 S.E.2d 41, 48 (2011) (“an unchallenged ruling, right or wrong, is the law of the case” (citing *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 489 S.E.2d 470 (1997))); see also *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 355-356, n 9 (S.C. Ct. App. 2006) (noting that the Court’s ruling on a previous grant of summary judgment represents the law of the case.)

Lacy Painting was a subcontractor that performed original painting work on only the gym and cottage buildings. In granting Lacy’s Motion for Summary Judgment this Court stated that: “the Board of the HOA . . . in May and June of 2003, acknowledged the need to investigate all three buildings to determine the full extent of the damage. This acknowledgement starts the statute running.” And:

Accordingly, the Court hereby finds that the South Carolina three year statute of limitations on any claims Plaintiffs could have brought against Lacy Painting began to run in 2003 when Myles Glick placed Plaintiff on notice of potential issues with Lacy Painting's scope of work on the project, and the Plaintiff acknowledged the need to investigate further to determine the full extent of the damage. Because Plaintiff did not file a lawsuit until January 16, 2009, the statute of limitations bars Plaintiff's action as it concerns Lacy Painting's scope of work.

Plaintiff in effect requests that this Court ignore its previous unchallenged ruling on when the statute of limitations began to run on all three buildings. The Court declines to do so. To hold otherwise would result in a procedural quandary. Indeed, the Court would be faced with the untenable situation whereby identical claims relating to identical work performed at identical times were dismissed and held to be untimely filed as to certain parties but found to be timely filed as to other parties.

The Court further notes that, while it has no impact on the decision reached in this matter, granting Plaintiff's motion would result in further confusion and delay as additional motions for reconsideration would be required to determine the status of parties previously released as well as to determine what, if any, issues would be precluded as a result of subcontractors' scopes of work being dismissed.

V. Statute of Limitations as to All Three Buildings

Having determined the law of the case as to the statute of limitations question, this Court need not consider further grounds for denying Plaintiff's Motion to Reconsider. However, the Court restates its finding that Plaintiff was on notice that it might have claims relating to the Main Building in May of 2003 when it was presented with the Glick Report. Plaintiff had three years from that date to further investigate its potential construction defect claims, which would necessarily include those areas allegedly repaired by Genoa prior to its leaving the Project in February 2004, and file suit. However, instead of investigating the Project further, as both its

B3

forensic architect and Property Manager suggested, Plaintiff took no action and waited for almost six years to file suit and six and half years to have the building inspected. Because Plaintiff failed to file suit within three years of learning that its forensic architect believed there to be significant and pervasive construction defect problems with the Main Building, this Court denies Plaintiffs Motion to Reconsider its grant of summary judgment to Genoa as to original work on that building.

This Court also restates its original finding that Plaintiff was on notice that it might have claims relating to the Gym and Cottage Buildings as of June of 2003 at the latest. By that time, Plaintiff was on notice that its forensic architect and general contractor believed there were significant and pervasive construction defects associated with the Project and Plaintiff was urged to have all the buildings associated with the Project inspected to determine the scope of the alleged problems. The Court notes that all three buildings were built at the same time, were managed by the same general contractor, and were built according to plans and specifications developed by the same architect.

A person of common knowledge and experience, much less one entrusted with preserving the value of three condominium buildings, would have been on notice at that time that some claim might exist. Further, there is no evidence suggesting that the construction defects alleged to be present in the gym and cottage buildings were either not present in 2003-2006 or would not have been discovered by the exercise of reasonable diligence, such as having a forensic architect, general contractor, and attorney inspect the buildings in question. Instead of acting in a reasonably diligent manner, however, Plaintiff ignored recommendations that the buildings be inspected for almost four years. Plaintiff's decision to avoid any attempt to discover defects and claims did not toll the statute of limitations. Consequently, the statute of limitations on



Plaintiff's claims for original work relating to the gym and cottage buildings began to run by June of 2003. Because Plaintiff did not file its Complaint until January of 2009, this Court denies Plaintiffs Motion to Reconsider.

VI. Original Work

This Court restates the decision set forth in the subject Order that Plaintiff is not entitled to seek damages for original work. Plaintiff may only seek damages for defective repairs that are directly related to the defective repair work and not to the time-barred claims relating to original work. See *Bramlette v. Charter Medical-Columbia*, 302 S.C. 68, 72, 393 S.E.2d 914, 916 (1990) (stating the requirements of proximate causation). At oral arguments Plaintiff stated clearly and expressly that "everything in litigation is stuff they repaired" and that "[f]ailed repair is probably the best summation that I have." This Court noted at the hearing that: "The only way [the Plaintiff] can get past the statute of limitation is pursuing over repairs, not original work." When Plaintiff was asked to stipulate that it was only seeking damages related to defective repairs this Court stated: "I don't know how many times [Plaintiff] can say that differently, but he started to venture off, but he came back and I wrote it down again, failed repairs or defective repairs only."

Relying in part on Plaintiff's own assertions this Court granted the motions for summary judgment of Genoa and the subcontractors that performed original work on the Project. Consequently, this Court declines to revisit its decision dismissing Plaintiff's claims for original work performed on the Project.

CONCLUSION

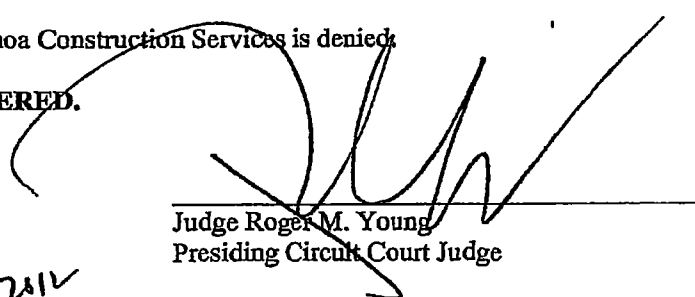
For the foregoing reasons, this Court denies Plaintiff's Motion to Reconsider, Alter or Amend Order Granting Partial Summary Judgment as to Genoa Construction Services.

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THEREFORE, IT IS HEREBY ORDERED THAT:

1. Plaintiff's Motion to Reconsider, Alter, or Amend Order Granting Partial Summary Judgment as to Genoa Construction Services is denied.

AND IT IS SO ORDERED.



Judge Roger M. Young
Presiding Circuit Court Judge

1/4

Charleston, South Carolina

2/1/11
2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

3 Chisolm Street Homeowners Association,)
Inc.,)

C/A No.: 2009-CP-10-00267

Plaintiff,)

v.)

**ORDER GRANTING SUMMARY
JUDGMENT TO THIRD-PARTY
DEFENDANT CT WINDOWS LIMITED**

Chisolm Street Partners, LLC, Murray)
School Partners, LLC, Genoa Construction)
Services, Inc., Masterpiece Millwork, Inc.,)
Allen Roper, Jr. d/b/a R. Masonry -)
Brickwork and Stucco, Carolina Roofing)
Systems, Inc. and Lacy Painting,)

Defendants.)

v.)

Genoa Construction Services, Inc.,)

Third-Party Plaintiff,)

v.)

The Fox Steel Company, Carolina)
Services, Inc., Lesco Restoration, Inc.,)
Ferst Plastering, Inc., Charleston Glass &)
Mirror Company, 3D Renovations,)
Williams Mechanical, Mastercraft Interior)
& Exterior, Bonifay Masonry, Coastal)
Glass and Block, Adams Davis & Partners,)
Troy Pardee Heating and Air Conditioning)
(d/b/a Pardee Heating and Air), Metro)
Water-Proofing, Inc., CT Windows)
Limited and Architectural Materials &)
Systems,)

Third-Party Defendants.)

v.)

Lesco Restoration, Inc.)

2012 MAY 25 PM 2:43
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

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	)
Fourth-Party Plaintiff,	)
	)
v.	)
	)
Coastal Waterproofing, Inc. n/d/b/a Wards	)
Waterproofing, Inc. ,	)
	)
<u>Fourth-Party Defendant.</u>	)

The Court heard arguments on summary judgment motions, as to the statute of limitations issue, from counsel for many of the parties on Monday, March 28, 2011.

It appears from the evidence and arguments that one class of Third-Party Defendants are those who participated only in the original conversion and renovation of the old Murray Vocational School Building and its two outbuildings.

CT Windows Limited has represented, through counsel, that it participated only in the original renovations/conversion of what became the 3 Chisolm Street Condominiums, by manufacturing the steel windows that were installed in the main building.

The Plaintiff hired forensic architect Myles Glick to investigate homeowner complaints of moisture intrusion and condensation in January of 2003. Mr. Glick conducted an inspection on January 30, 2003, and later, on April 8, 2003, issued a report which noted "very obvious building failures" and which recommended additional forensic testing to determine the extent of those failures. The present lawsuit was not brought until January 19, 2009, almost six years after the Glick Report was issued and nearly six years after the Plaintiff was on notice of a construction defect claim relating to water intrusion at and around the steel windows in the main school building.

There is no contention that CT Windows, a product manufacturer for purposes of this case, performed any repairs or did any work subsequent to the original conversion of the school, to a condominium complex, between 2000 and 2002.



The Plaintiff maintains that subsequent repairs made after the Glick Report by general contractor and Third-Party Plaintiff Genoa Construction comprised a temporary fix to the moisture intrusion and condensation problems at and around the steel windows, which resurfaced several years later. The Plaintiff therefore contends that the present action is based on defective repairs rather than on original construction.

The Third-Party claim of general contractor Genoa Construction against CT Windows is one brought against an "original construction" entity that did not participate in the subsequent repairs.

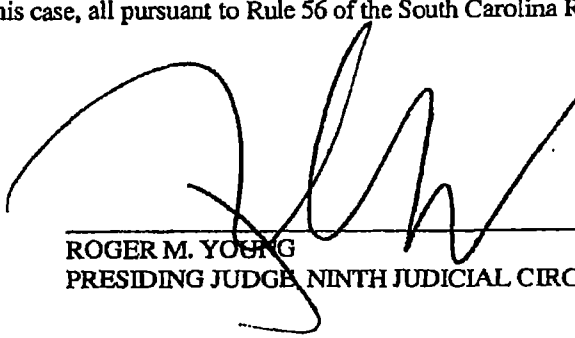
The Court is therefore persuaded that the three-year statute of limitations for any of the Plaintiff's claims against CT Windows ran from the April 8, 2003 issuance of the Glick Report. The statute of limitations expired as to CT Windows well before either the present action or the Third-Party Complaint was brought. A derivative claim against CT Windows would have to have been brought by April 8, 2006, three years after alleged defects in original renovations were published by forensic architect Myles Glick.

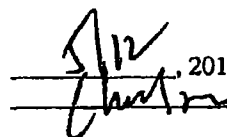
Additionally, based on the stipulations of Plaintiff, Plaintiff is not claiming any damages associated with the manufacturing, design, drawings, warranties, sale, contract, distribution, representations, or consultation regarding the original purchase, fabrication, shipment, or work associated with steel windows prior to April 2003, as all related issues were known by the Plaintiff as relayed by the Glick Report and would not be affected by repairs performed by Genoa Construction following April 2003. Accordingly, Genoa's claims against CT Windows also fail as a matter of law.

Based on the evidence and brief of counsel for CT Windows, it appears that summary judgment should be granted to this Third-Party Defendant.

IT IS THEREFORE ORDERED that Third-Party Defendant CT Windows Limited be granted summary judgment in this case, all pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

AND IT IS ORDERED.



ROGER M. YOUNG
PRESIDING JUDGE NINTH JUDICIAL CIRCUIT
_____, 2012
_____, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

3 Chisolm Street Homeowners
Association, Inc.,

Plaintiff,

vs.

Chisolm Street Partners, LLC, Murray
School Partners, LLC, Genoa Construction
Services, Inc., Masterpiece Millwork, Inc.,
Allen Roper, Jr. d/b/a R. Masonry
Brickwork, Carolina Roofing Systems, Inc.
and Lacy Painting,

Defendants.

Genoa Construction Services, Inc.,
Third Party Plaintiff,

vs.

The Fox Steel Company, Carolina
Services, Inc., Lesco Restoration, Inc.,
Ferst Plastering, Inc., Charleston Glass &
Mirror Company, 3D Renovations,
Williams Mechanical, Mastercraft Interior &
Exterior, Coastal Glass and Block, Adams
Davis & Partners, Troy Pardee Heating
and Air Conditioning (d/b/a Pardee
Heating and Air), Metro Water-proofing,
Inc., CT Windows, Limited, and
Architectural Materials & Systems,

Third-Party Defendants.

Lesco Restoration, Inc.,

Fourth- Party Plaintiff,

vs.

Coastal Waterproofing, Inc. n/d/b/a Wards
Waterproofing, Inc.

Fourth-Party Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-00267

2012 MAY 25 PM 2:43
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

ORDER GRANTING MASTERPIECE
MILLWORK, INC.'S MOTION FOR
SUMMARY JUDGMENT

19

This matter comes before the Court pursuant to Masterpiece Millwork, Inc.'s [hereinafter "Masterpiece"] Motion for Summary Judgment filed on September 1, 2011.

FINDINGS OF FACT

This case involves alleged construction deficiencies at 3 Chisolm Street arising out of the conversion of a vocational school to luxury condominiums which took place between 2000 and 2002. Three buildings were included in the conversion: the main building, the gym, and the cottage. The three buildings are in close proximity to each other and are all adjacent to a small common parking area. Genoa Construction Services, Inc. [hereinafter "Genoa"] acted as the general contractor for the project. Genoa purchased wood window units from Masterpiece in 2000-2001 for the gym and cottage buildings. Masterpiece has had no involvement with the project since construction was completed. The Certificate of Occupancy was issued in approximately July, 2002.

After construction was completed, the Plaintiff, 3 Chisolm Street Homeowners Association, Inc., began experiencing water intrusion and other problems with the buildings. They hired Myles Glick, a forensic architect, to investigate the problems. On January 30, 2003, Mr. Glick conducted a visual inspection of the property while accompanied by Joe Dapore, Esquire, the HOA's attorney, and Tom and Brett Carlson, who were representatives of a local contractor, Calibogue Construction.

Mr. Glick issued a report dated April 8, 2003, which cited numerous, significant

¹ In June 2011, this court previously granted various motions for summary judgment based upon the applicable statute of limitations. The Plaintiff filed a Motion to Reconsider which was denied by Order dated January 4, 2012. The Plaintiff has appealed. During the April 25, 2012 telephonic status conference, Judge Young requested from Counsel for Masterpiece a proposed order consistent with those previously granted granting Masterpiece Millwork, Inc.'s Motion for Summary Judgment absent a hearing so that this order could be added to the pending appeal. This Order is based upon the Order Granting Lacy Painting's Motion for Summary Judgment filed June 9, 2011.

and pervasive deficiencies at the property, including water intrusion and sealant failures at the windows, condensation on the inside of the glass window panes, problems with the roof, and cracks in the stucco in the courtyard area. It also cited that there was an extensive amount of mold and mildew in the units and that the mold and mildew presented a clear and present danger in terms of health for the individuals that occupy the units. He went on to say, "The removal of mold and mildew within the wall cavities is extremely important, because without the removal of mold and mildew, the problem will persist and grow." He recommended that a full investigation be made, which included destructive testing.

He concluded:

All of the above issues are significant and were pervasive throughout the entire building. I would recommend that these concerns be confirmed and documented through a program of destructive testing so that decisions can be made for corrections. Without correction, the issue of sales of unsold units and resales will come into play. **I recommend that the board seek legal counsel relative to the impacts of the above issues as well as, pursuing a forensic report documenting and recording the above issues.** This report only represents observations during a limited site visit and other construction deficiencies may exist. [Emphasis added]

A copy of the Glick report was sent to Jack Burnett, the President of the HOA. The report was discussed on at least two different occasions by the Board of Directors for the HOA as reflected by the meeting minutes on May 6, 2003 and June 10, 2003. In those meetings, the Board discussed the steps that they needed to take for additional investigation and destructive testing in all three buildings. Nevertheless, no additional investigation was performed and no legal action was taken.

Water intrusion problems continued and the possibility of legal action was again addressed as reflected in the meeting minutes of February 6, 2006. At that time, Joe

Dapore, the HOA's lawyer, advised the HOA that they had until April, 2006, to file suit over the water intrusion and other possible construction related issues. Notwithstanding multiple Board meetings in which the Board discussed known construction issues, the need for additional investigation, advice from Joe Dapore, their lawyer, and Myles Glick, their forensic architect, the Board did not take legal action until January, 2009. This is nearly six years after the Board of the HOA was put on notice of the problems by Myles Glick. It is also nearly six years after the Board discussed the need to further investigate all three buildings renovated by Genoa, including the gym and the cottage, to determine the full extent of the damage:

On April 8, 2010, Plaintiff filed a Second Amended Complaint alleging negligence, negligence per se, breach of implied and express warranties, strict liability and violation of the South Carolina Unfair Trade Practices Act as to Masterpiece. Genoa answered Plaintiff's Second Amended Complaint June 9, 2010 and filed Cross Claims against Masterpiece and others for contractual and equitable indemnity, breach of express and implied warranty, negligence, negligence per se, and breach of contract. CSP answered Plaintiff's Second Amended Complaint September 9, 2010 and filed Cross Claims against Masterpiece and others for breach of warranty, negligence and indemnity.

CONCLUSIONS OF LAW

South Carolina law imposes a three-year statute of limitations on actions concerning damage to real property, general negligence claims, and claims arising out of "a contract, obligation, or liability, express or implied." S.C. Code § 15-3-530 (2010). In each of those instances, Plaintiff benefits from the "discovery rule" of S.C. Code § 15-



3-535 that tolls the limitations period until such time that a plaintiff reasonably ought to have known that it had a cause of action against another party. Barr v. City of Rock Hill, 330 S.C. 640, 644 (Ct. App. 1998). Under the discovery rule, the Statute of Limitations runs from the date the injured party either knew or should have known by the exercise of reasonable diligence that a cause of action had arisen from the wrongful conduct of the tortfeasor. True v. Monteith, 327 S.C. 116, 119, 489 S.E.2d 615, 616 (1997). The fact that the injured party may not comprehend the full extent of damage or appreciate the exact nature of the wrong is immaterial to the discovery rule analysis. Christensen v. Mikell, 324 S.C. 70, 73, 476 S.E.2d 692, 694 (1996). See also Dean v. Ruscon Corp., 321 S.C. 360, 365 (1996). In this instance, the Board of the HOA had actual knowledge of leaking windows and sealant failures identified in the Myles Glick report, but also, in May and June of 2003, acknowledged the need to investigate all three buildings to determine the full extent of the damage. This acknowledgment starts the statute running.

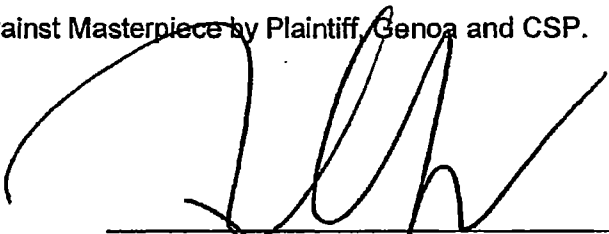
Plaintiff maintains that repairs performed by Genoa and/or the Developer following the Glick Report temporarily "fixed" certain alleged problems until they resurfaced some years later. Thus, Plaintiff argues that its claims are not barred by the statute of limitations because its claims are for "defective repairs" rather than original work. This argument does not apply to Masterpiece, as Masterpiece did not participate in any repairs. Accordingly, the Court hereby finds that South Carolina's three year statute of limitations on any claims Plaintiff could have brought against Masterpiece began to run in 2003 when Myles Glick placed Plaintiff on notice of potential issues with Masterpiece, and the Plaintiff acknowledged the need to investigate further to determine

the full extent of the damage. Because Plaintiff did not file a lawsuit until January 16, 2009, the statute of limitations bars Plaintiff's action as it concerns Masterpiece scope of involvement in this project. This Court concludes that there is no genuine issue as to any material fact, and Masterpiece is entitled to judgment as a matter of law.

In addition, Genoa and CSP have filed cross claims against Masterpiece. The Court hereby finds that Genoa and CSP are entitled to Summary Judgment as it concerns Masterpiece because Plaintiff's claims are barred by the statute of limitations. As a result, Genoa and CSP do not have indemnification actions against Masterpiece, and Masterpiece is likewise entitled to Summary Judgment in full.

WHEREFORE, this Court hereby grants Masterpiece's Motion for Summary Judgment in full for all claims against Masterpiece by Plaintiff, Genoa and CSP.

IT IS SO ORDERED.


April 5/15, 2012
Charleston, South Carolina

The Honorable Roger M. Young
Presiding Judge of the Ninth Judicial Circuit

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-10-267

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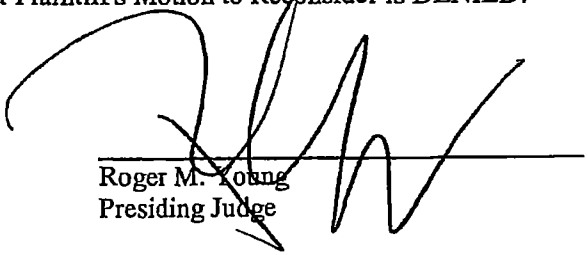
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Inc.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Reconsider is DENIED.

AND IT IS SO ORDERED.



Roger M. Young
Presiding Judge

7/13, 2012

Charleston, South Carolina.

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



www3.charlestoncounty.org

123



DAVID JAY PARRISH
NEXSEN PRUET, LLC
PO BOX 486
CHARLESTON SC 29402-0486

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRC

Order/Denying plntff's mot to reconsider, alter or amend

CASE NO: 2009CP1000267

**3 Chisolm Street Homeowners Association Inc VS Chisolm Street Partners Llc Etc ,
defendant, et a**

This judgment was entered on the 16th day of July, 2012, and a copy mailed first class on Wednesday, July 18, 2012, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

CHISOLM STREET PARTNERS, LCC;
MURRAY SCHOOL PARTNERS, LLC;
GENOA CONSTRUCTION SERVICES,
INC.; MASTERPIECE MILLWORK, INC.;
ALLEN ROPER, JR. D/B/A R MASONRY -
BRICKWORK AND STUCCO; and JOHN
DOE #1, and JOHN DOE #2,

Defendants.

IN THE CIRCUIT COURT

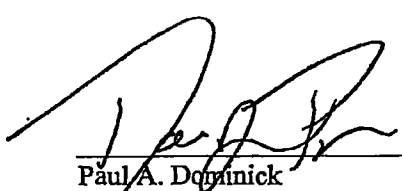
Case No. 2009-CP-10267

SUMMONS

FILED
2009 JAN 16 PM 4:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the above entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers at Post Office Box 486, Charleston, South Carolina 29402 (205 King Street, Suite 400, Charleston, South Carolina 29401), within thirty (30) days after the date of such service, exclusive of the day of service; and if you fail to answer the said Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.


Paul A. Dominick
David J. Parrish
NEXSEN PRUET, LLC
P.O. Box 486
Charleston, SC 29402
843.577.9440
Attorneys for Plaintiff

January 16, 2009

NPCHAR1:453893.3-SC-(DJP) 900000-00239

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

CHISOLM STREET PARTNERS, LCC;
MURRAY SCHOOL PARTNERS, LLC;
GENOA CONSTRUCTION SERVICES,
INC.; MASTERPIECE MILLWORK, INC.;
ALLEN ROPER, JR. D/B/A R MASONRY -
BRICKWORK AND STUCCO; JOHN DOE
#1, and JOHN DOE #2,

Defendants.

IN THE CIRCUIT COURT
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2009-CP-10-267

COMPLAINT

(Construction Defects)

Jury Trial Demanded

FILED
2009 JAN 16 PM 4:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Plaintiff would show as follows

1. Plaintiff 3 Chisolm Street Homeowners Association, Inc. is a South Carolina eleemosynary corporation.
2. Plaintiff owns and governs the common elements contained in the condominium horizontal property regime known as the Chisolm Street Condominiums located at 3 Chisolm Street in the City of Charleston (Charleston County), South Carolina, as reflected in the Master Deed Establishing the 3 Chisolm Horizontal Property Regime recorded in Book V309 beginning at Page 659 in the Charleston County RMC Office (hereinafter referred to as the "condominiums).

3. The condominiums are located on the site of the old Andrew B. Murray Vocational School, and the condominiums were developed by converting the school buildings into condominiums.

4. The condominiums consist of three buildings generally described as a three-story main building, a gymnasium building, and a care taker building, together with the other common elements contained in the regime as more fully described in the master deed.

5. Upon information and belief, Defendant Chisolm Street Partners, LCC is a limited liability company organized and existing under the laws of the State of Georgia. Upon information and belief, Chisolm Street Partners, LCC was a developer of the condominiums.

6. Upon information and belief, Defendant Murray School Partners, LLC is a limited liability company organized and existing under the laws of the State of Georgia. Upon information and belief, Murray Street Partners, LLC was a developer of the Chisolm Street Condominiums and acted as the general manager for Chisolm Street Partners, LCC during development of the condominiums.

7. Chisolm Street Partners, LCC and Murray School Partners, LLC are sometimes hereinafter individually and collectively referred to as the "Developer Defendants."

8. Upon information and belief, the Developer Defendants converted and developed, the Murray School property into condominium units, and then marketed and sold the condominiums to the condominium unit owners who comprise the 3 Chisolm Street Homeowners Association, Inc., or to their predecessors.

9. The Chisolm Street Condominiums are on the list of the National Register of Historic Places in South Carolina.

10. Upon information and belief, the Developer Defendants received substantial rehabilitation tax credits in connection with their conversion, rehabilitation, and development of the Chisolm Street Condominiums.

11. The Developer Defendants formed the 3 Chisolm Street Homeowners Association, Inc. and controlled the Association through appointment of its board of directors.

12. Upon information and belief Defendant Genoa Construction Services, Inc. ("Genoa") is a limited liability company organized and existing under the laws of the State of Georgia and acted as the general contractor for the construction of the condominiums.

13. Upon information and belief, Masterpiece Millwork, Inc. is corporation organized and existing under the laws of the State of Georgia and manufactured and supplied the window units installed during construction of the condominiums.

14. Upon information and belief, Allen Roper, Jr., d/b/a R Masonry – Brickwork and Stucco, is a citizen and resident of Charleston County, South Carolina, and acted as the masonry subcontractor during construction of the condominiums.

15. Defendant John Doe #1 is a fictitious name representing the as-yet unidentified person or entity that acted as the painting subcontractor during construction of the condominiums.

16. Defendant John Doe #2 is a fictitious name representing the as-yet unidentified person or entity that acted as the painting subcontractor during construction of the condominiums.

17. This Court has jurisdiction over the parties and subject matter of this action, and venue is proper before this Court.

18. The Chisolm Street condominiums contain construction defects and deficiencies, including without limitation the following:

- (a) improper installation of windows;
- (b) installation of windows that lack adequate wood preservative treatment;
- (c) improper priming and painting of the windows;
- (d) improper flashing of the windows and window openings;
- (e) improper connection of the windows to side walls;
- (f) rusting and deterioration of the brick lintel over windows;
- (g) improper installation firewalls between condominium units;
- (h) improper installation of the roofs on the buildings;
- (i) improper installation of interior grade doors in exterior applications;
- (j) such additional items as may be discovered during investigation of construction deficiencies.

19. The condominiums have sustained, and continue to sustain, water damage and water intrusion to the common elements caused by and resulting from defects and deficiencies in the construction of the condominiums.

20. As a result of the above defects and deficiencies, the roofs, brick lintels, windows and in the condominiums are prematurely failing and resulting in water intrusion and damage to the buildings.

21. Plaintiff has been and will continue to be proximately damaged by the water intrusion, water damage, and construction defects in the condominiums.

22. As a result of the construction defects and resulting property damage, Plaintiff has incurred, and in the future will incur, damages in the form of having to pay for professional fees to investigate, identify, and determine the extent of the problems and determine a plan for

repairing the problems, and to pay for the preparation of the plans, specifications and other documents needed to perform the repairs, and to pay for the repairs.

23. Plaintiff will suffer damages arising from having to pay for the costs of the repairs.

24. Plaintiff will incur damages in the form of the loss of use and enjoyment of the common elements during the repairs.

FOR A #1 CAUSE OF ACTION

(Negligence as to the Chisolm Street Partners, LCC
and Murray School Partners, LLC)

25. Plaintiff repeats and incorporates the above paragraphs by reference.

26. As the developers of the Chisolm Street condominiums, the Developer Defendants owed a duty of due care to Plaintiff and to the purchasers of condominium units in overseeing the construction and management of the condominiums.

27. The Defendants breached the duty of due care they owed to Plaintiff and to the purchasers of condominium units in one or more of the following particulars:

- (a) by failing to properly select the contractors and materials used in the construction of the condominiums.
- (b) by failing to properly oversee the construction, including the selection of contractors, of the condominiums when it planned to sell the condominium units to members of the public for profit.

28. The negligent acts and omissions of the Defendants are the proximate cause of construction defects and deficiencies which have resulted in property damage and financial damages to Plaintiff.

29. The acts and omissions of the Defendants have proximately caused Plaintiff to be damaged in that Plaintiff has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to identify and determine the

extent of the problems, to pay for design remediation plans and specifications to correct the construction defects and deficiencies, and to pay for the repairs.

30. Plaintiff will suffer loss of use and enjoyment of the common elements during the repairs.

31. As a result of the negligence of the Defendants, Plaintiff is entitled to a judgment against Defendants for actual and punitive damages in an amount to be determined at the trial of this case.

FOR A #2 CAUSE OF ACTION

(breach of implied warranty of habitability as to Chisolm Street Partners, LCC
and Murray School Partners, LLC)

32. Plaintiff repeats and incorporates the above paragraphs by reference.

33. As the developers of the condominiums, the Developer Defendants provided an implied warranty of habitability under South Carolina law to the purchasers and owners of the condominiums by controlling the design and ultimate cost of construction, by selecting contractors, by controlling the means and methods of construction, by offering the units for sale to the public, and by entering into contracts of sale. This warranty of habitability extends to subsequent purchasers who were the foreseeable beneficiaries of this warranty.

34. The construction defects and resulting property damage to the condominiums constitutes a breach of the warranty of habitability under the laws of South Carolina.

35. Due to the construction defects and resulting property damage, Plaintiff has, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to identify the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

36. Plaintiff will suffer loss of use of the common areas during the repairs.

37. Plaintiff is entitled to a judgment against the Defendants in an amount to be proven at trial for all damages proximately caused by Defendants' breach of the warranty of habitability.

FOR A #3 CAUSE OF ACTION

(negligence as to Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1,
and John Doe #2)

38. Plaintiff repeats and incorporates the above paragraphs by reference.

39. By undertaking construction work on this project, Defendants Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1 painting contractor, and John Doe #2 roofing contractor owed a duty to Plaintiff to use reasonable care during the performance of their respective work on the buildings and to perform their scope of work in accordance with all applicable building codes, applicable industry standards, and to ensure that construction conformed to the design documents when such documents reflected good design practice, the applicable standard of care, and industry standards.

40. Defendants breached the duty of care they owed to Plaintiff.

41. Defendants were negligent, grossly negligent, willful, and reckless in numerous aspects of the construction of the building, including, but not limited to, the following:

- (a) failing to properly supervise subcontractors and laborers during the construction of the condominiums;
- (b) failing to follow plans and specifications of the architect and design professionals;
- (c) failing to follow installation instructions and recommendations;
- (d) failing to perform construction work in accordance with applicable building codes and proper workmanlike practices; and
- (e) failing to select proper materials and capable subcontractors.
- (f) improper installation of windows;

- (g) installation of windows that lack adequate wood preservative treatment;
- (h) improper priming and painting of the windows;
- (i) improper flashing of the windows and window openings;
- (j) improper connection of the windows to side walls;
- (k) rusting and deterioration of the brick lintel over windows;
- (l) improper installation firewalls between condominium units;
- (m) improper installation of the roofs on the buildings;
- (n) improper installation of interior grade doors in exterior applications;
- (o) such additional items as may be discovered during investigation of construction deficiencies.

42. As a direct and proximate result of the negligence and recklessness of Defendants as hereinabove set forth, the condominium units and the common elements of the condominiums have been damaged by the intrusion of water.

43. Plaintiff has been proximately damaged by Defendants in that it has, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to identify the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

44. Plaintiff will suffer loss of use of the common areas during the repairs.

45. As a result of the negligence of Defendants, Plaintiff is entitled to a judgment against Defendants for actual and punitive damages in an amount to be determined at the trial of this case.

FOR A #4 CAUSE OF ACTION

(negligence per se as to Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1,
and John Doe #2)

46. Plaintiff repeats and incorporates the above paragraphs by reference.

47. By undertaking construction work on this project, Defendants Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1 painting contractor, and John Doe #2 roofing contractor owed a duty to Plaintiff to use reasonable care during the performance of their work on the buildings and to perform their scope of work in accordance with all applicable building codes, applicable industry standards, and to ensure that construction conformed to the design documents when such documents reflected good design practice, conformed to the applicable standard of care, and conformed to industry standards.

48. Defendants breached the duty of care owed to Plaintiff.

49. Defendants violated the applicable building codes in effect at the time of construction, specifically including, but not limited to the following:

- (a) improper installation of windows;
- (b) installation of windows that lack adequate wood preservative treatment;
- (c) improper priming and painting of the windows;
- (d) improper flashing of the windows and window openings;
- (e) improper connection of the windows to side walls;
- (f) rusting and deterioration of the brick lintel over windows;
- (g) improper installation firewalls between condominium units;
- (h) improper installation of the roofs on the buildings;
- (i) improper installation of interior grade doors in exterior applications;
- (j) such additional building code violations which may be discovered during ongoing investigations of construction deficiencies.

50. The violation of the building codes by Defendants amounts to negligence per se.

51. Plaintiff has been proximately damaged by Defendants in that it has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for

professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

52. Plaintiff will suffer loss of use of the common elements during the repairs.

53. As a result of the negligence per se of Defendants, Plaintiff is entitled to a judgment against Defendants for actual and punitive damage in an amount to be determined at trial.

FOR A #5 CAUSE OF ACTION

(breach of implied warranty of workmanlike service as to Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1, and John Does #2)

54. Plaintiff repeats and incorporates the above paragraphs by reference.

55. By undertaking construction on this project, Defendants Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1 painting contractor, and John Doe #2 roofing contractor impliedly warranted that their work would be of quality workmanship and in accordance with industry standards.

56. The above referenced construction defects and deficiencies show that Defendants breached their implied warranties by failing to provide quality workmanship and by failing to comply with industry standards

57. Plaintiff has been proximately damaged by Defendants in that it has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

58. Plaintiff will suffer loss of use of the common elements during the repairs.

59. Plaintiff is entitled to a judgment against Defendants for damages, in an amount to be determined at trial, resulting from the breach of their implied warranties.

FOR A #6 CAUSE OF ACTION

(breach of express warranty as to Genoa, Masterpiece Millworks, Allen Roper, Jr.,
John Doe #1, and John Doe #2)

60. Plaintiff repeats and incorporates the above paragraphs by reference.

61. Plaintiff is informed and believes that, as part of their contracts for this project, Defendants Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1 painting contractor, and John Doe #2 roofing contractor expressly warranted that their work would be of good quality, free from defects, and in conformance with the contract documents, and in conformance with industry standards.

62. As the ultimate and foreseeable owner of the condominiums, Plaintiff and its members are beneficiaries of the express warranties provided by these Defendants.

63. Defendants breached their express warranties by failing to construct the condominiums in a manner free from defects and in compliance with the contract documents, applicable building codes, and industry standards.

64. Plaintiff has been proximately damaged by Defendants in that it has been, and in the future will be, forced to expend funds to repair damages that have already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

65. Plaintiff will suffer loss of use of the common areas during the repairs.

66. Plaintiff is entitled to a judgment against Defendants for damages, in an amount to be determined at trial, resulting from the breach of their express warranties.

FOR A #7 CAUSE OF ACTION

(breach of implied warranty of merchantability as to Masterpiece Millwork)

67. Plaintiff repeats and incorporates the above paragraphs by reference.

68. By providing windows for use in the condominiums, Defendant Masterpiece Millwork impliedly warranted that the windows it supplied would be fit for the ordinary purposes for which they are used and would pass without objection in the trade.

69. The windows provided by Masterpiece Millwork are defective, have failed, and are allowing water to intrude into the buildings.

70. The failures of the windows provided by Masterpiece Millwork have resulted in damage to buildings and will require repair and restoration by Plaintiff, including, but not limited to, removal of the exterior windows and replacement with exterior windows that comply with the current building codes.

71. Plaintiff will suffer loss of use of the common elements during the repairs.

72. The failure of the windows constitutes a breach of the implied warranty of merchantability.

73. Plaintiff is entitled to a judgment against Masterpiece Millwork for damages, in an amount to be determined at trial, result from its breach of the implied warranty of merchantability.

FOR A #8 CAUSE OF ACTION

(breach of implied warranty of fitness for a particular purpose as to Masterpiece Millwork)

74. Plaintiff repeats and incorporates the above paragraphs by reference.

75. Defendant Masterpiece Millwork was aware that its windows were being used as building components for the condominiums.

76. Upon information and belief, Masterpiece Millwork recommended its windows for the particular purposes stated by the contractors, the developers, and the architect.

77. Masterpiece Millwork knew or reasonably should have known that the purchasers were relying on its skill and judgment to select suitable goods that are were in compliance with applicable building codes and industry standards.

78. By selling the windows for a particular use in the condominiums, Masterpiece Millwork impliedly warranted that its windows would be fit for their intended purposes in this condominium project.

79. The windows sold by Masterpiece Millwork and incorporated into the condominiums have failed prematurely and are allowing water to intrude into the buildings.

80. The failure of the windows has resulted in damage to the various components of the buildings and will require extensive repair and restoration by Plaintiff including, but not limited to, removal of the windows and replacement with windows that comply with current building codes.

81. Plaintiff will suffer loss of use of the common elements during the repairs.

82. The failure of the windows amounts to a breach of the implied warranty of fitness for a particular purpose.

83. Plaintiff is entitled to a judgment against Masterpiece Millwork from damages, in an amount to be determined at trial, resulting from its breach of the implied warranty of fitness for a particular purpose.

FORA #9 CAUSE OF ACTION
(strict liability in tort as to Masterpiece Millwork)

84. Plaintiff repeats and incorporates the above paragraphs by reference.

85. Defendant Masterpiece Millwork is in the business of selling building products for use in construction projects in South Carolina, specifically windows.

86. Masterpiece Millwork manufactured and sold the windows that were incorporated into the condominiums during construction.

87. The windows were expected to and were incorporated into the without substantial change from the condition in which they were originally manufactured and sold.

88. The windows have failed prematurely and are allowing water to enter the buildings.

89. The failure of the windows is causing property damage.

90. The failure of the windows will result in danger to Plaintiff and its members and their guests and invitees if the window products are unable to withstand the design wind loads required by the applicable building codes.

91. The windows that were sold for use in the condominiums are defective and unreasonably dangerous to the condominium owners.

92. As a proximate result of the defective windows, Plaintiff and its members have suffered and will continue to suffer damages, including but not limited to the costs of removal of the windows and replacement with windows that comply with current building codes.

93. Plaintiff and its members will suffer loss of use of the common elements during the repairs

94. As a direct and proximate result of the damages caused by the defective windows, Plaintiff is entitled to a judgment against Defendant for actual and punitive damages in an amount to be determined at the trial of this case.

FOR A #10 CAUSE OF ACTION
(South Carolina Unfair Trade Practices Act as to all Defendants)

95. Plaintiff repeats and incorporates the above paragraphs by reference.

96. Plaintiff and Defendants are considered persons within the meaning of the South Carolina Unfair Trade Practices ("UTPA"), S.C. Code Ann. § 39-5-10 et seq.

97. By developing, marketing, constructing, and selling the condominium units, the Defendants were engaged in commerce within the meaning of the UTPA.

98. In connection with their developing, marketing, constructing, and selling the Chisolm Street condominiums, Defendants engaged in unfair or deceptive acts or practices in the conduct of trade in violation of the UTPA.

99. The unfair and deceptive practices engaged in by Defendants affect the public interests of South Carolina, have the potential for repetition, and will continue to have an impact on the public interest.

100. Due to the acts of Defendants and the construction defects and resulting property damage, Plaintiff has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies and to pay for the repairs. Plaintiff will also suffer loss of use of the common elements during the repairs.

101. Plaintiff is entitled under the UTPA to a judgment against Defendants, jointly and severally, for treble actual damages plus attorneys' fees based on Defendants' knowing, intentional, willful, and malicious violations of the UTPA.

FOR A #11 CAUSE OF ACTION
(Violation of S.C Code § 27-31-430)

102. Plaintiff repeats and incorporates the above paragraphs by reference.

103. The South Carolina Horizontal Property Act contains requirements applicable to conversion of rental units to condominium ownership, as is set forth in S.C. Code §§ 27-31-410 to 27-31-440.

104. Section 27-31-410 states:

As used in this chapter, "conversion of rental units to condominium ownership" means the establishment of a horizontal property regime encompassing a preexisting building which, at anytime prior to the recording of the master deed or master lease, was wholly or partially occupied by persons as their residence on a permanent or at least a continuing basis other than persons who, at the time of such recording, had contractual rights to acquire condominium ownership within the building.

105. Upon information and belief, when the condominium property was used as the Andrew B. Murray Vocational School, the school's caretaker lived in a building on the property known as the care taker building. The Developer Defendants subsequently acquired the property, converted the buildings and property into condominiums, and then offered, marketed, and sold the condominium units to third party buyers. The condominiums horizontal property regime created and developed by the Developer Defendants included the renovation, conversion, and sale of the care taker building into condominiums.

106. Occupancy of the care taker building by the school's caretaker renders it a "preexisting building which, at anytime prior to the recording of the master deed or master lease, was wholly or partially occupied by persons as their residence on a permanent or at least a continuing basis" as set forth in § 27-31-410.

107. Section 27-31-430 states:

Whenever the lessee, sole owner, or co-owner of a building declares the undertaking of a conversion of rental units to condominium ownership through the recordation of a master deed or master lease, written disclosure shall be made within thirty days of the date of the recordation to all prospective purchasers, including tenants in possession, as to the physical condition of the building. The disclosure shall contain a written report prepared by an independent registered

architect or engineer licensed to practice his profession in this State, describing the present condition of all general common elements. The report shall contain a good faith estimate of the remaining useful life to be expected for each item reported on, together with a list of any notices of uncured violations of building codes or other county or municipal regulations, together with the estimated cost of curing those violations. The good faith estimate of useful life shall not constitute a warranty and, as to an independent registered architect or engineer licensed to practice his profession in this State, shall not be deemed a representation of material fact or an inducement to purchase and shall not give rise to any cause of action at law or in equity against such architect or engineer. A failure to make the disclosure required by this section shall constitute a violation of the South Carolina Unfair Trade Practices Act.

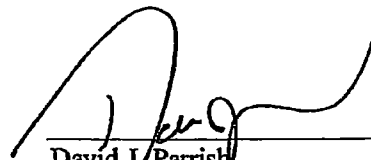
108. Upon information and belief, the Developer Defendants did not prepare or disclose the written report required under § 27-31-430.

109. The failure of the Developer Defendants to make the disclosures required under § 27-31-430 constitutes a *per se* violation of the South Carolina Unfair Trade Practices Act as stated in the last sentence of § 27-31-430.

110. Pursuant to § 27-31-430, Plaintiff is entitled under the UTPA to a judgment against the Developer Defendants, jointly and severally, for treble actual damages plus attorneys' fees based on their knowing, intentional, willful, and malicious violations of the UTPA

WHEREFORE, Plaintiff prays for:

- (a) a judgment for actual damages against Defendants jointly and severally with regard to causes of action #1 through #9;
- (b) a judgment for punitive damages against Defendants jointly and severally, with regard to causes of action #1, 3, 4, and 9;
- (c) a judgment for treble actual damages against Defendants jointly and severally with regard to cause of action #10 and #11.
- (d) an award of attorney's fees and costs; and
- (e) such other and further relief as the Court deems just and proper.



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Attorneys for Plaintiff

January 16, 2009

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

CHISOLM STREET PARTNERS, LCC;
MURRAY SCHOOL PARTNERS, LLC;
GENOA CONSTRUCTION SERVICES,
INC.; MASTERPIECE MILLWORK, INC.;
ALLEN ROPER, JR. D/B/A R MASONRY -
BRICKWORK AND STUCCO; and JOHN
DOE #1, and JOHN DOE #2,

Defendants.

IN THE CIRCUIT COURT

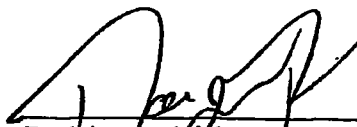
Case No. 2009-CP-10-267

AMENDED SUMMONS

FILED
2009 JAN 20 PM 4:22
JULIE J. ARMSTRONG
CLERK OF COURT

TO THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Amended Complaint in the above entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers at Post Office Box 486, Charleston, South Carolina 29402 (205 King Street, Suite 400, Charleston, South Carolina 29401), within thirty (30) days after the date of such service, exclusive of the day of service; and if you fail to answer the said Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



Paul A. Domitick
David J. Parrish
NEXSEN PRUET, LLC
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Charleston, SC 29402
843.577.9440
Attorneys for Plaintiff

January 20, 2009

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

CHISOLM STREET PARTNERS, LCC;
MURRAY SCHOOL PARTNERS, LLC;
GENOA CONSTRUCTION SERVICES,
INC.; MASTERPIECE MILLWORK, INC.;
ALLEN ROPER, JR. D/B/A R MASONRY –
BRICKWORK AND STUCCO; JOHN DOE
#1, and JOHN DOE #2,

Defendants.

IN THE CIRCUIT COURT
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2009-CP-10-267

AMENDED COMPLAINT

(Construction Defects)

Jury Trial Demanded

FILED
2009 JAN 20 PM 4:22
JULIE J. ARMSTRONG
CLERK OF COURT

Plaintiff would show as follows

1. Plaintiff 3 Chisolm Street Homeowners Association, Inc. is a South Carolina eleemosynary corporation.
2. Plaintiff owns and governs the common elements contained in the condominium horizontal property regime known as the Chisolm Street Condominiums located at 3 Chisolm Street in the City of Charleston (Charleston County), South Carolina, as reflected in the Master Deed Establishing the 3 Chisolm Horizontal Property Regime recorded in Book V309 beginning at Page 659 in the Charleston County RMC Office (hereinafter referred to as the "condominiums").

3. The condominiums are located on the site of the old Andrew B. Murray Vocational School, and the condominiums were developed by converting the school buildings into condominiums.

4. The condominiums consist of three buildings generally described as a three-story main building, a gymnasium building, and a care taker building, together with the other common elements contained in the regime as described in the master deed.

5. Upon information and belief, Defendant Chisolm Street Partners, LCC is a limited liability company organized and existing under the laws of the State of Georgia.

6. Upon information and belief, Chisolm Street Partners, LCC was a developer of the condominiums.

7. Upon information and belief, Defendant Murray School Partners, LLC is a limited liability company organized and existing under the laws of the State of Georgia.

8. Upon information and belief, Murray Street Partners, LLC was a developer of the Chisolm Street Condominiums and acted as the general manager for Chisolm Street Partners, LCC during development of the condominiums.

9. Chisolm Street Partners, LCC and Murray School Partners, LLC are sometimes hereinafter individually and collectively referred to as the "Developer Defendants."

10. Upon information and belief, the Developer Defendants purchased the Andrew B. Murray Vocational property, converted and developed the property into condominium units, and then marketed and sold the condominiums to the condominium unit owners who comprise the 3 Chisolm Street Homeowners Association, Inc., or to their predecessors.

11. The condominiums are on the list of the National Register of Historic Places in South Carolina.

12. Upon information and belief, the Developer Defendants received substantial rehabilitation tax credits in connection with their conversion, rehabilitation, and development of the condominiums.

13. The Developer Defendants formed the 3 Chisolm Street Homeowners Association, Inc. and controlled the Association through appointment of its board of directors.

14. Upon information and belief, Defendant Genoa Construction Services, Inc. ("Genoa") is a limited liability company organized and existing under the laws of the State of Georgia.

15. Upon information and belief, Genoa acted as the general contractor for the construction of the condominiums.

16. Upon information and belief, Masterpiece Millwork, Inc. is corporation organized and existing under the laws of the State of Georgia.

17. Upon information and belief, Masterpiece Millwork, Inc. manufactured and supplied the window units installed during construction of the condominiums.

18. Upon information and belief, Allen Roper, Jr., d/b/a R Masonry – Brickwork and Stucco, is a citizen and resident of Charleston County, South Carolina.

19. Upon information and belief, Allen Roper, Jr. acted as the masonry subcontractor during construction of the condominiums.

20. Defendant John Doe #1 is a fictitious name representing the as-yet unidentified person or entity that acted as the painting subcontractor during construction of the condominiums.

21. Defendant John Doe #2 is a fictitious name representing the as-yet unidentified person or entity that acted as the roofing subcontractor during construction of the condominiums.

22. This Court has jurisdiction over the parties and subject matter of this action, and venue is proper before this Court.

23. The Chisolm Street condominiums contain construction defects and deficiencies, including without limitation the following:

- (a) improper installation of windows;
- (b) installation of windows that lack adequate wood preservative treatment;
- (c) improper priming and painting of the windows;
- (d) improper flashing of the windows and window openings;
- (e) improper connection of the windows to side walls;
- (f) rusting and deterioration of the brick lintel over windows;
- (g) improper installation of firewalls between condominium units;
- (h) improper installation of the roofs on the buildings;
- (i) improper installation of interior grade doors in exterior applications;
- (j) such additional items as may be discovered during investigation of construction deficiencies.

24. The condominiums have sustained, and continue to sustain, water damage and water intrusion to the common elements caused by and resulting from defects and deficiencies in the construction of the condominiums.

25. As a result of the defects and deficiencies, the roofs, brick lintels, windows, and doors in the condominiums are prematurely failing and resulting in water intrusion and damage to the buildings.

26. Plaintiff has been and will continue to be proximately damaged by the water intrusion, water damage, and construction defects in the condominiums.

27. As a result of the construction defects and resulting property damage, Plaintiff has incurred, and in the future will incur, damages in the form of having to pay for professional fees

to investigate, identify, and determine the extent of the problems and determine a plan for repairing the problems, to pay for the preparation of the plans, specifications and other documents needed to perform the repairs, and to pay for the repairs.

28. Plaintiff will incur damages in the form of the loss of use and enjoyment of the common elements during the repairs.

FOR A #1 CAUSE OF ACTION
(Negligence as to the Chisolm Street Partners, LCC
and Murray School Partners, LLC)

29. Plaintiff repeats and incorporates the above paragraphs by reference.

30. As the developers of the condominiums, the Developer Defendants owed a duty of due care to Plaintiff and to the purchasers of condominium units in overseeing the construction and management of the condominiums.

31. The Defendants breached the duty of due care they owed to Plaintiff and to the purchasers of condominium units in one or more of the following particulars:

- (a) by failing to properly select the contractors and materials used in the construction of the condominiums.
- (b) by failing to properly oversee the construction, including the selection of contractors, when it planned to sell the condominium units to members of the public for profit.

32. The negligent acts and omissions of the Defendants are the proximate cause of construction defects and deficiencies which have resulted in property damage and financial damage to Plaintiff.

33. The acts and omissions of the Defendants have proximately caused Plaintiff to incur damages in that Plaintiff has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to identify and determine

the extent of the problems, to pay for design remediation plans and specifications to correct the construction defects and deficiencies, and to pay for the repairs.

34. Plaintiff will suffer loss of use and enjoyment of the common elements during the repairs.

35. As a result of the negligence of the Defendants, Plaintiff is entitled to a judgment against Defendants for actual and punitive damages in an amount to be determined at the trial of this case.

FOR A #2 CAUSE OF ACTION

(breach of implied warranty of habitability as to Chisolm Street Partners, LCC
and Murray School Partners, LLC)

36. Plaintiff repeats and incorporates the above paragraphs by reference.

37. As the developers of the condominiums, the Developer Defendants provided an implied warranty of habitability under South Carolina law to the purchasers and owners of the condominiums by controlling the design and ultimate cost of construction, by selecting contractors, by controlling the means and methods of construction, by offering the units for sale to the public, and by entering into contracts of sale. This warranty of habitability extends to subsequent purchasers who were the foreseeable beneficiaries of this warranty.

38. The construction defects and resulting property damage to the condominiums constitutes a breach of the implied warranty of habitability under the laws of South Carolina.

39. Due to the construction defects and resulting property damage, Plaintiff has incurred, and in the future will incur, damages to expend funds to repair damage that has already occurred, to pay for professional fees to identify the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

40. Plaintiff will suffer loss of use of the common areas during the repairs.

41. Plaintiff is entitled to a judgment against the Defendants in an amount to be proven at trial for all damages proximately caused by Defendants' breach of the implied warranty of habitability.

FOR A #3 CAUSE OF ACTION

(negligence as to Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1,
and John Doe #2)

42. Plaintiff repeats and incorporates the above paragraphs by reference.

43. By undertaking construction work on this project, Defendants Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1 painting contractor, and John Doe #2 roofing contractor owed a duty to Plaintiff to use reasonable care during the performance of their respective work on the buildings and to perform their scope of work in accordance with all applicable building codes, applicable industry standards and standards of care, and to ensure that construction conformed to the design documents.

44. Defendants breached the duty of care they owed to Plaintiff.

45. Defendants were negligent, grossly negligent, willful, and reckless in numerous aspects of the construction of the building, including, but not limited to, the following:

- (a) failing to properly supervise subcontractors and laborers during the construction of the condominiums;
- (b) failing to follow plans and specifications of the architect and design professionals;
- (c) failing to follow installation instructions and recommendations;
- (d) failing to perform construction work in accordance with applicable building codes and proper workmanlike practices;
- (e) failing to select proper materials and capable subcontractors.
- (f) improper installation of windows;

- (g) installation of windows that lack adequate wood preservative treatment;
- (h) improper priming and painting of the windows;
- (i) improper flashing of the windows and window openings;
- (j) improper connection of the windows to side walls;
- (k) improper installation of the brick lintel over windows;
- (l) improper installation firewalls between condominium units;
- (m) improper installation of the roofs on the buildings;
- (n) improper installation of interior grade doors in exterior applications;
- (o) such additional items as may be discovered during investigation of construction deficiencies.

46. As a direct and proximate result of the negligence and recklessness of Defendants as hereinabove set forth, the condominium units and the common elements of the condominiums have been damaged by water intrusion.

47. Plaintiff has been proximately damaged by Defendants in that it has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to identify the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

48. Plaintiff will suffer loss of use of the common areas during the repairs.

49. As a result of the negligence of Defendants, Plaintiff is entitled to a judgment against Defendants for actual and punitive damages in an amount to be determined at the trial of this case.

FOR A #4 CAUSE OF ACTION

(negligence per se as to Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1,
and John Doe #2)

50. Plaintiff repeats and incorporates the above paragraphs by reference.

51. By undertaking construction work on this project, Defendants Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1 painting contractor, and John Doe #2 roofing contractor owed a duty to Plaintiff to use reasonable care during the performance of their work on the buildings and to perform their scope of work in accordance with all applicable building codes, applicable industry standards and standards of care, and to ensure that construction conformed to the design documents.

52. Defendants breached the duty of care owed to Plaintiff.

53. Defendants violated the applicable building codes in effect at the time of construction, specifically including, but not limited to the following:

- (a) improper installation of windows;
- (b) installation of windows that lack adequate wood preservative treatment;
- (c) improper priming and painting of the windows;
- (d) improper flashing of the windows and window openings;
- (e) improper connection of the windows to side walls;
- (f) improper installation of the brick lintel over windows;
- (g) improper installation firewalls between condominium units;
- (h) improper installation of the roofs on the buildings;
- (i) improper installation of interior grade doors in exterior applications;
- (j) such additional building code violations which may be discovered during ongoing investigations of construction deficiencies.

54. The violation of the building codes by Defendants amounts to negligence per se.

55. Plaintiff has been proximately damaged by Defendants in that it has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

56. Plaintiff will suffer loss of use of the common elements during the repairs.

57. As a result of the negligence per se of Defendants, Plaintiff is entitled to a judgment against Defendants for actual and punitive damage in an amount to be determined at trial.

FOR A #5 CAUSE OF ACTION

(breach of implied warranty of workmanlike service as to Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1, and John Does #2)

58. Plaintiff repeats and incorporates the above paragraphs by reference.

59. By undertaking construction on this project, Defendants Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1 painting contractor, and John Doe #2 roofing contractor impliedly warranted that their work would be of quality workmanship and in accordance with industry standards.

60. The above referenced construction defects and deficiencies show that Defendants breached their implied warranties by failing to provide quality workmanship and by failing to comply with industry standards

61. Plaintiff has been proximately damaged by Defendants in that it has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

62. Plaintiff will suffer loss of use of the common elements during the repairs.

63. Plaintiff is entitled to a judgment against Defendants for damages, in an amount to be determined at trial, resulting from the breach of their implied warranties of workmanlike service.

FOR A #6 CAUSE OF ACTION

(breach of express warranty as to Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1, and John Doe #2)

64. Plaintiff repeats and incorporates the above paragraphs by reference.

65. Plaintiff is informed and believes that, as part of their contracts for this project, Defendants Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1 painting contractor, and John Doe #2 roofing contractor expressly warranted that their work would be of good quality, free from defects, and in conformance with the contract documents.

66. As the ultimate and foreseeable owner of the condominiums, Plaintiff and its members are beneficiaries of the express warranties provided by these Defendants.

67. Defendants breached their express warranties by failing to construct the condominiums in a manner free from defects and in compliance with the contract documents, applicable building codes, and industry standards.

68. Plaintiff has been proximately damaged by Defendants in that it has been, and in the future will be, forced to expend funds to repair damages that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

69. Plaintiff will suffer loss of use of the common areas during the repairs.

70. Plaintiff is entitled to a judgment against Defendants for damages, in an amount to be determined at trial, resulting from the breach of their express warranties.

FOR A #7 CAUSE OF ACTION

(breach of implied warranty of merchantability as to Masterpiece Millwork)

71. Plaintiff repeats and incorporates the above paragraphs by reference.

72. By providing windows for use in the condominiums, Defendant Masterpiece Millwork impliedly warranted that the windows it supplied would be fit for the ordinary purposes for which they are used and would pass without objection in the trade.

73. The windows provided by Masterpiece Millwork are defective, have failed, and are allowing water to intrude into the buildings.

74. The failure of the windows provided by Masterpiece Millwork have resulted in damage to buildings and will require repair and restoration by Plaintiff, including, but not limited to, removal of the exterior windows and replacement with exterior windows that comply with the current building codes.

75. Plaintiff will suffer loss of use of the common elements during the repairs.

76. The failure of the windows constitutes a breach of the implied warranty of merchantability.

77. Plaintiff is entitled to a judgment against Masterpiece Millwork for damages, in an amount to be determined at trial, result from its breach of the implied warranty of merchantability.

FOR A #8 CAUSE OF ACTION

(breach of implied warranty of fitness for a particular purpose as to Masterpiece Millwork)

78. Plaintiff repeats and incorporates the above paragraphs by reference.

79. Defendant Masterpiece Millwork was aware that its windows were being used as building components for the condominiums.

80. Masterpiece Millwork knew or reasonably should have known that the purchasers were relying on its skill and judgment to select suitable goods that are were in compliance with applicable building codes and industry standards.

81. By selling the windows for a particular use in the condominiums, Masterpiece Millwork impliedly warranted that its windows would be fit for their intended purposes in this condominium project.

82. The windows sold by Masterpiece Millwork and incorporated into the condominiums have failed prematurely and are allowing water to intrude into the buildings.

83. The failure of the windows has resulted in damage to the various components of the buildings and will require extensive repair and restoration by Plaintiff including, but not limited to, removal of the windows and replacement with windows that comply with current building codes.

84. Plaintiff will suffer loss of use of the common elements during the repairs.

85. The failure of the windows amounts to a breach of the implied warranty of fitness for a particular purpose.

86. Plaintiff is entitled to a judgment against Masterpiece Millwork from damages, in an amount to be determined at trial, resulting from its breach of the implied warranty of fitness for a particular purpose.

FOR A #9 CAUSE OF ACTION
(strict liability in tort as to Masterpiece Millwork)

87. Plaintiff repeats and incorporates the above paragraphs by reference.

88. Defendant Masterpiece Millwork is in the business of selling building products for use in construction projects in South Carolina, specifically windows.

89. Masterpiece Millwork manufactured and sold the windows that were incorporated into the condominiums during construction.

90. The windows were expected to and were incorporated into the without substantial change from the condition in which they were originally manufactured and sold.

91. The windows have failed prematurely and are allowing water to enter the buildings.

92. The failure of the windows is causing property damage.

93. The failure of the windows will result in danger to Plaintiff and its members and their guests and invitees if the window products are unable to withstand the design wind loads required by the applicable building codes.

94. The windows that were sold for use in the condominiums are defective and unreasonably dangerous to the condominium owners.

95. As a proximate result of the defective windows, Plaintiff and its members have suffered and will continue to suffer damages, including but not limited to the costs of removal of the windows and replacement with windows that comply with current building codes.

96. Plaintiff and its members will suffer loss of use of the common elements during the repairs.

97. As a direct and proximate result of the damages caused by the defective windows, Plaintiff is entitled to a judgment against Defendant for actual and punitive damages in an amount to be determined at the trial.

FOR A #10 CAUSE OF ACTION

(South Carolina Unfair Trade Practices Act as to all Defendants)

98. Plaintiff repeats and incorporates the above paragraphs by reference.

99. Plaintiff and Defendants are considered persons within the meaning of the South Carolina Unfair Trade Practices ("UTPA"), S.C. Code Ann. § 39-5-10 et seq.

100. By developing, marketing, constructing, and selling the condominium units, the Defendants were engaged in commerce within the meaning of the UTPA.

101. In connection with their developing, marketing, constructing, and selling the condominiums, Defendants engaged in unfair or deceptive acts or practices in the conduct of trade in violation of the UTPA.

102. The unfair and deceptive practices engaged in by Defendants affect the public interests of South Carolina, have the potential for repetition, and will continue to have an impact on the public interest.

103. Due to the acts of Defendants and the construction defects and resulting property damage, Plaintiff has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

104. Plaintiff and its members will suffer loss of use of the common elements during the repairs

105. Plaintiff is entitled under the UTPA to a judgment against Defendants, jointly and severally, for treble actual damages plus attorneys' fees based on Defendants' knowing, intentional, willful, and malicious violations of the UTPA.

FOR A #11 CAUSE OF ACTION
(Violation of S.C Code § 27-31-430)

106. Plaintiff repeats and incorporates the above paragraphs by reference.

107. The South Carolina Horizontal Property Act contains requirements applicable to conversion of rental units to condominium ownership as is set forth in S.C. Code §§ 27-31-410 to 27-31-440.

108. Section 27-31-410 states:

As used in this chapter, "conversion of rental units to condominium ownership" means the establishment of a horizontal property regime encompassing a preexisting building which, at anytime prior to the recording of the master deed or master lease, was wholly or partially occupied by persons as their residence on a permanent or at least a continuing basis other than persons who, at the time of such recording, had contractual rights to acquire condominium ownership within the building.

109. Upon information and belief, when the condominium property was used as the Andrew B. Murray Vocational School, the school's caretaker lived in a building on the property known as the care taker building and used the building as a residence. The Developer Defendants subsequently acquired the property, converted the buildings and property into condominiums, and then offered, marketed, and sold the condominium units to third party buyers. The condominiums horizontal property regime created and developed by the Developer Defendants included the renovation, conversion, and sale of the care taker building into condominiums.

110. Occupancy of the care taker building by the school's caretaker renders it a "preexisting building which, at anytime prior to the recording of the master deed or master lease, was wholly or partially occupied by persons as their residence on a permanent or at least a continuing basis" as set forth in § 27-31-410.

111. Section 27-31-430 states:

Whenever the lessee, sole owner, or co-owner of a building declares the undertaking of a conversion of rental units to condominium ownership through the recordation of a master deed or master lease, written disclosure shall be made within thirty days of the date of the recordation to all prospective purchasers, including tenants in possession, as to the physical condition of the building. The disclosure shall contain a written report prepared by an independent registered architect or engineer licensed to practice his profession in this State, describing the present condition of all general common elements. The report shall contain a good faith estimate of the remaining useful life to be expected for each item reported on, together with a list of any notices of uncured violations of building codes or other county or municipal regulations, together with the estimated cost of curing those violations. The good faith estimate of useful life shall not constitute a

warranty and, as to an independent registered architect or engineer licensed to practice his profession in this State, shall not be deemed a representation of material fact or an inducement to purchase and shall not give rise to any cause of action at law or in equity against such architect or engineer. A failure to make the disclosure required by this section shall constitute a violation of the South Carolina Unfair Trade Practices Act.

112. Upon information and belief, the Developer Defendants did not prepare or disclose the written report required under § 27-31-430.

113. The failure of the Developer Defendants to make the disclosures required under § 27-31-430 constitutes a *per se* violation of the South Carolina Unfair Trade Practices Act as stated in the last sentence of § 27-31-430.

114. Pursuant to § 27-31-430, Plaintiff is entitled under the UTPA to a judgment against the Developer Defendants, jointly and severally, for treble actual damages plus attorneys' fees based on their knowing, intentional, willful, and malicious violations of the UTPA.

WHEREFORE, Plaintiff prays for:

- (a) a judgment for actual damages against Defendants jointly and severally with regard to causes of action #1 through #9;
- (b) a judgment for punitive damages against Defendants jointly and severally, with regard to causes of action #1, 3, 4, and 9;
- (c) a judgment for treble actual damages against Defendants jointly and severally with regard to cause of action #10 and #11.
- (d) an award of attorney's fees and costs; and
- (e) such other and further relief as the Court deems just and proper.



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Attorneys for Plaintiff

January 2, 2009

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES,
INC., MASTERPIECE MILLWORK,
INC., ALLEN ROPER, JR. D/B/A R
MASONRY BRICKWORK, CAROLINA
ROOFING SYSTEMS, INC., AND
LACY PAINTING,

Defendants.

GEONA CONSTRUCTION SERVICES,
INC.,

Third Party Plaintiff,

v.

THE FOX STEEL COMPANY,
CAROLINA SERVICES, INC., LESCO
RESTORATION, INC., FERST
PLASTERING, INC., CHARLESTON
GLASS & MIRROR COMPANY, 3D
RENOVATIONS, WILLIAMS
MECHANICAL, MASTERCRAFT
INTERIOR & EXTERIOR, BONIFAY
MASONRY, COASTAL GLASS AND
BLOCK, ADAMS DAVIS &
PARTNERS, TROY PARDEE HEATING
AND AIR CONDITIONING (d/b/a
PARDEE HEATING AND AIR) AND
BROCK GREEN ARCHITECTS AND
PLANNERS,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2009 MAY 26 PM 2:19

FILED

**GENOA CONSTRUCTION SERVICES,
INC.'S ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT,
CROSSCLAIMS AND AMENDED
THIRD-PARTY COMPLAINT**

2969256

TO: PLAINTIFF, CROSS CLAIMANTS, AND THIRD-PARTY DEFENDANTS:

Defendant, Genoa Construction Services, Inc. ("Genoa"), by and through its undersigned counsel, Answering the Amended Complaint of Plaintiff, would allege as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Amended Complaint not hereinafter explained, qualified or admitted is denied. To the extent any allegation may not be expressly referred to and Answered, it is hereby denied.

2. Upon information and belief Genoa admits Paragraphs 1, 2, 3, 4, 5, and 6.

3. Upon information and belief Genoa admits Paragraphs 7 and 8.

4. There are no allegations contained in Paragraph 9. To the extent any allegations may be construed against Genoa, the same are hereby denied.

5. Upon information and belief Genoa admits Paragraphs 10 and 11.

6. Genoa lacks sufficient information to form a belief as to Paragraphs 12 and 13.

7. Genoa admits Paragraphs 14 and 15.

8. Upon information and belief Genoa admits Paragraphs 16, 17, 18, and 19.

9. There are no allegations contained in Paragraphs 20 and 21, therefore no response is required from Genoa. To the extent any allegations may be construed against Genoa, the same are hereby denied.

10. Genoa admits Paragraph 22.

11. Genoa denies Paragraphs 23, 24, 25, 26, 27, and 28.

12. The allegations contained in Paragraphs 29 through 41 are not directed at Genoa and thus no response is required. To the extent that any allegations contained in Paragraphs 29 through 41 may be construed against Genoa the same is hereby denied.

13. As to Paragraph 42, Genoa hereby incorporates its previous responses in Paragraphs 1 through 13 above.

14. Genoa denies the allegations contained in Paragraphs 43, 44, 45, 46, 47, 48, and 49 as they pertain to Genoa. Genoa asserts that to the extent any negligence was committed, it was by others and not Genoa.

15. As to Paragraph 50, Genoa hereby incorporates its previous responses in Paragraphs 1 through 15 above.

16. Genoa denies the allegations contained in Paragraphs 51, 52, 53, 54, 55, 56, and 57 as they pertain to Genoa. Genoa asserts that to the extent any negligence was committed, it was by others and not Genoa.

17. As to Paragraph 58, Genoa hereby incorporates its previous responses in Paragraphs 1 through 17 above.

18. Genoa denies the allegations contained in Paragraphs 59, 60, 61, 62, and 63 as they pertain to Genoa. Genoa asserts that to the extent any breach of implied warranty of workmanlike services was committed, it was by others and not Genoa.

19. As to Paragraph 64, Genoa hereby incorporates its previous responses in Paragraphs 1 through 19 above.

20. Genoa denies the allegations contained in Paragraphs 65, 66, 67, 68, 69, and 70 as they pertain to Genoa. Genoa asserts that to the extent any breach of express warranty was committed, it was by others and not Genoa.

21. The allegations contained in Paragraphs 71 through 97 are not directed at Genoa and thus no response is required. To the extent that any allegations contained in Paragraphs 71 through 97 may be construed against Genoa the same is hereby denied.

22. As to Paragraph 98, Genoa hereby incorporates its previous responses in Paragraphs 1 through 22 above.

23. Genoa denies the allegations contained in Paragraphs 99, 100, 101, 102, 103, 104, and 105 as they pertain to Genoa. Genoa asserts that to the extent any violation of the Unfair Trade Practices Act was committed, it was by others and not Genoa.

24. The allegations contained in Paragraphs 106 through 114 are not directed at Genoa and thus no response is required. To the extent that any allegations contained in Paragraphs 106 through 114 may be construed against Genoa the same is hereby denied.

FOR A SECOND DEFENSE
[SCRCP 12 (b) (6)]

25. The Amended Complaint fails to state a claim against Genoa for which relief may be granted.

FOR A THIRD DEFENSE

26. Any damages sustained by the Plaintiff as alleged in the Amended Complaint were due to and caused by the negligence, recklessness and assumption of the risk by Plaintiff or their agents and representatives which acts combined, contributed or concurred with any alleged negligence on the part of Genoa, if any, which is expressly denied and, therefore, Plaintiff is barred from recovery herein.

FOR A FOURTH DEFENSE

27. The claims set forth in the mended Complaint are barred, in whole or in part, by the applicable statutes of limitation or statutes of repose, and/or other contractual periods of limitation.

FOR A FIFTH DEFENSE

28. Genoa asserts that the claims against it are barred or limited by the contributing, concurring, intervening or superseding fault or breach by persons or entities other than Genoa.

FOR A SIXTH DEFENSE

29. Plaintiff is not entitled to recovery from Genoa in tort for purely economic losses.

FOR A SEVENTH DEFENSE

30. Plaintiff lacks sufficient legal privity with Genoa to impose liability on Genoa.

FOR AN EIGHTH DEFENSE

31. Plaintiff failed to mitigate its alleged damages as required by law.

FOR A NINTH DEFENSE

32. Plaintiff's claims are barred by the doctrines of waiver, estoppel or laches.

FOR A TENTH DEFENSE

33. Plaintiff's claims for breach of warranty are barred by their failure to give Genoa timely and reasonable notice as required by law.

FOR AN ELEVENTH DEFENSE

34. Genoa alleges that a verdict for Plaintiff for punitive damages would deprive Genoa of property without due process of law and without equal protection of the laws:

- (a) if the amount awarded bears no reasonable relationship to the proven harm claimed by Plaintiff;
- (b) if the award is based upon other, dissimilar acts or omissions;
- (c) if the award is based upon other parties' hypothetical claims;
- (d) if the award is based upon economic rather than physical harm; or
- (e) if the award is excessive in comparison to penalties imposed or authorized in comparable cases.

FOR A TWELFTH DEFENSE

35. Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A THIRTEENTH DEFENSE

36. Genoa has made no representations or warranties inducing the purchase of its products and/or services by any person or entity except in writing and to the specific purchaser. Such writings are the primary and best evidence of the content and legal effect and include lawful exclusion, disclaimers and limitation of responsibility of Genoa. Genoa is not responsible for any warranties or representations of competitors or anyone else.

FOR A FOURTEENTH DEFENSE

37. Certain of Plaintiff's claims may be barred by applicable statute of frauds.

FOR A FIFTEENTH DEFENSE

38. Genoa adopts and incorporates by reference any affirmative defenses or other defenses, to the extent applicable, which have been pled by any of the Defendants in this case.

FOR A SIXTEENTH DEFENSE

39. The conduct of Genoa was neither unfair nor deceptive and did not adversely impact the public interest. By way of further Answer, Genoa would allege and show that the transactions alleged by the Plaintiff constitute private transactions between commercial business entities and have no adverse impact upon the public interest and the Plaintiff has therefore failed to state a claim upon which relief can be granted as to Genoa under the South Carolina Unfair Trade Practices Act.

FOR A SEVENTEETH DEFENSE

40. Genoa asserts that the claims against it are barred or limited by the contributing, concurring intervening or superseding fault or breach by persons or entities other than Genoa, by

the means of misapplication, misuse or abuse of Genoa's materials and/or workmanship, which may include, but not be limited to:

- (a) installation on unsuitable structures or incorporation into structures with defects in construction or in structural components, resulting in whole or in part in the damages sought;
- (b) alteration or modification of Genoa's materials and/or workmanship after the materials and/or workmanship left the control of Genoa without the express consent of Genoa or contrary to instructions or specifications of Genoa; and
- (c) use of the materials and/or workmanship supplied by Genoa contrary to express instructions delivered with, appearing on, or attached to the materials and/or workmanship.

FOR AN EIGHTEENTH DEFENSE
AND BY WAY OF A CROSS CLAIM
FOR CONTRACTUAL INDEMNIFICATION
AGAINST MASTERPIECE, MASONRY,
CAROLINA ROOFING, AND LACY

41. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 40 above.

42. Defendants Masterpiece, Masonry, Carolina Roofing (identified as John Doe #1 in the Amended Complaint), and Lacy Painting (identified as John Doe #2 in the Amended Complaint) were responsible for the proper selection of materials, the proper quality control, the proper material installation, and the ultimate compliance with the contracts, industry standards, and building code requirements. If the Plaintiffs prove that these items were not in compliance with the contracts, industry standards, and building code requirements then Masterpiece, Masonry, Carolina Roofing, and Lacy failed to properly execute their duties which have allegedly caused the Plaintiff's damages.

43. The subcontracts between Genoa and Masterpiece, Masonry, Carolina Roofing, and Lacy state that Genoa shall be indemnified for damages resulting from work and or material provided by the respective Third-Party Defendants.

44. To the extent, if any, that Genoa is held liable to Plaintiff in this action, such liability would be direct and proximate result of the wrongful acts, omissions, negligence, and/or representations of Defendants Masterpiece, Masonry, Carolina Roofing, and Lacy have damaged Genoa as Genoa has been subjected to liability and has incurred consequential damages in having to expend attorneys' fees and cost in defending this action.

45. Genoa is entitled to full contractual and common law indemnification from Defendants Masterpiece, Masonry, Carolina Roofing, and Lacy for any liability Genoa is found to have to the Plaintiffs in this action, and Genoa would be entitled to damages Masterpiece, Masonry, Carolina Roofing, and Lacy's negligence, as afore described, entitling Genoa to recover from Masterpiece, Masonry, Carolina Roofing, and Lacy its attorneys' fees, costs, and any and all other expenses associated with defending this action and entitling Genoa to recover from these Defendants any sums for which it may be held liable to Plaintiffs.

FOR A NINETEENTH DEFENSE
AND BY WAY OF A CROSS CLAIM
FOR COMMON LAW INDEMNIFICATION
AGAINST MASTERPIECE, MASONRY,
CAROLINA ROOFING, AND LACY

46. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 46 above.

47. Third Party Defendants Masterpiece, Masonry, Carolina Roofing, and Lacy were responsible for the proper selection of materials, the proper quality control, the proper material installation, and the ultimate compliance with the contracts, industry standards, and

building code requirements. If the Plaintiffs prove that these items were not in compliance with the contracts, industry standards, and building code requirements Masterpiece, Masonry, Carolina Roofing, and Lacy failed to properly execute their duties which have allegedly caused the Plaintiff's damages.

48. To the extent, if any, that Genoa is held liable to Plaintiff in this action, such liability would be direct and proximate result of the wrongful acts, omissions, negligence, and/or representations of Masterpiece, Masonry, Carolina Roofing, and Lacy which have damaged Genoa as Genoa has been subjected to liability and has incurred consequential damages in having to expend attorneys' fees and cost in defending this action.

49. Genoa is entitled to full common law indemnification from Masterpiece, Masonry, Carolina Roofing, and Lacy for any liability Genoa is found to have to the Plaintiffs in this action, and Genoa would be entitled to damages for Masterpiece, Masonry, Carolina Roofing, and Lacy's negligence, as afore described, entitling Genoa to recover from Masterpiece, Masonry, Carolina Roofing, and Lacy its attorneys' fees, costs, and any and all other expenses associated with defending this action and entitling Genoa to recover from these Defendants any sums for which it may be held liable to Plaintiffs.

FOR A TWENTEETH DEFENSE
AND BY WAY OF A CROSS CLAIM
FOR BREACH OF ESPRESS WARRANTIES
AGAINST MASTERPIECE, MASONRY,
CAROLINA ROOFING, AND LACY

50. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 49 above.

51. Defendants Masterpiece, Masonry, Carolina Roofing, and Lacy made express warranties that materials, installation, and workmanship of the installation of the

windows, treatment of the windows, priming and painting of the windows and window openings, connection of the windows, installation of the firewalls, installation of the roof, installation of the doors, paint and coatings, caulking and sealants, flashing, weather lapping, wall frame, fixtures, and other work performed, fabricated, and installed at the Chisolm Street Project were proper as required by contract, applicable building codes, and industry standards.

52. The subcontracts between Genoa Masterpiece, Masonry, Carolina Roofing, and Lacy, incorporated herein by reference, expressly provide warranties for their work at the Chisolm Street Project.

53. If the Plaintiffs prove that material selection, installation, and workmanship were not in accordance with contract requirements, industry standards, and/or building code requirements then Masterpiece, Masonry, Carolina Roofing, and Lacy have materially breached express warranties by failing to provide acceptable workmanship at the Chisolm Street Project.

54. Genoa is entitled to judgment against Masterpiece, Masonry, Carolina Roofing, and Lacy in the amount of any judgment which Plaintiffs may obtain against Genoa, for breach of express warranties, along with attorneys fees and costs associated with Genoa's defense of Plaintiffs suit.

FOR A TWENTY-FIRST DEFENSE
AND BY WAY OF A CROSS CLAIM
FOR BREACH OF IMPLIED WARRANTIES
AGAINST MASTERPIECE, MASONRY,
CAROLINA ROOFING, LACY, CHISOLM STREET,
AND MURRAY

55. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 55 above.

56. Defendants Masterpiece, Masonry, Carolina Roofing, Lacy, Chisolm Street, and Murray made implied warranties of workmanlike service and fitness for a particular purpose

57. If the Plaintiffs prove that material selection, installation, and workmanship were not in accordance with contract requirements, industry standards, and/or building code requirements then Masterpiece, Masonry, Carolina Roofing, Lacy, Chisolm Street, and Murray have materially breached implied warranties of workmanlike service and fitness for a particular purpose by failing to provide proper materials, properly install said materials, and provide acceptable workmanship at the Chisolm Street Project. Genoa is entitled to judgment against Masterpiece, Masonry, Carolina Roofing, Lacy, Chisolm Street, and Murray in the amount of any judgment which Plaintiffs may obtain against Genoa, for breach of implied warranties of workmanlike service and fitness for a particular purpose warranties, along with attorneys fees and costs associated with Genoa's defense of Plaintiffs suit.

FOR A TWENTY-SECOND DEFENSE
AND BY WAY OF A CROSS CLAIM
FOR NEGLIGENCE
AGAINST MASTERPIECE, MASONRY,
CAROLINA ROOFING, AND LACY

58. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 58 above.

59. Masterpiece, Masonry, Carolina Roofing, and Lacy owed a duty to use due care in the selection of materials, the installation of such materials, and in insuring that proper levels of workmanship were achieved.

60. If the Plaintiffs prove that due care was not used in selecting materials, installing said materials, and insuring that proper levels of workmanship were achieved, then

Masterpiece, Masonry, Carolina Roofing, and Lacy breached that duty of due care by selecting improper materials, allowing the improper installation of said materials, and in failing to insure that proper levels of workmanship were achieved at the Chisolm Street Project.

61. If the Plaintiffs obtain judgment against Genoa as a direct and foreseeable and proximate result of the Masterpiece, Masonry, Carolina Roofing, and Lacy negligence, then Genoa is entitled to judgment against Masterpiece, Masonry, Carolina Roofing, and Lacy for the amount of any judgment for plus attorneys' fees and costs associated with Genoa's defense of Plaintiffs suit.

FOR A TWENTY-THIRD DEFENSE
AND BY WAY OF A CROSS CLAIM
FOR NEGLIGENCE PER SE
AGAINST MASTERPIECE, MASONRY,
CAROLINA ROOFING, AND LACY PAINTING

62. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 62 above.

63. By under taking the construction on the Chisolm Street Project Masterpiece, Masonry, Carolina Roofing, and Lacy owed a duty to use due care in the selection of materials, the installation of such materials, and in insuring that proper levels of workmanship were achieved.

64. If the Plaintiffs prove that due care was not used in selecting materials, installing said materials, and insuring that proper levels of workmanship were achieved, then Masterpiece, Masonry, Carolina Roofing, and Lacy breached that duty of due care by selecting improper materials, allowing the improper installation of said materials, and in failing to insure that proper levels of workmanship were achieved at the Chisolm Street Project.

65. If the Plaintiffs obtain judgment against Genoa as a direct and foreseeable and proximate result of Masterpiece, Masonry, Carolina Roofing, and Lacy's negligence per se, then Genoa is entitled to judgment against Masterpiece, Masonry, Carolina Roofing, and Lacy for the amount of any judgment for plus attorneys' fees and costs associated with Genoa's defense of Plaintiffs suit.

FOR A TWENTY-FOURTH DEFENSE
AND BY WAY OF A CROSS CLAIM
FOR BREACH OF CONTRACT
AGAINST MASTERPIECE, MASONRY,
CAROLINA ROOFING, AND LACY

66. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 66 above.

67. Masterpiece, Masonry, Carolina Roofing, and Lacy are contractually responsible for the proper selection of materials, the proper quality control, the proper material installation, and the compliance with the contract, industry standards and building code requirements.

68. If the Plaintiffs prove that the contract was breached due to improper materials selection, improper quality control, and improper material installation, Masterpiece, Masonry, Carolina Roofing, and Lacy materially breached their subcontracts in failing to properly select materials, insure quality control, properly install materials, and in failing to comply with the contract, industry standards, and/or building code requirements.

69. Genoa is entitled to judgment against Masterpiece, Masonry, Carolina Roofing, and Lacy to the extent Plaintiffs obtain judgment against Genoa, for breach of contract plus Genoa's cost and attorneys' fees.

FOR A TWENTY-FOURTH DEFENSE
AND BY WAY OF A CROSS CLAIM
FOR NEGLIGENT MISREPRESENTATION
AGAINST CHISOLM AND MURRAY

70. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 69 above.

71. Defendants Chisolm and Murray were the developers of the Project.

72. Defendants Chisolm and Murray provided the plans and drawings to renovate and reconstruct the Project.

73. Genoa relied on the plans, drawings, and instructions created by Brock and provided by Defendants Chisolm and Murray in the construction and renovation of the project.

74. Defendant Chisolm and Murray had a pecuniary interest in providing the plans to Genoa. Defendant Chisolm and Murray both stood to profit through the renovation and sale of units at the Project.

75. Defendants Chisolm and Murray had a duty to ensure that the plans provided to Genoa for the construction of the Project met industry standards, local building code and ordinances and would provide appropriate amounts of direction to allow Genoa to properly construct and renovate the project.

76. If Plaintiffs prove that the Project was not constructed properly and does not meet industry standards, local building codes and ordinances, Chisolm and Murray breached their duty by providing building plans that did not meet industry standards, local building codes and ordinances or provide appropriate direction for the construction of the Project.

77. Genoa is entitled to judgment against Chisolm and Murray to the extent Plaintiffs obtain judgment against Genoa plus Genoa's cost and attorneys' fees.

FOR A TWENTY-FIFTH DEFENSE
AND BY WAY OF A THIRD-PARTY COMPLAINT
AGAINST FOX STEEL, CAROLINA SERVICES, LESCO RESTORATION, FERST
PLASTERING, CHARLESTON GLASS AND MIRROR, 3D RENOVATIONS,
WILLIMAS MECHANICAL, BONIFAY INTERIORS, COASTAL GLASS AND
BLOCK, ADAMS DAVIS & PARTNERS, TROY PARDEE HEATING AND AIR
CONDITIONING LLC (d/b/a PARDEE HEATING AND AIR) AND BROCK GREEN
ARCHITECTS AND PLANNERS

The Defendant-Third Party Plaintiff, Genoa Construction Services, Inc. ("Genoa"), by and through undersigned attorneys, by way of a Third-Party Complaint, alleges:

78. Defendant-Third Party Plaintiff Genoa is a corporation organized and existing under the laws of the State of Georgia and is registered to conduct business in the State of South Carolina.

79. Third Party Defendant The Fox Steel Company ("Fox") is a company organized and existing under the laws of the State of Connecticut and is registered to conduct business in the State of South Carolina.

80. Third Party Defendant Carolina Services, Inc. ("Carolina Services") is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

81. Third Party Defendant LESCO Restoration, Inc. ("Lesco") is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Spartanburg.

82. Third Party Defendant Ferst Plastering, Inc. ("Ferst") is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

83. Third Party Defendant Charleston Glass & Mirror Company ("Charleston Glass") is a company organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

84. Third Party Defendant 3D Renovations ("3D") is a company organized under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

85. Third Party Defendant Williams Mechanical ("Williams") is a company organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

86. Third Party Defendant Mastercraft Interior & Exterior ("Mastercraft") is a company existing under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

87. Third Party Defendant Bonifay Masonry ("Bonifay") is a company organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

88. Third Party Defendant Coastal Glass and Block ("Coastal") is a company organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

89. Third Party Defendant Brock Green Architects ("Brock") is a company organized and existing under the laws of the State of Georgia and is registered to conduct business in the State of South Carolina.

90. Third Party Defendant Adams Davis and Partners ("Adams") is a company organized and existing under the laws of the State of Georgia and is registered to conduct business in the State of South Carolina.

91. Third Party Defendant Troy Pardee Heating and Air Conditioning, LLC (d/b/a Pardee Heating and Air Conditioning) ("Pardee") is a company organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

92. This Honorable Court has jurisdiction of the parties and claims which are hereinafter set forth in this Third Party Complaint as the contracts being sued upon and the actions complained of occurred or were performed in the County of Charleston, State of South Carolina.

93. No. 3 Chisolm Street is the subject of this lawsuit and is located at Chisolm Street, in the County of Charleston, State of South Carolina.

94. Genoa subcontracted with Fox to provide all labor, materials, equipment, shop drawings to fabricate and ship all steel windows to the project known as No. 3 Chisolm Street. That Contract and its General Conditions are dated August 13, 2001 and are hereby incorporated by reference.

95. Genoa subcontracted with Carolina Services for the installation of the fire wall systems and other work at the project known as No. 3 Chisolm Street. That Contract and its General Conditions are dated November 29, 2000 and are hereby incorporated by reference.

96. Genoa subcontracted with Lesco for the restoration and cleaning of the stucco and terra cotta and other work at the project known as No. 3 Chisolm Street. That Contract and its General Conditions are hereby incorporated by reference.

97. Genoa subcontracted with Ferst for the installation and all labor associated with the plastering and other work at the project known as No. 3 Chisolm Street. That Contract and its General Conditions are dated October 31, 2000 and are hereby incorporated by reference.

98. Genoa subcontracted with Charleston Glass for the installation and all labor associated with glazing and installing steel windows and doors and other work at the project known as No. 3 Chisolm Street. That Contract and its General Conditions are hereby incorporated by reference.

99. Genoa subcontracted with 3D for labor and the installation of doors and windows and other work at the project known as No. 3 Chisolm Street. That Contract and its General Conditions are dated November 27, 2001 and are hereby incorporated by reference.

100. Genoa subcontracted with Williams for installation of the HVAC and other work at the project known as No. 3 Chisolm Street. That Contract is hereby incorporated by reference.

101. Genoa subcontracted with Mastercraft for installation of the trim and other work at the project known as No. 3 Chisolm Street. That Contract is hereby incorporated by reference.

102. Genoa subcontracted with Bonifay for installation of the elevator shaft and other work at the project known as No. 3 Chisolm Street. That Contract is hereby incorporated by reference.

103. Genoa subcontracted with Coastal for installation of the glass block on the gymnasium and other work at the project known as No. 3 Chisolm Street. That Contract is hereby incorporated by reference.

104. Brock was hired to design the construction plans for the renovation and reconstruction of the Chisolm Street Project.

FOR A FIRST CAUSE OF ACTION
Contractual Indemnification
Against Third Party Defendants,
Carolina Services, Ferst, Charleston Glass, and 3D

105. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 104 above.

106. Plaintiffs have sued Defendant Third-Party Plaintiff claiming damages caused by work performed at the 3 Chisolm Street Condominium Project.

107. Defendant Third-Party Plaintiff has denied all of the substantive allegations against it that were made by Plaintiff.

108. Third Party Defendants Carolina Services, Ferst, Charleston Glass, and 3D were responsible for the proper selection of materials, the proper quality control, the proper material installation, and the ultimate compliance with the contracts, industry standards, and building code requirements. If the Plaintiffs prove that these items were not in compliance with the contracts, industry standards, and building code requirements Carolina Services, Ferst, Charleston Glass, and 3D failed to properly execute their duties which have allegedly caused the Plaintiff's damages.

109. The subcontracts between Genoa and Carolina Services, Ferst, Charleston Glass, and 3D provide that Genoa shall be indemnified for damages resulting from work and or material provided by the respective Third-Party Defendants.

110. To the extent, if any, that Genoa is held liable to Plaintiff in this action, such liability would be direct and proximate result of the wrongful acts, omissions, negligence, and/or representations of Third-Party Defendants Carolina Services, Ferst, Charleston Glass, and 3D which have damaged Genoa as Genoa has been subjected to liability and has incurred consequential damages in having to expend attorneys' fees and cost in defending this action.

111. Genoa is entitled to full contractual and common law indemnification from Third-Party Defendants Carolina Services, Ferst, Charleston Glass, and 3D for any liability Genoa is found to have to the Plaintiffs in this action, and Genoa would be entitled to damages for Carolina Services, Ferst, Charleston Glass, and 3D's negligence, as afore described, entitling Genoa to recover from Third Party Defendants Carolina Services, Ferst, Charleston Glass, and 3D its attorneys' fees, costs, and any and all other expenses associated with defending this action and entitling Genoa to recover from these Third-Party Defendants any sums for which it may be held liable to Plaintiffs.

FOR A SECOND CAUSE OF ACTION

Common Law Indemnification

Against Third Party Defendants,

Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, Pardee, and Brock

112. Genoa hereby incorporates its previous responses, defenses, and allegation contained In Paragraphs 1 through 111 above.

113. Plaintiffs have sued Defendant Third-Party Plaintiff claiming damages caused by work performed at the 3 Chisolm Street Condominium Project.

114. Defendant Third-Party Plaintiff has denied all of the substantive allegations against it that were made by Plaintiff.

115. Third Party Defendants Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, Pardee, and Brock were responsible for the proper selection of materials, the proper quality control, the proper material installation, and the ultimate compliance with the contracts, industry standards, and building code requirements. If the Plaintiffs prove that these items were not in compliance with the contracts, industry standards, and building code requirements then Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, Pardee, and Brock failed to properly execute their duties which have allegedly caused the Plaintiff's damages.

116. To the extent, if any, that Genoa is held liable to Plaintiff in this action, such liability would be direct and proximate result of the wrongful acts, omissions, negligence, and/or representations of Third-Party Defendants Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, Pardee, and Brock which have damaged Genoa as Genoa has been subjected to liability and has incurred consequential damages in having to expend attorneys' fees and cost in defending this action.

117. Genoa is entitled to full common law indemnification from Third-Party Defendants Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, Pardee, and Brock, for any liability Genoa is found to have to the Plaintiffs in this action, and Genoa would be entitled to damages for Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, Pardee, and Brock's negligence, as afore described, entitling Genoa to recover from Third Party Defendants Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, Pardee, and Brock its attorneys' fees, costs, and any and all other expenses associated with defending this action and entitling Genoa to recover from these Third-Party Defendants any sums for which it may be held liable to Plaintiffs.

FOR A THIRD CAUSE OF ACTION
Common Law Indemnification
Against Third Party Defendant Brock

118. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 117 above.

119. Plaintiffs have sued Defendant Third-Party Plaintiff claiming damages caused by work performed at the 3 Chisolm Street Condominium Project.

120. Defendant Third-Party Plaintiff has denied all of the substantive allegations against it that were made by Plaintiff.

121. Third Party Defendant Brock was responsible to insure that the design of the Chisolm Street Project complied with contracts, industry standards, and building code requirements. If the Plaintiffs prove that these items were not in compliance with the contracts, industry standards, and building code requirements then Brock failed to properly execute its duties which have allegedly caused the Plaintiff's damages.

122. To the extent, if any, that Genoa is held liable to Plaintiff in this action, such liability would be direct and proximate result of the wrongful acts, omissions, negligence, and/or representations of Third-Party Defendant Brock which have damaged Genoa as Genoa has been subjected to liability and has incurred consequential damages in having to expend attorneys' fees and cost in defending this action.

123. Genoa is entitled to full common law indemnification from Third-Party Defendant Brock for any liability Genoa is found to have to the Plaintiffs in this action, and Genoa would be entitled to damages for Brock's negligence, as afore described, entitling Genoa to recover from Brock its attorneys' fees, costs, and any and all other expenses associated with defending this action and entitling Genoa to recover from Brock any sums for which it may be held liable to Plaintiffs.

FOR A FOURTH CAUSE OF ACTION
Breach of Express Warranties
Against Third Party Defendants,
Carolina Services, Ferst, Charleston Glass, 3D, Fox, Lesco,
Williams, Mastercraft, Bonifay, and Coastal

124. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 123 above.

125. Third Party Defendants Carolina Services, Ferst, Charleston Glass, 3D, Fox, Lesco, Williams, Mastercraft, Bonifay, and Coastal made express warranties that materials,

installation, and workmanship of the installation of the windows, treatment of the windows, priming and painting of the windows and window openings, connection of the windows, installation of the firewalls, installation of the roof, installation of the doors, paint and coatings, caulking and sealants, flashing, weather lapping, wall frame, fixtures, and other work performed, fabricated, and installed at the Chisolm Street Project were proper as required by contract, applicable building codes, and industry standards.

126. The subcontracts between Genoa and Third Party Defendants, incorporated herein by reference, expressly provide warranties for their work at the Chisolm Street Project.

127. If the Plaintiffs prove that material selection, installation, and workmanship were not in accordance with contract requirements, industry standards, and/or building code requirements then Third Party Defendants have materially breached express warranties by failing to provide acceptable workmanship at the Chisolm Street Project.

128. Genoa is entitled to judgment against Third Party Defendants in the amount of any judgment which Plaintiffs may obtain against Genoa, for breach of express warranties, along with attorneys fees and costs associated with Genoa's defense of Plaintiffs suit.

FOR A FIFTH CAUSE OF ACTION
Breach of Implied Warranties
Against Third Party Defendants

129. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 129 above.

130. Third Party Defendants Carolina Services, Ferst, Charleston Glass, 3D, Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, and Brock made implied warranties of workmanlike service and fitness for a particular purpose

131. If the Plaintiffs prove that material selection, installation, and workmanship were not in accordance with contract requirements, industry standards, and/or building code requirements then Third Party Defendants have materially breached implied warranties of workmanlike service and fitness for a particular purpose by failing to provide proper materials, properly install said materials, and provide acceptable workmanship at the Chisolm Street Project. Genoa is entitled to judgment against Third Party Defendants in the amount of any judgment which Plaintiffs may obtain against Genoa, for breach of implied warranties of workmanlike service and fitness for a particular purpose warranties, along with attorneys fees and costs associated with Genoa's defense of Plaintiffs suit.

FOR A SIXTH CAUSE OF ACTION

Negligence

Against Third Party Defendants

**Carolina Services, Ferst, Charleston Glass, 3D, Fox, Lesco,
Williams, Mastercraft, Bonifay, Coastal, Adams, and Pardee**

132. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 131 above.

133. Third Party Defendants owed a duty to use due care in the selection of materials, the installation of such materials, and in insuring that proper levels of workmanship were achieved.

134. If the Plaintiffs prove that due care was not used in selecting materials, installing said materials, and insuring that proper levels of workmanship were achieved, then Third Party Defendants Carolina Services, Ferst, Charleston Glass, 3D, Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, and Pardee breached that duty of due care by selecting improper materials, allowing the improper installation of said materials, and in failing to insure that proper levels of workmanship were achieved at the Chisolm Street Project.

135. If the Plaintiffs obtain judgment against Genoa as a direct and foreseeable and proximate result of the Third Party Defendants Carolina Services, Ferst, Charleston Glass, 3D, Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, and Pardee negligence, then Genoa is entitled to judgment against Third Party Defendants Carolina Services, Ferst, Charleston Glass, 3D, Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, and Pardee for the amount of any judgment for plus attorneys' fees and costs associated with Genoa's defense of Plaintiffs suit.

FOR A SEVENTH CAUSE OF ACTION

Breach of Contract

Against Third Party Defendants

**Carolina Services, Ferst, Charleston Glass, 3D, Fox, Lesco,
Williams, Mastercraft, Bonifay, and Coastal**

136. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 135 above.

137. Third Party Defendants are contractually responsible for the proper selection of materials, the proper quality control, the proper material installation, and the compliance with the contract, industry standards and building code requirements.

138. If the Plaintiffs prove that the contract was breached due to improper materials selection, improper quality control, and improper material installation, the Third Party Defendants materially breached their subcontracts in failing to properly select materials, insure quality control, properly install materials, and in failing to comply with the contract, industry standards, and/or building code requirements.

139. Genoa is entitled to judgment against Third Party Defendants to the extent Plaintiffs obtain judgment against Genoa, for breach of contract plus Genoa's cost and attorneys' fees.

FOR AN EIGHTH CAUSE OF ACTION
Negligent Misrepresentation
Against Brock

140. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 139 above.

141. Defendants Brock was the architect of the Project.

142. Defendants Brock provided the plans and drawings to renovate and reconstruct the Project.

143. Genoa relied on the plans, drawings, and instructions created by Brock and provided by Defendants Chisolm and Murray in the construction and renovation of the project.

144. Defendant Brock a pecuniary interest in providing the plans to Genoa. Defendant Brock stood to profit through providing plans and drawings for the Project.

145. Defendant Brock had a duty to ensure that the plans provided to Genoa for the construction of the Project met industry standards, local building code and ordinances and would provide appropriate amounts of direction to allow Genoa to properly construct and renovate the project.

146. If Plaintiffs prove that the Project was not constructed properly and does not meet industry standards, local building codes and ordinances, Brock breached their duty by providing building plans ~~that~~ did not meet industry standards, local building codes and ordinances or provide appropriate direction for the construction of the Project.

147. Genoa is entitled to judgment against Brock to the extent Plaintiffs obtain judgment against Genoa plus Genoa's cost and attorneys' fees.

FOR AN NINTH CAUSE OF ACTION
Contribution
Against Third Party Defendants

148. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 147 above.

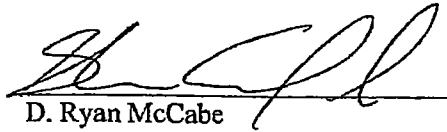
149. To the extent that Plaintiffs prevail on any of their claims against Genoa, it is entitled to contribution for Third Party Defendants.

RESERVATION AND NON-WAIVER

150. Genoa reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, Genoa Construction Services, Inc. having responded to the Amended Complaint and asserting its Crossclaims and Third-Party Complaint, prays that the Court:

1. Dismiss all claims against Genoa Construction Services, Inc. and to tax the costs thereof to the Plaintiff;
2. That Genoa Construction Services, Inc. be awarded judgment against the Cross Claimants and Third-Party Defendants jointly and severely, in the amount of any liability Genoa is found to have to Plaintiff in this action;
3. Genoa demands judgment requiring the Third-Party Defendants to defend and indemnify Genoa against any liability which Genoa may be liable for to Plaintiff in this action, to include Genoa's attorneys' fees, costs, and any and all other expenses incurred in defending this action.
4. For such other and further relief as this Court may deem just and proper; and
5. Award of attorneys' fees and the costs of this action.



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Shaun W. Cranford
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**ATTORNEY FOR GENOA CONSTRUCTION
SERVICES, INC.**

Columbia, South Carolina

May 21, 2009

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES,
INC., MASTERPIECE MILLWORK,
INC., ALLEN ROPER, JR. D/B/A R
MASONRY BRICKWORK AND
STUCCO, JOHN DOE #1, AND JOHN
DOE #2,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

CERTIFICATE OF SERVICE

2009 MAY 25 PM 2:20
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

FILED

I, Angela L. Sharpe, an employee with the Law Firm of Rogers Townsend & Thomas, PC, attorneys for Genoa Construction Services, Inc., hereby certify that I have served or caused to be served a copy of the foregoing document upon the below named individuals and/or counsel this the 21st day of May, 2009, via U.S. mail postage pre-paid as follows:

DOCUMENT SERVED

*Genoa Construction Services, Inc.'s Answer to Plaintiff's Amended Complaint,
Crossclaims and Amended Third-Party Complaint*

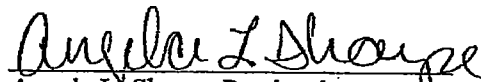
PARTIES SERVED

Paul A. Dominick, Esquire
David J. Parrish, Esquire
Nexsen Pruet, LLC
P.O. Box 486
Charleston, SC 29402
Attorneys for Plaintiff

2993316

Robert T. Lyles, Jr., Esquire
Catherine H. Bryan
Lyles & Lyles, LLC
P.O. Box 773
Charleston, South Carolina 29402
*Attorney for Defendants Chisolm Street Partners, LLC and
Murray School Partners, LLC*

Allen Roper, Jr.
d/b/a R Masonry-Brickwork and Stucco
1321 Stone Post Road
Charleston, South Carolina 29412
Defendant


Angela L. Sharpe, Paralegal

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC,

Plaintiff,

vs.

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES,
INC., MASTERPIECE MILLWORK, INC.,
ALLEN ROPER, JR., d/b/a R. MASONRY-
BRICKWORK AND STUCCO, JOHN DOE
#1, JOHN DOE #2, and BROOK GREEN
ARCHITECTS AND PLANNERS, LLC,

Defendants.

SECOND AMENDED SUMMONS

(to Brock Green Architects and Planners)

GENOA CONSTRUCTION SERVICES,
INC.,

Third-Party Plaintiff

v.

THE FOX STEEL COMPANY, CAROLINA
SERVICES, INC., LESCO RESTORATION,
INC., FERST PLASTERING, INC.,
CHARLESTON GLASS & MIRROR
COMPANY, 3D RENOVATIONS,
WILLIAMS MECHANICAL,
MASTERCRAFT INTERIOR & EXTERIOR,
BONIFAY MASONRY, COASTAL GLASS
AND BLOCK, ADAMS DAVIS &
PARTNERS, TROY PARDEE HEATING
AND AIR CONDITIONING (d/b/a PARDEE
HEATING AND AIR) AND BROCK GREEN
ARCHITECTS AND PLANNERS,

Third-Party Defendants.

FILED
2010 APR -8 PM 12:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

**TO DEFENDANT BROOK BROOK GREEN ARCHITECTS AND PLANNERS,
LLC ABOVE NAMED:**

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Second Amended Complaint in the above entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers at Post Office Box 486, Charleston, South Carolina 29402 (205 King Street, Suite 400, Charleston, South Carolina 29401), within thirty (30) days after the date of such service, exclusive of the day of service; and if you fail to answer the said Second Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Second Amended Complaint.



David J. Parrish
NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, South Carolina 29402
Phone: 843.577.9440
Fax: 843.414-8214
dparrish@nexsenpruet.com

Attorneys for Plaintiff
3 Chisolm Street Homeowner's Association, Inc.

April 8, 2010

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

CHISOLM STREET PARTNERS, LCC;
MURRAY SCHOOL PARTNERS, LLC;
GENOA CONSTRUCTION SERVICES,
INC.; MASTERPIECE MILLWORK, INC.;
ALLEN ROPER, JR. d/b/a R MASONRY -
BRICKWORK AND STUCCO; JOHN DOE
#1, JOHN DOE #2, and BROOK GREEN
ARCHITECTS AND PLANNERS, LLC,

Defendants.

GENOA CONSTRUCTION SERVICES,
INC.,

Third-Party Plaintiff,

v.

THE FOX STEEL COMPANY, CAROLINA
SERVICES, INC., LESCO RESTORATION,
INC., FERST PLASTERING, INC.,
CHARLESTON GLASS & MIRROR
COMPANY, 3D RENOVATIONS,
WILLIAMS MECHANICAL,
MASTERCRAFT INTERIOR & EXTERIOR,
BONIFAY MASONRY, COASTAL GLASS
AND BLOCK, ADAMS DAVIS &
PARTNERS, TROY PARDEE HEATING
AND AIR CONDITIONING (d/b/a PARDEE
HEATING AND AIR) AND BROCK GREEN
ARCHITECTS AND PLANNERS,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

FILED

2010 APR -8 PM 12:20

JULIE J. ARMSTRONG
CLERK OF COURT

SECOND AMENDED COMPLAINT

(Construction Defects)

Jury Trial Demanded

Plaintiff would show as follows:

1. Plaintiff 3 Chisolm Street Homeowners Association, Inc. is a South Carolina eleemosynary corporation.

2. Plaintiff owns and governs the common elements contained in the condominium horizontal property regime known as the Chisolm Street Condominiums located at 3 Chisolm Street in the City of Charleston (Charleston County), South Carolina, as reflected in the Master Deed Establishing the 3 Chisolm Horizontal Property Regime recorded in Book V309 beginning at Page 659 in the Charleston County RMC Office (hereinafter referred to as the "condominiums").

3. The condominiums are located on the site of the old Andrew B. Murray Vocational School, and the condominiums were developed by converting the school buildings into condominiums.

4. The condominiums consist of three buildings generally described as a three-story main building, a gymnasium building, and a care taker building, together with the other common elements contained in the regime as described in the master deed.

5. Upon information and belief, Defendant Chisolm Street Partners, LCC is a limited liability company organized and existing under the laws of the State of Georgia.

6. Upon information and belief, Chisolm Street Partners, LCC was a developer of the condominiums.

7. Upon information and belief, Defendant Murray School Partners, LLC is a limited liability company organized and existing under the laws of the State of Georgia.

8. Upon information and belief, Murray Street Partners, LLC was a developer of the Chisolm Street Condominiums and acted as the general manager for Chisolm Street Partners, LCC during development of the condominiums.

9. Chisolm Street Partners, LCC and Murray School Partners, LLC are sometimes hereinafter individually and collectively referred to as the "Developer Defendants."

10. Upon information and belief, the Developer Defendants purchased the Andrew B. Murray Vocational property, converted and developed the property into condominium units, and then marketed and sold the condominiums to the condominium unit owners who comprise the 3 Chisolm Street Homeowners Association, Inc., or to their predecessors.

11. The condominiums are on the list of the National Register of Historic Places in South Carolina.

12. Upon information and belief, the Developer Defendants received substantial rehabilitation tax credits in connection with their conversion, rehabilitation, and development of the condominiums.

13. The Developer Defendants formed the 3 Chisolm Street Homeowners Association, Inc. and controlled the Association through appointment of its board of directors.

14. Upon information and belief, Defendant Genoa Construction Services, Inc. ("Genoa") is a limited liability company organized and existing under the laws of the State of Georgia.

15. Upon information and belief, Genoa acted as the general contractor for the construction of the condominiums.

16. Upon information and belief, Masterpiece Millwork, Inc. is corporation organized and existing under the laws of the State of Georgia.

17. Upon information and belief, Masterpiece Millwork, Inc. manufactured and supplied the window units installed during construction of the condominiums.

18. Upon information and belief, Allen Roper, Jr., d/b/a R Masonry – Brickwork and Stucco, is a citizen and resident of Charleston County, South Carolina.

19. Upon information and belief, Allen Roper, Jr. acted as the masonry subcontractor during construction of the condominiums.

20. Defendant John Doe #1 is a fictitious name representing the as-yet unidentified person or entity that acted as the painting subcontractor during construction of the condominiums.

21. Defendant John Doe #2 is a fictitious name representing the as-yet unidentified person or entity that acted as the roofing subcontractor during construction of the condominiums.

22. Upon information and belief, Defendant Brook Green Architects and Planners, LLC (hereinafter "Architect"), is company organized under the laws of a State Other than South Carolina and at all times relevant hereto was conducting business in Charleston County, South Carolina.

23. Upon information and belief, Architect was responsible for the schematic design, design development, construction documents, bidding documents, construction supervision, and acceptance of the work involved in construction of the condominiums.

24. This Court has jurisdiction over the parties and subject matter of this action, and venue is proper before this Court.

25. The Chisolm Street condominiums contain construction defects and deficiencies, including without limitation the following:

- (a) improper installation of windows;
- (b) installation of windows that lack adequate wood preservative treatment;

- (c) improper priming and painting of the windows;
- (d) improper flashing of the windows and window openings;
- (e) improper connection of the windows to side walls;
- (f) rusting and deterioration of the brick lintel over windows;
- (g) improper installation of firewalls between condominium units;
- (h) improper installation of the roofs on the buildings;
- (i) improper installation of interior grade doors in exterior applications;
- (j) such additional items as may be discovered during investigation of construction deficiencies.

26. The condominiums have sustained, and continue to sustain, water damage and water intrusion to the common elements caused by and resulting from defects and deficiencies in the construction of the condominiums.

27. As a result of the defects and deficiencies, the roofs, brick lintels, windows, and doors in the condominiums are prematurely failing and resulting in water intrusion and damage to the buildings.

28. Plaintiff has been and will continue to be directly and proximately damaged by the water intrusion, water damage, and construction defects in the condominiums.

29. As a result of the construction defects and resulting property damage, Plaintiff has incurred, and in the future will incur, damages in the form of having to pay for professional fees to investigate, identify, and determine the extent of the problems and determine a plan for repairing the problems, to pay for the preparation of the plans, specifications and other documents needed to perform the repairs, and to pay for the repairs.

30. Plaintiff will incur damages in the form of the loss of use and enjoyment of the common elements during the repairs.

FOR A #1 CAUSE OF ACTION
(Negligence as to the Chisolm Street Partners, LCC
and Murray School Partners, LLC)

31. Plaintiff repeats and incorporates the above paragraphs by reference.

32. As the developers of the condominiums, the Developer Defendants owed a duty of due care to Plaintiff and to the purchasers of condominium units in overseeing the construction and management of the condominiums.

33. The Defendants breached the duty of due care they owed to Plaintiff and to the purchasers of condominium units in one or more of the following particulars:

- (a) by failing to properly select the contractors and materials used in the construction of the condominiums.
- (b) by failing to properly oversee the construction, including the selection of contractors, when it planned to sell the condominium units to members of the public for profit.

34. The negligent acts and omissions of the Defendants are the direct and proximate cause of construction defects and deficiencies which have resulted in property damage and financial damage to Plaintiff.

35. The acts and omissions of the Defendants have directly and proximately caused Plaintiff to incur damages in that Plaintiff has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to identify and determine the extent of the problems, to pay for design remediation plans and specifications to correct the construction defects and deficiencies, and to pay for the repairs.

36. Plaintiff will suffer loss of use and enjoyment of the common elements during the repairs.

37. As a result of the negligence of the Defendants, Plaintiff is entitled to a judgment against Defendants for actual and punitive damages in an amount to be determined at the trial of this case.

FOR A #2 CAUSE OF ACTION

(breach of implied warranty of habitability as to Chisolm Street Partners, LCC
and Murray School Partners, LLC)

38. Plaintiff repeats and incorporates the above paragraphs by reference.

39. As the developers of the condominiums, the Developer Defendants provided an implied warranty of habitability under South Carolina law to the purchasers and owners of the condominiums by controlling the design and ultimate cost of construction, by selecting contractors, by controlling the means and methods of construction, by offering the units for sale to the public, and by entering into contracts of sale. This warranty of habitability extends to subsequent purchasers who were the foreseeable beneficiaries of this warranty.

40. The construction defects and resulting property damage to the condominiums constitutes a breach of the implied warranty of habitability under the laws of South Carolina.

41. Due to the construction defects and resulting property damage, Plaintiff has incurred, and in the future will incur, damages to expend funds to repair damage that has already occurred, to pay for professional fees to identify the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

42. Plaintiff will suffer loss of use of the common areas during the repairs.

43. Plaintiff is entitled to a judgment against the Defendants in an amount to be proven at trial for all damages directly and proximately caused by Defendants' breach of the implied warranty of habitability.

FOR A #3 CAUSE OF ACTION

(negligence as to Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1,
and John Doe #2)

44. Plaintiff repeats and incorporates the above paragraphs by reference.

45. By undertaking construction work on this project, Defendants Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1 painting contractor, and John Doe #2 roofing contractor owed a duty to Plaintiff to use reasonable care during the performance of their respective work on the buildings and to perform their scope of work in accordance with all applicable building codes, applicable industry standards and standards of care, and to ensure that construction conformed to the design documents.

46. Defendants breached the duty of care they owed to Plaintiff.

47. Defendants were negligent, grossly negligent, willful, and reckless in numerous aspects of the construction of the building, including, but not limited to, the following:

- (a) failing to properly supervise subcontractors and laborers during the construction of the condominiums;
- (b) failing to follow plans and specifications of the architect and design professionals;
- (c) failing to follow installation instructions and recommendations;
- (d) failing to perform construction work in accordance with applicable building codes and proper workmanlike practices;
- (e) failing to select proper materials and capable subcontractors.
- (f) improper installation of windows;
- (g) installation of windows that lack adequate wood preservative treatment;
- (h) improper priming and painting of the windows;
- (i) improper flashing of the windows and window openings;
- (j) improper connection of the windows to side walls;
- (k) improper installation of the brick lintel over windows;

- (l) improper installation firewalls between condominium units;
- (m) improper installation of the roofs on the buildings;
- (n) improper installation of interior grade doors in exterior applications;
- (o) such additional items as may be discovered during investigation of construction deficiencies.

48. As a direct and proximate result of the negligence and recklessness of Defendants as hereinabove set forth, the condominium units and the common elements of the condominiums have been damaged by water intrusion.

49. Plaintiff has been directly and proximately damaged by Defendants in that it has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to identify the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

50. Plaintiff will suffer loss of use of the common areas during the repairs.

51. As a result of the negligence of Defendants, Plaintiff is entitled to a judgment against Defendants for actual and punitive damages in an amount to be determined at the trial of this case.

FOR A #4 CAUSE OF ACTION

(negligence per se as to Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1,
and John Doe #2)

52. Plaintiff repeats and incorporates the above paragraphs by reference.

53. By undertaking construction work on this project, Defendants Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1 painting contractor, and John Doe #2 roofing contractor owed a duty to Plaintiff to use reasonable care during the performance of their work on the buildings and to perform their scope of work in accordance with all applicable building

codes, applicable industry standards and standards of care, and to ensure that construction conformed to the design documents.

54. Defendants breached the duty of care owed to Plaintiff.

55. Defendants violated the applicable building codes in effect at the time of construction, specifically including, but not limited to the following:

- (a) improper installation of windows;
- (b) installation of windows that lack adequate wood preservative treatment;
- (c) improper priming and painting of the windows;
- (d) improper flashing of the windows and window openings;
- (e) improper connection of the windows to side walls;
- (f) improper installation of the brick lintel over windows;
- (g) improper installation firewalls between condominium units;
- (h) improper installation of the roofs on the buildings;
- (i) improper installation of interior grade doors in exterior applications;
- (j) such additional building code violations which may be discovered during ongoing investigations of construction deficiencies.

56. The violation of the building codes by Defendants amounts to negligence per se.

57. Plaintiff has been directly and proximately damaged by Defendants in that it has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

58. Plaintiff will suffer loss of use of the common elements during the repairs.

59. As a result of the negligence per se of Defendants, Plaintiff is entitled to a judgment against Defendants for actual and punitive damage in an amount to be determined at trial.

FOR A #5 CAUSE OF ACTION

(breach of implied warranty of workmanlike service as to Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1, and John Does #2)

60. Plaintiff repeats and incorporates the above paragraphs by reference.

61. By undertaking construction on this project, Defendants Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1 painting contractor, and John Doe #2 roofing contractor impliedly warranted that their work would be of quality workmanship and in accordance with industry standards.

62. The above referenced construction defects and deficiencies show that Defendants breached their implied warranties by failing to provide quality workmanship and by failing to comply with industry standards

63. Plaintiff has been directly and proximately damaged by Defendants in that it has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

64. Plaintiff will suffer loss of use of the common elements during the repairs.

65. Plaintiff is entitled to a judgment against Defendants for damages, in an amount to be determined at trial, resulting from the breach of their implied warranties of workmanlike service.

FOR A #6 CAUSE OF ACTION

(breach of express warranty as to Genoa, Masterpiece Millworks, Allen Roper, Jr.,
John Doe #1, and John Doe #2)

66. Plaintiff repeats and incorporates the above paragraphs by reference.

67. Plaintiff is informed and believes that, as part of their contracts for this project, Defendants Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1 painting contractor, and John Doe #2 roofing contractor expressly warranted that their work would be of good quality, free from defects, and in conformance with the contract documents.

68. As the ultimate and foreseeable owner of the condominiums, Plaintiff and its members are beneficiaries of the express warranties provided by these Defendants.

69. Defendants breached their express warranties by failing to construct the condominiums in a manner free from defects and in compliance with the contract documents, applicable building codes, and industry standards.

70. Plaintiff has been directly and proximately damaged by Defendants in that it has been, and in the future will be, forced to expend funds to repair damages that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

71. Plaintiff will suffer loss of use of the common areas during the repairs.

72. Plaintiff is entitled to a judgment against Defendants for damages, in an amount to be determined at trial, resulting from the breach of their express warranties.

FOR A #7 CAUSE OF ACTION

(breach of implied warranty of merchantability as to Masterpiece Millwork)

73. Plaintiff repeats and incorporates the above paragraphs by reference.

74. By providing windows for use in the condominiums, Defendant Masterpiece Millwork impliedly warranted that the windows it supplied would be fit for the ordinary purposes for which they are used and would pass without objection in the trade.

75. The windows provided by Masterpiece Millwork are defective, have failed, and are allowing water to intrude into the buildings.

76. The failure of the windows provided by Masterpiece Millwork have resulted in damage to buildings and will require repair and restoration by Plaintiff, including, but not limited to, removal of the exterior windows and replacement with exterior windows that comply with the current building codes.

77. Plaintiff will suffer loss of use of the common elements during the repairs.

78. The failure of the windows constitutes a breach of the implied warranty of merchantability.

79. Plaintiff is entitled to a judgment against Masterpiece Millwork for damages, in an amount to be determined at trial, result from its breach of the implied warranty of merchantability.

FOR A #8 CAUSE OF ACTION

(breach of implied warranty of fitness for a particular purpose as to Masterpiece Millwork)

80. Plaintiff repeats and incorporates the above paragraphs by reference.

81. Defendant Masterpiece Millwork was aware that its windows were being used as building components for the condominiums.

82. Masterpiece Millwork knew or reasonably should have known that the purchasers were relying on its skill and judgment to select suitable goods that are were in compliance with applicable building codes and industry standards.

83. By selling the windows for a particular use in the condominiums, Masterpiece Millwork impliedly warranted that its windows would be fit for their intended purposes in this condominium project.

84. The windows sold by Masterpiece Millwork and incorporated into the condominiums have failed prematurely and are allowing water to intrude into the buildings.

85. The failure of the windows has resulted in damage to the various components of the buildings and will require extensive repair and restoration by Plaintiff including, but not limited to, removal of the windows and replacement with windows that comply with current building codes.

86. Plaintiff will suffer loss of use of the common elements during the repairs.

87. The failure of the windows amounts to a breach of the implied warranty of fitness for a particular purpose.

88. Plaintiff is entitled to a judgment against Masterpiece Millwork from damages, in an amount to be determined at trial, resulting from its breach of the implied warranty of fitness for a particular purpose.

FOR A #9 CAUSE OF ACTION
(strict liability in tort as to Masterpiece Millwork)

89. Plaintiff repeats and incorporates the above paragraphs by reference.

90. Defendant Masterpiece Millwork is in the business of selling building products for use in construction projects in South Carolina, specifically windows.

91. Masterpiece Millwork manufactured and sold the windows that were incorporated into the condominiums during construction.

92. The windows were expected to and were incorporated into the without substantial change from the condition in which they were originally manufactured and sold.

93. The windows have failed prematurely and are allowing water to enter the buildings.

94. The failure of the windows is causing property damage.

95. The failure of the windows will result in danger to Plaintiff and its members and their guests and invitees if the window products are unable to withstand the design wind loads required by the applicable building codes.

96. The windows that were sold for use in the condominiums are defective and unreasonably dangerous to the condominium owners.

97. As a direct and proximate result of the defective windows, Plaintiff and its members have suffered and will continue to suffer damages, including but not limited to the costs of removal of the windows and replacement with windows that comply with current building codes.

98. Plaintiff and its members will suffer loss of use of the common elements during the repairs.

99. As a direct and proximate result of the damages caused by the defective windows, Plaintiff is entitled to a judgment against Defendant for actual and punitive damages in an amount to be determined at the trial.

FOR A #10 CAUSE OF ACTION

(South Carolina Unfair Trade Practices Act as to all Defendants)

100. Plaintiff repeats and incorporates the above paragraphs by reference.

101. Plaintiff and Defendants are considered persons within the meaning of the South Carolina Unfair Trade Practices ("UTPA"), S.C. Code Ann. § 39-5-10 et seq.

102. By developing, marketing, constructing, and selling the condominium units, the Defendants were engaged in commerce within the meaning of the UTPA.

103. In connection with their developing, marketing, constructing, and selling the condominiums, Defendants engaged in unfair or deceptive acts or practices in the conduct of trade in violation of the UTPA.

104. The unfair and deceptive practices engaged in by Defendants affect the public interests of South Carolina, have the potential for repetition, and will continue to have an impact on the public interest.

105. Due to the acts of Defendants and the construction defects and resulting property damage, Plaintiff has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

106. Plaintiff and its members will suffer loss of use of the common elements during the repairs

107. Plaintiff is entitled under the UTPA to a judgment against Defendants, jointly and severally, for treble actual damages plus attorneys' fees based on Defendants' knowing, intentional, willful, and malicious violations of the UTPA.

FOR A #11 CAUSE OF ACTION
(Violation of S.C Code § 27-31-430)

108. Plaintiff repeats and incorporates the above paragraphs by reference.

109. The South Carolina Horizontal Property Act contains requirements applicable to conversion of rental units to condominium ownership as is set forth in S.C. Code §§ 27-31-410 to 27-31-440.

110. Section 27-31-410 states:

As used in this chapter, "conversion of rental units to condominium ownership" means the establishment of a horizontal property regime encompassing a preexisting building which, at anytime prior to the recording of the master deed or master lease, was wholly or partially occupied by persons as their residence on a permanent or at least a continuing basis other than persons who, at the time of such recording, had contractual rights to acquire condominium ownership within the building.

111. Upon information and belief, when the condominium property was used as the Andrew B. Murray Vocational School, the school's caretaker lived in a building on the property known as the care taker building and used the building as a residence. The Developer Defendants subsequently acquired the property, converted the buildings and property into condominiums, and then offered, marketed, and sold the condominium units to third party buyers. The condominiums horizontal property regime created and developed by the Developer Defendants included the renovation, conversion, and sale of the care taker building into condominiums.

112. Occupancy of the care taker building by the school's caretaker renders it a "preexisting building which, at anytime prior to the recording of the master deed or master lease, was wholly or partially occupied by persons as their residence on a permanent or at least a continuing basis" as set forth in § 27-31-410.

113. Section 27-31-430 states:

Whenever the lessee, sole owner, or co-owner of a building declares the undertaking of a conversion of rental units to condominium ownership through the recordation of a master deed or master lease, written disclosure shall be made within thirty days of the date of the recordation to all prospective purchasers, including tenants in possession, as to the physical condition of the building. The disclosure shall contain a written report prepared by an independent registered architect or engineer licensed to practice his profession in this State, describing the present condition of all general common elements. The report shall contain a good faith estimate of the remaining useful life to be expected for each item reported on, together with a list of any notices of uncured violations of building codes or other county or municipal regulations, together with the estimated cost of curing those violations. The good faith estimate of useful life shall not constitute a

warranty and, as to an independent registered architect or engineer licensed to practice his profession in this State, shall not be deemed a representation of material fact or an inducement to purchase and shall not give rise to any cause of action at law or in equity against such architect or engineer. A failure to make the disclosure required by this section shall constitute a violation of the South Carolina Unfair Trade Practices Act.

114. Upon information and belief, the Developer Defendants did not prepare or disclose the written report required under § 27-31-430.

115. The failure of the Developer Defendants to make the disclosures required under § 27-31-430 constitutes a *per se* violation of the South Carolina Unfair Trade Practices Act as stated in the last sentence of § 27-31-430.

116. Pursuant to § 27-31-430, Plaintiff is entitled under the UTPA to a judgment against the Developer Defendants, jointly and severally, for treble actual damages plus attorneys' fees based on their knowing, intentional, willful, and malicious violations of the UTPA.

FOR A #12 CAUSE OF ACTION
(negligence as to Architect)

117. Plaintiff repeats and incorporates the above paragraphs by reference.

118. Defendant Architect owed a duty to Plaintiff to exercise that degree of skill necessary in design and inspection of the Project so that the Project would be delivered free of construction defects and would be designed and built in conformity with the customary and ordinary standards of the building and construction industry and the applicable building codes.

119. Defendant Architect was negligent, and/or grossly negligent in failing to properly design and inspect the construction of the project so as to insure compliance with the applicable plans, specifications, industry standards, manufacturer's requirements, applicable codes, and code construction practices, including without limitation the following:

- (a) in failing to observe deviations between the drawings and the as-built structure in that a layer of gypsum drywall on the fire walls between the

condominium units in the gym building was not installed as reflected on the plans.

- (b) in failing to observe deviations between the drawings and the as-built structure in that fire sealant/caulking was not installed in the fire walls between the condominium units in the gym building as called for on the UL ratings on the drawings.
- (c) in failing to observe deviations between the drawings and the as-built structure in that insulation is missing in locations in the fire walls between the condominium units in the gym building as called for on the drawings.
- (d) in failing to consider that the installation of non-insulated, single pane, metal frame exterior windows in the main building would lead to a condition whereby, due to temperature and humidity differences inside and outside the windows, condensation will form on the windows to various degrees at certain times of the year, resulting in a slow migration of condensation into the wall cavity under the windows and resulting moisture and water damage in the wall system in portions of the building.
- c) inadequate inspection and acceptance of defective or non-conforming construction work;
- d) failure to design and insure construction in compliance with applicable building codes and acceptable building practices; and
- e) failure to properly specify appropriate materials to be used in the construction of the Project.

120. Plaintiff has been directly and proximately damaged by the negligence and gross negligence of Architect in that Plaintiff has been, and in the future will be, forced to expend funds to repair damages that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the defects and resulting damages.

121. Plaintiff has been directly and proximately damaged in that it has been, and in the future will be, forced to expend funds to repair damages that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation

plans and specifications to correct the construction deficiencies and resulting damages, and to pay for the repairs.

122. Plaintiff is entitled to a judgment against Architect for actual and punitive damages, in an amount to be determined at trial, resulting from its negligence.

FOR A #13 CAUSE OF ACTION
(breach of warranty as to Architect)

123. Plaintiff repeats and incorporates the above paragraphs by reference.

124. Architect expressly and impliedly warranted that its design of the Project would be of high quality and in conformance with the generally accepted standards of the architectural and construction industry, and further, that the specifications of materials and procedures would comply with the generally accepted principals in the industry.

125. Architect further expressly and impliedly warranted that the plans and specifications prepared for the project were suitable and fit for use in constructing the project, and that the building, when complete, would be free of design defects.

126. The plans and specifications as provided by Architect were not suitable or appropriate for their intended purpose, and as a result of Architect's breach of warranties by designing the project with structural, moisture and water intrusion, and other problems.

127. Plaintiff is entitled to a judgment against Architect for all actual and consequential damages resulting from Architect's breach of warranties, including without limitation all costs incurred by Plaintiff to correct the construction deficiencies and resulting damages.

WHEREFORE, Plaintiff prays for:

- (a) a judgment for actual damages against all Defendants jointly and severally with regard to causes of action #1-9, 12, and 13;
- (b) a judgment for punitive damages against Defendants jointly and severally, with regard to causes of action #1, 3, 4, 9, and 12;

- (c) a judgment for treble actual damages against Defendants jointly and severally with regard to cause of action #10 and #11.
- (d) an award of attorney's fees and costs; and
- (e) such other and further relief as the Court deems just and proper.



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Attorneys for Plaintiff
3 Chisolm Street Homeowner's Association, Inc.

April 8, 2010

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO.: 2009-CP-10-267

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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

COMES NOW Defendant Brock Green Architects and Planners, LLC ("Brock Green"), responding to the allegations contained in the Second Amended Complaint, alleges as follows:

FOR A FIRST DEFENSE

The Plaintiff fails to state a cause of action upon which relief may be granted.

FOR A SECOND DEFENSE

Some or all of Plaintiff's claims are or may be barred by the Statute of Limitations and/or Statute of Repose.

FOR A THIRD DEFENSE

Some or all of Plaintiff's claims are or may be barred by the doctrines of waiver, laches, and/or estoppel.

FOR A FOURTH DEFENSE

Some or all of Plaintiff's claims are or may be the result of the acts and/or omissions of some party or parties other than Brock Green, with a result that the Plaintiff cannot recover from Brock Green.

FOR A FIFTH DEFENSE

Some or all of Plaintiff's claims are or may be barred by the Plaintiff's failure to mitigate any damages.

FOR A SIXTH DEFENSE

Any claims alleged by the Plaintiff for breach of warranty should be barred to the extent that the Plaintiff failed to give proper notice of any alleged breach of any warranty.

FOR A SEVENTH DEFENSE

The work and services provided by Brock Green were at all times applicable to the subject project in conformity with the industry standards for that time.

FOR AN EIGHTH DEFENSE

Any award of punitive damages for the Plaintiff would violate constitutional safeguards provided to Brock Green by the United States and South Carolina Constitutions.

FOR A NINTH DEFENSE

The Plaintiff may not have a contract or may not be in privity with Brock Green.

FOR A TENTH DEFENSE

The allegations of the Second Amended Complaint fail to state a claim for which any prejudgment interest may be granted.

FOR AN ELEVENTH DEFENSE

Some or all of the Plaintiff's claims are or may be barred, or in the alternative, reduced to the extent of comparative negligence of the Plaintiff.

FOR A TWELFTH DEFENSE

Brock Green is entitled to dismissal of the Complaint as the Plaintiff has failed to file an expert affidavit alleging professional negligence.

FOR A THIRTEENTH DEFENSE

Some or all of Plaintiff's claims are or may be barred by the doctrines of res judicata and/or collateral estoppel.

FOR A FOURTEENTH DEFENSE

Brock Green has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of the Plaintiff's allegations. Brock Green intends to act as best it can to inform itself of the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiff as alleged in the Complaint, and gives notice of its intent to assert any further affirmative defense that its information-gathering process

may indicate is supported by fact and law. Brock Green reserves the right to amend this Answer and assert such defenses.

FOR A FIFTEENTH DEFENSE

Each allegation of the Second Amended Complaint not specifically admitted is denied. Brock Green responds to the individually numbered paragraphs of the Second Amended Complaint as follows:

1. In response to Paragraphs 1 and 2, Brock Green lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraphs 1 and 2 and therefore denies the same and demands strict proof thereof.

2. In response to Paragraphs 3-6, upon information and belief, Brock Green admits the allegations contained in Paragraphs 3-6.

3. In response to Paragraphs 7 and 8, Brock Green lacks knowledge or information sufficient to admit or deny the allegations contained in these Paragraphs and therefore denies the same and demands strict proof thereof.

4. In response to Paragraph 9, Brock Green craves reference to the Second Amended Complaint as to the contents therein and denies any allegations inconsistent therewith.

5. In response to Paragraphs 10-14, Brock Green lacks knowledge or information sufficient to admit or deny the allegations contained in these Paragraphs and therefore denies the same and demands strict proof thereof.

6. In response to Paragraph 15, upon information and belief, Brock Green admits the allegations contained in Paragraph 15.

7. In response to Paragraphs 16-21, Brock Green lacks knowledge or information sufficient to admit or deny the allegations contained in these Paragraphs and therefore denies the same and demands strict proof thereof.

8. In response to Paragraph 22, Brock Green admits the allegations contained in this Paragraph.

9. In response to Paragraph 23, Brock Green admits that it was responsible for services as set forth in its contract with the developer, and denies all allegations inconsistent with that contract.

10. In response to Paragraph 24, this Paragraph contains conclusions of law to which no response is required.

11. In response to Paragraphs 25-30, Brock Green denies the allegations in these Paragraphs, including all sub-parts, and demands strict proof thereof.

12. In response to Paragraph 31, Brock Green reiterates its answers to the preceding paragraphs as if restated verbatim herein.

13. In response to Paragraphs 32-37, these Paragraphs consist of allegations against other parties to which no response is required by Brock Green. To the extent these Paragraphs state or imply liability on the part of Brock Green, the allegations are denied and Brock Green demands strict proof thereof.

14. In response to Paragraph 38, Brock Green reiterates its answers to the preceding paragraphs as if restated verbatim herein.

15. In response to Paragraphs 39-43, these Paragraphs consist of allegations against other parties to which no response is required by Brock Green. To the extent these Paragraphs

state or imply liability on the part of Brock Green, the allegations are denied and Brock Green demands strict proof thereof.

16. In response to Paragraph 44, Brock Green reiterates its answers to the preceding paragraphs as if restated verbatim herein.

17. In response to Paragraphs 45-51, these Paragraphs consist of allegations against other parties to which no response is required by Brock Green. To the extent these Paragraphs state or imply liability on the part of Brock Green, the allegations are denied and Brock Green demands strict proof thereof.

18. In response to Paragraph 52, Brock Green reiterates its answers to the preceding paragraphs as if restated verbatim herein.

19. In response to Paragraphs 53-59, these Paragraphs consist of allegations against other parties to which no response is required by Brock Green. To the extent these Paragraphs state or imply liability on the part of Brock Green, the allegations are denied and Brock Green demands strict proof thereof.

20. In response to Paragraph 60, Brock Green reiterates its answers to the preceding paragraphs as if restated verbatim herein.

21. In response to Paragraphs 61-65, these Paragraphs consist of allegations against other parties to which no response is required by Brock Green. To the extent these Paragraphs state or imply liability on the part of Brock Green, the allegations are denied and Brock Green demands strict proof thereof.

22. In response to Paragraph 66, Brock Green reiterates its answers to the preceding paragraphs as if restated verbatim herein.

23. In response to Paragraphs 67-72, these Paragraphs consist of allegations against other parties to which no response is required by Brock Green. To the extent these Paragraphs state or imply liability on the part of Brock Green, the allegations are denied and Brock Green demands strict proof thereof.

24. In response to Paragraph 73, Brock Green reiterates its answers to the preceding paragraphs as if restated verbatim herein.

25. In response to Paragraphs 74-79, these Paragraphs consist of allegations against other parties to which no response is required by Brock Green. To the extent these Paragraphs state or imply liability on the part of Brock Green, the allegations are denied and Brock Green demands strict proof thereof.

26. In response to Paragraph 80, Brock Green reiterates its answers to the preceding paragraphs as if restated verbatim herein.

27. In response to Paragraphs 81-88, these Paragraphs consist of allegations against other parties to which no response is required by Brock Green. To the extent these Paragraphs state or imply liability on the part of Brock Green, the allegations are denied and Brock Green demands strict proof thereof.

28. In response to Paragraph 89, Brock Green reiterates its answers to the preceding paragraphs as if restated verbatim herein.

29. In response to Paragraphs 90-99, these Paragraphs consist of allegations against other parties to which no response is required by Brock Green. To the extent these Paragraphs state or imply liability on the part of Brock Green, the allegations are denied and Brock Green demands strict proof thereof.

30. In response to Paragraph 100, Brock Green reiterates its answers to the preceding paragraphs as if restated verbatim herein.

31. In response to Paragraphs 101 and 102, these Paragraphs contain conclusions of law to which no response is required. To the extent a response is required, the allegations in these Paragraphs are denied and Brock Green demands strict proof thereof.

32. In response to Paragraphs 103-107, Brock Green denies the allegations of these Paragraphs directed to it and demands strict proof thereof. Brock Green lacks information or knowledge sufficient to admit or deny the allegations that pertain to other Defendants, and, therefore, denies the same and demands strict proof thereof.

33. In response to Paragraph 108, Brock Green reiterates its answers to the preceding paragraphs as if restated verbatim herein.

34. In response to Paragraphs 109-116, these Paragraphs consist of allegations against other parties to which no response is required by Brock Green. To the extent these Paragraphs state or imply liability on the part of Brock Green, the allegations are denied and Brock Green demands strict proof thereof.

35. In response to Paragraph 117, Brock Green reiterates its answers to the preceding paragraphs as if restated verbatim herein.

36. In response to Paragraph 118, Brock Green admits only the existence of those duties expressly set out in its contract for services with regard to this property and those duties as expressly created under South Carolina law, if any. To the extent Paragraph 118 may suggest or imply duties beyond those expressly admitted herein, or may otherwise suggest or imply that Brock Green breached any alleged duty, those allegations are denied.

37. In response to Paragraphs 119-122, Brock Green denies the allegations in these Paragraphs, including all sub-parts, and demands strict proof thereof.

38. In response to Paragraph 123, Brock Green reiterates its answers to the preceding paragraphs as if restated verbatim herein.

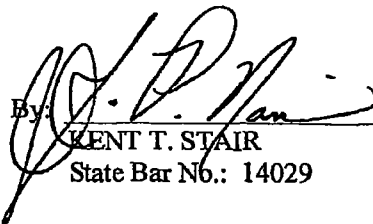
39. In response to Paragraph 124 and 125, these Paragraphs contain conclusions of law to which no response is required. To the extent a response is required, Brock Green admits only those warranties required by law or in its contract, if any, and specifically denies it breached any warranties and demands strict proof thereof. All other allegations in these Paragraphs are denied.

40. In response to Paragraphs 126 and 127, Brock Green denies the allegations in these Paragraphs and demands strict proof thereof.

WHEREFORE, having fully responded to the allegations of the Second Amended Complaint, Brock Green prays for judgment in its favor, for costs associated with defending this action, and for any such further relief as this Court may find just and proper.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 
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State Bar No.: 14029

PAUL E. SPERRY
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843-727-0307

Attorneys for Defendant
Brock Green Architects and Planners

THE STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES, INC.,
MASTERPIECE MILLWORK, INC., ALLEN
ROPER, JR. d/b/a MASONRY BRICKWORK,
AND STUCCO, JOHN DOE #1, JOHN DOE
#2, AND BROOK GREEN ARCHITECTS
AND PLANNERS, LLC,

Defendants.

GENOA CONSTRUCTION SERVICES, INC.,

Third-Party Plaintiff,

vs.

THE FOX STEEL COMPANY, CAROLINA
SERVICES, INC., LESCO RESTORATION,
INC., FERST PLASTERING, INC.,
CHARLESTON GLASS & MIRROR
COMPANY, 3D RENOVATIONS,
WILLIAMS MECHANICAL,
MASTERCRAFT INTERIOR & EXTERIOR,
BONIFAY MASONRY, COASTAL GLASS
AND BLOCK, ADAMS DAVIS &
PARTNERS, TROY PARDEE HEATING
AND AIR CONDITIONING (d/b/a PARDEE
HEATING AND AIR) AND BROCK GREEN
ARCHITECTS AND PLANNERS,

Third-Party Defendants.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-10-267

CERTIFICATE OF SERVICE

2010 APR 28 PM 12:56
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

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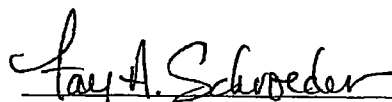
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This 27th day of April, 2010.



Fay A. Schroeder
Secretary to J. Patrick Norris

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES,
INC., MASTERPIECE MILLWORK,
INC., ALLEN ROPER, JR. D/B/A R
MASONRY BRICKWORK, CAROLINA
ROOFING SYSTEMS, INC., AND
LACY PAINTING,

Defendants.

GENOA CONSTRUCTION SERVICES,
INC.,

Third Party Plaintiff,

v.

THE FOX STEEL COMPANY,
CAROLINA SERVICES, INC., LESCO
RESTORATION, INC., FERST
PLASTERING, INC., CHARLESTON
GLASS & MIRROR COMPANY, 3D
RENOVATIONS, WILLIAMS
MECHANICAL, MASTERCRAFT
INTERIOR & EXTERIOR, BONIFAY
MASONRY, COASTAL GLASS AND
BLOCK, ADAMS DAVIS &
PARTNERS, TROY PARDEE HEATING
AND AIR CONDITIONING (d/b/a
PARDEE HEATING AND AIR) AND
BROCK GREEN ARCHITECTS AND
PLANNERS,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

**GENOA CONSTRUCTION SERVICES,
INC.'S ANSWER TO PLAINTIFF'S
SECOND AMENDED COMPLAINT,
CROSSCLAIMS AND AMENDED
THIRD-PARTY COMPLAINT**

2010 MAY 11 AM 9:42
JULIE J. ARMSTRONG
CLERK OF COURT
BY B

FILED

3847852-1

TO: PLAINTIFF, CROSS CLAIMANTS, AND THIRD-PARTY DEFENDANTS:

Defendant, Genoa Construction Services, Inc. ("Genoa"), by and through its undersigned counsel, Answering the Second Amended Complaint of Plaintiff, would allege as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Amended Complaint not hereinafter explained, qualified or admitted is denied. To the extent any allegation may not be expressly referred to and Answered, it is hereby denied.

2. Upon information and belief Genoa admits Paragraphs 1, 2, 3, 4, 5, and 6.

3. Upon information and belief Genoa admits Paragraphs 7 and 8.

4. There are no allegations contained in Paragraph 9. To the extent any allegations may be construed against Genoa, the same are hereby denied.

5. Upon information and belief Genoa admits Paragraphs 10 and 11.

6. Genoa lacks sufficient information to form a belief as to Paragraphs 12 and 13.

7. Genoa admits Paragraphs 14 and 15.

8. Upon information and belief Genoa admits Paragraphs 16, 17, 18, and 19.

9. There are no allegations contained in Paragraphs 20 and 21, therefore no response is required from Genoa. To the extent any allegations may be construed against Genoa, the same are hereby denied.

10. Upon information and belief Genoa admits Paragraphs 22 and 23.

11. Genoa admits Paragraph 24.

12. Genoa denies Paragraphs 25, 26, 27, 28, 29, and 30.

13. As to Paragraph 31, Genoa hereby incorporates its previous responses in Paragraphs 1 through 12 above.

14. The allegations contained in Paragraphs 32 through 37 are not directed at Genoa and thus no response is required. To the extent that any allegations contained in Paragraphs 32 through 37 may be construed against Genoa the same is hereby denied.

15. As to Paragraph 38, Genoa hereby incorporates its previous responses in Paragraphs 1 through 14 above.

16. The allegations contained in Paragraphs 39 through 43 are not directed at Genoa and thus no response is required. To the extent that any allegations contained in Paragraphs 39 through 43 may be construed against Genoa the same is hereby denied.

17. As to Paragraph 44, Genoa hereby incorporates its previous responses in Paragraphs 1 through 16 above.

18. Genoa denies the allegations contained in Paragraphs 45, 46, 47, 48, 49, 50, and 51 as they pertain to Genoa. Genoa asserts that to the extent any negligence was committed, it was by others and not Genoa.

19. As to Paragraph 52, Genoa hereby incorporates its previous responses in Paragraphs 1 through 18 above.

20. Genoa denies the allegations contained in Paragraphs 53, 54, 55, 56, 57, 58, and 59 as they pertain to Genoa. Genoa asserts that to the extent any negligence was committed, it was by others and not Genoa.

21. As to Paragraph 60, Genoa hereby incorporates its previous responses in Paragraphs 1 through 20 above.

22. Genoa denies the allegations contained in Paragraphs 61, 62, 63, 64, and 65 as they pertain to Genoa. Genoa asserts that to the extent any breach of implied warranty of workmanlike services was committed, it was by others and not Genoa.

23. As to Paragraph 66, Genoa hereby incorporates its previous responses in Paragraphs 1 through 22 above.

24. Genoa denies the allegations contained in Paragraphs 67, 68, 69, 70, 71, and 72 as they pertain to Genoa. Genoa asserts that to the extent any breach of express warranty was committed, it was by others and not Genoa.

25. The allegations contained in Paragraphs 73 through 99 are not directed at Genoa and thus no response is required. To the extent that any allegations contained in Paragraphs 73 through 99 may be construed against Genoa the same is hereby denied.

26. As to Paragraph 100, Genoa hereby incorporates its previous responses in Paragraphs 1 through 25 above.

27. Genoa denies the allegations contained in Paragraphs 101, 102, 103, 104, 105, 106, and 107 as they pertain to Genoa. Genoa asserts that to the extent any violation of the Unfair Trade Practices Act was committed, it was by others and not Genoa.

28. The allegations contained in Paragraphs 108 through 127 are not directed at Genoa and thus no response is required. To the extent that any allegations contained in Paragraphs 106 through 114 may be construed against Genoa the same is hereby denied.

FOR A SECOND DEFENSE
[SCRCP 12 (b) (6)]

29. The Second Amended Complaint fails to state a claim against Genoa for which relief may be granted.

FOR A THIRD DEFENSE

30. Any damages sustained by the Plaintiff as alleged in the Second Amended Complaint were due to and caused by the negligence, recklessness and assumption of the risk by Plaintiff or their agents and representatives which acts combined, contributed or concurred with any alleged negligence on the part of Genoa, if any, which is expressly denied and, therefore, Plaintiff is barred from recovery herein.

FOR A FOURTH DEFENSE

31. The claims set forth in the Second Amended Complaint are barred, in whole or in part, by the applicable statutes of limitation or statutes of repose, and/or other contractual periods of limitation.

FOR A FIFTH DEFENSE

32. Genoa asserts that the claims against it are barred or limited by the contributing, concurring, intervening or superseding fault or breach by persons or entities other than Genoa.

FOR A SIXTH DEFENSE

33. Plaintiff is not entitled to recovery from Genoa in tort for purely economic losses.

FOR A SEVENTH DEFENSE

34. Plaintiff lacks sufficient legal privity with Genoa to impose liability on Genoa.

FOR AN EIGHTH DEFENSE

35. Plaintiff failed to mitigate its alleged damages as required by law.

FOR A NINTH DEFENSE

36. Plaintiff's claims are barred by the doctrines of waiver, estoppel or laches.

FOR A TENTH DEFENSE

37. Plaintiff's claims for breach of warranty are barred by their failure to give Genoa timely and reasonable notice as required by law.

FOR AN ELEVENTH DEFENSE

38. Genoa alleges that a verdict for Plaintiff for punitive damages would deprive Genoa of property without due process of law and without equal protection of the laws:

- (a) if the amount awarded bears no reasonable relationship to the proven harm claimed by Plaintiff;
- (b) if the award is based upon other, dissimilar acts or omissions;
- (c) if the award is based upon other parties' hypothetical claims;
- (d) if the award is based upon economic rather than physical harm; or
- (e) if the award is excessive in comparison to penalties imposed or authorized in comparable cases.

FOR A TWELFTH DEFENSE

39. Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A THIRTEENTH DEFENSE

40. Genoa has made no representations or warranties inducing the purchase of its products and/or services by any person or entity except in writing and to the specific purchaser. Such writings are the primary and best evidence of the content and legal effect and include lawful exclusion, disclaimers and limitation of responsibility of Genoa. Genoa is not responsible for any warranties or representations of competitors or anyone else.

FOR A FOURTEENTH DEFENSE

41. Certain of Plaintiff's claims may be barred by applicable statute of frauds.

FOR A FIFTEENTH DEFENSE

42. Genoa adopts and incorporates by reference any affirmative defenses or other defenses, to the extent applicable, which have been pled by any of the Defendants in this case.

FOR A SIXTEENTH DEFENSE

43. The conduct of Genoa was neither unfair nor deceptive and did not adversely impact the public interest. By way of further Answer, Genoa would allege and show that the transactions alleged by the Plaintiff constitute private transactions between commercial business entities and have no adverse impact upon the public interest and the Plaintiff has therefore failed to state a claim upon which relief can be granted as to Genoa under the South Carolina Unfair Trade Practices Act.

FOR A SEVENTEETH DEFENSE

44. Genoa asserts that the claims against it are barred or limited by the contributing, concurring intervening or superseding fault or breach by persons or entities other than Genoa, by the means of misapplication, misuse or abuse of Genoa's materials and/or workmanship, which may include, but not be limited to:

- (a) installation on unsuitable structures or incorporation into structures with defects in construction or in structural components, resulting in whole or in part in the damages sought;
- (b) alteration or modification of Genoa's materials and/or workmanship after the materials and/or workmanship left the control of Genoa without the express consent of Genoa or contrary to instructions or specifications of Genoa; and
- (c) use of the materials and/or workmanship supplied by Genoa contrary to express instructions delivered with, appearing on, or attached to the materials and/or workmanship.

FOR AN EIGHTEENTH DEFENSE
AND BY WAY OF A CROSS CLAIM
FOR CONTRACTUAL INDEMNIFICATION
AGAINST MASTERPIECE, MASONRY,
CAROLINA ROOFING, AND LACY

45. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 44 above.

46. Defendants Masterpiece, Masonry, Carolina Roofing (identified as John Doe #1 in the Amended Complaint), and Lacy Painting (identified as John Doe #2 in the Amended Complaint) were responsible for the proper selection of materials, the proper quality control, the proper material installation, and the ultimate compliance with the contracts, industry standards, and building code requirements. If the Plaintiffs prove that these items were not in compliance with the contracts, industry standards, and building code requirements then Masterpiece, Masonry, Carolina Roofing, and Lacy failed to properly execute their duties which have allegedly caused the Plaintiff's damages.

47. The subcontracts between Genoa and Masterpiece, Masonry, Carolina Roofing, and Lacy state that Genoa shall be indemnified for damages resulting from work and or material provided by the respective Third-Party Defendants.

48. To the extent, if any, that Genoa is held liable to Plaintiff in this action, such liability would be direct and proximate result of the wrongful acts, omissions, negligence, and/or representations of Defendants Masterpiece, Masonry, Carolina Roofing, and Lacy have damaged Genoa as Genoa has been subjected to liability and has incurred consequential damages in having to expend attorneys' fees and cost in defending this action.

49. Genoa is entitled to full contractual and common law indemnification from Defendants Masterpiece, Masonry, Carolina Roofing, and Lacy for any liability Genoa is

found to have to the Plaintiffs in this action, and Genoa would be entitled to damages Masterpiece, Masonry, Carolina Roofing, and Lacy's negligence, as afore described, entitling Genoa to recover from Masterpiece, Masonry, Carolina Roofing, and Lacy its attorneys' fees, costs, and any and all other expenses associated with defending this action and entitling Genoa to recover from these Defendants any sums for which it may be held liable to Plaintiffs.

FOR A NINETEENTH DEFENSE
AND BY WAY OF A CROSS CLAIM
FOR COMMON LAW INDEMNIFICATION
AGAINST MASTERPIECE, MASONRY,
CAROLINA ROOFING, AND LACY

50. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 49 above.

51. Third Party Defendants Masterpiece, Masonry, Carolina Roofing, and Lacy were responsible for the proper selection of materials, the proper quality control, the proper material installation, and the ultimate compliance with the contracts, industry standards, and building code requirements. If the Plaintiffs prove that these items were not in compliance with the contracts, industry standards, and building code requirements Masterpiece, Masonry, Carolina Roofing, and Lacy failed to properly execute their duties which have allegedly caused the Plaintiff's damages.

52. To the extent, if any, that Genoa is held liable to Plaintiff in this action, such liability would be direct and proximate result of the wrongful acts, omissions, negligence, and/or representations of Masterpiece, Masonry, Carolina Roofing, and Lacy which have damaged Genoa as Genoa has been subjected to liability and has incurred consequential damages in having to expend attorneys' fees and cost in defending this action.

53. Genoa is entitled to full common law indemnification from Masterpiece, Masonry, Carolina Roofing, and Lacy for any liability Genoa is found to have to the Plaintiffs in this action, and Genoa would be entitled to damages for Masterpiece, Masonry, Carolina Roofing, and Lacy's negligence, as afore described, entitling Genoa to recover from Masterpiece, Masonry, Carolina Roofing, and Lacy its attorneys' fees, costs, and any and all other expenses associated with defending this action and entitling Genoa to recover from these Defendants any sums for which it may be held liable to Plaintiffs.

FOR A TWENTIETH DEFENSE
AND BY WAY OF A CROSS CLAIM
FOR BREACH OF EXPRESS WARRANTIES
AGAINST MASTERPIECE, MASONRY,
CAROLINA ROOFING, AND LACY

54. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 53 above.

55. Defendants Masterpiece, Masonry, Carolina Roofing, and Lacy made express warranties that materials, installation, and workmanship of the installation of the windows, treatment of the windows, priming and painting of the windows and window openings, connection of the windows, installation of the firewalls, installation of the roof, installation of the doors, paint and coatings, caulking and sealants, flashing, weather lapping, wall frame, fixtures, and other work performed, fabricated, and installed at the Chisolm Street Project were proper as required by contract, applicable building codes, and industry standards.

56. The subcontracts between Genoa Masterpiece, Masonry, Carolina Roofing, and Lacy, incorporated herein by reference, expressly provide warranties for their work at the Chisolm Street Project.

57. If the Plaintiffs prove that material selection, installation, and workmanship were not in accordance with contract requirements, industry standards, and/or building code requirements then Masterpiece, Masonry, Carolina Roofing, and Lacy have materially breached express warranties by failing to provide acceptable workmanship at the Chisolm Street Project.

58. Genoa is entitled to judgment against Masterpiece, Masonry, Carolina Roofing, and Lacy in the amount of any judgment which Plaintiffs may obtain against Genoa, for breach of express warranties, along with attorneys fees and costs associated with Genoa's defense of Plaintiffs suit.

FOR A TWENTY-FIRST DEFENSE
AND BY WAY OF A CROSS CLAIM
FOR BREACH OF IMPLIED WARRANTIES
AGAINST MASTERPIECE, MASONRY,
CAROLINA ROOFING, LACY, CHISOLM STREET,
AND MURRAY

59. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 58 above.

60. Defendants Masterpiece, Masonry, Carolina Roofing, Lacy, Chisolm Street, and Murray made implied warranties of workmanlike service and fitness for a particular purpose

61. If the Plaintiffs prove that material selection, installation, and workmanship were not in accordance with contract requirements, industry standards, and/or building code requirements then Masterpiece, Masonry, Carolina Roofing, Lacy, Chisolm Street, and Murray have materially breached implied warranties of workmanlike service and fitness for a particular purpose by failing to provide proper materials, properly install said materials, and

provide acceptable workmanship at the Chisolm Street Project. Genoa is entitled to judgment against Masterpiece, Masonry, Carolina Roofing, Lacy, Chisolm Street, and Murray in the amount of any judgment which Plaintiffs may obtain against Genoa, for breach of implied warranties of workmanlike service and fitness for a particular purpose warranties, along with attorneys fees and costs associated with Genoa's defense of Plaintiffs suit.

FOR A TWENTY-SECOND DEFENSE
AND BY WAY OF A CROSS CLAIM
FOR NEGLIGENCE
AGAINST MASTERPIECE, MASONRY,
CAROLINA ROOFING, AND LACY

62. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 61 above.

63. Masterpiece, Masonry, Carolina Roofing, and Lacy owed a duty to use due care in the selection of materials, the installation of such materials, and in insuring that proper levels of workmanship were achieved.

64. If the Plaintiffs prove that due care was not used in selecting materials, installing said materials, and insuring that proper levels of workmanship were achieved, then Masterpiece, Masonry, Carolina Roofing, and Lacy breached that duty of due care by selecting improper materials, allowing the improper installation of said materials, and in failing to insure that proper levels of workmanship were achieved at the Chisolm Street Project.

65. If the Plaintiffs obtain judgment against Genoa as a direct and foreseeable and proximate result of the Masterpiece, Masonry, Carolina Roofing, and Lacy negligence, then Genoa is entitled to judgment against Masterpiece, Masonry, Carolina Roofing, and Lacy for the amount of any judgment for plus attorneys' fees and costs associated with Genoa's defense of Plaintiffs suit.

FOR A TWENTY-THIRD DEFENSE
AND BY WAY OF A CROSS CLAIM
FOR NEGLIGENCE PER SE
AGAINST MASTERPIECE, MASONRY,
CAROLINA ROOFING, AND LACY PAINTING

66. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 65 above.

67. By under taking the construction on the Chisolm Street Project Masterpiece, Masonry, Carolina Roofing, and Lacy owed a duty to use due care in the selection of materials, the installation of such materials, and in insuring that proper levels of workmanship were achieved.

68. If the Plaintiffs prove that due care was not used in selecting materials, installing said materials, and insuring that proper levels of workmanship were achieved, then Masterpiece, Masonry, Carolina Roofing, and Lacy breached that duty of due care by selecting improper materials, allowing the improper installation of said materials, and in failing to insure that proper levels of workmanship were achieved at the Chisolm Street Project.

69. If the Plaintiffs obtain judgment against Genoa as a direct and foreseeable and proximate result of Masterpiece, Masonry, Carolina Roofing, and Lacy's negligence per se, then Genoa is entitled to judgment against Masterpiece, Masonry, Carolina Roofing, and Lacy for the amount of any judgment for plus attorneys' fees and costs associated with Genoa's defense of Plaintiffs suit.

FOR A TWENTY-FOURTH DEFENSE
AND BY WAY OF A CROSS CLAIM
FOR BREACH OF CONTRACT
AGAINST MASTERPIECE, MASONRY,
CAROLINA ROOFING, AND LACY

70. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 69 above.

71. Masterpiece, Masonry, Carolina Roofing, and Lacy are contractually responsible for the proper selection of materials, the proper quality control, the proper material installation, and the compliance with the contract, industry standards and building code requirements.

72. If the Plaintiffs prove that the contract was breached due to improper materials selection, improper quality control, and improper material installation, Masterpiece, Masonry, Carolina Roofing, and Lacy materially breached their subcontracts in failing to properly select materials, insure quality control, properly install materials, and in failing to comply with the contract, industry standards, and/or building code requirements.

73. Genoa is entitled to judgment against Masterpiece, Masonry, Carolina Roofing, and Lacy to the extent Plaintiffs obtain judgment against Genoa, for breach of contract plus Genoa's cost and attorneys' fees.

FOR A TWENTY-FOURTH DEFENSE
AND BY WAY OF A CROSS CLAIM
FOR NEGLIGENT MISREPRESENTATION
AGAINST CHISOLM AND MURRAY

74. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 73 above.

75. Defendants Chisolm and Murray were the developers of the Project.

76. Defendants Chisolm and Murray provided the plans and drawings to renovate and reconstruct the Project.

77. Genoa relied on the plans, drawings, and instructions created by Brock and provided by Defendants Chisolm and Murray in the construction and renovation of the project.

78. Defendant Chisolm and Murray had a pecuniary interest in providing the plans to Genoa. Defendant Chisolm and Murray both stood to profit through the renovation and sale of units at the Project.

79. Defendants Chisolm and Murray had a duty to ensure that the plans provided to Genoa for the construction of the Project met industry standards, local building code and ordinances and would provide appropriate amounts of direction to allow Genoa to properly construct and renovate the project.

80. If Plaintiffs prove that the Project was not constructed properly and does not meet industry standards, local building codes and ordinances, Chisolm and Murray breached their duty by providing building plans that did not meet industry standards, local building codes and ordinances or provide appropriate direction for the construction of the Project.

81. Genoa is entitled to judgment against Chisolm and Murray to the extent Plaintiffs obtain judgment against Genoa plus Genoa's cost and attorneys' fees.

FOR A TWENTY-FIFTH DEFENSE
AND BY WAY OF A THIRD-PARTY COMPLAINT
AGAINST FOX STEEL, CAROLINA SERVICES, LESCO RESTORATION, FERST
PLASTERING, CHARLESTON GLASS AND MIRROR, 3D RENOVATIONS,
WILLIMAS MECHANICAL, BONIFAY INTERIORS, COASTAL GLASS AND
BLOCK, ADAMS DAVIS & PARTNERS, TROY PARDEE HEATING AND AIR
CONDITIONING LLC (d/b/a PARDEE HEATING AND AIR) AND BROCK GREEN
ACRHITECTS AND PLANNERS

The Defendant-Third Party Plaintiff, Genoa Construction Services, Inc. ("Genoa"), by and through undersigned attorneys, by way of a Third-Party Complaint, alleges:

82. Defendant-Third Party Plaintiff Genoa is a corporation organized and existing under the laws of the State of Georgia and is registered to conduct business in the State of South Carolina.

83. Third Party Defendant The Fox Steel Company ("Fox") is a company organized and existing under the laws of the State of Connecticut and is registered to conduct business in the State of South Carolina.

84. Third Party Defendant Carolina Services, Inc. ("Carolina Services") is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

85. Third Party Defendant LESCO Restoration, Inc. ("Lesco") is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Spartanburg.

86. Third Party Defendant Ferst Plastering, Inc. ("Ferst") is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

87. Third Party Defendant Charleston Glass & Mirror Company ("Charleston Glass") is a company organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

88. Third Party Defendant 3D Renovations ("3D") is a company organized under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

89. Third Party Defendant Williams Mechanical ("Williams") is a company organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

90. Third Party Defendant Mastercraft Interior & Exterior ("Mastercraft") is a company existing under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

91. Third Party Defendant Bonifay Masonry ("Bonifay") is a company organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

92. Third Party Defendant Coastal Glass and Block ("Coastal") is a company organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

93. Third Party Defendant Brock Green Architects ("Brock") is a company organized and existing under the laws of the State of Georgia and is registered to conduct business in the State of South Carolina.

94. Third Party Defendant Adams Davis and Partners ("Adams") is a company organized and existing under the laws of the State of Georgia and is registered to conduct business in the State of South Carolina.

95. Third Party Defendant Troy Pardee Heating and Air Conditioning, LLC (d/b/a Pardee Heating and Air Conditioning) ("Pardee") is a company organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Charleston.

96. This Honorable Court has jurisdiction of the parties and claims which are hereinafter set forth in this Third Party Complaint as the contracts being sued upon and the actions complained of occurred or were performed in the County of Charleston, State of South Carolina.

97. No. 3 Chisolm Street is the subject of this lawsuit and is located at Chisolm Street, in the County of Charleston, State of South Carolina.

98. Genoa subcontracted with Fox to provide all labor, materials, equipment, shop drawings to fabricate and ship all steel windows to the project known as No. 3 Chisolm Street. That Contract and its General Conditions are dated August 13, 2001 and are hereby incorporated by reference.

99. Genoa subcontracted with Carolina Services for the installation of the fire wall systems and other work at the project known as No. 3 Chisolm Street. That Contract and its General Conditions are dated November 29, 2000 and are hereby incorporated by reference.

100. Genoa subcontracted with Lesco for the restoration and cleaning of the stucco and terra cotta and other work at the project known as No. 3 Chisolm Street. That Contract and its General Conditions are hereby incorporated by reference.

101. Genoa subcontracted with Ferst for the installation and all labor associated with the plastering and other work at the project known as No. 3 Chisolm Street. That Contract and its General Conditions are dated October 31, 2000 and are hereby incorporated by reference.

102. Genoa subcontracted with Charleston Glass for the installation and all labor associated with glazing and installing steel windows and doors and other work at the project known as No. 3 Chisolm Street. That Contract and its General Conditions are hereby incorporated by reference.

103. Genoa subcontracted with 3D for labor and the installation of doors and windows and other work at the project known as No. 3 Chisolm Street. That Contract and its General Conditions are dated November 27, 2001 and are hereby incorporated by reference.

104. Genoa subcontracted with Williams for installation of the HVAC and other work at the project known as No. 3 Chisolm Street. That Contract is hereby incorporated by reference.

105. Genoa subcontracted with Mastercraft for installation of the trim and other work at the project known as No. 3 Chisolm Street. That Contract is hereby incorporated by reference.

106. Genoa subcontracted with Bonifay for installation of the elevator shaft and other work at the project known as No. 3 Chisolm Street. That Contract is hereby incorporated by reference.

107. Genoa subcontracted with Coastal for installation of the glass block on the gymnasium and other work at the project known as No. 3 Chisolm Street. That Contract is hereby incorporated by reference.

108. Brock was hired to design the construction plans for the renovation and reconstruction of the Chisolm Street Project.

FOR A FIRST CAUSE OF ACTION
Contractual Indemnification
Against Third Party Defendants,
Carolina Services, Ferst, Charleston Glass, and 3D

109. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 108 above.

110. Plaintiffs have sued Defendant Third-Party Plaintiff claiming damages caused by work performed at the 3 Chisolm Street Condominium Project.

111. Defendant Third-Party Plaintiff has denied all of the substantive allegations against it that were made by Plaintiff.

112. Third Party Defendants Carolina Services, Ferst, Charleston Glass, and 3D were responsible for the proper selection of materials, the proper quality control, the proper material installation, and the ultimate compliance with the contracts, industry standards, and building code requirements. If the Plaintiffs prove that these items were not in compliance with the contracts, industry standards, and building code requirements Carolina Services, Ferst, Charleston Glass, and 3D failed to properly execute their duties which have allegedly caused the Plaintiff's damages.

113. The subcontracts between Genoa and Carolina Services, Ferst, Charleston Glass, and 3D provide that Genoa shall be indemnified for damages resulting from work and or material provided by the respective Third-Party Defendants.

114. To the extent, if any, that Genoa is held liable to Plaintiff in this action, such liability would be direct and proximate result of the wrongful acts, omissions, negligence, and/or representations of Third-Party Defendants Carolina Services, Ferst, Charleston Glass, and 3D which have damaged Genoa as Genoa has been subjected to liability and has incurred consequential damages in having to expend attorneys' fees and cost in defending this action.

115. Genoa is entitled to full contractual and common law indemnification from Third-Party Defendants Carolina Services, Ferst, Charleston Glass, and 3D for any liability Genoa is found to have to the Plaintiffs in this action, and Genoa would be entitled to damages for Carolina Services, Ferst, Charleston Glass, and 3D's negligence, as afore described, entitling Genoa to recover from Third Party Defendants Carolina Services, Ferst, Charleston Glass, and 3D its attorneys' fees, costs, and any and all other expenses associated with

defending this action and entitling Genoa to recover from these Third-Party Defendants any sums for which it may be held liable to Plaintiffs.

FOR A SECOND CAUSE OF ACTION

**Common Law Indemnification
Against Third Party Defendants,**

Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, Pardee, and Brock

116. Genoa hereby incorporates its previous responses, defenses, and allegation contained In Paragraphs 1 through 115 above.

117. Plaintiffs have sued Defendant Third-Party Plaintiff claiming damages caused by work performed at the 3 Chisolm Street Condominium Project.

118. Defendant Third-Party Plaintiff has denied all of the substantive allegations against it that were made by Plaintiff.

119. Third Party Defendants Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, Pardee, and Brock were responsible for the proper selection of materials, the proper quality control, the proper material installation, and the ultimate compliance with the contracts, industry standards, and building code requirements. If the Plaintiffs prove that these items were not in compliance with the contracts, industry standards, and building code requirements then Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, Pardee, and Brock failed to properly execute their duties which have allegedly caused the Plaintiff's damages.

120. To the extent, if any, that Genoa is held liable to Plaintiff in this action, such liability would be direct and proximate result of the wrongful acts, omissions, negligence, and/or representations of Third-Party Defendants Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, Pardee, and Brock which have damaged Genoa as Genoa has been subjected to liability and has incurred consequential damages in having to expend attorneys' fees and cost in defending this action.

121. Genoa is entitled to full common law indemnification from Third-Party Defendants Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, Pardee, and Brock, for any liability Genoa is found to have to the Plaintiffs in this action, and Genoa would be entitled to damages for Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, Pardee, and Brock's negligence, as afore described, entitling Genoa to recover from Third Party Defendants Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, Pardee, and Brock its attorneys' fees, costs, and any and all other expenses associated with defending this action and entitling Genoa to recover from these Third-Party Defendants any sums for which it may be held liable to Plaintiffs.

FOR A THIRD CAUSE OF ACTION
Common Law Indemnification
Against Third Party Defendant Brock

122. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 121 above.

123. Plaintiffs have sued Defendant Third-Party Plaintiff claiming damages caused by work performed at the 3 Chisolm Street Condominium Project.

124. Defendant Third-Party Plaintiff has denied all of the substantive allegations against it that were made by Plaintiff.

125. Third Party Defendant Brock was responsible to insure that the design of the Chisolm Street Project complied with contracts, industry standards, and building code requirements. If the Plaintiffs prove that these items were not in compliance with the contracts, industry standards, and building code requirements then Brock failed to properly execute its duties which have allegedly caused the Plaintiff's damages.

126. To the extent, if any, that Genoa is held liable to Plaintiff in this action, such liability would be direct and proximate result of the wrongful acts, omissions, negligence, and/or representations of Third-Party Defendant Brock which have damaged Genoa as Genoa has been subjected to liability and has incurred consequential damages in having to expend attorneys' fees and cost in defending this action.

127. Genoa is entitled to full common law indemnification from Third-Party Defendant Brock for any liability Genoa is found to have to the Plaintiffs in this action, and Genoa would be entitled to damages for Brock's negligence, as afore described, entitling Genoa to recover from Brock its attorneys' fees, costs, and any and all other expenses associated with defending this action and entitling Genoa to recover from Brock any sums for which it may be held liable to Plaintiffs.

FOR A FOURTH CAUSE OF ACTION
Breach of Express Warranties
Against Third Party Defendants,
Carolina Services, Ferst, Charleston Glass, 3D, Fox, Lesco,
Williams, Mastercraft, Bonifay, and Coastal

128. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 127 above.

129. Third Party Defendants Carolina Services, Ferst, Charleston Glass, 3D, Fox, Lesco, Williams, Mastercraft, Bonifay, and Coastal made express warranties that materials, installation, and workmanship of the installation of the windows, treatment of the windows, priming and painting of the windows and window openings, connection of the windows, installation of the firewalls, installation of the roof, installation of the doors, paint and coatings, caulking and sealants, flashing, weather lapping, wall frame, fixtures, and other work

performed, fabricated, and installed at the Chisolm Street Project were proper as required by contract, applicable building codes, and industry standards.

130. The subcontracts between Genoa and Third Party Defendants, incorporated herein by reference, expressly provide warranties for their work at the Chisolm Street Project.

131. If the Plaintiffs prove that material selection, installation, and workmanship were not in accordance with contract requirements, industry standards, and/or building code requirements then Third Party Defendants have materially breached express warranties by failing to provide acceptable workmanship at the Chisolm Street Project.

132. Genoa is entitled to judgment against Third Party Defendants in the amount of any judgment which Plaintiffs may obtain against Genoa, for breach of express warranties, along with attorneys fees and costs associated with Genoa's defense of Plaintiffs suit.

FOR A FIFTH CAUSE OF ACTION
Breach of Implied Warranties
Against Third Party Defendants

133. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 132 above.

134. Third Party Defendants Carolina Services, Ferst, Charleston Glass, 3D, Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, and Brock made implied warranties of workmanlike service and fitness for a particular purpose

135. If the Plaintiffs prove that material selection, installation, and workmanship were not in accordance with contract requirements, industry standards, and/or building code requirements then Third Party Defendants have materially breached implied warranties of workmanlike service and fitness for a particular purpose by failing to provide proper materials, properly install said materials, and provide acceptable workmanship at the Chisolm Street

Project. Genoa is entitled to judgment against Third Party Defendants in the amount of any judgment which Plaintiffs may obtain against Genoa, for breach of implied warranties of workmanlike service and fitness for a particular purpose warranties, along with attorneys fees and costs associated with Genoa's defense of Plaintiffs suit.

FOR A SIXTH CAUSE OF ACTION

Negligence

Against Third Party Defendants

**Carolina Services, Ferst, Charleston Glass, 3D, Fox, Lesco,
Williams, Mastercraft, Bonifay, Coastal, Adams, and Pardee**

136. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 135 above.

137. Third Party Defendants owed a duty to use due care in the selection of materials, the installation of such materials, and in insuring that proper levels of workmanship were achieved.

138. If the Plaintiffs prove that due care was not used in selecting materials, installing said materials, and insuring that proper levels of workmanship were achieved, then Third Party Defendants Carolina Services, Ferst, Charleston Glass, 3D, Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, and Pardee breached that duty of due care by selecting improper materials, allowing the improper installation of said materials, and in failing to insure that proper levels of workmanship were achieved at the Chisolm Street Project.

139. If the Plaintiffs obtain judgment against Genoa as a direct and foreseeable and proximate result of the Third Party Defendants Carolina Services, Ferst, Charleston Glass, 3D, Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, and Pardee negligence, then Genoa is entitled to judgment against Third Party Defendants Carolina Services, Ferst, Charleston Glass, 3D, Fox, Lesco, Williams, Mastercraft, Bonifay, Coastal, Adams, and Pardee

for the amount of any judgment for plus attorneys' fees and costs associated with Genoa's defense of Plaintiffs suit.

FOR A SEVENTH CAUSE OF ACTION

Breach of Contract

Against Third Party Defendants

**Carolina Services, Ferst, Charleston Glass, 3D, Fox, Lesco,
Williams, Mastercraft, Bonifay, and Coastal**

140. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 139 above.

141. Third Party Defendants are contractually responsible for the proper selection of materials, the proper quality control, the proper material installation, and the compliance with the contract, industry standards and building code requirements.

142. If the Plaintiffs prove that the contract was breached due to improper materials selection, improper quality control, and improper material installation, the Third Party Defendants materially breached their subcontracts in failing to properly select materials, insure quality control, properly install materials, and in failing to comply with the contract, industry standards, and/or building code requirements.

143. Genoa is entitled to judgment against Third Party Defendants to the extent Plaintiffs obtain judgment against Genoa, for breach of contract plus Genoa's cost and attorneys' fees.

FOR AN EIGHTH CAUSE OF ACTION

Negligent Misrepresentation

Against Brock

144. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 143 above.

145. Defendants Brock was the architect of the Project.

146. Defendants Brock provided the plans and drawings to renovate and reconstruct the Project.

147. Genoa relied on the plans, drawings, and instructions created by Brock and provided by Defendants Chisolm and Murray in the construction and renovation of the project.

148. Defendant Brock a pecuniary interest in providing the plans to Genoa. Defendant Brock stood to profit through providing plans and drawings for the Project.

149. Defendant Brock had a duty to ensure that the plans provided to Genoa for the construction of the Project met industry standards, local building code and ordinances and would provide appropriate amounts of direction to allow Genoa to properly construct and renovate the project.

150. If Plaintiffs prove that the Project was not constructed properly and does not meet industry standards, local building codes and ordinances, Brock breached their duty by providing building plans that did not meet industry standards, local building codes and ordinances or provide appropriate direction for the construction of the Project.

151. Genoa is entitled to judgment against Brock to the extent Plaintiffs obtain judgment against Genoa plus Genoa's cost and attorneys' fees.

FOR AN NINTH CAUSE OF ACTION
Contribution
Against Third Party Defendants

152. Genoa hereby incorporates its previous responses, defenses, and allegation contained in Paragraphs 1 through 151 above.

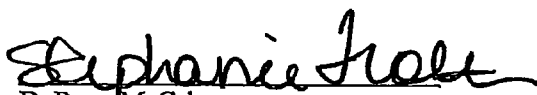
153. To the extent that Plaintiffs prevail on any of their claims against Genoa, it is entitled to contribution for Third Party Defendants.

RESERVATION AND NON-WAIVER

154. Genoa reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, Genoa Construction Services, Inc. having responded to the Second Amended Complaint and asserting its Crossclaims and Third-Party Complaint, prays that the Court:

1. Dismiss all claims against Genoa Construction Services, Inc. and to tax the costs thereof to the Plaintiff;
2. That Genoa Construction Services, Inc. be awarded judgment against the Cross Claimants and Third-Party Defendants jointly and severely, in the amount of any liability Genoa is found to have to Plaintiff in this action;
3. Genoa demands judgment requiring the Third-Party Defendants to defend and indemnify Genoa against any liability which Genoa may be liable for to Plaintiff in this action, to include Genoa's attorneys' fees, costs, and any and all other expenses incurred in defending this action.
4. For such other and further relief as this Court may deem just and proper; and
5. Award of attorneys' fees and the costs of this action.



D. Ryan McCabe

Stephanie C. Trotter

Rogers Townsend & Thomas, PC

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P.O. Box 100200

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Phone: 803-771-7900

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Email: rmccabe@rtt-law.com

strotter@rtt-law.com

**ATTORNEY FOR GENOA CONSTRUCTION
SERVICES, INC.**

Columbia, South Carolina

May 10, 2010

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES,
INC., MASTERPIECE MILLWORK,
INC., FERST PLASTERING, INC.,
CAROLINA ROOFING SYSTEMS,
INC., AND LACY PAINTING,

Defendants.

GEONA CONSTRUCTION SERVICES,
INC.,

Third Party Plaintiff,

v.

THE FOX STEEL COMPANY,
CAROLINA SERVICES, INC., LESCO
RESTORATION, INC., FERST
PLASTERING, INC., CHARLESTON
GLASS & MIRROR COMPANY, 3D
RENOVATIONS, WILLIAMS
MECHANICAL, MASTERCRAFT
INTERIOR & EXTERIOR, BONIFAY
MASONRY, COASTAL GLASS AND
BLOCK, ADAMS DAVIS &
PARTNERS, TROY PARDEE HEATING
AND AIR CONDITIONING (d/b/a
PARDEE HEATING AND AIR) AND
BROCK GREEN ARCHITECTS AND
PLANNERS,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

FILED
2010 MAY 11 AM 9:42
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

CERTIFICATE OF SERVICE

3847898-1

I, Angela L. Sharpe, an employee with the Law Firm of Rogers Townsend & Thomas, PC, attorneys for Genoa Construction Services, Inc., hereby certify that I have served or caused to be served a copy of the foregoing document upon the below named individuals and/or counsel this the 10th day of May, 2010, via electronic mail as follows:

DOCUMENT SERVED

Genoa Construction Services, Inc.'s Answer to Plaintiff's Second Amended Complaint, Cross-Claims, and Third-Party Complaint

PARTIES SERVED

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Murray School Partners, LLC***

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Attorney for Mastercraft Interior Exterior

Merrill A. Cox, Esquire
Cox Law Firm
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Goose Creek, SC 29445
Attorney for Carolina Roofing Systems, Inc.

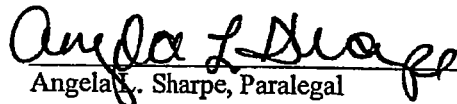
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Attorneys for GS Roofing Products Company


Angela L. Sharpe, Paralegal

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES, INC.,
MASTERPIECE MILLWORK, INC., ALLEN
ROPER, JR. d/b/a MASONRY-BRICKWORK
AND STUCCO, CAROLINA ROOFING
SYSTEMS, INC., LACY PAINTING, AND
BROCK GREEN ARCHITECTS AND
PLANNERS, LLC,

Defendants.

GENOA CONSTRUCTION SERVICES, INC.,

Third-Party Plaintiff,

vs.

THE FOX STEEL COMPANY, CAROLINA
SERVICES, INC., LESCO RESTORATION,
INC., FERST PLASTERING, INC.,
CHARLESTON GLASS & MIRROR
COMPANY, 3D RENOVATIONS,
WILLIAMS MECHANICAL,
MASTERCRAFT INTERIOR & EXTERIOR,
BONIFAY MASONRY, COASTAL GLASS
AND BLOCK, ADAMS DAVIS &
PARTNERS, TROY PARDEE HEATING
AND AIR CONDITIONING (d/b/a PARDEE
HEATING AND AIR),

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

**DEFENDANT BROCK GREEN
ARCHITECTS AND PLANNERS, LLC'S
MOTION FOR SUMMARY JUDGMENT**

2010 DEC -7 AM 10:48
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

10-20982

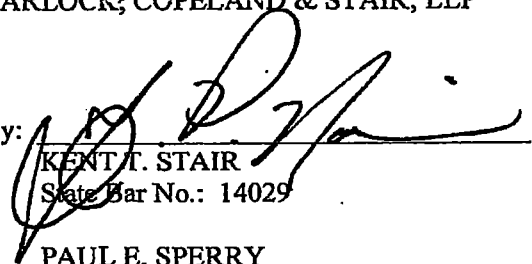
CHISOLM STREET PARTNERS, LLC,	)
	)
Third-Party Plaintiff,	)
	)
vs.	)
	)
THE FOX STEEL COMPANY, CAROLINA	)
SERVICES, INC., LESCO RESTORATION,	)
INC., FERST PLASTERING, INC.,	)
CHARLESTON GLASS & MIRROR	)
COMPANY, 3D RENOVATIONS,	)
WILLIAMS MECHANICAL,	)
MASTERCRAFT INTERIOR & EXTERIOR,	)
BONIFAY MASONRY, COASTAL GLASS	)
AND BLOCK, ADAMS DAVIS &	)
PARTNERS, and TROY PARDEE HEATING	)
AND AIR CONDITIONING (d/b/a PARDEE	)
HEATING AND AIR),	)
	)
Third-Party Defendants.	)
	)
LESCO RESTORATION, INC.,	)
	)
Fourth-Party Plaintiff,	)
	)
vs.	)
	)
COASTAL WATERPROOFING, INC.,	)
N/D/B/A WARDS WATERPROOFING, INC.,	)
	)
Fourth-Party Defendants.	)
	)

The Defendant Brock Green Architects and Planners, LLC (hereinafter "Brock Green") by and through its undersigned attorneys, hereby moves before this Court for an Order granting summary judgment in favor of Brock Green as to all causes of action asserted by the Plaintiff. The grounds for this motion include, but are not limited to, ~~the expiration of the applicable statute of limitations and Plaintiff's lack of standing.~~

Because there are no genuine issues of material fact at issue, Brock Green is entitled to judgment as a matter of law. This Motion is based upon Rule 56, SCRCP; the pleadings; discovery; evidence of record; applicable case law; deposition testimony; and any memorandum in support of summary judgment to be submitted to the court under separate filing.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 

KENT T. STAIR
State Bar No.: 14029

PAUL E. SPERRY
State Bar No.: 68441

J. PATRICK NORRIS
State Bar No.: 78270

Attorneys for Defendant Brock Green Architects
and Planners, LLC

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
843-727-0307

THE STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES, INC.,
MASTERPIECE MILLWORK, INC., ALLEN
ROPER, JR. d/b/a MASONRY-BRICKWORK
AND STUCCO, CAROLINA ROOFING
SYSTEMS, INC., LACY PAINTING, AND
BROCK GREEN ARCHITECTS AND
PLANNERS, LLC,

Defendants.

GENOA CONSTRUCTION SERVICES, INC.,

Third-Party Plaintiff,

vs.

THE FOX STEEL COMPANY, CAROLINA
SERVICES, INC., LESCO RESTORATION,
INC., FERST PLASTERING, INC.,
CHARLESTON GLASS & MIRROR
COMPANY, 3D RENOVATIONS,
WILLIAMS MECHANICAL,
MASTERCRAFT INTERIOR & EXTERIOR,
BONIFAY MASONRY, COASTAL GLASS
AND BLOCK, ADAMS DAVIS &
PARTNERS, TROY PARDEE HEATING
AND AIR CONDITIONING (d/b/a PARDEE
HEATING AND AIR),

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

CERTIFICATE OF SERVICE

2010 DEC -7 AM 10:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

CHISOLM STREET PARTNERS, LLC,)
)
 Third-Party Plaintiff,)
)
 vs.)
)
 THE FOX STEEL COMPANY, CAROLINA)
 SERVICES, INC., LESCO RESTORATION,)
 INC., FERST PLASTERING, INC.,)
 CHARLESTON GLASS & MIRROR)
 COMPANY, 3D RENOVATIONS,)
 WILLIAMS MECHANICAL,)
 MASTERCRAFT INTERIOR & EXTERIOR,)
 BONIFAY MASONRY, COASTAL GLASS)
 AND BLOCK, ADAMS DAVIS &)
 PARTNERS, and TROY PARDEE HEATING)
 AND AIR CONDITIONING (d/b/a PARDEE)
 HEATING AND AIR),)
)
 Third-Party Defendants.)
)
 _____)
 LESCO RESTORATION, INC.,)
)
 Fourth-Party Plaintiff,)
)
 vs.)
)
 COASTAL WATERPROOFING, INC.,)
 N/D/B/A WARDS WATERPROOFING, INC.,)
)
 Fourth-Party Defendants.)
)
 _____)

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

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 David J. Parrish, Esq.
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A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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(404) 522-8220

REPLY TO SC OFFICE

December 6, 2010

Ms. Julie J. Armstrong, Clerk
Circuit Court of Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401

Re: 3 Chisolm Street Homeowners Association, Inc. v. Chisolm Street Partners, LLC, et al
C/A No.: 2009-CP-10-267
Our File No. 2254-40836

Dear Ms. Armstrong:

Enclosed for filing, please find Defendant Brock Green Architects and Planners, LLC's Motion for Summary Judgment, Motion Slip and check in the amount of \$25.00 for the above-referenced matter.

By copy of this correspondence to all counsel of record, I am serving them with the same. If you have any questions or concerns, please do not hesitate to contact me. With kind regards, I am

Sincerely,


J. PATRICK NORRIS

JPN:te

Enclosures

cc: All Counsel of Record (w/ enc.)

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Jay R. Lee, Esq.
Aiken, Bridges, Elliot, Tyler, Saleeby, P.A.
181 East Evans Street, Suite 409
Florence, South Carolina 29506

This 6th day of December, 2010.


Theresa Escobedo
Legal Assistant to J. Patrick Norris

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES,
INC., MASTERPIECE MILLWORK,
INC., ALLEN ROPER, JR. D/B/A R
MASONRY BRICKWORK, CAROLINA
ROOFING SYSTEMS, INC., AND
LACY PAINTING,

Defendants.

GENOA CONSTRUCTION SERVICES,
INC.,

Third Party Plaintiff,

v.

THE FOX STEEL COMPANY,
CAROLINA SERVICES, INC., LESCO
RESTORATION, INC., FERST
PLASTERING, INC., CHARLESTON
GLASS & MIRROR COMPANY, 3D
RENOVATIONS, WILLIAMS
MECHANICAL, MASTERCRAFT
INTERIOR & EXTERIOR, COASTAL
GLASS AND BLOCK, ADAMS DAVIS
& PARTNERS, TROY PARDEE
HEATING AND AIR CONDITIONING
(d/b/a PARDEE HEATING AND AIR),
METRO WATER-PROOFING, INC., CT
WINDOWS LIMITED, AND
ARCHITECTURAL MATERIALS &
SYSTEMS,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

GENOA CONSTRUCTION SERVICES,
INC.'S MOTION FOR SUMMARY
JUDGMENT, OR, IN THE
ALTERNATIVE, FOR PARTIAL
SUMMARY JUDGMENT

2011 FEB - 1 AM 11:49
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

FILED

**TO: PAUL A. DOMINICK, ESQ. AND DAVID J. PARRISH, ESQ., ATTORNEYS FOR
PLAINTIFF 3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC.:**

PLEASE TAKE NOTICE that Defendant Genoa Construction Services, Inc. ("Genoa"), by and through its undersigned counsel, will move before the presiding judge of the Charleston County Court of Common Pleas ten (10) days after the service of this Notice upon you, or as soon thereafter as counsel may be heard, for an Order, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, granting Genoa's Motion for Summary Judgment as to all causes of action on the ground that, among other things, the statute of limitations ran prior to Plaintiff filing its Complaint against Genoa.

Genoa realleges and incorporates, as if set forth in full, the motion for summary judgment it filed on or about August 20, 2010, seeking an Order granting it summary judgment on the ground that Plaintiff lacked standing to bring claims against Genoa.

Genoa also seeks summary judgment on the ground that Plaintiff is barred from seeking damages for damages in Units 305 and 306 (of the old school building) as an action was previously brought by the owner of those two units and all claims relating to those units were subsequently released.

Because there are no genuine issues of material fact in issue, Genoa is entitled to judgment as a matter of law. This Motion is based upon the pleadings, discovery, deposition

transcripts, exhibits, applicable common and statutory law, and any supporting memorandum or affidavit that may be submitted to the court prior to the hearing.


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tturner@rtt-law.com
**ATTORNEY FOR GENOA CONSTRUCTION
SERVICES, INC.**

Columbia, South Carolina
January 31, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 Chisolm Street Homeowners Association, Inc.,

☐ Plaintiff

v.

Genoa Construction Services, Inc., et al.,

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2009-CP-10-267

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

David Parrish

Address: P.O. Box 486, Charleston, SC 29402

Phone: 843-577-9440 fax: 843-414-8214

e-mail: : dparrish@nexsenpruet.com

Defendant's Attorney:

Franklin H. Turner III, Bar No. 16583

Address: P.O. Box 100200, Columbia, SC 29202

phone: 803-771-7900 fax: 803-343-7017

e-mail: tturner@rtt-law.com other:

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment or in the Alternative for Partial Summary Judgment

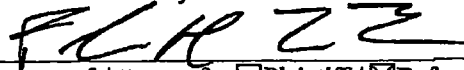
Estimated Time Needed: 30 mins Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

January 31, 2011

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: 25.00**

☐ **EXEMPT:** ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ **MOTION FEE COLLECTED:** _____

☐ **CONTESTED - AMOUNT DUE:** _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES,
INC., MASTERPIECE MILLWORK,
INC., ALLEN ROPER, JR. D/B/A R
MASONRY BRICKWORK, CAROLINA
ROOFING SYSTEMS, INC., AND
LACY PAINTING,

Defendants.

GENOA CONSTRUCTION SERVICES,
INC.,

Third Party Plaintiff,

v.

THE FOX STEEL COMPANY,
CAROLINA SERVICES, INC., LESCO
RESTORATION, INC., FERST
PLASTERING, INC., CHARLESTON
GLASS & MIRROR COMPANY, 3D
RENOVATIONS, WILLIAMS
MECHANICAL, MASTERCRAFT
INTERIOR & EXTERIOR, COASTAL
GLASS AND BLOCK, ADAMS DAVIS
& PARTNERS, TROY PARDEE
HEATING AND AIR CONDITIONING
(d/b/a PARDEE HEATING AND AIR),
METRO WATER-PROOFING, INC., CT
WINDOWS LIMITED, AND
ARCHITECTURAL MATERIALS &
SYSTEMS,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

2011 MAR 28 PM 1:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

MEMORANDUM IN SUPPORT OF
GENOA CONSTRUCTION SERVICES,
INC.'S MOTION FOR JUDGMENT, OR, IN
THE ALTERNATIVE, FOR PARTIAL
SUMMARY JUDGMENT

Defendant Genoa Construction Services, Inc. ("Genoa") hereby submits this Memorandum in support of its Motion for Summary Judgment, or, in the alternative, for Partial Summary Judgment.

PROCEDURAL HISTORY

On April 8, 2010, Plaintiff 3 Chisolm Street Homeowners Association, Inc. ("Plaintiff") filed a Second Amended Complaint alleging negligence, negligence per se, breach of implied warranty of workmanlike service, breach of express warranty and violation of the South Carolina Unfair Trade Practices Act as to Genoa Construction Services, Inc. ("Genoa"). (*See* Second Am. Compl., attached as Exhibit A.) The lawsuit alleges multiple defects associated with the construction of condominiums, including the following:

- (a) improper installation of windows;
- (b) installation of windows that lack adequate wood preservative treatment;
- (c) improper priming and painting of the windows;
- (d) improper flashing of the windows and window openings;
- (e) improper connection of the windows to side walls;
- (f) rusting and deterioration of the brick lintel over windows;
- (g) improper installation of firewalls between condominium units;
- (h) improper installation of interior grade doors in exterior applications;
- (i) such additional items as may be discovered during investigation of construction deficiencies.

(Second Am. Compl. ¶ 25.)

The Amended Complaint further alleges that the condominiums have sustained water damage and water intrusion to the common elements caused by and resulting from defects and deficiencies in the construction of the condominiums. (*Id.* ¶ 26.) Further, Plaintiff alleges that as a result of the defects and deficiencies, the roofs, brick lintels, windows, and doors in the condominiums are prematurely failing and resulting in water intrusion and damage to the buildings. (*Id.* ¶ 27.)

On January 31, 2011, Genoa filed a Motion for Summary Judgment, or, in the alternative,

for Partial Summary Judgment.

Genoa now submits this Memorandum in Support of its Motion for Summary Judgment, or, in the alternative, for Partial Summary Judgment, on the grounds that (a) Plaintiff lacks standing to bring claims relating to the losses alleged in this matter, (b) Plaintiff's claims regarding all three buildings are barred by the statute of limitations based on the fact that Plaintiff discovered the alleged construction defects more than three years before it brought this lawsuit, and (c) Plaintiff's claims regarding Units 305 and 306 are barred by the statute of limitations and by the doctrine of accord and satisfaction based on the fact that the unit owners brought and settled a lawsuit alleging defects more than three years before Plaintiff filed this lawsuit.

STATEMENT OF FACTS

This case arises out of the conversion of historical school buildings into luxury condominium units. Plaintiff owns and governs the common elements contained in the condominium horizontal property regime known as the Chisolm Street Condominiums located at 3 Chisolm Street in the City of Charleston, South Carolina ("Condominiums"). (Second Am. Compl. ¶ 2.) Genoa acted as the general contractor for the conversion, rehabilitation, and construction of the Condominiums. (*Id.* ¶ 15.) Genoa stopped performing work on the project on or around February of 2004. (*See* Affidavit of Ray Moses, attached as Exhibit B.)

The Condominiums are located on the site of the old Andrew B. Murray Vocational School and are on the list of the National Register of Historic Places in South Carolina. (Second Am. Compl. ¶¶ 3, 11.) The Condominiums were converted from three historical buildings: A three-story main building, a gymnasium building, and a care taker building. (*Id.* ¶ 4.)

Master Deed and By-Laws

According to the Master Deed and By-Laws of 3 Chisolm Street Homeowners Association, Inc. ("By-Laws") incorporated therein as Exhibit E, the Association is only responsible for the maintenance and repair of common elements for the subject condominiums. (Master Deed, Exhibit E at p. 688; By-Laws, § VI (1)(a)(i), attached as Exhibit C.) Common elements are defined as limited common elements and general common elements, and are further evidenced by the Plat and Floor Plans attached to the Master Deed. (Master Deed, Definitions, p. 660 at 1(c).) Section VI of the By-Laws provides that the Unit Owners are responsible for the maintenance and repair of all interior surfaces of a unit, in addition to any and all portions of a unit other than those portions to be maintained, repaired or replaced by the Association. (Master Deed, Exhibit E at p. 688; By-Laws, § VI (1)(a)(i), (1)(b)(i).) Further, the Master Deed provides the following expanded definition for the individual units:

In addition to the description of each Unit as may be seen by reference to exhibits attached hereto...each Unit is described as being bounded by the unfinished surfaces of its floors, ceilings and perimeter walls, and includes glass windows of each Unit. Specifically included within each Unit are the finished surfaces of the Unit, paint, wall paper, tiles, paneling, carpeting and interior non-load bearing walls contained within the boundaries of each Unit as shown on the Floor Plans, *together with all interior doors, the main entrance door or doors, window panes, window frames, sliding glass door frames and sliding glass plates...*

(Master Deed, Description of the Land, the Buildings, the Improvement and the Units, p. 661-662 at 3(d) (emphasis added).)

Plaintiff knew, or should have known, that claims regarding the windows were owned by the unit owners because Sandra Burnett brought suit individually for claims that included claims regarding water intrusion at the windows and window condensation. (See Sandra Burnett Answer and Counterclaim, attached as Exhibit D.) Sandra Burnett is the wife of Jack Burnett, who was

the President of the HOA from 2002 until 2008 or 2009. (Jackson Burnett Dep. 38:4-25, attached as Exhibit E.) In his deposition, Jack Burnett stated that he believed claims regarding the windows were owned by the unit owners and not the HOA. (See Jackson Burnett Dep. 46:25-47:11) Additionally, Mike Parades testified that he believed the Master Deed states that claims regarding the windows are owned by the individual unit owners, and not the HOA. (Mike Parades Dep. 72:22-73:7, attached as Exhibit F.) Mr. Parades is a Professional Community Association Manager; he teaches national courses for community association managers and one of his emphases is on governance, which includes Master Deeds. (*Id.* 163:13-165:14.) Mr. Parades was the Community Association Manager for 3 Chisolm Street beginning at the time of the first board meeting. (*Id.* 7:2-7:22.) Further, Mr. Parades specifically told the HOA to read and understand the Master Deed and By-Laws so that they knew what was their own responsibility and what was the responsibility of the HOA. (3 Chisolm Street HOA, Meeting Minutes, Feb. 2, 2004, attached as Exhibit G; Mike Parade Dep. 44:13-25.)

Myles Glick Report

Problems developed with the building. One result was that Sandra Burnett brought a claim for breach of contract, breach of warranty, negligence, and negligent misrepresentation, which was filed in September of 2002. (See Sandra Burnett Answer and Counterclaim.) Another result was that Plaintiff decided to commission a study to evaluate the extent of the situation. (See Jackson Burnett Dep. 69:14-25.) On April 8, 2003, Glick/Boehm & Associates, Inc. issued a report to Plaintiff ("Glick Report") after visual observations of the main building by Myles Glick (architect), Thomas Carlson (general contractor with Caliboghie Construction), Brett Carlson, and Joe Dapore (attorney for the HOA). (See Glick/Boehm & Associates, Inc., attached as Exhibit H.) The goal of those observations was to "get an understanding of the project and to

see what appeared to be some very obvious building failures." (*Id.*)

The Glick Report stated the following on the issue of water intrusion:

The indications of water intrusion into the main building were in the following areas: windows, window ledges, condensation buildup on the inside of the glass, and a strong possibility that the roof parapet is leaking. Of the four areas identified, the roof parapet will need more research so that this area can be eliminated or to determine that it is contributing to the water intrusion into the exterior wall cavity.

(*Id.*)

The Glick Report also addressed an issue with the steel windows:

In almost every case, the window system is a steel window with fixed panes of glass and an opening panel that does not close. Therefore, the windows do not stop water from intruding into the building. Water has accumulated on window sills as a result of water intrusion through the gaps created in operable window areas. It also appears that water is coming through the frames (mullions) of the fixed panes as well.

(*Id.*)

The Glick Report goes on to discuss problems with the interior wood floors, mechanical systems, and exterior stucco. (*Id.*) In regards to the exterior stucco, the report states the following:

It was noticed that there were new walls built at the rear courtyard of the main building and these walls appear to be metal studs with a three-coat masonry stucco finish. Intersection of the metal stud walls with the original masonry building are beginning to show cracks because of the construction defects associated with the installation of the three-coat masonry system. There are other areas of this exterior system that are also not installed in accordance with the standard of care for stucco as called for in the ASTM Standards which are in turn, called for in the building code. Stucco cracks will allow water to enter the building envelope.

(*Id.*)

The Glick Report also provides a list of predictable problems that have occurred as a

result of water intrusion, including "an extensive amount of mold and mildew," "rotted drywall associated with the windows," and "an excessive amount of rust showing up on the steel windows." (*Id.*) Further, the observers noticed numerous patches on the roof of the main building and stated that "[a] full investigation is recommended to see if there are any hidden failures."

(*Id.*)

The Glick Report concludes with the following statement to Plaintiff:

All of the above issues are significant and were persuasive throughout the entire building. I would recommend that these concerns be confirmed and documented through a program of destructive testing so that decision can be made for corrections. Without correction, the issues of sales of unsold units and resales will come into play. I recommend that the board seek legal counsel relative to the impacts of the above issues as well as, pursuing a forensic report documenting and recording the above issues. This report only represents observations during a limited site visit and other construction deficiencies may exist.

(*Id.*)

The Glick Report was brought before the HOA Board on May 6, 2003 as reflected in the meeting minutes:

It was noted the preliminary building inspection report has been received from Myles Glick. The report and accompanying photographs were reviewed. Discussion followed as to the next steps to be taken. It was noted that Mr. Glick looked at the main building.

Mike [Parades] discussed the typical sequence of steps that should be followed including:

1. Inspection of the cottage and gym building.
2. Some destructive testing will be needed to document cause of damage and what should be done to correct the problems.

(3 Chisolm Street HOA, Meeting Minutes, May 6, 2003.)

Consequently, the HOA was on notice as of May 6, 2003 that there were window leak

issues, condensation issues, stucco issues, as well as other possible deficiencies associated with the building. The HOA was also on notice as of May 6, 2003 that, according to its own Community Association Manager, the gymnasium and care taker buildings should be inspected.

In his deposition, Mr. Glick stated that he has recommended additional testing in 99% of the forensic investigations he has performed. (Myles Glick Dep. 49:2-7, attached as Exhibit I.) In all but three or four cases, he stated that he always heard back from the owners regarding the additional testing. (*Id.* 48:19-49:1.) In this case, however, the HOA chose not to follow his advice; although, according to Mr. Parades, the HOA kept Mr. Glick's findings in mind over the years. (Parades Dep. 65:7-25.)

Williamson and Associates Report

In addition to Myles Glick, on April 10, 2003, Williamson & Associates ("Williamson") conducted a visual examination and water nozzle spray test on various windows including windows in the main building. (See Williamson & Associates, Inc. Report 1, attached as Exhibit J.) Williamson prepared an extensive written report which included photographs of the windows.

According to the report:

Condensation was observed in the interior of the windows in several of the occupied units, to the extent that moisture flowed down, collecting on the sills. This condition has been noted prior to out inspection.

Water nozzle spray tests were conducted on several windows, including some that were cited as currently leaking. Water was observed entering the interior of Unit 101 when water was applied to the left jamb of the corner window on the west exposure, near the courtyard. An examination of the exterior showed that the sealant was applied to damaged masonry, and the water is entering behind the sealant at these points.

Water was observed entering the interior of Unit 201, along the top of the operable window. The plastic diverter was not apparent on this window, and water running down the face of the window

leaked in at this horizontal section.

(*Id.*)

Problems Continued

The issues raised in the Amended Complaint continued after Plaintiff received the Glick Report. (*See* George Davidson Dep. 95:20–21, attached as Exhibit K.) A former HOA Board president gave the following testimony regarding Plaintiff's actions after receiving the expert recommendations:

- Q. Was a program of destructive testing ever undertaken pursuant to that recommendation?
- A. Not pursuant to this, no.
- Q. Was a program of destructive testing ever undertaken outside of the present litigation?
- A. Not to my knowledge.

(Jackson Burnett Dep. 85:12–17.)

Instead of taking action on the Glick Report recommendations, Plaintiff sent demand letters to the developer of the Condominiums that went unanswered. (3 Chisolm Street HOA, Meeting Minutes, Sep. 29, 2004; Three Chisolm Street Demand Letter, dated August 2, 2004, attached as Exhibit L.) On February 6, 2006, Plaintiff again discussed what action to take regarding the issues alleged in this lawsuit:

Jack reported he spoke with Joe Dapore, the association's lawyer, and he said that they had until *April 2006* to take action against Purdue, the developer. Mike suggested using diplomacy rather than a lawsuit. A lawsuit will probably not be worth the money it would require.

(3 Chisolm Street HOA, Meeting Minutes, Feb. 6, 2006 (emphasis added).)

Plaintiffs took no legal action until January of 2009, nearly three years after this meeting. When the current Board president was shown the Glick Report and asked whether it looked like

the same complaints that the unit owners in the main building have made to the Board today, he gave the following testimony:

- A. It looks like the complaints are consistent, yes.

(George Davidson Dep. 95:20-21.)

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC.

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citing *Bankers Trust of South Carolina v. Benson*, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976)). "[S]ummary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

ARGUMENT

Based on the following reasons, Genoa is entitled to judgment as a matter of law and respectfully requests that this Court grant its Motion for Summary Judgment, or, in the alternative, for Partial Summary Judgment.

- I. Because the maintenance and repair of all doors, windows and all elements associated therewith are the responsibility of the individual unit owners ("Unit Owners"), Plaintiff does not have standing to bring claims relating to defects associated with those elements and summary judgment must be granted.

Rule 17(a) SCRPC, provides that, "[e]very action shall be prosecuted in the name of the

real party in interest." Rule 17(a), SCRCPP. A real party in interest is the party which has "a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." *Charleston County School Dist. v. Charleston County Election Com'n*, 336 S.C. 174, 181, 519 S.E.2d 567, 571 (1999). In South Carolina, the rights and authorities of a Regime are determined by the Horizontal Property Act and the applicable master deed. *Roundtree Villas Assoc. v. 4701 Kings Corp.*, 282 SC 415, 421, 321 S.E.2d 46, 49 (1984). It is well settled that property owners associations have standing to bring an action for construction defects only as to common elements that it has a duty to maintain. *Id.* (emphasis added).

In the case at hand, Plaintiff has presented claims relating to the alleged improper construction of windows, doors and associated elements for the Development's units. Based upon the Plat, Floor Plans, and the definitions of limited common elements, general common elements and "Unit" provided within the Master Deed, these damages fall well outside of the responsibility accorded to the Association and can only be claimed by the Unit Owners. Inasmuch as the Unit Owners have not timely assigned their claims to Plaintiff, Plaintiff lacks standing to bring claims relating to the losses alleged in this matter. Accordingly, because there is no genuine issue as to any material fact, Defendant is entitled to judgment as a matter of law as to all claims relating to the alleged improper construction of windows, doors and associated elements for the Development. *See Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct. App. 1994); *Roundtree*, 282 S.C. at 420-21, 321 S.E.2d at 49.

- II. Because Plaintiff discovered the alleged construction defects more than three years before filing this lawsuit, all claims regarding the three buildings are barred by the applicable three year statute of limitations and summary judgment must be granted.**

Section 15-3-530 of the South Carolina Code sets forth a three-year statute of limitations

for actions based in negligence and contract. *See* S.C. CODE ANN. § 15-3-530(1) (providing for a three-year statute of limitations for “an action upon a contract”); § 15-3-530(5) (providing for a three-year statute of limitations for “any injury to the person or rights of another, not arising on contract and not enumerated by law”).

“A statute of limitations reduces the interval between the accrual and commencement of a right of action to a fixed period, thereby putting to rest claims after the passage of time.” *City of N. Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 230, 599 S.E.2d 462, 464 (Ct. App. 2004). Statutes of limitations “are not simply technicalities,” but instead “have long been respected as fundamental to a well-ordered judicial system.” *Id.* at 231, 599 S.E.2d at 465. “Unless an action is commenced before expiration of the limitations period, the plaintiff’s claim is normally barred.” *Id.* at 231, 599 S.E.2d at 464.

The courts of South Carolina have adopted the “discovery rule” in determining when a cause of action accrues. *Dillon County School Dist. v. Lewis Sheet Metal Works*, 286 S.C. 207, 215, 332 S.E.2d 555, 559 (Ct. App. 1985) (overruled on other grounds). Under the discovery rule, the statutory period begins to run from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence. *Cline v. J.E. Faulkner Homes, Inc.*, 359 S.C. 367, 371–72, 597 S.E.2d 27, 29 (Ct. App. 2004). Under this objective test, one is charged with discovery when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim might exist. *Cline*, at 372, 597 S.E.2d at 29 (citing *Austin v. Conway Hosp., Inc.*, 292 S.C. 334, 339, 356 S.E.2d 153, 156 (Ct. App. 1987)).

Regarding the discovery rule and construction defect cases, the South Carolina Supreme Court has found that an owner can be put on notice that some claim might exist when the owner

observes a construction defect and retains a consultant who warns that the defect may continue to worsen. *See Dean v. Ruscon Corp.*, 321 S.C. 360, 366, 468 S.E.2d 645,647 (1996) (holding that there was no question of fact for the jury to decide and the claim was barred by the statute of limitations because the cause of action arose when the owner first observed a building crack and retained a consultant). Further, a party's actual ignorance of a defect is irrelevant if a person exercising reasonable care under similar circumstances would have been aware of the injury. *See Christensen v. Mikell*, 324 S.C. 70, 73, 476 S.E.2d 692, 694 (1996) (stating that "[t]he statutory limitations period begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor.")

Here, like in the *Dean* case, Plaintiff knew or should have known of the alleged construction defects and deficiencies in the main building more than three years prior to the filing of this lawsuit; thus all claims regarding the main building are barred by the statute of limitations.

The Glick Report described problems ranging from water intrusion and condensation to rust on the windows and potential problems with the roof. It concluded with an unequivocal recommendation that "concerns be confirmed and documented through a program of destructive testing so that decision can be made for corrections" and that the board should "seek legal counsel." Thus, at the time Plaintiff received the Glick Report in 2003 and discussed it in the May 6, 2003 HOA Board meeting, it then had the knowledge of the main building's problems described therein. However, Plaintiff failed to follow the expert recommendation of the Glick Report which strongly suggested destructive testing. Instead, Plaintiff merely sent demand letters to the Condominium developer.

On February 6, 2006, nearly three years after the Glick Report was issued, and over three

years before commencement of this action, the Glick Report was against discussed by Plaintiff. Those meeting minutes report that Jack Burnett, then President of the HOA, reported to the HOA Board that he "... spoke with Joe Dapore, the association's lawyer, and he said that they had until *April 2006* to take action." However, Plaintiff did not commence this action until January of 2009, almost three years after this meeting and almost six years after originally receiving the Glick Report.

As admitted by the current Board president, the building problems referenced in the Glick Report are the same complaints that Plaintiff is receiving today. This is clearly exemplified by the following table showing just a small number of the comparisons between the Glick Report (issued in 2003) and the reports by Applied Building Sciences, Inc. (issued between 2007 and 2011).

Issue	Glick Report	ABS Report
Condensation	"Condensation issues were apparent on the inside of the glass within the units and these areas may have associated problems." Glick Report, p. 2.	"This damage appears to be the result of non-insulated, single pane, metal frame exterior windows which led to condensation on the windows during certain times of the year." ABS Report, April 8, 2010, p. 8, attached as Exhibit M.
Water Accumulation on Sills	"Water has accumulated on window sills as a result of water intrusion through the gaps created in operable window areas. It also appears that water is coming through the frames (mullions) of the fixed panes as well." Glick Report, p. 2.	"Ponding and staining consistent with standing water was noted along the sill of multiple windows in the gymnasium building." ABS Report, Oct. 16, 2007, p. 4, attached as Exhibit N. In the school building, "staining and discoloration was identified in locations along the gypsum drywall returns at the windows' jambs." ABS Report, April 8,

		2010, p. 5.
Rotted Drywall	"Because of the extensive amount of water intrusion into various areas of the building, there is rotted drywall associated with the windows." Glick Report, p. 3.	"Evidence of moisture related damage was confirmed by ABS during both site visits. The moisture related damage identified in Unit 103 appears to be isolated to the wood stools and drywall in proximity to the window frames." ABS Report, April 8, 2010, p. 7.
Added Sealant	"In a lot of cases there was evidence that water was coming through fixed mullions of the steel windows. There were indications of added sealant to stop the water intrusion from coming through the window panes/mullion intersections." Glick Report, p. 3.	"The maroon colored sealant appeared to be a secondary application, installed over black sealant. Adhesion and cohesion failure of the maroon colored sealant were noted." ABS Report, April 8, 2010, p.5.

Thus, at the time of the Glick Report, Plaintiff knew of the injuries that are the subject of this lawsuit and it was put on notice that some claim might exist, and was expressly told that claims might exist for conditions Mr. Glick did not note. Had Plaintiff followed the Glick Report's expert advice and moved forward with destructive testing of the main building, it would have discovered any alleged construction defects or deficiencies alleged in this lawsuit. Indeed, Plaintiff did not even have to conduct destructive testing because the Glick Report noted all of the claims and conditions upon which Plaintiff ultimately brought suit almost six years later. However, Plaintiff ignored the Glick Report, failed to follow the expert recommendations, and sat on its known rights until it finally filed this lawsuit in 2009.

Further, summary judgment based on the three year statute of limitations applies not only to the main building, but to the gymnasium building and care taker building as well. In the May minutes, Mike Parades states that the course of action that should be followed was destructive

testing of the main building and an inspection of the gymnasium and care taker building. At the very least, such an inspection would have discovered the gaps in the separation walls, which were open and obvious. Additionally, given the problems occurring in the main building, the windows would have been thoroughly inspected. That inspection would have disclosed the painting issues, the flashing issues, the condensation issues, as well as any further water intrusion.

Under the "discovery rule," Plaintiff's claims regarding the three buildings began to run in 2003 when it received the Glick Report and discovered, or should have discovered with further testing, that the alleged construction defects and deficiencies existed. Thus, based on the applicable three year statute of limitations, Plaintiff's claims regarding all three buildings are time barred and should be dismissed as a matter of law.

III. Because unit owners brought defect claims involving Units 305 and 306, and later settled those claims, Plaintiff's claims involving Units 305 and 306 are barred by the statute of limitations and accord and satisfaction and summary judgment must be granted.

A. Statute of Limitations

In addition to all claims against Genoa involving the three buildings being barred based on the applicable statute of limitations, Plaintiff's claims as to Units 305 and 306 have expired based on prior lawsuit.

Unit 305 and 306 (a double unit) are owned by Jack and Sandra Burnett. In July of 2002, the developer of the project, Chisholm Street Partners, LLC brought an action against Sandra Burnett in the Charleston County Court of Common Pleas. Mrs. Burnett filed her answer and counterclaim on or about September 17, 2002. Mrs. Burnett's alleged counterclaim contained causes of action arising out of breach of warranty, negligence, gross negligence, and negligent misrepresentation arising out of the construction and her subsequent purchase of the 3 Chisholm

Street property. Her answer and counterclaim specifically sought damages arising out of, among other things, "leaking windows."

Mr. and Mrs. Burnett subsequently settled their lawsuit resulting in a resolution of any and all claims between them and the developer. (See Jackson Burnett Dep. 157:14-20.) Clearly the Burnetts were on notice of potential claims arising out of the design and construction of their Unit when they asserted the counterclaims in their lawsuit. Thus, the three-year statute of limitations bars any claims against Genoa rising out of these defects in Units 305 and 306.

B. Accord and Satisfaction

Any claims arising out of Units 305 and 306 are also barred by the doctrine of accord and satisfaction. The elements of an accord and satisfaction are an agreement between the parties to settle a dispute, and the payment of the consideration which supports the agreement. *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 430, 673 S.E.2d 448, 455 (2009) (citing *Wilson v. Builders Transp., Inc.*, 330 S.C. 287, 297, 498 S.E.2d 674, 680 (Ct. App. 1998)). To constitute accord and satisfaction, there must have been a meeting of the minds between the parties. *Historic*, at 448 (citing *Tremont Constr. Co., Inc. v. Dunlap*, 310 S.C. 180, 182, 425 S.E.2d 792, 793 (Ct. App. 1992)).

"The 'meeting of the minds' required to make a contract is not based on secret purpose or intention on the part of one of the parties . . . but must be based on purpose and intention which has to be made known or which, from all the circumstances should be known." *Clardy v. Vodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct. App. 2009) (quoting *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989)).

In September of 2002, Sandra Burnett asserted counterclaims containing causes of action for breach of warranty, negligence, gross negligence, and negligent misrepresentations arising

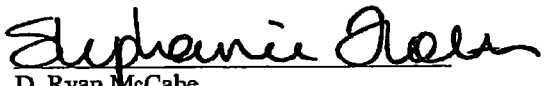
out of the construction of Units 305 and 306 at 3 Chisolm Street. (See Sandra Burnett Answer and Counterclaim.) Mrs. Burnett subsequently settled and executed a release of all claims arising out of the construction of Unit 305 and 306. The Burnetts released:

- (a) All claims which were raised in the lawsuit including cross-claims, counterclaims, and third party claims;
- (b) All claims related to the design, construction, application, manufacture, installation, inspection, disclosure, and marketing, and/or sale of the Condominium and any of its components; and
- (c) All claims relating in any way to alleged construction problems and defects in the interior of the Condominium, whether such problems and defects actual are now known or hereafter discovered.

Therefore, the doctrine of accord and satisfaction is a complete bar to Plaintiff's attempts to recover damages for alleged defects arising out of the design and construction of Units 305 and 306 in this action.

CONCLUSION

Based on the foregoing reasons, Genoa respectfully requests that this Court grant its Motion for Summary Judgment, or, in the alternative, for Partial Summary Judgment.

for 
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**ATTORNEYS FOR GENOA
CONSTRUCTION SERVICES, INC.**

Columbia, South Carolina
March 25, 2011

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

CHISOLM STREET PARTNERS, LCC;
MURRAY SCHOOL PARTNERS, LLC;
GENOA CONSTRUCTION SERVICES,
INC.; MASTERPIECE MILLWORK, INC.;
ALLEN ROPER, JR. d/b/a R MASONRY -
BRICKWORK AND STUCCO; JOHN DOE
#1, JOHN DOE #2, and BROOK GREEN
ARCHITECTS AND PLANNERS, LLC,

Defendants.

GENOA CONSTRUCTION SERVICES,
INC.,

Third-Party Plaintiff,

v.

THE FOX STEEL COMPANY, CAROLINA
SERVICES, INC., LESCO RESTORATION,
INC., FERST PLASTERING, INC.,
CHARLESTON GLASS & MIRROR
COMPANY, 3D RENOVATIONS,
WILLIAMS MECHANICAL,
MASTERCRAFT INTERIOR & EXTERIOR,
BONIFAY MASONRY, COASTAL GLASS
AND BLOCK, ADAMS DAVIS &
PARTNERS, TROY PARDEE HEATING
AND AIR CONDITIONING (d/b/a PARDEE
HEATING AND AIR) AND BROCK GREEN
ARCHITECTS AND PLANNERS,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

FILED
2010 APR -8 PM 12:20
JULIE J. ARMSTRONG
CLERK OF COURT

SECOND AMENDED COMPLAINT

(Construction Defects)

Jury Trial Demanded

Plaintiff would show as follows:

1. Plaintiff 3 Chisolm Street Homeowners Association, Inc. is a South Carolina eleemosynary corporation.

2. Plaintiff owns and governs the common elements contained in the condominium horizontal property regime known as the Chisolm Street Condominiums located at 3 Chisolm Street in the City of Charleston (Charleston County), South Carolina, as reflected in the Master Deed Establishing the 3 Chisolm Horizontal Property Regime recorded in Book V309 beginning at Page 659 in the Charleston County RMC Office (hereinafter referred to as the "condominiums").

3. The condominiums are located on the site of the old Andrew B. Murray Vocational School, and the condominiums were developed by converting the school buildings into condominiums.

4. The condominiums consist of three buildings generally described as a three-story main building, a gymnasium building, and a care taker building, together with the other common elements contained in the regime as described in the master deed.

5. Upon information and belief, Defendant Chisolm Street Partners, LCC is a limited liability company organized and existing under the laws of the State of Georgia.

6. Upon information and belief, Chisolm Street Partners, LCC was a developer of the condominiums.

7. Upon information and belief, Defendant Murray School Partners, LLC is a limited liability company organized and existing under the laws of the State of Georgia.

8. Upon information and belief, Murray Street Partners, LLC was a developer of the Chisolm Street Condominiums and acted as the general manager for Chisolm Street Partners, LCC during development of the condominiums.

9. Chisolm Street Partners, LCC and Murray School Partners, LLC are sometimes hereinafter individually and collectively referred to as the "Developer Defendants."

10. Upon information and belief, the Developer Defendants purchased the Andrew B. Murray Vocational property, converted and developed the property into condominium units, and then marketed and sold the condominiums to the condominium unit owners who comprise the 3 Chisolm Street Homeowners Association, Inc., or to their predecessors.

11. The condominiums are on the list of the National Register of Historic Places in South Carolina.

12. Upon information and belief, the Developer Defendants received substantial rehabilitation tax credits in connection with their conversion, rehabilitation, and development of the condominiums.

13. The Developer Defendants formed the 3 Chisolm Street Homeowners Association, Inc. and controlled the Association through appointment of its board of directors.

14. Upon information and belief, Defendant Genoa Construction Services, Inc. ("Genoa") is a limited liability company organized and existing under the laws of the State of Georgia.

15. Upon information and belief, Genoa acted as the general contractor for the construction of the condominiums.

16. Upon information and belief, Masterpiece Millwork, Inc. is a corporation organized and existing under the laws of the State of Georgia.

17. Upon information and belief, Masterpiece Millwork, Inc. manufactured and supplied the window units installed during construction of the condominiums.

18. Upon information and belief, Allen Roper, Jr., d/b/a R Masonry – Brickwork and Stucco, is a citizen and resident of Charleston County, South Carolina.

19. Upon information and belief, Allen Roper, Jr. acted as the masonry subcontractor during construction of the condominiums.

20. Defendant John Doe #1 is a fictitious name representing the as-yet unidentified person or entity that acted as the painting subcontractor during construction of the condominiums.

21. Defendant John Doe #2 is a fictitious name representing the as-yet unidentified person or entity that acted as the roofing subcontractor during construction of the condominiums.

22. Upon information and belief, Defendant Brook Green Architects and Planners, LLC (hereinafter "Architect"), is company organized under the laws of a State Other than South Carolina and at all times relevant hereto was conducting business in Charleston County, South Carolina.

23. Upon information and belief, Architect was responsible for the schematic design, design development, construction documents, bidding documents, construction supervision, and acceptance of the work involved in construction of the condominiums.

24. This Court has jurisdiction over the parties and subject matter of this action, and venue is proper before this Court.

25. The Chisolm Street condominiums contain construction defects and deficiencies, including without limitation the following:

- (a) improper installation of windows;
- (b) installation of windows that lack adequate wood preservative treatment;

- (c) improper priming and painting of the windows;
- (d) improper flashing of the windows and window openings;
- (e) improper connection of the windows to side walls;
- (f) rusting and deterioration of the brick lintel over windows;
- (g) improper installation of firewalls between condominium units;
- (h) improper installation of the roofs on the buildings;
- (i) improper installation of interior grade doors in exterior applications;
- (j) such additional items as may be discovered during investigation of construction deficiencies.

26. The condominiums have sustained, and continue to sustain, water damage and water intrusion to the common elements caused by and resulting from defects and deficiencies in the construction of the condominiums.

27. As a result of the defects and deficiencies, the roofs, brick lintels, windows, and doors in the condominiums are prematurely failing and resulting in water intrusion and damage to the buildings.

28. Plaintiff has been and will continue to be directly and proximately damaged by the water intrusion, water damage, and construction defects in the condominiums.

29. As a result of the construction defects and resulting property damage, Plaintiff has incurred, and in the future will incur, damages in the form of having to pay for professional fees to investigate, identify, and determine the extent of the problems and determine a plan for repairing the problems, to pay for the preparation of the plans, specifications and other documents needed to perform the repairs, and to pay for the repairs.

30. Plaintiff will incur damages in the form of the loss of use and enjoyment of the common elements during the repairs.

FOR A #1 CAUSE OF ACTION
(Negligence as to the Chisolm Street Partners, LCC
and Murray School Partners, LLC)

31. Plaintiff repeats and incorporates the above paragraphs by reference.

32. As the developers of the condominiums, the Developer Defendants owed a duty of due care to Plaintiff and to the purchasers of condominium units in overseeing the construction and management of the condominiums.

33. The Defendants breached the duty of due care they owed to Plaintiff and to the purchasers of condominium units in one or more of the following particulars:

- (a) by failing to properly select the contractors and materials used in the construction of the condominiums.
- (b) by failing to properly oversee the construction, including the selection of contractors, when it planned to sell the condominium units to members of the public for profit.

34. The negligent acts and omissions of the Defendants are the direct and proximate cause of construction defects and deficiencies which have resulted in property damage and financial damage to Plaintiff.

35. The acts and omissions of the Defendants have directly and proximately caused Plaintiff to incur damages in that Plaintiff has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to identify and determine the extent of the problems, to pay for design remediation plans and specifications to correct the construction defects and deficiencies, and to pay for the repairs.

36. Plaintiff will suffer loss of use and enjoyment of the common elements during the repairs.

37. As a result of the negligence of the Defendants, Plaintiff is entitled to a judgment against Defendants for actual and punitive damages in an amount to be determined at the trial of this case.

FOR A #2 CAUSE OF ACTION

(breach of implied warranty of habitability as to Chisolm Street Partners, LCC
and Murray School Partners, LLC)

38. Plaintiff repeats and incorporates the above paragraphs by reference.

39. As the developers of the condominiums, the Developer Defendants provided an implied warranty of habitability under South Carolina law to the purchasers and owners of the condominiums by controlling the design and ultimate cost of construction, by selecting contractors, by controlling the means and methods of construction, by offering the units for sale to the public, and by entering into contracts of sale. This warranty of habitability extends to subsequent purchasers who were the foreseeable beneficiaries of this warranty.

40. The construction defects and resulting property damage to the condominiums constitutes a breach of the implied warranty of habitability under the laws of South Carolina.

41. Due to the construction defects and resulting property damage, Plaintiff has incurred, and in the future will incur, damages to expend funds to repair damage that has already occurred, to pay for professional fees to identify the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

42. Plaintiff will suffer loss of use of the common areas during the repairs.

43. Plaintiff is entitled to a judgment against the Defendants in an amount to be proven at trial for all damages directly and proximately caused by Defendants' breach of the implied warranty of habitability.

FOR A #3 CAUSE OF ACTION

(negligence as to Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1,
and John Doe #2)

44. Plaintiff repeats and incorporates the above paragraphs by reference.

45. By undertaking construction work on this project, Defendants Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1 painting contractor, and John Doe #2 roofing contractor owed a duty to Plaintiff to use reasonable care during the performance of their respective work on the buildings and to perform their scope of work in accordance with all applicable building codes, applicable industry standards and standards of care, and to ensure that construction conformed to the design documents.

46. Defendants breached the duty of care they owed to Plaintiff.

47. Defendants were negligent, grossly negligent, willful, and reckless in numerous aspects of the construction of the building, including, but not limited to, the following:

- (a) failing to properly supervise subcontractors and laborers during the construction of the condominiums;
- (b) failing to follow plans and specifications of the architect and design professionals;
- (c) failing to follow installation instructions and recommendations;
- (d) failing to perform construction work in accordance with applicable building codes and proper workmanlike practices;
- (e) failing to select proper materials and capable subcontractors.
- (f) improper installation of windows;
- (g) installation of windows that lack adequate wood preservative treatment;
- (h) improper priming and painting of the windows;
- (i) improper flashing of the windows and window openings;
- (j) improper connection of the windows to side walls;
- (k) improper installation of the brick lintel over windows;

- (l) improper installation firewalls between condominium units;
- (m) improper installation of the roofs on the buildings;
- (n) improper installation of interior grade doors in exterior applications;
- (o) such additional items as may be discovered during investigation of construction deficiencies.

48. As a direct and proximate result of the negligence and recklessness of Defendants as hereinabove set forth, the condominium units and the common elements of the condominiums have been damaged by water intrusion.

49. Plaintiff has been directly and proximately damaged by Defendants in that it has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to identify the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

50. Plaintiff will suffer loss of use of the common areas during the repairs.

51. As a result of the negligence of Defendants, Plaintiff is entitled to a judgment against Defendants for actual and punitive damages in an amount to be determined at the trial of this case.

FOR A #4 CAUSE OF ACTION

(negligence per se as to Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1,
and John Doe #2)

52. Plaintiff repeats and incorporates the above paragraphs by reference.

53. By undertaking construction work on this project, Defendants Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1 painting contractor, and John Doe #2 roofing contractor owed a duty to Plaintiff to use reasonable care during the performance of their work on the buildings and to perform their scope of work in accordance with all applicable building

codes, applicable industry standards and standards of care, and to ensure that construction conformed to the design documents.

54. Defendants breached the duty of care owed to Plaintiff.

55. Defendants violated the applicable building codes in effect at the time of construction, specifically including, but not limited to the following:

- (a) improper installation of windows;
- (b) installation of windows that lack adequate wood preservative treatment;
- (c) improper priming and painting of the windows;
- (d) improper flashing of the windows and window openings;
- (e) improper connection of the windows to side walls;
- (f) improper installation of the brick lintel over windows;
- (g) improper installation firewalls between condominium units;
- (h) improper installation of the roofs on the buildings;
- (i) improper installation of interior grade doors in exterior applications;
- (j) such additional building code violations which may be discovered during ongoing investigations of construction deficiencies.

56. The violation of the building codes by Defendants amounts to negligence per se.

57. Plaintiff has been directly and proximately damaged by Defendants in that it has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

58. Plaintiff will suffer loss of use of the common elements during the repairs.

59. As a result of the negligence per se of Defendants, Plaintiff is entitled to a judgment against Defendants for actual and punitive damage in an amount to be determined at trial.

FOR A #5 CAUSE OF ACTION

(breach of implied warranty of workmanlike service as to Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1, and John Does #2)

60. Plaintiff repeats and incorporates the above paragraphs by reference.

61. By undertaking construction on this project, Defendants Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1 painting contractor, and John Doe #2 roofing contractor impliedly warranted that their work would be of quality workmanship and in accordance with industry standards.

62. The above referenced construction defects and deficiencies show that Defendants breached their implied warranties by failing to provide quality workmanship and by failing to comply with industry standards

63. Plaintiff has been directly and proximately damaged by Defendants in that it has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

64. Plaintiff will suffer loss of use of the common elements during the repairs.

65. Plaintiff is entitled to a judgment against Defendants for damages, in an amount to be determined at trial, resulting from the breach of their implied warranties of workmanlike service.

FOR A #6 CAUSE OF ACTION

(breach of express warranty as to Genoa, Masterpiece Millworks, Allen Roper, Jr.,
John Doe #1, and John Doe #2)

66. Plaintiff repeats and incorporates the above paragraphs by reference.

67. Plaintiff is informed and believes that, as part of their contracts for this project, Defendants Genoa, Masterpiece Millworks, Allen Roper, Jr., John Doe #1 painting contractor, and John Doe #2 roofing contractor expressly warranted that their work would be of good quality, free from defects, and in conformance with the contract documents.

68. As the ultimate and foreseeable owner of the condominiums, Plaintiff and its members are beneficiaries of the express warranties provided by these Defendants.

69. Defendants breached their express warranties by failing to construct the condominiums in a manner free from defects and in compliance with the contract documents, applicable building codes, and industry standards.

70. Plaintiff has been directly and proximately damaged by Defendants in that it has been, and in the future will be, forced to expend funds to repair damages that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

71. Plaintiff will suffer loss of use of the common areas during the repairs.

72. Plaintiff is entitled to a judgment against Defendants for damages, in an amount to be determined at trial, resulting from the breach of their express warranties.

FOR A #7 CAUSE OF ACTION

(breach of implied warranty of merchantability as to Masterpiece Millwork)

73. Plaintiff repeats and incorporates the above paragraphs by reference.

74. By providing windows for use in the condominiums, Defendant Masterpiece Millwork impliedly warranted that the windows it supplied would be fit for the ordinary purposes for which they are used and would pass without objection in the trade.

75. The windows provided by Masterpiece Millwork are defective, have failed, and are allowing water to intrude into the buildings.

76. The failure of the windows provided by Masterpiece Millwork have resulted in damage to buildings and will require repair and restoration by Plaintiff, including, but not limited to, removal of the exterior windows and replacement with exterior windows that comply with the current building codes.

77. Plaintiff will suffer loss of use of the common elements during the repairs.

78. The failure of the windows constitutes a breach of the implied warranty of merchantability.

79. Plaintiff is entitled to a judgment against Masterpiece Millwork for damages, in an amount to be determined at trial, result from its breach of the implied warranty of merchantability.

FOR A #8 CAUSE OF ACTION

(breach of implied warranty of fitness for a particular purpose as to Masterpiece Millwork)

80. Plaintiff repeats and incorporates the above paragraphs by reference.

81. Defendant Masterpiece Millwork was aware that its windows were being used as building components for the condominiums.

82. Masterpiece Millwork knew or reasonably should have known that the purchasers were relying on its skill and judgment to select suitable goods that are were in compliance with applicable building codes and industry standards.

83. By selling the windows for a particular use in the condominiums, Masterpiece Millwork impliedly warranted that its windows would be fit for their intended purposes in this condominium project.

84. The windows sold by Masterpiece Millwork and incorporated into the condominiums have failed prematurely and are allowing water to intrude into the buildings.

85. The failure of the windows has resulted in damage to the various components of the buildings and will require extensive repair and restoration by Plaintiff including, but not limited to, removal of the windows and replacement with windows that comply with current building codes.

86. Plaintiff will suffer loss of use of the common elements during the repairs.

87. The failure of the windows amounts to a breach of the implied warranty of fitness for a particular purpose.

88. Plaintiff is entitled to a judgment against Masterpiece Millwork from damages, in an amount to be determined at trial, resulting from its breach of the implied warranty of fitness for a particular purpose.

FOR A #9 CAUSE OF ACTION
(strict liability in tort as to Masterpiece Millwork)

89. Plaintiff repeats and incorporates the above paragraphs by reference.

90. Defendant Masterpiece Millwork is in the business of selling building products for use in construction projects in South Carolina, specifically windows.

91. Masterpiece Millwork manufactured and sold the windows that were incorporated into the condominiums during construction.

92. The windows were expected to and were incorporated into the without substantial change from the condition in which they were originally manufactured and sold.

93. The windows have failed prematurely and are allowing water to enter the buildings.

94. The failure of the windows is causing property damage.

95. The failure of the windows will result in danger to Plaintiff and its members and their guests and invitees if the window products are unable to withstand the design wind loads required by the applicable building codes.

96. The windows that were sold for use in the condominiums are defective and unreasonably dangerous to the condominium owners.

97. As a direct and proximate result of the defective windows, Plaintiff and its members have suffered and will continue to suffer damages, including but not limited to the costs of removal of the windows and replacement with windows that comply with current building codes.

98. Plaintiff and its members will suffer loss of use of the common elements during the repairs.

99. As a direct and proximate result of the damages caused by the defective windows, Plaintiff is entitled to a judgment against Defendant for actual and punitive damages in an amount to be determined at the trial.

FOR A #10 CAUSE OF ACTION

(South Carolina Unfair Trade Practices Act as to all Defendants)

100. Plaintiff repeats and incorporates the above paragraphs by reference.

101. Plaintiff and Defendants are considered persons within the meaning of the South Carolina Unfair Trade Practices ("UTPA"), S.C. Code Ann. § 39-5-10 et seq.

102. By developing, marketing, constructing, and selling the condominium units, the Defendants were engaged in commerce within the meaning of the UTPA.

103. In connection with their developing, marketing, constructing, and selling the condominiums, Defendants engaged in unfair or deceptive acts or practices in the conduct of trade in violation of the UTPA.

104. The unfair and deceptive practices engaged in by Defendants affect the public interests of South Carolina, have the potential for repetition, and will continue to have an impact on the public interest.

105. Due to the acts of Defendants and the construction defects and resulting property damage, Plaintiff has been, and in the future will be, forced to expend funds to repair damage that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the construction deficiencies, and to pay for the repairs.

106. Plaintiff and its members will suffer loss of use of the common elements during the repairs

107. Plaintiff is entitled under the UTPA to a judgment against Defendants, jointly and severally, for treble actual damages plus attorneys' fees based on Defendants' knowing, intentional, willful, and malicious violations of the UTPA.

FOR A #11 CAUSE OF ACTION
(Violation of S.C Code § 27-31-430)

108. Plaintiff repeats and incorporates the above paragraphs by reference.

109. The South Carolina Horizontal Property Act contains requirements applicable to conversion of rental units to condominium ownership as is set forth in S.C. Code §§ 27-31-410 to 27-31-440.

110. Section 27-31-410 states:

As used in this chapter, "conversion of rental units to condominium ownership" means the establishment of a horizontal property regime encompassing a preexisting building which, at anytime prior to the recording of the master deed or master lease, was wholly or partially occupied by persons as their residence on a permanent or at least a continuing basis other than persons who, at the time of such recording, had contractual rights to acquire condominium ownership within the building.

111. Upon information and belief, when the condominium property was used as the Andrew B. Murray Vocational School, the school's caretaker lived in a building on the property known as the care taker building and used the building as a residence. The Developer Defendants subsequently acquired the property, converted the buildings and property into condominiums, and then offered, marketed, and sold the condominium units to third party buyers. The condominiums horizontal property regime created and developed by the Developer Defendants included the renovation, conversion, and sale of the care taker building into condominiums.

112. Occupancy of the care taker building by the school's caretaker renders it a "preexisting building which, at anytime prior to the recording of the master deed or master lease, was wholly or partially occupied by persons as their residence on a permanent or at least a continuing basis" as set forth in § 27-31-410.

113. Section 27-31-430 states:

Whenever the lessee, sole owner, or co-owner of a building declares the undertaking of a conversion of rental units to condominium ownership through the recordation of a master deed or master lease, written disclosure shall be made within thirty days of the date of the recordation to all prospective purchasers, including tenants in possession, as to the physical condition of the building. The disclosure shall contain a written report prepared by an independent registered architect or engineer licensed to practice his profession in this State, describing the present condition of all general common elements. The report shall contain a good faith estimate of the remaining useful life to be expected for each item reported on, together with a list of any notices of uncured violations of building codes or other county or municipal regulations, together with the estimated cost of curing those violations. The good faith estimate of useful life shall not constitute a

warranty and, as to an independent registered architect or engineer licensed to practice his profession in this State, shall not be deemed a representation of material fact or an inducement to purchase and shall not give rise to any cause of action at law or in equity against such architect or engineer. A failure to make the disclosure required by this section shall constitute a violation of the South Carolina Unfair Trade Practices Act.

114. Upon information and belief, the Developer Defendants did not prepare or disclose the written report required under § 27-31-430.

115. The failure of the Developer Defendants to make the disclosures required under § 27-31-430 constitutes a *per se* violation of the South Carolina Unfair Trade Practices Act as stated in the last sentence of § 27-31-430.

116. Pursuant to § 27-31-430, Plaintiff is entitled under the UTPA to a judgment against the Developer Defendants, jointly and severally, for treble actual damages plus attorneys' fees based on their knowing, intentional, willful, and malicious violations of the UTPA.

FOR A #12 CAUSE OF ACTION
(negligence as to Architect)

117. Plaintiff repeats and incorporates the above paragraphs by reference.

118. Defendant Architect owed a duty to Plaintiff to exercise that degree of skill necessary in design and inspection of the Project so that the Project would be delivered free of construction defects and would be designed and built in conformity with the customary and ordinary standards of the building and construction industry and the applicable building codes.

119. Defendant Architect was negligent, and/or grossly negligent in failing to properly design and inspect the construction of the project so as to insure compliance with the applicable plans, specifications, industry standards, manufacturer's requirements, applicable codes, and code construction practices, including without limitation the following:

- (a) in failing to observe deviations between the drawings and the as-built structure in that a layer of gypsum drywall on the fire walls between the

condominium units in the gym building was not installed as reflected on the plans.

- (b) in failing to observe deviations between the drawings and the as-built structure in that fire sealant/caulking was not installed in the fire walls between the condominium units in the gym building as called for on the UL ratings on the drawings.
- (c) in failing to observe deviations between the drawings and the as-built structure in that insulation is missing in locations in the fire walls between the condominium units in the gym building as called for on the drawings.
- (d) in failing to consider that the installation of non-insulated, single pane, metal frame exterior windows in the main building would lead to a condition whereby, due to temperature and humidity differences inside and outside the windows, condensation will form on the windows to various degrees at certain times of the year, resulting in a slow migration of condensation into the wall cavity under the windows and resulting moisture and water damage in the wall system in portions of the building.
- c) inadequate inspection and acceptance of defective or non-conforming construction work;
- d) failure to design and insure construction in compliance with applicable building codes and acceptable building practices; and
- e) failure to properly specify appropriate materials to be used in the construction of the Project.

120. Plaintiff has been directly and proximately damaged by the negligence and gross negligence of Architect in that Plaintiff has been, and in the future will be, forced to expend funds to repair damages that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation plans and specifications to correct the defects and resulting damages.

121. Plaintiff has been directly and proximately damaged in that it has been, and in the future will be, forced to expend funds to repair damages that has already occurred, to pay for professional fees to investigate the full extent of the problems, to pay for design remediation

plans and specifications to correct the construction deficiencies and resulting damages, and to pay for the repairs.

122. Plaintiff is entitled to a judgment against Architect for actual and punitive damages, in an amount to be determined at trial, resulting from its negligence.

FOR A #13 CAUSE OF ACTION
(breach of warranty as to Architect)

123. Plaintiff repeats and incorporates the above paragraphs by reference.

124. Architect expressly and impliedly warranted that its design of the Project would be of high quality and in conformance with the generally accepted standards of the architectural and construction industry, and further, that the specifications of materials and procedures would comply with the generally accepted principals in the industry.

125. Architect further expressly and impliedly warranted that the plans and specifications prepared for the project were suitable and fit for use in constructing the project, and that the building, when complete, would be free of design defects.

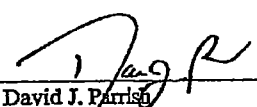
126. The plans and specifications as provided by Architect were not suitable or appropriate for their intended purpose, and as a result of Architect's breach of warranties by designing the project with structural, moisture and water intrusion, and other problems.

127. Plaintiff is entitled to a judgment against Architect for all actual and consequential damages resulting from Architect's breach of warranties, including without limitation all costs incurred by Plaintiff to correct the construction deficiencies and resulting damages.

WHEREFORE, Plaintiff prays for:

- (a) a judgment for actual damages against all Defendants jointly and severally with regard to causes of action #1-9, 12, and 13;
- (b) a judgment for punitive damages against Defendants jointly and severally, with regard to causes of action #1, 3, 4, 9, and 12;

- (c) a judgment for treble actual damages against Defendants jointly and severally with regard to cause of action #10 and #11.
- (d) an award of attorney's fees and costs; and
- (e) such other and further relief as the Court deems just and proper.



David J. Parrish
Paul A. Dominick
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Charleston, South Carolina 29402
843.577.9440

Attorneys for Plaintiff
3 Chisolm Street Homeowner's Association, Inc.

April 8, 2010

EXHIBIT
B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES,
INC., MASTERPIECE MILLWORK,
INC., ALLEN ROPER, JR. D/B/A R
MASONRY BRICKWORK, CAROLINA
ROOFING SYSTEMS, INC., AND
LACY PAINTING,

Defendants.

GENOA CONSTRUCTION SERVICES,
INC.,

Third Party Plaintiff,

v.

THE FOX STEEL COMPANY,
CAROLINA SERVICES, INC., LBSCO
RESTORATION, INC., FERST
PLASTERING, INC., CHARLESTON
GLASS & MIRROR COMPANY, 3D
RENOVATIONS, WILLIAMS
MECHANICAL, MASTERCRAFT
INTERIOR & EXTERIOR, COASTAL
GLASS AND BLOCK, ADAMS DAVIS
& PARTNERS, TROY PARDEE
HEATING AND AIR CONDITIONING
(d/b/a PARDEE HEATING AND AIR),
METRO WATER-PROOFING, INC., CT
WINDOWS LIMITED, AND
ARCHITECTURAL MATERIALS &
SYSTEMS,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

AFFIDAVIT OF RAY MOSES

4632125

PERSONALLY appeared before me Ray Moses, who, being duly sworn, deposes and states:

1. My name is Ray Moses, I am of the age of majority and I am familiar with and fully competent to testify to the facts and opinions set forth in this Affidavit.

2. I, Ray Moses, am the President and Chief Executive Officer of Genoa Construction Services, Inc., which served as the General Contractor for 3 Chisolm Street Renovation/Conversion Project and am authorized to speak and execute documents on behalf of Genoa Construction Services, Inc.

3. On, or about February, 2004, Genoa Construction Services, Inc. stopped performing work on the 3 Chisolm Street Renovation/Conversion Project.

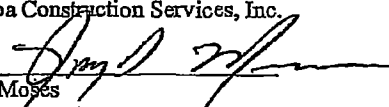
4. Genoa Construction Services, Inc. did not make any repairs, warranty work, or any other work after February, 2004 at the 3 Chisolm Street Project.

5. No one from Genoa Construction Services, Inc. or on behalf of Genoa Construction Services, Inc. was on site at the 3 Chisolm Street Project after February, 2004.

6. Genoa did not promise to make any repairs, warranty work, or any other work at the 3 Chisolm Street Project after February, 2004.

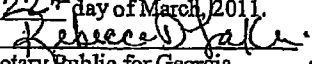
Further Affiant sayeth not.

Genoa Construction Services, Inc.

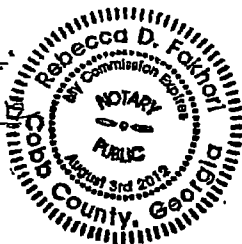

Ray Moses
President and Chief Executive Officer

SWORN to before me this

22nd day of March, 2011.


Notary Public for Georgia

My Commission Expires: 8/31



4632125



EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

BOOK V3906659

**MASTER DEED ESTABLISHING
3 CHISOLM STREET HORIZONTAL PROPERTY REGIME**

KNOW ALL MEN BY THESE PRESENTS, That this Master Deed is made on the date hereinafter set forth by CHISOLM STREET PARTNERS, LLC, hereinafter sometimes called "Developer," a limited liability company, organized under the laws of the State of Georgia and qualified to do business in South Carolina;

WHEREAS, Developer is the sole owner in fee simple of real property and buildings and improvements thereon (collectively the "Property"), which is located on the west side of Chisolm Street in the City of Charleston, Charleston County, South Carolina, and desires to submit the Property as hereinafter more fully described to a Horizontal Property Regime, according to the laws of the State of South Carolina (the "State") and subject to conditions and restrictions contained herein; and

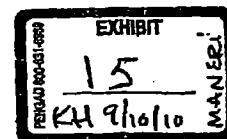
WHEREAS, Developer desires to convey the Property pursuant and subject to certain protective covenants, conditions, restrictions, reservations, liens and charges under the South Carolina Horizontal Property Act and as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the benefits expected to flow to Developer as a result of the submission of the herein described Property to a Horizontal Property Regime:

KNOW ALL MEN BY THESE PRESENTS that Chisolm Street Partners, LLC, for itself, its successors and assigns, subject to matters set forth herein, hereby submits the Property, to a Horizontal Property Regime according and subject to the terms and provisions of the Horizontal Property Act of the State of South Carolina as presently codified in the 1976 South Carolina Code of Laws at Section 27-31-10 et seq. (hereinafter sometimes referred to as the "Act") as it is now constituted and as it may from time to time be amended; PROVIDED, however, that such submission shall be and is made subject further to the conditions, provisions and restrictions contained herein, including exhibits attached hereto and incorporated herein by reference, that certain facade easement heretofore granted to Historic Charleston Foundation and that certain easement heretofore granted to Bellsouth Telecommunications, Inc., all of which shall be covenants, conditions, restrictions and easements which shall run with the land and shall bind and inure to the benefit of Developer, its successors and assigns, and all subsequent owners of any interest in the Property, their grantees, successors, heirs, executors, administrators, personal representatives, devisees or assigns.

1. **DEFINITIONS:** Unless a contrary definition is provided by the Act or is clearly required by the context hereof in order to effectuate the purpose and intent of the within Master Deed, the following definitions of terms shall apply to the within Master Deed, but in case of any

CHARLESTON 17



conflict between the definitions of the Act and the within Master Deed, the provisions of the Act shall control.

(a) "Act" shall mean the Horizontal Property Act of the State of South Carolina as hereinabove defined.

(b) "Association" shall mean the 3 Chisolm Street Homeowners Association, Inc., a South Carolina corporation.

(c) "Common Elements" shall mean the limited common elements ("LCE") and general common elements ("GCE") as shown on the Plat and the Floor Plans.

(d) "Developer" shall mean, Chisolm Street Partners, LLC, a Georgia limited liability company, its successors and assigns.

(e) "Master Deed" shall mean the within Master Deed and all exhibits or other documents incorporated herein by reference.

(f) "Owner" as used in the Master Deed and any exhibits shall mean, if required by the context, "Co-owner" as defined in the Act.

(g) "Property" shall mean the property including, without limitation, the Land, Buildings and Improvements (as such terms are defined in Section 3 hereof).

(h) All terms defined in the Act are incorporated herein by reference.

2. NAME: The Property shall hereinafter be named 3 CHISOLM STREET HORIZONTAL PROPERTY REGIME (hereinafter sometimes called for convenience "Regime").

3. DESCRIPTION OF THE LAND, THE BUILDINGS, THE IMPROVEMENTS AND THE UNITS:

(a) The land (the "Land") which is subject to the provisions of the within Master Deed and owned in fee simple and which contains 53,143 square feet, more or less, is described as follows:

ALL that lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in the City and County of Charleston, State aforesaid, and being known and designated as 3 Chisolm Street on a plat dated September 29, 1999 prepared by E. M. Seabrook, Jr., Inc. Engineers, Surveyors, Planners entitled "City of Charleston, Charleston County, S.C. Plat of 1.22 Acre Tract Situate at 3 Chisolm Street Owned by School District No. 20 of Charleston County, the State of South Carolina, The City Board of Public School Commissioners for the City of Charleston and School District of Charleston County about to be conveyed to Chisolm Street Partners, LLC" and attached

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hereto and recorded in the RMC Office for Charleston County. Said lot having such metes, bounds, measurements as shown thereon.

TMS#: 457-07-04-036

(b) The buildings (the "Buildings") are described generally as a three-story main building containing 51,088 square feet (the "Main Building"), a two-story gymnasium building containing 15,247 square feet (the "Gymnasium Building") and a two-story caretakers building which contains 1,308 square feet (the "Cottage") for a total square footage of 67,643 square feet. The square footage of the footprints of the Main Building, the Gymnasium Building and the Cottage is 25,885 square feet and expressed as a percentage of the square footage of the Land is forty-eight (48%) percent.

(c) The improvements (the "Improvements") consist of a utility building in which the phone system is located.

There is attached hereto as Exhibit "A" and incorporated herein a plat (the "Plat") prepared by E. M. Seabrook, Jr., Inc. ("Surveyor"), a registered land surveyor licensed to practice in South Carolina, which shows the Land and the horizontal location of the Buildings and the Improvements and the Common Elements within the boundary of the Land. In addition, there is attached hereto as Exhibit "A-1" a set of drawings showing the vertical location of the Buildings and the Improvements within the boundary of the Land.

(d) The Units. There are a total of twenty-six (26) units (the "Units") in the Buildings: nineteen (19) in the Main Building, six (6) in the Gymnasium Building and one (1) in the Cottage. The Units are more specifically described in the attached Exhibit "B" incorporated herein. There is attached hereto as Exhibit "C" a set of floor plans (the "Floor Plans") showing the dimensions, area and location of each unit and the Common Elements which provide access to each Unit, certified to by an engineer or architect authorized and licensed to practice in the State of South Carolina.

In addition to the description of each Unit as may be seen by reference to exhibits attached hereto, including without limitation Exhibits "B" and "C-2", each Unit is described as being bounded by the unfinished surfaces of its floors, ceilings and perimeter walls, and includes the glass windows of each Unit. Specifically included within each Unit are the finished surfaces of the Unit, paint, wall paper, tiles, paneling, carpeting and interior non-load bearing walls contained within the boundaries of each Unit as shown on the Floor Plans, together with all interior doors, the main entrance door or doors, window panes, window frames, sliding glass door frames and sliding glass plates, light fixtures, installed bathroom and kitchen appliances, HVAC system, and interior piping in connection therewith and installed heating devices and attachments measured from the interior of the Unit. Specifically excluded from each Unit are load-bearing columns, if any, located within the area bounded by the perimeter walls of a Unit, and pipes, wires and conduits below the surface of the unfinished surface of each Unit. The owner of each Unit shall be responsible for maintenance, upkeep and repair of

the Unit and the payment of his share of the expenses of the Common Elements subject to rules, regulations, covenants, and conditions set forth or incorporated herein by reference. Notwithstanding ownership of the Unit, no Unit owner may do anything or take any action which does or might change the exterior appearance of the Property without the consent of the Association. Floors and ceilings, and walls separating Units on the same horizontal level, except for the finished portions thereof, are common elements; nevertheless, the Co-owner of more than one (1) Unit which are adjacent either vertically or horizontally shall, with the approval of the Administrator, have the right and easement to cut apertures in such floors and ceiling, and in non-load bearing portions of such walls, and shall have the right and easement in said aperture for ingress, egress and access to and from each Unit and shall have the right and easement to construct stairs or other connecting devices in said aperture between Units; Provided, that in exercising such right any such Co-owner shall not interfere with any water, sewer, electrical or other lines or common elements in a manner detrimental to the use and enjoyment of other Units or to the detriment of the structural integrity of the building.

4. **LIMITATION ON NUMBER AND USE OF UNITS.** The maximum number of Units in the Buildings shall be twenty-six (26), and no Unit may be subdivided but may be combined with another Unit if approved by the Association. The Units shall not be (i) used in any "time sharing" arrangement; (ii) rented for less than sixty (60) day intervals; (iii) inhabited by more than two (2) unrelated adults, excluding paid domestic and healthcare personnel; and (iv) be utilized for any commercial business activity.

5. **PERCENTAGE OF OWNERSHIP.** The basic value of the Property as a whole (the "Basic Value") and the basic value of each Unit and, according to these basic values, the percentage appertaining to the Co-owners in the expenses of, and rights in, the elements held in common are set forth in Exhibit "D" attached hereto and incorporated herein by reference. The basic values set forth on Exhibit "D" are for purposes of the Master Deed only and shall not be construed in any way to establish circumstantial value for any Unit or for the Property from time to time. The percentage attributed to each Unit is computed by taking as a basis the basic value of the individual Unit in relation to the Basic Value of the Property as a whole. The stated percentage interest attributable to each Unit is permanent in character and cannot be altered without the consent and acquiescence of the Co-owners representing one hundred (100%) percent of the Units of the Property.

The percentage interest in the common elements, both general common elements and limited common elements, cannot be separated from the Unit to which it appertains and shall be automatically conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the deed, mortgage or other instrument.

The Common Elements, both general and limited, shall remain undivided and no right to partition the same or any part thereof shall exist except as may be specifically provided in the Act.

6. DESCRIPTION OF LIMITED COMMON ELEMENTS: The limited common elements appurtenant to the Units are described as follows:

(a) One parking space is designated for each Unit, with the exception of Units 201, 204 and 301 in the Main Building, each of which shall have two (2) parking spaces, and Unit 305 in the Main Building which shall have three (3) parking spaces, all as shown on the Plat or the Floor Plans;

(b) The garden areas immediately adjacent to Unit 107 Main Building and the Cottage as shown on the Plat;

(c) The terrace immediately adjacent to Gym Unit 106 as shown on the Floor Plans;

(d) The balconies on the exterior of Units 204 and 304 in the Main Building and Unit G-105 as shown on the Floor Plans;

(e) The steps and outside entrance to Unit 107 as shown on the Plat and Floor Plans;

(f) The roof platform on the roof of the Main Building immediately above Unit 305 as shown on the Floor Plans;

(g) The storage area adjacent to parking space designated as LCE-204 on the ground floor of the Gymnasium Building as shown on the Plat;

(h) The condenser for each Unit as shown on the Plat and the Floor Plans;

(i) Any roof garden or deck installed on the roof pursuant to this paragraph in the area immediately above and within the vertical extension of the exterior walls of the respective units on the third floor of the Main Building shall be a limited common element serving only the Unit over which it is located. Such roof garden or deck may be constructed at the respective Unit owner's expense upon obtaining all required governmental approvals and permits. In addition, the installation of such roof garden or deck shall be done in a manner that shall not adversely impact the structural integrity of the Main Building and its roof as certified to the Regime by a recognized engineer licensed in the State of South Carolina and acceptable to the Regime. The Owner of each Unit on the third floor of the Main Building shall have the right and easement to penetrate the roof of the Main Building and to convert the portion of the roof area located immediately above and within the vertical extension of the exterior walls of the respective unit to a roof garden or deck, subject to the provisions of this paragraph; and

(j) LCE MB-1, LCE G-1, LCE G-2, LCE P-1, LCE P-2, LCE P-3, LCE P-4, LCE P-5, LCE P-6, LCE P-7, LCE P-8 and LCE P-9 as shown on the Plat or the Floor Plans are reserved for the Units owned by the Developer and may be assigned by it, in its sole discretion, to such Units owned by it, on a first come, first serve basis, upon the sale of such Units for such consideration as determined by the Developer. At such time as Developer no longer owns a

Unit, to the extent that such LCE's have not been assigned to a Unit Owner for a specified Unit, they shall be converted to General Common Elements of the Regime. Any such assignments or conversion of such LCE's shall be evidenced and documented by an amendment to this Master Deed and shall be recorded in the RMC Office for Charleston County, and further the Developer shall have the right to make such amendment without the consent of any other person or entity.

7. **DESCRIPTION OF GENERAL COMMON ELEMENTS:** All of the Property not contained within or described as part of a Unit nor described as a limited common element nor otherwise designated herein as being owned by the Co-owner(s) of a Unit(s) shall be general common elements.

8. **ADMINISTRATION:** The Regime shall be administered by a Council of Co-owners which shall be constituted as a non-profit corporation under the laws of the State of South Carolina for the purpose of administration of the Property and to be known as 3 Chisolm Street Homeowners Association, Inc. (herein sometimes called the "Association"). The percentage of vote of each Co-owner in the Association shall be equal to the percentage of the basic value of the Unit owned by such Co-owner as set forth in Exhibit "D" attached hereto and incorporated herein by reference. The Association shall be governed by By-Laws attached hereto as Exhibit "E" and incorporated herein by reference.

9. **INSURANCE:** The Association shall insure the Property against risk of fire, liability, windstorm and all other risks normally insured against, including flood and earthquake insurance if available, and against such other risks as the Association may decide in accordance with provisions of its By-Laws. Such insurance does not cover the Unit and each Co-owner shall be responsible for obtaining insurance on his Unit and the contents thereof.

10. **DISBURSEMENTS OF CASUALTY INSURANCE PROCEEDS:** In the event it should be proper under the Act to repair or reconstruct the Property or any portion thereof, the proceeds of insurance, together with funds of the Co-owners sufficient to defray all expenses of repair or reconstruction above the insurance proceeds shall be placed in a separate bank account and disbursed by the Treasurer of the Association. Such disbursements shall be made only upon receipt of American Institute of Architects Request and American Institute of Architects Certificates for Payment signed by the supervising architect, if any, of said repair or construction and general contractor, in the case of hard construction costs, or invoices approved for payment by the President and Secretary of the Association in the case of non-construction invoices. If no supervising architect is employed, all funds shall be disbursed by the Treasurer only upon receipt by him of written approval of the President and Secretary. Should it not be proper to proceed with repair or reconstruction of the Property or any portion thereof under the Act, the insurance proceeds shall be disbursed to the Co-owners on a pro-rata basis according to their percentage of ownership.

11. **MAINTENANCE OF LIMITED COMMON ELEMENTS:** The Association shall be responsible for the maintenance, repair and replacement with comparable material of equal quality of all limited common elements. The Co-owner of a Unit may, upon approval of the Association make minor maintenance, repair and replacements to those limited common elements appurtenant to, or associated with his Unit alone, provided that all such maintenance,

repair and replacement by a Co-owner shall be done in a manner so as to maintain the harmonious exterior appearance of the Property.

12. **ASSESSMENTS:** The Co-owner of each Unit shall be responsible for his share of assessments established by the Regime as follows:

(a) **Creation of lien and personal obligation for assessments.** Each of the Co-owners of the Units are bound to contribute pro-rata in the percentage computed as set forth on Exhibit "D", and each Unit is and shall be subject to a lien and permanent charge in favor of the Regime for, the payment of annual and special assessments for the expenses of administration and of maintenance and repair of the general and limited common elements of the Property and toward any other expenses lawfully agreed upon or properly chargeable to the Unit Co-owner. If a lien for unpaid assessments is enforced by the Association, either by suit for damages or foreclosure, the Association shall be entitled to collect all costs of that action including attorneys fees. All sums assessed by the Association or other form of administration but unpaid for the share of common expenses, both general and limited, chargeable to any Unit shall constitute a lien on such Unit prior to all other liens except only (i) tax liens on the Unit in favor of any assessing unit, and (ii) mortgage and other liens, duly recorded, encumbering the Unit. Such lien may be foreclosed by suit by the Association or other form of administration, if any, acting on behalf of the Council of Co-owners, or by the Council of Co-owners itself, and in like manner as a mortgage of real property. In any such foreclosure the Unit Co-owner shall be required to pay a reasonable rental for the Unit after the commencement of the foreclosure action and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect such rents. The Association or other form of administration, acting on behalf of the Council of Co-owners, shall have power to bid in the Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Suit for recovery of a money judgment for unpaid common expenses may be maintained without instituting foreclosure proceedings.

(b) Where the mortgagee of any mortgage of record or other purchaser of a Unit other than the defaulting Unit owner obtains title at the foreclosure sale of such a mortgage, such acquirer of title, his/her heirs, successors and assigns, shall not be liable for the share of common expenses or assessments by the Association chargeable to such Unit accruing after the date of recording such mortgage but prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Unit Co-owners, including such acquirer, his/her heirs, successors and assigns. The foregoing shall be without prejudice to the right of the Association or any Co-owner to seek recovery from the defaulting Unit owner.

The purchaser of a Unit (other than a purchaser at a foreclosure sale as described above) shall be jointly and severally liable with the Seller for the amounts owing by the latter to the Association for assessments up to the time of the conveyance, without prejudice to the purchaser's right to recover from the other party the amounts paid by him such joint debtor. The Association shall provide for the issuance and shall issue to any purchaser, upon his request, a statement of such amounts due by the seller and the purchaser's liability hereunder shall be limited to the amount as set forth in this statement.

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(c) No later than December 20th of each calendar year, the Board of Directors of the Association shall set the annual assessments by estimating the common expenses to be incurred during the immediately succeeding calendar year and shall prorate such common expenses among the Co-owners of the Units in accordance with the percentage interest appurtenant to such Unit and shall give written notice to each Unit Co-owner of the annual assessment affixed against his Unit for such immediately succeeding calendar year. One-twelfth (1/12th) of such annual assessments shall be due and payable by the Co-owner to the Association or its designated agent in advance on or before the fifth day of each month.

(d) Developer anticipates that ad valorem taxes and other governmental assessments, if any, upon the Property will be assessed by the taxing authorities upon the Unit Co-owners and that each assessment will include the assessed value of the Unit and of the undivided interest of the Unit Co-owner in the common elements. Any such taxes and governmental assessments upon the property which are not so assessed shall be included in the budget of the Association as a recurring expense and shall be paid by the Association as a common expense. Each Unit Co-owner is responsible for making his own return of taxes and such returns shall include such owners undivided interest in the common elements, both general and limited.

(e) Special Assessments. In addition to the annual assessments, the Association may levy in any calendar year special assessments for the purpose of supplementing the annual assessments if the same are inadequate to pay the common expenses and for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of the general common elements or the limited common elements, provided that in the case of limited common elements, such special assessments shall be assessed only against those Units and the Co-owners thereof which shall be entitled to the use and benefit of such limited common elements, including the necessary fixtures and personal property related thereto; PROVIDED, HOWEVER, that any such special assessments shall have the assent of a majority of the votes of the Co-owners to be affected thereby represented, in person or by proxy, at a meeting at which a quorum is present, duly called for the expressed purpose of approving such expenditure, written notice of which shall be sent to all affected owners not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting, which notice shall set forth with particularity the purpose of a meeting. Special assessments shall be fixed against the Units involved in proportion to the percentage interest attributable to each Unit. The period of assessment and manner of payment shall be determined by the Board of Directors of the Association.

(f) Date of Commencement of Annual Assessments. The responsibility of each Co-owner who purchases from Developer for assessments provided for herein shall as to each Unit commence upon the date of conveyance thereof (the "Commencement Date"). The first monthly payment of the annual assessment for each such Unit shall be an amount rounded to the nearest whole dollar equal to the monthly payment for the fiscal year in progress on such Commencement Date, divided by the number of days in the month of conveyance and multiplied by the number of days then remaining in such month; PROVIDED, HOWEVER, that at the Commencement Date any purchaser of a Unit from the Developer shall pay to the Developer the pro-rata portion of any prepaid expenses paid by the Developer, such as by way of example only

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and not as a specification or limitation, prepaid insurance premiums for flood and hazard insurance.

13. **TRANSFER OF INTEREST IN UNITS:** (a) Upon the transfer or attempted transfer of an interest in any Unit, whether such transfer be by deed, lease, sublease, gift, devise, or by any means other than by first mortgage, sale pursuant to foreclosure of first mortgage or deed in lieu of foreclosure of said first mortgage, the Association shall have the right of first refusal in such interest as follows:

(i) **SALE OR LEASE:** Any Co-owner who wishes to sell or lease an interest in a Unit (or any lessee of any Unit wishing to assign or sublease such Unit) to any person not related by blood or marriage to the Co-owner shall give to the Association written notice of the terms of any such contemplated transfer, together with the name and address of the proposed purchaser, assignee, lessee or sublessee. The Association shall at all times have the first right and option to purchase or lease such Unit upon the same terms, which option shall be exercisable for a period of ten (10) days following the date of receipt of such notice. If said option is not exercised by the Association within said option period, the Co-owner (or lessee) may, at the expiration of said period and at any time within ninety (90) days after the expiration of said period, or for such longer period of time as the Association may agree to in writing, sell or lease (or sublease or assign) such Unit ownership upon the terms specified in such notice.

(ii) **GIFT:** Any Co-owner who wishes to make a gift of an interest in a Unit ownership or any interest therein to any person or persons or entity who would not be heirs at law of the owner under the laws of intestate succession of this state as of the date such gift is proposed, (or to any person or persons or entity who would not be an heir at law as aforesaid of any principal of Co-owner, if Co-owner is not a natural person), shall give to the Association written notice of intent to make such gift. The Association shall at all times have the first right and option to purchase such Unit ownership or interest therein for cash at fair market value to be determined by mutual agreement between such owner and the Association or if mutual agreement cannot be reached, then by arbitration as herein provided, which option shall be exercisable until the date of expiration as provided herein. If Co-owner and Association cannot agree within five (5) days of such notice to Association on fair market value, then within fifteen (15) days after receipt by the Association, of said written notice, the Association and the owner desiring to make such gift shall each appoint a qualified real estate appraiser to act as arbitrators. The two arbitrators so appointed shall, within fifteen (15) days after their appointment, appoint another qualified real estate appraiser to act as the third arbitrator. Within fifteen (15) days after the appointment of said arbitrator, the three arbitrators shall determine, by majority vote, the fair market value of the Unit ownership or interest therein which the Co-owner contemplates conveying by gift, and shall thereupon give written notice of such determination to the Co-owner and the Association. The Association's option to purchase the Unit ownership or interest therein shall expire thirty (30) days after the date of receipt by it of such notice or after agreement in writing between Co-owner and Association as to fair market value of the Unit, unless exercised in writing within said period and closed within thirty (30) days thereof. If the Association shall elect to

exercise such option to purchase, closing shall be held within thirty (30) days of exercise at the office of the attorney for the Association with the purchase price payable at the option of the Association (1) in cash or (2) Twenty-five (25%) Percent in cash and the balance payable in accord with a note and purchase money mortgage payable in monthly installments of principal and interest over five (5) years plus interest at Eight (8%) Percent.

(iii) **DEVISE:** In the event any natural person who is a Co-owner dies leaving a will devising his Unit or any interest therein to any person or persons not heirs at law of such owner under the laws of intestate succession of this state and said will is admitted to probate, the Association shall have an option (to be exercised in the manner hereinafter set forth) to purchase said Unit ownership or interest therein either from the devisees or devisees thereof named in said will or, if a power of sale is conferred by said will upon the personal representative named therein, from the personal representative acting pursuant to said power, for cash at fair market value which is to be determined by mutual agreement or by arbitration. If fair market value cannot be determined by agreement then within fifteen (15) days after notice to the Association of the appointment of a personal representative for the estate of the deceased owner, the Association shall appoint a qualified real estate appraiser to act as an arbitrator, and shall thereupon give written notice of such appointment to the said devisees or devisees or personal representative, as the case may be. Within fifteen (15) days thereafter said devisees or devisees, or personal representative, as the case may be, shall appoint a qualified real estate appraiser to act as an arbitrator. Within fifteen (15) days after the appointment of said arbitrator, the two so appointed shall appoint another qualified real estate appraiser to act as the third arbitrator. Within thirty (30) days thereafter, the three arbitrators shall determine, by majority vote, the fair market value of the Unit or interest therein devised by the deceased owner, and shall thereupon give written notice of such determination to the Association and said devisees or devisees, or personal representative, as the case may be. The Association's right to purchase the Unit or interest therein at the price determined by the three arbitrators shall expire thirty (30) days after the date of receipt by it of such notice if the personal representative of the deceased owner is empowered to sell, and shall expire three (3) months after the appointment of a personal representative who is not so empowered to sell. The Association shall be deemed to have exercised its option if it tenders the required sum of money to said devisees or devisees or to said personal representative, as the case may be, within the said option periods. Nothing herein contained shall be deemed to restrict the right of the Association or its authorized representative, pursuant to authority given to the Association by the Co-owners as hereinafter provided, to bid at any sale of the Unit or interest therein of any deceased Co-owner which is held pursuant to an order or direction of the court having Jurisdiction over that portion of the deceased Co-owner's estate which contains his Unit or interest therein.

(iv) **CONSENT OF VOTING MEMBERS:** The Association shall not exercise any option hereinabove set forth to purchase any Unit or interest therein without the prior written consent of Co-owners of seventy-five (75%) percent of the Basic Value of the Property. The Association may bid to purchase at any sale of a Unit or any interest therein of any deceased Co-owner which is held pursuant to an order or direction of a

court upon the prior written consent of Co-owners of seventy-five (75%) percent of the common elements, which consent shall set forth a maximum price which the Association is authorized to bid and pay for said Unit or interest therein.

(v) **RELEASE OR WAIVER OF OPTIONS:** Upon the written consent of Co-owners of fifty-one (51%) percent of the Basic Value of the Property, any of the options contained in this article may be released or waived prior to the expiration of such option and the Unit or any interest therein which is subject to an option set forth in this article may be sold, conveyed, leased, given, or devised free and clear of the provisions of this article.

(vi) **PROOF OF TERMINATION OF OPTION:**

(a) A certificate executed and acknowledged by the Secretary of the Association stating that the provisions of this article as hereinabove set forth have been met by a Co-owner, or duly waived by the Association, and that the rights of the Association hereunder are terminated, shall be conclusive upon the Association and the Co-owner in favor of persons who rely thereon in good faith, and such certificate in recordable form shall be furnished to any Co-owner who has in fact complied with the provisions of this article or in respect to whom the provisions of this article have been valued, upon request.

(b) **Mortgaging.** No Unit Co-owner may mortgage his Unit or any interest therein without the approval of the Association, except as to a first mortgage lien and an equity line made to a bank, life insurance company, savings and loan association or other federally or state licensed lending institution, in which event approval shall not be required but notice shall be required. Notice shall be given to the Association as to the name and address of such mortgagee. Upon request by the Association, the Co-owner of a Unit shall provide to the Association a copy of all mortgage documents relating to the Unit.

(c) **Transfer Voidable.** Any sale, voluntary transfer, conveyance, or lease for a period exceeding two (2) months or mortgage which is not authorized by the terms of this Master Deed or for which authorization has not been obtained pursuant to the terms hereof is voidable and may be voided by the Association at its election by notice to the grantee or mortgagee within sixty (60) days of the date on which the Board hears of the transfer or mortgage.

(d) **Infra-Family Transfer.** Notwithstanding anything herein to the contrary, any Co-owner may, without restriction, give, devise, lease, sell, mortgage or bequeath his interest in any Unit (i) to any person who would be an heir at law under the laws of intestate succession in the State; or (ii) to a corporation, limited liability company or partnership of which all classes of stock, membership or partnership interests are one hundred (100%) percent owned by such Unit Co-owner and/or any person who would be an heir at law under the laws of intestate succession in the State; or (iii) to a trustee of a trust (or similar

entity), the beneficiary(s) of which would be any person who would be an heir at law under the laws of intestate succession in the State, for estate planning purposes, without the prior written consent of the Association.

(c) **Rights of Subsequent Purchasers.** Subsequent purchasers of Units shall be entitled to receive, upon written request therefor, a certification from the Association that the Association has had no objections to any prior conveyances or, in the alternative, that there have been no prior conveyances of the Unit requiring approval by the Board.

14. MANAGEMENT AGENT:

(a) **Interim Management Agent and Assessments.** Developer reserves to itself the right to manage the Association as Interim Management Agent ("Interim Management Agent") until Developer has sold all of the Units of the Regime, or until December 31, 2002, or until Developer elects to abandon its right of management, whichever shall first occur. Developer may designate its management function to any person, association or corporation whatsoever.

(b) **Regular management and assessments.** Upon Developer (or its designee) ceasing to act as Interim Management Agent, the Association shall select a Regular Management Agent ("Regular Management Agent"). Any excess of interim assessments over total, actual operating expenses shall be deposited by the Interim Managing Agent to the account of the Association.

15. **REGIME WORKING CAPITAL:** At or before the time title is conveyed to a Co-owner, each Co-owner shall contribute to the working capital reserve established by the Interim Management Agent the sum of twice the monthly assessment attributable to his Unit. Such funds shall be used solely for initial operating and capital expenses of the Property. At the time of selection of the Regular Management Agent, the Interim Management Agent shall pay to the account of the Association all such unused funds and shall provide an accounting of all revenues and expenditures.

16. **UNITS SUBJECT TO MASTER DEED AND OTHER DOCUMENTS:** All present and future Co-owners, tenants and occupants of Units and their guests or invitees, shall be subject to, and shall comply with, the provisions of the Master Deed and exhibits as amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the Master Deed and exhibits are accepted and ratified by such Co-owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the lands and shall bind any person having at any time any interest or estate in such Unit as though such provisions were made a part of each and every deed of conveyance or lease. Failure to comply with the provisions of these documents shall entitle the Association or any Co-owner or other interested party to seek legal and/or equitable relief. In addition to other matters set forth herein, the Property is submitted to a Horizontal Property Regime as set forth herein subject to the following:

- (1) Easements, covenants, conditions, restrictions and rights of way of public record;
- (2) Rules and regulations of applicable governmental authorities, including zoning laws or ordinances, subdivision regulations, special assessments and ad valorem real property taxes;
- (3) Rules and Regulations of 3 Chisolm Street Homeowners Association, Inc. attached hereto as Exhibit "F" and incorporated herein by reference as the same shall be amended from time to time by majority vote of the Board of Directors of 3 Chisolm Street Homeowners Association, Inc.

17. **AMENDMENT OF MASTER DEED:** This Master Deed may be amended by the affirmative vote of the Co-owners of sixty-six and two-thirds (66 2/3%) percent in interest of the Property as based on percentage interests set forth in Exhibit "D" attached hereto and incorporated herein by reference, cast at a meeting duly held in accordance with the provisions of the By-laws. **PROVIDED**, however, that Section 4 is a permanent restriction which shall not be amended. No such amendment shall be effective until recorded in the RMC Office for Charleston County. **PROVIDED**, in no event may the Master Deed be amended so as to deprive the Developer of any rights granted herein or to impose any additional duties, financial or otherwise, upon the Developer without the consent in writing of the Developer; **PROVIDED**, **FURTHER**, that this Master Deed may not be amended in any respect without the written consent of Developer until Developer has sold all of the Units of the Regime, or until December 31, 2002, or until Developer elects to terminate its control of the Association whichever shall first occur. Developer reserves the right to make changes in the Master Deed, whether to correct typographical or similar errors or other changes in its derivation, provided that any such correction shall not adversely affect the interest of any Co-owner, by recording an appropriate document in the RMC Office for Charleston County, South Carolina. Any such corrective documents need be executed by Developer only until such time as Developer's right to manage the Association as herein provided shall terminate; thereafter any such document shall be executed by the Association.

18. **INVALIDITY:** The invalidity of any provisions of this Master Deed shall not impair or affect the validity and enforceability of the remainder of this Master Deed, and in such event, all of the other provisions of this Master Deed, shall continue in full force and effect as if such invalid provision had never been included.

19. **WAIVER:** No provisions contained in this Master Deed shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

20. **LAW CONTROLLING:** This Master Deed and the By-Laws attached hereto shall be construed under and controlled by the laws of the State of South Carolina.

21. **WARRANTIES:** Developer acknowledges that all contractual warranties in its favor set forth in the building renovation contract, for material and equipment in the Units, shall

accrue to the benefit of the Co-owner of such Unit, along with all warranties, if any, provided by the manufacturer or supplier of appliances, air conditioning, heating and utility systems in the Unit. THE CLOSING OF TITLE OR OCCUPANCY OF THE UNIT SHALL CONSTITUTE AN ACKNOWLEDGMENT BY THE UNIT OWNER THAT DEVELOPER MAKES NO OTHER IMPLIED OR EXPRESS WARRANTIES RELATING TO THE UNIT OR THE COMMON AREAS AND FACILITIES, EXCEPT FOR SUCH WARRANTIES AS MAY BE SET FORTH IN THE DEED TO THE UNIT.

22. **EASEMENTS:** Easements are hereby granted, extended, saved, excepted or reserved, as the case may be as follows:

(a) **Easement for Encroachments:** In the event that any portion of the common elements now or hereafter encroaches upon any Unit, or in the event that any portion of any Unit encroaches upon any other common elements now or hereafter, or in the event that any portion of one Unit now or hereafter encroaches upon another Unit, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, does and shall exist. In interpreting any and all provisions of this instrument, the exhibits attached hereto, and subsequent deeds and mortgages to individual Units, the actual location of any specific Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered notwithstanding any minor deviations, either horizontally or vertically from the proposed locations or size as indicated on exhibits attached hereto. To the extent that such minor variations in location or size do or shall exist, a valid easement therefor, and the maintenance thereof, does and shall exist.

(b) **Easement for Utilities:** A valid easement does and shall exist and continue to exist throughout the common elements for the purpose of installation, maintenance, repair and replacement of elevators, cable TV systems, if any, sewer, water, power and telephone pipes, lines, mains, conduits, wires, poles, transformers and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility system. The Association by instrument signed by the President and by one other officer of the Association may hereafter grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, storm drainage lines, gas lines, telephone and television wires and equipment and electrical conduits, and wires over, under and along (but not through) any portion of the Units and/or general or limited common elements which are not limited in use to only one Unit; and each Unit Co-owner by the acceptance of a deed to a Unit hereby grants to the Association, or its designee, an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Unit owner such instruments as may be necessary to effectuate the foregoing.

(c) **Easement for Workmen, Equipment, etc:** There is declared to be a valid easement in, upon and over the common elements for all workmen, laborers, suppliers or materialmen, deliverymen, servicemen, employers, architects and supervisory and management personnel lawfully upon the Property at the instance or request of the Association, Developer or Unit Co-owner, a prospective mortgagee or other persons having a valid and legally enforceable interest in a Unit. The Association shall have the irrevocable right, to be exercised by its duly authorized officer or agent, to have access to each Unit and any common elements from time to

time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common elements therein or accessible therefrom and at any time for making emergency repairs necessary to prevent damage to the Property or any part of the Property, and in the exercise of such rights the Association or its agents shall have the right to cut through floors, ceilings and walls, provided, that the Association shall leave a Unit after the exercise of such rights in as good condition as before the exercise.

23. **STRUCTURAL ALTERATIONS:** Upon the affirmative vote of the Co-owners owning two-thirds (2/3rds) of the Basic Value of the Property, after submission to them of detailed plans and specifications and a fixed price contract for the proposed work at a duly called meeting of the Association, the Association may be authorized to make or have made structural alterations in the general common elements and/or limited common elements; provided, however, that any structural alterations in all or part of the terraces or balconies shall be uniform. No Co-owner of a Unit may make any structural alterations or additions to the Property without first having the plans and specifications therefor approved in writing by the Association and depositing with the Association an amount of money sufficient, in the sole discretion of the Association, to defray all costs, if any, of modifying this Master Deed and recording said modification, including attorneys fees.

24. **PARKING SPACES:** Each Unit shall be assigned one (1) permanent specified parking space, except for Units 201, 204 and 301 in the Main Building which shall have two (2) parking spaces and Unit 305 which shall have three (3) assigned parking spaces, as shown on the Plat and the Floor Plans as Limited Common Elements. The remaining spaces shall be assigned by the Association for invitees, guests, handicapped persons and for such other purposes as it shall determine. No boats, camping vehicles or non-functioning automobiles may be kept in the parking area for more than seventy-two (72) hours.

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EX V390P6674

IN WITNESS WHEREOF, Chisolm Street Partners, LLC, a limited liability company, has executed this Master Deed this 29 day of November, 2001.

WITNESSES:

CHISOLM STREET PARTNERS, LLC,
a Georgia limited liability company

BY: MURRAY SCHOOL PARTNERS, LLC,
a Georgia limited liability company, its Manager

David L. Perdue
David L. Perdue
David L. Perdue
David L. Perdue
David L. Perdue
David L. Perdue

By: David L. Perdue
David L. Perdue, Manager

By: A. Rhodes Perdue
A. Rhodes Perdue, Manager

By: John W. Wilcox, III
John W. Wilcox, III, Manager

STATE OF Georgia)
COUNTY OF Gwinnett)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 29 day of November, 2001, by CHISOLM STREET PARTNERS, LLC, a limited liability company, by MURRAY SCHOOL PARTNERS, LLC, a limited liability company, its Manager, by David L. Perdue, its Manager.

James J. Platt
Notary Public for Georgia
My Commission Expires: July 7, 2004

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EX V390PG675

STATE OF Georgia
COUNTY OF Gwinnett

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 29 day of November, 2001, by CHISOLM STREET PARTNERS, LLC, a limited liability company, by MURRAY SCHOOL PARTNERS, LLC, a limited liability company, its Manager, by A. Rhodes Perdue, its Manager.

Jessie J. Platt
Notary Public for Georgia
My Commission Expires:

July 7, 2004
My Commission Expires July 7, 2004

STATE OF Georgia
COUNTY OF Gwinnett

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 29 day of November, 2001, by CHISOLM STREET PARTNERS, LLC, a limited liability company, by MURRAY SCHOOL PARTNERS, LLC, a limited liability company, its Manager, by John W. Wilcox, III, its Manager.

Jessie J. Platt
Notary Public for Georgia
My Commission Expires:

July 7, 2004
My Commission Expires July 7, 2004

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EXHIBIT "A"
TO MASTER DEED ESTABLISHING
3 CHISOLM STREET HORIZONTAL PROPERTY REGIME

PLAT

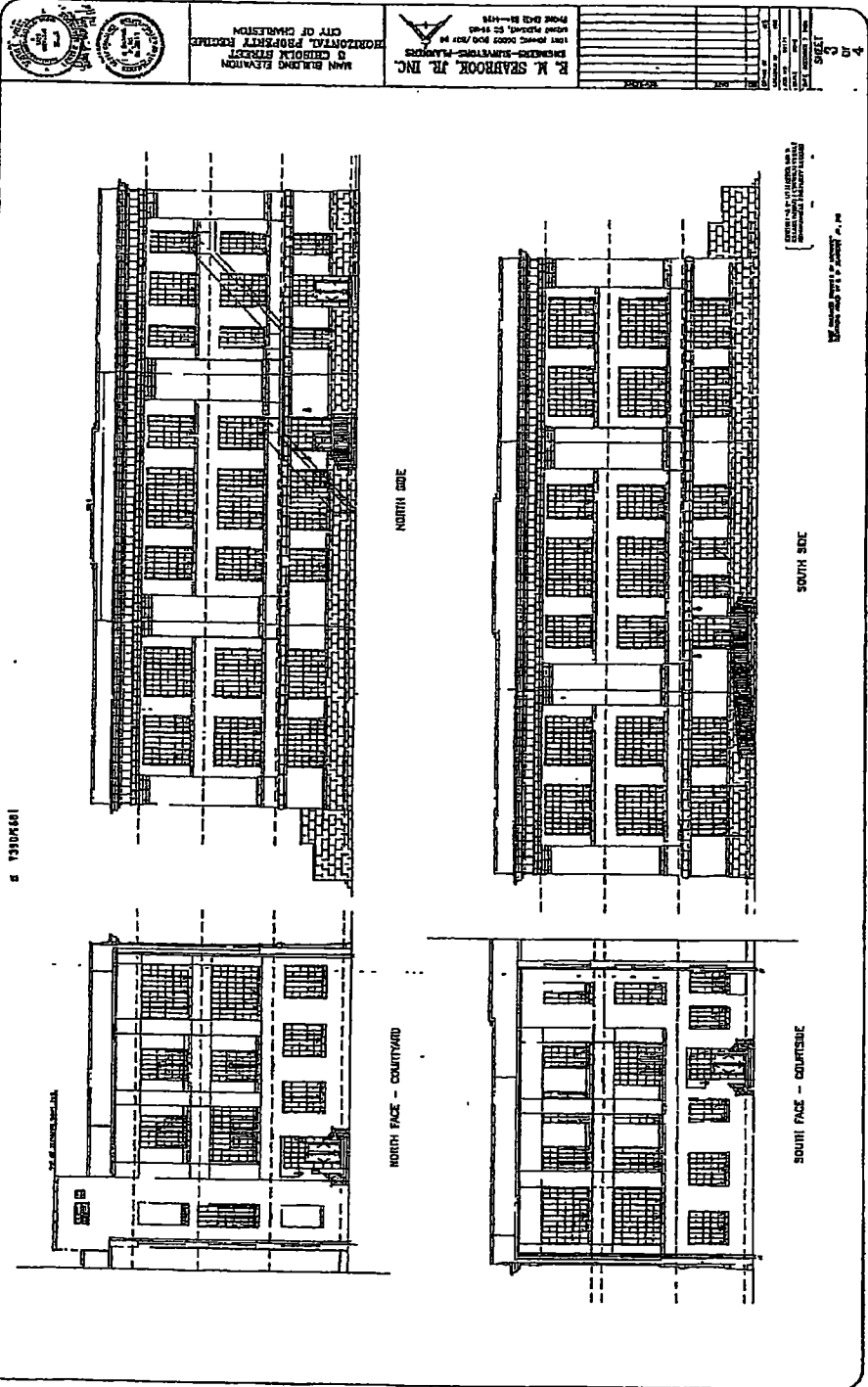
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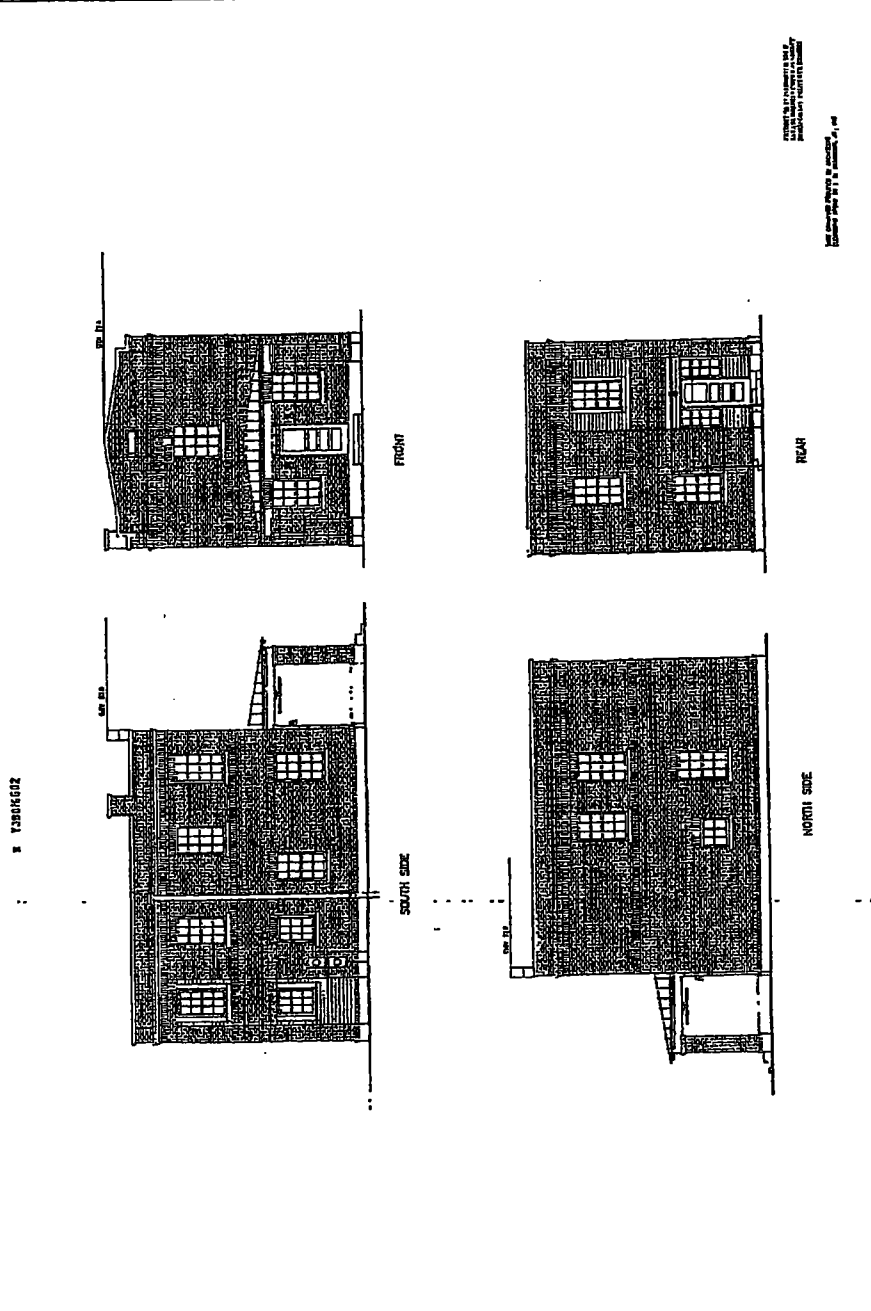
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EXHIBIT "A-1"
TO MASTER DEED ESTABLISHING
3 CHISOLM STREET HORIZONTAL PROPERTY REGIME

DRAWINGS SHOWING THE VERTICAL LOCATION
OF THE BUILDINGS AND IMPROVEMENTS

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 		CITY OF CHARLESTON HORIZONTAL PROPERTY RECORD 9 CHURCH STREET		 E. M. SEABROOK, JR. INC. ENGINEERS-ARCHITECTS-PLANNERS 1201 ADAMS STREET, SUITE 200 CHARLESTON, SOUTH CAROLINA 29403		PROJECT NO. 123456 SHEET NO. 1 OF 1 DATE: 12/15/2023	
				THIS DRAWING IS THE PROPERTY OF E. M. SEABROOK, JR. INC. AND IS NOT TO BE REPRODUCED OR USED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT.			

EX V390P6683

EXHIBIT "B"
TO MASTER DEED ESTABLISHING
3 CHISOLM STREET HORIZONTAL PROPERTY REGIME

DESCRIPTION OF UNITS

Unit 101 Main Building ("Unit 101MB") is located in the southwestern corner of the first floor of the Main Building and contains approximately 2,160 square feet, as more fully shown on the Floor Plans.

Unit 102 Main Building ("Unit 102MB") is located in the middle on the south side of the first floor of the Main Building and contains approximately 1,244 square feet, as more fully shown on the Floor Plans.

Unit 103 Main Building ("Unit 103MB") is located in the southeastern corner of the first floor of the Main Building and contains approximately 1,342 square feet, as more fully shown on the Floor Plans.

Unit 104 Main Building ("Unit 104MB") is located in the center on the courtyard of the first floor of the Main Building and contains approximately 1,702 square feet, as more fully shown on the Floor Plans.

Unit 105 Main Building ("Unit 105MB") is located in the northeastern corner of the first floor of the Main Building and contains approximately 1,344 square feet, as more fully shown on the Floor Plans.

Unit 106 Main Building ("Unit 106MB") is located in the middle on the north side of the first floor of the Main Building and contains approximately 1,249 square feet, as more fully shown on the Floor Plans.

Unit 107 Main Building ("Unit 107MB") is located in the northwestern corner of the first floor of the Main Building and contains approximately 2,117 square feet, as more fully shown on the Floor Plans.

Unit 201 Main Building ("Unit 201MB") is located in the southwestern corner of the second floor of the Main Building and contains approximately 3,148 square feet, as more fully shown on the Floor Plans.

Unit 202 Main Building ("Unit 202MB") is located in the southeastern corner of the second floor of the Main Building and contains approximately 1,910 square feet, as more fully shown on the Floor Plans.

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Unit 203 Main Building ("Unit 203MB") is located in the center front on the east side of the first floor and second floor of the Main Building and contains approximately 649 square feet on the first floor and 630 square feet on the second floor, as more fully shown on the Floor Plans.

Unit 204 Main Building ("Unit 204MB") is located in the center on the courtyard of the second floor of the Main Building and contains approximately 1,594 square feet, as more fully shown on the Floor Plans.

Unit 205 Main Building ("Unit 205MB") is located in the center front on the east side of the first floor and second floor of the Main Building and contains approximately 660 square feet on the first floor and 627 square feet on the second floor, as more fully shown on the Floor Plans.

Unit 206 Main Building ("Unit 206MB") is located in the northeastern corner of the second floor of the Main Building and contains approximately 1,905 square feet, as more fully shown on the Floor Plans.

Unit 207 Main Building ("Unit 207MB") is located in the northwestern corner of the second floor of the Main Building and contains approximately 3,146 square feet, as more fully shown on the Floor Plans.

Unit 301 Main Building ("Unit 301MB") is located in the southwestern corner of the third floor of the Main Building and contains approximately 3,148 square feet, as more fully shown on the Floor Plans.

Unit 302 Main Building ("Unit 302MB") is located in the southeastern corner of the third floor of the Main Building and contains approximately 1,910 square feet, as more fully shown on the Floor Plans.

Unit 303 Main Building ("Unit 303MB") is located in the center front on the east side of the third floor of the Main Building and contains approximately 1,440 square feet, as more fully shown on the Floor Plans.

Unit 304 Main Building ("Unit 304MB") is located in the center of the third floor of the Main Building overlooking the courtyard and contains approximately 1,594 square feet, as more fully shown on the Floor Plans.

Unit 305 Main Building ("Unit 305MB") is located in the north side of the third floor of the Main Building and contains approximately 5,051 square feet, as more fully shown on the Floor Plans.

The Cottage (the "Cottage") is a two-story brick structure in the center of the Property and contains a total of 1,095 square feet with 525 square feet on the lower level and 570 square feet on the upper level.

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Unit 101 Gymnasium ("Unit 101G") is located in the southeastern corner of the Gymnasium and contains 1,464 square feet, 836 square feet on the lower level and 628 square feet on the mezzanine level, as more fully shown on the Floor Plans.

Unit 102 Gymnasium ("Unit 102G") is located in the northeastern corner of the Gymnasium and contains 1,483 square feet, 815 square feet on the lower level and 668 square feet on the mezzanine level, as more fully shown on the Floor Plans.

Unit 103 Gymnasium ("Unit 103G") is located in the middle on the south side of the Gymnasium and contains 1,364 square feet, 869 square feet on the lower level and 495 square feet on the mezzanine level, as more fully shown on the Floor Plans.

Unit 104 Gymnasium ("Unit 104G") is located in the middle on the north side of the Gymnasium and contains 1,558 square feet, 891 square feet on the lower level and 667 square feet on the mezzanine level, as more fully shown on the Floor Plans.

Unit 105 Gymnasium ("Unit 105G") is located in the southwestern corner of the Gymnasium and contains 1,757 square feet, 1,281 square feet on the lower level and 476 square feet on the mezzanine level, as more fully shown on the Floor Plans.

Unit 106 Gymnasium ("Unit 106G") is located in the northwestern corner of the Gymnasium and contains 1,542 square feet, 1,070 square feet on the lower level and 472 square feet on the mezzanine level, as more fully shown on the Floor Plans.

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EXHIBIT "C"
TO MASTER DEED ESTABLISHING
3 CHISOLM STREET HORIZONTAL PROPERTY REGIME

FLOOR PLANS

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EX V390PG687

EXHIBIT "D"
TO MASTER DEED ESTABLISHING
3 CHISOLM STREET HORIZONTAL PROPERTY REGIME

THE BASIC VALUE OF THE PROPERTY AS A WHOLE
AND THE BASIC VALUE OF EACH UNIT

UNIT NO.	BASE VALUE	CO-OWNER'S % OF EXPENSES AND RIGHTS IN THE COMMON ELEMENTS
1st Floor/Main Building:		
101	\$ 650,000	3.7037%
102	\$ 650,000	3.7037%
103	\$ 650,000	3.7037%
104	\$ 650,000	3.7037%
105	\$ 650,000	3.7037%
106	\$ 650,000	3.7037%
107	\$ 650,000	3.7037%
2nd Floor/Main Building:		
201	\$ 650,000	3.7037%
202	\$ 650,000	3.7037%
203	\$ 650,000	3.7037%
204	\$ 650,000	3.7037%
205	\$ 650,000	3.7037%
206	\$ 650,000	3.7037%
207	\$ 650,000	3.7037%
3rd Floor/Main Building:		
301	\$ 650,000	3.7037%
302	\$ 650,000	3.7037%
303	\$ 650,000	3.7037%
304	\$ 650,000	3.7037%
305	\$1,300,000	7.4074%
Gym:		
G-101	\$ 650,000	3.7037%
G-102	\$ 650,000	3.7037%
G-103	\$ 650,000	3.7037%
G-104	\$ 650,000	3.7037%
G-105	\$ 650,000	3.7037%
G-106	\$ 650,000	3.7037%
Cottage	\$ 650,000	3.7037%
TOTAL	\$17,550,000	100.00%

CHARLESTON 11.1

EXHIBIT "E"
TO MASTER DEED ESTABLISHING
3 CHISOLM STREET HORIZONTAL PROPERTY REGIME

BY-LAWS
OF
3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC.

SECTION I

IDENTITY: These are the By-laws of 3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC., a nonprofit corporation existing under the laws of the State of South Carolina (hereinafter sometimes called "Association"). The Association has been organized for the purpose of managing, operating and administering the 3 CHISOLM STREET HORIZONTAL PROPERTY REGIME (hereinafter sometimes called "Regime") established pursuant to the Horizontal Property Act of the State of South Carolina (hereinafter sometimes called the "Act"), on real property shown on a plat thereof recorded in Plat Book ____, Page ____, RMC Office for Charleston County, South Carolina, and located generally on the west side of Chisolm Street between Broad Street and Tradd Street in Charleston, South Carolina, and being more particularly described in the Master Deed establishing the said Horizontal Property Regime.

1. **OFFICE:** The office of the Association shall be on the premises of 3 CHISOLM STREET HORIZONTAL PROPERTY REGIME, or at such other place as the Association shall select.
2. **FISCAL YEAR:** The fiscal year of the Association shall be the calendar year.
3. **SEAL:** The seal of the Association shall consist of a circle around the outer edge of which shall be the name of the Association and in the center of which is inscribed the word "Seal" or such facsimile thereof as may be used from time to time by the Association.
4. **DEVELOPER:** The term "Developer" means CHISOLM STREET PARTNERS, LLC, a limited liability company under the laws of the State of Georgia, its successors and assigns.

SECTION II
MEMBERSHIP: MEMBERS MEETINGS: VOTING AND PROXIES

1. **MEMBERSHIP:** Members of the Association shall be the Council of Co-owners, as that term is defined in 1976 South Carolina Code of Laws Section 27-31-10 et seq., of the Regime. The percentage of stock ownership of each Co-owner in the Association shall be equal

to the percentage of his right to share in the common elements as computed in accordance with the provision of the Act.

2. **ANNUAL MEETINGS:** The annual meeting of the Association shall be held at the office of the Association at 5 o'clock, P.M., or at such other time or location as the Association may select on the first Monday in February of each year, commencing with the year 2001, for the purpose of hearing reports of the officers, electing members of the Board of Directors, and for transacting any other business authorized to be transacted by the members; provided, however, that if that day is a legal holiday, then the meeting shall be held on the next business day thereafter at the same hour and place.

3. **SPECIAL MEETINGS:** Special meetings of the Association shall be held at the place of business of the Association whenever called by the President or Vice-President or by a majority of the Board of Directors. A Special Meeting must be called by such officers upon receipt of a written request for such meeting signed by members entitled to cast not less than ten (10%) percent of the votes of the entire membership.

4. **NOTICE:** Notice of all meetings of the membership stating the time and place and the object for which the meeting is called shall be given by the President, Vice President or Secretary unless waived in writing as set forth herein. Such notice shall be in writing to each member at his address as it appears on the books of the Association and shall be mailed not less than 14 days nor more than 21 days prior to the date of the meeting; or such notice may be given personally. Proof of such notice shall be given by affidavit of the person giving the notice. Notice of meeting may be waived by any member before, during or after meetings by the signing of a document setting forth a waiver by such member.

5. **SECRET BALLOT:** A secret ballot shall be used upon demand made prior to voting by ten percent of the members present and voting during the course of any vote upon any question during any meeting of the Association.

6. **QUORUM:** A quorum at meetings of the Association shall consist of Co-owners with fifty-one (51%) percent or more of the basic value of the Regime property as a whole, as set forth in the Master Deed. The joinder of a member in the action of a meeting by signing and occurring in the minutes thereof shall constitute the presence of such member for the purpose of determining a quorum. When a quorum is present at any meeting, the affirmative vote of owners of at least fifty-one (51%) percent of the value of the Regime property present and voting shall be required to adopt decisions brought before the meeting and shall be binding upon the members except where approval by a greater percentage is required by the Act, the Master Deed establishing the Regime, the Charter of the Association or these By-laws. A Co-owner represented by proxy shall be counted as present for purpose of quorum count and for all other purposes.

7. **VOTING RIGHTS:** Each Co-owner shall have a vote equal to his percentage ownership in the regime property as a whole, as set forth in the Master Deed. Such votes may be cast in person or by proxy. If a unit is owned by one person, his right to vote shall be established by the record title to his unit. If a unit is owned by more than one person, the person entitled to

cast the vote for the unit shall be one of the record Co-owners designated by a certificate signed by all of the record owners of the unit and filed with the Secretary of the Association. If a unit is owned by a corporation, the person entitled to cast a vote for the unit shall be designated by a certificate of appointment signed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Corporation and filed with the Secretary of the Association. If a unit is owned by a partnership, the person entitled to cast a vote for the unit shall be designated by a certificate of appointment signed by all the partners. Any such certificate shall be valid until revoked, until superseded by a subsequent certificate or until a change in the ownership of the unit concerned. A certificate designating the person entitled to cast the vote of a unit Co-owner may be revoked in like manner as provided hereinabove. If such a certificate is not on file, the vote of such Co-owner shall not be considered in determining the requirement for a quorum nor for any other purpose.

8. PROXIES: A proxy may be made by any person entitled to vote and shall be valid for such period as provided for by law, unless a shorter period is designated in the proxy, and must be filed with the Secretary of the Association before the appointed time of the meeting or any adjournment thereof.

9. ADJOURNED MEETINGS: If any meeting or meetings of members cannot be organized because a quorum is not present, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

10. ORDER OF BUSINESS: At annual meetings of the Association and as far as practical at all other meetings of the Association, the order of business shall be as follows:

- A. Calling of the roll and certifying of proxies.
- B. Proof of notice of meeting or waiver of notice.
- C. Reading and handling of any unapproved minutes.
- D. Reports of Officers.
- E. Reports of Committees.
- F. Election of inspectors of election.
- G. Election of directors.
- H. Unfinished business.
- I. New business.
- J. Adjournment.

11. DEVELOPER CONTROL: Until the Developer has completed and sold all of the units of the Regime, or until December 31, 2002, or until the Developer elects to terminate its control of the Association, whichever shall first occur, the proceedings of all meetings of members of the Association shall have no effect unless approved in writing by the Developer.

12. PRESIDING OFFICER; MINUTE BOOKS: The President of the Association, or the Vice-President in the President's absence, shall preside at all meetings of the Association. If neither officer be present at a duly called meeting, then the membership in attendance shall select a presiding officer by the vote of a majority in interest of the membership present. Minute Books of the Association shall be maintained by the Secretary.

**SECTION III
DIRECTORS**

1. **DIRECTORS:** The initial Board of Directors (the "Initial Directors") shall consist of two (2) members appointed by the Developer, which Directors shall hold office until the event set out in Section III, 2(D). Upon the happening of the event set out in Section III, 2(D), the Association shall elect, and the Board of Directors shall consist of five (5) members elected by the Association as provided herein. From their election three (3) Directors shall serve until the first annual meeting of the Association in February of 20____, or until their successors be elected. Two (2) Directors shall serve until the annual meeting of the Association in February of 20____ and the two (2) directors to serve until February of 20____ shall be so designated at the time of their election.

2. **ELECTION:** Election of Directors shall be conducted in the following manner:

A. Election of Directors shall be held at the annual members meeting upon a majority vote taken on each Directorship.

B. Except as to vacancies arising from removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the remaining Directors.

C. Any Directors may be removed by concurrence of two-thirds (2/3rds) of the votes of the entire membership at a special meeting of the members called for that purpose. The vacancy in the Board of Directors so created shall be filled by the members of the Association at the same meeting.

D. Provided, however, that until the Developer has completed and sold all the units of the Regime, or until December 31, 2002, or until Developer elects to terminate its control of the Regime, whichever shall first occur, the Initial Directors of the Association shall serve, and in the event of vacancies the remaining Director shall fill the vacancy, and if there are not remaining Directors the vacancy shall be filled by the Developer.

3. **TERM:** Except as otherwise provided herein, the terms of each director's service shall be two (2) years and thereafter until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided.

4. **ORGANIZATIONAL MEETING:** The organizational meeting of a newly elected Board of Directors shall be held within ten (10) days of its election at such place and time as shall be fixed by the directors at the meeting at which they were elected and no further notice of the organizational meeting shall be necessary.

5. **REGULAR MEETINGS:** Regular Meetings of the Board of Directors may be held not less often than once each quarter at such time and place as shall be determined from

time to time by a majority of the Directors. Notice of regular meetings shall be given to each director personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting unless such notice is waived in writing. Any such waiver may be given prior to, at or within ten (10) days of the meeting.

6. **SPECIAL MEETINGS:** Special Meetings of the directors may be called by the President at any time and must be called by the Secretary at the written request of not less than one-third of the directors. Not less than three (3) days notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Notice of Special Meetings may be waived as in the case of regular meetings. In the case of genuine emergency certified to by a majority of the Board of Directors, special meetings may be held upon call of any Director.

7. **WAIVER OF NOTICE:** Any Director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

8. **QUORUM:** A Quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except where approval by a greater number of Directors is required by the Master Deed establishing the Regime, the Act, the Charter of the Association or these By-Laws.

9. **ADJOURNED MEETINGS:** If at any meeting of the Board of Directors there is less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

10. **JOINDER IN MEETING BY APPROVAL OF MINUTES:** The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such Director for the purpose of determining a quorum.

11. **PRESIDING OFFICER:** The presiding officer of Directors' meetings shall be the Chairman of the Board if such an officer has been elected by the Board of Directors; and if none, then the President shall preside. In the absence of such presiding officers, the Directors present shall designate one of their number to preside. The Chairman of the Board must be a member of the Board of Directors.

12. **ORDER OF BUSINESS:** The order of business at Directors' meetings shall be:

- (a) Calling of Roll.
- (b) Proof of due notice of meeting.
- (c) Reading and handling of any unapproved minutes.
- (d) Reports of officers and Committees.
- (e) Election of officers.
- (f) Unfinished business.
- (g) New business.

(h) Adjournment.

13. **DIRECTORS' FEES:** Directors shall be reimbursed for reasonable out of pocket expenses as determined and approved by the members of the Association, but shall not be paid a fee for serving as a Director.

SECTION IV POWERS AND DUTIES OF THE BOARD OF DIRECTORS

All of the powers and duties of the "Council of Co-owners" and of the Association, shall be exercised by the Board of Directors (acting directly or through its agents, contractors or employees) including those existing under the Act, the Articles of Incorporation, these By-Laws and the documents establishing the Regime. Such powers and duties of the Directors shall be exercised in accordance with the provisions of the said documents, and shall include but not be limited to the following:

1. To make and collect assessments against members to defray the costs of the Regime.
2. To use the proceeds of assessments in the exercise of its powers and duties.
3. To provide for the maintenance, repair, replacement and operation of the Regime property.
4. To provide for the reconstruction of improvements after casualty and the further improvement of the property.
5. To make and amend regulations with respect to the use of the Regime property.
6. To enforce by legal means the provisions of the Regime documents including without limitation the Master Deed, the Articles of Incorporation of the Association, these By-Laws, the Rules and Regulations, and the applicable provisions of the Act.
7. To enter into Management Agreements and contract for the maintenance and care of the Regime property and to delegate to such contractor all powers and duties of the Association except as are specifically required by the Regime documents to have approval by the Board of Governors or the membership of the Association or any portion thereof.
8. To pay taxes and assessments which are liens against any property of the Regime other than the individual units and the appurtenances thereto, and to assess for payment of same.
9. To purchase and carry insurance for the protection of unit owners and the Association against casualty and liability.

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10. To pay the cost of all power, water, sewer and other utilities services rendered to the Regime and not billed to owners of individual units.

11. To employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of this Association.

12. To indemnify and hold harmless, or to protect by the purchase of appropriate insurance, on behalf of the Association, members of the Board of Directors appointed by Developer, including successor Directors appointed by Developer, for action taken in good faith in their capacity as Directors of the Association.

SECTION V OFFICERS

1. **EXECUTIVE OFFICERS:** The executive officers of the Association shall be a President, who shall be a Director, a Vice President, who shall be a Director, a Treasurer and a Secretary, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by vote of the Directors at any meeting. Any person may hold two or more offices except that the President shall not also be the Secretary. The Board of Directors shall from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association. The Board of Directors may select from itself a Chairman of the Board.

2. **PRESIDENT:** The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of the President of an association, including, but not limited to, the power to appoint committees from among the members from time to time, as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the Association.

3. **VICE PRESIDENT:** The Vice President shall in the absence or disability of the President exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

4. **SECRETARY:** The secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving and serving of all notices to the members and Directors and other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of secretary of an association and as may be required by the directors or the President.

5. **TREASURER:** The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He shall keep the books

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of the Association in accordance with good accounting practices; and he shall perform all other duties incident to the office of the Treasurer.

6. **COMPENSATION:** The compensation of all officers and employees of the Association shall be fixed by the Directors. The provision that the Directors' fee shall be determined by the members shall not preclude the Board of Directors from employing a Director as an employee of the Association nor preclude the contracting with a Director for the management of the Regime.

SECTION VI MAINTENANCE, UPKEEP AND REPAIR

Responsibility for the maintenance of the property of the Regime shall be as follows:

1. Units.

(a) By the Association. The Association shall maintain, repair and replace at the Association's expense:

(i) All common elements, including portions of a unit, except interior surfaces, contributing to the support of the Building, which portions shall include but not be limited to load-bearing columns and load-bearing walls, all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services contained in the portions of a unit maintained by the Association; and all such facilities contained within a unit that service part or parts of the Regime, including other units, other than the unit in which they are contained. Interior surfaces of a unit shall be maintained by the Co-owner.

(ii) All incidental damage caused to a unit by such work shall be promptly repaired at the expense of the Association.

(b) By the Co-owner. The responsibility of the Co-owner shall be as follows:

(i) To maintain, repair and replace at his expense all portions of his unit other than those portions to be maintained, repaired and replaced by the Association, including, but not limited to, service equipment, such as dishwasher, refrigerator, oven, stove, hot water heater, whether or not such items are built-in equipment, and interior fixtures, such as electrical and plumbing fixtures, and floor and wall coverings. Such shall be done without disturbing the rights of other Co-owners.

(ii) No Co-owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of the regime property, including the building(s) thereon.

(iii) To promptly report to the Association any defect or need for repairs, the responsibility for the remedying of which is that of the Association.

2. Common elements.

(a) By the Association. The maintenance and operation of the common elements, both general and limited, shall be the responsibility of the Association and a common expense; provided, however, that in case of emergency and in order to preserve the property or for the safety of the occupants, a Co-owner may assume the responsibility therefor, and he shall be relieved of liability for his acts performed in good faith and reimbursed for his expense by the Association when approved by its Board of Directors.

(b) The Association shall have the power to determine the use to be made of the common elements from time to time, unless the use thereof is otherwise specifically provided for herein or in the Master Deed, provided that no such use shall discriminate against a Co-owner except as may be provided in the Master Deed or exhibits thereto. The Association may establish reasonable charges to be paid to the Association for the use of general common elements not otherwise inconsistent with other provisions of the Master Deed, the Charter or these By-Laws.

SECTION VII
FISCAL MANAGEMENT

The making and collection of assessments against Co-owners for common expenses shall be pursuant to the following provisions:

1. ASSESSMENTS: The Association shall assess each Co-owner, including the Developer, for his proportionate share of the common expenses, such share being the same as the undivided share of such Co-owner in the general common elements appurtenant to his unit, which assessment shall be made and collected in the manner hereinafter provided, and all such assessments shall be adjusted based on actual costs to the Association.

2. ACCOUNTS: The funds and expenditures of the Association shall be credited and charged according to good accounting practices consistently applied to accounts under the following classifications (and such further classification as may be determined from time to time) as shall be appropriate, all of which expenditures shall be common expenses unless other provided:

(a) "Current expense", which shall include all funds and expenditures to be made within the year for which the funds are budgeted, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves, to additional improvements or to operations. The balance in this fund at the end of each year shall be applied to reduce the assessments for current expense for the succeeding year.

(b) "Reserve for deferred maintenance", which shall include funds for maintenance items which occur less frequently than annually.

(c) "Reserve for replacement", which shall include funds for repair or replacement required because of damage, depreciation or obsolescence.

(d) "Additional improvements", which shall include the funds to be used for capital expenditures for additional improvements or additional personal property which will be part of the common elements. If capital funds and expenditures are for alterations or further improvements of common elements, the cost thereof shall be charges to the Co-owners of units in the manner elsewhere provided.

3. BUDGET: The Board of Directors of the Association shall adopt a budget for each calendar year which shall include the estimated funds required to defray the common expense and to provide and maintain funds for the following accounts and reserves (and such further accounts and reserves as the Board may determine from time to time) according to good accounting practices as follows:

(a) "Current expense"

(b) "Reserve for deferred maintenance"

(c) "Reserve for replacement"

(d) "Additional improvements". Provided, however, that no item for this account shall be budgeted without the approval of the Co-owners in the manner elsewhere provided for alteration or further improvement of the common elements.

(e) Provided, however, that until the Developer has completed and sold all of the units of the Regime or until December 31, 2002, or until Developer elects to terminate its control of the Regime, whichever shall first occur, the Board of Directors may omit from the budget all allowances for contingencies and reserves.

(f) "Notice of Budget". Copies of the budget and proposed assessments shall be transmitted to each Co-owner on or before the December 1st preceding the year for which the budget is made. If the budget is subsequently amended, a copy of the amended budget shall be furnished to each Co-owner.

4. ASSESSMENT PROCEDURE.

(a) ANNUALLY; INSTALLMENTS: Assessments against the Co-owners for their shares of the items of the budget shall be mailed for the calendar year annually in advance on or before December 20th preceding the year for which the assessments are made. Such assessments shall be due in twelve (12) equal installments on the first day of each month of the year for which the assessments are made. If an annual assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior assessment and monthly payments thereon shall be due upon each installment payment date until changed by an amended assessment. In the event the annual assessment proves to be insufficient, the budget and assessments therefor may be amended at any time by the Board of Directors of the

Association. The unpaid assessment for the remaining portion of the calendar year for which the amended assessment is made shall be due in equal monthly installments on the first day of each month thereafter during the year for which the assessment is made. The first assessment shall be determined by the Board of Directors of the Association.

(b) **ACCELERATION OF ASSESSMENT INSTALLMENTS UPON DEFAULT.** If a Co-owner shall be in default in the payment of an installment upon an assessment, the Board of Directors of the Association may accelerate the remaining installments of the assessment upon notice thereof to the Co-owner, and thereupon the unpaid balance of the assessment shall come due upon the date stated in the notice, which date shall be not less than 10 days after delivery thereof to the Co-owner, nor less than 20 days after the mailing of such notice to him by registered or certified mail, whichever shall first occur.

(c) **ASSESSMENTS FOR EMERGENCIES.** Assessments for emergency common expenses which cannot be paid from the annual assessments for common expenses shall be made only after notice of the need therefor to the Co-owners concerned. After such notice and upon approval in writing by Co-owners owning fifty-one (51%) percent or more of the common elements owned by the Co-owners concerned, the assessment shall become effective, and it shall be due after thirty (30) days' notice thereof in such manner as the Board of Directors of the Association shall require.

5. **LIABILITY FOR ASSESSMENTS.** A Co-owner shall be liable for all assessments coming due while he, she or it is the owner of a Unit. The Association shall provide for the Issuance, and shall issue to every prospective purchaser, or mortgagee, upon his, her or its request, a statement of the status of the assessment account of the seller or mortgagor. Such a certificate made by the duly authorized representative of the Association as to the status of a Co-owner's assessment account shall limit the liability of any person for whom it is made and who shall justifiably rely thereon, other than the Co-owner.

6. **COLLECTION OF ASSESSMENTS.**

(a) **INTEREST; APPLICATION OF PAYMENTS.** Assessments and installments thereon paid on or before ten (10) days after the date when due shall not bear interest, but all sums not paid on or before ten (10) days after the date when due shall bear interest at the lesser of eighteen percent (18%) or the maximum legal rate from the date when due until paid. All payments upon account shall be first applied to interest and then to the assessment payment first due.

(b) **LIEN.** All assessments against any Co-owner shall constitute a lien against the Co-owner's Unit in favor of 3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC., as provided by the Act, which lien shall become effective when a notice, claiming such lien, has been duly recorded by the Association in the RMC Office for Charleston County, South Carolina. Such claim of lien shall state the description of the Unit, the name of the record owner, and the amount due and the date when due. Such claim of lien shall be signed and verified by an officer or agent of the Association prior to its being recorded; and no such claim of lien shall be made by the Association unless the assessment, charge or expense, giving

rise to the lien, remains unpaid for more than ten (10) days after same becomes due. Any such lien may be foreclosed by the Association in the manner provided by law for the foreclosure of real estate mortgages. The lien shall secure the payments of all assessments as described in said claim of lien and, in addition thereto, shall secure the payment of subsequent assessments which come due after the filing of the claim of lien and prior to the satisfaction of such lien by foreclosure or otherwise, including interest thereon as provided herein together with all costs and reasonable attorneys' fees incurred by the Association incident to the collection of such assessments or the enforcement of such lien. If foreclosure suit is not commenced within one (1) year after the date of filing such a claim of lien, such claim shall not thereafter be foreclosed, nor shall such claim thereafter constitute a lien on the unit described in such claim. The right of the Association to foreclose a lien as aforesaid shall be in addition to any other remedy, at law or in equity, which may be available to it for the collection of the monthly charges and expenses, including the right to proceed personally against any delinquent owner for the recovery of a judgment "in personam". Any personal judgment against any such delinquent Co-owner may include all unpaid subsequent assessments which come due after the institution of such suit and prior to such Order of Judgment, including interest thereon as provided herein, together with all costs and reasonable attorneys' fees incurred by the Association incident to the collection of such assessments.

(c) RENTAL PENDING FORECLOSURE. In any foreclosure of a lien for assessments, the Association shall, pending foreclosure, be entitled to the appointment of a receiver who shall collect a reasonable rental for the use of the unit subject to the lien, which rental shall be applied to the obligations of the Co-owner after deductions for costs of the receivership.

7. ABATEMENT OF ASSESSMENTS: Assessments provided for herein shall abate during the period for which any unit shall be both (a) owned by a foreclosing mortgagee pursuant to the sale at foreclosure or a deed in lieu of foreclosure, and (b) unoccupied.

8. ASSESSMENTS LIEN SUBORDINATE TO MORTGAGE LIEN: The lien of the assessments provided for herein shall be subordinate to the lien of any first-lien mortgage(s) now or hereafter placed upon the properties subject to the assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or any other proceedings in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments.

SECTION VIII INSURANCE

1. Insurance policies upon the property, covering the items described hereinbelow, shall be purchased by 3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC. for the benefit of the Association and the Co-owners of the Units and their respective mortgagees, as their interests may appear. Provision shall be made for the issuance of certificates of insurance,

with mortgagee endorsements, to the mortgagees of all Co-owners. Such policies and endorsements shall be deposited with the Association, which shall hold them.

2. Insurance shall cover the following when available:

(a) All buildings and improvements upon the land and all personal property included in the common elements but excluding the Units, coverage for which shall be the responsibility of each Co-owner, in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, flood and earthquake insurance and such other risks as are customarily covered with respect to buildings and improvements similar to the buildings and improvements on the land, such as, but not limited to, vandalism and malicious mischief;

(b) Public liability in such amounts and with such coverage as shall be determined by the Board of Directors of the Association, including, but not limited to, hired automobile and non-owned automobile coverages, and with cross liability endorsement to cover liabilities of the Co-owners of all Units as a group to a Unit Co-owner;

(c) Workmen's Compensation (if required);

(d) Such other insurance as the Board of Directors of the Association shall from time to time determine to be desirable.

3. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense.

4. The Association is hereby irrevocably appointed agent for each Co-owner to adjust all claims arising under insurance policies purchased by the Association, and to execute and deliver releases upon payment of claims.

5. The Association shall receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated herein for the benefit of the Co-owners and their mortgagees, in the following shares:

(a) Proceeds on account of damage to common elements shall consist of an undivided share for each Co-owner, such share being the same as the undivided share of such Co-owner in the common elements appurtenant to his, her or its Unit.

(b) Proceeds on account of damage to Units shall be held for the Co-owners thereof in proportion to the cost of repairing the damage suffered by each Co-owner, which costs shall be determined by the Association. In the event a decision is made not to reconstruct the Units, as provided hereinafter and in the Act, such proceeds shall be held for the Co-owners in the proportion in which they own the common elements.

(c) In the event a mortgagee endorsement has been issued as to an Unit, the share of the Co-owner shall be held in trust for the mortgagee and the Co-owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired.

6. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial owners in the following manner:

(a) All expenses of the Association in administering the funds shall be paid or provisions made for payment.

(b) If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the costs thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to Co-owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by him.

(c) If it is determined in a manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to Co-owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by him.

7. In making distribution to Co-owners and their mortgagees, the Association may rely upon the records of the Association as to the names of the Co-owners and their respective shares of the distribution.

8. No provisions of this Paragraph, the Master Deed, nor these By-Laws, shall be deemed to prevent or prohibit any Co-owner from obtaining additional insurance on his, her or its unit for his, her or its own account and benefit; from insuring such furniture, furnishings, or other personal property as they may have in their individual unit, for their own individual account and benefit; or from obtaining such additional public liability coverage as they may desire for their own individual protection. No Co-owner shall, however, insure any part of the common elements whereby, in the event of loss thereto, the right of the Association to recover the insurance indemnity for such loss, in full, shall be diminished or impaired in any way.

SECTION IX RECONSTRUCTION OR REPAIR AFTER CASUALTY

1. In the event of fire or other disaster or casualty resulting in damage to a building or buildings and common elements of the Regime which the Board of Directors of the Association shall determine to be two-thirds or less of the then total value of the property of the Regime, the net proceeds of all insurance collected shall be made available for the purpose of restoration or replacement. When such insurance proceeds are insufficient to cover the cost of

such reconstruction or replacement, the balance of such costs shall be assessed against the Co-owners in the case of damage to common elements and against the Co-owners who own the damaged Units in the case of damage to Units. Such assessments on account of damage to common elements shall be in proportion to the Co-owner's share in the common elements, and assessments against Co-owners for damage to Units shall be in proportion to the costs of reconstruction and repair of their respective units.

2. In the event the buildings and improvements of the Regime are damaged or destroyed to more than two-thirds of the then total value of the property of the Regime as determined by the Board of Directors of the Associations, the members of the Association shall be polled in writing via United States Mail by the Association as to whether the Regime shall be waived or the damaged property reconstructed and repaired. The Regime shall be waived unless within ninety (90) days after the mailing of such notices all of the Co-owners agree in writing to repair and reconstruct the buildings and improvements of the Regime. If the election is to repair and reconstruct the buildings and improvements of the Regime, payment of the costs thereof shall be made as provided for in paragraph 1 of this Section IX. If the decision is to waive the Regime and not reconstruct and repair, all sums recovered from insurance shall be paid over jointly to the Co-owners in the proportion in which they own the common elements and to their respective mortgagees, as their interest may appear.

3. The Association may rely upon a certificate of the Board of Directors to determine whether or not the damaged property is to be reconstructed or repaired or whether the Regime is to be waived.

4. Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair so as to place the damaged property in condition as good as that before the casualty.

5. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements which are shown on the exhibits attached to the Master Deed; or if not, then according to plans and specifications approved by the Board of directors of the Association. The approvals herein required shall not be unreasonably withheld.

SECTION X OPTION TO PURCHASE

Any transfer of ownership of a unit must be approved by the Association, as set forth in the Master Deed.

**SECTION XI
FUNDS**

1. **DEPOSITORY:** The depository of the Association shall be such bank or banks as shall be designated from time to time by the Directors and in which the moneys of the Association shall be deposited. Withdrawal of moneys from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

2. **AUDIT:** An examination and report of the accounts of the Association shall be made annually by a certified public accountant, a copy of which shall be furnished, or made available, to each member not later than April 1 of the year following the year for which the examination is made. An audit of the accounts of the Association shall be made upon demand in writing by Co-owners representing fifty-one (51%) percent or more of the basic value of the property as a whole.

3. **FIDELITY BONDS:** Fidelity bonds may be required by the Board of Directors from all persons handling or responsible for Association funds. The amount of such bonds shall be determined by the Directors, but shall be at least one-half of the amount of the total annual assessments against members for common expenses. The premium on such bonds shall be by the Association.

**SECTION XII
NON-LIABILITY AND INDEMNITY OF DIRECTORS AND OFFICERS**

1. No Director or officer of the Association shall be liable for acts, defaults or neglects of any other Director or officer or member or for any loss sustained by the Association or any Co-owner, unless the same shall have resulted from his own willful or negligent act or omission.

2. Every Director and officer of the Association shall be indemnified by the Association against all reasonable costs, expenses and liabilities (including counsel fees) actually and necessarily incurred by or imposed upon him in connection with or resulting from any claim, action, suit, procedure, investigation, or inquiry as to whatever nature in which he may be involved as a part or otherwise by reason of his being or having been a Director or officer of the Association whether or not he continues to be such Director or officer at the time of incurring or imposition of such costs, expenses, or liabilities, except in relation to matters as to which he shall be finally adjudged in such action, suit, proceeding, investigation, or inquiry to be liable for willful misconduct or willful neglect in the performance of his duties. As to whether a Director or officer is liable by reason of willful misconduct or willful neglect in the performance of his duties, in the absence of such final adjudication of the existence of such liability, the Association and each member thereof and officer thereunder may conclusively rely on an opinion of legal counsel selected by the Association. The foregoing right of indemnification shall be in addition to and not in limitation of all other rights to which such person may be entitled as a matter of law, and such shall inure to the benefit of the legal representative of such person.

**SECTION XIII
DEFINITIONS**

1. The members of the Association shall be all the Co-owners of the property.
2. The majority of members or majority of Co-owners means members (Co-owners) owning fifty-one percent or more of the basic value of the property as a whole, as set forth in the Master Deed.
3. All definitions set forth in the Master Deed are incorporated by reference herein.

**SECTION XIV
PARLIAMENTARY RULES**

Roberts' Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the Charter and By-laws of the Association, the Master Deed establishing the Regime, or with the laws of the State of South Carolina.

**SECTION XV
AMENDMENTS**

These By-laws may be amended in the following manner:

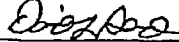
1. **NOTICE:** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.
2. **RESOLUTION:** A resolution for the adoption of the proposed amendment shall be presented to a meeting of the members of the Association. The affirmative vote of Co-owners representing at least two thirds of the total value of the property shall be required for approval of an amendment.
3. **PROVISO:** Provided, however, that no amendment shall discriminate against any Co-owner or against any Unit or class or group of Units unless the Co-owners so affected shall consent. No Amendment shall be made which is in conflict with the Act, the Charter of the Association or the Master Deed establishing the Regime. Until the Developer has completed or sold all of the units of the Regime or until December 31, 2002, or until Developer elects to terminate its control of the Association, whichever shall first occur, these By-laws shall not be amended without consent of the Developer in writing.
4. **EXECUTION AND RECORDING:** A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the officers of the Association with formalities of a deed. The amendment shall be effective when such certificate and a copy of the amendment are recorded in the RMC Office for Charleston County, South Carolina.

BK V390PG705.

The foregoing were adopted as By-laws of 3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC., a non-profit corporation existing under the laws of the State of South Carolina, at the first meeting of the Board of Directors on November 29, 2001.

 (SEAL)
John W. Wilcox, III, Secretary

APPROVED:


David L. Perdue, President

APPROVED:


David L. Perdue, Director

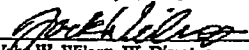

John W. Wilcox, III, Director

EXHIBIT "F"
TO MASTER DEED ESTABLISHING
3 CHISOLM STREET HORIZONTAL PROPERTY REGIME

RULES AND REGULATIONS OF 3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.

1. The walkways, entrances, halls, corridors and stairways shall not be obstructed or used by Unit owners for any purpose other than ingress to and egress from the Units.
2. The view of a Unit from the exterior and all exterior areas associated with, appurtenant to, or connected with a Unit shall not be painted, decorated, or modified by any owner in any manner without prior consent of the Association, which consent may be withheld on purely aesthetic grounds within the sole discretion of the Association. This provision shall apply without limitation to doors, windows, sliding doors, door frames, glass, window panes, window frames and balconies.
3. No article shall be hung or shaken from or attached to the doors, balconies or windows or placed upon the outside window sills or balconies of the Units without approval of the Association.
4. No bicycles, scooters, baby carriages or similar vehicles or toys or other personal articles shall be allowed to be or remain in any of the common areas except those areas designated for such use by the Association.
5. No owner shall make or permit any noises, including but not limited to amplified music, after 11:00 p.m. or odors that will or may disturb or annoy the occupants of any of the Units or do or permit anything to be done which will interfere with the rights, comfort or convenience of other owners.
6. Each owner shall keep his Unit in a good state of preservation and cleanliness and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors, balconies or windows thereof, any dirt or other substance.
7. No awnings, window guards, light reflective materials, hurricane or storm shutters, ventilators, fans or air conditioning devices or other devices visible from outside the building shall be used in or about the Unit except as shall have been approved by the Association, which approval may be withheld on purely aesthetic grounds within the sole discretion of Association.
8. If a Unit owner elects to install interior coverings on his exterior windows, he shall put either white backed curtains or blinds in such exterior windows.
9. Each Unit owner who plans to be absent from his Unit during the hurricane season, must prepare the Unit prior to departure by:

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- a. Removing all furniture, potted plants and other movable objects from any terrace and balcony; and securing all exterior windows and doors; and
 - b. Designating a responsible firm or individual satisfactory to the Association to care for his Unit should the Unit suffer hurricane damage. Such firm or individuals shall contact the Association for permission to install or remove hurricane shutters or any other device.
10. No sign, including but not limited to "Unit for Sale" signs, notice or advertisement shall be inscribed or exposed on or at any window or other part of the Units, except such as shall have been approved in writing by the Association, nor shall anything be projected out of any window in the Units or from any balcony without similar approval. No illuminated or fluorescent exterior sign will be permitted, nor will any sign which is not flush with the building be permitted.
11. All garbage and refuse from the Units shall be deposited with care in garbage containers intended for such purpose only at such times and in such manner as the Association will direct. All disposals shall be used in accordance with instructions given to the owner by the Association.
12. Waterclosets and other water apparatus in the buildings shall not be used for any purposes other than those for which they were constructed. Any damage resulting from misuse of any waterclosets or other apparatus shall be paid for by the owner in whose Unit such misuse shall have originated.
13. No owner shall request or cause any employee of the Association to do any private business of the owner, except as shall have been approved in writing by the Association.
14. Owners of Units shall keep and maintain any parking space or other area, which may be assigned to each owner, in a neat and sanitary condition at all times.
15. No radio or television aerial or antenna shall be attached to, or hung from, the exterior of the Units or the roof or the balcony by a Unit owner, nor shall any such aerial or antenna be installed by a Unit owner in any manner visible from the exterior of the building.
16. The agents of the Association and any contractor or workman authorized by the Association may enter any Unit at any reasonable hour of the day for any purpose permitted under the terms of the Master Decd, By-Laws of the Association or Management Agreement. Except in case of emergency, entry will be made by pre-arrangement with the owner.
17. No vehicle belonging to an owner or to a member of the family or guest, tenant or employee of an owner shall be parked in such manner as to impede or prevent ready access to and other owner's parking space. The owners, their employees, servants, agents, visitors, licensees and the owner's family will obey the parking regulations posted at the parking areas and drives and any other traffic regulations promulgated in the future for the safety, comfort and

convenience of the owners. No junked vehicle which cannot operate on its own power shall remain within the Regime property for more than seventy-two (72) hours, and no repair of vehicles shall be made within the Regime property.

18. The owner shall not cause or permit the blowing of any horn from any vehicle of which his guests or family shall be occupants, approaching or upon any other driveways or parking areas serving the Regime property.

19. All damage to the Units and/or common areas caused by the moving or carrying of any article therein shall be paid by the owner responsible for the presence of such article.

20. No owner shall use or permit to be brought into the Units any inflammable oils or fluids such as gasoline, kerosene, naphtha or benzene, or other explosives or articles deemed extra hazardous to life, limb or property.

21. The owners shall not be allowed to put their names on any entry of the Units or mail receptacles appurtenant thereto, except in the proper places and in the manner prescribed by the Association for such purpose.

22. The Association shall have the right to retain a passkey to each Unit. If a Co-owner shall alter any lock or install a new lock on any door leading into the Unit of such Co-owner, such Co-owner shall provide the Association with a key within 24 hours of such alteration or installation.

23. Any damage to the Buildings, recreational facilities (if any) or other common areas or equipment caused by any resident or his guests shall be repaired at the expense of such owner.

24. Parents shall be held responsible for the actions of their children and their guests.

25. Children shall not be allowed to play in the Common Areas without first obtaining permission from the Association.

26. Food and beverage may not be prepared or consumed in the Common Areas, except in accordance with the regulations which may be promulgated from time to time by the Association.

27. Complaints regarding the management of the Units and grounds or regarding actions of other owners shall be made in writing to the Association.

28. Any consent or approval given under these Rules and Regulations by the Association shall be revocable at any time.

29. The General Common Areas are solely for the use of the Regime residents and their invited guests subject to further regulation by the Association including, without limitation, hours of use, designated times for specified age groups, periods of reserved use, etc. The use of

any General Common Areas shall be at the risk of those involved and not in any event the risk of the Association or its Manager.

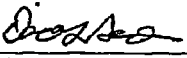
30. The regulations governing the use of the General Common Elements, permitted hours, guest rules, safety and sanitary provisions, and all other pertinent matters shall be in accordance with regulations adopted from time to time by Association and posted in the recreational areas.

31. Birds or animals may be kept or harbored in the Regime conditioned on such terms as the Association in its sole discretion deem to be in the best interests of the Regime as a whole. In no event shall dogs or cats or other four-footed animals be permitted in any of the common areas of the Regime unless restrained by a leash, and only in such places as may from time to time be designated by the Association. The owner shall indemnify the Association and hold it harmless against any loss or liability of any kind or character whatsoever arising from or growing out of having any bird or animal in the Regime. If a bird, dog or other animal become obnoxious to other owners by barking or otherwise, the owner thereof must cause the problem to be corrected; or if it is not corrected, the owner, upon written notice by the Association, will be required to have the animal removed from the premises.

32. The Association may enforce the within rules and regulations, and such further regulations provided for hereunder, as provided in the Master Deed, the South Carolina Horizontal Property Act, the Charter of 3 Chisolm Street Homeowners Association, Inc. or the By-laws of the Association, or by appropriate legal action.

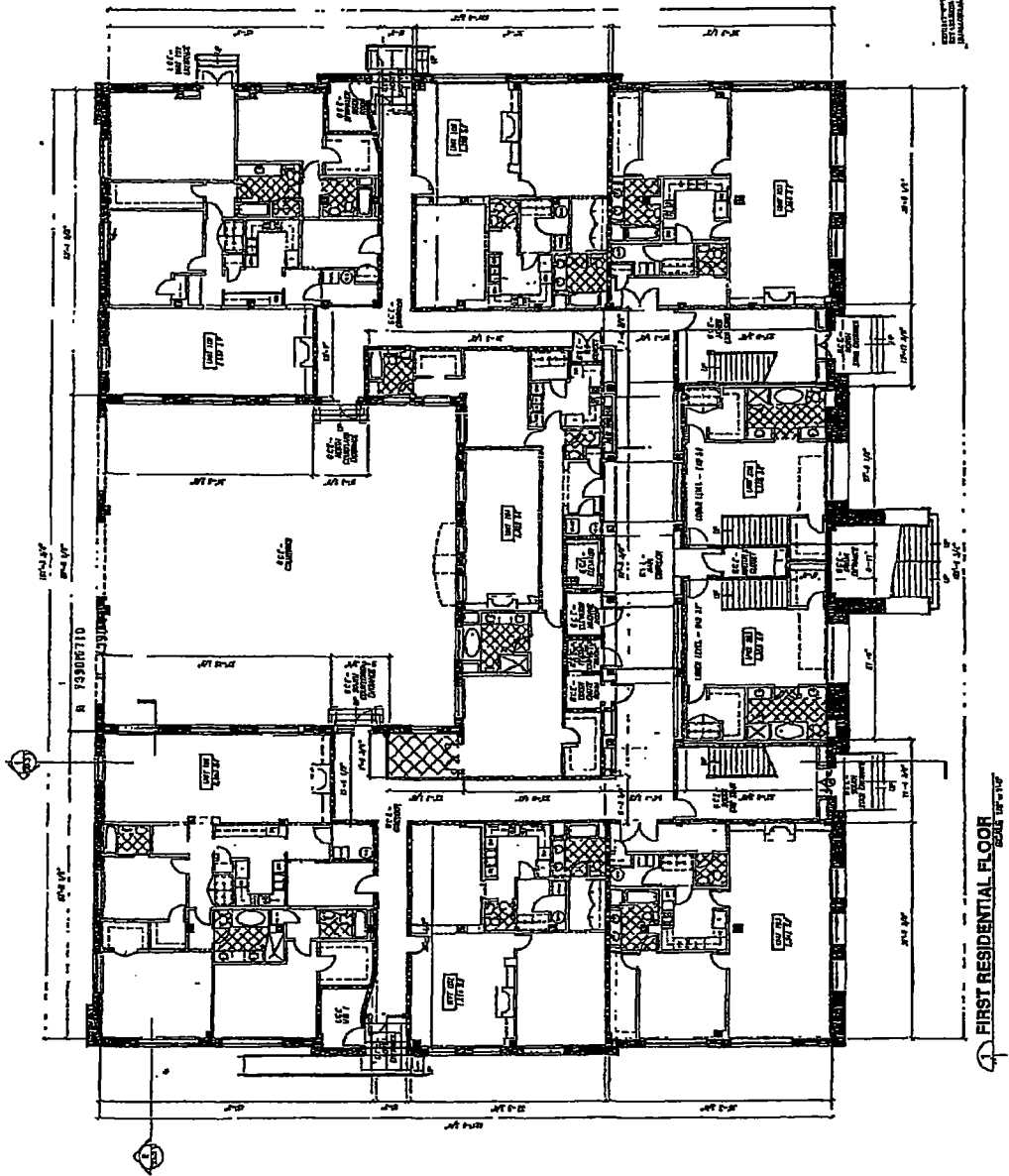
These Rules and Regulations may be modified, added to, or repealed at any time by the Association.

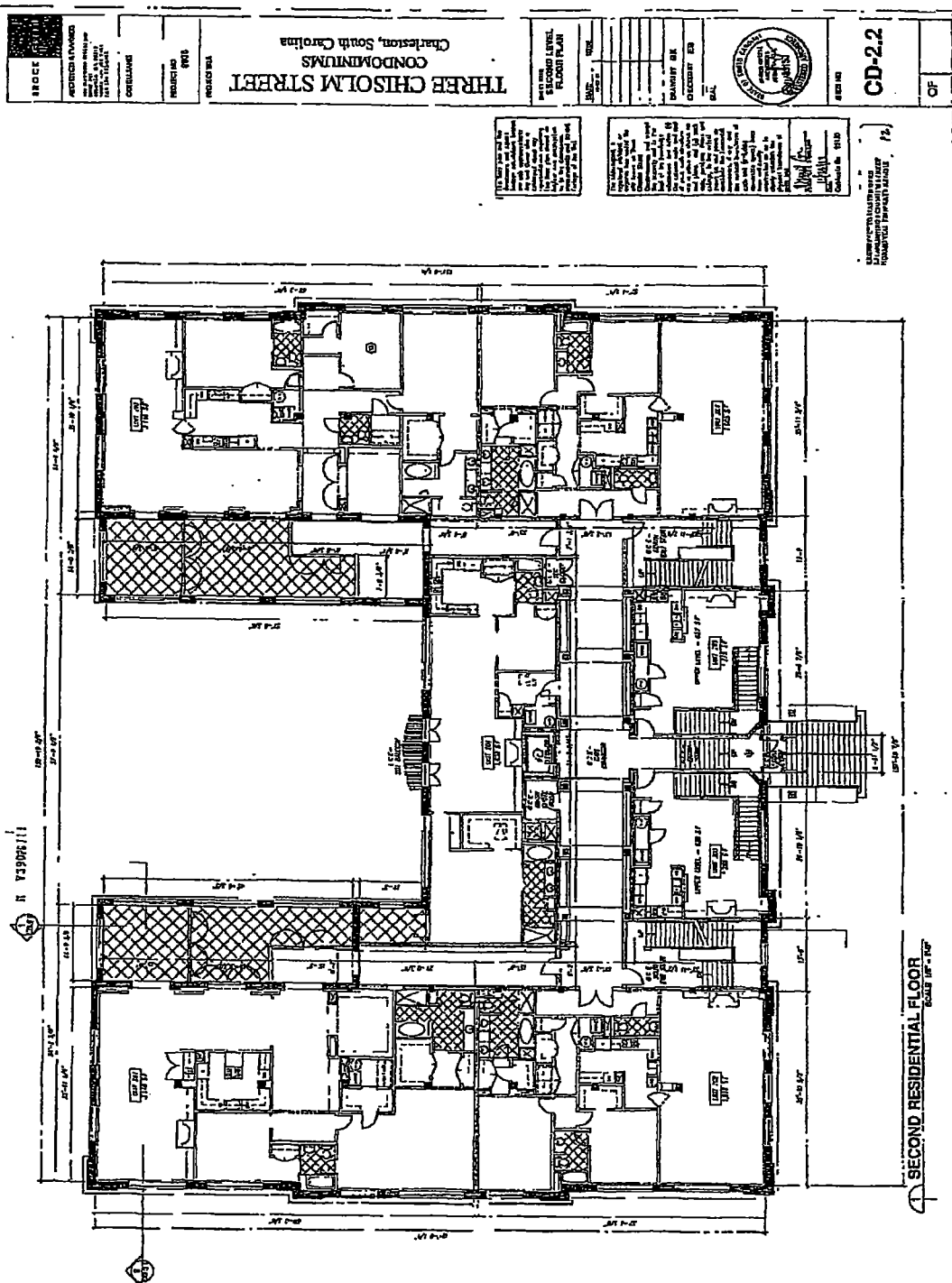
By order of the Board of Directors,
3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.

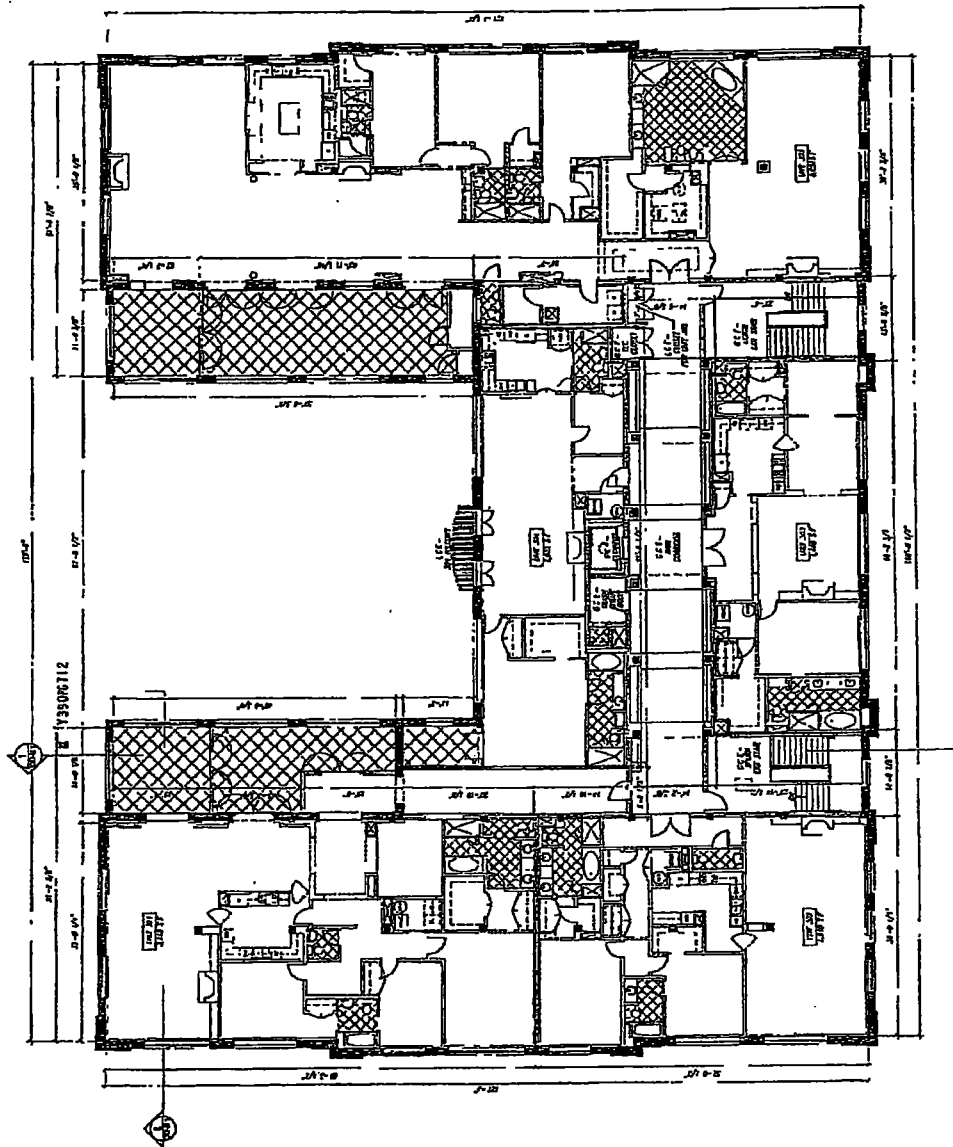
By: 
David L. Perdue, Chairman

November 29, 2001, 2001
(Dated)

33002 APPROVED PLANNING DATE: 10/10/1991 BY: [Signature] FOR: [Signature]	CD-2.1 SHEET NO.	OF
THREE CHISOLM STREET CONDOMINIUMS Charleston, South Carolina		
CONTRACTOR PROJECT NO.	DRAWN BY: [Signature] CHECKED BY: [Signature]	SCALE:
FIRST FLOOR FLOOR PLAN		

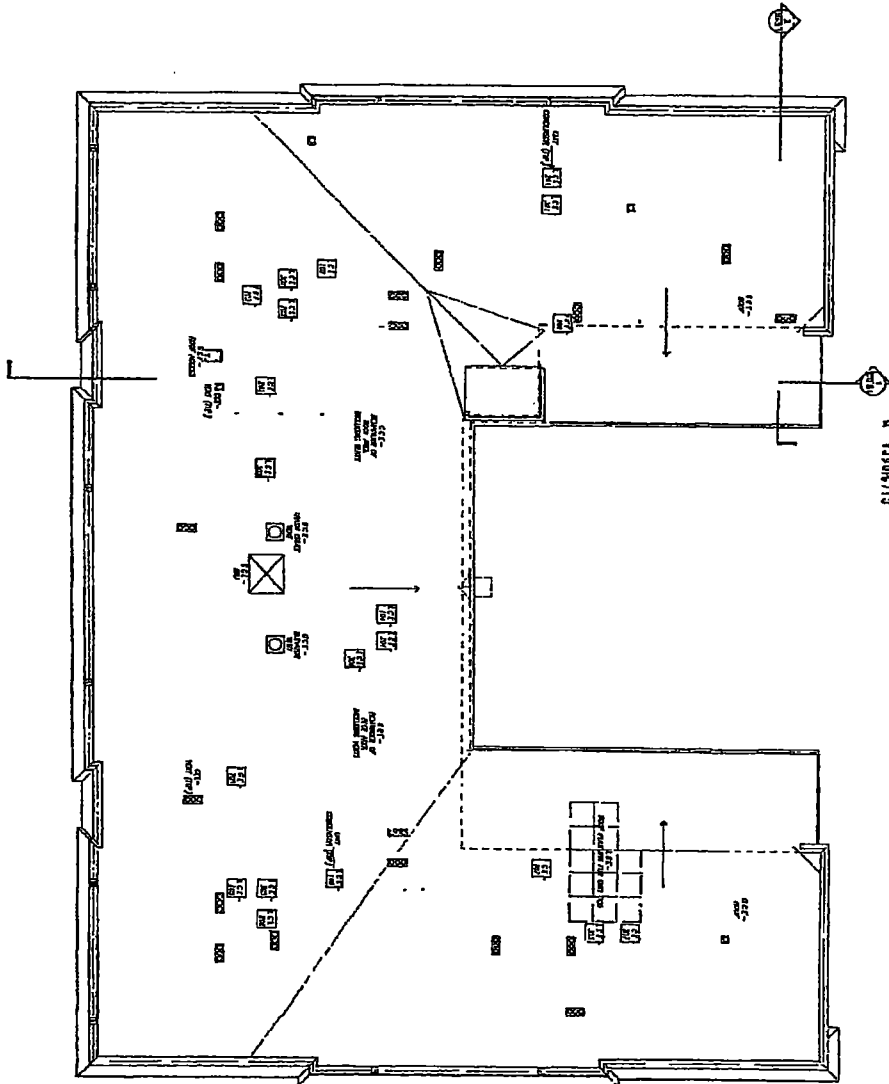






THIRD RESIDENTIAL FLOOR
SCALE 1/8" = 1'-0"

ROOF PLAN



THREE CHISOLM STREET
CONDOMINIUMS
CHARLESTON, SOUTH CAROLINA

THESE PLANS WERE PREPARED BY THE ARCHITECT FOR THE PURPOSE OF OBTAINING A PERMIT TO CONSTRUCT THE BUILDING SHOWN THEREON. THEY ARE NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT.

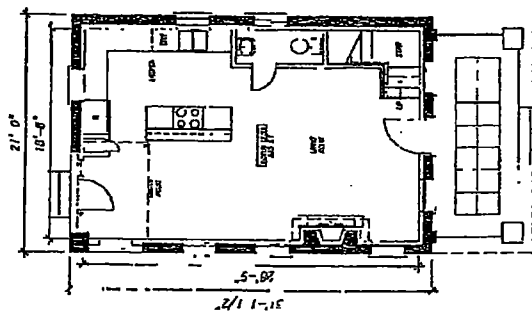
THESE PLANS WERE PREPARED BY THE ARCHITECT FOR THE PURPOSE OF OBTAINING A PERMIT TO CONSTRUCT THE BUILDING SHOWN THEREON. THEY ARE NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT.

CD-2.4		THREE CHISOLM STREET CONDOMINIUMS Charleston, South Carolina		APPROVED FOR PERMIT DATE: 10/1/88 BY: [Signature]		RECEIVED DATE: 10/1/88 BY: [Signature]	
OF		NO. 10		NO. 10		NO. 10	

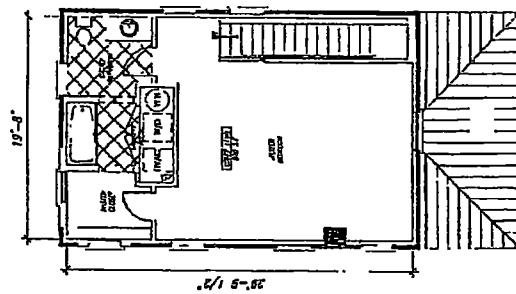


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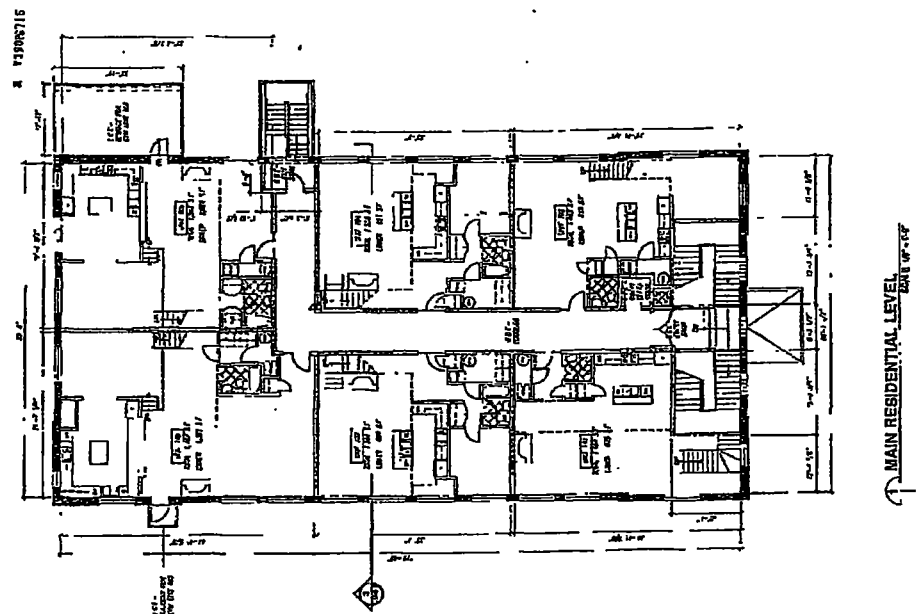
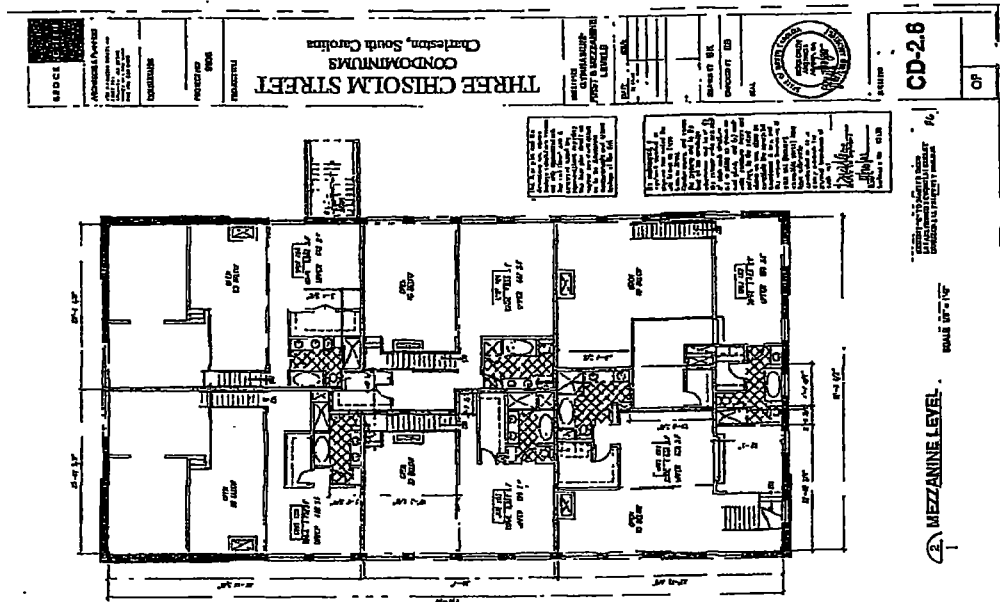
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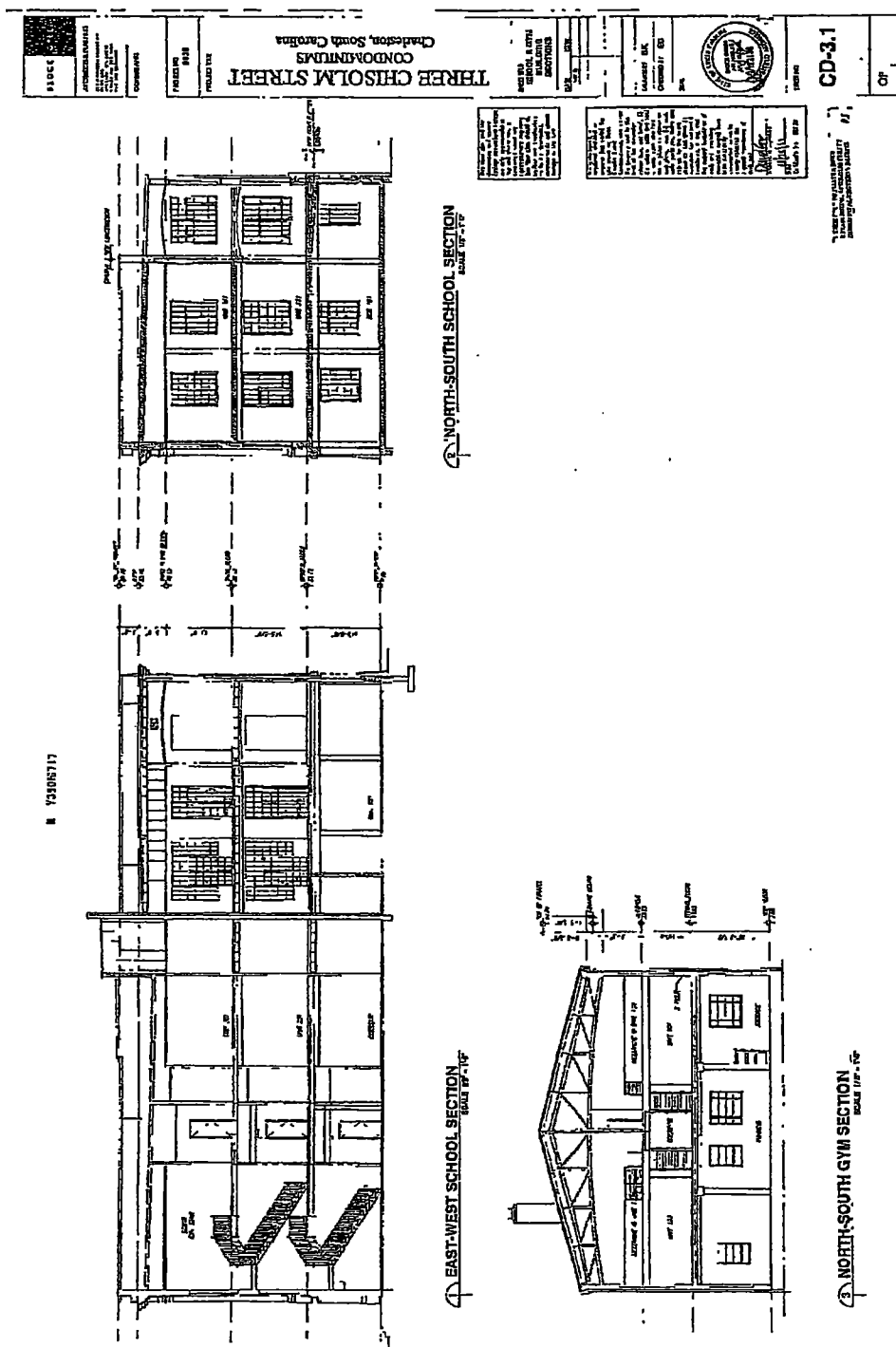


① COTTAGE FIRST LEVEL DATE: 6-1-19

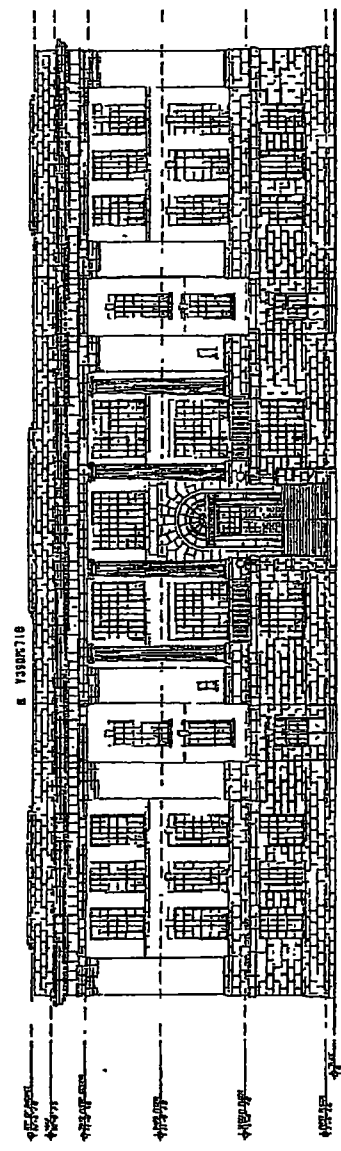


2 COTTAGE SECOND LEVEL

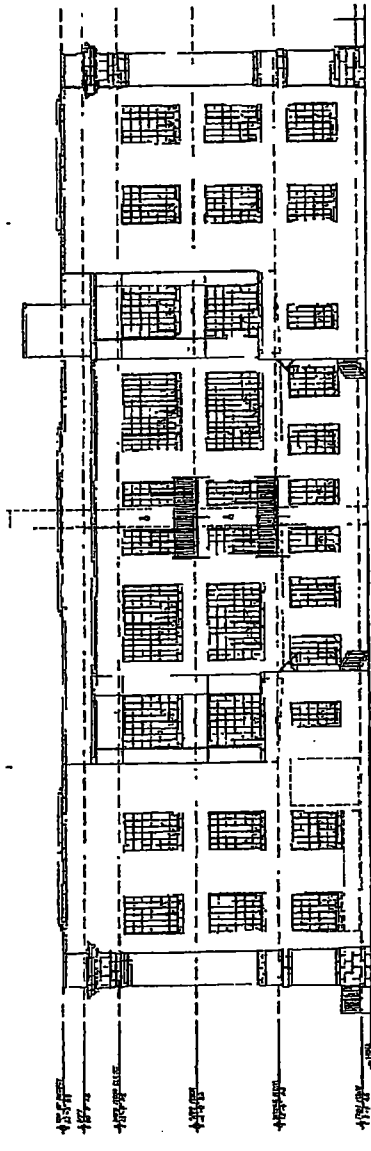




THREE CHISOLM STREET Charleston, South Carolina		CD-3.2 OF
PROJECT NO. 11002	DRAWN BY SECURITY 89	CHECKED BY SECURITY 89
CONTRACT NO. 11002		
CONTRACTOR SECURITY 89		
ARCHITECT SECURITY 89		



EAST ELEVATION
SCALE 1/8" = 1'-0"



WEST ELEVATION
SCALE 1/8" = 1'-0"

NOTES:
1. SEE PLAN FOR WINDOW SIZES AND LOCATIONS.
2. SEE SECTION FOR FLOOR FINISHES.
3. SEE SECTION FOR ROOF FINISHES.
4. SEE SECTION FOR FOUNDATION FINISHES.
5. SEE SECTION FOR EXTERIOR FINISHES.
6. SEE SECTION FOR INTERIOR FINISHES.
7. SEE SECTION FOR MECHANICAL FINISHES.
8. SEE SECTION FOR ELECTRICAL FINISHES.
9. SEE SECTION FOR PLUMBING FINISHES.
10. SEE SECTION FOR HEATING FINISHES.
11. SEE SECTION FOR COOLING FINISHES.
12. SEE SECTION FOR INSULATION FINISHES.
13. SEE SECTION FOR PAINT FINISHES.
14. SEE SECTION FOR CARPET FINISHES.
15. SEE SECTION FOR TILE FINISHES.
16. SEE SECTION FOR STONE FINISHES.
17. SEE SECTION FOR BRICK FINISHES.
18. SEE SECTION FOR CONCRETE FINISHES.
19. SEE SECTION FOR METAL FINISHES.
20. SEE SECTION FOR WOOD FINISHES.

SECURITY 89
ARCHITECTURAL FIRM
11002



3 SOUTH ELEVATION @ COURTYARD
SCALE: 1/8" = 1'-0"

4 SOUTH ELEVATION

SALES ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11/18/2011 BY 60324
CLASSIFICATION AUTHORITY

CD-3.3

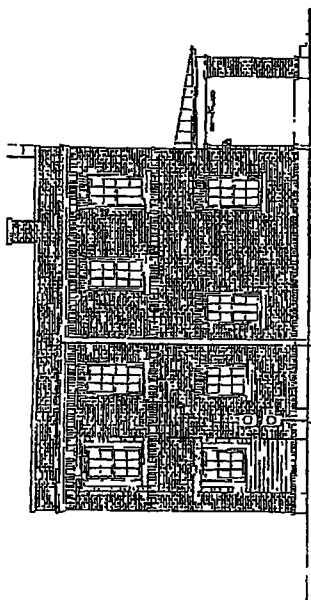


THREE CHISOLM STREET
CONDOMINIUMS
Charleston, South Carolina

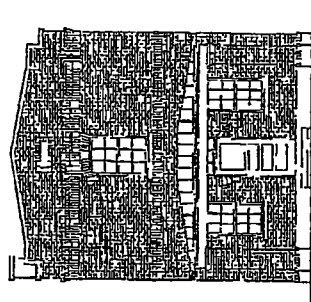
ELEVATORS
 NORTH & SOUTH
 TROCHES
 194.00

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

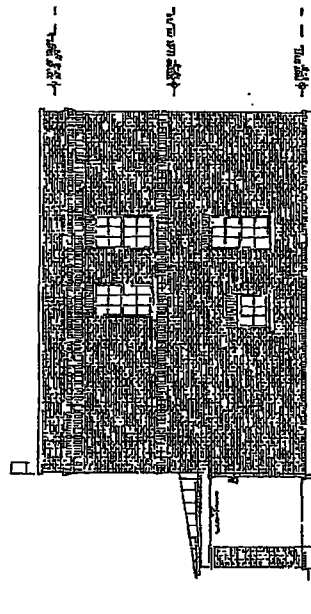
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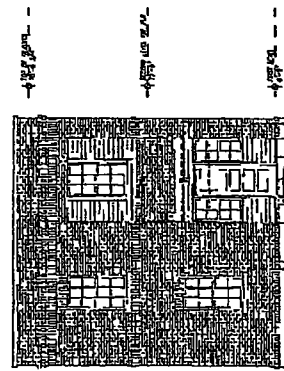
SOUTH ELEVATION



2 EAST ELEVATION



3 NORTH ELEVATION



4 WEST ELEVATION

[illegible]

EX V390PG722

RECORDER'S PAGE

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the original document.



Moore & Van Allen
PO Box 22828
Charleston, SC 29413

Filed, Indexed and Recorded

2001 DEC 13 PM 3:03
DATE TIME

Book *V390* Page *659*

Chetford
Register Mesne Conveyance
Charleston County, S.C.

Recording
Fee 69.00

State
Fee _____

County
Fee _____

Postage _____

TOTAL 69.00 B

OK
City

OK Party, Developer's Name

TMS VERIFIED
BAC _____
DTD _____

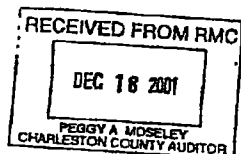


EXHIBIT D

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
CASE NO. 02-CP-10-3090

CHISOLM STREET PARTNERS, LLC,)

Plaintiff,

vs.

SANDRA W. BURNETT,

Defendant.

ANSWER AND COUNTERCLAIM

2002 SEP 18 PM 4:32
J. J. HARRIS
CLERK OF COURT

Defendant, Sandra W. Burnett, answering Plaintiff's Complaint counterclaiming thereto alleges and says:

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted.
2. Defendant admits upon information and belief, the first paragraph of the Complaint.
3. Defendant admits the second and third paragraphs of the Complaint.
4. Defendant alleges that the fourth paragraph of the Complaint sets forth conclusions of law which she neither admits or denies.
5. Defendant admits upon information and belief the fifth paragraph of the Complaint.
6. Defendant admits the allegations of the sixth through eighth paragraphs of the Complaint

7. In response to paragraphs nine through eleven, Defendant believes that said paragraphs accurately reflect the language of the Escrow Agreement that is in dispute, but alleges that the best source of such provisions is the agreement itself.

~~8. Defendant admits the allegations of the twelfth paragraph of the Complaint.~~

9. In response to the thirteenth paragraph of the Complaint, Defendant alleges that a punch list was furnished to Plaintiff listing seven items and that the document was entitled "Major Items". Defendant further alleges that such punch list items did not and was not intended to list all deficiencies and defects, and it did not include additional defects and deficiencies which have developed or become known since that time.

10. In response to the fourteenth paragraph of the Complaint, Defendant admits that a letter was written to Plaintiff on or about January 31, 2002 that referred to the punch list previously submitted.

11. Defendant admits the fifteenth paragraph of the Complaint and alleges that such additional punch lists were provided to Plaintiff because defects and deficiencies in the building continually developed and became known to Defendant subsequent to January 10, 2000.

12. Defendant denies the sixteenth and seventeenth paragraphs of Plaintiff's Complaint.

13. Defendant admits the eighteenth and nineteenth paragraphs of the Complaint; and Defendant alleges that the amount of the escrow account was disbursed to her in accordance with the terms, provisions, and requirements of said agreement.

14. Defendant responds to the twentieth paragraph of the Complaint as she responded to all of the foregoing allegations of said Complaint as if set forth here verbatim.

15. Defendant denies the allegations of the twenty-first paragraph of the Complaint.

16. Defendant has no information upon which either to admit or deny the allegations of the twenty-second paragraph of the Complaint, and alleges that such matters alleged therein are not relevant to the dispute concerning the Escrow Agreement in this action, and therefore denies said paragraph.

17. Defendant denies the twenty-third through twenty-seventh paragraphs of the Complaint being all of the allegations of the first cause of action thereof.

18. Plaintiff responds to the twenty-eighth paragraph of the Complaint as she has responded to all the foregoing allegations of said Complaint as if set forth here verbatim.

19. Defendant denies the twenty-ninth and thirtieth paragraphs of the Complaint.

20. In response to the thirty-first paragraph of the Complaint (two paragraphs are numbered as such) Defendant admits that she demanded that the escrow agent disburse the full \$200,000 balance of the escrow account, which amounts have been disbursed to her in accordance with the terms of the agreement; however, Defendant denies that such disbursement is in derogation of her legal and fiduciary obligations.

21. Defendant alleges that the second paragraph numbered thirty-one and the thirty-second paragraph of the Complaint sets forth conclusions of law which she is not required to admit or deny.

22. Defendant responds to the thirty-third paragraph of the Complaint and she has responded to all the foregoing allegations of said Complaint as if set forth here verbatim.

23. Defendant denies the thirty-fourth through the thirty-sixth paragraphs of the Complaint being all of the allegations of said Complaint.

**FURTHER ANSWERING THE COMPLAINT AND
AS A FURTHER DEFENSE THERETO, DEFENDANT ALLEGES**

24. Plaintiff has failed to allege facts sufficient to constitute any cause of action against Defendant and the Complaint should be dismissed as a matter of law.

**FURTHER ANSWERING THE COMPLAINT AND
AS A FURTHER DEFENSE THERETO, DEFENDANT ALLEGES**

25. Plaintiff has breached its duty of good faith and fair dealings in the performance of its contact with Defendant as a result of such conduct the Complaint should be dismissed.

**FURTHER ANSWERING THE COMPLAINT AND
AS A COUNTERCLAIM, DEFENDANT ALLEGES**

JURISDICTION

26. Plaintiff is limited liability company organized in the state of Georgia with its principal place of business in Charleston County, South Carolina.

27. Defendant is a citizen and resident of Charleston County, South Carolina.

28. Defendant's counterclaim involves a dispute arising out of a contract and subsequent agreements entered into by and between the parties by which the Defendant purchased Units 305 and 306 of the Chisolm Street Horizontal Property Regime, and such contract is dated November 7, 2000, which is made a part hereof by reference, and the terms and provisions of said contract existed at the time of the closing of said property transaction on December 19, 2001; and this matter is in their jurisdiction of this Court;

FACTUAL BACKGROUND

29. Plaintiff agreed to sell the Defendant Units 305 and 306 in the Chisolm Street property regime finished and free of defects and other deficiencies no later than July 1, 2002, but

the work on said units was not completed by July 1, 2002; and much of the work that had been performed was unsatisfactory and defective.

30. Despite the terms of the contract between the parties and other agreements, ~~representations and assurances made by Plaintiff to Defendant, Defendant's Units 305 and 306~~ contain many and substantial defects and deficiencies including but not limited to defective floors, a defective heating and air conditioning system, the absence of a water heater which Plaintiff agreed to install on the property, a leaking roof, leaking windows, ill-fitting doors, the absence of a ceiling light, deficient guttering on the outside of the building and other deficiencies.

The defects and deficiencies in the construction work at Plaintiff's Units 305 and 306 in the Chisolm Street Horizontal Property Regime are due to and caused by breaches of contract, breaches of warranties, misrepresentations, and negligence of the Plaintiff, and as a result of said wrongful acts, Defendant has been damaged.

**FOR A FIRST CAUSE OF ACTION
(Breach of Contract)**

31. Defendant alleges all of the foregoing allegations of the counterclaim as if set forth here verbatim.

32. Plaintiff agreed, by contract, to deliver to Defendant Units 305 and 306, Chisolm Street Horizontal Property Regime in a completely finished condition free of deficiencies and defects. Plaintiff has refused to complete the substantial defective, deficient and unfinished work in Unit 305 and 306.

33. Plaintiff's action constitute a breach of contract for which Defendant is entitled to an award of damages for the cost to complete and correct the deficient and defective aspects of Units 305 and 306.

**FOR A SECOND CAUSE OF ACTION
(Breach of Warranty)**

34. Defendant realleges all the foregoing allegations of the counterclaim as if set forth here verbatim.

35. Plaintiff expressly and impliedly warranted that Units 305 and 306, Chisolm Street Horizontal Property Regime that were purchased from it by Defendant would be completed in a good and workmanlike condition and free of defects and deficiencies.

36. Much of the construction work on the premises described herein is defective, deficient, and incomplete and as a result of such conditions, Defendant is entitled to an award of damages for breach of warranties that have been expressly given as well as those implied by law.

**FOR A THIRD CAUSE OF ACTION
(Negligence)**

37. Defendant realleges all the foregoing allegations of the counterclaim as if set forth here verbatim.

38. Plaintiff's conduct in the planning and construction of Defendant's Units 305 and 306, Chisolm Street Horizontal Property Regime has been negligent, and in some instances Plaintiff's conduct has been grossly negligent, and as a result of such negligence and gross negligence Units 305 and 306 are defective, deficient, and incomplete.

39. As a result of Plaintiff's negligent and grossly negligent conduct, Defendant is entitled to an award of actual and punitive damages.

**FOR A FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)**

40. Defendant realleges all the foregoing allegations of the counterclaim as if set forth here verbatim.

During the course of the construction of Units 305 and 306, Chisolm Street Horizontal Property Regime, Plaintiff negligently represented that the work to complete the project would be performed in a manner that was in accord with established construction standards.

41. ~~Despite such representations, Plaintiff, or those directed by it, did not perform the~~ contract in accordance with the representations made to Defendant that it would be performed in such manner, and as a result the construction work in many respects on Defendant's units are defective and deficient and she has been damaged, and is entitled to an award of damages for such negligent representation.

DAMAGES

42. Defendant's residence is incomplete and has, in many respects, been defectively constructed; and Defendant will incur substantial costs to complete and repair the premises as Plaintiff agreed to do.

43. The delayed construction work that has been ongoing in Defendant's residence has caused her to suffer respiratory ailments engendered by the dust and debris from the construction activity. She has also suffered emotional stress and strain from the constant construction work on the premises, all of which would have been avoided if Plaintiff had completed the units before Defendant was required to occupy them.

44. Defendant is entitled to an award of actual and punitive damages for the costs to complete and repair her property; and for physical and emotional damages she has sustained.

WHEREFORE, having fully answered Plaintiff's Complaint, and having set forth a counterclaim thereto, Defendant prays as follows:

- a) that Plaintiff's Complaint be dismissed;
- b) that she be awarded actual and punitive damages on her counterclaim; and

- c) that she be awarded attorney's fees and the costs and disbursements of this action.

YOUNG, CLEMENT, RIVERS & TISDALE, LLP

By: Thomas S. Tisdale, Jr.
Thomas S. Tisdale, Jr.
P.O. Box 993, Charleston, SC 29402
(843) 724-6650; E-mail: tst@ycrt.com
Attorneys for Defendant

Charleston, South Carolina

Dated. September 17, 2002

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to
all counsel of record in this proceeding this _____ day of
_____, 20____.



EXHIBIT E

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
3 CHISOLM STREET)
HOMEOWNERS ASSOCIATION,)
INC.,)
Plaintiff,)
-vs-)
CHISOLM STREET PARTNERS,)
LLC; MURRAY SCHOOL)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2009-CP-10-267

VOLUME I
THE DEPOSITION OF:
JACKSON WILBUR BURNETT, III

PARTNERS, LLC; GENOA)
CONSTRUCTION SERVICES,)
INC.; MASTERPIECE MILL)
WORK, INC.; ALLEN ROPER,)
JR. d/b/a R. MASONRY -)
BRICKWORK & STUCCO;)
CAROLINA ROOFING SYSTEMS,)
INC.; and LACY PAINTING,)
Defendants,)

Date: September 21, 2010
Time: 9:19 a.m.
Location: Nexsen Pruet, LLC
205 King Street
Suite 400
Charleston, SC 29401

GENOA CONSTRUCTION)
SERVICES, INC.,)
Third-Party Plaintiff,)
-vs-)

Reporter: Kimberli S. Hogle
Professional Court
Reporter & Notary
(843) 849-3007

THE FOX STEEL COMPANY;)
CAROLINA SERVICES, INC.;)
LESCO RESTORATION, INC.;)
FERST PLASTERING, INC.;)
CHARLESTON GLASS & MIRROR)
COMPANY; 3D RENOVATIONS;)
WILLIAMS MECHANICAL;)
MASTERCRAFT INTERIOR &)
EXTERIOR; BONIFAY)
MASONRY; COASTAL GLASS)
AND BLOCK; ADAMS DAVIS &)
PARTNERS; TROY PARDEE)
HEATING & AIR)
CONDITIONING d/b/a PARDEE)
HEATING & AIR; and JACK)
BURNETT, FRANCES)
HEGENBERGER, CHARLES)
WYRICK, JACKALYN NOLLER,)
ANGELA HALFACRE, LAURA)
RADLEY, LINDA AUSTIN,)

KIMBERLI S. HOGLE
Independent Court Reporter
Tele: (843) 849-3007 Fax: (843) 849-7127

KIMBERLI S. HOGLE Independent Court Reporter (843) 849-3007

CONNIE WYRICK, ERICK)
JABLON, GWEN MCCURDY,)
BEVERLY SEINSHEIMER, BILL)
MANERI, GEORGE DAVIDSON,)
MIMS ROBERTS, GEORGE)
COGAR, AND ALEX MCMILLAN,)
)
Third-Party Defendants.)

A P P E A R A N C E S

For The Plaintiff Nexsen Pruet, LLC
& Third-Party By: DAVID J. PARRISH, ESQUIRE
Defendants By: JOSHUA L. ELLIS, ESQUIRE
By: ANNE ROSS ROSEN, ESQUIRE
205 King Street, Suite 400
Charleston, South Carolina 29401

For Defendant & Rogers, Townsend & Thomas, PC
Third-Party Plaintiff By: FRANKLIN H. TURNER, III, ESQUIRE
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Columbia, South Carolina 29210

For Third-Party : McAngus, Goudelock & Courie, LLC
Defendant By: CHARLES O. WILLIAMS, III, ESQ.
CHARLESTON GLASS & 700 Gervais Street, Suite 300
MIRROR Columbia, South Carolina 29201

For Third-Party : McAngus, Goudelock & Courie, LLC
Defendant By: BEN DAVIS, ESQUIRE
WILLIAMS MECHANICAL 78 Wentworth Street, Suite 200
Charleston, South Carolina 29401

For Third-Party : Elmore & Wall, PA
Defendant By: GRAHAM POWELL, ESQUIRE
CAROLINA SERVICES 145 King Street, Suite 302
Charleston, South Carolina 29401

For Third-Party : Anderson & Reynolds, LLC
Defendant By: CURTIS B. MARTIN, ESQUIRE
CAROLINA SERVICES 37 1/2 Broad Street
Charleston, South Carolina 29401

KIMBERLI S. HOGLE

Independent Court Reporter

Tele: (843) 849-3007 Fax: (843) 849-7127

KIMBERLI S. HOGLE Independent Court Reporter (843) 849-3007

1 APPEARANCES CONTINUED:
2 For Third-Party : Howser, Newman & Besley, LLC
Defendant By: KYLIE KESLEY, ESQUIRE
3 MASTERCRAFT 1508 Washington Street
(via telephone) Columbia, South Carolina 29201
4
5 For Third-Party : Hayes Law Firm, LLC
Defendant By: MARY-MARGARET FITZHENRY, ESQ.
6 FOX STEEL CO. 180 Meeting Street, Suite 305
Charleston, South Carolina 29401
7
8 For the Defendant : Carlock, Copeland & Stair, LLP
BROCK GREEN By: PATRICK NORRIS, ESQUIRE
9 ARCHITECTS 40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
10
11 For Third-Party : Richardson, Plowden & Robinson, PA
Defendant By: JARED GARRAUX, ESQUIRE
12 PARDEE HEATING & AIR 1900 Barnwell Street
Columbia, South Carolina 29201
13
14 For Third-Party : Thurmond, Kirchner, Timbes &
Defendant Yelverton, PA
15 FERST PLASTERING By: CHRISTOPHER DETERS, ESQUIRE
15 Mid Atlantic Wharf, Suite 101
16 Charleston, South Carolina 29401
17
18 For the Defendant : Clawson & Staubes, LLC
LACY PAINTING By: TREVOR CANGELOSI, ESQUIRE
126 Seven Farms Drive, Ste. 200
19 Charleston, South Carolina 29492
20 (via telephone)
21 For the Defendant : Lyles & Lyles, LLC
CHISOLM STREET BY: CATHERINE H. BRYAN, ESQUIRE
PARTNERS & MURRAY 342 East Bay Street
22 SCHOOL PARTNERS Charleston, South Carolina 29401
23
24 For the Third-Party : Murphy & Grantland, P.A.
Defendant By: EMILY C. SHEETS, ESQUIRE
LESCO RESTORATION 4406-B Forest Drive
25 Columbia, South Carolina 29206

1	INDEX TO EXAMINATIONS:	
2		Page
3	Examination By Mr. Turner	5
4	Examination By Mr. Cangelosi	166
5	Examination By Mr. Williams	179
6	Examination By Ms. Fitzhenry	189
7	Examination By Mr. Garraux	193
8	Examination By Mr. Deters	195
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12	Further Examination By Mr. Powell	210
13	Examination By Ms. Keesley	212

14		
15	INDEX TO EXHIBITS:	
16		
17	47. Burnett/3 Chisolm St. Lawsuit Documents	8
18		
19	* Mr. Burnett's documents were not received until the day	
20	after this deposition took place. However, they were marked	
21	as Exhibits 58 through 72, but not identified for the	
22	record.	
23	** Once Mr. Burnett's deposition reconvenes and the	
24	transcript is completed, please refer then to the Volume II	
25	transcript exhibit index for identification of Exhibits 58	
	through 72.	

MR. BURNETT

Page 38

1 Q. Those were all the windows at one time, not just
2 individual unit windows?

3 A. I can't answer that.

4 Q. You rolled onto the Board -- or you actually
5 started on the Board in 2002; is that correct?

6 A. If that's what it says.

7 Q. Well, what is your recollection?

8 A. I don't know. It was sometime probably in 2002.
9 I don't remember what month. I just remember that someone
10 said, you know, according to the bylaws we should take over
11 from the developer, and so we got a lawyer and he said,
12 "Yes, you should," and he drew up the papers and we did.

13 Q. You were a member of the first unit-owner
14 controlled Board?

15 A. Yes, I was.

16 Q. And were you the president of that Board?

17 A. Yes, I was.

18 Q. And you served as president of the Board until
19 when?

20 A. Until the current president took over.

21 Q. And the current president is who?

22 A. George Davidson.

23 Q. And did George Davidson take over in 2008 or
24 2009?

25 A. I don't recall.

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Independent Court Reporter

1 Q. I'll show you what's been labeled Exhibit 15.

2 Have you seen that document before?

3 A. Yes, I have.

4 Q. And have you read it?

5 A. Not in total.

6 Q. That's the master deed?

7 A. Yep.

8 Q. If you turn to page 3 and go down to section D,
9 if you would just read that first sentence.

10 A. Okay.

11 Q. If you go down next to where the sentence starts
12 "Unit "S" shown on the floor plans," do you see that, it's
13 seven lines down?

14 A. Oh, yeah.

15 Q. If you'll read from there to the end of the
16 sentence.

17 A. Uh-huh.

18 Q. Is it your understanding based on this master
19 deed that the repair and replacement and maintenance of the
20 windows, HVAC unit, interior doors, was the unit owner's
21 responsibility?

22 MR. ELLIS: Object to the form of the
23 question. You can answer if you can.

24 A. Would you repeat that question?

25 Q. Sure. Is it your understanding, having read

1 this, that the maintenance and repair and upkeep of the
2 items listed here, which would be the windows, interior
3 doors, HVAC system, kitchen appliances, light fixtures, et
4 cetera, are the responsibility of the unit owner?

5 MR. ELLIS: Same objection.

6 A. Yeah. I mean, from a common sense standpoint, I
7 agree with you. However, the Board has a letter that they
8 sent me the other day, because that's what I said. And his
9 legal opinion is that the windows and frames are not for the
10 unit owners only but are part of the regime, common
11 elements.

12 Q. Who sent you this?

13 A. Tom Mikell.

14 Q. That's the --

15 A. Attorney for the Association.

16 Q. And he sent you this just recently?

17 A. I interpreted it the way you did, and he told me
18 no, he had sent an opinion letter a year or so ago, and I -
19 said, well, I don't remember it. I'm not a lawyer, but it
20 says what it says. It doesn't really matter what I think or
21 don't think.

22 Q. But that's Tom Mikell that you're talking about?

23 A. Tom Mikell's opinion is that the windows -- how
24 do you have an outside of a window with the Association and
25 inside of a window -- anyway.

1 about specifically. I know we had issues with the roof. We
2 had issues with the windows. We had issues with the parapet
3 thing. We had some cracks up there. We had somebody that
4 did a study.

5 Q. Let me show you what's been marked as Exhibit
6 30, it's the Glick/Boehm. Is this the study you're
7 referring to?

8 A. Yeah. I remember the name Glick.

9 Q. This is actually addressed to you?

10 A. Not addressed to me, somebody like that. Yeah,
11 that was addressed to me.

12 Q. As president of the Homeowners Association?

13 A. Yes, uh-huh.

14 Q. And this is dated April 8, 2003, and was that
15 something that the Homeowners Association commissioned?

16 A. Yes, it is.

17 Q. And what prompted the Homeowners Association to
18 hire Glick/Boehm & Associates to do --

19 A. We just had a lot of problems on the roof and we
20 didn't know how extensive they were, and the management
21 company recommended we get someone to -- or somebody on the
22 Board, I don't know, and said let's find out what is wrong
23 with this building and get it fixed, see what the developer
24 can take care of, see where we are, what's going on, and so
25 that's the study we got.

MR. BURNETT

Page 85

1 A. No. I've got a closet there and water would go
2 in the closet, which caused a big problem, so what they did
3 is put another level of slate so it raised the floor of the
4 closet by a half-inch, which kept the water -- I hope it's
5 not going in there. It might be going under the slate.
6 Those are things you don't know until you get inside of
7 them.

8 Q. If you'll go to the conclusions?

9 A. (The witness complied.)

10 Q. Do you see that second sentence?

11 A. Uh-huh.

12 Q. Was a program of destructive testing ever
13 undertaken pursuant to that recommendation?

14 A. Not pursuant to this, no.

15 Q. Was a program of destructive testing ever
16 undertaken outside of the present litigation?

17 A. Not to my knowledge.

18 Q. If you go down to the fourth sentence starting --
19 "I recommend" --

20 A. Uh-huh.

21 Q. -- "that the Board seek legal counsel relative
22 to the impacts of the above issues as well as pursuing a
23 forensic report documenting and recording the above issues."
24 Did the Board seek legal counsel regarding these issues?

25 A. No, I don't think we did. We might have talked

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Independent Court Reporter

1 but the panes weren't good. It doesn't say that the BAR
2 would not allow insulated glass. David Perdue told me they
3 would not allow insulated glass. Maybe that's a question I
4 need to ask. But my disagreement with David Perdue has been
5 settled, so that's not an issue.

6 Q. All of the issues that we talked about in that
7 paragraph in your counterclaim against David Perdue have
8 been settled, all the water intrusion issues, the HVAC, the
9 roof, floors, all of that was taken care of in the previous
10 lawsuit?

11 A. I don't fully understand the legal ramifications
12 of what you just said. I know the paragraph you're
13 referring to.

14 Q. Were all the claims that you had in your
15 counterclaim against Chisolm Street Partners, actually your
16 wife's counterclaim against Chisolm Street Partners, were
17 all of the claims that you and your wife had relating to
18 Chisolm Street settled?

19 A. We settled the lawsuit, and I'm not supposed to
20 disclose the settlement.

21 Q. I'm not gonna ask the amount at this point in
22 time. I'm just asking if those claims were resolved. The
23 claims from Chisolm Street Partners against you and your
24 claims against Chisolm Street were all resolved and
25 dismissed?

EXHIBIT F

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
3 CHISOLM STREET)
HOMEOWNERS ASSOCIATION,)
INC.,)

Plaintiff,)

-vs-)

CHISOLM STREET PARTNERS,)
LLC; MURRAY SCHOOL)

PARTNERS, LLC; GENOA)
CONSTRUCTION SERVICES,)
INC.; MASTERPIECE MILL)
WORK, INC.; ALLEN ROPER,)
JR. d/b/a R. MASONRY -)
BRICKWORK & STUCCO;)
CAROLINA ROOFING SYSTEMS,)
INC.; and LACY PAINTING,)

Defendants,)

GENOA CONSTRUCTION)
SERVICES, INC.,)
Third-Party Plaintiff,)

-vs-)

THE FOX STEEL COMPANY;)
CAROLINA SERVICES, INC.;)
LESCO RESTORATION, INC.;)
FERST PLASTERING, INC.;)
CHARLESTON GLASS & MIRROR)
COMPANY; 3D RENOVATIONS;)
WILLIAMS MECHANICAL;)
MASTERCRAFT INTERIOR &)
EXTERIOR; BONIFAY)
MASONRY; COASTAL GLASS)
AND BLOCK; ADAMS DAVIS &)
PARTNERS; TROY PARDEE)
HEATING & AIR)
CONDITIONING d/b/a PARDEE)
HEATING & AIR; and JACK)
BURNETT, FRANCES)
HEGENBERGER, CHARLES)
WYRICK, JACKALYN NOLLER,)
ANGELA HALFACRE, LAURA)
RADLEY, LINDA AUSTIN,)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2009-CP-10-267

THE DEPOSITION OF:

Mr. Michael R. Parades

Date: March 21st, 2011

Time: 10:16 a.m.

Location: Nexsen Pruet, LLC
205 King Street
Suite 400
Charleston, SC 29401

Reporter: Kimberli S. Hogle
Professional Court
Reporter & Notary
(843) 849-3007

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CONNIE WYRICK, ERICK .)
JABLON, GWEN MCCURDY,)
BEVERLY SEINSHEIMER, BILL)
MANERI, GEORGE DAVIDSON,)
MIMS ROBERTS, GEORGE)
COGAR, AND ALEX MCMILLAN,)
)
Third-Party Defendants.)

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MR. PARADES

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MR. PARADES

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1 A. Yes, sir.

2 Q. How did you become involved as property manager
3 at 3 Chisolm Street?

4 A. In the industry, we call them community
5 managers, small distinction.

6 Q. Okay.

7 A. But as I recall, the developer was still in
8 control of the HOA and they were getting ready to transition
9 to the homeowner control, and the former management company
10 I think was Ravenel. Jack Burnett and Pete Wyrick were the
11 two principal individuals I dealt with. They were not
12 necessarily happy with Ravenel and wanted to get another
13 proposal. I'm not sure if they found me by looking in the
14 phone book or if I was referred, if my name was given to
15 them by somebody else, but they asked me to come meet them.
16 We talked about management philosophies and the approach
17 that my company used, and they asked me to give them a
18 proposal. They wound up accepting the proposal, and I kind
19 of helped them a little bit in preparing right before the
20 transition meeting, and then after the owners were electing
21 their own board, the first board meeting, my company was a
22 appointed as the management company.

23 Q. And your company would be Sentry Management?

24 A. At that time it was CCM Management. I owned
25 that company.

1 Q. The "Water intrusion at the window," that's
2 basically what we've seen before?

3 A. Seen that before, seen that before. Not sure
4 which unit this is, it's hard to tell. "Stucco wall
5 cracks," I do recall seeing some stucco wall cracks. That's
6 unit 101, there may well have been some gaps; I don't recall
7 specifically having seen it, but there may well have been
8 some gaps where the drywall and the windows united.

9 Q. These is just warping floors?

10 A. There were some, yeah.

11 Q. Okay.

12 A. First floor, this must have been in the unit.

13 MR. NORRIS: Can you say the title of the
14 photos?

15 MR. TURNER: These are all the wood floors
16 warping and buckling.

17 Q. The next one is "Mildew and water intrusion,"
18 which we've talked about before. Do you recall seeing that?

19 A. Yeah. I don't recall the specifics, but I'm
20 sure that I did see -- you know, occasionally those windows
21 that did have some water leaking in around them or if there
22 was condensation, I did see them. Again, that's another
23 thing, there may well have been some gaps.

24 Q. Okay, "Gaps in windows."

25 A. "Sealant problems," I'm not sure where that is.

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1 required the HVAC units on the roof to be physically tied
2 down to the roof. That was probably, I'm sure, one of them
3 because of the concern if a hurricane comes along and blows
4 it. There may have been a couple of other things, but
5 without more detail I can't tell you more.

6 Q. Do you ever recall talking to him about any code
7 issue related to windows?

8 A. I'm sure we probably had some discussion about
9 code and windows. And, again, all of that is in the context
10 of what did the BAR let them do when they did the buildings.

11 Q. February 2nd, 2004?

12 A. Okay.

13 Q. If you'll go under "General Discussion," the
14 third paragraph, I'm just curious as to why you pointed out
15 the need for everyone to read their master deed and
16 paperwork?

17 A. I'll go ahead and say it, even though you know
18 the answer. Most owners have never read the master deed.
19 You get a lot of questions sometimes, you know, my toilet is
20 clogged up, will you come fix it. Well, that's not an HOA
21 responsibility. Owners need to understand where HOA starts
22 and stops, and where their responsibilities start and stop.
23 I'm sure that's probably in some relation to that, just need
24 to read your governing documents. I tell that to every
25 homeowner association.

1 Q. And based on this master deed, the windows
2 themselves are a unit owner responsibility; correct?

3 A. Well, let's see what it says.

4 MR. ELLIS: Object to the form.

5 A. If you look on page 3.

6 Q. Right. Under "D"?

7 A. "D", the second paragraph, "In addition to the
8 description of each unit, this may be -- each unit is
9 described as being bounded by the unfinished surfaces of its
10 floors, ceilings, parametric walls, and includes the glass
11 windows of each unit. Specifically included within each
12 unit are the finished surfaces of the unit, paint,
13 wallpaper, towels, paneling, carpeting, and interior
14 non-load-bearing walls contained within the boundaries of
15 each unit as shown on the floor plans, together with all
16 interior doors, the main entrance door or doors, window
17 panes, window frames, sliding glass door frames and sliding
18 glass plates, light fixtures installed in bathroom and
19 kitchen, appliances, HVAC system, and interior piping in
20 connection therewith and installed heating devices and
21 attachments measured by the interior of the unit."

22 Q. So based on that language, is it your opinion
23 that any window condensation issue would be the
24 responsibility of the unit owner?

25 MR. ELLIS: Object to the form.

1 A. I believe that would be an individual unit
2 owner's problem. Now, that said, I'll just go one step
3 further, it doesn't mean the Association just turns a blind
4 ear. If there is something that is uniform going across,
5 depending on the outcome of Jack's lawsuit, they could have
6 perhaps looked at banding together. But based on this, it
7 would be an owner problem.

8 Q. When you have been qualified as an expert in the
9 past, have you been qualified as an expert in the
10 interpretation of HOA documents?

11 A. Have not been qualified as an expert in the
12 interpretation of documents. If I wanted to have a formal
13 answer to the Board, I'd suggest they get a legal opinion.
14 I've been qualified as an expert for community governance,
15 community management, and board fiduciary responsibilities.
16 I could certainly tell the Board what I think this says. I
17 think the language reads pretty plain. But if they want a
18 written opinion to hold up in a courtroom, they need to go
19 hire an attorney. I'm not a lawyer. Maybe in my next
20 lifetime.

21 (6/10/03 CALIBOGUE PROPOSAL MARKED EXHIBIT NO.
22 236 FOR I.D.)

23 Q. June 10, 2003, from Calibogue Construction
24 Company?

25 A. Yes, sir.

1 find a name. Wilson, does that name ring a bell?

2 Q. It's the one we talked about in one of the
3 exhibits?

4 A. Yeah. He was kind of like the supervisory
5 person that I ran into a couple of times over there. My
6 communications were primarily with Perdue as the developer.
7 I have no real relationship with the general contractor,
8 they're working for the developer.

9 Q. And would you have had any conversation with
10 that person whose name came up in the exhibits other than
11 what was documented in the exhibits?

12 A. Not aware of anything. Can't recall anything.

13 Q. We had talked briefly about your background.
14 Can you just take me through what your background with
15 community association work is?

16 A. Well, I basically first got involved with
17 community associations as the outside auditor for Seabrook,
18 and then I set up the accounting systems for the Seabrook
19 regime management function. When I went back as controller
20 to Seabrook, I had their Homeowners Association management
21 department reported to me. When I resigned from Seabrook in
22 May of '87, because it burned down, I took some time off.
23 And then Bob Russell and Bob Sawyer asked me to come back
24 out and straighten out their homeowner association
25 management function because Dave Kinowski had moved to

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1 another position. That was when I got involved with my
2 first construction defect lawsuit. I did that for six
3 months, and when I finally concluded I needed to start my
4 own company, I started CCM Management.

5 I owned CCM Management from January 1, '88,
6 to December of 2005 when I sold it to Sentry. I stayed on
7 with Sentry as the South Carolina District Manager until
8 July of '09, and then retired. In the intervening time, I
9 went through all the process. I have my professional
10 community association manager designation. I've taught on
11 national faculty for CAI for the last ten years. I teach
12 the risk management, financial management, and the basics of
13 homeowner association M-100 course, and I also teach the
14 governance course. These are courses managers have to take
15 to ultimately get their designations.

16 In the past, I've served on numerous
17 national committees, actually five at one point. I was
18 president of the chapter for two years. I was on the LAC
19 for two years; I still stay very active in legislation
20 efforts. For those that don't know it, we got our community
21 manager licensing legislation introduced last week. I
22 consult for homeowner associations, and just recently
23 finished a job assisting a large HOA here in town in
24 transition from developer control to homeowner control. And
25 I work as an expert for litigation related to homeowner

1 associations, and I just kind of told you some of the
2 attorneys that I've worked for in response to a question.
3 I've been qualified twice in the South Carolina Court System
4 as an expert witness.

5 Q. So when you were talking about some of the
6 national things you do, you're actually teaching some of the
7 managers how to be managers?

8 A. I teach managers all over the country, the
9 fundamentals.

10 Q. And when you say "governance," what is that --

11 A. It's one of the courses, community governance.
12 It talks about homeowner associations, master deeds,
13 covenants, by-laws, hierarchy, all of those kind of things
14 that go into the governance of a community.

15 Q. Let me ask you one last question on Exhibit 240.

16 A. HVAC unit on the roof?

17 Q. Well, on the last part, and you can look back
18 over the front part before you answer this, but it's saying
19 again that if the issues are not resolved by November 30th,
20 2003, the board intends to take appropriate action to bring
21 them to a resolution. My question is gonna be, on that, was
22 it your understanding, again, that the appropriate action
23 was gonna be litigation?

24 MR. ELLIS: Object to the form.

25 A. Not necessarily in that order. Again, the

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EXHIBIT G

Board of Directors Meeting
3 Chisolm Street HOA
May 6, 2003

Members Present

Pete Wyrick, Jackie Noller and Frances Hegenberger

Others Present

Mike Parades

The meeting was called to order at 5:15 p.m.

Minutes of Prior Meetings

Jackie commented she had not received a copy of the minutes. Mike will mail to her.

There being no changes or corrections, motion was made, seconded and passed to approve the minutes of the March 26, 2003 Board meeting minutes as issued.

Old Business

1. Building Report

It was noted the preliminary building inspection report has been received from Myles Glick. The report and accompanying photographs were reviewed. Discussion followed as to the next steps to be taken. It was noted that Mr. Glick only looked at the main building.

Mike discussed the typical sequence of steps that should be followed including:

1. Inspection of the cottage and gym building.
2. Some destructive testing will be needed to document cause of damage and what should be done to correct the problems.

It was agreed that proposals should be solicited from Glick/Boehm and Calibogue Construction for the next phases of investigation. Mike was asked to obtain these proposals for the next Board meeting.

2. Action Items

It was reported that all action items from the previous meeting have been completed or are in process. Mike noted he has received financial information from Great Beach and is in the process of reviewing all activity back to inception of the HOA.

3. Comparison to other regimes

Frances reported she had investigated typical regime fees for other comparable HOAs in downtown. Based on her findings, the monthly fee for 3 Chisolm is reasonable for the services being provided.

PLE000903

3 Chisolm Street HOA
Board Meeting
May 6, 2003

New Business

1. Noise from pets

It was noted that there is an on-going problem with barking pets, particularly in #104. It was agreed that a general letter should be sent to all owners and include a copy of the Rules & Regulations, with emphasis on the section related to pets.

2. Management Report

Mike reported he is in the process of going through the financial information provided by Great Beach. In addition, he has begun meeting with service providers to review their contracts and actual work being performed.

The fire alarm contractor has advised the warranty period has ended and is preparing a maintenance contract for approval. Mike noted that in his discussions with this contractor it has been emphasized that the HOA is not prepared to accept the warranty period is over until it can be shown the alarm system operates properly. This is based on the fact that the systems in both buildings have a history of spurious alarms.

3. Meeting Schedule

Following discussion, it was agreed that the regular monthly Board meeting will be held the second Tuesday of each month at 5:30 p.m. in one of the Board member's home.

There being no further business, the meeting adjourned at 6:15 p.m.

Respectfully submitted by
CCM Management, Inc.

McPander
6/11/03

3 Chisolm Street
Annual Meeting
February 2, 2004

Members Present

Kent Scott (102), Charles Wyrick (201), Brent Pace (205), Layton McCurdy (301), Ada Quattrocchi (302), Darlene Shaw and George Cogar (304), Jack Burnett (305) and Laura Radley (G-106).

Others Present

Howell Morrison, Mike Parades and Piper Pelley.

The meeting was called to order at 5:05 p.m.

Proof of Notice and Certification of Quorum

Mike Parades reported the meeting notice was mailed to all owners of record. He further reported that eight (8) owners were present and proxies have been received from eleven (11) owners. A quorum is present.

Minutes of Prior Meeting

MOTION was made to waive the reading of the minutes from the March 26, 2003 Annual Meeting. The motion was seconded and passed without objection.

Managers Report

Mike Parades gave an introduction of CCM Management, Inc and Community Association Institute. He briefly talked about the new janitorial service; WW&C Industrial, the new bike racks and where they will be located, the consideration of installing carpet runners, the Rules and Regulations and the newly revised Amendments.

Election of Directors

Mike Parades reported that the terms of Jackie Noller and Angela Halfacre expire with this meeting. The floor was open for nominations. Laura Radley and George Cogar were nominated. There being no further nominations, MOTION was made, seconded and passed to elect Laura Radley and George Cogar.

General Discussion

Mike Parades talked about the homeowner's individual HO6 insurance policies and what they should include when purchasing.

Mike Parades stated that CCM will send out an insurance summary to all homeowners.

☐ Mike Parades suggested, for further understanding and knowledge, everyone should read their Master Deed and paperwork that they signed at closing.

There being no further business, the meeting adjourned at 5:30 p.m.

Respectfully submitted by
CCM Management, Inc.

Piper Pelley

CHISOLM001164

**3 Chisolm Street Owners Association
Board Meeting
September 29, 2004**

Members Present

Jack Burnett, Pete Wyrick, Laura Radley and George Cogar

Others Present

Mike Parades

The meeting was called to order at 5:30 pm.

Minutes of Prior Meetings

It was noted the minutes of the 4/27/04 and 6/16/04 meetings had been previously distributed. There being no changes or corrections, motion was made, seconded and passed to approve the minutes as issued.

Financial Report

It was noted the financial statements for the month ended 8/31/04 had been previously distributed. Mike reported operating expenses are consistent with budget. It was noted two owners are delinquent. CCM to follow up in accordance with standard policy.

Mike reported that he plans to have the proposed budget for 2005 distributed to the Board for review and approval by 10/31/04.

Manager's Report

Mike reported that there was very little damage due to the hurricanes in August. Damage consisted primarily of some trees being blown over. These trees have been reset and staked. He further noted that due to the growth of the trees, a contractor was hired to prune them.

Mike reported that there were some leaks reported as a result of the hurricanes. A roofing contractor was engaged and a complete inspection done. Numerous deficiencies in the installation of the roof were identified that it is believed are the cause of the leaks. The roofer is in the process of correcting the deficiencies and the cost will be billed back to the Developer.

As will be discussed later, the Developer did not respond to the demand letter. The roofing contractor has suggested a method of correcting the deficient installation of the A/C units on the roof. The suggestion is being reviewed by Myles Glick. The cost associated with the correction of the deficient installation will be billed back to the Developer.

PLF000883

**3 Chisolm Street Owners Association
Board Meeting
September 29, 2004**

Mike reported that the window screens were incorrectly made. None of the screens on hand fit any windows. Following discussion, it was agreed the general contractor should be contacted for the name of the sub-contractor who provided the screens in order to have them replaced with screens that fit. Any cost will be billed back to the Developer.

Mike reported several complaints have been received regarding pigeons in the garage soiling cars. In addition, concerns have been expressed about security in the garage. In response to the complaints, a proposal has been received to install discrete screening and a gate on the pedestrian entrance. Total cost for both would be approximately \$5,000.

In addition, the auto gate is frequently left open because owners are not shutting the gate after entering or leaving. A solution is to change the operator system such that it automatically closes the door after a set time period. There would be a safety device using an infrared beam that would reopen the gate during the close cycle if a pedestrian or vehicle was going through the gate. Estimated cost to install is approximately \$1,000.

Following discussion, motion was made, seconded and passed to install screening, pedestrian gate and automate the vehicle gate during the first quarter of 2005, with the associated cost included in the budget for 2005.

Mike reported that #202 has been sold for \$680,000 and #204 has been sold for \$649,000. The cottage has been placed on the market for \$525,000. It was noted that the regime has a right of first refusal on all resales. Suggestion was made that the Board may want to consider exercising its right with respect to the cottage as there are several possible uses that could be made. Decision was deferred at this time.

Discussion followed regarding "For Sale" signage. All agreed that "For Sale" signs detract from the overall appearance of the community. The current rules and regulations only prohibit "For Sale" signs in windows of units. Motion was made, seconded and passed to amend the Rules & Regulations to prohibit all signs of any type.

Old Business

Mike reported that a demand letter was sent to the Developer related to various deficiencies. Legal counsel has advised that no response has been received. As reported earlier, action has been initiated to correct the deficiencies with the cost to be billed back to the Developer. Should he refuse to pay, the Board can then make the decision of what legal action to take?

As part of the action to correct deficiencies, Carolina Concrete Systems has been engaged to conduct a complete inspection of the exterior of all buildings, provide a report of work that needs to be done with an estimated cost. This report should be ready in approximately one week.

3 Chiselm Street Owners Association
Board Meeting
September 29, 2004

Mike reported that the City was contacted regarding changing the street address of the Gym building. The City advised the street address could not be changed. There continue to be instances where contractors, police, service personnel and others go to the wrong buildings. Because of the continuing problem, the City is going to be contacted again with the approach being if the City is not willing to change the street address, they will be asked to accept responsibility for consequences that may result from emergency personnel not being able to find the right address.

Mike reported that a listing of unauthorized items in the common areas was prepared. For the most part, the items relate to door hardware, mats and some other miscellaneous items. At issue is how aggressive does the Board want to be on enforcing items in common areas. Following discussion, it was agreed to defer action to the next meeting when all Board members are present.

The next meeting was scheduled for Wednesday, November 10th at 5:30 pm at Jack's unit.

There being no further business, the meeting adjourned at 6:45 pm.

Respectfully submitted by
CCM Management, Inc.

M. R. Lander, 9/30/04

Action Items

1. Complete Roof repairs
2. Obtain and distribute building exterior inspection report.
3. Draft budget for 2005 to Board by 10/31/04.
4. Contact Genoa regarding window screens.
5. Continue efforts with City to change street address for the Gym building.
6. Owner letter advising of Rules change regarding signs and reminder to close garage gate.
7. Get door handle repaired for door by 101.
8. Find out who bought store rooms in Gym building (copy of deeds)

Chisolm Street
Board Meeting
February 6, 2006

Members Present

Jack Burnett, Linda Austin, Connie Wyrick and Gwen McCurdy

Others Present

Mike Parades and Courtney Parades

The meeting was called to order at 7:05 pm.

Approval of the Minutes

Motion was made, seconded and passed to approve the October 2005 minutes as issued.

Election of Officers

Motion was made, seconded and passed to elect Jack as President. Motion was made, seconded and passed to elect Connie as Vice President. Motion was made, seconded and passed to appoint Mike as the association's secretary/treasurer.

Old Business

Jack reported he spoke with Joe Dapore, the association's lawyer, and he said that they had until April 2006 to take action against Purdue, the developer. Mike suggested using diplomacy rather than a lawsuit. A lawsuit will probably not be worth the money it would require. Mike will talk to Purdue again about getting the Gym roof warranty signed over to the association.

Jack would like to increase communications with owners as it pertains to action being taken in response to problems that have been reported. Mike said that someone in the association should update the website frequently so people want to look at it. Sentry Management does not provide one. Each association will have to decide if it wants one.

The Board is considering changing the building entrance codes. They are considering having one code for all owners that can be changed quarterly. This issue is tabled until the next meeting.

The hedges are growing, but are still not up to the agreed upon height. The pigeon problem has lessened, so the Board deferred any further action at this time.

There are 5 or 6 people who are not on the master key. Courtney is going to schedule Jantzen to come and change their locks so that the master will work. She will notify the owners first.

PLF000868

Chisolm Street Board Meeting
February 6, 20066

Mike met with the Coast Guard about their lights and night noise. It has been better since. The corner house dogs are still really loud. Mike suggested City Livability Court.

Courtney will email the deviation and policy change log to the Board. Mike will distribute the emergency plan in about a month.

Gwen is going to be the Board liaison for the new building and grounds committee. The committee is going to look into the problem of the bright light on the gym and review the grounds proposal from The Greenery. The Board members were all given copies of Caroline McMillan letter regarding the light issue.

Connie suggested that the Regime keep ownership of the storage closets. There is very little common area space in the building, and the Regime may need them in the future for something like generators.

There being no further business, the meeting adjourned at 7:45 pm.

Respectfully submitted by
Sentry Management, Inc.

Courtney Parades



EXHIBIT H

Glick/Boehm & Associates, Inc.

April 8, 2003

Jack Bernette
President
Chisholm Street Homeowners Association
3 Chisholm Street
Charleston, SC 29401

Re: Initial Site Visit
Chisholm Street Condominiums
Charleston, SC

Dear Mr. Bernette,

In accordance with the request of the Chisholm Street Homeowners Association Board of Directors, I have prepared comments regarding my visual observations that took place on January 30, 2003. Present during that site visit were Myles Glick, Thomas Carlson, Brett Carlson, and Joe Dapore. The following comments are based on visual observations only, therefore, no destructive testing has taken place. The goal of the visit was to get an understanding of the project and to see what appeared to be some very obvious building failures.

A. Introduction

The Chisholm Street Condominiums are located in three buildings at 3 Chisholm Street. The first of three distinct buildings is known as the old Murray Vocational School, which is a three-story masonry building with a flat roof. The second building is known as the old headquarters for the Charleston Symphony Orchestra, which is a two-story residential scaled building. The third building was the gymnasium associated with the Murray Vocational School that has been divided into units on the top floor and an indoor parking garage on the first floor. The following comments represent an overview of my observations are specific to the main three-story Murray Vocational School building. The other two buildings that are listed above were not reviewed.

B. Water Intrusion

The indications of water intrusion into the main building were in the following areas: windows, window ledges, condensation building on the inside of the glass, and a strong possibility that the roof parapet is leaking. Of the four areas identified, the roof parapet will need more research so that this area can be eliminated or to determine that it is contributing to the water intrusion into the exterior wall cavity.

In almost every case, the window system is a steel window with fixed panes of glass and an opening panel that does not close. Therefore, the windows do not stop water from intruding into the building. Water has accumulated on window sills as a result of water intrusion through the gaps created in the operable window areas. It also appears that water is coming through the frames (mullions) of the fixed panes as well.

Condensation issues were apparent on the inside of the glass within the units and these areas may have associated problems (in terms of cause and effect) with the size and distribution of the mechanical systems.

C. Interior Floors

The floor problems noticed throughout the building had to do with undulating wood floors as a result of water intrusion. In some cases, there were construction quality issues that resulted in finishing problems on the wood floors. Most of the moisture intrusion problems associated with the wood floors, had to do with the first floor units. The damage in Unit 101 is an example of extensive movement within the floor system itself. In this case, the floor moved so much that the closet door in one of the bedrooms would not even open.

D. Mechanical Systems

Problems associated with the mechanical systems will fall into two categories. The first category would be capacity of the unit relative to specific unit sizes and unit orientation. The other concern is air distribution within the actual spaces. The air distribution system is not adjacent to the glass areas and therefore, this begins to contribute to the extremes in temperature differentials causing condensation. An additional item with the mechanical system was noticed on the roof. The units (compressors) were sitting on 4x4 wood members and therefore, the units are not tied down to the roof, which is required by code and within the standard care for construction. This would be a separate construction deficiency in addition to the possibility of design issues with capacity and distribution.

E. Exterior Stucco

It was noticed that there were new walls built at the rear courtyard of the main building and these walls appear to be metal studs with a three-coat masonry stucco finish. Intersections of the metal stud walls with the original masonry building are beginning to show cracks because of the construction defects associated with the installation of the three-coat masonry system. There are other areas of this exterior system that are also not installed in accordance with the standard of care for stucco as called for in the ASTM Standards.

which are in turn, called for in the building code. Stucco cracks will allow water to enter the building envelope.

F. Predicable Results From Water Intrusion

1. It can be seen in some of the units that are occupied, but mostly in the first floor units that are not occupied, that there is an extensive amount of mold and mildew. Mold and mildew presents a clear and present danger in terms of health for the individuals that occupy the spaces. The removal of mold and mildew within the wall cavities is extremely important, because without the removal of mold and mildew and without stopping the water intrusion causing the mold and mildew, the problem will persist and grow.
2. Because of the extensive amount of water intrusion into various areas of the building, there is rotted drywall associated with the windows.
3. Because of the sealant failure at the windows and the fact that the opening portion of the windows do not close properly to stop water intrusion, there is an extreme amount of rust showing up on the steel windows. Steel windows that are subject to rust will eventually be a maintenance problem if these problems are not stopped. Even under the best circumstances, a strong maintenance program will be needed to stop the rust on these steel windows.
4. Sealant Failures- In a lot of cases there was evidence that water was coming through fixed mullions of the steel windows. There were indications of added sealant to stop the water intrusion from coming through the window panes/mullion intersections. A full investigation of these areas needs to be made.
5. Grout at existing exterior window ledges- Sill areas on the exterior of the building, where existing windows were replaced with new steel windows are problematic. In many cases there was grout missing which allows water to intrude in and around the frames of the steel windows. This is a particular concern to me, because the walls of the existing building are extremely thick and therefore, it will take some time for the water to show up on the inside of the units. In the interim, the walls will be subject to mildew and mold growth if water intrudes.

G. Miscellaneous Issues

1. The roof, which is a flat roof, looks as if there are numerous patches that could very well be from the original construction. A full investigation is recommended to see if there are any hidden failures.
2. Slope of exterior verandas- It was noticed that in at least two units, that the scuppers associated with water removal from the exterior verandas did not have slope to them. In one case, water was sloping away from the scupper. Without proper slope on these verandas, water will have a tendency to puddle, break down mortar joints and ultimately penetrate into the slab

and down to the unit below. In some cases, water is already coming in under the threshold of some of the doors resulting in a wood floor problem.

H. Conclusions

All of the above issues are significant and were pervasive throughout the entire building. I would recommend that these concerns be confirmed and documented through a program of destructive testing so that decisions can be made for corrections. Without correction, the issue of sales of unsold units and resales will come into play. I recommend that the board seek legal counsel relative to the impacts of the above issues as well as, pursuing a forensic report documenting and recording the above issues. This report only represents observations during a limited site visit and other construction deficiencies may exist.

If I can be of any further assistance, please do not hesitate to call.

Sincerely,


Myles E. Glick, AIA
Principal

Copy: Joe DeFore
Tom Carlson

EXHIBIT

I

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2009-CP-10-267

3 CHISOLM STREET)
HOMEOWNERS ASSOCIATION,)
INC.,)

Plaintiff,)

-vs-)

CHISOLM STREET PARTNERS,)
LLC; MURRAY SCHOOL)

PARTNERS, LLC; GENOA)
CONSTRUCTION SERVICES,)
INC.; MASTERPIECE MILL)
WORK, INC.; ALLEN ROPER,)
JR. d/b/a R. MASONRY -)
BRICKWORK & STUCCO;)
CAROLINA ROOFING SYSTEMS,)
INC.; and LACY PAINTING,)

Defendants,)

GENOA CONSTRUCTION)
SERVICES, INC.,)
Third-Party Plaintiff,)

-vs-)

THE FOX STEEL COMPANY;)
CAROLINA SERVICES, INC.;)
LESCO RESTORATION, INC.;)
FERST PLASTERING, INC.;)
CHARLESTON GLASS & MIRROR)
COMPANY; 3D RENOVATIONS;)
WILLIAMS MECHANICAL;)
MASTERCRAFT INTERIOR &)
EXTERIOR; BONIFAY)
MASONRY; COASTAL GLASS)
AND BLOCK; ADAMS DAVIS &)
PARTNERS; TROY PARDEE)
HEATING & AIR)
CONDITIONING d/b/a PARDEE)
HEATING & AIR; and JACK)
BURNETT, FRANCES)
HEGENBERGER, CHARLES)
WYRICK, JACKALYN NOLLER,)
ANGELA HALFACRE, LAURA)
RADLEY, LINDA AUSTIN,)

THE DEPOSITION OF:

Mr. Myles L. Glick, AIA

Date: March 18th, 2011

Time: 10:13 a.m.

Location: Nexsen Pruet, LLC
205 King Street
Suite 400
Charleston, SC 29401

Reporter: Kimberli S. Hogle
Professional Court
Reporter & Notary
(843) 849-3007

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CONNIE WYRICK, ERICK)
JABLON, GWEN MCCURDY,)
BEVERLY SEINSHEIMER, BILL)
MANERI, GEORGE DAVIDSON,)
MIMS ROBERTS, GEORGE)
COGAR, AND ALEX MCMILLAN,)
)
Third-Party Defendants.)

A P P E A R A N C E S

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1 obvious stuff.

2 Q. You reported one condition that a homeowner
3 mentioned and that was that a door wouldn't close all the
4 way because the wood floor was buckling. Were there other
5 specific instances of complaints that homeowners made to you
6 such as condensation on all the windows and things of that
7 nature?

8 A. There were some complaints about condensation on
9 the windows, yes.

10 Q. Did anybody tell you that they had seen water
11 leaking through the windows?

12 A. I can't sit here today and say that someone told
13 me those exact words. I actually put that kind of stuff in
14 my reports. When someone tells me exactly something, I
15 write it down. But it was pretty obvious because there were
16 towels. In some of the pictures I have, there are towels
17 sitting on the sills. I mean, that's a way of telling me
18 they know water is coming through.

19 Q. And as I understand it, in all of the forensic
20 investigations you've done throughout the years, I think you
21 said there were only about four instances where you had told
22 people "you've got a problem and you need to get it
23 investigated further" that you never heard anything back
24 from the homeowners?

25 A. Yes, maybe three or four. They went in other

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1 directions or did whatever they did, I don't know.

2 Q. And roughly how many forensic investigations
3 have you done through the years where you've expressed to
4 the homeowners or building owner that there needed to be
5 additional testing?

6 A. I would say 99 percent, and I've done hundreds
7 and hundreds of investigations.

8 Q. And have you worked with Joe DaPore on any prior
9 construction defect matters?

10 A. Prior to 2003?

11 Q. Yes, sir.

12 A. That's a real hard one to answer. I know we did
13 Riverside together, and I think that was prior to 2003. I
14 think that may have been the only one, Riverside
15 Condominiums.

16 Q. Did you and Joe DaPore know each other in any
17 other context except for construction litigation?

18 A. No, sir.

19 Q. So when he contacted you, he was contacting you
20 because he knew you were a forensic architect experienced in
21 construction litigation; correct?

22 A. Yes.

23 Q. What was your belief?

24 A. That was my belief, and the fact that he
25 probably heard I was really a nice guy.

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EXHIBIT

J

WEATHERPROOFING EVALUATION

OF

111 CHISOLM STREET

CHARLESTON, SOUTH CAROLINA

APRIL 10, 2003

W&A PROJECT # - 203241

WILLIAMSON & ASSOCIATES, INC.
5180 ROSWELL ROAD, SUITE 100 SOUTH
ATLANTA, GA 30342

OBSERVATIONS

On April 10, 2003, Williamson & Associates conducted a visual inspection and water nozzle spray tests on selected windows at the above referenced facility. The following observations were made:

1. The windows installed in the units are a single-pane window assembly, with operable windows along the lower ends of the units.
 - a. Most of the operable windows have had weather stripping installed in response to air infiltration.
 - b. The tops of the operable windows have been retrofitted with a plastic strip to divert water to the exterior.
 - c. Several of the operable windows still contain significant voids between the window and the frame, in spite of the installation of the weather stripping.
 - d. Most of the windows observed appeared to be wet sealed.
2. Condensation was observed on the interior of the windows in several of the occupied units, to the extent that moisture flowed down, collecting on the sills. This condition has been noted prior to our inspection.
3. Water nozzle spray tests were conducted on selected windows, including some that were cited as currently leaking. Water was observed entering the interior of Unit 101 when water was applied to the left jamb of the corner window on the west exposure, near the courtyard. An examination of the exterior showed that the sealant was applied to damaged masonry, and the water is entering behind the sealant at these points.
4. Water was observed entering the interior of Unit 201 along the top of the operable window. The plastic diverter was not apparent on this window, and water running down the face of the window leaked in at this horizontal section.
5. Moisture was noted at the heads of the windows, and the jambs of windows on the north courtyard exposure of Unit 101. Water testing these windows did not produce any visible flow into the unit; however, moisture probing of the walls indicates significant moisture content in the drywall.
6. Water was observed flowing over the north courtyard windows of Unit 101 while sprayed on the windows and walls of the unit above. There is no provision in the head recess of the windows for water to drip off the building, so it flows under the wall, to the head. There are observable cracks in the stucco at the heads of these windows that are very likely allowing water to enter the wall and get into the units, behind the sealant at the head of the window.

7. There is an exposed patio directly above two of the windows on the north courtyard exposure of Unit 101 that was built on the flat roof location of the original building. We have requested information about any waterproofing that was applied under the tile floor. Details 5, 6, & 7/A-7.2 do not show any membrane under the tile floor. If that is the case, water could be entering at these patios, and migrating to the wall, showing up along the windows of the lower floor.
8. General observations of the sealant applied around the perimeter of the windows shows areas where the sealant is disbonding from mortar joints in the stone sills. Clear silicone sealant has been used in several locations in an attempt to stop leaks, including applications over mortar, stucco, and other sealants.
9. The surface area of the stucco around the windows of Unit 101 suggests that moisture can be migrating through the surface cracks, bypassing sealants around the perimeter of the windows, and entering the interior of the Unit.

RECOMMENDATIONS

The recommendations for repairing the observed deficiencies would be:

- Cut out perimeter sealants around windows cited as leaking. This would include repair materials applied to additional joints at the sills and jambs.
- Remove damaged stucco, repair areas for receipt of sealant joint. Seal mortar joints in sill stones with Dow Corning 795 Silicone Sealant after cutting mortar down 1/2".
- Re-seal perimeter joints with Dow Corning 795 Silicone Sealant after stucco has been completely repaired.
- Install sheet metal drip edge in the return of each window where water flows to the window from the wall sections above. Set in full bed of Dow Corning 795 Silicone Sealant, and mechanically attach.
- Apply surface coating of a waterproofing material over the stucco that would comply with the architectural requirements of Charleston, if this is possible. Cracks are inevitable on this stucco exterior assembly. W&A believes that a coating will be required, as will soft joint repair to the stucco to mitigate water penetration.
- The scuppers as designed and installed do not allow for subsurface drainage of the patios. There is no waterproof (sealant) seal between stucco/scupper/tile. This needs to be re-visited in general design prior to our recommendations.
- Have the window manufacturer/installer address the weather stripping and water diverters to ensure that air and water infiltration is minimized at the operable windows.
- None of these recommendations will address the condensation on the interior of the windows.

PHOTO LOG

Photos 1 - 6 show views of the facility. Photo 1 is the east elevation; Photo 2 the north elevation; Photo 3 the south elevation; Photo 4 the west elevation; Photo 5 the west interior courtyard elevation; and Photo 6 the north interior courtyard elevation. The areas that were focused on during our inspection was the west elevation, and the north interior courtyard elevation, with particular attention on Unit 101.

Photo 7 shows the south interior courtyard windows of Unit 101. Leaking has been noted in each of these windows, particularly along the heads of the windows.

Photo 8 shows the patio of Unit 201; this is directly above part of Unit 101, and may be contributing to the leaking. A review of the Specifications indicates that a waterproofing membrane was to be installed, but the Architectural Drawings provided for our review do not provide any details for the termination of this membrane. In fact, the drawings do not reflect a waterproofing membrane within this assembly.

Photos 9 and 10 show the inside and outside of through wall scuppers installed on the patios to drain them. There is no indication of how these scuppers are tied into the waterproofing membrane, or, how the waterproofing membrane would allow moisture that penetrates through the tile floor to drain to the exterior.

Photos 11 and 12 show two areas where the stone on top of the parapet wall at the patios ties into the main building. The arrows point to the juncture with the wall, and the lack of a sealant joint at these points. Moisture can enter the walls at these points.

Photos 13 - 21 show general observations about the windows around the facility. Some of these observations were made in unoccupied units, and some in occupied units. Weather-stripping has been added to the windows by the Manufacturer to minimize air infiltration in the units, and water diverters have been added at the top interior edge of each operable window. Photos 13 and 14 show arrows pointing to gaps where light is visible through windows that have been locked in place.

Photo 15 shows an arrow pointing to a gap between window frame components that is wider at the bottom than at the horizontal intermediate. This is an operable window, and it is locked in place.

Photo 16 shows another window where a knife blade can be passed through the gaps between the window frame and the operable window unit, in spite of the weather-stripping that has been added to the windows.

Photo 17 shows the hardware that allows the operable windows to open. These hinges keep the window open, and limit the distance that the window can be open. There is no apparent sealant on the screw penetrations within the jambs on these windows. Water

that penetrates through any of the openings previously noted can leak through the screw penetrations, past the jambs into the walls.

Photo 18 shows a first floor operable window unit, where the lower restraining hinge has been removed to allow the window to open wider and serve as an egress in case of fire. The circle area in the photo shows a hole through the jamb where water can pass by the window and get into the walls.

Photo 19 points to the approximate location of the water diverter that has been added by the Manufacturer to prevent water from leaking in at the top of the operable windows. This was retrofitted on the windows.

Photos 20 - 30 show photos of the water test that was conducted on the west elevation window in Unit 101. This was the last window before the building turned into the courtyard.

Photo 20 shows the lower left corner of the window, where leaking has been observed. Also apparent is the condensation that forms on the interior of the windows. The conditions on the day of this inspection were temperatures in the low 50's, and 100% humidity. It had rained in the area through the night, and off and on during the day.

Photos 21 and 22 show water flowing up over the sill of the operable window when water was sprayed along the sill. This water flowed up between the two pieces of additional weather-stripping installed by Genoa personnel to address continuing air infiltration.

Photos 23 and 24 show water flowing into the unit on the interior sill through deteriorated wall board at the sill/jamb intersection. The source of the water entry was determined to be through deteriorated stucco in the window returns that allow water to by-pass the perimeter sealant joints. This particular leak has been persistent enough to result in the deterioration of the wall board.

Photos 25 and 26 show the condition of the stucco in the window return of the jamb that leaks. The arrows point to the cracks in the stucco that were not patched during the rehabilitation of this building, and may be a source of water entry. The area pointed to in Photo 26 appeared to allow the most water to enter the unit when water was sprayed directly over this area. Photo 27 shows the opposite jamb, and the cracking that exists there as well. Water sprayed in this area did not produce a visible leak into the building.

Photo 28 shows an arrow pointing to a crack emanating from the corner of the top of the window. Note that this crack in the stucco runs up to what had been the top of the wall before the building renovations. A roof detail existed here, and a wall was added to the top of the existing wall. Photo 29 shows a closer view of this crack. Water appears to have an entry point into the wall here.

Photo 30 shows the opposite corner of this window. More cracks are visible in the stucco, and the arrow points to moisture that appears to be absorbed into the stucco through the cracks. The absorption of moisture into the stucco walls could contribute to the leaking, and will have a detrimental affect on the stucco over time.

Photos 31 - 41 show photos taken during the water test of one of the windows on the courtyard side of Unit 101. Photo 31 shows the water being sprayed onto the stucco wall above the window, allowing the water to flow down the wall.

Photos 32 and 33 show the water dripping off of the wall, at the return to the window. It is apparent in Photo 33 that a significant amount of water can flow across the return and run directly onto the windows. There is no device here for the water to drip off before getting to the perimeter sealant joint at the head of the window, or the window unit.

Photos 34 and 35 show the interior sill corners of this window unit. The water damage in these corners is apparent. A Delmhorst Moisture Meter was used to determine if the wall boards were wet or damp. The probes were placed on the interior surface of the walls in these corners, and the meter indicated saturation. Note the location of the needle on the face of the meter to the extreme right. The needle moves left to right across the face of the meter, with higher concentrations of moisture indicated on the right. These walls are very wet.

Photos 38 and 39 show the interior head conditions of this window. Arrow A in each of the photos points to previous water marks on the wall boards. Arrow B in each of the photos points to new watermarks observed during the testing. Photo 40 shows another watermark developing in a corner.

Photo 41 shows the return area above these windows. The wall above this window was not sprayed during our testing, but note the wetmarks in the stucco return above the head of the window. This indicates that the wall is absorbing moisture, or moisture from the patio above is getting behind the wall and flowing downward.

Photos 42 and 43 show the leaking window in Unit 201. In Photo 42, the towels on the sill were placed there by the homeowner to absorb the water that leaks in. Water testing this unit revealed that the leak is at the top of the operable unit, on the right side of the window. Water was sprayed at the top of the window unit, and it immediately leaked in, as seen in Photo 43. The water diverter along the top of this operable unit is ineffective and needs to be replaced.

Photos 44 - 54 show exterior conditions around the windows in the courtyard. Photo 44 shows the area around Units 101 and 202.

Photo 45 shows a typical perimeter sealant joint at the sill of a window. The sealant spans from the window frame to the stones that form the sill, or stucco detail in lieu of the stones. Photo 46 shows a typical jamb sealant condition, and Photo 47 shows that

the individual glass lights have been wet sealed to the frame. There do not appear to be any openings in the frame, except at operable window units.

Photo 48 shows stones forming the sill of this window. Photo 49 shows a mortar joint in between the stones. The condition of the mortar joints varies around the building. At no time, however, was sealant observed used in place of mortar.

Photos 50 and 51 show the sill/jamb corners of the window in the sunroom of Unit 202. Mortar joints were installed here, rather than sealant joints. Photo 52 shows a closer view of the joint in Photo 51, at the return. The arrows point to openings in the mortar joint that could allow water to get behind the sill stones, by-passing the sealant joints, and get into the walls. A look back at Photo 44 does not show any means for water to weep from the wall if it does get into it.

Photos 53 and 54 show examples of where the horizontal sealant joint at the sill of windows peels free at the perpendicular mortar joints. It is apparent that moisture can migrate under the sealant at each of these mortar joints.

Photos 55 - 70 show sill conditions around the building. Photo 55 shows clear silicone sealant applied to cracks in the stucco and at jamb/sill intersections. Photo 56 shows old, weathered sealant that does not completely cover the joint in the sill.

Photo 57 shows clear silicone sealant applied over a mortar joint that is perpendicular to the perimeter sealant joint along the sill. We do not typically recommend clear silicone sealant for these types of conditions. Compatibility of the sealants is another issue.

Photos 58 - 63 show joints in various sill locations that could possibly allow moisture to penetrate behind them. Photo 61 shows a section of stucco on a new wall between window sills. The sill stones are not sealed to the stucco and could allow water to pass between the different substrates. The presence of clear silicone sealant in several of these indicates that these areas were suspected of leaking, and the clear silicone was the repair attempt.

Photos 64 - 70 show sill conditions at the front and sides of the facility. Most of these conditions are mortar joints in a deteriorating state that intersect the sill sealant joint. These are sources of water penetration into the building. At the present time, however, no leaking was noted in any of these areas along the first floor. However, if the same conditions are present on the upper floors, water could be migrating to the lower levels and contributing to the leaking conditions at the heads of windows below.

Photos 71 - 83 show conditions around the remainder of the facility relating to the windows, stone copings at the head condition, the condition of the mortar joints between those stones, and the stucco between the stone bands and floor levels.

Photo 72 shows cracks in the stones that form the head condition over this window. The window is apparently sealed to the stone around the window, but the perpendicular mortar joints have not been addressed. Photo 73 shows more of the same condition in another area. Photo 74 shows a closer view of the cracks in the stone, and the condition of the mortar joints.

Photo 75 shows some "veining" in the face of the stucco between these windows. This is between the first and second floors. It is obvious that moisture is penetrating the stucco and wetting the walls.

Photo 76 shows a vertical crack in the stucco that has been repaired. It appears, however, that the crack is still taking in water through the patch material.

Photo 77 shows a stone band across the head of a window on the east elevation of the building. The circled joint is shown in closer detail in Photo 78, and the condition of the mortar joints, and what appears to be a horizontal sealant joint. Water that enters through these open vertical joints can weep out through the open horizontal joints along the bottom of the stone, in the return. However, if some of that moisture flows on top of the stones, can it by-pass the sealant joint of the windows, and enter the unit?

Photos 79 - 82 show interior wall conditions in Unit 106, in the northeast corner of the facility. At the time of the inspection, the unit had de-humidifiers running in it, in an attempt to dry out the area. These conditions are prevalent on the north wall, which has an exposure to weather driven in from the west. Note the relation of the problems, associated with leaking, to mortar joints in the stones along the head of the windows. It appears that the open joints, and porous surface of the stucco walls is allowing moisture to by-pass the sealants around the windows and affect interior conditions.

End of Report

EXHIBIT K

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

3 CHISOLM STREET)
HOMEOWNERS ASSOCIATION,)
INC.,)

Plaintiff,)

-vs-)

CHISOLM STREET PARTNERS,)
LLC; MURRAY SCHOOL)
PARTNERS, LLC; GENOA)
CONSTRUCTION SERVICES,)
INC.; MASTERPIECE MILL)
WORK, INC.; ALLEN ROPER,)
JR. d/b/a R. MASONRY -)
BRICKWORK & STUCCO;)
CAROLINA ROOFING SYSTEMS,)
INC.; and LACY PAINTING,)

Defendants,)

GENOA CONSTRUCTION)
SERVICES, INC.,)
Third-Party Plaintiff,)

-vs-)

THE FOX STEEL COMPANY;)
CAROLINA SERVICES, INC.;)
LESCO RESTORATION, INC.;)
FERST PLASTERING, INC.;)
CHARLESTON GLASS & MIRROR)
COMPANY; 3D RENOVATIONS;)
WILLIAMS MECHANICAL;)
MASTERCRAFT INTERIOR &)
EXTERIOR; BONIFAY)
MASONRY; COASTAL GLASS)
AND BLOCK; ADAMS DAVIS &)
PARTNERS; TROY PARDEE)
HEATING & AIR)
CONDITIONING d/b/a PARDEE)
HEATING & AIR; and JACK)
BURNETT, FRANCES)
HEGENBERGER, CHARLES)
WYRICK, JACKALYN NOLLER,)
ANGELA HALFACRE, LAURA)
RADLEY, LINDA AUSTIN,)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2009-CP-10-267

THE DEPOSITION OF:

GEORGE GRAY DAVIDSON

Date: October 25, 2010

Time: 1:38 p.m.

Location: Nexsen Pruet, LLC
205 King Street
Suite 400
Charleston, SC 29401

Reporter: Kimberli S. Hogle
Professional Court
Reporter & Notary
(843) 849-3007

KIMBERLI S. HOGLE
Independent Court Reporter
Tele: (843) 849-3007 Fax: (843) 849-7127

CONNIE WYRICK, ERICK)
JABLON, GWEN MCCURDY,)
BEVERLY SEINSHEIMER, BILL)
MANERI, GEORGE DAVIDSON,)
MIMS ROBERTS, GEORGE)
COGAR, AND ALEX MCMILLAN,)
Third-Party Defendants.)

A P P E A R A N C E S

For The Plaintiff & Third-Party Defendants	Nexsen Pruet, LLC By: JOSHUA L. ELLIS, ESQUIRE 205 King Street, Suite 400 Charleston, South Carolina 29401
For Defendant & Third-Party Plaintiff GENOA CONSTRUCTION	Rogers, Townsend & Thomas, PC By: FRANKLIN H. TURNER, III, ESQUIRE 220 Executive Center Drive, Suite 109 Columbia, South Carolina 29210
For Third-Party : Defendant CHARLESTON GLASS & MIRROR (via telephone)	McAngus, Goudelock & Courie, LLC By: CHARLES O. WILLIAMS, III, ESQ. 700 Gervais Street, Suite 300 Columbia, South Carolina 29201
For Third-Party : Defendant WILLIAMS MECHANICAL	McAngus, Goudelock & Courie, LLC By: BEN DAVIS, ESQUIRE 78 Wentworth Street, Suite 200 Charleston, South Carolina 29401
For Third-Party : Defendant CAROLINA SERVICES	Elmore & Wall, PA By: GRAHAM POWELL, ESQUIRE 145 King Street, Suite 302 Charleston, South Carolina 29401
For Third-Party : Defendant CAROLINA SERVICES	Anderson & Reynolds, LLC By: DANIELLE WEGENER, ESQUIRE 37 1/2 Broad Street Charleston, South Carolina 29401

KIMBERLI S. HOGLE
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* No exhibits were proffered during the deposition.

KIMBERLI S. HOGLE
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1 A. He is the past president.

2 Q. There's only been you and he?

3 A. I was the silly one to walk in after the fact.

4 Q. I'm sorry, did I ask you have you seen this
5 before?

6 A. I have not seen this.

7 Q. Do you see under "B", under "water intrusion",
8 where it says "water intrusion in the main building were in
9 the following areas: Windows, window ledges, condensation
10 build-up on the inside of the glass," does it surprise you
11 that this report came out in 2003?

12 A. Well, I haven't seen it before, so I don't know
13 if "surprise" is the word I would use.

14 Q. Does this look like the same complaints that the
15 unit owners in the main building have made to the Board
16 today?

17 MR. ELLIS: Object to the form of the
18 question.

19 Q. "Today" not being a literal day.

20 A. It looks like the complaints are consistent,
21 yes.

22 Q. The last paragraph of that "water intrusion"
23 section says, "The condensation issues were apparent. They
24 may have associated problems with the size and distribution
25 of the mechanical systems." Are you aware of any issues

KIMBERLI S. HOGLE
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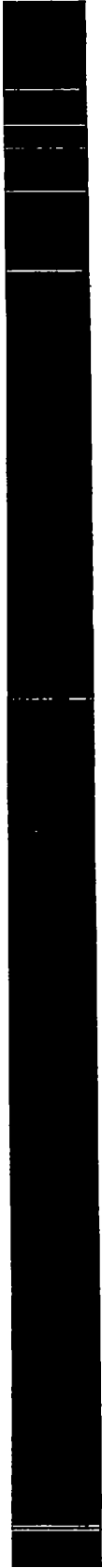


EXHIBIT L

CHARLESTON
28 BROAD STREET
P.O. Box 993
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August 2, 2004

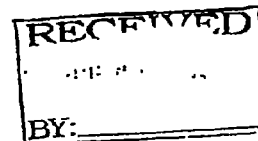
David Perdue
Chisolm Street Partners, LLC
P.O. Box 518
Somerset, Virginia 22972

Re: Three Chisolm Street – Demand Letter
YCRT File: 11246-20022677

Dear David:

The current owners of three Chisolm Street, through their attorneys, assert there are multiple construction defects in the above referenced property. A description of each of these claims and a description of any results of these defects, if known, follows:

- 1) The HVAC units located on the roof are sitting on 4x4 members and are not tied down to the roof. This construction defect is a deficiency arising out of the construction of this dwelling, and it is in violation of the applicable codes in effect at the time of the residential improvements. Specifically, the HVAC units are in violation of the 1997 Standard Building Code that requires these compressors to be tied to their supports, which then need to be tied to the roof. Should these compressors be relocated by high winds then we will hold you strictly liable for any resulting damage.
- 2) The additional walls built at the rear of the courtyard of the main building are showing cracks. These walls appear to be metal studs with a three-coat masonry stucco finish. The intersections of the metal stud walls with the original masonry building are cracking because of construction defects associated with the installation of the three-coat masonry system. This construction defect is a deficiency arising out of the construction of this dwelling, and it is in violation of the applicable codes in effect at the time of the residential improvements. This defect will allow water to enter the building envelope and cause damage. Should any water intrusion occur we will hold you strictly liable for the resulting damage.



PI F001640

- 3) The lines running from the HVAC units down the sides of the building were to be "boxed out" and finished with stucco. Currently the lines are visible and not behind the necessary cover. This construction defect needs to be cured.

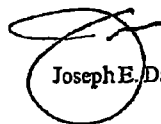
You have 45 days from the date of this letter to cure these defects. Should the above listed defects not be cured within this 45 day time period, then we will pursue all legal avenues to ensure proper resolution of these issues.

Should any damage occur because of these defects, then we will hold you strictly liable. This may not be a complete and accurate list of all the construction defects at three Chisholm Street, so we reserve the right to amend or add any claim that may be discovered and is not listed above.

With kindest regards, I am

Sincerely,

YOUNG, CLEMENT, RIVERS, LLP



Joseph E. DaPore

cc: ✓ Mike Parades – CCM Management, Inc.
Howell Morrison – Attorney for Chisolm Street Partners, LLC

PLE001641

EXHIBIT M



April 8, 2010

3 Chisolm Street Home Owners Association
c/o Sentry Management, Inc.
4925 Lacross Rd Ste 112
North Charleston SC 29406

Re: Fire Protection, Sound Attenuation & Window Observations Report
3 Chisolm Street Condominiums
Gymnasium & School Buildings
Charleston, South Carolina
ABS Project No. 950.0787

Dear Chisolm Street HOA,

Personnel from Applied Building Sciences, Inc. (ABS) performed a visual survey, destructive testing and subsequent document review at 3 Chisolm Street Condominiums (the Facility). The purpose of the survey was twofold. The first portion of the survey was conducted for the purpose of making observations related to the fire protection and sound attenuation in the Gymnasium Building. The purpose of second portion of the survey requested was to make observations related to the extent of the damage incurred due to condensation from the School Building's metal window assemblies. You also asked that we compare our findings to the architectural drawings and specifications produced in association with the renovations performed in 2000.

DESCRIPTION

The subject facility consists of three buildings, referred to on the architectural drawings as the *School* building, the *Gymnasium* building and the *Cottage*. For the purpose of this report, only the School and the Gymnasium buildings are addressed. For orientation purposes the north elevation is the side of the facility facing Broad Street.

BACKGROUND

ABS reviewed information related to the subject facility that was provided by you and Nexsen Pruet. This information included the contract documents originally produced by Brock Green Architects and Planners (Brock Green). No additional specifications, drawings, or construction correspondence have been provided and/or reviewed by ABS to date.

OBSERVATIONS

A survey of the subject facility was conducted by Scott A. Harvey, AIA, Whitney E. Okon, Associate AIA, Barbara Burnham (Sentry Management) and you on November 6, 2009. A

follow-up survey, for the purpose for conducting destructive testing in the areas identified on November 6, was conducted by Whitney E. Okon. . Access to the site was provided by Barbara Burnham and Spence Thomas of Sentry Management and were accompanied by George Davidson, 3 Chisolm Street Home Owners Association President. Our most significant observations are listed below.

Gymnasium Building

Observations and destructive testing were conducted in the Gymnasium building for the purpose of determining the continuity of the fire protection and sound attenuation at the tenant separation walls. Observations were made within Units 402 and 404.

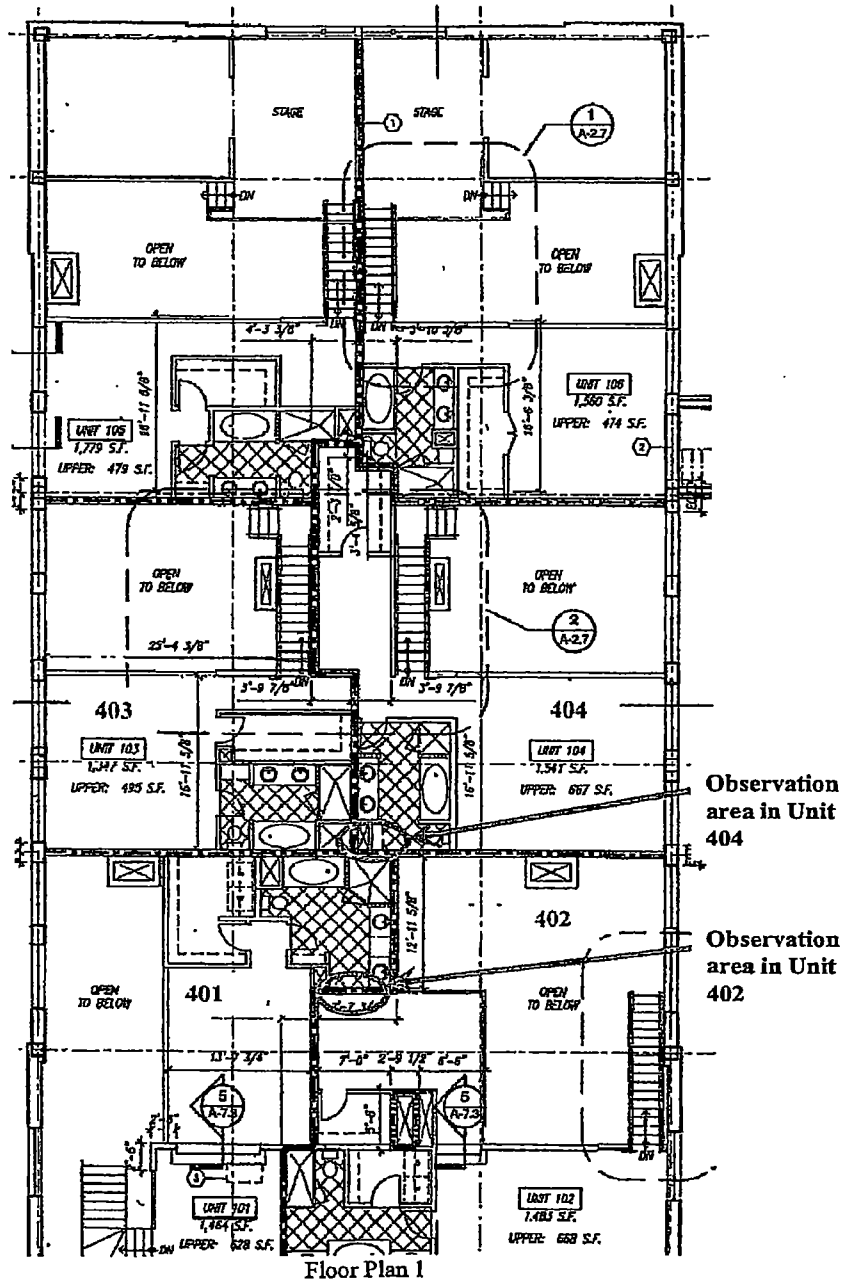
Unit 404

- Discontinuities in the gypsum wall assembly were observed at the southeast corner of Unit 404 (referenced on the Brock Green documents as Unit 104) (Figure 1). The observations were made along a portion of the wall that is adjacent to Units 403 and 401 (referenced on the Brock Green documents as Units 103 and 101) (See Floor Plan 1).
- Discontinuities in the gypsum wall assembly were identified in proximity to existing, horizontal and vertical HVAC trunk lines. Sections of missing gypsum left exposed steel studs and the inboard side of the adjacent wall's gypsum (along Unit 401) exposed (Figure 2).
- Closer observations made along the south elevation wall, between the vertical portions of the exposed HVAC truck line, revealed HVAC trunk lines in the adjacent unit (likely Unit 403) visible (Figure 3).
- Portions of the exposed wall cavity were not filled with fiberglass batt insulation (Figure 4). Twenty (20) gauge steel studs were exposed along with 5/8 inch thick gypsum in the "open" wall areas.
- Discontinuities in the gypsum wall assembly were observed in proximity to structural members (Figure 5) as well. Several locations were identified in which open gaps existed surrounding beams that penetrated the demising wall (separating Unit 404 from Unit 401 and 402).
- Isolated destructive testing was performed to remove additional gypsum drywall in proximity to the area on the east wall shown in Figure 1 (Figure 6). Removing approximately five square feet of gypsum revealed the inboard side of Unit 401's gypsum drywall at the demising wall. Portions of the exposed area revealed a lack of insulation within the wall cavity and sections of the gypsum drywall which had not been fastened into the steel studs.

- Closer observations made along the inboard side of Unit 401's gypsum (facing Unit 404) exposed an Underwriter's Laboratory stamp signifying the material's designated fire resistance classification (Figure 7).

Unit 402

- Discontinuities in the gypsum wall assembly were observed at the northwest corner of Unit 402 (referenced on the Brock Green documents as Unit 102) (Figure 8). The observations were made along a portion of the wall that is adjacent to Unit 401 (referenced on the Brock Green documents as Units 101) (See Floor Plan 1).
- Closer observations revealed open gaps surrounding structural members (Figures 9 & 10). Several locations were identified in which discontinuities in the gypsum left open areas between the gypsum and the beams penetrating the demising wall separating Unit 402 from Unit 401.
- Isolated destructive testing was performed to remove gypsum drywall in proximity to the area of the wall shown in Figure 8 (Figures 11 & 12). Removal of gypsum revealed the fiberglass batt insulation and steel studs at the demising wall between Unit 402 and 401.
- Removal of the fiber glass batt insulation, in the area of the destructive test cut, revealed open gaps visible between individual gypsum boards at the demising wall separating Unit 402 from Unit 401 (Figure 13). The gap allowed open visibility into the ceiling area believed to be above Unit 401's bathroom area. Light fixtures, wiring and HVAC ducts were visible through this open joint. Wiring, typically concealed within the wall cavity, had been routed through the open joint.
- Sections of the gypsum board that had been removed during the destructive testing exhibited stamps indicating portions of the material's fire resistance classification rating (Figure 14).



School Building

Observations and destructive testing were conducted in the School building for the purpose of attempting to determine the extent of the damage incurred due to condensation from the School Building's metal window assemblies. Observations were made within Units 103 and 301.

Unit 103

- Observations were made, from the interior, at the series of south facing windows in the front bedroom of Unit 103 (Figure 15). The windows' metal frames consist of a combination of fixed and operable (awning) sections with single pane glazing.
- Portions of the frame-to-glazing interfaces exhibited maroon colored sealant, not consentient with the black sealant installed along the majority of the mullions (Figure 16). The maroon colored sealant appeared to be a secondary application, installed over black sealant. Adhesion and cohesion failure of the maroon colored sealant were noted.
- Staining and discoloration was identified in locations along the gypsum drywall returns at the windows' jambs (Figure 17).
- A self-adhered white vinyl product had been installed over the entire laminate wood stool at the subject window in Unit 103. Observations made prior to the vinyl being disturbed showed staining patterns on top of the vinyl in proximity to the window frame. The staining pattern was more prominent directly adjacent to the frame and lessened in severity inboard toward the bedroom.
- Removal of the white vinyl product unveiled a painted wood laminate stool. Deterioration to the laminate wood stool, in proximity to the metal window frame, was noted (Figure 18). Similarly, discoloration and possible fungal growth was identified on the underside of the white vinyl product.
- Staining and discoloration was observed on the gypsum drywall under the sill of the subject window in Unit 103 (Figure 19).
- Destructive testing performed under a section of the window sill resulted in removal of a portion of the adhesively attached wood stool and gypsum drywall (Figure 20). The laminate wood stool was cut out in section, along with gypsum drywall, exposing the wall cavity.
- Paper faced fiberglass batt insulation was exposed (paper facing toward the interior) when the gypsum drywall was removed. Minor staining was identified on the fiberglass batt's paper facing. No corrosion or discoloration was observed on the steel studs.
- Removal of the fiberglass batt insulation revealed the inboard side of the masonry wall (Figure 21). The wall cavity, between the studs and the masonry appeared dry. The

metal window frame was situated over the masonry wall (outboard of the steel studs and gypsum).

Unit 303

- Observations were made along the sitting room's north facing window (Figure 22). Moderate to severe blistering of the green paint was identified at the jamb-to-sill interface of the window.
- Destructive testing was performed in proximity to the paint blister, exposing sections of gypsum drywall and the interior of the wall cavity (Figure 23). Staining and liquid water was noted on the fiberglass batt insulation's paper facing when the gypsum was removed.
- Corrosion was identified along the gypsum drywall's corner bead accessories and fasteners. Minor corrosion was also noted on a portion of the steel stud track in proximity to the window (Figure 24)..
- Removal of the gypsum sill revealed that the metal window frame was installed over the steel stud track (Figure 25). Building paper and a plastic membrane had been installed between the stud track and the window frame at the sill.
- Severe staining and discoloration was identified at the inboard side of the exterior gypsum once the fiberglass batt insulation was peeled back (Figure 26). Liquid water was also seen dripping from the underside of the stud track.

CONCLUSIONS

Based on our site surveys, destructive testing, information relayed to us by the property management and review of the design documents provided to us to date, it is our opinion that construction defects have resulted in discontinuity in the demising walls between units in the Gymnasium building. These discontinuities have resulted in code violations related to the fire rated assemblies and sound attenuation requirements. In addition, destructive testing has better revealed the extent of the damage incurred by the reported condensation at the School building windows.

Preliminary test cuts made at Units 402 and 404, within the Gymnasium Building, revealed what is believed to be discontinuity in the fire rated assemblies at the demising walls separating the tenant units. Lack of adequately rated and/or installed fire protection assemblies can result in a life safety concern for the residents. The Brock Green drawings, on sheets A 4.12 - A 4.15, address the fire protection requirements for the demising walls in the units surveyed. The demising walls are called out as P-4. Sheet A 8.1 illustrates P-4 as a 1 HOUR PARTITION - NEW. The 1 hour rated assembly called out by Brock Green refers to Underwriters Laboratory (U.L.) designation U451 which is a nonbearing wall with a rating of one hour. Sheet A 8.2 addresses through penetrations in rated assemblies. All of the details shown, in which penetrations (pipes, structural, etc...) penetrate a rated assembly, call out the necessity for caulk (and in some cases packing material) to be installed.

Observations made during the destructive testing at Units 402 and 404 indicated that the subject wall assemblies installed at the Gymnasium building were not installed in conformance with U.L. U451. The required furring strips were not observed in the areas surveyed, nor was the fastener spacing consistent with the twelve inch on center (12" o.c.) requirement in some areas. Large sections of the gypsum drywall were missing entirely in Unit 404. Similarly the gypsum drywall was discontinuous surrounding the majority of the structural members surveyed. Sections of the demising wall, separating the HVAC ducts in Unit 404 from Unit 403, are missing entirely. The combination of all of the aforementioned conditions has resulted in an installation not in compliance with the contract documents. It is possible that other U.L. classification numbers, utilizing the same construction materials, may enable a one hour rated non-load bearing wall to be appropriate for the facility. However, it is ABS's experience that no U.L. classifications will allow for discontinuities or unsealed penetrations in the rated assembly such as those identified at the Gymnasium building to date.

ABS was asked to survey the Gymnasium building's demising walls for sound attenuation purposes. Sound attenuation is determined based upon a defined Sound Attenuation Classification (S.T.C.) number, which is defined as an integer rating of how well a building partition attenuates airborne sound. U.L. U451, specifically identified on the Brock Green contract documents, corresponds to a S.T.C. rating of 50. Generically speaking, and S.T.C. of 50 will allow for the transmission of loud sounds, such as musical instruments and loud stereos to be faintly heard, but will not allow loud speech to be audible. While surveying units in the Gymnasium building it was noted that a baby crying in an adjacent unit could be clearly heard, as could conversations in some instances. The discontinuity of the rated assemblies surveyed has resulted in a lack of compliance with U.L. U451. These discontinuities, along with the absence of batt insulation in some of the demising walls, have inhibited the as-built assembly from meeting the S.T.C. rating of 50. It is likely that the lack of continuity at the demising walls' rated assemblies has fostered an increase of airborne sound as reported by the unit owners and tenants.

Observations and destructive testing made at the request of the HOA were also conducted in the School building. The purpose of the effort expended in the School building was to determine the existence of damage caused by condensation at the metal window assemblies. Evidence of moisture related damage was confirmed by ABS during both site visits. The moisture related damage identified in Unit 103 appears to be isolated to the wood stools and drywall in proximity to the window frames. Based on the fact that the window frame is situated outboard of the newly built (circa 2000) gypsum drywall and steel stud assembly, severe moisture damage has not resulted in this unit. The majority of the condensation reported is likely being absorbed into the existing masonry wall due to the masonry's inherently large moisture storage capacity. Observations made within Unit 303, on the other hand, revealed severe moisture damage in proximity to the metal window surveyed. The metal window surveyed in Unit 303 was installed inboard of the masonry wall, directly over the newly built (circa 2000) gypsum drywall and steel stud assembly. The moisture storage capacities of gypsum drywall and metal studs are far less than that of masonry (such as brick veneer and concrete masonry units). Additional effort will be required to determine if the moisture damage observed is a result of condensation alone or is a result of both condensation and bulk water intrusion. Further effort may also be required to

determine if the conditions observed, based upon the specific placement of the metal window within the depth of the as-built wall cavity, is consistent throughout the School building.

In summary, construction deficiencies, code violations and moisture damage have been identified at the 3 Chisolm Street facility. These observations are in addition to the condition of the Gymnasium building's wood windows previously reported. The lack of adequately rated and/or installed fire protection assemblies is a life safety concern for the residents of the Gymnasium building. The discontinuity of the installed demising walls has likely resulted in an increase of airborne sound within the Gymnasium building (based upon the lack of compliance with the designated U.L. design and therefore S.T.C. rating). Finally, the moisture related damage at the School building has resulted in damage to portions of the interior finishes. This damage appears to be the result of non-insulated, single pane, metal frame exterior windows which led to condensation on the windows during certain times of the year and resulted in the slow migration of condensation into the wall cavity under the windows and resulting moisture and water damage in the wall system in portions of the building to the windows' single pane glass (resulting in condensation) and fostered by certain placement locations of the metal window assemblies within the depth of the wall cavity.

PRELIMINARY REMEDIAL RECOMMENDATIONS

Remedial action will be required at the Gymnasium building in order to address the inadequate fire protection at the unit demising walls. Ensuring the continuous installation of gypsum drywall, at all of the walls identified in the Brock Green contract documents as P-4, shall be necessary. This will include adding additional gypsum in the missing areas and adequately sealing all of the through-wall penetrations. Extra effort should be expended to ensure that the P-4 walls are continuous in concealed areas, such as above gypsum ceilings and within mechanical chases.

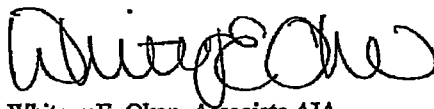
In effort to address the complaint of audible sound transmittance between units it will likely be necessary to add the missing insulation and resilient furring channels to the existing tenant demising walls as shown on the UL U451 design. This will enable the demising walls to meet the S.T.C. designation associated with the U.L. cited on the contract documents and thus reduce the transmission of airborne sound between units.

Based upon observations previously noted at the Gymnasium building's wood windows, in addition to the more recent observations at the School building's metal windows, moisture related damage will continue to manifest itself if modifications to the as-built assemblies are not made. It is recommended that insulated glass windows be considered for installation in place of the single pane glazing currently in place throughout the facility. If insulated glass and windows with better thermal performance cannot be installed, ABS recommends considering alternative design solutions. These solutions may include, but are not limited to, the installation of weather stripping and a secondary, operable, energy/thermal panel covering the existing windows from the interior. Additional design effort will need to be expended if new, thermally performing windows cannot be installed.

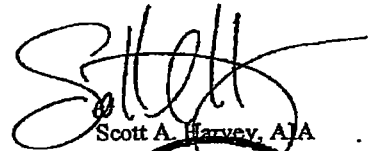
The information and opinions provided herein are based upon the work expended to date as well as the information provided to us. Should additional information be provided at a later date we reserve the right to review said information and modify our opinions and recommendations accordingly.

If you have any questions or comments regarding the information included in this report please feel free to contact us.

Regards,



Whitney E. Okon, Associate AIA



Scott A. Harvey, AIA

Enclosure: U.L. U451
Cc: Mr. David Parrish, Esquire

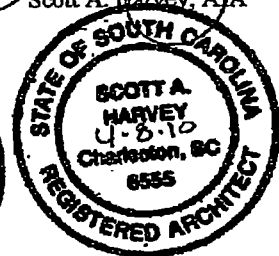


EXHIBIT N



APPLIED BUILDING SCIENCES INC.

ENGINEERS • ARCHITECTS • ENVIRONMENTAL CONSULTANTS

October 16, 2007

Mr. Christopher Ogiba, Esquire
Nexsen Prust, LLC
205 King Street
Suite 400
Charleston, South Carolina 29401

Re: Preliminary Observations Report
3 Chisolm Street Condominiums
Gymnasium and Cottage Structures
Charleston, South Carolina
ABS Project No. 950.0787L

Dear Mr. Ogiba:

Pursuant to your request, personnel from Applied Building Sciences, Inc. (ABS) performed a preliminary visual survey at 3 Chisolm Street Condominiums (the facility). The purpose of our survey was to make observations related to the general condition of the window assemblies installed at the subject property. You also asked that we review the architectural drawings produced in association with the renovations performed in 2000.

DESCRIPTION

The subject address consists of three buildings, referred to in the architectural drawings as the school building, the gymnasium building and the cottage. Only the cottage and the gymnasium buildings are addressed in this report. Based on the information that was provided to us, both of the brick clad buildings were converted from the Murray Vocational School into residential structures. The gymnasium consists of multiple two story condominiums elevated over an enclosed parking garage. The cottage is a single-family, stand alone structure situated between the gymnasium and the school building. For orientation purposes the north elevation is the side of the facility facing Broad Street.

BACKGROUND

Based on the information provided to us by you, Mr. Collin Bruner (the property manager) and the architectural plans provided for our review, the condominiums at 3 Chisolm Street were most recently renovated in 2000. The plans were produced by Brook Green Architects and Planners, based out of Atlanta, Georgia, on behalf of

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Chisolm Street Partners, LLC. The 1997 Standard Building Code (97 SBC) was the applicable code at the time the building permit was issued and Genoa Construction acted as the general contractor on the project.

OBSERVATIONS

Scott Harvey, AIA, of ABS, performed a cursory visual survey of selected areas of the interior and exterior of the structures on August 23, 2007 in the presence of yourself and Mr. Bruner. A follow-up site visit was performed by Scott Harvey, and Whitney Okon, following a review of the architectural contract documents dated June 16, 2000. The contract documents called for isolated removal, repair, and in some cases replacement of several of the window units on the gymnasium and cottage structures. Effort was made during the surveys to gain a general understanding of the condition of the fenestration throughout the facility. Our most significant observations are listed below.



Figure 1 shows the front elevation of the gymnasium structure. The majority of the observations included in this report were made on this building.

General

- Double-hung and fixed, single glazed wood windows are installed on site. The manufacturer of the windows has not been identified to date. No proprietary

maddings were observed on the frame, glazing, or hardware of the windows surveyed.

- According to the architectural plans, isolated windows were to be completely replaced during the construction process. Other windows were to receive replacement glass, sill height modifications, and/or replacement of wood trim (Figure 2). No visual indications of the aforementioned work were identified during the site visits.
- The glazing, hardware and framework observed appeared relatively consistent in age.

Exterior

- Moderate to severe deterioration of the wood window frames was observed throughout the facility. Wood decay and visible rot was noted in multiple locations along the jambs, sill and mullions of the windows (Figures 3 & 4). The deterioration did not appear to be isolated to specific portions of the framework nor was it limited to specific elevations of the structures.
- Discoloration of the wood frames and fungal growth was observed on the window units from the exterior of the structures (Figure 5). Mushroom-like fungal growth was noted projecting from the rotted framework. The exterior paint covering the window frames is severely deteriorated (cracking, peeling, etc...) and the wood was soft to the touch in locations.
- The sealant joints surrounding the fenestration exhibited both adhesion and cohesion failures. Gaps in excess of 3/16 inch wide were noted in isolated locations.
- Separation in the finger jointing of the wood frames was observed. Untreated (unpainted) wood was exposed as a result of the separations in the jointing.
- Plexiglass was installed on the exterior side of multiple windows along the gymnasium structure. According to Mr. Bruner, the plexiglass had been attached over the wood windows in effort to inhibit water intrusion at windows which consistently leaked during rain events.

Interior

Interior observations were made on selected windows within units 402, 404, 405 and 406.

- From the interior of the units, dark staining was observed showing through the off-white colored window trim paint (Figure 6). Gaps were identified along

joints in the wood framework and air migration was noted between the sash and the framework in the majority of the windows surveyed. Similarly, daylight was visible through the frame in multiple locations.

- Ponding and staining consistent with standing water was noted along the sill of multiple windows in the gymnasium building. The tenant in unit 402 explained that she frequently saw water collecting on one of the sills within her unit, but could not identify the point(s) of the water intrusion.
- Observations made along the glazing revealed that all of the windows surveyed had been stamped with the following information: ANSI Z97.1-1984 16 CPR 1201 CIL 1/8 UTP. Windows which had been identified on the architectural contract documents to be "replaced" and those that were not modified (according to the drawings) exhibited the same marking on the glass.
- Comparison of the architectural contract documents with the *as-built* conditions on site revealed that several infill windows had not been installed on the rear (west) elevation of the gymnasium structure. It is unknown at this time why the *as-built* conditions are not consistent with the contract documents (dated 6.16.00).



Figure 2 illustrates the typical wood windows installed at the facility. The subject photo was taken looking along the second story of the gymnasium building's north elevation.



Figure 3 reveals the decay observed along the majority of the wood window frames at the subject facility.



Figure 4 illustrates the severity of the wood decay on some of the windows identified as "new windows to match existing" on the architectural plans.

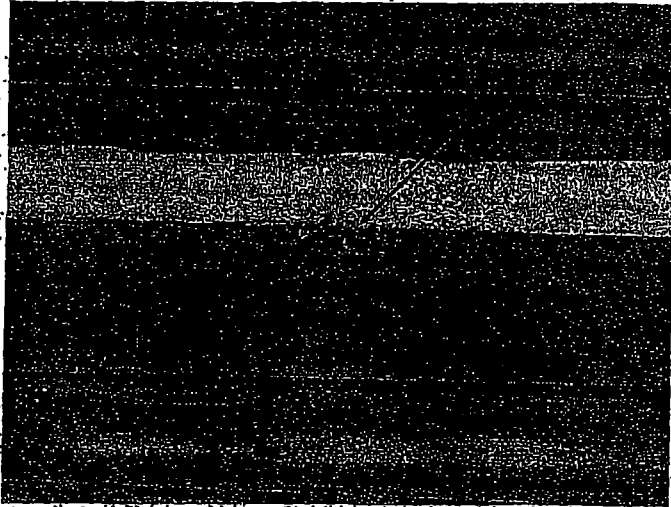


Figure 5 shows the fungal growth observed along the wood window sills in isolated locations.

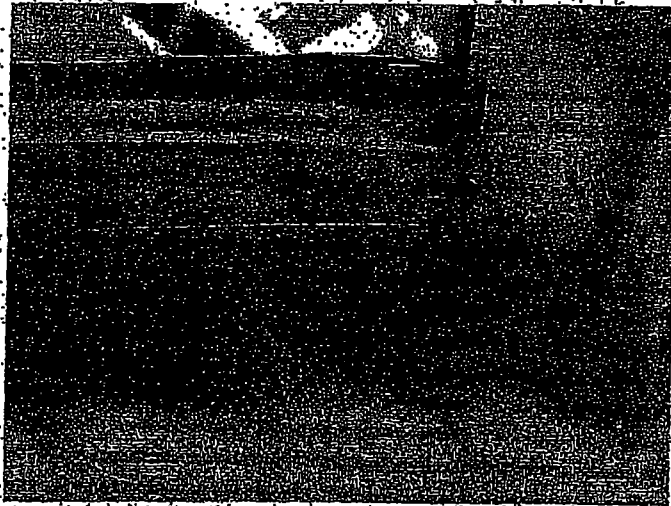


Figure 6 reveals the typical staining and deterioration observed on multiple windows from the interior of the gymnasium building. Note: this window, in unit 406, is identified as "new windows to match existing" on the architectural plans produced by Brock Green in 2000.



Figure 7 shows the rear (west) elevation of the gymnasium structure. Note the lack of windows on the ground level.

CONCLUSIONS

Based on our survey, the information provided to us and our experience with similar problems, it appears that window replacement and/or modification at 3 Chisolm Street Condominiums was not accomplished in accordance with the Brock Green contract documents provided for our review. None of the windows observed during our preliminary survey were indicative of replacement windows exhibiting only seven years of age. Instead, all of the windows appeared to be of the same age based on the visual survey conducted. Severe deterioration to the wood framework of the windows was typical throughout the facility. Separation in the jointing, sealant failures, and fungal growth were noted. No visible distinction could be made in the field to distinguish between the windows identified for replacement and/or repair on the contract documents and those which were identified to remain original.

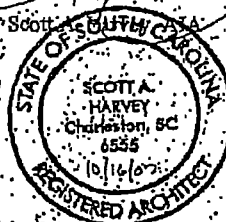
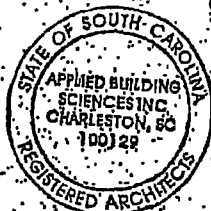
ABS has not, to date, identified any manufacturer codes or date stamps associated with the windows. However, subsequent research was performed in regards to the stamp identified on all of the operable windows surveyed at the facility. The nomenclature on the glazing characterized the glass as being rated for human body impact in accordance with the American National Standards Institute (ANSI) Safety Performance and Methods of Test for Safety Glazing Material Used in Buildings. The ANSI standard was produced in 1984, and was not modified until 2004. The applicable building code at the time the renovations occurred references the 1984 version of the standard. Therefore, the stamp observed does not help to identify the age of the window as specifically being manufactured after the mid-1980's. It is likely that additional information regarding the windows will be required in order to determine if replacement units were ever installed during the 2000 renovations.

In summary, it does not appear, based on our preliminary observations, that the windows at 3 Chisolm Street were repaired or replaced in accordance with the contract documents. No destructive testing was conducted to verify the installation/replacement methods or the cause of the observed window deterioration. We reserve the right to amend this report and modify our opinions once additional information is provided to us.

If you have any questions regarding this report please feel free to call us.

Sincerely,
APPLIED BUILDING SCIENCES, INC.


Whitney E. Oken, Associate AIA



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March 25, 2011

The Honorable Julia J. Armstrong
Charleston County Clerk of Court
100 Broad Street, #106
Charleston, South Carolina 29401

Re: 3 Chisolm Street Homeowners Association v. Chisolm Street Partners, LLC, et al.
C/A Number: 2009-CP-10-267
RTT File Number: 11152.53

Dear Ms. Armstrong:

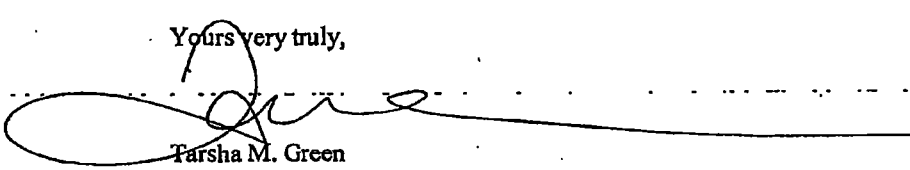
Enclosed for filing please find the original and one copy of Memorandum in Support of Genoa Construction Services, Inc.'s Motion for Judgment, or in the Alternative, for Partial Summary Judgment in the above referenced matter.

Please return the extra filed copy to my office in the self-addressed stamped envelope provided.

Thank you for your assistance.

With kind regards, I am,

Yours very truly,


Tarsha M. Green
Paralegal to Franklin H. Turner III

/tg

Enclosures

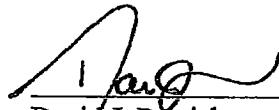
cc: All Counsel of Record (w/enclosures, via email)
Ms. Shari Bradix (w/enclosures, via email)
Mr. Ray Moses (w/enclosures, via email)

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 27, 2013



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