THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JUN 17 2015
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Circuit Case No. 2012-CP-10-3858

Appellate Case No. 2014-002765

Oscar Mendiondo, individually and as representative of a class of similarly situated owners of condominium units in the horizontal property regime known as Shipwatch Condominiums, ...Appellants,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually,

Of Which Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually, are..... Respondents.

RECORD ON APPEAL
VOLUME I
PAGES 1-464

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-10-3858

FILED
2014 OCT 30 PM 1:55
JULIE J. ARMSTRONG
CLERK OF COURT

Oscar Mendiondo, et al — PLAINTIFF(S)

Carolina Concrete Systems Inc, et al — DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion for Summary Judgment, filed on 9/15/2014, is GRANTED IN PART; Formal order to follow

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge — 2060 Judge Code — 10/27/2014 Date

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS Case No. 2012-CP-10-3858
Oscar Mendiondo, individually and as representative of a class of similarly situated owners of condominium units in the horizontal property regime known as Shipwatch Condominiums PLAINTIFF, **Carolina Concrete Systems, Inc., et al.** DEFENDANT.	)	ORDER

FILED
2014 DEC -1 PM 1:27
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter comes before me upon Motion for Reconsideration, filed November 12, 2014 by Plaintiff, **Oscar Mendiondo,** by and through his counsel. After fully considering said Motion, this Court finds no need for oral argument in this matter and, therefore, the Motion is DENIED. The Order Granting in Part the Defendant Carolina Concrete Systems, Inc.'s Motion for Summary Judgment, filed on October 30, 2014, stands.

AND IT IS SO ORDERED!

R. MARKLEY DENNIS, JR.
Presiding Judge

Charleston, South Carolina

November 24, 2014

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	Docket No.: 2012-CP-10-3858
OSCAR MENDIONDO, INDIVIDUALLY AND AS REPRESENTATIVE OF A CLASS OF SIMILARLY SITUATED OWNERS OF CONDOMINIUMS UNITS IN THE HORIZONTAL PROPERTY REGIME KNOWN AS SHIPWATCH CONDOMINIUMS,)	
Plaintiff,)	
v.)	**AMENDED CONSENT SCHEDULING ORDER**
CAROLINA CONCRETE SYSTEMS, INC., SISNROY ENGINEERING, LLC; ROBERT G. SISNROY, individually; TERRENCE J. McKELVEY; GLASGOW ROOFING, INC.; GLASTEC, INC.; SPECTECH, INC.; SONNEBORN, INC.; CHIMNEY SWEEPS, INC.; LOW COUNTRY CHIMNEYS, INC.; EFCO CORP.; W.C. JOHNSTON ARCHITECTURAL SALES, INC.; CHARLESTON GLASS COMPANY, INC.; FIRST EXTERIORS, LLC; ACROCRETE, INC.; BASF CORP.; GARY FREEMAN ARCHITECT, INC.; GARY FREEMAN, individually,)	
Defendants.)	

FILED
2014 APR -7 PM 3:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The Court adopts the following scheduling order based on the agreement of the parties:

(a) Mediation shall be held by July 31, 2014; and

(b) This case shall be subject to trial after December 1, 2014.

IT IS SO ORDERED.

Charleston, South Carolina

~~March~~ April ___, 2014

s/Stephanie P. McDonald
Honorable Stephanie P. McDonald
Chief Administrative Judge

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By _____
DEPUTY CLERK

WE MOVE AND CONSENT TO SCHEDULING ORDER
(Mendiondo 2012-CP-10-3858)

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WE MOVE AND CONSENT TO SCHEDULING ORDER
(Mendiondo 2012-CP-10-3858)

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON OSCAR MENDIONDO, INDIVIDUALLY AND AS REPRESENTATIVE OF A CLASS OF SIMILARLY SITUATED OWNERS OF CONDOMINIUM UNITS IN THE HORIZONTAL PROPERTY REGIME KNOWN AS SHIPWATCH CONDOMINIUMS, ☐ Plaintiffs v. CAROLINA CONCRETE SYSTEMS, INC., et al. ☒ Defendants	)	IN THE COURT OF COMMON PLEAS CASE NO.: 2012-CP-10-3858 MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendants' Attorney (Carolina Concrete):
R. Patrick Flynn 177 Meeting Street, Suite 300 Charleston, SC 29401 phone: 843-723-6470; fax: e-mail: rpf@roblaw.net	David S. Cobb, Bar No. 66569 Post Office Box 22129 Charleston, SC 29413 phone: 843-576-2803 fax: 843-577-1629 e-mail: dcobb@turnerpadget.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:
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type: **Amended Consent Scheduling Order**
☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

David S. Cobb
Signature of Attorney for ☐ Plaintiff / ☒ Defendant Carolina Concrete

March 26, 2014
Date submitted

SECTION III: Motion Fee
☒ PAID – AMOUNT:
☐ 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, SCRCP)
☐ 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: 2463 Date:

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) Case No. 2012-CP-10- 3858
Oscar Mendiondo, individually and as representative of a class of similarly situated owners of condominiums units in the horizontal property regime known as Shipwatch Condominiums, Plaintiff, vs. Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually; Defendants.	**SUMMONS** **(Jury Trial Demanded)**

FILED
2012 JUN 13 PM 4:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY: R. Patrick Flynn, Esquire
Robertson Hollingsworth & Flynn
177 Meeting Street, Suite 300
Charleston, South Carolina 29401
Ph (843) 723-6470
Fax (843) 853-9045

an answer to the Complaint which is herewith served upon you, within 30 days after service of this Second Amended Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

ROBERTSON HOLLINGSWORTH & FLYNN
177 Meeting St., Suite 300
Charleston, South Carolina 29401
(843) 723-6470
(843) 853-9045 fax

By: _____
R. Patrick Flynn
Attorneys for the Plaintiff

Charleston, South Carolina

June 13, 2012

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) Case No. 2012-CP-10- 3858
Oscar Mendiondo, individually and as representative of a class of similarly situated owners of condominiums units in the horizontal property regime known as Shipwatch Condominiums, Plaintiff, vs. Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually; Defendants.	**COMPLAINT** **(Jury Trial Demanded)**

FILED
2012 JUN 13 PM 4:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The Plaintiff, Shipwatch Condominium Association, Inc., complaining of the above-captioned Defendants, alleges and states as follows:

The Plaintiff, Oscar Mendiondo, individually and as representative of a class of similarly situated owners of condominiums units in the horizontal property regime known as Shipwatch Condominiums (hereinafter sometimes referred to as "Shipwatch"), complaining of the above-captioned Defendants, alleges and states as follows:

1. The Plaintiff is a citizen and resident of the State of Kentucky who, at all times relevant hereto and presently owns a condominium unit within the horizontal property regime known as Shipwatch Condominiums, located in the Wild Dunes Development in the City of Isle of Palms, South Carolina. Plaintiff further alleges and states that he is bringing this action in his individual capacity and pursuant to Rule 23, SCRCP, as representative of a class composed of each and every unit owner in the Shipwatch horizontal property regime, and that

a) The class is so numerous that joinder of all members is impracticable;

b) There are questions of law and fact common to the class;

c) The claims of the Plaintiff are typical of the claims of the class;

d) The Plaintiff will fairly and adequately protect the interest of the class; and

e) The amount in controversy exceeds One Hundred Dollars ($100.00) for each member of the class.

2. Defendant Carolina Concrete Systems, Inc. is a corporation organized and existing under the laws of the State of South Carolina and, at all times relevant hereto, was authorized to and did conduct business in the State of South Carolina, County of Charleston.

3. Defendant Sisnroy Engineering, LLC is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant hereto, conducted business relating to the practice of Engineering in the State of South Carolina, County of Charleston.

4. Defendant Robert G. Sisnroy is a citizen and resident of Charleston County, South Carolina who is licensed to practice and actually does practice engineering within the State of South Carolina, County of Charleston.

5. Defendant Terrence J. McKelvey is a citizen and resident of Charleston County,

South Carolina who, at all times relevant hereto, held himself out to the public as a contractor and/or professional in the construction industry within South Carolina.

6. Defendant Glasgow Roofing, Inc. is a corporation organized and existing under the laws of the State of South Carolina and, at all times relevant hereto, conducted business in the State of South Carolina, County of Charleston.

7. Defendant GlassTec, Inc. is a corporation organized and existing under the laws of the State of South Carolina and, at all times relevant hereto, conducted business in the State of South Carolina, County of Charleston.

8. Defendant Spectech, Inc. is a corporation organized and existing under the laws of the State of South Carolina and, at all times relevant hereto, conducted business in the State of South Carolina, County of Charleston.

9. Defendant Sonneborn, Inc. is a corporation organized and existing under the laws of a State other than South Carolina and, at all times relevant hereto, conducted business in the State of South Carolina, County of Charleston.

10. Defendant Chimney Sweeps, Inc. is a corporation organized and existing under the laws of the State of South Carolina and, at all times relevant hereto, conducted business in the State of South Carolina, County of Charleston.

11. Defendant Lowcountry Chimneys, Inc. is a corporation organized and existing under the laws of the State of South Carolina and, at all times relevant hereto, conducted business in the State of South Carolina, County of Charleston.

12. Defendant EFCO, Inc. was, at all times relevant hereto, a corporation organized and existing under the laws of a State other than South Carolina and, at all times relevant hereto,

conducted business in the State of South Carolina, County of Charleston.

13. Defendant W. C. Johnston Architectural Sales, Inc. was, at all times relevant hereto, a corporation organized and existing under the laws of a State other than South Carolina and, at all times relevant hereto, conducted business in the State of South Carolina, County of Charleston.

14. Defendant Charleston Glass, Inc. is a corporation organized and existing under the laws of the State of South Carolina and, at all times relevant hereto, conducted business in the State of South Carolina, County of Charleston.

15. Defendant First Exteriors, LLC is a corporation organized and existing under the laws of the State of South Carolina and, at all times relevant hereto, conducted business in the State of South Carolina, County of Charleston.

16. Defendant Acrocrete, Inc. was, at all times relevant hereto, a corporation organized and existing under the laws of a State other than South Carolina and, at all times relevant hereto, conducted business in the State of South Carolina, County of Charleston.

17. Defendant BASF Corporation, Inc. was, at all times relevant hereto, a corporation organized and existing under the laws of a State other than South Carolina and, at all times relevant hereto, conducted business in the State of South Carolina, County of Charleston.

18. Defendant Gary Freeman Architect, Inc., is a corporation organized and existing under the laws of the State of South Carolina and, at all times relevant hereto, conducted business relating to the practice of Architecture in the State of South Carolina, County of Charleston.

19. Defendant Gary Freeman is a citizen and resident of Charleston County, South Carolina who, at all times relevant hereto, was licensed to practice and actually did practice architecture within the State of South Carolina, County of Charleston.

20. The Defendants listed above including Carolina Concrete Systems, Inc.; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corporation; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; and BASF Corporation (hereinafter referred to collectively as the "Contractor Defendants") provided labor, materials, goods, and services in connection with the construction of repairs at the Shipwatch Condominium project in the Wild Dunes development of Isle of Palms, within Charleston County, South Carolina (hereinafter referred to as the "Project") as general contractors, subcontractors, suppliers, consultants, or independent contractors, or which manufactured, fabricated, and/or otherwise provided construction and building materials, equipment and goods for use in connection with the construction of repairs at the Project; and the labor, materials, goods, and services associated with the Project, constituting the work of each of these defendants was deficient and defective and resulted in damages to the Plaintiff as set forth below.

21. The list of Defendants captioned above including Sisnroy Engineering, LLC; Robert G. Sisnroy, Individually; Gary Freeman Architect, Inc.; Gary Freeman, Individually; is intended to incorporate by reference each of their principals, employees, agents, affiliates, and subconsultants, (hereinafter collectively referred to as the "Design Professional Defendants"), and each of these Defendants provided labor, materials, goods, and services as architects, engineers, draftsmen, technicians, surveyors, or otherwise in connection with the design of the repairs to the Project, and the labor, materials, goods, and services associated with the Project, constituting the work of each of these Defendants was deficient and defective and resulted in damages to the Plaintiff as set forth below.

Jurisdiction

22. Personal jurisdiction is vested and exists in the Court of Common Pleas, County of Charleston, State of South Carolina, and venue is proper in the County of Charleston, State of South Carolina, by virtue of, among other things, the fact that the property which is the subject matter of the Complaint is located in Charleston, South Carolina, and the great majority of the activities relating to the Project and the claims herein occurred in this jurisdiction.

As a First Cause of Action
Against All Defendants
(Negligence, Professional Negligence, and Gross Negligence)

23. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth herein verbatim.

24. Defendants, and each of them, owed a duty to Plaintiff to act in a manner compliant with the reasonable standard of care, good faith, and fair dealing recognized under South Carolina law, and Defendants violated this duty to the Plaintiff and were negligent, professionally negligent, grossly negligent, careless, reckless, willful and wanton in one or more of the following particulars:

a) in failing to properly design, construct, develop, repair, and/or convert the Project into condominiums;

b) in failing to comply with the applicable Building Codes of the County and City of Charleston, State of South Carolina;

c) in failing to comply with the applicable Fire and Safety Codes of the County and City of Charleston, State of South Carolina;

d) in creating deficient architectural and engineering plans, performing deficient contract administration, and/or negligently performing duties associated with architectural and engineering responsibilities;

e) in failing to properly design and construct elements of the Project to permit the existence of an adequate and sufficient program for the treatment,

extermination, eradication, colony control, and/or termite control of any kind on the Project in accordance with industry standards, due care, and applicable law;

f) in failing to properly supervise the contractors, subcontractors, suppliers and/or agents or employees of any of them in connection with the planning, design, and construction of repairs at the Project;

g) in manufacturing, fabricating, preparing for the incorporation into a residential building, reviewing, approving, procuring, and incorporating into the construction of this project such items which were defective, deficient, inferior, inadequate, unsafe, dangerous, inappropriate for the use intended, noncompliant with approved design or design intent, non-compliant with applicable codes and standards in the industry, and otherwise improper for use in the project including, but not limited to, mechanical systems, interior and exterior drywall and other substrate and sheathing material, windows, insulation, roofing, waterproofing systems, and other building materials and supplies, finishes, and other items relating to the construction and ultimate use of this residential project;

h) in designing and constructing repairs to the units within this Project, including, but not limited to the marketing, selling, and installation of defective windows;

i) in designing and constructing repairs to the units within this Project, including, but not limited to the marketing, selling, and installation of inadequate flashing;

j) in designing and constructing repairs to the units within this Project, including, but not limited to the marketing, selling, and installation of inadequate roofs;

k) in designing and constructing repairs to the units within this Project, including, but not limited to the marketing, selling, and installation of inadequate water barriers;

l) in designing and constructing repairs to the units within this Project, including, but not limited to the marketing, selling, and installation of non-weather proof building envelopes and exteriors;

m) in designing, constructing, and repairing elements of the Project and installing products which were defective, deficient, inadequate, unsafe, dangerous, or otherwise non-compliant with codes and standards;

n) in placing defective and inferior construction into the stream of commerce;

o) in placing defective and inferior manufactured systems, equipment, building materials and other products into the stream of commerce.

p) in failing to give proper disclosure of the condition of the Project to the Plaintiff and/or other unit owners at the Project;

q) in failing to properly warn purchasers of dangers and risks associated with the conditions of the material and work product which was being installed for use by the general public;

r) in failing to properly review the original plans and specifications for the Project to determine the repairs which were necessary for the use of the Project by or sale to the general public;

s) in failing obtain necessary building permits or otherwise providing required notification to applicable governmental authorities in connection with the repairs carried out by the Defendants, and by further obstructing and/or hindering efforts to conduct a proper evaluation of the construction and repairs by applicable governmental authorities;

t) in failing to investigate the condition of the individual units and common elements to ascertain and determine if any repair work was performed as required and/or properly performed to correct such conditions as have led to the damaged condition of the Project;

u) in failing to undertake sufficient actions to develop a plan for repairs and otherwise failing to make adequate repairs to conditions at the Project which were unsafe, dangerous, or otherwise not in compliance with applicable building codes or other authorities or standards of care;

v) in negligently and/or intentionally covering up deficiencies associated with the construction and repairs conducted by the Defendants;

w) in failing to act as reasonable persons would in circumstances then and there prevailing and in such other failures as will be shown during discovery and at trial.

25. Said failures above-described, as well as the Defendants' gross negligence, willfulness, and reckless disregard for the rights of Plaintiff and others, have actually and

proximately caused damages to Plaintiff, and the Defendants are liable to the Plaintiff in an amount of actual, incidental, consequential, special, and punitive damages in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

As a Second Cause of Action
(Against Carolina Concrete Systems, Inc.)
(Violation of S.C. Unfair Trade Practices Act, S.C. Code § 39-5-10, *et seq.*)

26. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth herein verbatim.

27. Carolina Concrete Systems' design and/or construction of repairs to the Project, along with the issuance of the property condition reports and other representations to Plaintiff and the other unit owners, and the public at large, constituted the conduct of trade and commerce within the meaning of S.C. Code Section 39-5-20(a).

28. The Defendants, through their acts and omissions including, but not limited to, the following particulars, conducted unfair and deceptive practices within the meaning of S.C. Code Section 39-5-140(a) and 27-31-430, S.C. Code of Laws as amended:

a) in failing to properly evaluate the original set of plans and specifications for the Project prior to conducting repairs;

b) in failing to repair the latent defects within the work performed by the Contractor Defendants, of which this Defendant was or should have been aware;

c) in failing to carry out the fiduciary duties owed to Plaintiff and other unit owners by offering and accepting a special relationship of trust and confidence by virtue of their role in the design and construction of repairs to the Project;

d) in attempting to disclaim implied warranties of merchantability and habitability in documents contrary to South Carolina law;

e) in failing to provide any additional consideration for these purported efforts to waive implied warranties of merchantability and habitability;

f) in making false representations as to the condition of the Project and/or representations as to the condition of the Project in reckless disregard as to the truth of the representations;

29. The conduct of Carolina Concrete Systems as described above was knowing and willful, and this Defendant knew or should have known that such conduct was a violation of S.C. Code Section 39-5-20 and 27-31-430.

30. Plaintiff is a person within the meaning of S.C. Code Section 39-5-140(a) and Plaintiff has suffered actual, direct, and proximate damages as a direct and proximate result of unfair and deceptive acts of these Defendants, in an amount to be determined by the trier of fact.

31. The aforesaid acts of Carolina Concrete Systems, Inc. impact the public interest in that they constituted unfair and deceptive acts and have the potential for repetition and, in fact, occurred at each and every sale of the units of this Project and, as such, are acts which can, have and will affect the public at large by repetition.

32. These unfair and deceptive acts are acts which will affect members of the public, beyond the parties to the above-described transactions, in the form of other consumers who may by injured by purchasing or leasing condominiums and/or rely upon the actions and representations of this Defendant thereby placing members of the public in danger of physical and other injuries.

33. Plaintiff is entitled to be compensated pursuant to S.C. Code Section 39-5-140(a) for the above-described actual, incidental, consequential, and special damages, as well as costs, interest,

and attorneys fees, and to recover three (3) times these damages by reason of the knowing and willful nature of the unfair and deceptive acts by Carolina Concrete Systems, Inc. and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

As a Third Cause of Action
(As to the Design Professional Defendants; Carolina Concrete Systems, Inc.; and Terrence J. McKelvey)
(Breach of Fiduciary Duty)

34. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth herein verbatim.

35. These Defendants, at all times relevant hereto, sought and accepted a special relationship of trust and confidence with the Plaintiff and other unit owners, and were therefore charged with the duty of administration, care and maintenance of the regime property and its common elements according to the terms of the contracts and promises made by these Defendants

36. These Defendants breached these obligations by their acts and omissions such that they have committed breaches of fiduciary duties, negligence, gross negligence, recklessness, willfulness, wantonness, bad faith, mismanagement, self-dealing and waste with respect to their duty of administration, care and maintenance of the regime property and their duty to protect the interests and rights of the Plaintiff and other unit owners, along with their duty to properly conduct the designs and repairs of the regime property. These wrongful acts and omissions have caused and will cause the Plaintiff and other unit owners to incur and continue to incur substantial monetary damages.

37. These Defendants owed a duty to Plaintiff to exercise that degree of skill necessary

to insure that the regime property was properly maintained and to keep the owners informed of serious defects found or discovered and to protect the owners' property interest in conformity with customary and ordinary standards.

38. These Defendants held themselves out to the public as qualified and experienced in the design and construction of repairs to commercial and residential properties such as the Project, and these representations of experience and qualifications were imputed to the Individual Defendants by virtue of their legal relationship and appearance to the public as an indistinguishable single entity by and through the operation of the various individuals and affiliated entities.

40. These Defendants' negligent, reckless and willful conduct includes, but is not limited to:

a) in failing to properly evaluate the original set of plans and specifications for the Project prior to conducting repairs;

b) in failing to repair the latent defects within the work performed by the Contractor Defendants, of which this Defendant was or should have been aware;

c) in failing to carry out the fiduciary duties owed to Plaintiff and other unit owners by offering and accepting a special relationship of trust and confidence by virtue of their role in the design and construction of repairs to the Project;

d) in attempting to disclaim implied warranties of merchantability and habitability in documents contrary to South Carolina law;

e) in failing to provide any additional consideration for these purported efforts to waive implied warranties of merchantability and habitability;

f) in making false representations as to the condition of the Project and/or representations as to the condition of the Project in reckless disregard as to the truth of the representations;

41. As a direct and proximate result and consequence of the aforementioned negligent, grossly negligent and reckless acts or omissions of these Defendants, Plaintiff has and will continue to be required to spend substantial sums of money in connection with the extraordinary repairs and reconstruction of the Project and the associated loss of use and other damages.

42. The Defendants' breaches of duty, acts, errors, and omissions as set forth above caused, among other damages: physical injury to tangible property; a resulting loss of use of that property; and Plaintiff's resulting money damages due to budget deficits and special assessments; all of which were directly and proximately caused by and resulting from the Defendants' negligence, willfulness, wantonness, and recklessness directly related to the mismanagement of the Project by the Defendants.

43. Each of the wrongful acts of the Defendants as described above that occurred in connection with the mismanagement of the Project constituted gross negligence and were more than momentary thoughtlessness, inadvertence or error in judgment on the part of the Defendants with regard to representations consisting of either affirmative statements or silence when there was a duty to speak; instead, these wrongful acts or omissions constitute a complete lack of care and conscious indifference to the rights, welfare or property of the Plaintiff, tenants, prospective purchasers, and other unit owners, and were intended to cause financial harm to the Plaintiff and other unit owners.

44. The Defendants as described above had a fiduciary relationship and owed fiduciary obligations and duties to Plaintiff.

45. The Defendants as described above at all relevant times were or should have been aware of, among other things, the extensive and severe construction defects and deficient conditions at the Project. The Defendants' failure to carry out and inspect the work product; their failure to

properly investigate the extent of these defects and problems; their failure to properly mitigate the damaging effects of these problems and defects; and their failure to properly safeguard the rights and interests of Plaintiffs, all constitute breaches of their fiduciary obligations to Plaintiff.

46. Upon information and belief, Defendants purposely withheld their knowledge of the above-described defects and problems from Plaintiff or consciously failed to investigate the defects knowing that the Defendants would find defects to the extreme detriment of Plaintiff and against the Plaintiff's pecuniary interest. In failing to notify Plaintiff, these Defendants knowingly caused Plaintiff to become responsible for and liable for the above-described needed extraordinary repairs and reconstruction expenses such that these Defendants breached their fiduciary duties owed to Plaintiff including, but not limited to, the duty to perform, the duty of care and skill, the duty of good conduct, the duty to give information, the duty to keep and render accounts, and the duty to act only as authorized.

47. As a direct and proximate result of their breaches of their fiduciary duties to the Plaintiff, these Defendants are liable to the Plaintiff for the actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

As a Fourth Cause of Action
(As to the Design Professional Defendants; Carolina Concrete Systems, Inc.; and Terrence J. McKelvey)
(Aiding and Abetting a Breach of Fiduciary Duty)

48. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth herein verbatim.

49. These Defendants owed fiduciary duties to Plaintiff and breached their fiduciary duties to the Plaintiff as set forth hereinabove.

50. By joining in the failure to disclose, misrepresentations, concealment of conditions, and other acts and omissions in an effort to deceive or otherwise induce the Plaintiff to accept the repairs and condition of the Project as misrepresented by these Defendants, and these Defendants knowingly participated in the breach of the fiduciary duties by the other Defendants as aforesaid.

51. As a direct and proximate result thereof, Plaintiff has and will continue to suffer, and these Defendants are jointly and severally liable for, the actual, incidental, special, consequential and punitive damages as aforesaid in an amount to be determined by the trier of fact.

As a Fifth Cause of Action
(As to the Design Professional Defendants; Carolina Concrete Systems, Inc.; and Terrence J. McKelvey)
(Breach of Contract)

52. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth herein verbatim.

53. These Defendants entered into oral and/or written contractual arrangements with Plaintiff relating to the evaluation, design, and performance of repairs required for the buildings at Shipwatch.

54. Based upon the terms of their contractual agreements, along with the duties which flowed from these Defendants by virtue of the laws and regulations of the State of South Carolina, these Defendants owed a contractual obligation to Plaintiff which required that these Defendants ensure that the repairs were complete and that the Project was safe, habitable, and code-compliant following the work performed and/or services rendered by these Defendants.

55. In breach of these contractual obligations, these Defendants failed to make a full investigation of conditions at the Project, and failed to disclose the existence of the known defects associated with the Defendants' work product at the Project, which constitutes a breach of contract and violation of the terms of the contractual agreements by these Defendants as described above.

56. In addition to and accompanying this breach of these contractual and other obligations, these Defendants made material representations which were false as more fully described in this Complaint which the Plaintiff relied upon to the Plaintiff's detriment.

57. As a direct and proximate result thereof, Plaintiff has and will continue to suffer, and the actual, incidental, special, and consequential damages and other injuries including, but not limited to, the damages and injuries associated with the acts and omissions which constituted the breach of contract by these Defendants as aforesaid, all in an amount to be determined by the trier of fact.

58. These Defendants are therefore liable to the Plaintiff for the actual, incidental, special, and consequential damages and other injuries as aforesaid in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

As a Sixth Cause of Action
(Against all Defendants)
(Breach of Express and/or Implied Warranties)

59. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth herein verbatim.

60. The agreements to perform evaluation, design, and construction of repairs by these

Defendants contained as a matter of law express and/or implied warranties including, but not limited to, good faith and fair dealing, fitness for use, merchantability, habitability, and workmanship with respect to construction, repairs, and/or remodeling, which warranties were not effectively disclaimed under South Carolina law.

61. The Defendants, through their acts and/or omissions, have breached the aforesaid express and/or implied warranties, which directly, actually, and proximately caused and resulted in damage which the Plaintiff has suffered and continues to suffer in an amount to be determined by the trier of fact.

62. These Defendants are therefore liable to the Plaintiff for actual, incidental, special, and consequential damages in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

As a Seventh Cause of Action
(As to the Contractor Defendants)
(Strict Liability)

63. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth herein verbatim.

64. Each and every item repaired or installed by these Defendants was a product within the meaning of S.C. Code Section 15-73-10, *et seq.*

65. These Defendants are and were engaged in the business of selling the aforesaid materials which are within the meaning of S.C. Code Section 15-73-10, *et seq.*

66. The aforesaid products were expected to, and in fact did, reach the Plaintiff herein

as Users or Consumers without substantial change in condition in which it was sold within the meaning of Section B of S.C. Code 15-73-10, *et seq.*

67. The products which were sold by these Defendants were at the time of sale in a defective condition, unreasonably dangerous to Plaintiff as a User or Consumer or to the Plaintiff's property and, as such, these Defendants are strictly liable to Plaintiff as Users or Consumers herein for the physical harm and damage proximately caused thereby.

68. As a direct and proximate result thereof, Plaintiff and other unit owners, as Users or Consumers have suffered, and these Defendants are liable to the Plaintiff for, actual, incidental, consequential, special and punitive damages, all in an amount to be determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

Certification Pursuant to S.C. Code Ann. Section 15-36-100
(Expert Affidavit Requirement)

69. Plaintiff hereby states and certifies that, based upon such conditions as described in S.C. Code Ann. Section 15-36-100 (C)(1), the Plaintiff shall supplement the Complaint by filing any and all required expert affidavits as may be required within Forty-Five (45) days after the filing of this Complaint, or as otherwise provided within the provisions of S.C. Code Ann. Section 15-36-100.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

a) Enter judgment in favor of the Plaintiff and against all Defendants, jointly and severally, in an amount to be determined for actual, incidental,

consequential, special, and punitive damages.

b) Find that the Defendants have engaged in unfair trade practices and knowingly did so thereby entitling Plaintiff to treble damages.

c) Award attorneys' fees and costs to the Plaintiff; and

d) Award such other and further relief as the Court may deem just and proper.

ROBERTSON HOLLINGSWORTH & FLYNN
177 Meeting St., Suite 300
Charleston, South Carolina 29401
(843) 723-6470
(843) 853-9045 fax
rpf@roblaw.net

By: _____
R. Patrick Flynn
Attorney for the Plaintiff

Charleston, South Carolina

June 13, 2012

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Oscar Mendiondo, individually and as representative of a class of similar situated owners of condominium units in the horizontal property regime known as Shipwatch Condominiums, Plaintiff, vs. Carolina Concrete Systems, et al, Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2012-CP-10- 3858 CIVIL ACTION COVER SHEET

Submitted By:	R. Patrick Flynn, Esquire	SC Bar #:	065599
Address:	Robertson Hollingsworth & Flynn 177 Meeting Street, Suite 300 Charleston, SC 29401	Telephone #: Fax #: Email:	843-723-6470 843-853-9045 rpf@roblaw.net

NOTE: The cover sheet and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this Cover Sheet must be served on the Defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (***Check all that apply***)
If Action is Judgment/Settlement do not complete

X JURY TRIAL demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.

☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.

☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.

☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts	Torts-Professional Malpractice	Torts - Personal Injury	Real Property
X Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20__-CP-___-_____ ☐ Notice/File Med Mal (230) ☐ Other (299)	☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Product Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)

Inmate Petitions	Administrative Law/Relief	Judgments/Settlements	Appeals
☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture - Petition (840) ☐ Forfeiture - Consent Order ☐ Other (899)	☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript of Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	☐ Arbitration (900) ☐ Magistrate -Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Commission (991) ☐ Other (999)

Special/Complex/Other	
☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) ☐ Sexual Predator (510)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out of State Depositions ☐ Motion to Quash Subpoena in Out of County Action (660)

Submitting Party Signature: _____ **Date:** **June 13, 2012**

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (04/2012)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	Docket No.: 2012-CP-10-3858
Oscar Mendiondo, individually and as representative of a class of similarly situated owners of condominiums units in the horizontal property regime known as Shipwatch Condominiums, Plaintiff, v. Carolina Concrete Systems, Inc.; Sinsroy Engineering, LLC; Robert G. Sinsroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually, Defendants.	)	**DEFENDANT CAROLINA CONCRETE SYSTEMS, INC.'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

FILED
2014 SEP 15 PM 2:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO PLAINTIFFS AND ATTORNEY FOR PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that as soon as counsel may be heard, Defendant Carolina Concrete Systems, Inc. ("Carolina Concrete") will move for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that Plaintiffs' claims are barred by the applicable statute of limitations. In support of this Motion, Carolina Concrete craves reference to applicable South Carolina law, discovery, deposition testimony, and a memorandum to be filed with this Court.

TURNER PADGET

David S. Cobb
Post Office Box 22129
Charleston, South Carolina 29413-2129
Direct: (843) 576-2803
Fax: (843) 577-1629
dcobb@turnerpadget.com

ATTORNEYS FOR DEFENDANT
CAROLINA CONCRETE SYSTEMS, INC.

Charleston, South Carolina

September 12, 2014

TURNER PADGET
TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

DAVID S. COBB
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September 12, 2014

Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2210

Re: **Oscar Mendiondo v. Carolina Concrete Systems, Inc., et al.**
Docket No.: 2012-CP-10-3858
TP File No.: 490.1123

Dear Ms. Armstrong:

I enclose the original and one copy of the Defendant Carolina Concrete System's Notice of Motion for Summary Judgment, the Motion Cover Sheet, and our $25 check for the filing fee. Please file the original and return a clocked copy to me in the enclosed envelope. By copy of this letter to counsel of record, I am serving them with a copy. If you have any questions or need additional information, please call me at your convenience. With kind regards,

TURNER PADGET

David S. Cobb

DSC/hah
enclosures
cc: counsel of record (with enclosures)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Oscar Mendiondo, et al., ☐ Plaintiff v. Carolina Concrete Systems, Inc., et al. ☒ Defendants	IN THE COURT OF COMMON PLEAS CASE NO.: 2012-CP-10-3858 MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney: R. Patrick Flynn 177 Meeting Street, Suite 300 Charleston, South Carolina 29401 phone: (843) 723-6470 fax: (843) 853-9045 e-mail:	Defendant Carolina Concrete Systems, Inc.'s Attorney: David S. Cobb, Bar No. 66569 Post Office Box 22129 Charleston, SC 29413 phone: 843-576-2803 fax: 843-577-1629 e-mail: dcobb@turnerpadget.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**
Estimated Time Needed: 30 minutes 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 — September 12, 2014 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, SCRCP)
☐ 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:

12-3858

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Shipwatch Condominium Association, Inc.

Plaintiff,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually,

Defendants.

IN THE COURT OF COMMON PLEAS

Docket No.: 2012-CP-10-3857

DEFENDANT CAROLINA CONCRETE SYSTEMS, INC.'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

FILED
2014 OCT 27 AM 9:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Oscar Mendiondo individually and as representative of a class similarly situated Owners of Condominium Units in the Horizontal Property Regime known as Shipwatch Condominiums

Plaintiffs,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G.

IN THE COURT OF COMMON PLEAS

Docket No.: 2012-CP-10-3858

Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually,

Defendants.

Carolina Concrete Systems, Inc. ("CCS") submits this Memorandum in support of its summary judgment motion based on the statute of limitations. Plaintiffs filed lawsuits on June 13, 2012 alleging defective and deficient construction at the Shipwatch Condominiums located within the Wild Dunes development of Isle of Palms, South Carolina. Plaintiffs served CCS on July 12, 2012 and set forth causes of action for negligence, violation of the S.C. Unfair Trade Practice Act (S.C. Code §§ 39-5-10 et seq.), aiding and abetting a breach of fiduciary duty, breach of contract, breach of express and/or implied warranties, and strict liability in tort. Complaint.

The Shipwatch project consists of four oceanfront buildings constructed around 1985 with EIFS exterior cladding. Neither CCS nor any of the defendants in this litigation had any involvement with the original construction. From 2002-2010, CCS acted as the general contractor for various piece-meal repairs and renovations to the buildings at the direction of the Shipwatch Homeowners' Association ("HOA") and various on-site property managers. The work included partial replacement of some of the original EIFS cladding with a Durock Wall System ("DEFS"); installation of new windows and sliding glass doors at certain locations on the endwalls, oceanside, and streetside elevations; reframing of chimneys; and recoating of balcony and corridor decks.

Plaintiffs' assert in this litigation that CCS and the other defendants should be liable for the costs associated with the repairs arising from the failure of original building components such as EIFS and original sliding glass doors and windows (which were not installed, repaired, or replaced by CCS or any of the defendants in this litigation); however, the applicable statutes of limitations bar the claims because the undisputed facts show that Plaintiffs knew about water intrusion and alleged construction defects more than three years before commencing this litigation. S.C. Code Ann. § 15-3-530 applies a three-year statute of limitations to Plaintiffs' claims of negligence, aiding and abetting a breach of fiduciary duty, breach of contract, common-law warranty, and strict liability in tort. Further, S.C. Ann. § 39-5-150 provides a three-year statute of limitations on Plaintiffs' claims under the South Carolina Unfair Trade Practices Act. Accordingly, CCS is entitled to summary judgment as a matter of law.

STANDARD FOR SUMMARY JUDGMENT

Statutes of limitations "are designed to promote justice by forcing parties to pursue a case in a timely manner." State ex rel. Condon v. City of Columbia, 528 S.E. 2d 408, 413 (S.C. 2000). These statutes "encourage plaintiffs to initiate actions promptly while evidence is fresh and a court will be able to judge more accurately." Moriarty v. Garden Sanctuary Church of God, 511 S.E.2d 699, 706 (S.C. Ct. App. 1999), *aff'd*, 534 S.E.2d 672 (S.C. 2000), overruled in part on other grounds, 606 S.E.2d 475 (S.C. 2004). Thus, as the South Carolina Court of Appeals has observed:

> Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. . . . Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. . . . One purpose of a statute of limitations is to 'to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.' . . . Another purpose of a statute of limitations is

> to protect potential defendants from protracted fear of litigation. . . .

City of N. Myrtle Beach v. Lewis-Davis, 599 S.E.2d 462, 465 (S.C. Ct. App. 2004) (internal citations omitted).

The statute of limitations starts to run when the "cause of action shall have accrued." S.C. Code Ann. § 15-3-20. "Generally, a cause of action accrues under South Carolina law 'the moment the defendant breaches a duty owed to the plaintiff.'" Bar v. City of Rock Hill, 330 S.C. 640, 644, 500 S.E.2d 157, 159-60 (Ct. App. 1998).

In some circumstances, however, the "discovery rule" provides an exception to the general rule and tolls the statute of limitations until such time as "the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann § 15-3-535. A person has constructive notice of a cause of action if he or she knows of "facts and circumstances of an injury [that] would put a person of common knowledge and experience on notice that some right ... has been invaded or that some claim against another party might exist." Id. "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 developed." Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). The analysis is an objective one, focusing not on the subjective knowledge of the individual plaintiff, but on whether a reasonable person with knowledge of the facts and circumstances should have been placed on notice of an injury.

Importantly, the statute is not tolled because of the inability of the plaintiff to identify alleged wrongdoers. In Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994), the Supreme Court said,

> "The important date under the discovery rules is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of another alleged wrongdoer. If, on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run *for all claims based on that injury*. (emphasis added).

Wiggins, 442 S.E.2d at 170. Likewise, the inability of the Plaintiff to discover evidence of culpability against a particular defendant within the limitations period is irrelevant. Republic Contracting Corp. v. South Carolina Dept. of Highways and Public Transportation. 332 S.C. 197, 208, 503 S.E.2d 761, 767 (Ct. App. 1998). In addition, the "[f]ailure of the injured party to comprehend the full extent of the damages . . . is immaterial." Wiggins, 442 S.E.2d at 170.

ARGUMENT

I. Plaintiffs' failed to initiate their claims against CCS within the time allowed by the applicable statute of limitations.

Plaintiffs clearly had knowledge of various water intrusion issues at the Shipwatch project at least 5-10 years before filing this litigation and, clearly, well before July 12, 2009 (three years before Plaintiffs served CCS with pleadings). For example, Arnie Schaewe (a board member and unit owner) testified in his deposition that Plaintiffs knew they had leakage problems at various locations including the end walls, oceanside sliding glass doors, and bay windows when CCS began work in 2003. Deposition of Arnie Schaewe, page 35, line 9-page 37, line 22. Fred Trombino (also a board member) testified that during his tenure on the board between 2005-2007, the board knew EIFS was problematic and not the right application for a coastal environment. Deposition of Fred Trombino, page 37, line 24-page 38, line 6. Specifically, the board was told that water tends to get behind EIFS, causing the metal studs to rot and fail. Id. page 38, lines 11-17. However, the board elected not to further inspect the buildings at that time because they had already decided to remove the remaining EIFS. Id. page 38, lines 18-25.

The regime manager (Linda Jerningan), who the HOA has employed since 2005, testified that she recommended to Plaintiffs in September 2008 that she had obtained a contract to remove and replace all of the remaining EIFS off of all buildings at the development, at a projected cost of $1,800,000 (or approximately $423,000 per building). Deposition of Linda Jernigan, page 330, line 2-page 331,

line 18. The September 2008 Board Minutes also reflect that Jernigan told Plaintiffs that the buildings showed water intrusion problems when they opened up the buildings previously for EIFS removal at certain locations and that Plaintiffs should anticipate additional problems if Plaintiffs moved forward with her recommendation about complete removal of the remaining EIFS. Id., page 333, line 14-page 335, line 10. Jernigan also recommended Plaintiffs remove and replace the balcony deck coatings and leaking sliding glass doors because of problems that had been "on-going" or that had not been funded by Plaintiffs in previous years. Id., page 332, line 15-page 333, line 13. Plaintiffs now claim these items, all recommended to be replaced in 2008 because of water intrusion or other damage, as part of this current litigation.

Further, Plaintiffs have known for approximately ten years that certain sliding glass doors and windows leak and continued to leak, with resulting damage to the exterior and interior of the units. Linda Jernigan (the on-site property manager from 2005 to the present) testified that leaking sliding glass doors have been a problem at Shipwatch since she returned to manage the property in February 2005. Deposition of Linda Jernigan, Vol. II, page 219, lines 8-18; page 230, lines 9-12. Trombino testified he knew about leaking sliding glass doors when he joined the Board in 2005 when Jernigan told him the project had problems with the sliding glass doors. Trombino, page 132, line 22-page 133, line 14. Beginning in 2006, the Board started replacing a certain number of leaking sliding glass doors on an annual basis based mainly upon homeowner complaints. Schaewe, page 78, line 11-page 79, line 6.

HOA board meeting minutes between 2005-2007 clearly reflect Plaintiffs' knowledge and ongoing discussions about repairing and replacing leaking sliding glass doors. In 2005, the Board noted leaks continued at some sliding glass doors, including the 5th floor penthouse doors likely caused by sunlight deteriorating the rubber seals and caulking. See Shipwatch Board of Directors Meeting, April 1, 2005, page 2 (Exhibit 1); and Shipwatch Board of Director Meeting, September 16-17, 2005, page 2 (Exhibit 2). In 2006, the Board discussed that leaking sliding glass

doors continued to be problematic, and the leaking persisted despite repairs with caulk. See Shipwatch Board of Directors Meeting, March 18, 2006, page 10 (Exhibit 3).

In 2006 and 2007, Plaintiffs also received correspondence directly from Defendants that put Plaintiffs on notice of continued water intrusion issues at the sliding glass doors. On July 10, 2006, engineer Robert Sisnroy, P.E., produced a report to Jernigan explaining the results of his visual survey of "chronic water intrusion" conditions at two of the Shipwatch buildings. Sisnroy stated that based on his observations, "it is evident that chronic water intrusion is occurring adjacent to the sliding glass door installations typically at the south walls." Further, Sisnroy cautioned his recommended repair of installing a sill pan with end dams would only be a temporary solution to the leaks, and a long term solution included installation of new doors on an elevated curb. (Exhibit 4).

In 2007, the HOA building committee reported: "it has been well known by passed boards that there has been leakage problem[s] with ... a number of sliding glass doors....The regime has put forth concerted effort over the years to remedy this problem by caulking." See Building Report, March 9, 2007, page 2 (Exhibit 5). Moreover, leaks continued at the 4th and 5th floor sliding glass doors, and the Board undertook an investigation to determine "whether [the] leakage is from the doors themselves or from other sources." See Building Committee Report, Shipwatch Homeowners' Meeting, January 20, 2007, page 2 (Exhibit 6).

On May 9, 2007, CCS issued Plaintiffs a report of its inspection of the buildings at the HOA's request. which found that "leaks continue to be a problem at and around the old sliding glass doors on the oceanside and streetside of the buildings ... have repeatedly shown Jernigan and board members these doors that are leaking and ... sure there are damages occurring in the new metal stud walls with the Durock System that CCS installed in 2003-2004." (Exhibit 7). Schaewe testified he remembered discussing this report with CCS and another board member, but did not recall what, if anything the Board did to address CCS' concern. Schaewe, page 152, line 17-page 153, line 24.

II. CCS is entitled to summary judgment based on the applicable statute of limitations.

Plaintiffs' claims are barred by any applicable statute of limitations because they were clearly on notice of their claims before July 12, 2009, as discussed previously. The facts in this case are analogous to Dean v. Ruscon Corporation, 321 S.C. 360, 468 S.E.2d 645 (1996). In that case, Susan Dean purchased a building in Charleston on September 1984 after a contractor had inspected it and found it to be structurally sound. Two months later, she noticed a fine crack in the building façade, which she thought might be related to some pile driving done by Ruscon during construction at another location nearby. She immediately hired expert consultants to examine the crack. Several months later Ms. Dean noticed that the original crack had expanded and the façade in that location was beginning to bulge and buckle. A second crack also had appeared in another location. After being informed that the building was no longer structurally sound, Dean brought suit against Ruscon in 1991. At trial, the court directed a verdict against Dean, finding as a matter of law that the statute of limitations had run.

On appeal, the Supreme Court affirmed, holding that the statute of limitations began to run in November 1984 when Dean initially discovered the crack. The court said, "[b]ecause Dean had *notice* in November 1984 that she may have a cause of action against Ruscon, there is no need to toll the statute of limitations beyond that date. (emphasis in original)." Dean, 321 S.C. at 366, 468 S.E.2d at 647. Further, the court said, "Dean's subsequent failure to act with reasonable diligence in pursuing such claim is no reason to toll the statute of limitations until such time as further damage evolved." Id. Moreover, the court said, "The fact that Dean may not have comprehended in 1984 that the original crack would expand causing the building to ultimately buckle is immaterial." Id.

In a similar case, the court upheld summary judgment for the defendant based on the statute of limitations in Barr v. City of Rock Hill, 330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998). The court held a termite inspection report noting

moisture in the crawl space of the Plaintiffs' house was sufficient notice of water damage to start the running of the statute of limitations.

In this case, Plaintiffs' clearly knew about possible claims for damage from water intrusion before July 12, 2009, as evidenced by the deposition testimony of Schaewe, Trombino, and Jernigan. Meeting minutes of the HOA board clearly documented numerous discussions surrounding continued issues involving leaks at the sliding glass doors and attempted piece-meal repairs short of removal and replacement. Moreover, Robert Sisnroy and CCS notified Plaintiffs' of water intrusion issues and resulting damage at certain sliding glass doors before July 12, 2009.

II. The UCC limitations period does not apply to Plaintiffs' warranty claims.

S.C. Code Ann. § 36-2-102 states Chapter 2 of the UCC applies to "transactions in goods." South Carolina courts have rejected the application of the UCC warranties to the sale of buildings. E.g., Lane v. Trenholm Building Co., 267 S.C. 497, 229 S.E.2d 728 (1976) (holding "Article II of the UCC was adopted with the stated purpose to standardize the laws governing transactions involving *personalty*") emphasis added). "Goods," as defined in the UCC, "means all things (including specially manufactured goods) which are moveable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities . . . and things in action. 'Goods' also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty [§ 2-107]." S.C. Code Ann. § 36-2-105(1). Generally, identified things attached to realty cannot be considered goods unless they are "capable of severance without material harm thereto." S.C. Code Ann. § 36-2-107(2).

Plaintiffs' did not buy "goods." The Shipwatch Condominiums themselves are clearly not within the UCC definition of "goods" because they are not "moveable." Furthermore, Plaintiffs' claims regarding deficient or defective construction and

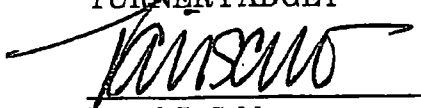
repairs to various building components are not "capable of severance without material harm thereto" and, therefore, cannot become "goods" within the UCC definition. This reading of the UCC is fitting and sensible, particularly in view of the related legal precepts of product liability law that require proof of a defect existing in a product as of the time of sale, before any subsequent alterations of the product by others. The repairs by the Defendants at Shipwatch consisted of replacing various building components including exterior cladding, windows, and sliding glass doors. The installation of these materials transformed these materials into an integral part of the realty, different in character than the individual components at the time of sale. Plaintiffs' complain about the performance of these building components after they were incorporated into the Shipwatch buildings and attached to realty.

In Republic Contracting Corp. v. South Carolina Dept. of Highways and Public Transportation, 332 S.C. 197, 503 S.E.2d 761 (Ct. App. 1998) the court held the three-year statute of limitations of S.C. Ann. § 15-3-5301(1) applied to a common law implied warranty claim. Thus, any common law warranties that may arise under the circumstances of this case would be governed by the three-year statute of limitations set forth in S.C. Code Ann. § 15-3-530.

CONCLUSION

For these reasons, CCS respectfully asks this Court to grant its motion for Summary Judgment. In Jackson v. John Doe, 342 S.C. 552, 556, 537 S.E.2d 567, 569 (Ct. App. 2000) the court acknowledged the policy reasons supporting the enactment and strict enforcement of statutes of limitation and the constitutional responsibility of the courts to effectuate the principles of repose, despite hardship in occasional circumstances. In this case, the undisputed facts prove that the statutory period of limitations expired before Plaintiffs commenced litigation against CCS. Accordingly, this court should grant summary judgment in favor of CCS.

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CAROLINA CONCRETE SYSTEMS,
INC.

Charleston, South Carolina

October 27, 2014

Deposition of
Arnold E. Schaewe

July 21, 2014

Shipwatch Condominium Association, Inc. v. Carolina Concrete Systems, Inc., et al.
Case Number: 2012-CP-10-03857&58



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sliding glass doors were leaking in various units; is that not correct?
A. Well, I believe it said at this point in time -- I think -- I believe it was Carl working with Mr. Wiggins. At that point it says, had identified 15 as a problem.
Q. And from that point forward, did you all continue to inspect the sliding glass doors for leaks?
A. Yes.
Q. And, additionally, you had homeowners reporting that they had leaking sliding glass doors?
A. Yes.
Q. And throughout the years after 2006, the board decided to replace certain sliding glass doors based on those inspections and complaints by homeowners?
A. Yes.
Q. And each year, would the board determine how much it could afford as far as the number of doors that it could replace?
A. I believe I left the board after 2007, I believe. So I do not know what discussions the board had between my leaving the board and my

coming back to the board in 2012.
Q. Fair enough. But during that time period, additional doors were replaced every year, is that not correct?
A. Yes. As I mentioned earlier, I believe we stand somewhere around 160 right now.
Q. Okay.
(Off the record.)
(Lunch recess was taken from 12:30 to 1:48.)
BY MS. SMITH:
Q. Okay. Mr. Schaewe, we're back on the record. And I just have some few short questions regarding some of the documents that you produced this morning to us.
Specifically, I am looking at what's been Bates stamped AS0297. Do you have those documents in front of you?
A. No, I don't have those with me.
Q. You don't have any of those documents?
A. They're out in the car, in fact.
MS. SMITH: Are we all going to be asking him about the documents?
MR. ROOT: His documents?

MS. SMITH: Yes.
THE WITNESS: Do you want me to go get them for you?
MS. SMITH: Yes.
(Off the record.)
THE WITNESS: I apologize for that. I just received these documents back from Flynn's office, and they're still in the FedEx box.
A. Okay. I have them.
BY MS. SMITH:
Q. I believe what they are is your rental of the unit; is that correct?
A. The -- on the bottom left, those are the -- those are the rentals, right.
Q. Okay. And it's for years -- I can't read it. I think it's 2003 to 2013?
A. Yes. Yes.
Q. Okay.
MS. SMITH: Can we mark that as an exhibit?
THE WITNESS: Pardon?
MS. SMITH: I said I'd like to mark that as an exhibit.
(Off the record.)

(Deposition Exhibit 164 was marked for identification.)
BY MS. SMITH:
Q. All right. Mr. Schaewe, if you could just possibly -- is this an Excel spreadsheet?
A. Yes, it is.
Q. That this is -- okay. And I'm not real good with Excel spreadsheets, I'll tell you right now.
A. Okay.
Q. So I just want to try and get some clarification and some information that you have on here for each of the years.
You have certain columns that are going across the top of the page. For instance, in 2013, you have housekeeping as the first column on the left.
A. Yes.
Q. Okay. And then you have a number of amounts that go down underneath housekeeping.
A. Yes.
Q. Are those -- is that by month or is there -- are those simply entries or --
A. They -- they come -- all of these numbers -- or most of these numbers, the

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chimneys. And I do not recall the name of that organization, because I was not on the board then.

But that was not successful.

And then we asked Carolina Concrete to come in and check out those leakages and -- so Carolina Concrete then worked on the chimneys.

Q. What about other areas of the building besides the chimneys?

A. The progression was that Carolina Concrete looked at the chimneys and suggested rework of the chimneys.

At the time they were working on the chimneys, they discovered -- the roof on Shipwatch at that time was a tile roof. They discovered that -- that many of the roof tiles were basically loose because the fastening nails were rusted through.

And we decided -- we decided to replace the tile roof with a metal -- with a metal roof.

And then through investigations and advice from Bob Wiggins in talking about other leakages on the building, in consultation with him and through his advice, we proceeded to do more the rather extential (phonetic) cladding

work that we did at that time on -- on the ocean side walls and the two end walls on each building.

Q. Do you know specifically why Mr. Wiggins suggested that work? What did he find that would have suggested that you all replace cladding on the end walls on the ocean side?

A. Well, we knew we had -- we knew we had leakage problems in various parts of the building on the -- on the ocean side through -- through doors. He discovered that we had leakage due to construction of the partition walls on the oceanfront balconies.

We had -- we knew we had water intrusion in the bay window areas on the first three floors of the end walls. So we knew we had problems of water intrusion from the exterior at Shipwatch.

And we were being advised by Mr. Wiggins on what we could do about that, so --

Q. And is that then what led to removing the stucco on the end walls and the ocean side --

A. Yes, exactly.

Q. -- and various areas?

A. Yes.

Q. And you also removed the bay windows; is that correct?

A. The bay windows on the end walls?

Q. Yes, sir.

A. We -- the bay windows, some of them had been replaced previous to Carolina Concrete beginning that work. And then we replaced additional ones during that project.

Q. Do you recall any mention of rusted or corroded metal stud framing --

A. Yes.

Q. -- during Mr. Wiggins investigation?

A. Yes.

Q. What do you recall about that?

A. Pardon?

Q. Do you remember what Mr. Wiggins told you about that?

A. I'm sorry. Every time papers rustle in the background I don't hear you.

Q. Sorry about that.

A. Sorry about that.

Q. What did Mr. Wiggins -- what do you recall Mr. Wiggins telling you all about the rusted or corroded metal studs?

A. Well, we found rusted studs -- you have to remove the cladding to find rusted studs. So when we removed -- when we removed the original EIFS cladding, we found many rusted studs.

Q. Was that on both the end walls?

A. Both -- both the ocean side and end walls.

Q. Was this done on all four buildings?

A. Yes.

(Off the record.)

BY MS. SMITH:

Q. Mr. Schaewe, just to clarify, when you're talking about the removal of the synthetic stucco from the end walls and the ocean side and the corroded and rusted metal stud framing that we're just speaking of, you're talking about in the 2003, 2004 time frame, approximately?

A. If -- if that's what you're saying. Again, I don't recall the exact dates of that. But I'm certain you have the record there, so if it -- if you say it's 2003, 2004, then it's 2003, 2004. So --

Q. Okay. Do you know at that point if there was any issue with the deck sloping?

A. With -- with the what?

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STATE OF SOUTH CAROLINA

THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM ASSOCIATION,	)	
Plaintiff,	)	
-versus-	)	Case No.: 2012-CP-10-3858
CAROLINA CONCRETE SYSTEMS, INC., et al.,	)	
Defendants.	)	
OSCAR MENDIONDO, Individually and as representative of a class of similarly situated owners of condominium units in the horizontal property regime known as SHIPWATCH CONDOMINIUMS,	)	
Plaintiffs,	)	
-versus-	)	
CAROLINA CONCRETE SYSTEMS, INC., et al.,	)	
Defendants.	)	

THE DEPOSITION OF FRED TROMBINO was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 10:00 a.m. on Friday, the 18th day of July 2014, at the offices of Carlock Copeland, 40 Calhoun Street, Suite 400, Charleston, South Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

BY MR. COBB:
Q Before 2011, the board had decided that it was going to remove all the sliding glass doors?
A Yes.
Q The board had decided that it was going to remove all of the EIFS off the buildings. Correct?
A Yes.
Q And the board wanted to do those over a number of years because of the concern about cost and occupancy?
A Correct.
Q And those two considerations primarily drove the decision not to do all of that work at once at some point in 2009, 2010, 2011. Correct?
A Yes.
Q That's the work that's being done now as part of these 2013/2014 repairs. Correct?
A That is correct.
Q When did you first learn that there was an issue at Shipwatch about the synthetic stucco or EIFS?
A When I was on the board the first time.
Q So sometime in the 2005 to 2007 time period you learned as a board member that synthetic

stucco was a problem for Shipwatch?
A That is correct.
Q What did you learn?
A I learned that the synthetic stucco was a problem, not the right application for a coastal environment.
Q Who told you that?
A I believe the insurance company told us they were charging us a premium for insurance for the EIFS.
Q Did you also get told at that point in time about issues with water intrusion and EIFS?
A Yes.
Q What were you told about that?
A We were told that EIFS has a tendency to – water tends to get behind the EIFS, rotting the studs, causing failure.
Q Did the board hire anyone in 2005, 2006 or 2007 to inspect the buildings to see if there were problems to the structure because of EIFS or any water intrusion to the building because of EIFS?
A Not that I'm aware of.
Q And why not?
A We were in the process of removing the EIFS, replacing studs, probably the reason.

Q Essentially the board knew that the EIFS was coming off, so why spend money on someone inspecting what's going to be removed. Correct?
A I haven't got a good answer for that yet. Let me just think about that. I don't have an answer for that.
Q What knowledge, if any, do you have about why impact windows and impact-rated sliding glass doors were not installed at Shipwatch until these 2013/2014 repairs?
A I have no information about impact-resistant glass, only that it's apparently code.
Q What information was given to the board before SKA about the cost associated with impact glass either for the windows or sliding glass doors?
A Impact glass was never mentioned.
Q Did Linda Jernigan ever communicate to the board any comments by either Bob Wiggins, Bob Sisnroy, Gary Freeman or any of the folks at Charleston Glass about impact glass and the costs associated with impact glass?
A I am not aware of that.
Q If she testified that she did have communications with the board about that issue,

would you disagree with her?
A No.
Q Do you recall any discussions when you were on the board either in 2005, 2006, 2007 or in 2012, 2013 and 2014 where proposals were made to the board about the cost associated with impact glass versus regular glass and how exponentially greater impact glass costs?
A That was made aware to us by SKA.
Q What did they tell you?
A That the impact-resistant glass was going to cost exponentially more.
Q If there is evidence that shows that the board at Shipwatch did not want to pay for that item before 2013, would you find it hard to believe that the board did not want to incur that expense?
MR. RAMSEY: Object to the form.
BY MR. COBB:
Q What I'm getting at is, it appears based on the stuff that we have that the board had the option to do that and chose not to.
A I don't believe that's the case.
Q Why not?
A Because if we were instructed that you needed to put in impact-resistant glass for code, we

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STATE OF SOUTH CAROLINA
THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM ASSOCIATION, Plaintiff, -versus- CAROLINA CONCRETE SYSTEMS, INC., et al., Defendants. OSCAR MENDIONDO, Individually and as representative of a class of similarly situated owners of condominium units in the horizontal property regime known as SHIPWATCH CONDOMINIUMS, Plaintiffs, -versus- CAROLINA CONCRETE SYSTEMS, INC., et al., Defendants.	Case No.: 2012-CP-10-3858

THE CONTINUATION OF THE DEPOSITION OF LINDA JERNIGAN was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 10:00 a.m. on Tuesday, the 15th day of July 2014, at the offices of Turner Padget, 40 Calhoun Street, Suite 200, Charleston, South Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

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side of A and B.
Q Had all of the synthetic stucco been removed from the ocean side of buildings C and D before the 2013/2014 repairs began?
A No. Only the end walls.
Q So there would be some difference in the scopes between phase one and phase two. Correct?
A I don't know why there would be.
Q Well, is the synthetic stucco that has already been removed in phase -- I'm sorry. Let me back up. On phase two, are there repairs to the ocean side involving the removal and replacing of the cladding?
A Yes.
Q What explanation did someone give as far as why that's being done?
A I don't know how I could answer that. That's just kind of beyond my realm of understanding and expertise.
Q In your job as the property manager, how often do you inspect the interior of each unit?
A I don't go in to inspect a unit unless I'm called to for a specific reason.
Q Would you be contacted by either the unit owner or the rental agency?

A Yes. One of them would request or call in about something they had a problem with or something they needed me to look at; or when it rains, you know, we had problems with leaking sliding glass doors. So we would go in after a heavy rain looking for wet carpet, any sign of water.
Q How long has it been a problem with leaking sliding glass doors at Shipwatch?
A Well, I've been there -- this is my ninth year. So there's been problems since I've been there.
Q And you started when?
A February 2005, I think.
Q What kind of problems have you noticed with the leaking sliding glass doors since February of 2005?
A They leak.
Q Anybody ever told you why they leak?
A We've had contractors out there that look. Sometimes they say it was no end dams. Sometimes it was installation. They kind of each had their own opinion.
Q What contractors gave you those comments?
A Carolina Concrete and Charleston Glass.

Q And those comments were given to you as early as February of 2005?
A I don't remember for sure when I might have gotten reports from them. I just know that some doors leaked, and they were the contractors of choice. So whenever there was a problem, that's who I called. And they would come out and investigate and do what they could to stop the leaks. Sometimes they could. Sometimes they couldn't.
Q What problems have existed with windows at Shipwatch?
A I don't really recall any specific problems with windows.
Q Anybody ever reported to you any window leaks?
A I don't recall any.
Q Anybody give you any explanation as to why the windows needed to be replaced as part of the 2013/2014 repairs when there have been no reported problems with the windows?
A It's my understanding that they do not meet code. And when they were replaced, they were replaced with a product that did not meet code.
Q Who explained that to you?
A Well, the building -- the city building

inspector is the one that said it, and then it was explained to me by Sutton-Kennerly.
Q When did you have the discussion with the city building inspector?
A I didn't discuss it with him. Sutton-Kennerly did.
Q That's what I asked you, is who gave you the information about the windows not meeting code? Did the city building inspector talk to you about that?
A Not personally, no. Sutton-Kennerly after their discussion with them.
Q So the only information you've had with the windows not meeting code were comments relayed to you by Sutton-Kennerly?
A Correct.
Q Who from Sutton-Kennerly?
A Jeff Miller.
Q Have you had any discussions with anyone with the Isle of Palms building department about the windows?
A No.
Q Have you had any conversations with anybody, either with Carolina Concrete or Charleston Glass or any of the subcontractors, about why those

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Q Any place other than sliding glass doors?
A Fourth floor units are townhouses. So they incorporate the fourth and the fifth floors. And there will be water penetration in the fourth floor bedroom street side, which is right below the fifth floor sliding glass door. That's how we would be able to find a leaking sliding glass door on the fifth floor.
Q How long have you had the problem with the leaking fifth floor sliding glass doors?
A We've had leaking problems since I came in 2005.
Q Any other places where the homeowners have complained about water intrusion?
A Not that I can think of.
Q Have any of the homeowners complained about roof leaks?
A I think we had a couple of -- I remember having Carolina Concrete come out and make some repairs -- they had to make some repairs to roof drains. I don't remember -- I know they had to cut into the ceilings of some of the townhouses to make the repair. I don't remember if there was a leak inside -- I don't remember why we had to do that, but they had to make some repairs to roof drains.

Q What about chimneys?
A -- I don't recall any complaints about water intrusion at the chimneys.
Q A couple of more background questions and then I'm going to move on to some other things.
Do you consider yourself to be an expert in construction?
A No, I do not.
Q Who do you rely on for any kind of information concerning the actual conditions of the buildings at Shipwatch?
A Up until Sutton-Kennerly was hired in 2011, 2012, whenever they did the investigation report, Carolina Concrete, we relied on them for just about everything. They were the contractor of choice.
Q What's your opinion of the work that Carolina Concrete performed?
A I don't have an opinion of the quality of their work.
Q Well, why would you keep hiring them back and forth for what seems like to be a decade if there was some issue of concern about the quality of work?
A We believed in them and trusted them

completely. They were the contractor of choice.
Q And how did they fail to live up to that trust?
A The inspection that was done by Sutton-Kennerly revealed some things that weren't properly done.
Q Such as?
A I don't know. You have the report. I really don't -- can't recall anything particularly from the report, but there were things.
Q You just don't know what things they were?
A I don't recall. I've got a lot going on right now. I've got a construction project that's gone on. That's past history. All I can tell you is that I had the greatest respect for Carolina Concrete and Charleston Glass. We hired them to do the work and trusted and depended upon them to do it properly. Whether they did or not is not up to me to say. It's up to the professionals.
Q And you would agree with me that Sutton-Kennerly is one of many professionals. Correct?
A Yes.
Q You would agree with me that

Sutton-Kennerly like any human being is not perfect. Correct?
A They are darn close.
Q Has Sutton-Kennerly indicated to you any mistakes that they've made in their evaluation of the project?
A They have not.
Q How was Sutton-Kennerly chosen for the project?
A We interviewed a few engineers. We asked people that had used them in the past. And Sutton-Kennerly was the most highly respected and they were recommended by Carolina Concrete.
Q In fact, Carolina Concrete gave Sutton-Kennerly's name to you. Correct?
A They did.
Q You had never heard of Sutton-Kennerly before. Correct?
A No. I had no reason to deal with an engineer.
Q In fact, Carolina Concrete was out with Sutton-Kennerly when Sutton-Kennerly was doing some of their initial work?
A They were.
Q And Sutton-Kennerly or Shipwatch paid

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have recommended what he recommended.
Q I want to make sure I'm clear. In September of 2008 you recommended to the board that the board enter into the $1.8 million contract with Carolina Concrete Systems to replace the EIFS off of the four buildings at Shipwatch. Correct?
A I don't believe I recommended that they enter into a contract with anyone. I recommended that they do the work that had been recommended that they do for the protection of the buildings.
Q Let me rephrase. In September of 2008 did you recommend to the board that it spend approximately $423,060 per building which can be done in phases totaling $1,800,000 for EIFS replacement of the buildings at Shipwatch?
A Apparently, I recommended whatever it says in here that I recommended. But did I stand up and say I recommend that you sign a contract with someone for this amount of money? No, that's not my place. My place is to do research to know what the buildings need to get the prices, get the information and lay it out for them. And, yes, I recommend that you do what is appropriate for the buildings. But I don't recommend that they sign a contract for a million dollars. That's not my

place.
Q My question to you -- the last question I asked you did not involve you recommending that they contract with anyone.
My question to you was, the September 2008 minutes indicate that you "highly recommended" item No. 6 of the September 2008 budget meetings. Correct?
A That's what it says, yes.
Q Item No. 6 is titled, "EIFS replacement, approximately $423,060 per building which can be done in phases totaling $1,800,000."
A That's what it says, yes, correct.
Q And that work would have involved the complete removal and replacement of all the EIFS on the four buildings at Shipwatch. Correct?
A All that had not already been replaced, yes.
Q And do you recall making that recommendation to the Shipwatch board that they have that work done beginning in 2008?
A I can't say that I specifically remember it, but I'm sure that I would. And it says here that I did.
Q At any point in time after you reviewed

the September 2008 minutes did you ever go to anyone on the board and say you have misquoted me, mischaracterized what I said or did?
A No.
Q And so anybody who is objectively looking at the September 2008 minutes can take these minutes to mean that you in fact did --
A Yes, they can.
Q In 2008?
A Yes, they can.
Q That the Shipwatch board completely remove and replace all the existing EIFS on the four buildings. Correct?
A Sure.
Q And you would agree with me that there was a recognition by the board in 2008 that the three items you listed as "highly recommended" which in their entirety would have totaled over $2 million were things that were either, quote, ongoing or had been held back from previous years?
A What was the question? The board -- What was it? The board what?
Q There is a recognition, is there not, in these September 2008 minutes by the board that you had recommended $2.1 million worth of repairs --

A It says here, yes. The secretary is in the minutes, so yes. I guess that would say that the board is acknowledging that I recommended that they get the EIFS off the building and replace it, yes.
Q Not only that, but dealing with the deck coatings and the sliding glass doors. Correct?
A Yes.
Q And the board recognized in September of 2008 that those three items were either as the minutes reflect, quote, ongoing or had been held back from previous years. Correct?
A Yes, that's what it says.
Q On the last page of the September 2008 minutes there is a note that you told the board in September of 2008 that when Shipwatch opened up the EIFS before, there were problems, and that you notified the board additional problems may arise when opening up the new areas of EIFS, meaning that the costs may be more than expected. Correct?
A It says that, but I don't remember that.
Q Do you have any reason to dispute the accuracy of these minutes?
A No.
Q Let me go back to page 3 of these

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SHIPWATCH Board of Directors Meeting
April 1, 2005

The April 1st meeting was called to order with all in attendance except Bill Clifton and
Rogeriee Thompson.

Minutes of the January 14th Board of Directors meeting and the January 15th Annual Homeowners meeting were approved by Terry and seconded by John.

Connie presented 2 Financial Reports, one with Capitals and one without. Insurance
premium invoice came on February 14th and was due February 18th. Cost of insurance in conjunction with a higher deductible was found to be negligible because
the Regime rarely presents claims. If we did have more claims the cost would go up.
Because the premium notice didn't come until 2/14 it was decided it would be harder to do the budget if we changed the fiscal year. We will, therefore, stay with the present 11/01-10/31 fiscal year.

Carrie's costs are higher, however, she said it would level off during this summer.

Eric asked if an Incident Report is started when an "incident" happens at the Regime.
Linda has started to implement this type of report.

Building Maintenance & Repairs are over by $16,000 mainly due to screen door maintenance that Lester implemented before he left. The company contracted to do
the work, in the Board's opinion accomplished nothing. Linda said our policy regarding screens is that the Regime is no longer responsible. Linda paid for the screen work so far, but has told them to leave the premises and has asked Walter to
re-screen doors if necessary, making sure everyone has a screen.

A cash flow analysis on the Capital Account will be done and then decide if an assessment or larger Regime fees would be needed.

Coming into April it was decided we needed to put construction issues to a close. Arnie to send a letter to homeowners regarding a cut-off date for construction issues for each unit.

Carl gave his Building Report. Elevators need overhauling badly. We will need to re-tile the floors in porcelain or slate tiles. To re-do the elevators totally would cost approximately $26,000.

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Contractors on site are making a mess of Shipwatch. Carl and Linda would like to propose a $500 bond for any new interior construction. Carl and Linda will work on this and also "contractor regulations". We will need a Board policy regarding contractor regulations. Audrey asked if a designated area could be set aside for tile cutting, which seems to be the messiest of the construction.

Pool filter needs fixing. $5,000 is needed to re-plumb the line.

Leaks are still apparent on some sliding glass doors. Carl said he is offering his leaky doors to find a solution to this problem.

Terry offered his landscape report, noting that initial work on the entrances has been done, with more perennial plantings to follow. He indicated installation of up lighting is a priority but since Shipwatch cash flow is tight, that item, plus planting of more perennials will have to wait. The Landscape Master Plan calls for large plantings of perennials instead of annuals, as well as groundcovers to replace so much area now devoted to pine straw that must be continually replaced. The irrigation system is in the process of being checked and dead plants have been. Eric asked that the grass clippings stop being blown on the pine straw and landscaping.

Nothing to new to report regarding the legal procedures with Cyclone.

Linda then gave her Managerial Report. Elevators are contracted at different times. D Building is up June 1st, 2005, the others renewed in the fall of 2004 for 5 years. We are looking into a new provider for service. Linda and Thyssen-Krupp will have a meeting Thursday regarding the contract and their responsibilities.

Linda asked several companies to give bids regarding home inspections for plumbing issues for units.

Carroll LeTellier is updating the 20-year plan. Several chimney caps were found loose. There have been several roof leaks due to bad roof drains. This damaged several units, however, has nothing to do with the new roof we've had installed.

Pool steps must be re-plastered. This repair would require the pool to be closed and partially drained at a cost of $1,200. This is scheduled for April 4th. We are awaiting proposals for Security for this summer.

Linda would like to mark pet areas better and install a post, sign and bags. This was okayed by the Board.

Arnie has categorized systems at Shipwatch with a detailed calendar of when items would need cleaning, repairs or replacement. Linda will make a spread sheet of same.

Arnie started a discussion about a Damage Loss Policy. Over the years it has become evident that losses occurring from one unit to another or even from within one unit have not had a clear avenue for remedy as to costs or who pays for what, nor a chain
of command on how to handle such. This policy and the accompanying example will serve the Regime in sorting out and keeping tabs on these items, as none have ever been budgeted for. These costs have found their way mostly into Unscheduled Repairs or Building Maintenance. The Board feels these items need to be itemized and recognized for what they are. A Motion to accept this policy was made by Terry and seconded by Carl. It will take effect April 1, 2005.

The policy shall read:

Damage Loss Accounting

The Shipwatch Board of Directors instructs the Board Treasurer, the Shipwatch Manager, and Bookkeeper to establish a new financial tracking account titled "Damage Loss".

This account will be used for journalizing expenses to the Regime and to individual owners remaining from damages after insurance claims have been settled. At the end of the fiscal year, the Board will review this account and make a decision on whether to assess all owners for the amount in the account.

Also attached to these minutes is an "example" of the procedures to follow if an incident occurs.

Connie suggested the category of Damage Loss Accounting with sub-categories of water damage, and others. Linda would like to see more sub-categories under Building Maintenance to have a better understanding of what items are really cost. Connie said we have many account numbers that have never been used. Connie, Linda and Carrie are to overhaul the categories and sub-categories with accounting numbers.

Audrey has been working on the MD/BL proposed amendments since October 2002,
and with the help of Arnie and past President Charlie Rhoden, we will present these amendments to the homeowners in a special meeting tomorrow, April 2, 2005 for voting. It was suggested by Eric, and approved, that several non-Board homeowners certify the vote of the homeowners. It was decided unanimously that the MD/BL be posted on the Shipwatch web site in either it's current form, or should the amendments be passed, then the new incorporated version of them. A Motion was made to place final version of the MD/BL on the Shipwatch web site. Made by Terry and seconded by Eric.

Linda had asked during an earlier meeting with Arnie how she was to maintain Shipwatch without employees. Arnie felt we are in need of a maintenance/janitorial
type person (even if only in a part-time capacity). This person could be utilized for small things – light bulb changing, door closing problems, extra trash removal, washing deck chairs, small painting projects, etc.

The janitorial service we use now will give us a proposal for extra services. The Board and Linda's responsibility is to keep Shipwatch maintained and kept clean. The Board feels that we need to polish Shipwatch image with better landscaping and cleanliness – better housekeeping all around.

We will start with the janitorial service and then address a maintenance person at the June meeting. Walter has been doing a lot of extra miscellaneous work at a cost of
$28 and hour, and his helpers at $20 an hour. Eric mentioned that work by another company called Palmetto Maintenance was well done.

Arnie mentioned setting up the audit sheet for a particular person for a week or at least a few days to see how they work out.

Linda asked about air conditioners. She's been called about several A/C's not working. She was told that all calls are to be referred to Resort Maintenance. It was thought that possibly a page be posted for Q & A of problems for the summer rental people – such as:

Q: The A/C is not working.
A: Call Resort Maintenance at .....

Q: My car has been towed.
A. Call .....

Q: My light bulb is burned out.
A: Call.....

Connie, Linda, and Carrie will have a meeting explaining the chain of command, her responsibilities, and our expectations. Linda also asked if the Board would agree to have Carrie sign a time sheet – the Board agreed. It was stressed that Carrie know she is responsible and working for Linda primarily.

Terry said he'd like to see a part-time intern. He said he would write up a report for our next meeting. Along with this he would write up a volunteer agenda for our homeowners that would like to help the Board and Shipwatch without being tied to an office for 3 years.

Meeting adjourned at 3:30 PM.

SHIPWATCH Board of Directors Meeting
September 16/17, 2005

Meeting called to order at 1:04 PM, in attendance were Arnie Schaewe, Audrey Lehner, Carl Grisier, Eric Bergstrom, Terry Henderson, David Metts, John Ratliff, Linda Jernigan, Regime Manager, and Jayme Hines, representing homeowner, Hugh Jaeger.

Motion to accept the June 4th, 2005 Board minutes and April 22nd, 2005 Special Meeting minutes were approved. It was noted that the Special Meeting was to approve the changes to the Master Deed and By-Laws, and that it was approved with over 2/3rd of the Homeowners.

In Connie's absence, Linda gave the Financial Report starting with the "A/R Aging Summary" as of 9/14/05. The total states we are $6,169 in the black. Terry noted that the accounting practices deceive the eye when the amount is noted as a negative number. As such, and because it is hard for most to understand, he asked that on future reports this should be explained with an asterisk (*).

At the end of August we have approximately $86,000 under budget. Some items under budget were Administrative Expenses, Building Insurance, Travel Expenses, Elevator Maintenance, Water & Sewer. Some items over budget were Board Expenses (due to the TGIF party at the end of construction), Pool Maintenance (a pump), and Electricity. Landscape & Grounds looks higher but that was because pine straw was in the wrong category before and is now added into it. Pest Control is up (ants were extremely prevalent and we also had a big problem with ducks).

Terry asked that homeowners should be made more aware of what exactly their Regime fees cover, such as the pest control, cable TV, water, pool, etc. He would like to work on a Q&A on who takes care of what and packet for homeowners telling them what the Regime fees cover.

Security worked well this summer. There were no major complaints or problems other than that Shipwatch has become the local "hangout" for teens not staying at SW.

Arnie stated that approximately $45,000 has been spent for "D" building for the drain line roof leak repairs and another $50,000 more has been spent by owners. 6 units were affected.

Capers Barr, our attorney, entered the meeting at 2 PM. Regarding the D building leak, homeowners have filed with their insurance carriers and have been turned down. Glasgow has insurance for this type of claim. A letter from Capers to Arnie dated 8/30/05 outlines the status with Glasgow and D Building. Capers is currently in the investigation phase. He will follow up with a report when all recommendations come in from Bob Sisenroy and Bob Wiggins.

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Capers to check if attorney fees are included in our contract with Glasgow.

Regarding Cyclone – we are still in line with many creditors before us with larger claims.

Building & Grounds report by Carl – Firestone signed off on the roof. Other than D building leak the roof looks very good. There are some leaks around doors on the 5th floor due to sunlight deteriorating the rubber seals and caulking. Carl feels they should be handled in an as needed basis. There are no new doors on the 4th & 5th floor units. 64 doors may need repairing...approximate cost of $350 per townhouse. Arnie stated we may want to include some amount towards this goal for the next several years.

Problems with standing water in front of elevators on each floor in every building. Carl to talk to Bob Wiggins about this.

Landscape Report by Terry – Greenery doing a good job and he is very satisfied. New landscaping should look to not obstruct views in the future. Terry presented a policy for SW regarding tree trimming, to which the Board agreed. That policy is attached to these minutes and also included in the Policy Book. A long discussion regarding tree trimming and "line of sight" – it was agreed that the Board does not guarantee any homeowner with a "line of sight".

Arnie asked if some annuals were going to be planted for winter color. Many plants died because the irrigation system was off in those areas. The Board wants more color.

Managers Report by Linda included many diverse items. The topic of Golf Carts will be taken up at the January meeting.

Corridors was a big topic, during the rental season they are very unkempt, rusting chairs leach onto our new decks, bicycles, sand and beach toys, rafts, shoes, and the like. It was discussed to corral an area in the under building parking with bins, but because of liability and moving one unsightly mess to just another place, this idea was scrapped. No one wanted the items brought into their rental unit – it was thought the items should be stored in the cars from which they came from. Linda & Terry to work on wording of signs, or process, for corridors and towels on balconies management. The possibility of putting up sticky notes on the offending units was also talked about.

Eric & Terry mentioned the need to tell people the mess in the corridors is a fire code violation. Linda will question other Regimes about what they do. Audrey asked if she could question the CAI about these problems.

The Board has a long discussion regarding people (not SW owners or renters) parking in our lot and using our pool. Also, the city of Isle of Palms placed a garbage receptacle near the gazebo bringing in more debris.

Motion approved a parking/pool attendant for the rental season. Linda will be empowered to put in motion a Program and Rules for the attendant(s) and hiring of same.

All sorts of ideas came up for a pool attendant and how this would be accomplished. A use of a ledger, pool passes, wrist bracelets, and a gate key pad were some of the ideas. It was decided to close of the pool gate closest to the ocean to discourage easy access to the pool from the beach. Eric wants the attendant to enforce the rules of SW be it by voice or sticky notes. The person needs to have this authority to do so.

The gate key pad was thought to be the best idea. Code to be posted inside each unit, changed periodically.

Discussion turned to a Contractor's Policy. It was decided to acquire elevator pads (to place in the elevators so contractors can help protect the elevator cab walls from damage and dirt), and that no construction in units can be done between Memorial Day and Labor Day. Construction trailers must be removed daily and clean up should be done daily of the designated work area.

Motion approved to adopt Contractor Policy as presented and purchase protective elevator pads.

Next came a discussion regarding the Air Conditioner Inspection Contract. There have been several complaints that the inspections are not done as per the contract. The contract will be re-bid. Resort Maintenance price has gone up from $50 to $60 per unit, and "as needed" coil cleaning to $30.

Motion to keep our Air Conditioner Inspection Contract to stay as a budgeted item was approved.

Motion approved, for this Board meeting only, hotel stay for no more than 2 nights and $130 per night plus tax for directors attending this meeting.

Meeting adjourned at 5:16 PM/ reconvened the next morning and called to order at 9:10 AM.

It was noted that the January Board Meeting will be Friday, January 20th, 2006 and the Annual Homeowners Meeting will be at 11:00 AM on January 21, 2006.

Carrie will come to the office once a week instead of twice, saving about $3,100.

Linda talked about who can relieve her in case of her absence. We have been using Carrie and/or Walter. Linda to investigate other possibilities and will bring them to the January Board meeting.

Board Travel expenses have been extended to $5,000 due to high costs of travel expenses. Also noted was that the new Federal guide line for car expense has gone up to 48.5 cents a mile, which will also cause the travel expenses to be higher.

Building Insurance will be budgeted for $10,000 less to $150,000. Employee Health Insurance was increased to $8,000.

Pest Control will also be re-bid for the perimeter of the buildings.

Security – new parking/pool attendant(s) will be budgeted for $6,500.

Cable – Comcast wants to rewire the buildings at their expense if we are willing to sign an extended contract with them. This may not happen until later in 2006. Comcast doesn't know if the buildings can be rewired, but will research it.

After finishing the 2006 budget items, discussion turned to the probable assessment and what needed to be accomplished. Items to be included in the assessment are: building of cash reserves, pool interior, pool deck, pool equipment, pool furniture, elevator cabs, elevator lobbies, elevator maintenance update, repayment to homeowners in D building, parking lot, paint railings, landscaping, retractable screens, boardwalk repairs, corridor light fixtures, and contingency.

Elevator Sensors will be only needed in building A, B, & D.

Pool Deck is a real problem with mildew in the summer. Power washing the deck is costly and has to be done on almost a weekly basis. Because the deck does not drain properly the mildew will continue. Carl and Arnie to meet with pool person for more info on how to proceed and find out our options to rectify this situation. Stan Standard, a local pool person, was thought to be a good Project Manager. The Board stressed we wanted to make sure we do this correctly.

Landscaping – Eric wants to make sure there is cohesiveness to the Master Plan and the installation of the plantings and other items in the plan. Guarantees on plantings should be at least 1 year. Terry to make sure the architect and landscaper work together and implement the plan properly. Eric and Arnie want a project manager to oversee all the landscape projects. Tree trimming will be done every 2 years, possibly doing it in 2006.

Parking Lot – There was a long discussion revolving around the parking lot. Questions involved drainage, under base, French drains, total re-paving or re-surfacing of the lot. Also, the handling of where the lot and parking areas under the buildings meet. Arnie, Carl and Linda will have a meeting with paving contractor regarding lot re-paving.

Corridor Lights – The building light fixtures on corridors are all nearly broken but are not replaceable. It was decided to replace them with a similar ceramic shell design that is by the doors. Linda to look at pricing.

Retractable Screens – This year $24,000 was spent on replacing/repairing the older screen doors. Although the Regime, under the new Master Deed/By Laws articles, no longer is responsible for screens, it was a Board decision to make all the living room area doors the same. The homeowners will be responsible for upkeep and maintenance of these screens. Though this item will be an assessment item, homeowners that have already put on these retractable screens will be given a credit towards the living room door only. Most of the master bedroom doors have new sliders/screens.

Boardwalks – Most are buried and walkways tend to lead people onto the dunes which needs to be protected. For A & D building we will block off the entrance to the dunes after the seating area. Prominent signs will be posted.

Pool Furniture – Crescent, the same company that reconditioned the chairs years ago, can strip, re-powder coat, and re-web (strap) chairs for $40 each. We have Tropitone furniture and replacing this excellent quality furniture would cost over $40,000. Tables will also be done.

Paint Railings – with all the previous construction the railings need re-painting.

New Regime Fee – there was talk of increasing Regime Fees for not more than $33 a month.

Audrey asked if the office deck needed repainting or sealing.

In Executive Session it was agreed to give Linda a 4% salary increase coupled with a 1% Christmas Bonus.

There were so many unanswered questions regarding costs, options, procedures, and schedule timing with the parking lot and pool deck it was decided that a more thorough investigation be done and the Board would meet again by phone when we had a better understanding of what our options and cots were. At that time we would discuss the scope of projects, schedule, cost of assessment and timing of payments.

Respectfully Submitted,

Audrey Lehner
Secretary

SHIPWATCH Board of Directors Meeting
March 18, 2006

Meeting called to order at 9:11 am; in attendance were the following: John Ratliff, Connie Foy, Terry Henderson, Arnie Schaewe, Jim McDonough, Fred Trombino, Rogeriee Thompson, William Clifton, David Metts, and Linda Jernigan, Regime Manager.

Board President John Ratliff started the meeting with a summary of his thoughts about **Board structure and operations.** A Board of Directors is a representative form of government with each property unit entitled to one vote for its governing body. Pursuant to the Master Deed which sets forth the Shipwatch Regime governing structure and process, the board is elected to serve property owners in the areas of Regime policy making, finances, levy assessment, spending, property upkeep, maintenance and improvement, safety issues and legal issues. The Board has fiduciary accountability to the owners and to other Board members. Each member must exercise due diligence in performing Board duties using individual thoughtfulness, expertise, and experience as demanded. Otherwise, without such individual diligence Board decisions would be made with less than full board participation. Board deliberations are confidential and must be protected, particularly in light of a litigious legal climate. For example, Board discussions regarding settlement of the pending construction claims must be held in confidence lest settlement negotiations be compromised. Because the Board derives its authority from the Master Deed, individual Board members have no authority to speak or act for the Board unless such authority is appropriately delegated in accordance with the by-laws for the convenience of the Board. All decisions are Board decisions and should be Board decisions after full Board discussion and deliberation. The Board is responsible for hiring the Property Manager.

The duly elected President speaks for the Board on Board decisions but has no more authority than any other Board member. The role of the President is as follows:
The President facilitates the setting of the Board meeting times and agendas and insures the smooth operation of meetings through a formalized protocol. The President determines if consensus has been reached by the full Board and calls for a vote.
The President has no individual decision making authority except in times of emergency, i.e., when an expenditure greater than $5000 is necessary, and no other option is available including polling the Board. The President facilitates committee assignment.

The Board works through Committees as follows:
Committees examine and study problems or issues, meet in person, or by phone or internet to frame and discuss issues or problems, make reasoned recommendations to the Board with considered options outlined. Committees utilize the property manager as a resource.

Upon receipt of Committee recommendations, the full Board deliberates and makes the ultimate decisions.

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The Property Manager is hired by the Board and reports to the Board. The Property manager implements and enforces Board decisions and policies, and provides recommendations and information to the Board and its committees in order to assist the Board in its decision making responsibilities. The Property Manager does not work directly for the owners but for the Regime Board for the benefit of the owners.

After outlining his thoughts on Board structure, the floor was opened for comment. All Board members verbally indicated agreement with the President's thoughts.

Motion was made by Terry and seconded by Jim to approve the previously distributed minutes of the January 21, 2006 Board minutes. The minutes were unanimously approved without amendment.

Terry raised a **process question.** The landscape project often calls for decisions regarding contracts and obligations which bind the Board such as pricing, plant selection and placement, and detailed landscape design. Terry noted that the landscape architects and contractors will not proceed in many instances with any work without a formal contract with the Board. Terry thought the process should be centralized and standardized giving the President and or his designee the authority to act for the Board. Equally important, Terry also felt the process should go through the Manager because of scheduling and cash flow problems. Although the Board has approved the general project and budgeted money for same, authority has not been designated to any one Board member or members, or to management to make particularized implementation decisions which have contractual and financial implications for the Regime. Terry expressed discomfort in proceeding with landscape implementation without formal Board authorization.

John noted his agreement with Terry that Board authorization and delegation is needed as the Board's errors and omissions insurance policy will not cover individual board member action not authorized by the full Board. John also reiterated the need for the manager's participation. John felt that all contracts needed some form of Board approval.

The Board discussed how detailed the approval need be, to wit, ministerial tasks vs. substantive obligations involving money or material design.

Bill noted that the Board has the authority to make contemporaneous authorizations as well as retroactively approved authorizations.

If the Board felt comfortable authorizing Terry to proceed with implementation of the Landscape plan within budget, then Terry felt comfortable signing for the Board with management cosigning all contracts and checks.

Arnie suggested that since landscape is one item within the overall construction plan and since a general landscape budget has already been approved, that Terry gets specific cost estimates for the categories of work to be performed and submit same to the Board for approval. Arnie indicated that during the implementation of the plan, if Terry's proposed

actual costs were to exceed the estimates that Terry should return to the Board for further approval.

John felt Terry's process question was a procedural problem rather than a budget issue to wit, is Terry authorized or not to bind the Board. John indicated that contract decisions were Board decisions needing Board approval. He indicated that except in cases of emergency, Terry could utilize current technology to submit contract proposals to the full board via email for a Board vote via the internet.

Rogeriee asked if Terry needed a resolution in order to proceed.

Bill suggested that a resolution was needed in order to allow Terry to speak for the Board as he went forth in implementing the landscaping plan.

Terry felt that a decision on this particular delegation issue would be helpful for the work of all Board committees.

John indicated that to protect the Board and individual directors, particularly in light of the limits of the Board's professional liability policy, Terry should return to the Board for approval of contracts.

Next agenda item was an update on the legal issues.

Glasgow dispute:

Bill reported that Mediation with Glasgow is scheduled for April 17, 2006. Bill explained mediation. A mediator does not decide the dispute but works with both sides to bring the parties together. A good mediator can often facilitate a resolution of the claim. Bill opined that mediation is superior to trial in that it is voluntary and involves an admission of exposure by both sides and a willingness to attempt resolution of the claim. Trial involves the uncertainty of jury reasoning and class bias. Mediation also saves attorney fees.

John reported that he, Arnie, Bill and Rogeriee will represent the Board at mediation. Also present will be Capers and the engineer who provided the Board a professional opinion regarding the proximate cause of the damage.

Capers provided the committee with a mediation packet although Arnie did not receive one. John will provide the entire Board with a copy of the package.

Rogeriee indicated that under the contract with Glasgow, litigation is not an option as the contract provides for binding arbitration if mediation is not successful. John noted that if a suit were filed, it would only involve the court enforcing the mediation clause.

Bill estimated that the mediation would take several hours and a decision if one is to be reached, will take place that day.

The selected mediator is a Charleston attorney with construction experience.

Before a discussion of the Board's low end high end position, the Board discussed the essence of SW's dispute with Glasgow.

In summary, on the D building, the contractor allowed a copious amount of tar to enter the drain pipe, pulling it away from the wall and allowing water which is supposed to be diverted outward by the drain pipe, to instead enter the building, thereby causing massive flooding. For 20 years, the pipe properly drained water as it was so designed. Two days after the contractor concluded work, it rained and D building flooded.

The issue is what constitutes proper roofing practices or standards in the industry. The contractor does not have an engineer's report but Glasgow did conduct a laboratory test which purported to replicate the drainage. Not surprisingly, their tar accumulation test did not result in pipe failure or improper flooding, or damage of any sort. Thus, Glasgow interpreted this lab test to mean that the D Building problem was either an initial construction design defect or a building age problem. The Board agreed that it defied credulity to think that pouring 500 degree tar down a 20 year old drain pipe would not result in significant damage. Moreover, because the drain worked properly for 20 years, it obviously worked well for the use for which it was designed. It was also pointed out that D building was the last of the four buildings to be re-roofed so that Glasgow was well aware by then of the building design. The Board concluded that Glasgow was unacceptably obscuring the real issue, to wit, its faulty workmanship.

A discussion ensued regarding the damages suffered by SW. It was noted that the A building also had tar, rocks and foam improperly injected in its pipes causing SW to expend money to have this material removed.

Linda indicated that a letter was sent to Building D homeowner regarding their individual damage claims. Only two owners have thus far responded.

John stressed that the Regime is responsible for building damages in accordance with the Master deed, specifically exterior building and perimeter wall damage. Owners are responsible for interior, non perimeter wall damage plus upgrades and furniture loss.

The estimated total loss from the construction problem is $92,766.63. Attorney fees for mediation only are approximately $5,000 to $7,000. SW has already incurred legal fees for discovery and pre-hearing exchanges and construction fees to Sissenroy and Wiggins for repairs. The contract does not provide for consequential damages such as that for loss of use.

Terry raised the concern that SW has always had problems with contracts. He indicated that SW always signs whatever contract is presented to us without reading it or without knowing the contents. The Board disagreed with Terry and Rogeriee noted the inherent limitations on the Board's negotiating power for certain types of contracts. Glasgow's

contract is a standard Building Construction contract and the fact that it contains deletions and typed-in additions indicates that someone reviewed and negotiated the terms. Arnie said it was the standard AIA (American Institute of Architects) construction contact used industry wide. Terry felt it problematic that all SW contracts are not filed systematically in the SW office. Bill noted that that concern was a different problem and Rogeriee disagreed that such was even a problem. Terry queried whether all SW contracts should have provisions mandating mediation/arbitration provisions. Bill observed that in theory, all contracts are negotiable but that disagreeing contractors have considerable walk-away leverage and SW may have few contractor options. Arnie pointed out that the current proposed parking lot paving contract is a standard AIA model two contract without an arbitration/mediation provision and that SW has asked the contractor to include such a provision. The request is still under discussion. All agreed that SW should ask for such a provision in every contract but that such a request will likely result in negotiation, depending on the nature and extent of the work being performed. Everyone also agreed that most parties to a contract wish to avoid expensive litigation.

Jim was called upon to give the **Financial Report.**

Jim distributed a Profit and Loss Budget Performance report and a Profit and Loss Budget Performance report with 'Cap Adds.' Jim indicated that the actual expenditures are tracking nicely with the budget. Jim and Linda see no areas of concern in the operating budget. Some areas are currently overspent but will be recaptured in later months, for example, the insurance expenditure. Jim and Linda feel expenditures are on track.

Connie explained the financial process to the Board. The Manager, the bookkeeper and the CPA have different duties to insure checks and balances. Connie, as past Treasurer still receives all bank statements but said statements will now go to Jim. He will review for irregularity of signatures, endorsements, payees, and amounts. Connie felt this process has worked well and should continue in order to insure that SW funds are protected. Jim will continue the process and make recommendations for change if needed.

Connie noted that Carrie hastily resigned causing disruption to the financial system. Gail has been hired, is doing well, but wishes to work from home rather than the SW office. The Board has been given two other bookkeepers' names who Connie feels are qualified on paper. John suggested that Connie and Linda pursue contact with these two individuals. The Board agreed that SW's checks and financial documents should not leave the office.

Jim moved, seconded by Bill, that the Treasurer's financial reports be accepted. The motion carried unanimously.

The Board returned to its discussion of the Glasgow mediation. Linda has received bills as follows: $2300 legal bills from Capers, $2891 from Sissenroy, and $8500 from

Carolina Concrete which includes the repair cost. This amount brings the $92,000 to approximately $106,000.00 including the Wiggins repair.

We have no firm number on the final figure.

John sought a **minimum settlement figure**—the lowest figure for which we would settle. The Board had an extensive discussion of the amounts in issue, repair costs, attorney fees.

Arnie stated that according to Capers, he evaluated our chances of success on the merits at 50%. Rounding off the damages to $100,000 and calculating the cost of mediation, **Arnie moved and Jim seconded that the low settlement figure be $50,000.**

John noted that the Insurance carrier and not Glasgow would be paying this claim and that the carrier's litigation costs would probably run between $10,000 and $15,000. Thus, the insurer's cost would be the litigation costs plus the exposure.

Bill suggested that when mediating, round figures should never be used because they appear too random. When bottom lines are presented out to the penny, it leaves opponents baffled about how the figure was calculated but convinced that the number is legitimate.

Arnie indicated that the actual number he had in mind was $47,293 representing the cost SW would have to pay to owners based upon current estimates. Jim asked if Arnie was proposing that we eat the legal fees and repair costs and seek only the cost for monies paid to the owners. Arnie noted that adding on costs for Capers, Sissenroy and Wiggins would bump us over $50,000. Jim felt that seeking our direct repair costs was a good approach.

Bill reminded all that the discussion was only about bottom line and not what the committee would settle for. John indicated that the actual costs would be $58,846.

Arnie amended his motion to set as a bottom line figure, $58, 846.59. Jim seconded the motion.

Arnie indicated that if we did not reach that figure, it would cost $10,000 to $15,000 more in mediation costs.

Bill indicated that if we set a bottom line figure, that the committee must be flexible depending on the circumstances of the mediation. For instance, if we are $3000 apart, do we walk away? Or if the mediator does not agree with our claim, do we remain inflexible. We must consult with legal counsel to determine if we are on solid legal ground and be flexible.

Extensive additional discussion ensued on setting a bottom line figure taking into consideration projected damages to SW and individual owners, costs of mediation and the dynamics of mediation.

Arnie was asked to amend his motion to set $39,000 as the bottom figure with the understanding that the committee's goal was to settle as close to the top figure as possible

Arnie declined to amend his motion as his mind was set on a low figure of $45,192.

After further discussion regarding the actual known damages suffered by SW and with strong Board sentiment that the bottom line figure should not be less that 50% of our damages, **Arnie amended his motion to set $48,000 as the low figure with no discretion to the committee to settle for less. Jim seconded the motion.**

After further discussion, Arnie withdrew his motion.

After additional discussion, Jim moved $56,385.50 as the bottom line, seconded by Connie.

The Board reviewed known damage figures as follows: $92,766.63 spent by SW, $9,800 attorney fees, $2,891 fees for Sisnroy, $8,463 to Carolina Concrete, $1,000 fee for Sisnroy's attendance at mediation, $3,000 costs for Board attendance at mediation.

After confusion ensued as to whether a motion was pending, **the Chair ruled that no motion was on the table.** Based upon the detailed discussion as to actual and projected costs, the chair approximated the total damage figure at $117,320.63.

Terry moved to set the bottom line figure at $58,660.311/2. Jim seconded the motion.

The Chair called for a roll-call vote.

Arnie raised more concerns about the costs of litigation and our inflexibility at arbitration. Terry expressed a strong philosophical opinion to remain at 50%. Bill indicated the need to be flexible enough with a bottom line to consider any reasonable recommendation of legal counsel. The board discussed that the cost of mediation could exceed our recovery.

Using $15,000.00 as the approximate cost of binding arbitration **Terry amended his motion to set $43,660.31 ½ the bottom figure, with no committee discretion to go lower. The amended motion did not garner a second.**

A vote was taken on the first motion to set the bottom line at $58,660.31 ½. The vote failed by unanimous vote.

Terry moved to set the bottom figure at $43,660.31 ½. Fred seconded the motion.

The discussion temporarily recessed for the Manager to pull documents.

The Chair gave a report on insurance.

The cost of five million in coverage with our current carrier is $208,000. By bifurcating the coverage between two carriers, the cost is reduced to $129,000. SW gets more favorable ratings because of the nature of our concrete structure. Coverage does not include loss from wind driven rain. No such coverage is currently available on the market. Linda pointed out that compared to other regimes, our insurance costs are relatively low. She also queried whether SW is adequately covered at 4.4 million per building. Rogeriee pointed out that the extent of our coverage is unclear based upon the language of the policies. The chair suggested that he and Linda review the policies with our agent before our next board meeting.

The board resumed discussion of the mediation and the pending motion. Adjusting the figure after a reassessment of projected attorney fees, the bottom figure would move to $52,660.31 ½.

A discussion occurred as the whether the committee should be given complete discretion with an understanding that the committee would consider damages, the board discussion, mediation dynamics, and the advice of counsel.

A roll call vote was taken on the pending motion of $43, 660.31 ½. Connie, Terry, Jim, Fred, Bill, David, John voted, nay. Arnie voted, yea. The vote failed.

The discussion continued. Terry moved and Jim seconded the figure of $52,660.31 ½. Further discussion ensured on committee discretion.

A roll call vote was taken. Connie, Arnie, Bill, and Jim voted nay. Terry, Jim, Fred, and David voted yea. The voted failed on a tie vote.

More discussion took place on discretion. **Bill moved and Connie seconded the following motion: The committee be authorized to accept as a minimum $52,660.31 ½ subject to counsel's recommendation.**

Discussion followed on the motion.

A roll call vote was taken. The motion passed unanimously.

Bill gave a report on the Cyclone Roofing litigation. Our original claim was $140,000. Bill recapped the previous SW vs. Cyclone April, 2004 mediation which resulted in an agreement of understanding between the parties of a $107.00 settlement figure. Shortly after the mediation, Cyclone filed for bankruptcy. The matter had been

dormant until Capers received a letter from Cyclones attorney offering to now settle for $63.962.50. The Board discussed the pros and cons of accepting the offer.

Bill moved and Connie seconded the motion that SW should accept the settlement offer. The motion passed unanimously.

Arnie gave the Building Committee's Report.

The pool should be completed by April 13, 2006. Progress was delayed because of the stone deck delivery. The portabella color we chose which comes from a quarry in Turkey was not available for sixty days. Another stone, caramel walnut noche, is available in the United States in sufficient quantity and has been selected. Arnie noted that any resemblance of the actual stone to the brochure sample is purely coincidental.

Arnie and Linda prepared and distributed a financial sheet for capital projects. Our original cost projection was $1,160,000.00 and the special assessment was based on this figure. The current scope represents our recent modifications i.e.; the original pool cost was $84,000.00 and the modification due to the change in skit surface is $129.346.00 for and increase of $28,000. Removal of the plaster added $10,000 and repair of pool leaks cost $7,295.00. Cost overages are deducted from the contingency budget line. Excess expenses have reduced that figure from $100,000.00 to $49,544.00.

Arnie next reported on the **elevators.** SW's elevator maintenance contract is with ThyssenKrupp (hereafter, TK) and cost $9,936 per year. It is a five year auto renewing contract and has been auto renewed for 20 years. Cancellation requires a 90 day notice and must be a cancellation *for cause*. Fred, Karl, Linda and Arnie met with an Otis Elevator Co. representative and Otis's contract cost per year is $13,200, with the same auto renewal and cancellation terms as TK's. Arnie described TK's maintenance contract as more reactionary than preventative though TK has improved subsequent to a meeting with SW management. Elevator stoppages have lessened and no one has been stuck of late but preventative maintenance remains a problem. Otis gave Linda and Arnie an impressive description of their maintenance process as well as their parts replacement and modernization plan.

Arnie proposed to the Board that we attempt to break the TK contract and switch to Otis. The Board discussed Arnie's proposal including issues of proprietary parts that may not be readily available. Establishing a *for cause* termination is difficult since the contract gives TK 30 days to correct any reported problem. John noted that we may have to buy out of the contract if carefully documented complaints would not justify cancellation for cause. SW's financial obligation under the contract is $40,000. A buyout would factor in that amount plus litigation costs.

Arnie moved that the Board authorize the Building committee to negotiate contract termination with TK. Jim seconded the motion.

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Discussion followed on the motion. John asked the legal committee to review the contract and consult with the Building committee.

The motion passed unanimously.

The Board had a general discussion on contract policy. All contracts should be kept in the SW office and all contracts should be reviewed by the Board or Executive Committee. Terry noted that the Board should never enter into a non-negotiated contract or a contract which automatically renews. Bill indicated his agreement in theory but pointed out that SW may not be able to avoid certain contract provisions deemed standard in some industries. John noted that automatic renewals do serve some legitimate purposes but that the Board must stay mindful of expiration dates. Connie suggested that if automatic renewals are unavoidable, that SW attempt to negotiate shorter renewal periods. John indicated that Linda has a list of SW contracts. Renewal dates are to be noted on the list to assist this Board and future Boards with timely review of contracts.

Arnie noted a significant regime financial risk due to leaking sliding glass doors on the fourth and fifth floors--back and front, living room and bed room. Management has been working with Wiggins to test the leakage and 15 doors are problematic. Replacement costs are between $4000 and $5000 per door and no money is available for such work. Carl has been attempting to repair with caulking and sealing. Wiggins has caulked 16 doors in A building, 5th floor back and front, and leaking persists. Linda will get bids on new doors. Wiggins proposes removing the old doors, putting a pan beneath and replacing the doors but there is uncertainty as to whether this can be done. Linda will get a bid to do such work. If Carl's less expensive approach is successful, SW will follow that approach.

Arnie made a report on the elevator lobby renovation. He noted the completion of the tile and cab work. All Board members had viewed the test panels containing the glazing work. John raised concerns about the challenge of maintenance vis-à-vis the difficulties of matching the glaze when repairs are needed. Terry noted that the surface would be sealed with a hard coat of polyurethane that would adequately protect the glaze. Further discussion ensued and the Board reached consensus about proceeding with the project.

Arnie and Linda recommended that the paving of the parking lot be postponed until the fall as management did not want the pool and paving contractors on grounds simultaneously. Paving this spring just after pool completion would interfere with the rental season. Rogeriee asked if the price would rise and Arnie suggested the final cost would be based on the fair market value of labor and materials at the time of the undertaking. It was the Board's consensus to postpone the paving until fall.

Terry was asked to give the grounds report. Predicated on a $217,000.00 budget, Terry sought access to $90,000 for pre season demolition, relocation, and enlargement of the planter spaces, and relocation of parking spaces; completion of pool landscaping and tree up-lighting and financing of the detail design for completion of the landscaping plan. The balance would be shifted to the fall.

Jim questioned the handicap accessibility issues of all the building because of the placement of the curb stones in the garage areas. Terry and Arnie as committee chairs, will review the issue relative to buildings and grounds planning. Jim also questioned the need to move building D's and not building A's planter box. Terry indicated that aesthetically, it worked for one building but not the other and that it also gave more parking spaces to D.

Arnie moved to make available $90,000.00 for landscaping. Jim seconded the motion. It was unanimously approved.

Linda gave the management report.

Linda indicated ongoing problems with contractors. Fifteen units are currently under renovation and negligent work is causing damages to other parts of the buildings such as water leaks to other units. All renovation work is to be completed by Memorial Day and Linda anticipated compliance problems with the contractors. Monitoring contractors has taken a disproportionate as well as inappropriate amount of Linda's time. Also, Linda questioned what, if any, work does the Board wish to allow between Memorial Day and November. Linda stated the need for a Board letter to owners with explicit rules regarding renovation. Jim questioned whether contractors should be required to sign contracts with individual home owners which incorporate our policies. John noted that contractors now are required to take out permits with SW before work begins. John has asked Linda to prepare a draft letter for Board feedback with proposed construction rules and regulation including financial sanctions for violations which will be sent to owners before the rental season begins.

John thanked Fred for agreeing to serve on the Wild Dunes Regime Committee. A president of another regime is attempting to organize a regime committee to discuss issues and strategies affecting all Resort Regimes.

John sought **permission to send a letter** to the two D building owners who have yet to submit a claim for damages resulting from the Glasgow roof damage setting an April 10, 2006 deadline for submission of their claims. Bill suggested the letter indicate that a failure to so submit would constitute a waiver of their right to seek reimbursement.

Bill so moved, seconded by Arnie, and the motion passed unanimously.

Arnie next raised his concerns about multiple partner SW unit ownerships. With the escalating increases in the fair market value of SW units, has come a concomitant increase in the number of multiple partner ownerships. These lesser ownership interests have given rise to a group of persons with seemingly less concern for the maintenance and overall well being of the regime. Arnie gave the example of a 1/13 owner who departed SW leaving a leaking washing machine for the next limited owners to contend with. The real estate agent as well as the insurance company sought Linda's intervention, contrary to the notion that a truly invested owner would not have behaved so

irresponsibly in the first place. Arnie proposed that the legal committee confer with Capers to determine whether large multiple ownership interests violate SW's Master Deed which prohibits time shares or otherwise violate South Carolina law, of if neither, should our Master Deed be amended to bar such multiple ownerships.

John agreed that the nature of one's ownership interest changes the community environment and increases communal costs because of resource overuse and suggested that SW should explore with Capers our legal options when we meet with him next month.

Regarding fees, Linda reported that 7 owners had not paid regular assessments for March and 18 had not paid the March special assessment. John reminded the Board of the late fee and interest policy. All owners paid the January special assessment. Two owners requested that the late fees imposed on their special assessment be waived. After Board discussion of the merits of their requests, **Arnie moved and Terry seconded that the fees be waived for the two property owners on a one time basis.**

The vote was unanimous.

Terry next proposed that Linda attend some type of **professional development training.** Rogeriee pointed out that Gloria had attended two special workshops for regime managers. Bill suggested that Linda explore management training opportunities. Linda was previously a member of CSI which has an annual membership fee of approximately $300. The additional expense of that membership comes from seminar and workshop travel and registration fees. John proposed that Linda make a recommendation to the Board about the issue of her professional development.

After unanimous vote on a motion to adjourn made by John, seconded by Jim the meeting concluded at approximately 1:36 pm.

Respectfully submitted,

Bill Clifton and Rogeriee Thompson

WATER INTRUSION AT SLIDING GLASS DOORS
Shipwatch

Prepared for:
Linda Jernigan, General Manager

Prepared by:
Robert G. Sisnroy, P.E.

July 10, 2006

SISNROY ENGINEERING L.L.C.
This report is a proprietary document for the sole use of the above name client. Any unauthorized use of this document is prohibited. Dissemination of this document is at the direction of the client.

DEPOSITION EXHIBIT
JERNIGAN 94
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PL 0822

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July 10, 2006
2006-078

Linda Jernigan, General Manager
Shipwatch Horizontal Property Regime
7600 Palmetto Drive
Isle of Palms, South Carolina 29451

RE: Water Intrusion at Sliding Glass Doors

Dear Ms. Jernigan,

On June 22, 2006, a visual survey of chronic water intrusion conditions was performed in Building A and Building C. Based on the observations, it is evident that chronic water intrusion is occurring adjacent to the sliding glass door (SGD) installations typically at the south walls. (See Photo 1) The source of the water intrusion is leakage from the SGD frames at the jamb/sill intersection. The chronic water intrusion has heavily deteriorated tack strips and stained carpet along the SGD frames and adjacent wall areas including portions of interior heated walls. (See Photo 1) Moisture measurements revealed active moisture conditions at several locations. Moreover, it is evident that the leakage source is the jamb/sill intersection of the door frames. (See Photo 2 and 3) Observations revealed holes or separations at the jamb/sill corners of the SGD frames where accumulations of rain or dew can drain and enter the interior and contaminate carpet and wall framing. These conditions are evident at SGD installations elevated on 3 inch concrete curbs and SGD installations at the slab surface.

Consequently, as a damage control measure, it is recommended that the existing door frames be removed and reinstalled in a copper sill pan with end dams. This would require full removal of the SGD frame; grouting the existing concrete floor where necessary; and, installing the sill pan and door along with restoration of interior and exterior finishes to walls and floors. Successful water resistance of the repair would necessitate similar repair scenarios on fourteen additional SGD installations.

As mentioned previously, this is only a damage control measure and not a long term repair application. Although the sill pan is a standard of care for typical exterior door installations, there is no guarantee that this will stop the entirety of the leakage, particularly where door sills are level with the adjacent concrete slab and floor. Bob Wiggins is in agreement that the sill pan could provide a temporary solution to the leakage problem. However, the long term solution is to install a new door, in a full sill pan on an elevated concrete curb.

PL 0823

According to Bob Wiggins, the estimated cost to perform the trial temporary repair is $3600.00. This would include removal of the existing SGD frame; installation of the sill pan, replacement of the same SGD frame, and limited restoration of the interior and exterior wall and deck finishes and caulking. The temporary repair and estimate evolution is contingent on the structural stability of the existing SGD frame, such that it is sound enough to be removed and replaced. Since the integrity of the existing SGD door frames is questionable, it is recommended that a new SGD door assembly be available for the candidate unit at the time of removal of the existing SGD frame.

The repair protocol and estimate is based on available information and observations at the time of development of this letter. It also assumes the existing SGD is viable for reinstallation. If you have any questions, please call me.

Sincerely,

Robert G. Sisnroy

Robert G. Sisnroy, P.E. 7/14/06

Shipwatch

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PL 0824



Photo 1: Chronic water intrusion is occurring adjacent to the sliding glass door (SGD) installations typically at the south walls. The chronic water intrusion has heavily deteriorated tack strips and stained carpet along the SGD frames and adjacent wall areas including portions of interior heated walls.

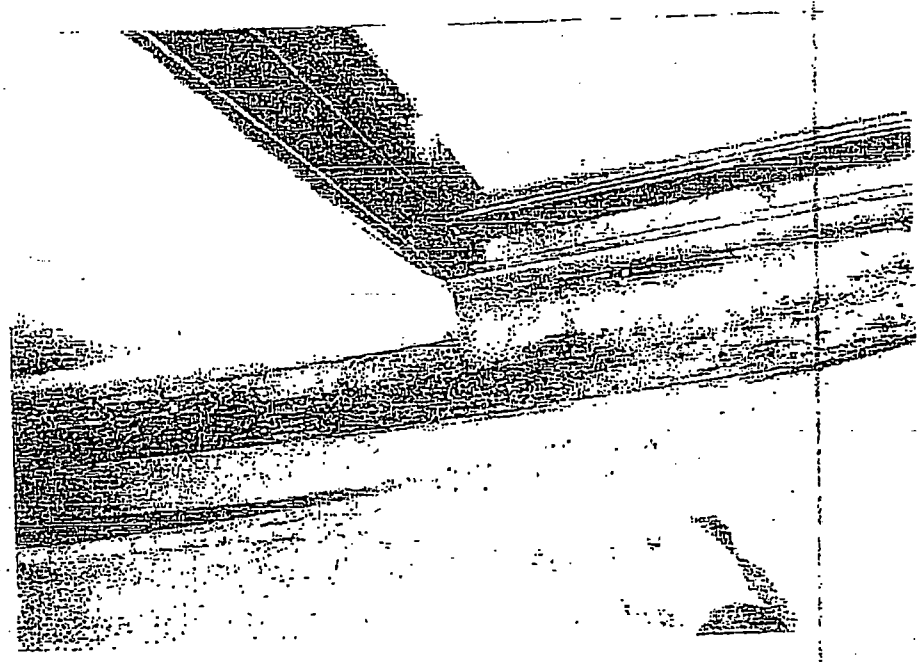


Photo 2: Moisture measurements revealed active moisture conditions at several locations. Moreover, it is evident that the leakage source is the jamb/sill intersection of the door frames.

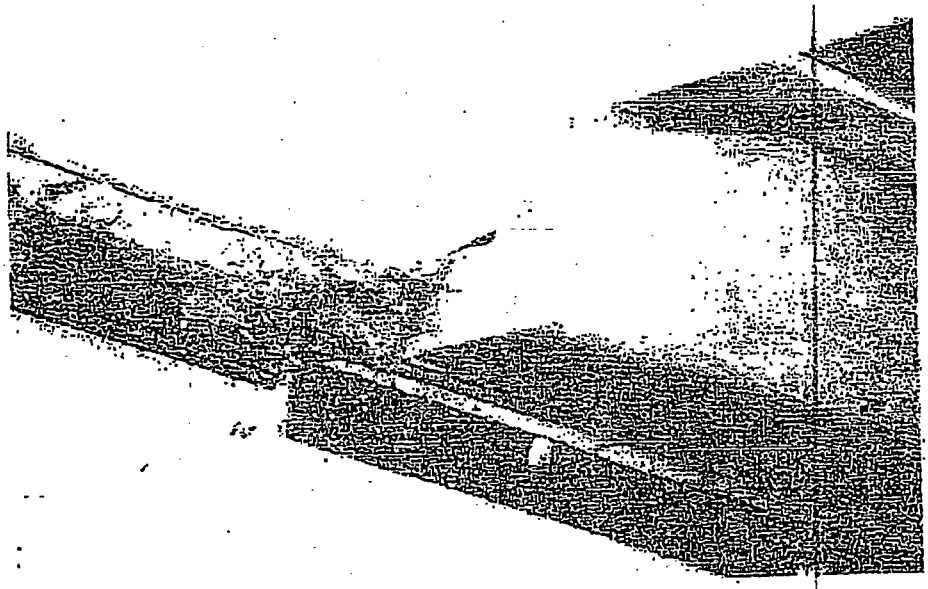


Photo 3: Moisture measurements revealed active moisture conditions at several locations. Moreover, it is evident that the leakage source is the jamb/sill intersection of the door frames.

3/09/2007

BUILDING REPORT

1) Renovation Inspections

Carl and I inspected the 17 units that were undergoing remodeling. The visual inspections took 2 ½ hours and the written reports took and additional hour.

Based on that experience, I created an inspection check list, a standardized form for the written report, and a suggested fee schedule. The fee schedule would incorporate the inspector's compensation and Shipwatch's administrative cost. There is also a separate cleaning fee (Linda had recommended, I thought was a great idea) which will be charged on a monthly or part of basis.

All of the concrete violations caused by the contractors have been resolved. There were no other violations noted.

Questions – discussion of fee schedule

Offer inspection position to Chris Weiner

2) Security Cameras

We contacted 2 local companies to give us an education and an estimate. Currently we're looking at cameras for inside the elevators cabs, the elevator lobbies, the outside parking areas incorporating the 2 entrances to Shipwatch, and the pool area. Security Net on Mount Pleasant had stopped by to give us an estimate last week, and they have informed us that they are unable to handle a project of this size. We have received an estimate from Wholesale Industrial Electronics, located Downtown. Their

DEPOSITION EXHIBIT
SERNZGAN 96

(5)

PL008535

proposal recommends a wireless system utilizing 13 cameras. The office would be equipped with a recording device and a screen capable of viewing past recordings and the ability to monitor live activity.
Cost of this project is $46,484.00 / $450.00 per unit.

3) Sliding Glass Doors

It has been well known by passed boards that there has been a leakage problem with a good number of sliding glass doors. The regime has put forth a concerted effort over the years to remedy this problem by caulking. This has not worked in many cases. There are 16 doors that need to be replaced as soon as possible. We are currently researching door manufacturers. Arnie has suggested Efco Doors. This company supplied the last group of doors installed at Shipwatch, and he seems to be very satisfied. I recommend that once a price for the doors, installation and concrete work has been agreed upon by the board, a replacement schedule be implemented and work begin in the fall. Eventually the remaining 80 doors will have to be replaced and this expense should be addressed at the budget meeting.
Estimated cost to replace 16 doors @ 7,500 each = $120,000.00

4) Water Pressure Pumps

Our pressure pumping systems are definitely aging. The metal support stands that the units rest on are severely rusted. On a positive note, Carl had spoke to the manufacture and said that replacement parts are available. We will continue to research for a replacement system and inform the board of our findings.

Building Committee Report
Shipwatch Homeowners' Meeting
January 20, 2007

DEPOSITION EXHIBIT
Trombino 154

Dear Shipwatch Owners,

I am sorry I cannot be with you today to give this report in person. Marcy had knee surgery for a torn meniscus two weeks ago and the doctor has restricted travel for one month. Her knee is coming along fine and she began physical therapy this week. We hope to be at Shipwatch for our winter stay in early February. Be that as it may, I wanted to write this report as the basis for discussion of Shipwatch building status at today's meeting. Shipwatch manager, Linda Jernigan, Building Committee member, Fred Trombino and past Board member, Carl Grisier will be more than able to answer any questions you may have regarding the status of buildings and facilities at Shipwatch.

2006 has been a busy and event filled year of capital improvement for Shipwatch. The Capital Plan that necessitated an owner assessment is nearly complete. As I have said before, none of us want or appreciate an assessment. However, I think we can all agree that the improvements done on the pool, elevator cabs, elevator lobbies, parking lot, landscaping and corridor lights are not only very aesthetically pleasing but are important for improving the equity we have as owners of Shipwatch. Additionally, I trust you are enjoying the convenience and elimination of hassle the retractable screens on living room doors are providing versus the sliding screens.

Attached to this report is a cost and completion status of the project. As you can see, all items are complete except for landscaping, painting of building railings and boardwalk extensions at Buildings A and D. Landscaping work is in progress now and will be completed shortly. Building railings will be painted in March. Extending the boardwalks outward at the A and D buildings is on hold because of the current cycle of beach erosion.

As you review the status sheet, you will notice cost differences (both plus and minus) between our original estimates that went into sizing the assessment amounts and actual costs. Following is a discussion on the difference for the pool, elevator lobby, parking lot repaving, corridor lights and elevator modernization.

1. The original pool estimate for $84,000 was based on plastering and retiling the inside of the pool, replacing and resurfacing the concrete deck and installing new equipment in the pump house. Upon doing further investigation into deck materials, the decision was made to use travertine stone for the deck rather than coated concrete. The cost of the travertine versus coated concrete was an additional $28,052. (Not only is the appearance of travertine much better but the long term maintenance costs justify the additional expenditure. Power washing the concrete was costing up to $5000 per year and recoating cost done every 5-10 years runs about $20,000.) When plastering of the pool was begun, it was found that previous plaster coats were loose and five previous coats needed to be totally

PL009298

removed. This was an additional $10,000. Numerous leaks in pool piping were discovered and repairs needed. This added $6917 to make the total pool cost $128,969.

2. When the existing elevator lobby tiles were removed, it was discovered that the base material under the tile was a gypsum product not suitable as a base for retiling. The gypsum was removed and concrete poured to make a sound base for the new tile. This added $5973 to the cost for the four lobbies.
3. The original schedule for paving the parking lot was March 2006. Because the work on the pool was extended into early April by stone delivery and because we did not want to pave until pool work was done, it was necessary to delay paving until November. The additional cost of $14,416 for paving was due to the increase in asphalt cost because of oil prices.
4. Corridor lights came in well below our original estimate. Linda found a source for the lights we wanted well below the initial investigation and painting and installation of the lights also came in below cost. This saved $19,600 versus estimated cost.
5. The original elevator modernization estimate was based on a quote from our elevator contractor ThyssenKrupp. This work entailed replacing the control system, wiring, signal fixtures, door closure protection and door operators. Because of the large amount of this quote, we contacted two other elevator maintenance firms and asked for their input. Based on this, we scaled down the scope of work to $35,285. Improvements completed include infrared door closure protection, solid state motor starters, emergency return to the 1st floor when there is a power failure, automatic lubrication for rails and heaters for the hydraulic oil.

I'm sure we are all glad to have the past few years of construction and construction costs behind us. However, life on the beach is never dull and it is necessary to be vigilant on maintaining Shipwatch to the high standards owners (and future owners) expect. Therefore, I want to give you a glimpse of capital work under consideration by the Board at this time.

1. A number of units are experiencing water leaks in the area of 4th and 5th floor doors. Investigation is under way to determine whether this leakage is from the doors themselves or from other sources. Linda has identified fifteen suspect doors. All 264 sliding doors at Shipwatch were installed around Hugo time (1989). Seventy two of these doors were replaced two years ago. That leaves 192 doors that are 17 years old and showing various signs of age. We want to identify the doors needing replacement now and proceed with this work during 2007. The cost of a door replacement is between $7000-8000. Additionally, we need to incorporate into annual budgeting, a plan to do a rolling change of all doors.
2. Shipwatch has two water pressure boost pump stations. One is located in the B Building for Buildings A and B and one in the C Building for C and D. These pumping stations are definitely aging. A breakdown in one of them would cause a water shutdown for two whole buildings. We are considering replacement of these pumping stations. Replacement cost for the two stations would be between $50,000 and $100,000.

PL009299

3. Although not a building item, we are all aware of the beach erosion going on now. This item will be discussed in detail in another part of our meeting. I include it here simply to raise the point that erosion is another cost threat for our budget.

Enjoy the meeting and your time at Shipwatch. The floor is open for questions at this time.

If you wish to discuss any of this work with me, please contact me by phone on 513-702-6301.

Arnie Schaewe
Building Committee Chair

PL009300

CAROLINA CONCRETE SYSTEMS, INC.

INSPECTION REPORT

May 9, 2007

MS. LINDA JERNIGAN
Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Exterior Building Inspection Report

Linda,

Here is our report of the conditions of the exterior of the 4 buildings at 7600 Palmetto Drive Isle of Palms, S.C. The exterior inspection report is broken down into left and right ends standing in the parking lot, corridors, stairs and balconies.

1. We inspected and caulked all areas that needed to be caulked on the new windows that were installed with the exception of the one window on D bldg on the 417 unit. I have repeatedly asked Charleston Glass to send someone out to caulk it, as we could not reach it with a lift. I will continue to call them until they send someone out.
2. All light fixtures and receptacles on the balconies that were not caulked or that caulk had failed were recaulked.
3. All vertical and horizontal joints in the stucco system was inspected and found to be in good condition. All areas that needed to be recaulked were done.
4. The hard coat stucco on the stair towers and elevator shafts have a few cracks and this has been shown to Carl Ulm of Ferst Exteriors. He was not alarmed and told us to keep and eye on them.
5. There is one area on the southeast end of the B bldg on the third level right end wall that has a blister and Carl said he would talk with the manufacture of the products he used and would take care of repairing the area.
6. We also checked all the stairs in the stair towers and found several that you had already mentioned to us that need to have new metal welded to the lower riser and treads.
7. We also noticed several areas on the elevator windows that the glazing has failed and we recommend this be repaired in the near future.
8. We did not inspect the roof, however there are a number of problems that we noticed from the lift as we were inspecting the walls and balconies.

DEPOSITION EXHIBIT
JERNIGAN 98
CCS 968
7

9.The deck coating in the common corridors was inspected and found to be in good condition. They will need to be top coated again next year in order to maintain the 10-year warranty.
10. The balcony deck coatings were also in good condition and will need the same top coating next year. There are a few areas where the coatings have been cut, cigarette burns, furniture rusting and furniture legs gouging into the coating. We recommended after installation of the deck coating that no metal furniture be used on the balconies. However, there are a significant number of units that have the metal furniture.
11. There are a few balconies that will need to be recoated this fall as they have tears and or cuts.
12. There are several areas that need to have the stucco patched on the balconies because of construction in the units. There are a few areas in the parking garages that the stucco has been bumped by cars that need to be fixed.
12. The new bedroom/balcony doors look good and are functioning properly.
13. The handrails inspected are in good condition with the exception of the corridor handrails. Hoses and equipment continue to be drug across the rail cap, which has scraped the paint off.
14. Leaks continue to be a problem at and around the old sliding doors on the beachfront and golf course side of the buildings. We have repeatedly shown you and numerous board members that these doors are leaking and I am sure there is damage that is occurring in the new metal stud walls with the Durock system that we installed during our project. In 2003/2004.
15. I would recommend you have someone inspect the roofs, as they probably have not been looked at since it was installed.

In closing, our inspection tells us that the remediation project that was performed in 2003/2004 has eliminated several reoccurring problems and the systems are performing adequately. However, there are a few problems that remain an issue. General maintenance of the deck coatings, stucco system and caulk inspection and repairs on an annual program should extend the life cycle of the remediation project for years to come.

Sincerely,

Bob Wiggins

International Concrete Repair Institute

"2002 Project of the Year Award Recipient"

"2003 Project of the Year Award Recipient"

843-588-6721 FAX-843-588-6722

P.O. BOX 13149, CHARLESTON, S.C. 29422

CCS 969

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) Case No. 2012-CP-10- 3857

Shipwatch Condominium Association, Inc.)
)
Plaintiff,)
)
vs.)
)
Carolina Concrete Systems, Inc., Sisnroy)
Engineering, LLC; Robert G. Sisnroy,)
individually; Terrence J. McKelvey;)
Glasgow Roofing, Inc.; GlassTec, Inc.;)
Spectech, Inc.; Sonneborn, Inc.; Chimney)
Sweeps, Inc.; Low Country Chimneys, Inc.;)
EFCO Corp.; W.C. Johnston Architectural)
Sales, Inc.; Charleston Glass Company, Inc.;)
First Exteriors, LLC; Acrocrete, Inc.;)
BASF Corp.; Gary Freeman Architect, Inc.;)
Gary Freeman, individually;)
)
Defendants.)

PLAINTIFFS' RESPONSE IN OPPOSITION TO CAROLINA CONCRETE SYSTEMS, INC.'S MOTION FOR SUMMARY JUDGMENT

FILED
2014 OCT 27 AM 9:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) Case No. 2012-CP-10- 3858

Oscar Mendiondo, individually and as)
representative of a class of similarly)
situated owners of condominiums units in)
the horizontal property regime known as)
Shipwatch Condominiums,)
)
Plaintiff,)
)
vs.)
)
Carolina Concrete Systems, Inc.; Sisnroy)
Engineering, LLC; Robert G. Sisnroy,)
individually; Terrence J. McKelvey;)
Glasgow Roofing, Inc.; GlassTec, Inc.;)
Spectech, Inc.; Sonneborn, Inc.; Chimney)

1

Sweeps, Inc.; Low Country Chimneys, Inc.;)
EFCO Corp.; W.C. Johnston Architectural)
Sales, Inc.; Charleston Glass Company, Inc.;)
First Exteriors, LLC; Acrocrete, Inc.;)
BASF Corp.; Gary Freeman Architect, Inc.;)
Gary Freeman, individually;)
)
Defendants.)
)

The Defendant Carolina Concrete Systems, Inc. filed its Motion for Summary Judgment in the above captioned matters on September 15, 2014, and the above-captioned Plaintiffs hereby submit the following as their consolidated Memorandum in Opposition to each of these motions.

BACKGROUND

The Plaintiffs brought the above-captioned lawsuits against the Defendants based upon construction and design defects at the Shipwatch Condominiums located in the Wild Dunes community in the city of Isle of Palms, South Carolina (the "Project"). The Shipwatch Association (hereinafter referred to as the Homeowners Association or "HOA") brought claims associated with the common elements of the Project, and the individual unit owners brought a separate lawsuit for claims associated with non-common element damages including, but not limited to, loss of use of the condominium units during the period of repairs relating to the defects and deficiencies caused by the acts and omissions of the Defendants.

The Project is an oceanfront condominium complex consisting of four buildings with 104 total condominium units. The Project is governed by a Master Deed filed in 1984 which establishes the homeowners association known as the Shipwatch Condominium Association, Inc. as its horizontal property regime in accordance with South Carolina law.

These lawsuits were filed on June 13, 2012, based upon repairs and other construction work

and design services provided by the defendants, generally from 2002 through 2011, as more fully set forth in the Complaints. On August 8, 2014, the unit owners' lawsuit was certified as a Class Action by Order of the Honorable J.C. Nicholson, Jr. of the Court of Common Pleas in Charleston County, South Carolina.

The HOA engaged a repair contractor which began repairs relating to the claims in these lawsuits for buildings C and D at the Project beginning in September, 2013. By a second agreement with that repair contractor, the HOA began repairs on buildings A and B at the Project in September 2014. The aggregate cost of these repairs for all four buildings exceeds $15 million. The scope of repairs for the acts and omissions of the defendants was so broad that the unit owners had to vacate the premises during repairs, losing the ability to occupy the units or rent them to third parties.

The notice of motion filed by Carolina Concrete Systems, Inc. ("CCS") fails to elaborate upon its argument for summary judgment relating to the statute of limitations, and there were no affidavits filed within the required time limits afforded by the South Carolina Rules of Civil Procedure. Nonetheless, the Plaintiffs offer the following deposition testimony by Plaintiffs' witnesses, documentary evidence gathered during the discovery phase of this litigation, and applicable legal authority to establish that there exists a genuine issue of material fact relating to the claims set forth in both of the above-captioned matters. Accordingly, the motions by CCS must be denied pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

STANDARD OF REVIEW

"Summary Judgment is appropriate when it is clear that there is no issue of material fact and that the moving party is entitled to a judgment as a matter of law." *Café Assocs., Ltd. v. Gerngross*, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991); Rule 56(c), SCRCP. Summary judgment is a drastic

remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Moreover, "in 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 issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Wiedemann v. Town of Hilton Head Island*, 330 S.C. 532, 500 S.E.2d 783, 785-86 (1998); see also *Henkel v. Winn*, 346 S.C. 14, 17 (Ct. App. 2001).

STATEMENT OF FACTS

The original construction of the Shipwatch condominium Project was completed in the mid-1980s. Linda Jernigan testimony attached as Exhibit A, at 247. The defendants in this lawsuit were not involved in the original construction. Id. at 250-251. Rather, the defendants in this lawsuit are those entities who acted as contractors, design professionals, and/or suppliers during extensive renovations and repairs to the Project from 2002-2012. Shipwatch Ledger Report for CCS attached as Exhibit B.

Linda Jernigan is the regime manager for the Shipwatch HOA and has served in that role since February 2005. Exhibit A at 219. She testified that she and the Shipwatch HOA considered CCS (and Bob Wiggins, its principal) to be their contractor of choice for the renovations and repairs conducted at the Project between 2002-2012. "I would have recommended that we do what Bob Wiggins says, because he was our contractor of choice. I had great faith and trust in him." Id. at 329.

On November 5, 2002, CCS entered into a contract with the Shipwatch HOA in which it agreed to perform repairs to the chimneys at a price of nearly $250,000. Contract attached as Exhibit C. On September 22, 2003, CCS entered into a second contract with the HOA in which it agreed to re-slope balconies, repair doors and windows, and remove the exterior EIFS system and stucco system at various locations on the buildings and replace with a Durock Stucco System, all for the price of $1.15 million. Contract attached as Exhibit D.

At the request of the HOA, CCS performed the work outlined in its contracts as well as additional repairs over the following nine (9) years. Exhibit B. In addition to the work already mentioned, CCS undertook to replace ceilings in stairwells, repair concrete, repair roofs, repair handrails, and perform regular inspections and caulking of the buildings. Id. CCS did not obtain a new building permit, but instead continued to use the same building permit it had obtained in 2003 as authorization to perform its ongoing work at the Project through 2012. Exhibit A at 517-518.

As recently as May 2, 2011, CCS reported to Linda Jernigan and the Shipwatch HOA that "[o]verall the Duroc/BASF stucco system is in good condition." CCS Report attached as Exhibit E, at 1. "Our inspection reveals that the buildings are in good condition." Id. at 3. CCS noted that there were "several issues that need to be addressed, some that require immediate attention." Id. However, CCS characterized these "issues" as normal maintenance concerns and not as construction defects attributable to faulty work performed by CCS: "General maintenance of the doors and windows, deck coatings, stucco system and caulk inspection and repairs on an annual maintenance program should extend the life cycle of Shipwatch Properties for years to come." Id.

In late 2011, the Shipwatch HOA hired Sutton-Kennerly & Associates ("SKA"), an engineering firm, to perform an analysis of the Project so that the HOA could be assured that its

ongoing repair project was being done correctly. Exhibit A at 27-28.. In January and April 2012, SKA issued reports identifying numerous deficiencies at the Project related to the DEFS cladding system, metal stud framing, window and door flashing, waterproofing at balconies, flashing at roof to wall intersections, Tyvek moisture barrier, and wall penetrations. SKA recommended extensive repairs to the work that had just been completed by CCS. Exhibit F. Two months later, in June 2012, the Plaintiffs filed this lawsuit.

ANALYSIS OF LAW

In South Carolina, a plaintiff must commence an action within three years of the date the cause of action arises. S.C. Code Section 15-3-530. The statute of limitations "begins to run when the underlying cause of action reasonably ought to have been discovered." *Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 575, 593 S.E.2d 624, 627 (Ct. App. 2004). Under this discovery rule, "the three-year clock starts ticking on 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." Id. at 575-76, 593 S.E.2d at 627.

A defendant may be estopped from asserting the statute of limitations as a defense if the delay that otherwise would give operation to the statute was induced by the defendant's conduct. *Wiggins v. Edwards*, 314 S.C. 126, 130, 442 S.E.2d 169, 171 (1994). Such inducement may consist either of an express representation that the claim will be settled without litigation or conduct that suggests a lawsuit is not necessary. Id. Deceit is not an essential element of estoppel; rather, it is sufficient that the aggrieved party reasonably relied on the words and conduct of the person to be estopped in allowing the limitations period to expire. *Dillon Cty. Sch. Dist. No. 2 v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 218, 332 S.E.2d 555, 561 (1985).

In *Dillon*, the Court was presented with an owner who complained that its roof was designed and constructed in a deficient manner. The defendant contractor, architect, and roofer argued that the Plaintiff's claims were barred by the statute of limitations. The Court held that "[o]ne's assurances to an injured party that defects can be corrected coupled with his attempts to correct them is conduct that may lead the injured party to reasonably believe that it will receive satisfaction without resort to litigation." Id. at 219 (quoting *City of Bedford v. James Leffel & Co.*, 558 F.2d 216 (4th Cir. 1977)). Therefore, the defendants' employment of a roofing expert, frequent meetings at the school to resolve the issue, and numerous attempts to repair the roofs allowed an inference that the defendants assured the Plaintiff that the problems would be corrected and litigation would not be required. Further noting that whether equitable tolling applies to a defendant's conduct is usually a jury question, the Court reversed the trial court's grant of summary judgment. Id. at 219-220.

In this case, there is no evidence that any Plaintiff knew or should have known that a claim may exist against these defendants prior to January 2012, which is when SKA first reported to the HOA concerning deficiencies in CCS work.[1] Prior to that date, the Plaintiff reasonably relied upon the reports from CCS that the project was in "good condition" and simply needed periodic maintenance. CCS generally attributed any other problems at the Project to the original construction team or to the advanced age of the Project. At no time did CCS suggest that its own work was defective and would need to be repaired.

During her deposition, Ms. Jernigan explained the relationship between Shipwatch and Bob

[1] Of course, counsel for CCS may point to documents or deposition testimony which he believes establishes the HOA's constructive knowledge that these claims may exist. Plaintiff reserves the right to supplement its response to address any newly provided information accordingly.

Wiggins of CCS:

Q. Who do you rely on for any kind of information concerning the actual conditions of the buildings at Shipwatch?

A. Up until Sutton-Kennerly was hired in 2011, 2012, whenever they did the investigation report, Carolina Concrete, we relied on them for just about everything. They were the contractor of choice.

Q. What's your opinion of the work that Carolina Concrete performed?

A. I don't have an opinion of the quality of their work.

Q. Well, why would you keep hiring them back and forth for what seems like to be a decade if there was some issue of concern about the quality of work?

A. We believed in them and trusted them completely. They were the contractor of choice.

Q. And how did they fail to live up to that trust?

A. The inspection that was done by Sutton-Kennerly revealed some things that weren't properly done.

Exhibit A at 231-232. This exchange highlights why the Plaintiffs would not have contemplated a lawsuit against CCS until after receipt of the SKA report in 2012. Plaintiffs reasonably relied on CCS not only to perform the work correctly, but to accurately report on any problems at the Project. CCS failed in both respects.

The argument of CCS that the statute of limitations has run is even more baffling when one considers that CCS was still performing work at the Project in 2011 – work that SKA reports is defective and will need to be re-done correctly. CCS performed this work pursuant to the same building permit it obtained in 2003, which demonstrates that CCS regarded this as a single ongoing project. Shipwatch continued to pay CCS to perform repairs at the Project through 2011 because they had no reason to think the CCS work was defective. Only when a third-party engineer assessed

the Project and reported that the CCS work was defective did the Plaintiffs have knowledge of a potential claim, and the statute of limitations begin to run. Once the Plaintiffs received this information, they acted swiftly to pursue any claims they might have. The Complaints were filed within six months of receiving the SKA reports. It can hardly be argued that the Plaintiffs failed to exercise due diligence in pursuing these claims or slept on their rights in some way.

Indeed, exhibit "B" establishes that the defendant CCS was actually paid by the Plaintiffs to perform "cutting and patching" services in support of SKA when it was investigating the conditions of the Project in 2011, resulting in the SKA reports from 2012. This evidence supports the contention that not even the movant CCS was aware of the issues in this lawsuit prior to the investigation by SKA in 2011 or its reports issued in 2012. The evidence certainly establishes that the Plaintiffs were unaware of these issues with the performance of CCS, and that when the Plaintiffs became aware of these defects and deficiencies, immediate action was taken against CCS. Moreover, even if Plaintiffs were deemed to have constructive notice of any aspect of its legal claims, the continuity of work performed by CCS and payments by Plaintiffs to CCS through 2012 establishes that a jury could reasonably find that CCS is equitably estopped from claiming the statute of limitations as a defense in these lawsuits.

CONCLUSION

The testimony, documentary evidence, and applicable legal authority establish that Plaintiffs neither knew nor reasonably should have known that they had legal claims against the above-captioned defendants before receipt of the report by SKA in April 2012. Based upon this evidence, the requirement of Rule 56, SCRCP regarding Plaintiffs' claims are satisfied, in that a genuine issue of material fact exists in relation to these claims, and these claims must be presented to the trier of

fact. For the foregoing reasons, the motions for summary judgment by the defendant Carolina Concrete Systems in the above-referenced matters must be denied.

Respectfully submitted,



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Charleston, SC 29401
Telephone: (843) 723-6470
E-mail: rpf@roblaw.net

Charleston, South Carolina

October 24, 2014

some documents.
A I think when Lester Griffin was there, he had no previous property management experience.
Q Was he the police officer?
A He was a police officer. So I think they hired Mike Parades, CCM, to support him and give the board advice until I came. Since I had experience, they no longer needed Mike Parades.
Q Now, the history of Shipwatch, the construction was in 1984 to '86? Do you know?
A It was turned over to the homeowner association in 1984, April of 1984.
Q So construction was done by 1984?
A I assume all four buildings. I know A and B were phase one. C and D was phase two. But they were very close to the same time.
Q And they've always had -- they always have a board of directors for the history of the organization. Right?
A Correct.
Q And the board of directors meet monthly?
A No. They meet quarterly.
Q Typically does the manager attend the meetings?
A Yes.

Q Do you take notes, minutes, or does some secretary?
A A secretary takes the minutes.
Q And those minutes are eventually passed and published?
A They are filed in the office. You know, owners can come in and read them, but we don't publish.
Q Do they have executive sessions? The board.
A Sometimes, yes.
Q What issues call for going to executive session? Usually it's money and legal.
A The only executive sessions they've had since I've been there since 2005 were talking about me and pay raises and stuff, yeah.
Q How about the decision to file a lawsuit? Was that an executive meeting?
A Typically no one attends our board meetings.
Q No homeowners. Just the board members?
A Right, just the board members. So they just talk about whatever they talk about and don't have to call for executive session.
Q Some boards will have executive session

to not take minutes.
A To not take minutes, right.
Q Do you know if that occurred here?
A I don't think so.
Q How was the decision made -- It's a broad question, and we'll get into some detail, but how was the decision made to file this lawsuit?
A We hired Sutton-Kennerly & Associates Engineers to do a study of our buildings.
Q Who made that decision?
A The board.
Q It was a study brought on by what? Why did you decide to do that?
A We had been doing upgrades to the buildings piecemeal because of money, I would assume. And we were doing -- Like they did the end walls and the roofs, and then they started to do the ocean side of two buildings. And Oscar Mendiondo as president said, you know, we just need to be sure that we're doing everything just right. So it was his idea to hire someone to do a study of the buildings, and Sutton-Kennerly had been highly recommended to us.
Q Who gave you that recommendation?
A The first recommendation came from Bob

Wiggins. And then just a couple -- I just checked with people that I knew, and everybody had heard of Sutton-Kennerly and had a high respect for them. So we hired them to do an investigation of the buildings.
Q Do you remember offhand when that is? I know it's in the documents.
A Well, 2011, I guess. Late 2011 into 2012, because we got the report in April of 2012, and the lawsuit was filed in June of 2012.
Q Do you remember if Sutton-Kennerly was involved before that? Maybe '08, '09?
A We had them do a visual inspection of the buildings. I don't remember when, but prior to 2012, just to do a visual to see if there were any major things. We did not have like a 20-year plan or anything in place. So we had them come and look at the buildings just visual -- there were no cuts or anything -- to recommend to us a schedule of repairs.
Q Maintenance?
A Maintenance, repairs.
Q So it sounds like the idea was you guys didn't have a maintenance schedule going forward and reserves set in order to accomplish the anticipated

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

EXHIBIT A

you're saying --
A It was completed when I got there in February of 2005.
Q Just the master bedroom?
A First, second and third floor master bedrooms.
Q Not the living room ones. Right?
A Not the living room.
Q Nor the fourth and fifth floor?
A Correct.
Q And not the fixed windows?
A Correct.
Q They were still there. All the original stuff?
A Yes.
Q Were they leaking?
A I don't know.
Q It goes on to just coat decks, level decks, that sort of thing.
If you see the second column of the page, "The following items are also part of the scheduled work and will be completed concurrent to tasks shown above." One of them is bay windows. Do you know if that was done for $30,000?
A I don't know.

(Exhibit No. 24 marked for identification.)
BY MR. ELLIOTT:
Q No. 24. I'm going to skip ahead in time, but then I'll go back after we cover this with regard to sliding glass doors.
This is an inspection report from Carolina Concrete, Bates Plaintiff's 1157 to 1158, regarding Exterior Building Inspection Report. And Bob Wiggins is writing you, here's our report for the conditions of the four buildings.
If you look on item 14, Bob writes, "Leaks continue to be a problem at and around the old sliding glass doors on the beach front and golf course side of the buildings. We have repeatedly shown you and numerous board members that these doors are leaking, and I am sure that there's damage that is occurring in the new metal stud walls with the Durock system that we installed during our project in '03 and '04."
Do you recall having discussions with Bob Wiggins in the '07 time period where he's making these complaints?
A I believe that would be the fourth and fifth floor sliding glass doors that he was talking

about.
Q By '07 he had certainly replaced the Durock on those floors?
A I believe so, yes.
Q Do you have any recollection of him including the first through third floor balconies in that complaint?
A No. I don't know.
(Exhibit No. 25 marked for identification.)
BY MR. ELLIOTT:
Q We'll circle back in dates, but I just want to put these together. An inspection report from Bob Wiggins of May 2, 2011, written to you, Exterior Building Inspection Report, Bates 394 to 498. It's rather large.
Look on the second page. Beach Front Balcony Inspection. No. 5, "Leaks continue to be a problem at and around the old sliding glass doors on the beach front and golf course side of the buildings." You think that was four and five, levels four and five?
A That would be my thought.
Q This is two years later after his inspection report that we just looked at where he.

makes the same complaint. Was the board taking any action to remedy ongoing problems behind new work caused by old doors?
A Every year we were replacing sliding glass doors on the fourth and fifth floors that were identified as leaking.
Q Do you know which ones and when and that sort of thing?
A There are documents --
Q Maybe we'll get to it?
A Yeah.
Q Do you remember when the work of Wiggins stopped when they were no longer -- I get the feeling like they didn't finish their contract. I may be wrong. Did they finish all of their work and then walk away? It seems like that didn't happen. I may be wrong.
A They had continued to do work for us. The last time they actually did work for us was when Sutton-Kennerly did their investigation cuts.
Q Carolina did it?
A Carolina Concrete was there and they provided someone to make the repair after it was cut open.
Q Why was it that they didn't remove and

Janice Ohlendorf Darby, RPR
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replace the synthetic stucco on C and D?
A The plan was we did A and B in '10, '11, I think.
Q 2010, 2011?
A I think. And we were going to do ocean side of C and D in 2012. And the board president said we just need to know that we are on the right path, and he called in Sutton-Kennerly to do the report.
Q Found problems and then that was sort of it. Right?
A That was it.
Q Meaning Wiggins didn't do those second buildings. Right? I mean C and D ocean side.
A Correct.
(Exhibit No. 26 marked for identification.)
BY MR. ELLIOTT:
Q Again, out of order but this is a large inspection report by Wiggins. This is '09. We had '07, 2011, and this is '09. Bates stamp 628 through 749. This is 2009. Beach Front Balcony Inspection, item No. 6, "Leaks continue to be a problem at and around the old sliding glass doors on the beach front" -- I'm sorry. 631, No. 6. "Leaks continue

to be a problem at and around the old sliding glass doors on the beach front and golf course. We have repeatedly shown you and numerous board members that these doors are leaking, and I'm sure there is damage that is occurring in the new metal stud walls with the Durock system that we installed during our project in '03 and '04. We are in the process of replacing 17 doors, and I recommend the remaining old doors be removed and replaced."
Do you know, in '09 were all 17 doors replaced that Mr. Wiggins highlights or mentions?
A We just did several each year. I don't remember what year we did how many.
Q Do you know if any were done before February of '09?
A Not without looking at records, I don't.
Q And there may very well be records that show something different. I just don't know.
He says we recommend the remaining doors be removed. It is fair to say that in 2009 all of the sliding glass doors were not removed and replaced. All the old ones. Right?
A That's correct.
Q And they continued to potentially leak behind new Durock, right, which Mr. Wiggins is

complaining about?
A But I can't say.
Q Do you know if water damaged studs on fourth and fifth floor beach side -- the cost to remedy damaged studs because of water intrusion -- is a part of your-all's lawsuit, your damages?
A I don't know.
Q Do you know if any water intrusion because of doors that resulted on the fourth and fifth floor from old sliding glass doors, if damage related to that is a part of this lawsuit?
A I don't know.
Q Do you think it should be segregated out?
A I don't know. Sorry.
Q The next page on 632 is No. 7, "The fixed panel windows on the beach front balconies are showing signs of considerable corrosion and the glazing is cracking. These need to be replaced in the near future."
That's the fixed panel windows that are floor to ceiling. Right? They are on the balconies. Remind me. Have you-all replaced those?
A A and B building have been replaced.
Q Not C and D?
A Correct.

Q Do you know about when they were done?
A It was 2010, 2011 time frame.
MR. BARFIELD: What's the date on that exhibit, James?
MR. ELLIOTT: February of '09.
BY MR. ELLIOTT:
Q I want go back in time back to '02 just for a second. I've got a collection of what appears to be proposals from Wiggins that lead up to the signing of the contract. Maybe that will sort of round out our understanding of what was supposed to be done at least during certain time periods.
(Exhibit No. 27 marked for identification.)
BY MR. ELLIOTT:
Q No. 27 is I think Wiggins' contract, or Carolina's, 1150 to 1156 signed by Rhoden and Wiggins. You may have never even looked at that before. Have you concerned yourself at all with it before?
A No.
Q It's November 5, 2002.
(Exhibit No. 28 marked for identification.)
BY MR. ELLIOTT:

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

A Yes. One of them would request or call in about something they had a problem with or something they needed me to look at; or when it rains, you know, we had problems with leaking sliding glass doors. So we would go in after a heavy rain looking for wet carpet, any sign of water.

Q How long has it been a problem with leaking sliding glass doors at Shipwatch?

A Well, I've been there -- this is my ninth year. So there's been problems since I've been there.

Q And you started when?

A February 2005, I think.

Q What kind of problems have you noticed with the leaking sliding glass doors since February of 2005?

A They leak.

Q Anybody ever told you why they leak?

A We've had contractors out there that look. Sometimes they say it was no end dams. Sometimes it was installation. They kind of each had their own opinion.

Q What contractors gave you those comments?

A Carolina Concrete and Charleston Glass.

Q What about chimneys?
A I don't recall any complaints about water intrusion at the chimneys.
Q A couple of more background questions and then I'm going to move on to some other things.
Do you consider yourself to be an expert in construction?
A No, I do not.
Q Who do you rely on for any kind of information concerning the actual conditions of the buildings at Shipwatch?
A Up until Sutton-Kennerly was hired in 2011, 2012, whenever they did the investigation report, Carolina Concrete, we relied on them for just about everything. They were the contractor of choice.
Q What's your opinion of the work that Carolina Concrete performed?
A I don't have an opinion of the quality of their work.
Q Well, why would you keep hiring them back and forth for what seems like to be a decade if there was some issue of concern about the quality of work?
A We believed in them and trusted them

completely. They were the contractor of choice.

Q And how did they fail to live up to that trust?

A The inspection that was done by Sutton-Kennerly revealed some things that weren't properly done.

Q Such as?

A I don't know. You have the report. I really don't -- can't recall anything particularly from the report, but there were things.

Q You just don't know what things they were?

A I don't recall. I've got a lot going on right now. I've got a construction project that's gone on. That's past history. All I can tell you is that I had the greatest respect for Carolina Concrete and Charleston Glass. We hired them to do the work and trusted and depended upon them to do it properly. Whether they did or not is not up to me to say. It's up to the professionals.

Q And you would agree with me that Sutton-Kennerly is one of many professionals. Correct?

A Yes.

Q You would agree with me that

inspection and give us a maintenance plan so we can maintain the buildings properly. And they provided us with a five-year maintenance plan, and we gave it to Carolina Concrete, and they started doing the repairs that they had suggested.

Q I believe CBC was in 2008 and Sutton-Kennerly was in 2009.

A Okay.

Q Before CBC, had Shipwatch had any vendor inspect the buildings?

A I don't believe so.

Q And these buildings were constructed in the mid 1980s. Correct?

A Yes.

Q So for that roughly 20-year period, 25-year period, no person had been paid by Shipwatch to perform any type of maintenance inspection of the buildings. Correct?

A No. Hurricane Hugo in 1989 required considerable work to be done to the buildings.

Q Who performed those repairs after Hugo?

A Western Waterproofing.

Q And did Shipwatch sue Western Waterproofing?

A You know, I think maybe. I was gone by

Q Did you ever contract on behalf of Shipwatch or suggest to the board that they approve any contract with Carolina Concrete Systems or any of these defendants that involve these defendants installing EIFS or synthetic stucco to these buildings?

A Did I recommend it?

Q Yes. I'm just trying to get somebody to concede the obvious, which is that the repairs in 2013 and 2014 include removal and replacement of the original EIFS, and none of these defendants installed that original EIFS in the mid 1980s.

A Well, we know that.

Q That's all I'm trying to get somebody to --

A I didn't understand your question. It's being removed now and --

Q None of these defendants installed the original EIFS. Correct?

A I don't know. I wasn't there when they built the buildings.

Q Do you have any evidence that any of these defendants --

A No, I do not.

Q -- were involved in the original

construction in the mid 1980s?

A No, I do not.

Q When was the first time somebody contacted you regarding the insurance issues with the synthetic stucco at these buildings?

A What do you mean?

Q One of the things that we know from this litigation is that the homeowners had conversations with the insurance brokers about the premiums being excessive because of EIFS and that there would be difficulty in getting insurance --

A That's correct.

Q -- because of the EIFS. Correct?

A That is correct.

Q And that situation existed when you first came back in February of 2005. Correct?

A The situation of the claddings on the buildings?

Q And the issues with the insurance. Because those issues arose as early as 2001. Correct?

A Oh, I don't know. I do not know. I know that while I was there we had the insurance agent that represented Shipwatch come to a board meeting, and he explained to us that the insurance companies

recommended were items that either were ongoing or have been held back from years previous." Correct?

A Correct.

Q Earlier you told me that you never made recommendations to the board.

A Not anything as large as the remediation projects, I do not. It's not my place.

Q Items one, five and six that in September of 2008 the minutes reflect you highly recommended to the board were $177,600 for sliding glass door replacement, $200,000 for deck coating, waterproofed in 2003 to maintain warranty they must be top coated every three years, and a phased approach of $423,060 per building, for a total of $1,800,000 for EIFS replacement.

Now, are those things that in September of 2008 you highly recommended to the Shipwatch board of directors?

A I don't know that I used the words "highly recommend." But I would have made -- This is a budget meeting, and I do the budget. And based on the items and prices given to me by Bob Wiggins, I would have recommended that we do what Bob Wiggins says, because he was our contractor of choice. I had great faith and trust in him. So, yes, I would

November 12, 2010 e-mail, if you look at paragraph three, would you agree with me that Mr. Freeman raised a concern when he discovered that the work that was being done in 2010 was being conducted under a permit that was pulled in 2003?

A Yes, he did.

Q Do you remember discussing that with Mr. Freeman?

A I don't specifically remember discussing it with Mr. Freeman. I certainly remember discussing it with Mr. Wiggins.

Q And what was the take-away from that discussion?

A Mr. Wiggins continued to say that he felt it was a continuing part of a project, not a new project, but a continuation of what he had done before. Therefore, he felt that he could work under the same permit, and that was less than the 50 percent that would require bringing it up to the building code of today. And he believes that.

Q And you were satisfied with that?

A I was concerned about it, but it was almost over. I didn't know what else I could do.

Q Do you recall responding to that concern that Mr. Freeman raised?

A Responding to Mr. Freeman?
Q Yes.
A I'm sure we talked about it, yes. I don't remember, no. But, yes, I'm sure we talked about it, because it upsets me very much that we could have been doing something that was inappropriate as far as the building department of the Isle of Palms would think.
Q Do you remember Mr. Freeman expressing surprise that the work was being done that way independent of this e-mail?
A Surprised at what?
Q That the work in 2010 was being done pursuant to a permit that was pulled in 2003?
A Yeah, he was surprised. I was shocked.
Q But what Mr. Wiggins told you about his interpretation of the code satisfied you sufficiently to allow the work to complete?
A I can't say that it satisfied me at all. But the work was about finished, and I just went to the board and told them this is our predicament. And by then he was about finished.
Q Did you have Mr. Freeman come and talk to the board to talk more specifically about why that would be a concern?

Shipwatch Regime
Vendor QuickReport
January 1, 2002 through April 26, 2012



Type	Date	Num	Memo	Acc...	Clr	Sp	Amount
Bill Pmt -Ch...	1/31/2005	9135	phase II	1020...	X	20	-95,226.57
Check	3/10/2005	9222	,phase I and phase II	1020...	X	70	-91,150.00
Bill	3/28/2005	05-14	phase II	2000...		-...	-16,843.08
Bill Pmt -Ch...	4/8/2005	9277	phase II	1020...	X	20	-16,843.08
Bill	2/10/2006	06-5	phase II	2000...		62	-3,120.00
Bill	2/10/2006	06-4	phase II	2000...		62	-3,213.87
Bill	2/10/2006	06-3	phase II	2000...		70	-300.00
Bill	2/13/2006	06-7	phase II	2000...		62	-1,780.00
Bill Pmt -Ch...	3/5/2006	9736		1020...	X	20	-8,413.87
Bill	2/20/2007	06-55	Unit concrete repairs	2000...		62	-3,098.00
Bill	5/1/2007	06-71	Bldgs inspected and caulkec	2000...		62	-49,000.00
Bill Pmt -Ch...	5/16/2007	10391	Unit concrete repairs	1020...	X	20	-3,098.00
Bill Pmt -Ch...	6/19/2007	10475	Bldgs inspected and caulkec	1020...	X	20	-49,000.00
Bill	6/19/2007		VOID: Bldgs inspected and caulkec	2000...	X	62	0.00
Check	3/20/2008	20048	Sliding door project	1026...	X	70	-150,000.00
Bill	4/23/2008	balan...	Sliding door project balance due	2000...		70	-11,900.00
Bill Pmt -Ch...	4/23/2008	20050	Sliding door project balance due	1026...	X	20	-11,900.00
Check	2/4/2009	11448	Building Inspection/Caulk	1020...	X	62	-49,000.00
Check	2/4/2009	11449	Research / Caulk after storm Sept 08	1020...	X	62	-1,960.00
Check	3/2/2009	11580	17 door installations	1020...	X	70	-160,700.00
Bill	3/9/2009	06-149	Repairs spalls,awnings and handrails	2000...		62	-21,215.00
Bill Pmt -Ch...	3/17/2009	11609	Repairs spalls,awnings and handrails	1020...	X	20	-21,215.00
Check	5/14/2009	11667	Powerwash Bldgs - All sides	1020...	X	62	-11,440.00
Bill	10/31/2009	06-166	roof repairs over d430	2000...		62	-29,800.00
Bill Pmt -Ch...	11/10/2009	11987	roof repairs over d430	1020...	X	20	-29,800.00
Bill	12/21/2009	06-170	repair end closets eng report #6	2000...		62	-9,280.00
Bill Pmt -Ch...	1/19/2010	12073	repair end closets eng report #6	1020...	X	20	-9,280.00
Check	2/25/2010	1000	Sliding door project invoice #06-173	1026...	X	70	-159,000.00
Bill	4/24/2010	06-179	power wash buildings all sides	2000...		62	-12,600.00
Bill	4/24/2010	06-178	install 2 slider doors	2000...		70	-21,200.00
Check	5/7/2010	12199	VOID: Powerwash Bldgs - All sides	1020...	X	62	0.00
Bill Pmt -Ch...	5/10/2010	12199	power wash buildings all sides	1020...	X	20	-12,600.00
Bill Pmt -Ch...	5/10/2010	1002	install 2 slider doors	1026...	X	20	-21,200.00
Check	10/29/2010	1010	EIFS project invoice #06-173	1026...	X	70	-156,950.50
Bill	12/6/2010	06-196	Trim charges EIFS	2000...		70	-4,800.00
Bill	12/10/2010	Draw ...	Draw 12/10/2010	2000...		70	-111,710.00
Bill Pmt -Ch...	12/13/2010	1029	Draw 12/10/2010	1026...	X	20	-111,710.00
Bill	12/20/2010	06-199	retainage less gate passes	2000...		70	-13,285.00
Bill	12/20/2010	06-198	Sliding glass door 11 new	2000...		70	-116,600.00
Bill Pmt -Ch...	1/10/2011	1035	Eifs Expenses	1026...	X	20	-18,086.00
Bill Pmt -Ch...	1/11/2011	1036	Sliding glass door 11 new	1026...	X	20	-116,600.00
Bill	1/26/2011	06-203	C bldg elevator leak repair/cleanup & pressure was..	2000...		70	-7,467.30
Bill Pmt -Ch...	2/7/2011	12670	C bldg elevator leak repair/cleanup & pressure was..	1020...	X	20	-7,467.30
Check	4/19/2011	12868	Powerwash Bldgs/Caulk/Inspect	1020...	X	62	-56,250.00

Shipwatch Regime
Vendor QuickReport
January 1, 2002 through April 26, 2012

Type	Date	Num	Memo	Acc...	Clr	Sp	Amount
Bill	5/11/2011	06-213	Repair rails reinstalled C413 & D430 X2	2000...		70	-4,430.00
Bill Pmt -Ch...	5/17/2011	1046	Repair rails reinstalled C413 X2 & D43(	1026...	X	20	-4,430.00
Bill	5/25/2011	06-217	Window Aluminum for bldgs C&D	2000...		70	-16,000.00
Bill Pmt -Ch...	6/1/2011	1048	Window Aluminum for bldgs C&D	1026...	X	20	-16,000.00
Bill	7/29/2011	06-223	Inspect labor & equip elevator leaks	2000...		70	-1,850.00
Bill Pmt -Ch...	8/1/2011	1052	Inspect labor & equip elevator leaks	1026...	X	20	-1,850.00
Bill	8/4/2011	06-227	Inspect labor & equip elevator caulk windowt	2000...		70	-898.00
Bill Pmt -Ch...	8/8/2011	1053	Inspect labor & equip elevator caulk windowt	1026...	X	20	-898.00
Bill	8/29/2011	06-230	Inspect labor & equip elevator caulk windowt	2000...		70	-6,100.00
Bill Pmt -Ch...	9/6/2011	1055	Inspect labor & equip elevator caulk windowt	1026...	X	20	-6,100.00
Bill	2/1/2012	06-243	Replaced DURROC STUCCO & unit B107 Molc	2000...		-...	-3,750.00
Bill	2/6/2012	06-246	Water testing slider A402	2000...		62	-345.00
Bill Pmt -Ch...	2/13/2012	13331		1020...	X	20	-4,095.00
Bill	2/23/2012	06-252	EIFS investigative cuts	2000...		70	-9,152.00
Bill Pmt -Ch...	2/23/2012	13345	EIFS investigative cuts	1020...	X	20	-9,152.00
Bill	3/21/2012	06-257	EIFS repair to investigative cuts	2000...		70	-13,871.00
Bill Pmt -Ch...	4/2/2012	13490	EIFS repair to investigative cuts	1020...		20	-13,871.00

Shipwatch Regime
Vendor QuickReport
January 1, 2002 through April 26, 2012

Type	Date	Num	Memo	Acc...	Clr	Sp	Amount
Carolina Concrete Systems							
Bill	12/19/2002	Dispo...	Building Repairs/trash container Invoice#02-3!	2000...		70	-635.00
Bill Pmt -Ch...	12/19/2002	7780	Building Repairs/trash container Invoice#02-3!	1020...	X	20	-635.00
Check	12/31/2002	1373		1010...	X	70	-74,033.50
Check	12/31/2002	1374		1010...	X	70	-7,478.50
Bill	1/27/2003	Garba...	Invoice # 03-07/03-07	2000...		-...	-1,448.14
Bill Pmt -Ch...	1/27/2003	7846	Invoice # 03-07/03-07	1020...	X	20	-1,448.14
Check	1/31/2003	1376		1010...	X	70	-117,923.00
Check	2/28/2003	1377		1010...	X	70	-137,104.19
Check	3/31/2003	1383		1010...	X	70	-146,968.45
Check	3/31/2003	1386		1010...	X	70	-12,089.35
Check	4/30/2003	1388		1010...	X	70	-40,792.05
Check	5/15/2003	1393		1010...	X	70	-36,161.51
Check	10/31/2003	1001		1010...	X	70	-61,802.80
Check	11/13/2003	1002		1010...	X	70	-107,966.60
Check	11/13/2003	1003	permits	1010...	X	70	-8,713.64
Check	12/9/2003	1005	3-48	1010...	X	70	-52,266.16
Check	12/9/2003	1006	3-47	1010...	X	70	-31,087.20
Check	1/19/2004	1008	3-47	1010...	X	70	-90,211.05
Check	1/19/2004	1010	3-47	1010...	X	70	-60,422.00
Check	2/10/2004	1011	04-4	1010...	X	70	-1,808.10
Check	2/10/2004	1012		1010...	X	70	-1,968.78
Check	2/18/2004	1013	04-4	1010...	X	70	-210,471.25
Check	2/18/2004	1014	04-4	1010...	X	70	-45,686.64
Bill	3/23/2004		phase II	2000...		70	-170,377.70
Bill	3/25/2004		phase II	2000...		70	-22,594.80
Bill	3/26/2004	04-13	disposal fees	2000...		70	-1,295.40
Bill Pmt -Ch...	4/1/2004	8604		1020...	X	20	-192,972.50
Bill Pmt -Ch...	5/1/2004	8661	disposal fees	1020...	X	20	-1,295.40
Check	5/3/2004	8680	04-11,phase I and phase II	1020...	X	-...	-87,798.35
Bill	6/1/2004	04-22	disposal fees	2000...		70	-3,714.15
Bill Pmt -Ch...	6/15/2004	8735	disposal fees	1020...	X	20	-3,714.15
Check	6/21/2004	8764	,phase I and phase II	1020...	X	70	-43,759.66
Bill	8/1/2004	04-36	rplc ceilings in 8 stariwells	2000...		-...	-15,080.00
Bill Pmt -Ch...	9/16/2004	8896	rplc ceilings in 8 stariwells	1020...	X	20	-15,080.00
Bill	10/18/2004	04-60	business license & permits	2000...		70	-2,164.96
Bill	10/29/2004	10/15/...	phase II	2000...		70	-220,037.58
Bill	10/29/2004	10/15/...	phase II	2000...		70	-27,148.25
Bill Pmt -Ch...	10/29/2004	8968	business license & permits	1020...	X	20	-2,164.96
Bill Pmt -Ch...	10/29/2004	8969	phase II	1020...	X	20	-220,037.58
Bill Pmt -Ch...	10/29/2004	8970	phase II	1020...	X	20	-27,148.25
Bill	12/6/2004	04-69	phase II	2000...		70	-146,099.27
Bill Pmt -Ch...	12/6/2004	9051	phase II	1020...	X	20	-146,099.27
Bill	1/4/2005		phase II	2000...		70	-95,226.57

OFFICE COPY

1997 EDITION

ORIGINAL

AIA DOCUMENT A101-1997

Standard Form of Agreement Between Owner and Contractor
where the basis of payment is a STIPULATED SUM

AGREEMENT made as of the Fifth day of November in the year 2002
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

SHIPWATCH HORIZONTAL PROPERTIES
7600 PALMETTO DRIVE
ISLE OF PALMS, S.C. 29451

and the Contractor:
(Name, address and other information)

CAROLINA CONCRETE SYSTEMS, INC.
P.O. BOX 13149
CHARLESTON, S.C. 29422

The Project is:
(Name and location)

SHIPWATCH AT WILD DUNES
7600 PALMETTO DRIVE
ISLE OF PALMS,S.C.

The Architect is:
(Name, address and other information)

The Owner and Contractor agree as follows.

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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

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AIA DOCUMENT A101-1997
OWNER-CONTRACTOR AGREEMENT

The American Institute of Architects
1735 New York Avenue, N.W.
Washington, D.C. 20006-5292

EXHIBIT C

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

3.2 The Contract Time shall be measured from the date of commencement.

3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than 65 days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.) This schedule is for substantial completion of Chimney Repairs only. Additional schedules will be provided when the additional work is started.

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

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PL 1151

ARTICLE 4 CONTRACT SUM

4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be TWO HUNDRED FORTY NINE THOUSAND FIVE HUNDRED FORTY SIX Dollars ($249,546^{00}), subject to additions and deductions as provided in the Contract Documents.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

4.3 Unit prices, if any, are as follows:

ARTICLE 5 PAYMENTS

5.1 PROGRESS PAYMENTS

5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

5.1.3 Provided that an Application for Payment is received by the ~~Architect~~ Owner not later than the 30th day of a month, the Owner shall make payment to the Contractor not later than the 15th day of the following month. If an Application for Payment is received by the ~~Architect~~ Owner after the application date fixed above, payment shall be made by the Owner not later than 15 days after the ~~Architect~~ Owner receives the Application for Payment.

5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the ~~Architect~~ Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

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5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Five percent (5 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Subparagraph 7.3.8 of AIA Document A201-1997;

.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Five percent (5 %);

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201-1997.

5.1.7 The progress payment amount determined in accordance with Subparagraph 5.1.6 shall be further modified under the following circumstances:

.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and *(Subparagraph 9.8.5 of AIA Document A201-1997 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*

.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 9.10.3 of AIA Document A201-1997.

5.1.8 Reduction or limitation of retainage, if any, shall be as follows:
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Clauses 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

5.2 FINAL PAYMENT

5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Subparagraph 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the ~~Architect~~ Engineer

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PL 1153

5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 6 TERMINATION OR SUSPENSION

6.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-1997.

6.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

7.3 The Owner's representative is:
(Name, address and other information)

Charles Rhoden
President
Shipwatch Horizontal Properties
Isle of Palms, S.C. 29451

7.4 The Contractor's representative is:
(Name, address and other information)

Robert M. Wiggins
P.O. Box 13149
Charleston,S.C. 29422

7.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

7.6 Other provisions:

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ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A101-1997.

8.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated October 16th, 2002, and are as follows:

Document	Title	Pages
Proposal	Waterproofing Repairs	4
Proposal	Additional Traffic Coatings	1
Exterior Condition Survey		35

8.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 8.1.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages

8.1.5 The Drawings are as follows, and are dated unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date

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8.1.6 The Addenda, if any, are as follows:

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

Shipwatch Horizontal Property Regime

OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
Charles W. Rhoden, Jr.	
(Printed name and title)	*(Printed name and title)*

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PL 1156

9/22/03

AIA Document A101/CMa

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a STIPULATED SUM

1992 CONSTRUCTION MANAGER-ADVISER EDITION

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

The 1992 Edition of AIA Document A201/CMa, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

AGREEMENT

made as of the TWENTY SECOND day of SEPTEMBER in the year of
(In words, indicate day, month and year.) TWO THOUSAND AND THREE

BETWEEN the Owner:
(Name and address)
SHIPWATCH HORIZONTAL PROPERTY REGIME
7600 PALMETTO DRIVE
ISLE OF PALMS, S.C.

and the Contractor:
(Name and address)
CAROLINA CONCRETE SYSTEMS, INC.
P.O. BOX 13149
CHARLESTON,S.C. 29422

For the following Project:
(Include detailed description of Project, location, address and scope.)

The attatched Schedule dated September 19th, 2003 is the scope of work for the project and will become a part of this contract.However, because of deferrment of balcony repairs, the pricing may change if the price of subcontractors and material suppliers changes.

The Construction Manager is:
(Name and address)

The Architect is:
(Name and address)

The Owner and Contractor agree as set forth below.

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EXHIBIT D

ARTICLE 1
THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2
THE WORK OF THIS CONTRACT

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

ARTICLE 3
DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement is the date from which the Contract Time of Paragraph 3.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

October 1st, 2003

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner, through the Construction Manager, in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than

(Insert the calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)

March 30th, 2004
*excluding weather delays

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

ARTICLE 4
CONTRACT SUM

4.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of One Million One Hundred Fifty One Thousand Two Hundred Seveteen Dollars ($ 1,151,217.00), subject to additions and deductions as provided in the Contract Documents.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date until which that amount is valid.)

1. Resloping Balconies with concrete overlays.
2. Window or door repairs.
3. PROPOSAL DATED JUNE 3rd 2003. ATTACHED

4.3 Unit prices, if any, are as follows:

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ARTICLE 5
PROGRESS PAYMENTS

5.1 Based upon Applications for Payment submitted by the Contractor to the Construction Manager, and upon Project Applications and Certificates for Payment issued by the Construction Manager and Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

5.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

25th day of each month.

5.3 Provided an Application for Payment is submitted to the ~~Construction Manager~~ Owner not later than the 25th day of a month, the Owner shall make payment to the Contractor not later than the 15th day of the following month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner not later than n/a days after the Construction Manager receives the Application for Payment.

5.4 Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager or Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

5.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of five percent (5 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Subparagraph 7.3.7 of the General Conditions;

5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5 %);

5.6.3 Subtract the aggregate of previous payments made by the Owner; and n/a

5.6.4 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General Conditions.

5.7 The progress payment amount determined in accordance with Paragraph 5.6 shall be further modified under the following circumstances: n/a

5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to ninety five percent (95 %) of the Contract Sum, less such amounts as the Construction Manager recommends and the Architect determines for incomplete Work and unsettled claims; and

5.7.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 9.10.3 of the General Conditions.

5.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Subparagraphs 5.6.1 and 5.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

n/a

ARTICLE 6
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Subparagraph 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Project Certificate for Payment has been issued by the Construction Manager and Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Project Certificate for Payment, or as follows:

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

7.3 Temporary facilities and services:

(Here insert temporary facilities and services which are different from or in addition to those included elsewhere in the Contract Documents.)

Carolina Concrete will be provided with power, water and waste disposal containers. We will be allowed to place temporary portable bathrooms on the property and we will be provided laydown area for material storage.

7.4 Other Provisions:

(Here list any special provisions affecting the Contract.)

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ARTICLE 8
TERMINATION OR SUSPENSION

8.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

8.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

ARTICLE 9
ENUMERATION OF CONTRACT DOCUMENTS

9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

9.1.1 The Agreement is this executed Standard Form of Agreement Between Owner and Contractor, AIA Document A101/CMa, 1992 Construction Manager-Adviser Edition.

9.1.2 The General Conditions are the General Conditions of the Contract for Construction, AIA Document A201/CMa, 1992 Construction Manager-Adviser Edition.

9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows:

Document	Title	Pages
n/a		

9.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 9.1.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
Statement of Work	Chimney and Roof Repairs	
11/13/2002	by Robert Sisnroy P.E.	
Engineering Report of Remedial Repairs		
1/16/2003	by Sisnroy Engineerings	

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9.1.5 The Drawings are as follows, and are dated unless a different date is shown below:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
n/a		

9.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
n/a		

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

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9.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents which are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above and is executed in at least four original copies of which one is to be delivered to the Contractor, one each to the Construction Manager and Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER	CONTRACTOR
Carl A. Grisier	Robert M. Wiggins
(Signature)	(Signature)
CARL A. GRISIER DIRECTOR	Robert M Wiggins President
(Printed name and title)	(Printed name and title)

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CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL

June 3rd, 2003

Mr. Charlie Rhoden
Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Phase II Waterproofing Repairs at Shipwatch

Dear Mr. Rhoden,

I appreciate the opportunity you have given me to work with you, the board and the homeowners on your waterproofing needs.

Enclosed is our proposal for the repairs you asked for. Since we deferred some of the repairs from phase 1, I am including them here so that you can work on a budget as well as the overall scope of repairs needed.

I am not sure if we had stariwell and elevator towers scheduled for 2004 budget, however, I have included them.

Also, keep in mind we have not flooded any of the balconies to determine what if anything can be done to correct the negative slope and ponding issues.

Scope of Work

1. Privacy walls on golf course side of penthouse units that are leaking into heated wall space Bld C & D Qty 32 $2475.00@ = $79,200.00

2. Chimneys and walls of end unit balconies that are of improper construction and are leaking into heated wall space. Qty 4 $13,400.00@ = $53,600.00

3. Replace flashing around top of roof hatches inside perimeter of each. Qty 8 $2250.00@ = $18,000.00

4. Prep and paint 3 ladders each bld. Does not include any welding if necessary. Qty 16 $650.00@ = $10,400.00

5. Balcony and corridor deck coating based on 42,968 with light to medium coatings on balconies and heavy duty on corridors. $294,013.00

6. Waterproof flextight 6" up wall and 4" out on to balcony slab. $4480.50 = $17,842.00

7 Remove and replace EIFS system with Durock Stucco System on 4th and 5th floor endwalls of Bldg. C & D. Qty 4 walls $13,836.00 @ $55,340.00

8. Remove and replace EIFS system with Durock Stucco System, 50 % metal stud replacement 100% replacement of insulation on 1st, 2nd and 3rd floor end walls of all 4 Bldg. Qty 8 walls $37,240.00@ $297,920.00

9. Remove and replace stucco system to stairwell towers. Qty 8 walls $28,800.00@ $230,400.00

10. Remove and replace stucco system on elevator towers. Qty 4 $26185.00@ $104,740.00

Phase II Total $1,161,455.00

This proposal does not include any roof repairs, window, door, additional wall repairs, mold remediation and interior finish repairs. We will be happy to provide you with a price to perform any of these repairs.

Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

Shipwatch
Capital Budget
FYE October 31, 2003

LINE No.		
1	Chimney & Balcony wall repairs	27804.5
2	Leaks in privacy walls	158400
3	End roof wall	107200
4	Roof flashing	85680
5	Stairwell, elevator, deck flashing	15000
6	Prep and paint ladders	2600
7	Deck coating	294013
8	Waterproof flexitight coating	17842
9	Contingencies	59596
10		
11	TOTAL	1018336

Sisnroy Engineering, LLC
P.O. BOX 12806
CHARLESTON, S.C. 29422
PHONE (843) 795-0450
FAX (843) 795-0307

2002-50
December 5, 2003

Mr. Charles Rhoden
Shipwatch at Wild Dunes
Shipwatch Horizontal Property Regime
7600 Palmetto Drive
Isle of Palms, South Carolina 29451

RE: Summary of Roof Replacement and Stucco Replacement

Dear Mr. Rhoden,

To date, significant progress has been made on replacement of the exterior wall cladding. Installation of the cement board based system is approximately 75% complete on C Building. Workmanship and progress has been found to be satisfactory.

Roofing demolition and/or replacement continues on both C and D Buildings. C Building demolition and roof water barrier placement is complete. Approximately 15% of roofing panels have been installed. D Building still has ongoing roofing tile demolition primarily at the side roofs. Buildings A and B roofing installation are complete. Overall, the roofing and flashing replacement has been satisfactory with the exception of chimney caps on C Building. The roofing contractor will address fastening deficiencies immediately.

If you have any questions concerning this summary, please call me.

Sincerely,

Robert G. Sisnroy

Robert G. Sisnroy, P.E. 12/5/03

CAROLINA CONCRETE SYSTEMS, INC
P.O. BOX 13149
CHARLESTON, SC 29422

Invoice

Date	Invoice #
3/27/2003	3-12

Bill To
Shipwatch Property Horizontal Regime 7600 Palmetto Drive Isle of Palms, S.C. 29451

P.O. No.	Terms	Project
	Net 15	

Item	Qty	Description	Rate	Amount
2		SUPERVISION, LABOR, EQUIPMENT & MATERIALTO INSTALL TEMPORARY BITUTHENE CAP OVER PARAPET ON C & D BLD UNTIL PHASE II	1,700.00	1,700.00
2		SUPERVISION, LABOR, EQUIPMENT & MATERIAL TO REMOVE EXISTING WINDOWS ON 5TH FLOOR OF A&B BLD AND INSTALL BITUTHENE FLASHING ACCORDING TO BOB SISNROYS DETAIL AND REINSTALL OLD WINDOWS.	3,100.00	3,100.00
2		SUPERVISION, LABOR, EQUIPMENT & MATERIAL TO INSTALL 12 NEW WINDOWS THAT MEET BUILDING CODES.	12,240.00	12,240.00
2	4	SUPERVISION, LABOR, EQUIPMENT & MATERIAL TO REPAINT ORIGINAL 4 NEW CHIMNEY CAPS THAT WERE ORDERED PRIOR TO NEW ROOF COLOR PICKED.	270.00	1,080.00
			Total	

CAROLINA CONCRETE SYSTEMS, INC
P.O. BOX 13149
CHARLESTON, SC 29422

Invoice

Date	Invoice #
3/27/2003	3-12

Bill To
Shipwatch Property Horizontal Regime 7600 Palmetto Drive Isle of Palms, S.C. 29451

P.O. No.	Terms	Project
	Net 15	

Item	Qty	Description	Rate	Amount
2		SUPERVISION, LABOR, EQUIPMENT & MATERIAL FOR CONCRETE REPAIR TO PENTHOUSE BALCONY PRIVACY WALL TO SLAB PER BOB SISNROY. 2 MEN @ $45.00HR FOR 2 DAYS PLUS MATERIAL	1,760.00	1,760.00
2		SUPERVISION, LABOR, EQUIPMENT & MATERIAL TO REMOVE AND REPLACE 4TH FLOOR CORRIDOR ENDWALL ON B BUILDING DUE TO FAILED METAL STUD FRAMING., FAILED SHEATHING AND NO FLASHING.	1,890.00	1,890.00
2		SUPERVISION, LABOR, EQUIPMENT & MATERIAL TO TEMPORARILY REPAIR SMALL END CHIMNEYS ON BLD C	1,170.00	1,170.00
			Total	$22,940.00

Page 2

CAROLINA CONCRETE SYSTEMS, INC.

INSPECTION REPORT

May 2nd, 2011

MS. LINDA JERNIGAN
Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Exterior Building Inspection Report

Linda;

Here is our report of the conditions of the exterior of the 4 buildings at 7600 Palmetto Drive Isle of Palms, S.C. The exterior inspection report is broken down into different reports starting at the North end standing in the parking lot and working around to the south end, including corridors, stairs and balconies.

Exterior ends and street side report

1. We inspected and caulked all areas that needed to be caulked including the light fixtures on the golf course side balconies. There are several areas on the west end of A and the east end of C buildings that have some bubbles in the stucco system. This has been noted and we are communicating this to Ferst Exteriors to repair as these areas in the Fall 2011 project. We will be removing and replacing the EIFS on the Ocean front of Building C and D in the fall of 2011. Overall the Duroc/BASF stucco system is in good condition with the exception of some staining that cannot be removed by pressure washing.
2. All light fixtures and receptacles on the balconies that were not caulked or that the caulk has failed were recaulked.
3. All vertical and horizontal joints in the stucco system was inspected and found to be in fair condition. All areas that needed to be recaulked were done. It is recommended the building be recaulked within 2 years for the caulk has reached the end of its Life Cycle.
4. There are numerous areas on the elevator windows that the glazing has failed and we recommend this be repaired in the near future.
5. We did not inspect the roof but will be glad to perform this inspection if you would like for us to.
6. The roof hatches were in good condition with the exception of the new hatch in D building. The handle will not latch and needs to be repaired or replace.

EXHIBIT
E

7. The deck coating in the common corridors was inspected and found to be in fair to poor condition. The topcoat of the deck coating with the non skid aggregate has been worn down past its ability to provide protection to the base coat and its non skid capability. This is the 8th year the coating has been in place and has passed its 5 year warranty and it's Life Cycle.
8. Elevator door frames were checked and re-caulked if necessary.
9. The handrails are in fair to poor condition and have widespread paint peeling as well as some corrosion appearing. There is numerous loose rail post on all Buildings and we had The Structural Engineering Firm of Rickborne and Associates look at and are in the process of evaluating the capability and load capacity of the existing rails and grout. There were numerous post that were only embedded 1 ½" in a porous Poroc Grout that has emulsified allowing the post to be dangerously loose and could be a **Life Safety Issue.** There also continues to be hoses dragged over the rails causing paint to peel and stress on the rails.
10. The stairwells were inspected and the areas that were corroded and needed welding have been done with the exception of the risers on the steps.
11. The stairwell doors and storage doors are showing signs of rust and need to be sanded and painted.
13. There are several door stops on the corridors that have been broken of and are causing rust stains on the deck coating.
14. There are numerous areas on the EIFS stucco system on the corridors that has been busted and needs to be repaired.
15. The windows on the corridors are exhibiting signs of corrosion and the caulk around the windows has long exceeded its Life Cycle.

Beach front balcony inspection

1. The balcony deck coatings were also in fair to poor condition and need top coating. There are a few areas where the coatings have been cut, cigarette burns, furniture rusting and furniture legs gouging into the coating. We recommended after installation of the deck coating that no metal furniture be used on the balconies. However, there are a significant number of units that have the metal furniture.
2. There are a few areas in the parking garages that the stucco has been bumped by cars that need to be fixed.
3. The new bedroom/balcony doors look good and are functioning properly.
4. The handrails inspected are in fair to poor condition. There is widespread peeling of paint and signs of corrosion. There are numerous rail post that are loose and need to be fixed now.
5. Leaks continue to be a problem at and around the old sliding doors on the beachfront and golf course side of the buildings.
6. The fixed panel windows on the beachfront balconies on Building C and D will be replaced in the Fall 2011 project but are showing sign of considerable corrosion and the glazing is cracking.
7. There are numerous receptacles broken and wall vents that have rusting screws leaching on the stucco walls.

PL 0395

8. The ceilings all have some paint peeling and need to be repainted as soon as possible.
9. There are several spalls on the face of the balconies that need to be repaired so that they don't become a life safety issue.

Summary
Our inspection reveals that the buildings are in good condition. However there are several issues that need to be addressed, some that require immediate attention. **There are loose handrails that have been inspected by Rickborn & Associates Engineers and they stated in a report to Shipwatch Properties dated April 25th, 2011, that the inadequate embedment depth of the vertical post and the degredation of the anchoring cement, presents a Life Safety issue.**
Carolina Concrete Systems makes no warranties or guarantees, expressed or implied concerning the livability or safety of the units. We will warrant our repairs but cannot warranty the rails not inspected or repaired.
General maintenance of the doors and windows, deck coatings, stucco system and caulk inspection and repairs on an annual maintenance program should extend the life cycle of Shipwatch Properties for years to come.

Sincerely,

Bob Wiggins

International Concrete Repair Institute

"2002 Project of the Year Award Recipient"

"2003 Project of the Year Award Recipient"

"2010 Project of the Year Award Recipient"

843-588-6721 FAX-843-588-6722

P.O. BOX 13149, CHARLESTON, S.C. 29422

PL 0396

SKA CONSULTING ENGINEERS

Sutton-Kennerly & Associates, Inc.
4651 Charlotte Park Drive, Ste. 150
Charlotte, NC 28217-1191

Telephone: 704 424 9663
Fax: 704 424 9665
www.suttonkennerly.com

April 5, 2012

Shipwatch at Wild Dunes Home Owners Association
7600 Palmetto Drive
Isle of Palms, South Carolina 29451

Attention: Ms. Linda Jernigan

Reference: Report of Engineering Evaluation of Direct Applied Exterior Finish System and Preliminary Schematic Design - Shipwatch at Wild Dunes Condominiums
Isle of Palms, South Carolina
SKA Project No. 090432.3

Dear Ms. Jernigan:

As authorized, Sutton-Kennerly & Associates, Inc., Consulting Engineers (SKA) has completed our additional evaluation of the Direct Applied Exterior Finish System (DEFS) cladding at the Shipwatch at Wild Dunes Condominiums located in Isle of Palms, South Carolina and completed our preliminary schematic design of the overall building remediation. The purpose of our work was to further evaluate the DEFS cladding, provide a detailed recommended restoration scope of work to address the defects noted, provide a detailed restoration scope of work to address non-DEFS repair items, to determine estimated repair quantities, and to provide an engineering opinion of construction cost for the repair items.

Included in this report is a brief summary of our conclusions and recommendations. Attached to this report is an Appendix, which presents our understanding of the background information, summary of our investigative tasks, summary sheets of our field evaluation findings, and a spreadsheet summary of our recommended scope of work, with quantities and opinions of construction costs.

Conclusions and Recommendations

Analysis of DEFS Cladding (Building Code Conformance)

An exterior cladding system must meet the minimum structural requirements necessary to protect the life, safety, and welfare of the public and be installed in a manner to resist moisture intrusion. These requirements are dictated by the International Building Code (IBC). The as-built DEFS cladding, which is an Acrowall-CBS system currently manufactured by BASF, is considered an "alternative material" by the IBC. Manufacturers of "alternative materials" are required to have their products tested by an independent testing agency to confirm that they are in compliance with the requirements of the Code. One of the most accepted testing agencies for Code compliance is the International Code Council (ICC), which issues reports identified as "ICC-ES Evaluation Reports".



As discussed in our January 11, 2012 report, the as-built installation of the Acrowall-CBS DEFS cladding does not meet the requirements of the ICC Evaluation report (ESR-2359) for the installed system. Based on our previous review, it was our opinion that the as-built exterior wall cladding system did not appear to be in compliance with the IBC. We recommended that additional investigation and evaluation be performed to verify compliance or non-compliance of the system.

In order to verify compliance of the system, we initially evaluated the as-built system based on structural performance criteria. Based on our review, we determined the following:

1. The as-built system consists of DEFS lamina, over 1/2-inch thick cement board, over a Tyvek moisture barrier, over a second layer of 1/2-inch thick cement board, over metal stud framing. Two different types of cement board were used throughout the project. The cement boards were either: Permabase, manufactured by National Gypsum; or Durock, manufactured by US Gypsum.

2. The as-built installation meets the Code-required positive design wind load pressures (compression, from the exterior). During this type of wind load condition, the two cement boards will act together to satisfactorily resist the design wind load pressure.

3. The as-built installation does <u>not</u> meet the Code-required negative design wind load pressures of -58psf (suction, towards the exterior). During this type of wind load condition, the two cement boards will act independently from each other (rather than collectively) in resisting the negative design wind load pressure. The as-installed single outer layer of cement board will <u>not</u> resist the required loads.

4. It is our opinion that the as-built DEFS cladding does not currently meet the structural requirements of the IBC, but can be remediated in-place to meet those requirements. In order to accomplish this, additional supplemental mechanical fasteners will be needed to secure the outer layer of cement board to the existing metal studs. It is our opinion that this could be accomplished by installing additional fasteners at each stud at a spacing of 8 inches on center so that the screw spacing will not exceed 4 inches. This approach however, requires a minimum stud thickness of 18-gauge or thicker and will not work at wall locations containing 20-gauge metal stud framing (ocean front balcony walls).

Please note that these conclusions are based on our evaluation of the installed system based on representative test cuts, which are assumed typical and representative of the construction. These conclusions may change if different construction installation methods are discovered.

<u>Analysis of Metal Stud Framing</u>

SKA performed a limited structural analysis of the as-built metal stud wall framing to determine if it meets the wind load requirements of the IBC. Based on our analysis, we determined the following:

1. The as-built wall framing system consists of multiple sizes and gauges of metal studs. We observed the following:

    a. 6-inch, 20-gauge metal wall studs are located on the lower levels of the end walls.

    b. 3-5/8-inch, 18-gauge metal wall studs are located on the upper floors of the end walls and fifth floor balcony walls, street side units.

    c. 3-5/8-inch, 20-gauge metal wall studs are located on the fourth and fifth floor balcony walls, ocean side units.

    d. Window and door units contain a single jamb stud.

2. The 3-5/8-inch, 20-gauge metal wall studs are not adequate to meet the design wind load requirements of the IBC. We recommend that supplemental studs be installed.

3. The single jamb studs at the balcony door and fixed windows are not adequate to meet the design wind load requirements of the IBC. We recommend that supplemental studs be installed.

Please note that this analysis is based on multiple viewport excavations and assumes typical construction throughout the building. Subsequent investigation/repairs of the building may reveal different framing conditions.

Analysis of DEFS Cladding (Water Management and Installation Conformance)

SKA performed field water spray testing and viewport excavations at representative areas adjacent to sliding glass doors, windows, balcony-to-slab transitions, mansard roof panels, flashing transitions, and other typical wall conditions to evaluate the conditions and waterproofing performance of the as-built DEFS cladding system.

Our findings revealed the following:

1. Widespread water infiltration occurred through the cladding during our field water spray testing. A total of 12 non-pressurized water spray tests were performed and 10 of the tests resulted in water infiltration. Water was typically observed within the metal stud framing and behind the Tyvek moisture barrier. At some locations, water was observed on the face of the interior drywall or within the units.

2. Pressurized and non-pressurized water spray testing was performed on the EFCO window and door units (exclusive of the cladding). No leakage related to the window/door units occurred during the water testing.

3. The curb height beneath some EFCO balcony sliding doors and fixed windows are at the same elevation as the balcony slab or only minimally elevated above the slab. The height of the installed curbs does not provide a substantial increase in moisture protection.

4. The original EIFS cladding was not replaced at some balcony wall locations that were reported to have been replaced with DEFS. Instead, the original EIFS was covered with DEFS finish coat to match the adjacent DEFS appearance.

5. The metal stud framing at the small, street side corner balconies was significantly corroded and not replaced behind the DEFS cladding.

6. An overall lack of proper detailing exists at the window and door perimeters. No head, jamb, or sill pan flashing was installed. Most of the rough openings are not waterproofed. The Tyvek moisture barrier terminates at the edge of the cladding. A portion of the original "peel-and-stick" waterproofing flashing membrane was left in place at some door sill corners.

7. An inadequate joint gap typically exists at window/door perimeters. No backer rod was installed to control the sealant depth.

8. An overall lack of proper waterproofing detailing exists at balcony wall-to-slab transitions. Transitions are often sealed to prevent drainage.

9. Metal flashing above the mansard roof on the end walls was not shingle lapped by the Tyvek moisture barrier and contained no method for drainage. The flashing is discontinuous at corners.

10. The Tyvek moisture barrier installed behind the first layer of cement board is defective in some areas. We observed the following:

    a. The moisture barrier was missing in several isolated locations.

    b. The moisture barrier was "folded" such that it is not continuous in isolated locations.

    c. The moisture barrier was not overlapped, but butted together in some locations.

11. The installation of the DEFS cladding is improper and does not conform to the manufacturer's requirements:

    a. No expansion joint gap was provided in the cement boards at floor line joints. The expansion joint accessory was not properly installed. It was placed within the lamina rather than within a joint gap in the cement board. The lamina was excessively "built-up" to a thickness of approximately 3/8-inch at the accessories.

b. Saw cut control joints were made in the DEFS above and below fifth floor windows in lieu of a properly installed expansion joint accessory.

c. Wall penetrations were not properly sealed. Voids were typically present in the sheathing around the penetrations.

d. Vertical control joints were not installed at minimum 24-foot centers on the end walls.

12. Miscellaneous cracks are present in the DEFS.

13. Metal lath was installed between the two layers of cement board (as an apparent furring material) in two locations.

14. The DEFS lamina is delaminated in isolated locations.

It is our opinion that total replacement/repair of the DEFS cladding is needed to address the multitude of problems identified during our evaluation and to prevent current and future leakage into the building. As part of this process, installation of flashings at all penetrations, floor lines, and changes in materials is necessary. Various terminations, proper construction of joints, and the overall water management elements of the façade will require design and repairs.

Attached to this report is an summary sheet of our recommendations for each elevation of the four buildings. Along the fifth floor street side and entire ocean side elevations, we recommend the DEFS cladding be removed and replaced with a new hard coat stucco cladding. The amount of removal necessary to repair the various wall issues does not justify a repair approach on these elevations. On the north and south end wall elevations, we also recommend the DEFS be removed and replaced with a new hard coat stucco cladding. However, we have also provided a "repair approach" for these elevations as a comparison to the "replacement" recommendation.

Miscellaneous Other Items

1. An EPDM membrane was observed over the structural slab at an isolated fifth floor street side balcony with a sloped concrete topping (3-inch thick at the door) installed over it. The EPDM membrane was not "tied-in" to any other flashing/waterproofing element.

2. Several of the balcony units (street side and ocean side) contain a concrete topping over the structural slab. The elevation of the topping slab is higher than the interior unit elevation in some locations.

SKA appreciates this opportunity to provide our services. If you have any questions, please contact this office.

Sincerely,

SUTTON-KENNERLY & ASSOCIATES, INC.
SKA SC LICENSE NO. C00699

Gregory J. Isaacs, PE (NC)
Project Engineer, I

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER No. 21845 JEFFREY S. MILLER

Jeffrey S. Miller, PE
Manager, Building Investigative and Diagnostic Group

Attachment: Appendix

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) Case No. 2012-CP-10- 3858
Oscar Mendiondo, individually and as representative of a class of similarly situated owners of condominiums units in the horizontal property regime known as Shipwatch Condominiums, Plaintiff, vs. Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually; Defendants.	**PLAINTIFF'S MOTION FOR REHEARING AND/OR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT IN PART TO DEFENDANT CAROLINA CONCRETE SYSTEMS, INC.**

FILED
2014 NOV 12 PM 3:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff above-named, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, hereby moves this Court for Rehearing and/or Reconsideration of the Court's Order which granted summary judgment in part to the Defendant Carolina Concrete Systems, Inc ("CCS"). That order was entered on October 30, 2014, and a Notice of Entry was mailed by the Clerk of Court on October 31, 2014 to all parties of record. The above-captioned Plaintiff received a copy of this Notice of Entry of Order within the past ten days, and this Motion is filed pursuant to the requirements of Rule 59(b), SCRCP.

The Court entered a "Form 4" Order which states that the Defendant CCS's motion for summary judgment filed on September 15, 2014 was granted in part, and that a formal order would follow. As of the date of this motion, no formal order has been submitted or filed, upon information and belief, and this motion is respectfully submitted in order to preserve all procedural rights under Rule 59 and other applicable rules of the South Carolina Rules of Civil Procedure for rehearing and/or reconsideration, and all rights to appeal and otherwise challenge the Court's order pursuant to the South Carolina Rules of Appellate Procedure. This motion is further intended to provide notice to the Court and all parties that the above-captioned Plaintiff is preserving and not waiving any and all rights to challenge and appeal this order and any subsequent formal order which may be forthcoming in connection with the Defendant CCS's Motion for Summary Judgment noted above.

The basis of this Motion for Rehearing and/or Reconsideration is that there exists a genuine issue of material fact regarding the date upon which the Plaintiff knew, or reasonably should have known, that it had a legal claim against the Defendant CCS and all other Defendants for the matters set forth in the above-captioned Complaint. Among other things, the material presented to the Court by the Defendant CCS in support of its motion for summary judgment included deposition testimony which demonstrated that the Plaintiff and its representatives was engaged in discussions with the Defendant and others regarding original construction work performed on the Shipwatch Condominium Project during the 1980's. The gravamen of the Plaintiff's Complaint is not based upon existing deficiencies caused by the parties involved in the original construction in the 1980's but, instead, is based upon defects and deficiencies in the repairs and other work performed by the above-captioned Defendants. These defects and deficiencies, which are the subject of the above-captioned lawsuit, were not known by the Plaintiff until less than three years before the filing of this

lawsuit. Accordingly, the motion for summary judgment filed by the Defendant CCS was improperly granted in part, and must instead be denied in its entirety. The material submitted in the Plaintiff's Memorandum in Opposition, as well as the material offered to the Court at the hearing, further support the Plaintiff's position and demonstrate that summary judgment in favor of the Defendant CCS and, indeed, in favor of any of the above-captioned defendants, is improper and must be denied in its entirety.

"Summary Judgment is appropriate when it is clear that there is no issue of material fact and that the moving party is entitled to a judgment as a matter of law." *Café Assocs., Ltd. v. Gerngross*, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991); Rule 56(c), SCRCP. Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Moreover, "in 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 issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Wiedemann v. Town of Hilton Head Island*, 330 S.C. 532, 500 S.E.2d 783, 785-86 (1998); see also *Henkel v. Winn*, 346 S.C. 14, 17 (Ct. App. 2001).

This Motion for Rehearing and/or Reconsideration shall be further supported by such briefs and exhibits as may be submitted by the Plaintiff at or prior to the hearing on this motion.

Rule 11 Affirmation: Movant's counsel affirms that one or more defendants in this matter are appearing pro se and that the consultation provision is inapplicable as to this motion. Counsel

is nonetheless communicating with counsel in an effort to resolve the lawsuit to the extent possible with represented parties. Movant's counsel further certifies that consultation with counsel would serve no useful purpose in connection with the resolution of this particular motion.

Respectfully submitted,



R. Patrick Flynn
Robertson Hollingsworth & Flynn
177 Meeting Street Suite 300
Charleston, SC 29401
Telephone: (843) 723-6470
E-mail: rpf@roblaw.net

Charleston, South Carolina

November 11, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2012-CP-10-3858
	)	
Oscar Mendiondo, et al	)	
☒ Plaintiff,	)	
	)	
v.	)	MOTION AND ORDER INFORMATION
Carolina Concrete Systems, Inc., et al	)	FORM AND COVER SHEET
☐ Defendants.	)	

Plaintiff's Attorney: R. Patrick Flynn, Esquire Robertson Hollingsworth & Flynn 177 Meeting St., Suite 300 Charleston, SC 29401 Phone: (843)723-6470 fax: (843)853-9045 e-mail: rpf@roblaw.net other:	Defendant's Attorney: SEE ATTACHED Address: phone: fax: e-mail: 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: **Reconsideration/Rehearing**

Estimated Time Needed: 30 minutes 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 — November 11, 2014 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ 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, SCRCP)
☐ 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: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) Case No. 2012-CP-10- 3857

Shipwatch Condominium Association, Inc.)
)
Plaintiff,)
)
vs.)
)
Carolina Concrete Systems, Inc., Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually;)
)
Defendants.)

PLAINTIFFS' SUPPLEMENTAL RESPONSE IN OPPOSITION TO CAROLINA CONCRETE SYSTEMS' MOTION FOR SUMMARY JUDGMENT, AND MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR REHEARING & RECONSIDERATION

FILED
2014 NOV 21 PM 5:34
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR ~~THE NINTH~~ JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) Case No. 2012-CP-10- 3858

Oscar Mendiondo, individually and as representative of a class of similarly situated owners of condominiums units in the horizontal property regime known as Shipwatch Condominiums,)
)
Plaintiff,)
)
vs.)
)
Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney)

Sweeps, Inc.; Low Country Chimneys, Inc.;)
EFCO Corp.; W.C. Johnston Architectural)
Sales, Inc.; Charleston Glass Company, Inc.;)
First Exteriors, LLC; Acrocrete, Inc.;)
BASF Corp.; Gary Freeman Architect, Inc.;)
Gary Freeman, individually;)
)
Defendants.)
)

The Defendant Carolina Concrete Systems, Inc. filed its Motion for Summary Judgment in the above captioned matters on September 15, 2014, and the above-captioned Plaintiffs hereby submitted their consolidated Memorandum in Opposition to each of these motions prior to the hearing of this Motion before The Honorable R. Markley Dennis on October 27, 2014.

The Court entered a "Form 4" Order which states that the Defendant CCS's motion for summary judgment filed on September 15, 2014 was granted in part, and that a formal order would follow. As of the date of this motion, no formal order has been submitted or filed, upon information and belief, and Plaintiffs filed a motion in each of the above-referenced matters in order to preserve all procedural rights under Rule 59 and other applicable rules of the South Carolina Rules of Civil Procedure for rehearing and/or reconsideration, and all rights to appeal and otherwise challenge the Court's order pursuant to the South Carolina Rules of Appellate Procedure.

The Plaintiffs' Motion for Rehearing and Reconsideration is further intended to provide notice to the Court and all parties that the above-captioned Plaintiff is preserving and not waiving any and all rights to challenge and appeal this order and any subsequent formal order which may be forthcoming in connection with the Defendant CCS's Motion for Summary Judgment noted above.

The following information and documentation is provided to supplement the Record for the Court's consideration.

SUPPLEMENTAL INFORMATION

The Plaintiffs' claims are for repair costs and loss of use relating to the repairs of work performed by the Defendant CCS and the other defendants during 2002 through 2012. The Shipwatch Project was originally built in the mid-1980's, but that original work is not the subject of this lawsuit. Rather, the subject of this lawsuit is the repairs performed to that original work.

The Defendant CCS included three unnumbered deposition excerpts and 7 documentary exhibits in its Memorandum in Support of its Motion for Summary Judgment filed and heard on October 27, 2014. In its Memorandum, CCS contends that those attached documents establish that Plaintiffs had notice of negligence by CCS, and that Plaintiffs failed to bring a lawsuit against CCS until more than three years after those documents were produced.

Those attachments include discussions regarding leaks and other areas needing to be repaired. **But a plain reading of those attached documents establishes that the leaks being discussed are existing leaks from the original construction work in place**. Contrary to the position expressed by CCS, those attached documents are not relevant to the claims by the Plaintiffs, because neither the Plaintiffs nor CCS were aware of the defects and deficiencies in the repair work by CCS until those issues were uncovered by an independent engineering firm, Sutton Kennerly Associates ("SKA") during its visits to the site in 2011, culminating in a report to the Plaintiffs dated April 5, 2012.

For ease of reference, the documents attached to CCS's memorandum referenced above include the following:

Excerpt of Deposition of Arnie Schaewe

Excerpt of Deposition of Fred Trombino

Excerpt of Deposition of Linda Jernigan

(1) Meeting Minutes of Shipwatch Board dated April 1, 2005

(2) Meeting Minutes of Shipwatch Board dated September 16/17, 2005

(3) Meeting Minutes of Shipwatch Board dated March 18, 2006

(4) Sisnroy Report dated July 10, 2006

(5) Building Report dated March 9, 2007

(6) Building Committee Report, Shipwatch Homeowners' Meeting January 20, 2007

(7) Carolina Concrete Systems Inspection Report dated May 9, 2007

Each of these exhibits presented by CCS in its brief and oral argument are consistent with the Plaintiffs' position that there was no basis for the Plaintiffs to have known that any claim existed against the Defendants until SKA presented its findings in a report dated April 5, 2012. The testimony by the witnesses in those exhibits, as well as the discussion among Board Members in the meetings involved discussions of water leaks and other chronic issues relating to the original construction performed at Shipwatch, which was subject to planning for removal, replacement, and/or repair by the Defendant CCS.

It is the repair design and construction work performed by CCS and the other Defendants which are the subject of the above-captioned lawsuits.

The exhibits submitted as supplemental information in this memorandum were included within the information to be presented at the hearing on October 27, 2014. These documents establish a course of dealing and conduct by the Plaintiffs and Defendants in which the original construction conditions were being removed, replaced, and/or repaired by the Defendants over the

course of 2002 through 2012. As part of this work by Defendants, there were various inspections and examinations by CCS and the other defendants showing certain issues with the repairs performed by these defendants.

But the following 41 exhibits establish that these issues were raised after those repairs, brought to the attention of the Defendants, and corrected by the Defendants. Indeed, as late as April 14, 2011, Mr. Bob Wiggins of CCS declared that the exterior cladding system installed by CCS at Shipwatch was in good condition. Further, CCS had been paid in full for its work, as indicated by various invoices included within these exhibits.

The following is an itemization of the above-described information which is being submitted along with this Supplemental Consolidated Memorandum in Opposition:

(1) CCS 837 - receipt showing that the latest time that any permit was obtained by CCS was on 9/22/2004, over seven years before CCS ceased its operations at the Shipwatch Project in 2012.

(2) CCS 848 - letter from CCS dated 10/14/2004 reporting that the originally installed EIFS was improperly installed.

(3) CCS 916 - letter from CCS 2/2/2005 requesting that Shipwatch have Sisnroy inspect its recently completed work so that Shipwatch can release the funds to pay for that portion of the work.

(4) CCS 924 - CCS Proposal dated 2/23/2005 directing its subcontractor to complete repairs to its work.

(5) CCS 925 - Shipwatch memorandum faxed to CCS requesting that CCS present a proposal regarding a building examination/inspection.

(6) CCS 936-38 - Report of Investigation and successful completion of repairs by CCS in conjunction with engineer Bob Sisnroy.

(7) CCS 955-56 - Sisnroy letter dated 7/10/2006 regarding chronic water intrusion conditions in the original 1980's, stating agreement with Bob Wiggins regarding the scope of work required.

(8) CCS 959 - CCS proposal dated 7/30/2006 regarding the procedures for installation and repair of sliding glass doors.

(9) CCS 962-965 - Sisnroy's investigative report 4/17/2007 regarding the replacement of sliding glass doors at unit C423.

(10) CCS 968-69 - CCS inspection report 5/9/2007 certifying repairs completed by CCS.

(11) CCS 972 - Shipwatch (Property Manager Linda Jernigan) letter 6/19/2007 acknowledging CCS recent inspection and requesting that CCS prepare a budget for the work required.

(12) CCS 977-78 - CCS Proposal 7/12/2007 for removal and replacement of original EIFS and original sliding glass doors.

(13) CCS 979-80 - CCS Proposal 9/6/2007 for removal of original sliding glass doors on 4th and 5th floor.

(14) CCS 981-82 - CCS proposal 9/6/2007 for removal and replacement of 17 original sliding glass doors.

(15) CCS 1090 - CCS invoice showing that Shipwatch paid the CCS invoice for removal and replacement of original sliding glass doors.

(16) CCS 1110-1116 - Commercial Building Consultants' Limited Property Assessment Report finding that with proper maintenance, the buildings will have an estimated remaining useful

life of 30 years.

(17) CCS 1159-1161 - CCS Proposal dated 8/22/2008 regarding removal and replacement of original EIFS and original sliding glass doors.

(18) CCS 1353-59 - Sisnroy Investigation Report dated 8/23/2008 detailing blistering and other deficiencies in the DEFS cladding installed by CCS.

(19) CCS 1177 - Letter from Shipwatch (Linda Jernigan) to CCS requesting that CCS make repairs noted in Sisnroy Investigation Report dated 8/23/2008.

(20) CCS 1182-83 - CCS Proposal 2/6/2009 regarding concrete repairs, handrail issues, and pressure washing of all 4 buildings.

(21) CCS 1197 - CCS fax to Shipwatch (Jernigan) 5/13/2009 requesting payment of invoices for its work completed at the Shipwatch Project.

(22) CCS 1199-1201 - SKA proposal for preparation of long range maintenance plans.

(23) CCS 1207-09 - CCS Proposal 9/9/2009 for its annual inspection of the Shipwatch Property and associated repairs.

(24) CCS 1221-22 - SKA report 10/15/2009 with recommended maintenance and remediation schedule, annotated by CCS with items completed by CCS and its subcontractors.

(25) CCS 1233 - CCS Invoice 10/31/2009 requesting payment from Shipwatch for work CCS performed as recommended by SKA's 10/15/2009 report.

(26) CCS 1433-34 - CCS Proposal 2/23/2010 for removal and replacement of original EIFS cladding and balcony decks.

(27) CCS 1435-36 - CCS Inspection Report 2/23/2010 regarding CCS completion of work from maintenance schedule provided by SKA.

(28) CCS 1441-42 - CCS Proposal 3/8/2010 regarding performance of annual inspection and required repairs at the Shipwatch Project.

(29) CCS 1446-47 - CCS Proposal 4/26/2010 regarding removal and replacement of original EIFS and original windows.

(30) CCS 1451 - CCS letter to Shipwatch (Jernigan) dated 8/19/2010 regarding time required to perform its work for removal/replacement of original cladding system.

(31) CCS 1472 - AIA A105 Agreement between CCS and Shipwatch dated 9/1/2010 regarding removal and replacement of original windows on the Project.

(32) CCS 1493 - CCS invoice 10/27/2010 for $165,211.50 marked as paid in full by Shipwatch.

(33) CCS 1567-69 - CCS Proposal 1/5/2011 for removal of EIFS on Buildings C and D.

(34) CCS 1570-71 - CCS Proposal 1/10/2011 for sandblasting and painting of original handrails.

(35) CCS 1590-92 - CCS Proposal 2/11/2011 regarding removal and replacement of original EIFS and original bedroom windows.

(36) CCS 1609-11 - CCS Inspection Report 4/14/2011 stating that the "Duroc/BASF stucco system" installed by CCS at the Shipwatch Project is in good condition.

(37) CCS 1742 - Invoice dated 1/31/2012 from CCS subcontractor Strictly Stucco for cutting and patching work in support of SKA building testing and inspections.

(38) CCS 1744 - Invoice from CCS 2/1/2012 regarding support services for SKA building testing and inspections.

(39) CCS 1752 - CCS invoice marked as paid dated 2/23/2010 for support services for SKA building testing and inspections.

(40) CCS 1754 - CCS invoice marked as paid dated 3/21/2012 for support services for SKA

building testing and inspections

(41) CCS 1758 - Invoice from CCS Subcontractor Strictly Stucco dated 3/8/2012 for services in support of SKA building testing and inspections.

The HOA engaged a repair contractor which began repairs relating to the claims in these lawsuits for buildings C and D at the Project beginning in September, 2013. By a second agreement with that repair contractor, the HOA began repairs on buildings A and B at the Project in September 2014. The aggregate cost of these repairs for all four buildings exceeds $15 million. The scope of repairs for the acts and omissions of the defendants was so broad that the unit owners had to vacate the premises during repairs, losing the ability to occupy the units or rent them to third parties. The unit owners are claiming, among other things, damages for loss of use of their units in an aggregate amount in excess of $6.5 million. The total of repair cost and loss of use suffered by the Plaintiffs arising out of the acts and omissions of the above-captioned defendants exceeds $21.5 million.

CONCLUSION

"[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 issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Wiedemann v. Town of Hilton Head Island*, 330 S.C. 532, 500 S.E.2d 783, 785-86 (1998); see also *Henkel v. Winn*, 346 S.C. 14, 17 (Ct. App. 2001).

The testimony, documentary evidence, and applicable legal authority establish that Plaintiffs

neither knew nor reasonably should have known that they had legal claims against the above-captioned defendants before receipt of the report by SKA in April 2012. Based upon this evidence, the requirement of Rule 56, SCRCP regarding Plaintiffs' claims are satisfied, in that a genuine issue of material fact exists in relation to these claims, and these claims must be presented to the trier of fact. For the foregoing reasons, the Plaintiffs' motions for Rehearing and Reconsideration noted above must be granted, and the motions for summary judgment by the defendant Carolina Concrete Systems in the above-referenced matters must be denied.

Respectfully submitted,



R. Patrick Flynn
Robertson Hollingsworth & Flynn
177 Meeting Street Suite 300
Charleston, SC 29401
Telephone: (843) 723-6470
E-mail: rpf@roblaw.net

Charleston, South Carolina

November 21, 2014

Receipt # 28075 C

PERMIT #: 04-00443 TYPE: BR MASTER PERMIT: -

PROJ. #: 89- AFW DATE ISSUED:09-22-04

CITY OF ISLE OF PALMS

PROJECT ADDRESS: 7600 PALMETTO DR BUILDING A LOT:
PROJECT NAME: SHIPWATCH BUILDING A BLK:
SUBDIVISION: WILD DUNES

OWNER NAME: SHIPWATCH HORIZ PROPERTY REGIME
ADDRESS: 211 B SHIPWATCH
CITY: ISLE OF PALMS STATE: SC ZIP: 29451 PHONE: (843)886-5267

CONTRACTOR: CAROLINA CONCRETE SYSTEMS, INC.
ADDRESS: PO BOX 13149
CITY: CHARLESTON STATE: SC ZIP: 29422 PHONE: (843)588-6721

ARCHITECT/ENGINEER:
PROPOSED USE: CONDOS FLOOD ZONE: MAP: PARCEL:

SQUARE FOOTAGE: VALUATION: 62250.00 PERMIT FEE: 322.00

WORK: WATERPROOFING BALCONY DECK
DESC:
****

This is to certify that I am the owner ___ or authorized agent RMW of the owner and that the above information and all other information submitted herewith is a true and accurate indication of the intended improvements to the above identified property. I also understand that any and all changes, unless submitted and approved as an amendment to this building permit shall cause this permit revoked entirely. I further understand that the owner and/or general contractor will be held accountable for the subcontractors with regard to the acquisition of business licenses and applicable permits and that failure to acquire said licenses or permits will result in an immediate revocation of this permit which will not be lifted until all fees are paid in full.

****

Notice to Owner or Possessor

Pursuant to S.C. Code Sec. 15-3-640 you have the right to contract for a guarantee of the structure being free from defective or unsafe conditions beyond 13 years after substantial completion of the improvements for which the permit is issued.

****

WORK MUST BE COMMENCED WITHIN 6 MONTHS OR PERMIT WILL BE REVOKED.

Robert M. Wiegand DATE: 9-22-04 EST. COMPLETE: __-__-__
(SIGNATURE OF CONTRACTOR/AGENT)

_____ DATE: __-__-__
(APPROVED BY BUILDING OFFICIAL)

CCS 837

CAROLINA CONCRETE SYSTEMS, INC.

Shipwatch Properties
7600 Palmetto Drive
Isle of Palms, S.C. 29451

October 14, 2004

Re: Request for Change Order for the labor and material to remove EIFS stucco on both sides and the header of the new bedroom sliding glass doors and replace with the Duroc drainage system.

Dear Mr. Schaewe,

Enclosed is our proposal for the changes that are necessary to correct the deficiencies of the incorrectly installed EIFS system around the existing doors. The installation of the original system is improperly installed. The return of the EIFS at the wall to metal sash on the existing doors does not have a casing bead for the corners nor is it waterproofed properly. Unless we remove this wall and header and re-install properly, there is a potential for leaks when the caulk fails around the new doors.

We propose to remove the EIFS system up to the existing corners on either side of the doors and replace with Duroc and the moisture management measures provided to us by Sisnroy Engineers on the previous walls and door replacements.

Unit Price

$ 16,470.00 per building / 18 bedroom sliders per bldg.

Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

Mr. Schaewe, the doors on A building are installed and have temporarily been caulked. Please advise me how we should proceed for the doors have already been removed from the B bldg and need to be dealt with now.

CCS 848

CAROLINA CONCRETE SYSTEMS, INC
P.O. BOX 13149 CHARLESTON, S.C. 29422

Fax

To:	SHIPWATCH PROPERTIES	**From:**	Bob Wiggins
	LESTER	**Date:**	2/02/05
Fax:	888-5815	**Pages**	2
Subject	FINAL PAY APP FOR PHASE II, D BLDG & RETAINAGE	**CC:**	

LESTER,

Here is our invoice for the final pay app for the D building and for our retainage. There are still a few items left on the Phase I contract ie: bay windows, privacy wall cap flashing on D Bldg and the retainage from the handrails reinstallation. Please contact Bob Sisnroy as soon as possible and have him inspect, so we can get a check by the end of the month.

Thank you,

Bob

Bob Wiggins

843-588-6721 FAX 843-588-6722

Member: International Concrete Repair Institute
Member: Associated General Contractors
Member: American Concrete Institute
Member: Sealant, Waterproofing Restoration Institute

CCS 916

February 23, 2005

CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL

Charleston Glass Co.
4231 Spruill Avenue
N. Charleston, S.C.

ATTENTION: Randy Morgan

SUBJECT: Bay window removal and reinstallation with correct flashing.

Randy,

Here is a list of the windows that have not been removed and or replaced.

A-106 needs new window
A-206 needs reflashing
A-306 needs new window

B-212 bay window whistles when there is a strong wind

C-218 top of frame on outside of building looks bent

D-124 needs a better caulk finish joint outside
D- 224 window looks out of square in opening. Look like Freddy had to fill in a gap with a blob of caulk over top left corner.
D-324 needs a better caulk finish joint outside
D-124 door latch in new slider in bedroom needs adjusting.

Randy, Please get these things taken care of this week. I need to get a check from Shipwatch and they are holding out until we finish.

Thanks.

Bob Wiggins

P.O. BOX 13149, CHARLESTON, S.C. 29422

843-588-6721 Fax 843-588-6722

CCS 924

7600 Palmetto Drive
Isle of Palms, SC 29451
843-886-5287
843-886-5815
lopship@bellsouth.net

Shipwatch Homeowner's Association

Fax

To:	Bob Wiggins	**From:**	Linda Jernigan
Fax:	588-6722	**Pages:**	1
Phone:		**Date:**	3/16/05
Re:	Help Items Shipwatch	**cc:**	

Bob, following is a list of items we discussed that I am requesting your help with:

1. D222 has a crack in the ceiling of the Left GBR, ceiling shows signs of discoloration.
2. A401 has mildew at and on the sliding glass door LR.
3. B307 carpet has black foot tracks you thought you could remove.
4. B409 and B414 both have water leaking in at sliders. B409 at MBR; B414 both at LR and MBR.
5. Don't forget to email me the pictures taken at D426 and roof; A403/404 roof drain full of water and the events of vacuuming etc. before I have time to forget what I am looking at and won't know how to file.
6. Please check end of buildings A and D for stucco issues Carl had. I don't quite know what I am looking for.
7. Please explain the Fireplace Chase and Spark Arrestor design to me again (notice how I use the terms like I know what I am talking about).
8. I called First Exterior about the stucco repair to be made in B414, the same one you had called them about. They have not yet done that. I also told them about the clay/mud they left in my driveway, and they have not returned to clean that up.
9. I have called Charleston Glass three times about the missing screen at C217 (Audrey Lehner, one of my bosses). It doesn't appear that they intend to do anything about it, which makes me look bad to one who signs my paycheck.
10. We need to do a thorough examination/inspection of the buildings. Please look at your last proposal (I'd like to have a copy of it myself), and give me a price for just your services (Excluding Bob Wiggins).

Thanks!o

CCS 925

CAROLINA CONCRETE SYSTEMS, INC.

INVESTIGATION

March 25th, 2005

Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

MS. Linda Jernigan

Re: Investigation of Roof drains and possible leaks from these drains on Building A, B, C, & D.

Dear Linda,

I was called to investigate the roof leak in D Building unit 425 on Monday, January 31st, 2005. I could not get to the site until Tuesday, February 1st, 2005. Upon arrival to the unit, Lester Griffin, the on site property manager, Shipwatch's Insurance Adjuster and Roy Chavis of Glasgow roofing were in the unit. They had all the drywall down in the ceiling and wall, where the roof drain in plumbed. It was apparent that the PVC drain line had unseated from the no hub roof drain coupling. I asked everyone there, how this could happen, and no one would say. Roy Chavis said that he had put a plug in the drain from the roof side and put some caulk inside the drain to prevent any further water from coming down the wall.

I was asked by Arnie Schwaee what I thought could have happened. I told him that the pvc pipe didn't just fall out of the rubber coupling by itself. He asked me if I could fix the problem, since I have had experience in installing roof drains, and I told him that I could.

Ms. Linda Jernigan had taken over as property manager for Shipwatch and was asking me to help her get this problem solved. I gave her an estimate for the repairs and she said she would get authorization to start the repairs.

I suggested that we call Bob Sisnroy of Sisnroy Engineers and have him look at the drain as well. Bob and I both concluded that the drain had to have been dislodged from the no hub coupling on the bottom of the drain but we were not sure how it could have happened. We were sure that it had just occurred prior to the last rain storm on January 29th, 2005 as there had not been any leaks or flooding of the units beside and below unit 425. We decided that we could possibly chip the concrete from around the base of the drain on the underside of the roof and reconnect. I told Bob Sisnroy that I would check with the manufacture to see if we could reconnect the pvc with a new coupling on the underside of the roof.

CCS 936

After our investigation, I told Ms. Jernigan that I would need to cut a section of the pvc pipe out of the wall in order to make a temporary drain until we could make a permanent repair. Upon cutting out a 3' section of the pipe, I discovered that there was a ¼" layer of roofing tar covering the bottom half of the pvc pipe. The 3' section of pipe was significantly heavier than it should have been, with the tar in it. I decided to go up on the roof and look at the cast iron drain. There was as much as 1/2" thick roofing tar piled up in the bottom of the roof drain bowl and it was running down into the hub where the pvc pipe attaches to the drain.

I suggested that we call the manufacture of the drain and investigate the connection detail and determine what could have caused this problem and how we could reconnect it. I contacted Mr. Joe Clary who is a manufactures representative for Josam, the manufacture of the roof drain in question. Mr. Clary came to the property on Friday, March 11th, 2005. After his inspection, he told Ms. Jernigan and me, the pvc pipe had been dislodged by some event. He told us that when the roofing tar (at 500 degrees) was allowed to run down the inside of the drain, the rubber coupling and the pvc pipe, it had probably heated the rubber coupling enough and had added extra weight inside the pvc pipe to cause the pvc pipe to slip out of the coupling boot. He also informed us that there is no way to reconnect the pvc pipe because the existing rubber coupling is cast into the concrete and could not be reused. His recommendation was to chip out the existing drain and install a new drain with a new coupling and new pvc pipe.

I asked Ms. Jernigan when Glasgow Roofing had completed the roof repairs and she advised me that it was _____. I suggested to Ms. Jernigan that we check all drains and verify their condition. We took pictures and documented each drain. We found a drain on the west end of A building that was full of water. We tried to unplug the drain on the roof, but could not. I suggested to Ms. Jernigan that we remove drywall and cut out the pvc pipe under this drain as well. We proceeded to do this and found the same problem with it as Building D, being full of tar. We were able to cut out the pvc with the tar in it and replace a section of the pipe with out having to remove the pipe from the no hub drain coupling.

We had to wait for a two-day clear weather window because, we had to remove the concrete around the drain and replace the new drain and concrete. Also, Glasgow Roofing had to cut into the new roof system so we could have access to the drain. Glasgow Roofing was contacted and we scheduled Thursday, March 24th to perform the repairs to Building D unit 425.

We successfully completed our repairs on Thursday and Glasgow Roofing returned on Friday March 25, 2005 to close the roof up.

Based on the investigation with Bob Sisnroy of Sisnroy Engineers, Joe Clary Sales Representative for Josam Roof drains, Shipwatch's Liability Insurance Adjuster and me, Our conclusion is that the pvc pipe was dislodged from the rubber coupling

CCS 937

sometime during the roof repairs which caused the units under the drain to be flooded during the 1st rain storm after the roof installation.

If you have any questions about this memo, don't hesitate to call me.

Sincerely,

Bob

Bob Wiggins

International Concrete Repair Institute

"2002 Project of the Year Award Recipient"

www.realpages.com/carolinaconcretesystems

843-588-6721 FAX-843-588-6722

P.O. BOX 13149, CHARLESTON, S.C. 29422

CCS 938

Sisn Roy Engineers

July 10, 2006
2006-078

Linda Jernigan, General Manager
Shipwatch Horizontal Property Regime
7600 Palmetto Drive
Isle of Palms, South Carolina 29451

RE: Water Intrusion at Sliding Glass Doors

Dear Ms. Jernigan,

On June 22, 2006, a visual survey of chronic water intrusion conditions was performed in Building A and Building C. Based on the observations, it is evident that chronic water intrusion is occurring adjacent to the sliding glass door (SGD) installations typically at the south walls. (See Photo 1) The source of the water intrusion is leakage from the SGD frames at the jamb/sill intersection. The chronic water intrusion has heavily deteriorated tack strips and stained carpet along the SGD frames and adjacent wall areas including portions of interior heated walls (See Photo 1). Moisture measurements revealed active moisture conditions at several locations. Moreover, it is evident that the leakage source is the jamb/sill intersection of the door frames. (See Photo 2 and 3) Observations revealed holes or separations at the jamb/sill corners of the SGD frames where accumulations of rain or dew could drain and enter the interior and contaminate carpet and wall framing. These conditions are evident at SGD installation elevated on 3 inch concrete curbs and SGD installations at the slab surface.

Consequently, as a damage control measure, it is recommended that the existing door frames be removed and reinstalled in a copper sill pan with end dams. This would necessitate full removal of the SGD frame; grouting the existing concrete floor where necessary; and, installing the sill pan and door along with restoration of interior and exterior finishes to walls and floors.

As mentioned previously, this is only a damage control measure and not a long term repair application. Although the sill pan is a standard of care for typical exterior door installations, there is no guarantee that this will stop the entirety of the leakage, particularly where door sills are level with the adjacent concrete slab and floor. Bob Wiggins is in agreement that the sill pan could provide a temporary solution to the leakage problem. However, the long term solution is to install a new door, in a full sill pan on an elevated concrete curb.

CCS 955

According to Bob Wiggins, the estimated cost to perform the trial temporary repair is $_____. This would include removal of the existing SGD frame installation of the sill pan, replacement of the same SGD frame, and restoration of the interior and exterior wall and deck finishes and caulking. The temporary repair and estimate evolution is contingent on the structural stability of the existing SGD frame, such that it is sound enough to be removed and replaced. Since the integrity of the existing SGD door frames is questionable, it is recommended that a new SGD door assembly be available for the candidate unit at the time of removal of the existing SGD frame.

The repair protocol and estimate is based on available information and observations at the time of development of this letter. It also assumes the existing SGD is viable for reinstallation. If you have any questions, please call me.

Sincerely,

Robert G. Sisnroy, P.E.

CCS 956

CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL

JULY 30TH, 2006

MS. LINDA JERNIGAN
Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: SLIDING GLASS DOOR REMOVAL AND REPLACEMENT.

Dear MS. JERNIGAN,

Enclosed is our proposal for the replacement of the 4th and 5th floor beachfront balcony doors.

We will remove old sliding glass doors, repair concrete under sill and install a 1 ½" raised concrete curb to install new doors on. We will apply Sonneguard Base coat waterproofing over the new curb and will then install the new EFCO sliding glass door. Once installed, we will then repair the stucco around the outside of the slider and the drywall around the inside of the new door. We will touch up the Sonnoguard Top Coat deck coating along the new door threshold.

Our price does not include any repair to the metal studs that support the doors or the new installed wall studs, for we do not know the extent of any damage at this time. The fact that the doors, have been leaking since the new duroc stucco wall system was installed 2 years ago, has allowed water to enter the wall and has probably damaged the metal studs in the wall.

This proposal does not include any mold remediation and interior finishes.

Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

The price for the repairs will be in the amount of **$6745.00** each.

Sincerely,

Bob Wiggins

843-588-6721 FAX 843-588-6722

P.O. BOX 13149, CHARLESTON, S.C. 29422

CCS 959

CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL **August 22, 2008**

Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Waterproofing Repairs at Shipwatch

Dear Ms. Linda Jernigan

I appreciate the opportunity you have given me to provide you with a proposal for the 2nd phase of restoration for the above named project. Enclosed is the price you asked for on the Removal and replacement of the remaining EFIS on the building as well as replacement of the 16 sliding glass doors.

Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

Scope of Work

We will mobilize to the site and begin preparation and repairs of the specified items listed below.

1. Removal and replacement of all remaining EIFS on the 4 buildings, including but not limited to the breezeways and front beach balcony walls that were not replaced in the 1st phase
2. Removal and replacement of 16 sliding glass doors on designated units
3. Top coat all balconies that are damaged from abuse ie: metal tables & chairs cutting into deckcoat, damage from construction by others performing interior restoration on the units prior to our arrival.

Building Breakdown

	Streetside	Oceanside
1st floor	$45,315.00	$49,600.00
2nd floor	$45,315.00	$49,600.00

CCS 1159

According to Bob Wiggins, the estimated cost to perform the trial temporary repair is $_____. This would include removal of the existing SGD frame installation of the sill pan, replacement of the same SGD frame, and restoration of the interior and exterior wall and deck finishes and caulking. The temporary repair and estimate evolution is contingent on the structural stability of the existing SGD frame, such that it is sound enough to be removed and replaced. Since the integrity of the existing SGD door frames is questionable, it is recommended that a new SGD door assembly be available for the candidate unit at the time of removal of the existing SGD frame.

The repair protocol and estimate is based on available information and observations at the time of development of this letter. It also assumes the existing SGD is viable for reinstallation. If you have any questions, please call me.

Sincerely,

Robert G. Sisnroy, P.E.

CCS 956

CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL

JULY 30TH, 2006

MS. LINDA JERNIGAN
Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: SLIDING GLASS DOOR REMOVAL AND REPLACEMENT.

Dear MS. JERNIGAN,

Enclosed is our proposal for the replacement of the 4th and 5th floor beachfront balcony doors.

We will remove old sliding glass doors, repair concrete under sill and install a 1 ½" raised concrete curb to install new doors on. We will apply Sonneguard Base coat waterproofing over the new curb and will then install the new EFCO sliding glass door. Once installed, we will then repair the stucco around the outside of the slider and the drywall around the inside of the new door. We will touch up the Sonnoguard Top Coat deck coating along the new door threshold.

Our price does not include any repair to the metal studs that support the doors or the new installed wall studs, for we do not know the extent of any damage at this time. The fact that the doors, have been leaking since the new duroc stucco wall system was installed 2 years ago, has allowed water to enter the wall and has probably damaged the metal studs in the wall.

This proposal does not include any mold remediation and interior finishes.

Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

The price for the repairs will be in the amount of **$6745.00** each.

Sincerely,

Bob Wiggins

843-588-6721 FAX 843-588-6722

P.O. BOX 13149, CHARLESTON, S.C. 29422

CCS 959

SLIDING GLASS DOOR REPLACEMENT
STATEMENT OF WORK
Preliminary
Unit C423 Shipwatch

Prepared for:
Shipwatch
Linda Jernigan, General Manager

Prepared by:
Robert G. Sisnroy, P.E.

April 17, 2007

SISNROY ENGINEERING L.L.C.
This report is a proprietary document for the sole use of the above name client. Any unauthorized use of this document is prohibited. Dissemination of this document is at the direction of the client.

CCS 962

SLIDING GLASS DOOR REPLACEMENT
STATEMENT OF WORK
Unit C423 Shipwatch

This report is a proprietary document for the sole use of the above name client. Any unauthorized use of this document is prohibited. Dissemination of this document is at the direction of the client.

1. General

1.1. The contractor shall accomplish the following scope of work in accordance with the International Building Code (IBC) 2003 Edition; applicable industry standards of care; and Sliding Glass Door (SGD) manufacturer's installation requirements.

1.2. The Contractor shall be responsible for the proper performance of all scope of work items. If there is a question as to the required installation method, it shall be the responsibility of the Contractor to adequately determine the proper method and/or materials to satisfy the requirement of the respective code or manufacturer's instructions contingent on approval by Shipwatch or Shipwatch representative.

1.3. The contractor shall be responsible for contacting Shipwatch or Shipwatch representative in a timely manner with respect to inspections of ongoing work. Inspections should be accomplished at project milestones including but not limited to demolition of existing SGD and adjacent walls, evaluation of structural conditions, repair of existing damaged wall stud framing, curb formwork installation, sill pan installation, new SGD installation, exterior deck repair applications, and installation of cement board stucco system.

2. Site Preparation

2.1. Remove all adjacent floor finishes such as carpet. Also remove all trim such as interior SGD frame sill trim.

2.2. Cleanup

2.2.1 Cleanliness on the job site shall be maintained daily.

2.2.2 Debris, equipment (where applicable) and materials shall be stowed on a daily basis.

3. Demolition

3.1. Remove existing exterior lighting.

SLIDING GLASS DOOR REPLACEMENT
STATEMENT OF WORK
Unit C423 Shipwatch

3.2. Remove existing EIFS exterior cladding from SGD frame to adjacent wall on both sides. Also remove existing substrate.

3.3. Remove metal stud frame walls to adjacent walls on both sides of the SGD unit.

3.4. Remove the sliding glass door unit.

3.5. Remove existing exterior deck membrane surface as required to accommodate repair. New deck membrane application will be required.

4. Repair and Sliding Glass Door Replacement

4.1. Concrete Curb

4.1.1 Clean and install forms for a concrete curb the full width of the opening from adjacent wall to adjacent wall.

4.1.2 Concrete curb height shall be 3-3/8 inches from existing raised slab surface (approximately 1-1/2 inches above interior concrete floor) observed from the interior. The width shall be the existing width of the door frame and wall framing.

4.1.3 Install .060 mil sheet membrane on the outside face between the existing slab and new concrete for expansion.

4.1.4 Ensure top of curb in level to within 1/8 inch in 10 feet.

4.1.5 Pour concrete in forms and finish. Allow a minimum of 72 hours cure time.

4.1.6 Install a temporary wood framed wall with heavy plastic on the exterior to protect the open wall area.

4.2 Replace wall framing on top of curb with galvanized steel stud framing to proper dimension to accept new door frame.

4.3 Install first layer of concrete board on exterior wall in accordance with manufacturer's instructions.

4.4 Install prefabricated stainless steel welded sill pan at framed opening.

4.4.1 Pan front turn down shall be one inch and side faces shall extend a minimum of 3 inches on face of exterior wall.

SLIDING GLASS DOOR REPLACEMENT
STATEMENT OF WORK
Unit C423 Shipwatch

4.5 Install minimum 1 inch cant strip and flash membrane deck coating up wall 6 inches using encapsulated fabric. Also flash completely into pan the depth of the pan.

4.6 Install sticky back framed opening door flashing down into door sill pan.

4.7 Install new sliding glass door in accordance with manufacturer's installation requirements. Ensure proper fit in sill pan and that membrane is not damaged.

4.8 Install TYVEK stucco wrap water barrier on exterior wall faces.

4.9 Install the second layer of cement board in accordance with manufacturer's instructions.

4.10 Install interior insulation, drywall and finishes.

4.11 Install stucco mesh and base coat in accordance with manufacturer's instructions with particular care to provide proper channels for backer rod and sealant joints.

4.12 Install exterior finish coat and sealant joints.

4.13 Replace exterior lighting.

Robert G. Sisnroy, P.E.

CAROLINA CONCRETE SYSTEMS, INC.

INSPECTION REPORT

May 9, 2007

MS. LINDA JERNIGAN
Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Exterior Building Inspection Report

Linda,

Here is our report of the conditions of the exterior of the 4 buildings at 7600 Palmetto Drive Isle of Palms, S.C. The exterior inspection report is broken down into left and right ends standing in the parking lot, corridors, stairs and balconies.

1. We inspected and caulked all areas that needed to be caulked on the new windows that were installed with the exception of the one window on D bldg on the 417 unit. I have repeatedly asked Charleston Glass to send someone out to caulk it, as we could not reach it with a lift. I will continue to call them until they send someone out.
2. All light fixtures and receptacles on the balconies that were not caulked or that caulk had failed were recaulked.
3. All vertical and horizontal joints in the stucco system was inspected and found to be in good condition. All areas that needed to be recaulked were done.
4. The hard coat stucco on the stair towers and elevator shafts have a few cracks and this has been shown to Carl Ulm of Ferst Exteriors. He was not alarmed and told us to keep and eye on them.
5. There is one area on the southeast end of the B bldg on the third level right end wall that has a blister and Carl said he would talk with the manufacture of the products he used and would take care of repairing the area.
6. We also checked all the stairs in the stair towers and found several that you had already mentioned to us that need to have new metal welded to the lower riser and treads.
7. We also noticed several areas on the elevator windows that the glazing has failed and we recommend this be repaired in the near future.
8. We did not inspect the roof, however there are a number of problems that we noticed from the lift as we were inspecting the walls and balconies.

CCS 968

9.The deck coating in the common corridors was inspected and found to be in good condition. They will need to be top coated again next year in order to maintain the 10-year warranty.
10. The balcony deck coatings were also in good condition and will need the same top coating next year. There are a few areas where the coatings have been cut, cigarette burns, furniture rusting and furniture legs gouging into the coating. We recommended after installation of the deck coating that no metal furniture be used on the balconies. However, there are a significant number of units that have the metal furniture.
11. There are a few balconies that will need to be recoated this fall as they have tears and or cuts.
12. There are several areas that need to have the stucco patched on the balconies because of construction in the units. There are a few areas in the parking garages that the stucco has been bumped by cars that need to be fixed.
12. The new bedroom/balcony doors look good and are functioning properly.
13. The handrails inspected are in good condition with the exception of the corridor handrails. Hoses and equipment continue to be drug across the rail cap, which has scraped the paint off.
14. Leaks continue to be a problem at and around the old sliding doors on the beachfront and golf course side of the buildings. We have repeatedly shown you and numerous board members that these doors are leaking and I am sure there is damage that is occurring in the new metal stud walls with the Durock system that we installed during our project. In 2003/2004.
15. I would recommend you have someone inspect the roofs, as they probably have not been looked at since it was installed.

In closing, our inspection tells us that the remediation project that was performed in 2003/2004 has eliminated several reoccurring problems and the systems are performing adequately. However, there are a few problems that remain an issue. General maintenance of the deck coatings, stucco system and caulk inspection and repairs on an annual program should extend the life cycle of the remediation project for years to come.

Sincerely,

Bob Wiggins

International Concrete Repair Institute

"2002 Project of the Year Award Recipient"

"2003 Project of the Year Award Recipient"

843-588-6721 FAX-843-588-6722

P.O. BOX 13149, CHARLESTON, S.C. 29422

CCS 969

June 19, 2007

Mr. Bob Wiggins
CAROLINA CONCRETE SYSTEMS, INC
Sent via Facsimile 843-588-6722

Dear Bob:

Thank you for your report on the recent inspection of the exterior of Shipwatch. Following are questions or comments that I have with numbers corresponding to your report and I would appreciate your response so I may present it to the Board of Directors with your report and invoice.

1. The correct unit number of the D building unit window problem is 432. Also please add the foggy window on unit A408 to the list for Charleston Glass. Also in the last storm we had, the bay window in C213 leaked; please add that to the list.
2. Light fixtures on the Oceanside and the street side both were caulked?
3. ok
4. The repair you made at the A building roof hatch still needs sheetrock repair; can you give me a repair schedule date?
5. Do we have a date for completion of this stucco repair to B building?
6. Do we have a date for completion of the welding work needed on the stairways?
7. Do you know someone that does re-glazing?
8. Do you know if we need to call Glasgow for a roof inspection or the manufacturer?
9. Can you give me an estimated price for top-coating all corridors for my 2008 budget and a recommended calendar time frame the work should be performed?
10. I was not aware of the "NO METAL" rule; can you give me a cost for top coating the balconies?
11. Do you have a list of the damaged decks so that I may discuss with the board charging those owners for these damages?
12. Could I please have a list of the units with damaged stucco so I may discuss with the board charging the unit owners that have had construction in their units?
13. ok
14. Do you have a recommendation for your concern on the metal studs? Have you heard anything on the 2 EFCO doors that Port City ordered?
15. Is there a reason that you did not include the roofs in your inspection since this was to be a "whole building" inspection? Would you please identify the problems that you witnessed?

In your closing, you recommend an annual program of maintenance and inspections for deck coatings, stucco, and caulk; can you provide an annual budget figure for this program? We also discussed a retainer arrangement with Carolina Concrete in case of a major hurricane to ensure that Shipwatch would be your first response effort, please let's have your thoughts on this arrangement.

Thank you again for all you do for us.

Yours sincerely,
SHIPWATCH HPR

Linda Jernigan
Regime Manager

Bob
As we discussed the hatch
today (7/16/07) the D Bldg (south) is posted
and not cleaning properly
Look forward to
hearing from
you

CCS 972

CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL July 12th, 2007

Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Waterproofing Repairs at Shipwatch

Dear Ms. Linda Jernigan

I appreciate the opportunity you have given me to provide you with a proposal for the 2nd phase of restoration for the above named project. Enclosed is the price you asked for on the Removal and replacement of the remaining EFIS on the building as well as replacement of the 16 sliding glass doors that are leaking.

Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

Scope of Work

We will mobilize to the site and begin preparation and repairs of the specified items listed below.

1. Removal and replacement of all remaining EIFS on the 4 buildings, including but not limited to the breezeways and front beach balcony walls that were not replaced in the 1st phase
2. Removal and replacement of 16 sliding glass doors on designated units
3. Top coat all balconies that are damaged from abuse ie: metal tables & chairs cutting into deckcoat, damage from construction by others performing interior restoration on the units prior to our arrival.

Basis of Proposal

1. We will be given free and clear access to the project work site.
2. Waste Containers for disposal of debris from preparation will be provided by others.

CCS 977

3. Electricity and potable water will be provided by others.

4. We will be allowed to work during daylight hours to perform task that do not generate excessive noise and will be allowed to work evening hours to perform the remaining task.

5. This proposal does not include bonds, permits or fees required by the City or County to perform this project. Once a contract is awarded, these fees will be included in the contract amount and will be payable once we have mobilized to the site and started repairs.

6. Landscape will be protected as well as possible but some damage may occur which should be repaired at no cost to us.

7. Contract shall be written on standard AIA Contract form with terms agreeable with both parties.

Payment

There will be a mobilization fee of 1% of the contract due within 15 days of mobilization to the project.

1. Payment for the removal and replacement of the EIFS system with the Duroc sheathing and Acrocrete hard coat system will be in the amount of **$1,854,497.00**

2. Payment for topcoating the beach front balcony decks is **$156,000.00**. Regular pay request / invoices will be generated on a monthly basis and payment will be due within 15 days of receipt of invoice.

3. We are meeting with another EFCO Door installer this week to get a proposal for the replacement of the 16 doors you need replaced

Ms Jernigan, I look forward to having the opportunity to working with you on this project, and if you have any questions, please don't hesitate to call me.

Sincerely,

Bob Wiggins

President

www.carolinaconcretesystems.com

843-588-6721 FAX 843- 588- 6722

P.O. BOX 13149, CHARLESTON, S.C. 29422

CCS 978

CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL

September 6, 2007

MS. LINDA JERNIGAN
Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: SLIDING GLASS DOOR REMOVAL AND REPLACEMENT AND TEMPORARY REPAIRS TO EXISTING DOORS NOT BEING REPLACED

Dear MS. JERNIGAN,

Enclosed is our proposal for the replacement of the 4th and 5th floor beachfront balcony doors.

We will remove old sliding glass doors, repair concrete under sill and install a 1 ½" raised concrete curb to install new doors on. We will apply Sonneguard Base coat waterproofing over the new curb and will then install the new EFCO sliding glass door. Once installed, we will then repair the stucco around the outside of the slider and the drywall around the inside of the new door. We will touch up the Sonnoguard Top Coat deck coating along the new door threshold.

Our price does not include any repair to the metal studs that support the doors or the new installed wall studs, for we do not know the extent of any damage at this time. The doors, have been leaking since the new duroc stucco wall system was installed 2 years ago, and has allowed water to enter the wall and has probably damaged the metal studs in the wall.

This proposal does not include any mold remediation or repairs to interior finishes.

Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

The price for the removal and replacement with new doors will be in the amount of **$10,600.00** each. The price for the removal and installation of a sill pan with end dams and recaulking and repairing the stucco and drywall on the existing old sliding glass doors will be in the amount of **$4,310.00** each.

$169,600.00
- 63,120
106,480

$106,480.00
÷ 16
6655

169,600
- 7700

CCS 979

We have not been able to secure a price for the impact resistant glass yet but are still working on this price.

Sincerely,

Bob Wiggins

843-588-6721 FAX-843-588-6722

P.O. BOX 13149, CHARLESTON, S.C. 29422

CCS 980

Subj: **(no subject)**
Date: 9/6/2007 11:52:53 AM Eastern Standard Time
From: CCSRockDoc
To: loopship@bellsouth.net

inda,

lere is the proposal for the R/R of 17 doors and replacing them with the same EFCO doors that were used in the 2003 -2005 roject.
lso, a price for the removal of other doors and installing a sill pan and end dams and recaulking and stucco repairs and drywall pairs.
all me if you have any questions.

hanks,

ob Wiggins
ttp://www.carolinaconcretesystems.com/
csrockdoc@aol.com

---

et a sneak peek of the all-new AOL.com.

Thursday, September 06, 2007 America Online: CCSRockDoc

CCS 981

Glazing Concepts, Inc.
212 Summerset Lane
Summerville, SC 29483-8338

EIN: 20-2386879
License# G108734 Class BD4

Bid/Proposal

Proposal Date:	Proposal #:
9/6/2007	35529

Bill To:

Carolina Concrete Systems Inc.
274 Little Oak Dr
Folly Beach SC 29422

Job Address
Isle of Palms

Customer Contact:	Customer Phone
Bob Wiggins	843.729.2510

Project/Job:
Ship Watch Condos

Description	Total
Glazing Concepts, Inc. proposes to supply and install the following: 17 thus series 3015 series sliding glass doors Dark Bronze Anodized 1" IG 1/4 " temp bronze temp 1/2 " spacer, 1/4 " temp clear Fiberglass screens Standard locking hardware with ss rollers Subframes at head and sill	78,157.00
To repair 17 existing sliding glass doors - $27,800.00	
2292 - Folly Beach:Charleston County Sales Tax	0.00
Total	$78,157.00

SIGNATURE _____

Please sign here to accept this bid. Your signature constitutes a contract for the above amount. This bid is valid for 60 days. After 60 days this bid will be subject to any material price increases.

Phone:	Fax:	E-mail
843-873-7387	843-821-7062	glazingconcepts@sc.rr.com

CCS 982

Invoice

CAROLINA CONCRETE SYSTEMS, INC.

P.O. BOX 13149
CHARLESTON, SC 29422

Date	Invoice #
3/20/2008	06-112

PAID

Bill To
Shipwatch Property Horizontal Regime 7600 Palmetto Drive Isle of Palms, S.C. 29451

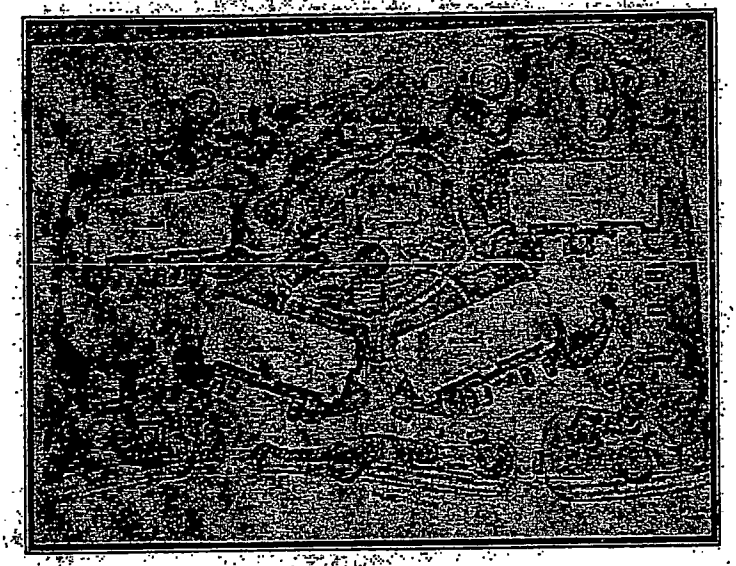
P.O. No.	Terms	Project
Jernigan	Net 15	

Quantity	Description	Rate	Amount
	SUPERVISION, LABOR, EQUIPMENT & MATERIAL TO REMOVE 14 DOORS, BUILD NEW 1" 5/8 CONCRETE CURB FOR RAISED THRESHOLD, INSTALL NEW EFCO DOORS, REPAIR DRYWALL AROUND DOORS AND REINSTALL SONNEBORNE DECK COATING	148,400.00	148,400.00
	TWO (2) EFCO DOORS THAT WERE NOT INSTALLED AT THIS TIME	13,500.00	13,500.00
		Total	$161,900.00

CCS 1090

LIMITED PROPERTY ASSESSMENT REPORT

Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, South Carolina 29451



CBC # 08-010
Date Issued: January 30, 2008

Prepared By
Commercial Building Consultants, LLC.
590 N. Semoran Blvd.
Orlando, Florida 32807
Office 407-447-5861 Fax 407-843-0006
www.CommercialBuildingConsultants.com

CCS 1110

January 31, 2008

Anne Ossewaarde
Morgan Stanley/Merchant Banking
3424 Peachtree Road NE, Floor 9
Atlanta, GA 30326
Anne.ossewaarde@morganstanley.com

Re: Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, South Carolina 29451

CBC Job # 08-010

Subject: Property Assessment and Report

Dear Ms. Ossewaarde:

CBC is pleased to provide the results of our Property Assessment for The Shipwatch at Wild Dunes Condominiums located at 7600 Palmetto Drive in Isle of Palms, SC. This assessment was conducted on January 30, 2008.

We appreciate the opportunity to provide building services to The Shipwatch Condominiums. If you have any questions concerning this report, or if we can assist you in any other matter, please contact Rick Wimmer at his office at (407) 447-5881 or my cell (407) 832-8387.

Very truly yours

Rick Wimmer
Senior Project Manager

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Appendix A Photographs

PROJECT SUMMARY TABLE

Item	Excellent	Good	Fair	Poor	Action*	Immediate Needs	Capital Reserves
SITE IMPROVEMENTS							
Topography		X			NM		
Storm Drain System		X			NM		
Parking Pavement, Curbs & Gutters		X			NM/RR		$5120
Sidewalks/Walkways		X			NM		
Utilities		X			NM		
Landscaping		X			NM		
Site Lighting		X			NM		
Site & Building Signage		X			NM		
Pool		X			NM		
STRUCTURAL SYSTEMS AND BUILDING ENVELOPE							
Foundations		X			NM		
Structural System		X			NM		
Exterior Walls (Drip Edges)		X		X	RR/IR	$4,800	$48,000
Windows & Frames		X			NM/RR		(Budgeted)
Exterior Doors & Frames		X			NM		
Stairs		X			NM		
Upper Floor Walkways		X			NM		
Roof Coverings		X		X	NM/IR	$15,800	
Roof Drainage		X			NM		
MECHANICAL, ELECTRICAL & PLUMBING SYSTEMS							
HVAC		X		X	NM/IR	$4,000	
Electrical		X			NM		
Emergency Generator					NA		
Water Distribution System		X			NM		
Water Heaters					NA		
VERTICAL TRANSPORTATION CONVEYING SYSTEMS							
Elevators/ Escalators		X			NM		
FIRE / LIFE SAFETY							
Emergency Lighting Repairs		X		X	NM/IR	$1,500	
INTERIOR ELEMENTS							
Common Area Finishes					NA		
Unit Finishes (Floor Coverings)					NA		
Unit Appliances					NA		
Interior Doors & Frames					NA		
BARRIER FREE ACCESSIBILITY (ADA)							
Parking, Signage & Ramps					NA		
Common Area Accessibility Including Restrooms					NA		

*Action: NM = Normal Maintenance, IR = Immediate Repair/Replacement, RR = Replacement Reserves, NA = Not Applicable,
**Un-Inflated Values, NA=Not Applicable

Immediate and Reserve Summary	Term (yrs)	Uninflated Cost	Inflated Cost	Uninflated $/Unit/Yr	Inflated $/Unit/Yr	Report Section
Immediate Repair and Deferred Maintenance Expenditures	0-1	$26,100	NA	NA	NA	Table 1
Replacement Reserves Cost Estimate	12	$55,120	$66,134	$40	$48	Table 2

This table displays the estimated costs. The estimated costs are preliminary and are based upon CBC's experience in conducting similar projects. The actual cost will be affected by factors such as project duration, site access, market conditions, and other contingencies applied by the owner. This project summary is not to be used alone. The attached report is intended to be read in its entirety.

EXECUTIVE SUMMARY

Commercial Building Consultants (CBC) performed a limited Property Condition Assessment on the Shipwatch Condominium property located at 7600 Palmetto Drive, Isle of Palms, SC (Subject Property). The site assessment was conducted on January 30, 2008.

The purpose of this assessment is to identify the current condition of the property common areas and building shell specifically as it pertains to wind and weather resistance. This report will identify construction methods as well as alterations that have been put into place since the time of original construction.

General Description

The Subject Property consists of an irregular-shaped parcel that is situated in a residential area on the ocean front coast of South Carolina. The property is improved with four, five-story multi-family residential buildings plus a leasing office, pool, coastal garden area with wood framed gazebo and associated parking.

General Physical Condition

The Subject Property was observed to be in good to fair overall condition. Adequate maintenance of the Subject Property's major systems, components and equipment appear to be in place including appropriate preventative maintenance. Recent capital improvements consist of the replacement of a significant amount of wall coverings from EFIS type stucco to aggregate dura-rock, the replacement of several windows and sliding glass doors and roof replacement. The scope of each of these items will be defined within their respective sections of this report.

Conclusions/Recommendations

Deferred maintenance items and physical deficiencies that are considered significant and require repair within a one-year term were identified and include:

During the site visit a moisture issue at each of the building ends at the lower termination edge at the parking entrances below the buildings was observed. The wall cladding is missing an appropriate termination edge. As a result, storm water does not properly run off of the wall; instead it wraps the surface and soaks into the drywall of the parking area ceiling. Several past repairs are present from this issue. We recommend that a sloped drip edge be installed across the building end.

During the site evaluation it was observed that the lower edges of the EPDM membranes on the parapet walls was poorly adhered at the time of installation. These lower edges are loose at several locations of each of the building roofs. These membranes overlap a metal counter flashing that in turn overlaps the bitumen membrane. Due to the poor adhesion these EPDM membranes may be susceptible to uplift during high wind events. We recommend that the lower edges of these surfaces be mechanically fastened to fully secure the membrane to the wall surface and prevent wind uplift.

It was noted that the lower edge of the sheet metal mansard roofs at each end of each building does not have a kick-out flashing installed at the wall connection to the stair towers. There is a control joint just below this location. At each of the storage closets located off of the walkways; there was moisture penetration below these areas. Kick-out flashings should be installed at each of these eight locations.

The mechanical screw fasteners at the chimney shrouds are not intended for roofing applications. They are functioning as fasteners but do not have any method of weather sealing at their penetration points. The other, appropriate metal cap flashing fasteners are becoming oxidized due to the salt air environment. All of the roof flashing fasteners should have mastic applied to seal their penetrations as well as preserve the screws.

Several (approximately 50%) of the emergency lighting panels in the stairwells were not functional when tested. Each lighting panel should be repaired.

It was noted that none of the condensing coils observed were strapped to the metal roof frames as intended. Without anchoring in place these condensing units could be susceptible to movement and thus cause roof damage. Each of these systems should be securely strapped to the metal frame stand.

Capital Replacement Reserves over the twelve year term of this report will be required for items such as asphalt pavement resurfacing and exterior paint. These items are identified in Table 2.

The structural elements of these buildings appear to have performed adequately for the past twenty-three years. Assuming the work is completed as was indicated and CBC's recommendations in this report in reference to the Immediate and Physical Needs over the Term are made in an appropriate time frame; a preventive/remedial maintenance program is implemented continually; and all site systems and building components are replaced as necessary with an acceptable standard of care, this sites estimated remaining useful life (ERUL) should be at least an additional 30 years barring any natural disasters. This is based on the observation that the foundations, which has an expected useful life (EUL) of 50 years plus, were observed to be functioning properly with no major deficiencies. Other site and building elements are replaceable. However, as the property ages, the maintenance program cost should be expected to increase.

CBC can make no comment on the marketability of the site units. Any qualifications and limitations in place for the property assessment as provided by CBC is applicable to the summary comments mentioned above.

3rd floor	$45,315.00	$49,600.00
4th floor	$45,315.00	$49,600.00
5th floor	$21,000.00	$22,400.00
Total @ Bldg	$202,260.00	$220,800.00

= 423,060 per bld
= 1,692,240 Total

Add $3500.00 per floor per building if work is not done on one mobilization.

($17,500.00) per building.

16 doors removal and replacement $ 162,257.00

Basis of Proposal

1. We will be given free and clear access to the project work site.
2. Waste Containers for disposal of debris from preparation will be provided by others.
3. Electricity and potable water will be provided by others.
4. We will be allowed to work during daylight hours to perform task that do not generate excessive noise and will be allowed to work evening hours to perform the remaining task.
5. This proposal does not include bonds, permits or fees required by the City or County to perform this project. Once a contract is awarded, these fees will be included in the contract amount and will be payable once we have mobilized to the site and started repairs.
6. Landscape will be protected as well as possible but some damage may occur which should be repaired at no cost to us.
7. Contract shall be written on standard AIA Contract form with terms agreeable with both parties.
8. This proposal is good for 90 days.

CCS 1160

August 22, 2008

1. Payment for the removal and replacement of the EIFS system with the BASF Acrowall Acrocrete CBS system will be in the amount of **$1,854,497.00**
2. Payment for topcoating the corridors and balcony decks is **$176,000.00.** Regular pay request / invoices will be generated on a monthly basis and payment will be due within 15 days of receipt of invoice.

Ms Jernigan, I look forward to having the opportunity to working with you on this project, and if you have any questions, please don't hesitate to call me.

Sincerely,

Bob Wiggins

President

ROOF FLASHING INSTALLATION DEFICIENCIES AND EXTERIOR CLADDING FAILURE INVESTIGATION
Shipwatch Condominiums

Prepared for:
Linda Jernigan, General Manager
Shipwatch Horizontal Property Regime

Prepared by:
Robert G. Sisnroy, P.E.

August 23, 2008

SISNROY ENGINEERING L.L.C.
This report is a proprietary document for the sole use of the above named client. Any unauthorized use of this document is prohibited. Dissemination of this document is at the direction of the client.

CCS 1353

SISNROY ENGINEERING LLC
P. O. Box 12806
Charleston, South Carolina 29422
(843) 795-0450
(843) 795-0307 Fax

August 23, 2008
2008-023

Linda Jernigan, General Manager
Shipwatch Horizontal Property Regime
7600 Palmetto Drive
Isle of Palms, South Carolina 29451

RE: Roof Flashing Installation Deficiencies and Exterior Cladding Failure Investigation
Shipwatch Condominiums

Dear Ms. Jernigan,

As requested, a limited investigation of roof flashing deficiencies and exterior cladding failure has been accomplished. The purpose of the investigation was to determine the extent of flashing deficiencies at the sloped roof terminations at the end walls in Buildings A through D. The purpose was also to determine the extent of failure of the exterior cladding on the buildings particularly at the end walls and balcony end walls and partitions. Lack of proper flashings installed in such as a manner to prevent moisture entering the wall through intersections with the roof plane is in violation of the International Building Code (IBC). Additionally, failure of the exterior cladding resulting in conditions allowing water intrusion is in violation of IBC requirements and cladding manufacturer's installation requirements. The following report delineates deficiencies in the respective material installations and provides recommendations for remediation.

DESCRIPTION

Shipwatch Condominium complex consists of four five-story buildings, A through D, with parking under the buildings at grade level. The rear of the buildings face the ocean in a south orientation. Balconies and walkways are at the rear and front of the buildings respectively with stairwells and elevator towers at the front or north face of the buildings. There is a steep hip or mansard metal roof above the third floor elevation at each end of the building where there is a vertical three-story wall. The fifth floor wall terminates above the end metal roof. The exterior cladding is primarily a direct applied exterior finished system (DEFS). This installation is comprised of cement board fastened to stud framing with mesh and polymer based finish on the face of the based coated cement board. The metal roofs and DEFS were part of a remediation project installed concurrently in approximately 2003. (See Photo 1 for representative configurations) It should be noted that consistent with time frame of building construction, the buildings are identified in order of construction, Buildings A & B being built first and Buildings C & D

CCS 1354

last. As a result there are variations in configuration particularly at the roofs above the third floor at the end walls. Buildings A & B were constructed with an inside corner at the termination of the roof. (See Photo 2) Buildings C & D were constructed with a continuous in plane wall at the termination at the roof. (See Photo 3)

BACKGROUND

As part of remediation and repair of the Shipwatch Condominiums, clay tiled roofing was removed and replaced with standing seam metal panel roofing. Concurrent with this, the bulk of the EIFS exterior cladding was replaced with DEFS over the majority of the building exterior. These projects were permitted in February 2003 for metal roofing and November 2003 for DEFS; therefore the applicable building code was the International Building Code (IBC) 2000. At several locations, the DEFS stucco was integrated with the standing seam metal panel roof. Following installation of the DEFS exterior cladding and the standing seam metal roofs, the flat roofs on the primary area of the building were replaced with built up roofing.

OBSERVATIONS

As indicated previously, the limited investigation focused on the metal roof termination conditions at the DEFS clad walls. Additionally, the investigation also focused on the performance of the DEFS at several locations on the buildings. The following items delineate the results of the observations with regard to deficiencies in either the installation of the roofing and flashings or the DEFS exterior cladding installation.

Standing Seam Roof Termination Flashing Deficiencies

I. Limited observations of all four buildings were performed with regard to the sloped roof terminations at each end of the building. Based on availability and access, some observations were made from a lift and others were performed from the ground level. As mentioned previously, Building A & Building B construction at sloped third floor roof terminations include inside corners requiring the roof to jog from the inside corner to the outside to accomplish drainage at the roof/wall termination as illustrated in photograph 2.

1. Observations of the third floor roof termination at the east and west ends of Building A revealed that the flashings, which wrap around the corner are overlapped by the DEFS stucco. (See Photo 4) There is no evidence of a kick out or water dam flashing to ensure water does not infiltrate behind stucco surfaces. The existing condition promotes water intrusion behind the stucco in violation of IBC Section 1405.3. This condition is also in violation of IBC Roof Assemblies and Roof Top Structure Section 1503.2 which requires that flashing shall be installed in such a manner as to prevent moisture entering the wall at intersections with the roof plane. Note in photograph 4 that there is no mechanism other than caulk to stop water from running behind the stucco at the vertical flashing/stucco

interface. A similar condition was observed at the west elevation at the stucco flashing intersection where the stucco overlaps the vertical wall corner flashing with no evidence of a kick out to ensure water intrusion does not occur behind the stucco and contaminate the wall. These conditions are not in accordance with contract requirements. (See Photo 5)

II. Observations of the sloped roof terminations at the third floor roof of Building B revealed that a fabricated corner flashing was installed wrapping around the corner on the face of the stucco. However, the top of the flashing is simply sealed with caulk with no counter flashing promoting a water intrusion condition. Counter flashing was required by the contract. (See Photo 6) Also note in photograph 7 that no kick out or water dam flashing was installed thus directing water onto the face of the stucco and the control joint below promoting water intrusion conditions in the adjacent wall as described by the Commercial Building Consultant's report of January 31, 2008. The absence of kickout flashing is in violation of original contract requirements.

III. Observations of the third floor sloped roof terminations at the east and west ends of Building C revealed evidence of kick out flashings at both ends of the building.

1. Although there was evidence of kick out or water dam flashing at the east end third floor roof termination, observations revealed no evidence of counter flashing to ensure moisture does not enter the system as required by the contract. Observations revealed evidence that the stucco and flashing intersection was heavily caulked which was not the proper configuration to ensure prevention of moisture entering the wall at the flashing joint. (See Photo 8) Water intrusion can occur at the upper portion of the flashing since no counter flashing or overlap of the stucco was observed.

2. Observations of the west elevation also indicated evidence of a kick out configuration; however, the flashing installation adjacent to the kick out is an improper configuration as illustrated in photograph 9. There is no counter flashing and it appears the flashing is simply an extension of the metal roof vertical panel flashing with heavy amounts of caulk to seal it to the wall. This configuration is not in accordance with contract requirements for kickout flashing and industry standard of care for flashing installations adjacent to stucco. This configuration is not in accordance with Code requirements since the flashing is not installed in such a manner as to prevent moisture entering the wall without massive amounts of caulk at the flashing and stucco interface.

IV. Observations of the third floor sloped roof terminations at Building D revealed different configurations at each end of the building.

1. Observations at the east end of the building revealed an improper sloped roof termination configuration such that the standing seam roof/wall flashing was

overlapped by the stucco at the vertical face with no evidence of a kick out to ensure water intrusion did not occur behind the overlapped stucco. Also note that there was no counter flashing and that the intersection was simply caulked which promotes a water intrusion condition. This configuration is not in accordance with contract requirements that specified counter flashing and kickout flashing. (See Photo 10)

2. Observations of the third floor sloped roof termination at the west end of Building D revealed a different flashing configuration. Observations revealed that the metal panel roof/wall intersection flashing was extended onto the face of the stucco panel. However, the counter flashing terminated prior to termination of the panel roof flashing. (See Photo 11) The extension flashing was then simply sealed to the wall with caulk without counter flashing and kickout flashings thus promoting water intrusion when the caulk fails. Similar to the other installations with the exception of Building C, water is directed to drain onto the face of the stucco and the control joint directly below further promoting water intrusion. The installation and drainage condition is in violation of the contract requirements.

V. In general, observations revealed that the third floor sloped roof termination flashings on all of the buildings are installed improperly at the roof termination and stucco interface promoting water intrusion in violation of the Code. According to the Commercial Building Consultant's report, there is evidence of water intrusion adjacent to this area at these building locations. Roofing and flashing which is not installed in a manner to prevent moisture from entering the wall is in violation of roofing contract and IBC requirements. However, observations revealed evidence of kick out flashing having been installed at the sloped roof terminations on Building C.

Direct Applied Exterior Finish System (DEFS) Failure

I. Observations at numerous building locations on several elevations primarily, but not limited to, Buildings A & C revealed evidence of blistering of the DEFS lamina off of the concrete board substrate. Observations indicate that the lamina has failed to bond and has pulled away from the board in the form of a blister in the surface finish. Photograph 12 documents a blister condition in the third floor level at the west end of Building C. Photographs 13 and 14 document blistering at the west end, fourth floor balcony sidewall of Building C. As indicated, currently the observations indicate but are not limited to the blistering condition on Buildings A & C, but predominately on Building C. Further and more detailed observations are required on other building elevations to inventory all the blistering failure conditions. This condition is indicative of DEFS failure not in accordance with warrantee requirements.

II. Observations of the masonry walls and Portland Cement Plaster Stucco installations at the stair towers on all Shipwatch buildings revealed evidence of

cracking in the parged plaster stucco installation at Buildings A, C & D. The heaviest cracking was primarily observed at the west stair tower of Building A. Observations revealed heavy efflorescence emanating from cracking under the polymer based finish coat as illustrated in photographs 15 & 16.

1. Observations at Buildings C & D also revealed evidence of efflorescence in the stair towers at both ends of Building C and evidence of cracking in the west stair tower of Building D. Similarly these conditions were based on a limited visual survey and additional cracking may be evident upon closer observation at additional stair tower locations in other buildings.

III. Observations of the west elevation of Building B revealed evidence of raised joint lines in the field of the wall in the area of the first three floors. The panel lines are evident at ends and edges of the cement board panels. This condition is unsightly and not in accordance with industry standards of care for installation of the DEFS stucco system.

CONCLUSION

Observations revealed evidence of improper installation of flashings at third floor roof/wall intersections such that they are not in accordance with IBC requirements and industry standard of care to prevent moisture from entering the wall. Moreover, the installations are not in accordance with contract requirements for flashing at the third floor roof/wall stucco cladding intersections. According to the report provided by Commercial Building Consultants dated January 31, 2008, there was evidence of water intrusion at each location adjacent to the sloped roof termination flashings at all of the buildings. This condition is also in violation of IBC requirements. Consequently, all flashing installations must be remediated with counter flashing and kick out installations to ensure water intrusion does not occur in the stucco exterior cladding adjacent to the metal roof terminations and wall intersections.

Observations of DEFS and stucco installations at several building locations revealed evidence of failure of the DEFS system as well as failure of the parged stucco on masonry block. Consequently, it will be necessary to repair all failed stucco applications in accordance with manufacturer's installation requirements and warranty requirements.

RECOMMENDED REPAIR

I. As discussed previously, there is evidence of improper installation of all roof termination flashings at the third floor roof terminations at each end of each of Buildings A through D at the metal roof and stucco clad wall intersections. Improperly installed flashings must be remediated to include proper counter flashings and kick out flashings properly integrated with the DEFS stucco system as required by the original contract. All termination flashings must be properly placed with welded kick out configurations similar to the installations at the metal-sloped roof terminations adjacent to chimney chases at the fifth floor level

on all buildings. Considering the evidence of improper installation resulting in water intrusion, the remediation and proper installation of the sloped roof termination flashing is a warranty issue, which should be accomplished by the metal roofing installation contractor. Proper repair and replacement of the DEFS stucco system will be the responsibility of the stucco contractor.

II. All areas of failed blistering lamina on the DEFS stucco system must be repaired in accordance with manufacturer's repair requirements. All repaired areas must match adjacent areas in color and contrast following the repair of the failed lamina areas. Currently, areas of failure were observed but not limited to Buildings A & C; however, all buildings must be visually inventoried and observed where necessary to ensure no other lamina failures are occurring. All failures of the DEFS lamina must be fully repaired.

III. Several areas of cracked, parged stucco on stair towers were observed. Numerous locations are exhibiting effloresence indicative of water intrusion behind the parged stucco consistent with failure of the stucco system. As a minimum, these conditions are occurring but are not limited to Buildings A, C & D, therefore, all areas of cracked and failed parged stucco must be properly repaired in accordance with manufacturer's installation requirements. As a minimum, cracked and failed parged stucco must be removed and replaced with properly installed plaster stucco with proper finish coat application.

IV. It is recommended that the panel line condition on the west elevation of Building B be remediated at the time of DEFS repair. Other building end elevations should be observed for similar conditions and repaired as necessary.

This report is based on available information at the time of development of the report. If additional information becomes available which has a bearing on conclusions then an addendum will be provided. Representative photographs are enclosed. Additional photographs on file may document additional improper conditions. If you have any questions concerning this report, please call me.

Sincerely,

Robert G. Sisnroy

Robert G. Sisnroy, P.E. 9/28/08

CCS 1359

Shipwatch
AT WILD DUNES

January 26, 2009

Mr. Bob Wiggins
Carolina Concrete Systems Inc.
P. O. Box 13149
Charleston, South Carolina 29422

RE: DEFS Cladding Failure and Parged Stucco Failure
Shipwatch Condominiums

Dear Bob,

As indicated in the Direct Applied Exterior Finish System (DEFS) Failure Section of the investigation report dated August 23, 2008, observations revealed that the DEFS cladding is failing in the form of blisters at numerous locations on the Shipwatch building claddings. Additionally, cracking and efflorescence are occurring at several stair towers indicating failure of the plaster stucco at these locations. Additional cladding unacceptable conditions are also identified in the report. Overall, the cladding conditions are indicative of failure of the DEFS system as well as failure of the parged stucco on stair towers.

Consequently, Shipwatch Horizontal Property Regime requests that Carolina Concrete Systems Inc. repair the failed claddings in accordance with manufacturer's installation requirements and warranty requirements. Please contact me to make arrangements to accomplish this work as soon as possible.

Yours Sincerely,
SHIPWATCH HOA

Linda Jernigan
General Manager

CC: Bob Sisnroy, Sisnroy Engineering

7600 Palmetto Drive, Isle of Palms, South Carolina 29451 843-886-5267

CCS 1177

CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL **FEBRUARY 6TH, 2009**

Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Waterproofing Repairs at Shipwatch

Dear Ms. Linda Jernigan

I appreciate the opportunity you have given me to provide you with a proposal for the repairs that were detected in our recent inspection performed in January 2009.

Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

Scope of Work

We will mobilize to the site and begin preparation and repairs of the specified items listed below.

1. Removal and replacement of all spalled concrete on the face of the balconies that are visible at this time. 8 locations **$ 10,865.00**
2. Chip out old grout around handrail post that are loose and repour with epoxy mortar and recoat with Sonneborne Deck Waterproofing. 3 post **$1150.00**
3. Repair stair risers in C Bldg and D Bldg that has rusted through. **$1820.00**
4. Pressure wash the beach side balconies of all 4 buildings. **$7440.00**
5. Remove and replace rusted steel bolts with stainless anchors in the 4th floor metal awning. This is a life safety issue and needs to be repaired immediately. We will also be installing 34 additional bolts per building. **$9,200.00**

Basis of Proposal

1. We will be given free and clear access to the project work site.

CCS 1182

2. Waste Containers for disposal of debris from preparation will be provided by others.
3. Electricity and potable water will be provided by others.
4. We will be allowed to work during daylight hours to perform task that do not generate excessive noise and will be allowed to work evening hours to perform the remaining task.
5. This proposal does not include bonds, permits or fees required by the City or County to perform this project. Once a contract is awarded, these fees will be included in the contract amount and will be payable once we have mobilized to the site and started repairs.
6. Landscape will be protected as well as possible but some damage may occur which should be repaired at no cost to us.
7. Contract shall be written on standard AIA Contract form with terms agreeable with both parties.
8. This proposal is good for 90 days.

Payment

Invoices will be generated on a monthly basis and payment will be due within 15 days of receipt of invoice.

Ms Jernigan, I look forward to having the opportunity to working with you on this project, and if you have any questions, please don't hesitate to call me.

Sincerely,

Bob Wiggins

President

www.carolinaconcretesystems.com

843-588-6721 FAX 843- 588- 6722

CCS 1183

CAROLINA CONCRETE SYSTEMS, INC
P.O. BOX 13149 CHARLESTON, S.C. 29422

Fax

To:	SHIPWATCH PROPERTIES		Bob Wiggins
Cc	MS. LINDA JERNIGAN	Date:	5/13/09
Fax #	886-5815	Pages:	2
Subject	Invoices for completed work at Shipwatch		

Londa,
Would you please process these invoices for payment as soon as possible? I appreciate your business. Please call me at 843-729-2510, if you have any questions.

Thank You,
Bob Wiggins
President
Carolina Concrete Systems

INTERNATIONAL CONCRETE REPAIR INSTITUTE
"2002 PROJECT OF THE YEAR AWARD WINNER"
"2003 PROJECT OF THE YEAR AWARD WINNER"

www.carolinaconcretesystems.com
843-588-6721 fax 843-588-6722

CCS 1197

SKA

Sutton-Kennerly & Associates, Inc.
9651 Charlotte Park Drive Suite 150
Charlotte, NC 28217-1191

Telephone: (704) 424 9663
Fax: (704) 424 9665
www.suttonkennerly.com

July 17, 2009

Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, South Carolina 29451

Attention: Ms. Linda Jernigan

Reference: Proposal for Engineering Review and Consultation
Prioritize Remediation Efforts - Exterior Façade Elements
Shipwatch at Wild Dunes - Isle of Palms, South Carolina
Charlotte I&D Proposal No. 64

Dear Ms. Jernigan:

Sutton-Kennerly & Associates, Inc. (SKA), Consulting Engineers, is pleased to submit this proposal for providing engineering consulting services associated with prioritizing remediation efforts for the exterior façade elements of Shipwatch at Wild Dunes Condominiums located in Isle of Palms, South Carolina. The purpose of this work is to review the present general condition of the exterior façade elements and recommend a priority for remediation efforts during a 10-year period. Included in this proposal is our understanding of the background information, proposed tasks, proposed schedule, estimated fee, and authorization procedures.

BACKGROUND INFORMATION

The Shipwatch at Wild Dunes is located in Isle of Palms, South Carolina. The property consists of four, five-story multi family residential buildings. The buildings were built between 1984 and 1986. The exterior cladding consists of textured aggregate dura-rock and EIFS stucco, and aluminum framed windows. Exterior breezeways, having recently installed urethane deck coatings, provide access to the inland side tenant entrances. Ocean side balconies have also recently received urethane deck coatings. The breezeways and balconies have aluminum handrails. The roof is a combination membrane and mansard standing seam metal roofing systems.

It is our understanding that some of the recently discovered leaking doors have been replaced with new EFCO sliding glass doors which include new curbs. Other moisture problems being addressed include installation of metal drip edge flashing along the ends of the buildings, and kick-out flashings at the transition between the sloped metal roof of the existing stair wells and the exterior façade. These past moisture intrusion problems were published in a Limited Assessment Report by Commercial Building Consultants and a report by Sisnroy Engineering.

1. We do not have a budget — that is what we are looking to establish.
2. Mileage charge from Greensboro?
5.

CCS 1199

This background information was obtained during a site visit conversation between Ms. Linda Jernigan of The Shipwatch at Wild Dunes Condominiums and our Michael Parker, P.E., and preliminary review of reports prepared by Commercial Building Consultants and Sisnroy Engineering.

PROPOSED ENGINEERING CONSULTING TASKS

SKA proposes to provide the following tasks to recommend a priority for remediation efforts over a ten-year period:

1. Conduct a half day site visit and observe the general exterior façade conditions of the four buildings.
2. Review available original project structural and architectural drawings and specifications regarding the façade elements.
3. Review other pertinent documents (reports, maintenance records, repair information, etc.) pertaining to the property and façade elements.
4. Interview maintenance personnel and review documented moisture and past repair history associated with the doors, the building ends, and the transition between the sloped metal roof of the stairwells and the exterior façade.
5. Review current proposed maintenance/repair budgets for the upcoming year, next three years, and years three through five.

At the conclusion of our site visit and reviews, we will prepare a table document which summarizes our recommended priority for proposed maintenance/repairs over the next ten years. This document will recommend immediate, one- to three-year, three- to five-year, and five- to ten-year maintenance/repairs in order to extend the useful service life of the exterior façade.

ENGINEERING FEE AND TERMS OF PAYMENT

SKA proposes to perform the scope of work described above on an hourly basis. We estimate that the fee for our work to be on the order of $3,000 to $3,500. The actual cost of our services will be determined based on the actual time required to perform the work, multiplied by SKA's standard hourly billing rates plus reimbursable expenses. SKA's 2009 Charge and Billing Rate Schedule is attached. The rates shown are the same as SKA's 2008 billing rates and are subject to change. Reimbursable expenses anticipated for this project include travel, photographic and reproduction expenses.

Our proposal does not include the preparation of repair details or specifications.

AUTHORIZATION AND SCHEDULE

Based on our present schedule, we can begin our services within approximately one week after receiving your written authorization. We anticipate that the fieldwork and office work will require approximately three weeks to complete. The prioritized remediation plan can be completed within approximately two to three weeks after the field/office work has been completed.

If this scope of services is satisfactory, please authorize us to proceed by signing the attached proposal acceptance sheet and returning one copy to our office mail, email or fax. Please also refer to the General Conditions of Service that are attached and made a part of this proposal.

Sutton-Kennerly & Associates, Inc. appreciates the opportunity to provide this proposal for engineering services. If there are any questions concerning this proposal, please contact this office.

Sincerely,

SUTTON-KENNERLY & ASSOCIATES, INC.

Michael L. Parker, P.E.
Senior Engineering Technical Specialist, P.E.

Jeffrey S. Miller, P.E.
Manager, Investigation and Diagnostic Department

Attachments: Proposal Acceptance Sheet
SKA Charge and Billing Rates Sheet
SKA General Conditions of Service

cc: Carole Vaughan (SKA – Greensboro)

CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL ***September 9th, 2009***

Shipwatch Properties
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Repairs at Shipwatch

Dear Ms. Jernigan,

I appreciate the opportunity you have given me to provide you with a proposal for the annual inspection of your property, preparation of and painting of the ceilings, urethane deck coating of the balconies and corridors at the above named project.

Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

Scope of Work

1. We will mobilize to the site and begin preparation and repairs of the ceilings prior to recoating. We will remove loose, damaged and flaking textured coatings.
   We will prime and prepare ceiling to receive new coatings existing texture and will install two coats of elastomeric waterproof coatings to the prepared areas.
2. We will high pressure clean the beach side balcony decks and corridors to receive a new textured top coat of Sonneguard Urethane waterproof deck coating.
3. We will pressure wash all four sides, walls, ceiling and stairwells of all four buildings.

Basis of Proposal

1. We will be given free and clear access to the project work site.
2. Waste Containers for disposal of debris from preparation will be provided by others.

CCS 1207

3. Electricity and potable water will be provided by others.
4. We will be allowed to work during daylight hours to perform task that do not generate excessive noise and will be allowed to work evening hours to perform the remaining task.
5. This proposal does not include bonds, permits or fees required by the City or County to perform this project. Once a contract is awarded, these fees will be included in the contract amount and will be payable once we have mobilized to the site and started repairs.
6. Landscape will be protected as well as possible but some damage may occur which should be repaired at no cost to us.
7. Contract shall be written on standard AIA Contract form with terms agreeable with both parties.

Payment

1. Payment for the removal of flaking and peeling ceiling coatings, preparing the clean surface, priming and 2 coats of elastomeric waterproof paint will be in the amount of **$326,200.00.** (Beachfront - **$171,460.00,** Corridors- **$154740.00)**
2. Payment for the Beachfront balcony deck coating will be in the amount of **$156,000.00.**
3. Payment for the Corridor waterproof deck coating will be in the amount of **$122,560.00**
4. Payment for the pressure washing of all four sides, walls, ceilings and stairwells will be in the amount of **$13,000.00.**
5. Payment for the complete inspection of all 4 buildings, fire pump building pool building, office building, sidewalks, repairs to any caulk around windows, doors, elevators, lights, electrical receptacles and providing a condition survey report will be in the amount of **$26,800.00**

Regular pay request / invoices will be generated on a monthly basis and payment will be due within 15 days of receipt of invoice.

Ms Jernigan, I look forward to having the opportunity to working with you on this project, and if you have any questions, please don't hesitate to call me.

CCS 1208

Sincerely,

Bob Wiggins

President

International Concrete Repair Institute

"2002 Project of the Year Recipient"

"2003 Project of the Year Recipient"

www.carolinaconcretesystems.com

843-588-6721 FAX-843-588-6722

P.O. BOX 13149, CHARLESTON, S.C. 29422

CCS 1209

A-302

Stor-

Recommended Maintenance/Remediation Schedule
Shipwatch at Wild Dunes
SKA Job# 090432.0
October 15, 2009

	Observations	Building	Comments	Repair Schedule	Est
	IMMEDIATE RECOMMENDED REPAIRS				
1	Roof membrane not fully secured to parapet wall.	A, B, C, D	Adhere isolated areas of unsecured parapet membrane. Install new termination bar to secure the bottom edge of the parapet membrane at the full perimeter of the roof.	Immediate	1,3
2	Water damaged wood framing below mansard roof-stair tower transitions.	A, B, C, D	Replace damaged wood.	Immediate	1
3	Deteriorating pitch pocket filler on buildings A & D and typical at scuppers	A, D	Replace pitch pocket filler at penetrations and scuppers.	Immediate	1
4	Corroded (bldg A) and missing (bldg B) fasteners at standing seam metal roof at rear balconies	A, B	Replace corroded and missing fasteners with new stainless steel fasteners	Immediate	A: B:
5	Gutter at back of building not properly sloped, sealed, flashed, or cleaned. Gaps between downspouts and gutters.	B	Clean debris from gutters. Reseure and reslope gutters to drain to downspouts. Properly size downspouts to gutter openings. Check all locations.	Immediate	1
6	Black organic growth on vertical wall beneath standing seam mansard roof. Potential water intrusion at horizontal edge of mansard roof in attic/ trash storage area.	C	Install new counter flashing at horizontal transition of mansard roof on the building end. Remediate drywall.	Immediate	7
7	Water stains on parking level overhead exterior drywall	A	Investigate source of plumbing leak. Repair plumbing as needed. Replace exterior drywall. Replace corroded light framing. Install new vents.	Immediate	
8	Office building exterior light fixture casing missing.	Office	Install new light fixture	Immediate	1
9	Curtain wall at elevator missing face caps	A	Install new curtain wall face caps where missing	Immediate	2
10	Fastener on 4th floor overhang loose	D	Replace loose fastener at bulding D. Check all 4th floor overhangs and replace all with new ss fasteners	Immediate	2
11	Sealant cracked or missing at roof parapet metal cap joints	A, B, C, D	Install Dow 123 strips over joints with failed sealant immediately. (Install Dow 123 strips over the remaining joints in 3 to 5 years.)	Immediate	2
12	Wood columns out of plumb 1/8-inch to ¼-inch per foot at gazebo, leaning towards ocean.	Gazebo	Investigate the structure	Immediate	
13	Roof drain clamping ring not properly secured or waterproofed.	D	Replace fasteners at clamping ring and properly waterproof drain basin. Check all.	Immediate	1
14	Black organic growth on walls and ceiling of center trash rooms.	A, B, C, D	Spray anti-fungicide and clean surfaces	Immediate	2
15	Corrosion of stairwell door jambs, stair framing and roof hatch ladder	B	Investigate and repair leaks. Clean and repaint steel.	Immediate	8
	REPAIRS RECOMMENDED TO BE COMPLETED IN 1 TO 3 YEARS				
16	Poor stainless steel kickout flashings and terminations at mansard roof to building transition	A, B, C, D	Replace kickout flashings	1 to 3 years	1
17	Roof ladder fasteners and connection plates corroded at securemet to rear balconies.	A, B, C, D	Replace ladder attachment with stainless steel connection and fasteners.	1 to 3 years	4
18	Termination of durock façade above parking deck entrance has corroded fasteners and impact damage.	A, B, C, D	Install new stainless steel drip edge termination.	1 to 3 years	57

Page 1 of 2

Done CCS
Done GR
Done GR
Cleaned CCS
OLD LEAKS & DRYWALL CCS
Done CCS
Done GR
CCS
Done PE GR
Done PE

LEAK
C-424
cut out durock
Price - $52,000 ea
Pressure wash
Inspection April
Gutters

Disaster Preparedness
GARY FREEMAN
MIKE PARKER

Metal
130 Doors

214

CCS 1221

19	Durock façade not terminated on privacy wall at rear 5th floor balconies	A, B, C, D	Install new stainless steel drip edge termination.	1 to 3 years	1
20	Impact damage on EIFS corners at corridors. (apprx. 5 per corridor. Luggage carts etc.)	A, B, C, D	Repair damaged EIFS. Install protective corner barriers at all corridor EIFS corners.	1 to 3 years	10
21	Tile roof on pool house building: tiles easily lifted upward. Straps show mild corrosion.	Office, pool, pump	Investigate and replace tile securement anchor system	1 to 3 years	
22	Deteriorating sealants at elevator curtain wall.	A, B, C, D	Replace glazing sealants	1 to 3 years	1
23	Cracked sealant around window perimeters at building ends and corridor windows.	A, B, C, D	Replace sealants around windows in corridors and building ends.	1 to 3 years	
24	Water ponding over stair towers	A, B, C, D	Build up coating to drain ponding water	1 to 3 years	
25	Deck coating deteriorated at transitions from corridor to stair	A, B, C, D	Remove existing coating and install new coating at transitions	1 to 3 years	
26	Cracks on façade at office building	Office	Fill cracks and recoat	1 to 3 years	1
27	Corroded electrical boxes on parking level	A, B, C, D	Replace boxes and anchors	1 to 3 years	
28	Damaged a/c unit straps	A, B, C, D	Replace straps that are bent, twisted or show damage	1 to 3 years	
29	Roof vent cap replaced with sheet metal.	A	Install proper roof vent cap	1 to 3 years	
30	Canvas canopy fasteners and clips corroded at parking level	A,	Replace fasteners		
31	Corrosion at trash door jamb at center of building. Frame and EIFS loose.	B	Install new door frame. Repair adjacent EIFS	1 to 3 years	
32	Insulation on air conditioning unit condensate lines worn or missing	A, B, C, D	Replace deteriorated insulation. (apprx.25%)	1 to 3 years	
33	Paint peeling on walkway ceilings.	A, B, C, D	1. Scrape and paint isolated locations on a yearly schedule. 2. Remove all existing coatings. Prime and paint concrete surface with new coating.	1 to 3 years	2
34	Paint peeling on parking level at overhead concrete	A, B, C, D	1. Scrape and paint isolated locations on a yearly schedule. 2. Remove all existing coatings. Prime and paint concrete surface with new coating.	1 to 3 years	2
	REPAIRS RECOMMENDED TO BE COMPLETED IN 3 TO 5 YEARS				
35	Deck coating deterioration	A, B, C, D	Install new deck coating on corridors and balconies	3 to 5 years	1
36	Sealant cracked or missing at roof parapet metal cap joints	A, B, C, D	Install Dow 123 strips over the remaining joints in 3 to 5 years.	3 to 5 years	
37	Sealant cracked and aging at roof parapet metal cap fasteners. Fasteners show corrosion.	A, B, C, D	Replace roof parapet metal cap fasteners with new stainless steel fasteners.	3 to 5 years	1
38	Metal counter flashing around chimneys are sealed but do not fit.	A, B, C, D	Replace flashing around all chimney bases with new stainless steel flashing.	3 to 5 years	
39	Parking stops spalled and cracked	A	Replace	3 to 5 years	
40	Interior drywall water damage at building end storage areas (floor 1-3)	A, B, C, D	Replace damaged drywall after mansard roof counterflashing repairs.	3 to 5 years	
	REPAIRS RECOMMENDED TO BE COMPLETED IN 5 TO 10 YEARS			5 to 10 years	1
41	Slab on grade cracks	A, B, C, D	Fill with sealer	5 to 10 years	2
42	Paint scratched on corridor handrails	A, B, C, D	Repaint	5 to 10 years	10
43	Façade staining under misc windows and at mansard roof	A, B, C, D	Install new coating on façade surfaces	5 to 10 years	1
	Recommendations EIFS for insurance purposes	A, B, C, D	Install new gutters at the perimeter of all metal roofs		
			Perform a detailed survey of EIFS cladding. Replace EIFS with new stucco façade, reduce coverage by apprx. 10% to 25%		10

CAROLINA CONCRETE SYSTEMS, INC.

P.O. BOX 13149
CHARLESTON, SC 29422

Invoice

Date	Invoice #
10/31/2009	06-166

Bill To

Shipwatch Property Horizontal Regime
7600 Palmetto Drive
Isle of Palms, S.C. 29451

P.O. No.	Terms	Project
JERNIGAN	Net 15	

Quantity	Description	Rate	Amount
	SUPERVISION, LABOR, EQUIPMENT & MATERIAL TO PERFORM REMEDIATION/ REPAIRS OF THE ITEMS RECOMMENDED BY SUTTON-KENNERLY ENGINEERS	0.00	0.00
	Install termination bar on roof membrane on parapet wall on roof of all 4 bldgs	18,600.00	18,600.00
	Repair leak in vent line in bathroom wall of unit D 430	2,300.00	2,300.00
	Apply Sporocide Cleaner to walls and ceiling of Trash closets in middle of all four Buildings	1,400.00	1,400.00
	Remove molded drywall and insulation in 4th floor storage closets and replace	7,500.00	7,500.00
		Total	$29,800.00

6252 - Roof Termination Bar - 18,600.00
6252 - Treat/Remove Mildew Closets - 1400.00
6252 - Rplc Sheet Rock closets 7,500.00
6258 - Rpr Roof Leak D430 2300.00

CCS 1233

CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL ***February 23, 2010***

Shipwatch Properties
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Repairs at Shipwatch

Dear Ms. Jernigan,

I appreciate the opportunity you have given me to provide you with a proposal for the removal and replacement of the EIFS on the Beachfront balconies at the above named project.

Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

Scope of Work

We will mobilize to the site and begin removal of the existing EIFS stucco system and will reinstall the BASF Accrowall Accocrete/Durock and Stucco system that was used on the other areas of the buildings in the 2003-2005 project.

We will high pressure clean the beach side balcony decks after the stucco project is complete. This would be an opportune time to recoat the balcony decks with the Sonneborne Urethane Waterproof Deck coating. We will be glad to provide you with the price to perform this work.

Basis of Proposal

1. We will be given free and clear access to the project work site.
2. This proposal is based on performing the work on two (2) buildings starting in September 2010.
3. Electricity and potable water will be provided by others.

CCS 1433

4. We will be allowed to work during daylight hours to perform task that do not generate excessive noise and will be allowed to work evening hours to perform the remaining task.

5. All furniture must be removed from the balconies prior to our mobilization or we will remove it for a fee of $25.00 per balcony and will not be responsible for security of the furniture.

6. This proposal does not include bonds, permits or fees required by the City or County to perform this project. Once a contract is awarded, these fees will be included in the contract amount and will be payable once we have mobilized to the site and started repairs.

7. Landscape will be protected as well as possible but some damage may occur which should be repaired at no cost to us.

8. Contract shall be written on standard AIA Contract form with terms agreeable with both parties.

9. This proposal is good for 90 days.

Payment

Payment for the removal of the existing EIFS system and replacement of the BASF Accrowall System and the pressure washing of the Beach Front Balconies per building will be in the **$282,800.00**

Regular pay request / invoices will be generated on a monthly basis and payment will be due within 15 days of receipt of invoice.

Ms Jernigan, I look forward to having the opportunity to working with you on this project, and if you have any questions, please don't hesitate to call me.

Sincerely,

Bob Wiggins

President

International Concrete Repair Institute

"2002 Project of the Year Recipient"

"2003 Project of the Year Recipient"

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843-588-6721 FAX-843-588-6722

P.O. BOX 13149, CHARLESTON, S.C. 29422

CCS 1434

CAROLINA CONCRETE SYSTEMS, INC.

INSPECTION REPORT

February 23, 2010

MS. LINDA JERNIGAN ,
Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Exterior Building Maintenance/Remediation Schedule provided Sutton Kennerly Engineering.

Linda,

Here is our report of the completed work from the maintenance schedule provide by Sutton Kennerly.

Immediate Repairs
Item #

1. Roof membrane secured—CCS
2. Kick outs reinstalled but no wood repairs—Glasgow Rooding
3. Pitch pockets filled by Glasgow Roofing
4. Fasteners on standing seam roof repaired or replaced—Glasgow
5. Gutter refastened and all gutters were cleaned—CCS
6. Black organic growth- Drywall was treated and majority was replaced
10. Fastener on 4th floor checked. A new fastener was installed by the bad one—CCS
11. Sealant repaired at roof parapet cap joints—Glasgow
14. Black organic growth in trash closets was treated—CCS

1 to 3 Year Repairs
Item #

16. Stainless kickouts replaced by Ferst Exteriors and Glasgow Roofing
18. Duroc façade fasteners at parking deck repaired—Ferst Exteriors
20. Damaged EIFS corners on corridors patched— Simply Stucco

3 to 5 Year Repairs
Item #

36. Sealant at roof parapet metal cap joints repaired—Glasgow Roofing
37. Roof parapet cap fasteners replaced by —Glasgow Roofing
40. Interior drywall damage in storage areas replaced ——CCS

CCS 1435

If you have any questions, please don't hesitate to call me at 843-729-2510.

Sincerely,
Bob
Bob Wiggins

International Concrete Repair Institute

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P.O. BOX 13149, CHARLESTON, S.C. 29422

CCS 1436

CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL ***March 8, 2010***

Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Building Inspection and Pressure Wash 7 buildings.

Dear Ms. Linda Jernigan

I appreciate the opportunity you have given me to provide you with a proposal for the Annual Building Inspection and the pressure washing of the 7 buildings at your property.

Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

Scope of Work

We will mobilize to the site and begin preparation and repairs of the specified items listed below.

1. Pressure wash the all sides of the buildings end walls, balconies, tairwells and the corridors of all 7 buildings.
2. We will inspect all caulk joints in the walls, around windows and doors, lights and receptacles and will repair any torn or failed caulk on 4th and 5th floor ocean front balconies, end walls, stairwells, elevator towers and 1st through 5th floor street side.

Basis of Proposal

1. We will be given free and clear access to the project work site.
2. Waste Containers for disposal of debris from preparation will be provided by others.
3. Electricity and potable water will be provided by others.

CCS 1441

4. All Furniture must be removed from the balconies or we will remove it for a fee of $25.00 @ balcony.
5. We will be allowed to work during daylight hours to perform task that do not generate excessive noise and will be allowed to work evening hours to perform the remaining task.
6. This proposal does not include bonds, permits or fees required by the City or County to perform this project. Once a contract is awarded, these fees will be included in the contract amount and will be payable once we have mobilized to the site and started repairs.
7. Landscape will be protected as well as possible but some damage may occur which should be repaired at no cost to us.
8. Contract shall be written on standard AIA Contract form with terms agreeable with both parties.
9. This proposal is good for 90 days.

Payment

Payment for this project will be in the amount of **$45,880.00.** Invoices will be generated on a monthly basis and payment will be due within 15 days of receipt of invoice.

Ms Jernigan, I look forward to having the opportunity to working with you on this project, and if you have any questions, please don't hesitate to call me.

Sincerely,

Bob Wiggins

President

www.carolinaconcretesystems.com

843-588-6721 FAX 843- 588- 6722

P.O. BOX 13149, CHARLESTON, S.C. 29422

CCS 1442

CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL ***April 26, 2010***

Shipwatch Properties
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Repairs at Shipwatch

Dear Ms. Jernigan,

I appreciate the opportunity you have given me to provide you with a proposal for the removal and replacement of the EIFS on the Beachfront balconies at the above named project.

Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

Scope of Work

We will mobilize to the site and begin removal of the existing EIFS stucco system and will reinstall the BASF Accrowall Accocrete/Durock and Stucco system that was used on the other areas of the buildings in the 2003-2005 project.

We will also be removing and replacing the fixed store front windows on a raised curb on the 1st through 3rd floor units.

We will high pressure clean the beach side balcony decks after the stucco project is complete. This would be an opportune time to recoat the balcony decks with the Sonneborne Urethane Waterproof Deck coating. We will be glad to provide you with the price to perform this work.

Basis of Proposal

1. We will be given free and clear access to the project work site.
2. This proposal is based on performing the work on two (2) buildings starting in September 2010.
3. Electricity and potable water will be provided by others.
4. We will be allowed to work during daylight hours to perform task that do not generate excessive noise and will be allowed to work evening hours to perform the remaining task.

CCS 1446

5. All furniture must be removed from the balconies prior to our mobilization or we will remove it for a fee of $25.00 per balcony and will not be responsible for security of the furniture.

6. This proposal does not include bonds, permits or fees required by the City or County to perform this project. Once a contract is awarded, these fees will be included in the contract amount and will be payable once we have mobilized to the site and started repairs.

7. Landscape will be protected as well as possible but some damage may occur which should be repaired at no cost to us.

8. Contract shall be written on standard AIA Contract form with terms agreeable with both parties.

9. This proposal is good for 90 days.

Payment

Payment for the removal of the existing EIFS system and replacement of the BASF Accrowall System, replacing the fixed store front windows and the pressure washing of the Beach Front Balconies on two buildings will be in the **$282,800.00**

Regular pay request / invoices will be generated on a monthly basis and payment will be due within 15 days of receipt of invoice.

Ms Jernigan, I look forward to having the opportunity to working with you on this project, and if you have any questions, please don't hesitate to call me.

Sincerely,

Bob Wiggins

President

International Concrete Repair Institute

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CCS 1447

CAROLINA CONCRETE SYSTEMS INC.

Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C.

August 19, 2010

RE: SCHEDULE

Ms.Linda Jernigan,

I own rental property myself and I know there is no convenient time to close a unit for rent, however, I know that every aspect of the work we are performing at Shipwatch is affected by weather and the fall or spring is to be the best time to accomplish an exterior restoration project. Since the spring is a very busy rental season, I would definitely not want to lose that potential rental period. Thus fall is the best time.

We can perform demo of EIFS on the balconies if it is raining but no coatings of any kind. Also, according to the American Concrete Institute, The International Concrete Repair Institute and BASF Construction Products Division guidelines, we cannot install any coatings on the new Duroc Wall System unless the temperature is 40 degrees Fahrenheit and rising.

I have enclosed a copy of the Technical Bulletin for cold weather precautions submitted by BASF and a copy of the history of the weather for the 2009 fall and winter in Mt. Pleasant. Just as a matter of record, there were 53 rain days and 59 days when the temperature was below 40 degrees during the 5 month period from October 1st 2009 through February 28, 2010. During January 2010, there were 15 days where the average temperature was below 40 degrees all day.

Let me reiterate that the units on a stack will only be out of commission for approximately 3 to 4 weeks depending on weather. Therefore, the potential loss of rental income is only a month not 90 or 120 days.

If an accelerated schedule is required, we can place more personnel on the job and can finish the project in 90 days if we mobilize and start construction on September 20th2010. The additional cost to accomplish this is **$18,600.00 per building.** If we are not allowed to start in September, the potential for a contract extension because of inclement weather is imminent.

Ms. Jernigan, we look forward to working with you, the board, and the homeowners on this upcoming project. If you have any questions, please don't hesitate to call me.

Sincerely,

Bob Wiggins

843-588-6721 fax 843-588-6722
Email:CCSROCKDOC @ AOL
PO Box 13149 Charleston, S.C. 29422

CCS 1451

AIA® Document A105™ – 2007

Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project

AGREEMENT made as of the First day of SEPTEMBER
in the year 2010
(In words, indicate day, month and year.)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

State or local law may impose requirements on contracts for home improvements. If this document will be used for Work on the Owner's residence, the Owner should consult local authorities or an attorney to verify requirements applicable to this Agreement.

BETWEEN the Owner:
(Name, legal status, address and other information)

Shipwatch Properties
7600 Palmetto Drive
Isle of Palms, S.C. 29451

and the Contractor:
(Name, legal status, address and other information)

Carolina Concrete Systems, Inc.
P.O. Box 13149
Charleston, S.C. 29422

for the following Project:
(Name, location and detailed description)

The removal and replacement of the existing EIFS stucco system with the BASF Accrowal Accocrete / Duroc system. Removal and replacement of the fixed storefront windows on 1st through 3rd floor on building A & B.

The Architect
(Name, legal status, address and other information)

Gary Freeman Architect Inc.
1469 Diamond Boulevard
Mt. Pleasant, S.C. 29466
843-884-6506

The Owner and Contractor agree as follows.

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CCS 1472

CAROLINA CONCRETE SYSTEMS, INC.

P.O. BOX 13149
CHARLESTON, SC 29422

Invoice

Date	Invoice #
10/27/2010	06-191

PAID

Bill To
Shipwatch Property Horizontal Regime 7600 Palmetto Drive Isle of Palms, S.C. 29451

P.O. No.	Terms	Project
Jernigan	Net 15	

Quantity	Description	Rate	Amount
	SUPERVISION, LABOR, EQUIPMENT & MATERIAL to perform work as scheduled	165,211.50	165,211.50
		Total	$165,211.50

CCS 1493

CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL ***January 5th, 2011***

Shipwatch Properties
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Repairs at Shipwatch

Dear Ms. Jernigan,

I appreciate the opportunity you have given me to provide you with a proposal for the removal and replacement of the EIFS on the Beachfront balconies at the above named project.

Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

Scope of Work

We will mobilize to the site and begin removal of the existing EIFS stucco system on the C & D buildings Oceanfront and will reinstall the BASF Accrowall Accocrete/Durock and Stucco system that was used on the other areas of the buildings in the 2003-2005 project.

We will also be removing and replacing the fixed store front windows on a raised curb on the 1st through 3rd floor units.

We will high pressure clean the beach side balcony decks after the stucco project is complete. This would be an opportune time to recoat the balcony decks with the Sonnebourne Urethane Waterproof Deck coating. We will be glad to provide you with the price to perform this work.

Basis of Proposal

1. We will be given free and clear access to the project work site.
2. This proposal is based on performing the work on two (2) buildings starting in September 20101.
3. Electricity and potable water will be provided by others.

CCS 1567

4. We will be allowed to work during daylight hours to perform task that do not generate excessive noise and will be allowed to work evening hours to perform the remaining task.

5. All furniture must be removed from the balconies prior to our mobilization or we will remove it for a fee of $25.00 per balcony and will not be responsible for security of the furniture.

6. This proposal includes all interior trim repairs needed around the new windows, reinstallation of lights and receptacles on oceanfront balconies after stucco in reinstalled.

7. This proposal does not include bonds, permits or fees required by the City or County to perform this project. Once a contract is awarded, these fees will be included in the contract amount and will be payable once we have mobilized to the site and started repairs.

8. Landscape will be protected as well as possible but some damage may occur which should be repaired at no cost to us.

9. Contract shall be written on standard AIA Contract form with terms agreeable with both parties.

10. This proposal is good for 90 days.

Payment

Payment for the removal of the existing EIFS system and replacement of the BASF Accrowall System, replacing the fixed store front windows and the pressure washing of the Beach Front Balconies on two buildings will be in the **$306,400.00**

Regular pay request / invoices will be generated on a monthly basis and payment will be due within 15 days of receipt of invoice.

Ms Jernigan, I look forward to having the opportunity to working with you on this project, and if you have any questions, please don't hesitate to call me.

Sincerely,

Bob Wiggins

CCS 1568

International Concrete Repair Institute

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"2003 Project of the Year Recipient"

"2010 Project of the Year Recipient"

843-588-6721 FAX-843-588-6722

P.O. BOX 13149, CHARLESTON, S.C. 29422

CCS 1569

CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL ***January 10th, 2011***

Ms. Linda Jernigan
Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Sandblasting and Painting of existing handrails

Ms. Jernigan

I appreciate the opportunity you have given me to provide you with a proposal for the painting of the handrails at the above named project

Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

Scope of Work

We will mobilize to the site and begin preparation and repairs of the handrails prior to recoating. We will remove loose, damaged and flaking textured coatings by using a water/sandblast. We will prepare and prime the handrails with an epoxy primer and then coat them with an epoxy coating.

Basis of Proposal

1. We will be given free and clear access to the project work site.
2. Waste Containers for disposal of debris from preparation will be provided by others.
3. Electricity and potable water will be provided by others.
4. We will be allowed to work during daylight hours to perform task that do not generate excessive noise and will be allowed to work evening hours to perform the remaining task.
5. This proposal does not include bonds, permits or fees required by the City or County to perform this project. Once a contract is awarded, these fees will be included in the contract amount and will be payable once we have mobilized to the site and started repairs.

CCS 1570

6. Landscape will be protected as well as possible but some damage may occur which should be repaired at no cost to us.
7. This proposal is based on all handrails on the balconies and corridors of 4 buildings which is approximately 6680 sf of rails.
8. Contract shall be written on standard AIA Contract form with terms agreeable with both parties.

Payment

Payment will be in the amount of **$84,920.00** @ building. There will be a mobilization fee of 2% of the contract due within 15 days of mobilization to the project. Regular pay request / invoices will be generated on a monthly basis and payment will be due within 15 days of receipt of invoice.

Ms. Jernigan, I look forward to having the opportunity to working with you on this project, and if you have any questions, please don't hesitate to call me.

Sincerely,

Bob Wiggins

President

International Concrete Repair Institute

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843-588-6721 FAX-843-588-6722

P.O. BOX 13149, CHARLESTON, S.C. 29422

CCS 1571

CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL February11, 2011

Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: EIFS and window removal and replacement on the corridor of one Building and EIFS and window removal and replacement on the Ocean front of two (2) Buildings and the removal of the old ceiling paint and on the corridors and balconies of one (1) Building and the cleaning and recoating of the Sonneguard Deck Waterproofing on the balconies and corridors of one (1) building at Shipwatch

Ms. Jernigan,

I appreciate the opportunity you have given me to provide you with a proposal for the repairs at the above named project.

Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

Scope of Work

We will mobilize to the site and begin preparation and repairs of the specified items listed below.

Our scope of work includes the removal and replacement of the EIFS on the corridors of one building, the bedroom windows (32)on the corridors of one building, the waterproof recoating on the corridors of one building , the ceiling paint removal and recoating on the corridors of one building, the EIFS removal and replacement on the oceanfront balconies of two(2) buildings, the cleaning and recoating of the Sonneborne Sonneguard deck waterproofing on the balconies of two (2) building as well as replacement of the storefront windows(72) on the balconies of two (2) buildings..

Basis of Proposal

1. We will be given free and clear access to the project work site.
2. Waste Containers for disposal of debris from preparation will be provided by others.
3. Electricity and potable water will be provided by others.

CCS 1590

4. We will be allowed to work during daylight hours to perform task that do not generate excessive noise and will be allowed to work evening hours to perform the remaining task.

5. This proposal does not include bonds, permits or fees required by the City or County to perform this project. Once a contract is awarded, these fees will be included in the contract amount and will be payable once we have mobilized to the site and started repairs.

6. Landscape will be protected as well as possible but some damage may occur which should be repaired at no cost to us.

7. Contract shall be written on standard AIA Contract form with terms agreeable with both parties.

8. We have been notified by Charleston Glass that there aluminum supplier prices will go up on February 28th by **6 %.** If an order for the windows is not in place by this date, the price for the project will be adjusted accordingly

Schedule

The time for completion of this project excluding deck recoating and ceiling paint will be 16 weeks.

Payment

There will be a mobilization fee of 1% of the contract due within 15 days of mobilization to the project.

1. Payment for the removal and replacement of the EIFS system with the Duroc sheathing and Acrocrete hard coat system will be in the amount of **$264,680.00** for the Street side corridors of one (1) building

2. Payment for the 32 impact resistant bedroom windows will be in the amount of **$65,422.00** for one (1) building.

3. Payment for the EIFS removal and replacement with the Duroc sheathing and Accrocrete system and the replacement of seventy two (72) storefront windows on the balconies of Building C & D will be in the amount of **$306,400.00.**

4. Payment for the removal and recoating of the ceilings on the ocean front balconies on Building C & D will be in the amount of **$61,210.00**

5. Payment for the removal and recoating of the ceilings on the street side corridors on one (1) building will be in the amount of **$27,590.00.**

6. Payment for the ocean front balcony Sonneborne Sonneguard deck waterproofing for Building C & D will be in the amount of **$78,300.00**

7. Payment for the street side corridor Sonneborne Sonneguard deck waterproofing will be in the amount of **$21,870.00.**

Regular pay request / invoices will be generated on a monthly basis and payment will be due within 15 days of receipt of invoice.

Ms. Jernigan, we will offer a **5 % discount** on this project if the entire scope of work is performed and we receive a contract within 30 days. I look forward to having the opportunity to working with you on this project, and if you have any questions, please don't hesitate to call me.

Sincerely,

Bob Wiggins

President

843-588-6721 FAX 843- 588- 6722

P.O. BOX 13149, CHARLESTON, S.C. 29422

CCS 1592

CAROLINA CONCRETE SYSTEMS, INC.

INSPECTION REPORT

April 14th, 2011

MS. LINDA JERNIGAN
Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Exterior Building Inspection Report

Linda,

Here is our report of the conditions of the exterior of the 4 buildings at 7600 Palmetto Drive Isle of Palms, S.C. The exterior inspection report is broken down into different reports starting at the North end standing in the parking lot and working around to the south end, including corridors, stairs and balconies.

Exterior ends and street side report

1. We inspected and caulked all areas that needed to be caulked including the light fixtures on the golf course side balconies. There are several areas on the west end of A and the east end of C buildings that have some bubbles in the stucco system. This has been noted and we are communicating this to Ferst Exteriors to repair as these areas in the Fall 2011 project. We will be removing and replacing the EIFS on the Ocean front of Building C and D in the fall of 2011. Overall the Duroc/BASF stucco system is in good condition with the exception of some staining that cannot be removed by pressure washing.
2. All light fixtures and receptacles on the balconies that were not caulked or that the caulk has failed were recaulked.
3. All vertical and horizontal joints in the stucco system was inspected and found to be in fair condition. All areas that needed to be recaulked were done. It is recommended the building be recaulked within 2 years for the caulk has reached the end of its Life Cycle.
4. There are numerous areas on the elevator windows that the glazing has failed and we recommend this be repaired in the near future.
5. We did not inspect the roof but will be glad to perform this inspection if you would like for us to.
6. The roof hatches were in good condition with the exception of the new hatch in D building. The handle will not latch and needs to be repaired or replace.

CCS 1609

7. The deck coating in the common corridors was inspected and found to be in fair to poor condition. The topcoat of the deck coating with the non skid aggregate has been worn down past its ability to provide protection to the base coat and its non skid capability. This is the 8th year the coating has been in place and has passed its 5 year warranty and it's Life Cycle.
8. Elevator door frames were checked and re-caulked if necessary.
9. The handrails are in fair to poor condition and have widespread paint peeling as well as some corrosion appearing. There is numerous loose rail post on all Buildings and we had The Structural Engineering Firm of Rickborne and Associates look at and are in the process of evaluating the capability and load capacity of the existing rails and grout. There were numerous post that were only embedded 1 ½" in a porous Poroc Grout that has emulsified allowing the post to be dangerously loose and could be a **Life Safety Issue**. There also continues to be hoses dragged over the rails causing paint to peel and stress on the rails.
10. The stairwells were inspected and the areas that were corroded and needed welding have been done with the exception of the risers on the steps.
11. The stairwell doors and storage doors are showing signs of rust and need to be sanded and painted.
13. There are several door stops on the corridors that have been broken of and are causing rust stains on the deck coating.
14. There are numerous areas on the EIFS stucco system on the corridors that has been busted and needs to be repaired.
15. The windows on the corridors are exhibiting signs of corrosion and the caulk around the windows has long exceeded its Life Cycle.

Beach front balcony inspection

1. The balcony deck coatings were also in fair to poor condition and need top coating. There are a few areas where the coatings have been cut, cigarette burns, furniture rusting and furniture legs gouging into the coating. We recommended after installation of the deck coating that no metal furniture be used on the balconies. However, there are a significant number of units that have the metal furniture.
2. There are a few areas in the parking garages that the stucco has been bumped by cars that need to be fixed.
3. The new bedroom/balcony doors look good and are functioning properly.
4. The handrails inspected are in fair to poor condition. There is widespread peeling of paint and signs of corrosion. There are numerous rail post that are loose and need to be fixed now.
5. Leaks continue to be a problem at and around the old sliding doors on the beachfront and golf course side of the buildings.
6. The fixed panel windows on the beachfront balconies on Building C and D will be replaced in the Fall 2011 project but are showing sign of considerable corrosion and the glazing is cracking.
7. There are numerous receptacles broken and wall vents that have rusting screws leaching on the stucco walls.

8. The ceilings all have some paint peeling and need to be repainted as soon as possible.
9. There are several spalls on the face of the balconies that need to be repaired so that they don't become a life safety issue.

In closing, our inspection reveals that the buildings are in good condition. However there are several issues that need to be addressed, some that require immediate attention. General maintenance of the doors and windows, deck coatings, stucco system and caulk inspection and repairs on an annual maintenance program should extend the life cycle of Shipwatch Properties for years to come.

Sincerely,

Bob Wiggins

International Concrete Repair Institute

"2002 Project of the Year Award Recipient"

"2003 Project of the Year Award Recipient"

"2010 Project of the Year Award Recipient"

843-588-6721 FAX-843-588-6722

P.O. BOX 13149, CHARLESTON, S.C. 29422

CCS 1611

Strictly Stucco

1365 Fields Circle
Charleston, SC 29412
(843) 814-4775
******INVOICE*******

January 31, 2012

Paid 2/3/12
CH# 152,16
2200.00

Carolina Concrete Systems
RE: **Shipwatch**

Building D

1) Set up scaffolding for engineer.
2) Cut out all pieces as instructed by engineer.
3) Repair all cut out sections.

Building A

1) Cut out beaten out stucco.
2) Reinstall expansion joint.
3) Repair cut out section.

TOTAL NOW DUE.....$2,200.00

!!! THANK YOU FOR YOUR BUSINESS !!!

Please write a check for ~~Kenton~~
~~Strictly~~ Strictly Stucco

CCS 1742

CAROLINA CONCRETE SYSTEMS, INC.

P.O. BOX 13149
CHARLESTON, SC 29422

Invoice

Date	Invoice #
2/1/2012	06-243

Bill To
Shipwatch Property Horizontal Regime 7600 Palmetto Drive Isle of Palms, S.C. 29451

P.O. No.	Terms	Project
	Net 15	

Quantity	Description	Rate	Amount
	SUPERVISION, LABOR& EQUIPMENT TO REMOVE AND REPLACE DUROC STUCCO SYSTEM	3,200.00	3,200.00
	SCAFFOLD AND EQUIPMENT RENTAL	150.00	150.00
	TREATMENT AND CLEANING OF MOLD FROM UNIT B107	400.00	400.00
		Total	$3,750.00

Phone #
843-588-6721

CCS 1744

CAROLINA CONCRETE SYSTEMS, INC.

P.O. BOX 13149
CHARLESTON, SC 29422

Invoice

Date	Invoice #
2/23/2012	06-252

PAID

Bill To
Shipwatch Property Horizontal Regime 7600 Palmetto Drive Isle of Palms, S.C. 29451

P.O. No.	Terms	Project
	Net 15	

Quantity	Description	Rate	Amount
	SUPERVISION, LABOR, EQUIPMENT & MATERIAL TO MAKE INVESTIGATIVE CUTS IN STUCCO AND DRYWALL IN 21 LOCATIONS AND PROTECT * DOES NOT INCLUDE MANLIFT*	9,152.00	9,152.00
		Total	$9,152.00

Phone #
843-588-6721

CCS 1752

CAROLINA CONCRETE SYSTEMS, INC.

P.O. BOX 13149
CHARLESTON, SC 29422

Invoice

Date	Invoice #
3/21/2012	06-257

Bill To
Shipwatch Property Horizontal Regime 7600 Palmetto Drive Isle of Palms, S.C. 29451

faxed 3/21
emailed 3/21
mailed 3/21

P.O. No.	Terms	Project
	Net 15	

Quantity	Description	Rate	Amount
	SUPERVISION, LABOR& EQUIPMENT drywall interior repairs, interior painting, stucco repairs at 21 locations, and manlift rental for 4 weeks	13,871.00	13,871.00
		Total	$13,871.00

Pd 4/5/12
$13871.00
Balance
Ck# 13490

Phone #
843-588-6721

CCS 1754

Strictly Stucco

1365 Fields Circle
Charleston, SC 29412
(843) 814-4775

******INVOICE*******

March 8, 2012

Carolina Concrete Systems
RE: **Shipwatch**

February 27- March 2

35 hrs@$50 per hr.....$1,750.00

March 5- March 8

36 hrs@$50 per hr.....$1,800.00

Materials, equipment, tools and gas.....$744.00

Lowes- $227.53
Palmetto Masonry- $341.36
Fuel- $175.00

TOTAL NOW DUE.....$4,294.00

!!! THANK YOU FOR YOUR BUSINESS !!!

CCS 1758

74634

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED
DEC 30 2014
SC Court of Appeals

Case No. 2012-CP-10-3858

Oscar Mendiondo, individually and as representative of a class of similarly situated owners of condominium units in the horizontal property regime known as Shipwatch Condominiums, ...Appellants,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually, ...Respondents.

NOTICE OF APPEAL

Appellants hereby appeal the Order granting Summary Judgment in Part to Carolina Concrete Systems, Inc. That motion was heard October 27, 2014, and the Order filed on October 30, 2014. Appellant received notice of this Order on November 3, 2014, and filed a timely Motion for Rehearing and/or Reconsideration on November 12, 2014. On December 5, 2014, Appellant received notice that its Motion for Rehearing and/or Reconsideration had been denied.

December 30, 2014

R. Patrick Flynn
ROBERTSON HOLLINGSWORTH & FLYNN
177 Meeting Street, Suite 300
Charleston, South Carolina 29401
Phone: 843-723-6470
Attorney for Appellants

Other Counsel of Record:
[see following pages]

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED
JAN 12 2015
SC Court of Appeals

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-10-3858

Oscar Mendiondo, individually and as representative of a class of similarly situated owners of condominium units in the horizontal property regime known as Shipwatch Condominiums, ...Appellants,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually,

Of Whom, Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually, are,..... Respondents.

AMENDED NOTICE OF APPEAL

The Appellants hereby amend the caption of their Notice of Appeal filed on December 30, 2014. This amended caption reflects that certain defendants named in the underlying action made no appearance in that action and are not Respondents in this Appeal.

January 8, 2015

R. Patrick Flynn
ROBERTSON HOLLINGSWORTH & FLYNN
177 Meeting Street, Suite 300
Charleston, South Carolina 29401
Phone: 843-723-6470
Attorney for Appellants

Other Counsel of Record:
[see following pages]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	Docket No.: 2012-CP-10-3857
Shipwatch Condominium Association, Inc.	)	
Plaintiff,	)	
v.	)	Charleston Glass Company's Motion for Summary Judgment
Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston) Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually,	)	
Defendants.	)	
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	Docket No.: 2012-CP-10-3858
Oscar Mendiondo individually and as representative of a class similarly situated Owners of Condominium Units in the Horizontal Property Regime known as Shipwatch Condominiums	)	
Plaintiffs,	)	
v.	)	
Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.;	)	

EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually,

Defendants.

This matter comes before the Court on Defendant Charleston Glass Company's ("Charleston Glass") summary judgment motion based on the statute of limitations. Plaintiffs filed these lawsuits on June 13, 2012 alleging defective and deficient construction at the Shipwatch Condominiums located within the Wild Dunes development of Isle of Palms, South Carolina. Plaintiffs served Charleston Glass on August 31, 2012. The Plaintiffs allege negligence, professional negligence, gross negligence, breach of express and/or implied warranties, and strict liability in tort against Charleston Glass.

The Shipwatch project consists of four oceanfront buildings constructed around 1985. Charleston Glass did not have any involvement with the original construction. Beginning in 2003, Charleston Glass installed new sliding glass doors and windows on the buildings at the direction of Defendant Carolina Concrete Systems ("CCS") and the Shipwatch Homeowners' Association ("HOA"), through various on-site property managers. This work took place primarily between 2003-2005 and 2008-2011.

The Plaintiffs claim Charleston Glass and other defendants should be liable for the costs associated with the repairs arising from the failure of the original sliding glass doors and windows, which were not installed by Charleston Glass. The

Plaintiffs also claim Charleston Glass should be liable for alleged defects in the work it performed and of which the Plaintiffs were aware prior to June 12, 2009. The statute of limitations bars these claims because the Plaintiffs knew about water intrusion and other alleged construction defects with the sliding glass doors and windows more than three years before commencing this litigation. S.C. Code Ann. § 15-3-350 provides for a three-year statute of limitations to Plaintiffs' claims of negligence, common law warranty, and strict liability in tort. Therefore, Charleston Glass is entitled to summary judgment as a matter of law.

STANDARD FOR STATUTE OF LIMITATIONS

The statute of limitations starts to run when the "cause of action shall have accrued." S.C. Code Ann. § 15-3-20. "Generally, a cause of action accrues under South Carolina law 'the moment the defendant breaches a duty owed to the plaintiff.'" Barr v. City of Rock Hill, 330 S.C. 640, 644, 500 S.E.2d 157, 159-60 (Ct. App. 1998). In some circumstances, however, the "discovery rule" provides an exception to the general rule and tolls the statute of limitations until such time as "the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535. A person has constructive notice of a cause of action if he or she knows of "facts and circumstances of an injury [that] would put a person of common knowledge and experience on notice that some right . . . has been invaded or that some claim against another party might exist." Id. "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 developed." Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). The analysis is

an objective one, focusing not on the subjective knowledge of the individual plaintiff, but on whether a reasonable person with knowledge of the facts and circumstances should have been placed on notice of an injury. As stated in Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994), the "[f]ailure of the injured party to comprehend the full extent of damages ... is immaterial." Wiggins, 442 S.E.2d at 170. In Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 609 S.E.2d 548 (Ct. App, 2005), the Court wrote:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote response by giving security and stability to human affairs." The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, "statutes of limitations provide potential defendants with certainty that after a period of time, they will not be hailed [sic] into court to defend time-barred claims. Moreover, limitation periods discourage plaintiffs from sitting on their rights." Statutes of limitations are, indeed, fundamental to our judicial system. Id., 363 S.C. at 175-176, 609 S.E.2d at 552 (citations omitted).

The applicable statute of limitations is three years.[1] Charleston Glass does not dispute that any work performed after the applicable date for statute of limitations purposes should not be included with this order; Charleston Glass challenges, however, certain claims based on notice to Plaintiffs that implicates the

[1] S.C. Code Ann. § 15-3-530 applies a three-year statute of limitations to Plaintiffs' claims of negligence, breach of contract, common-law warranty, and strict liability in tort.

statute of limitations. Thus, the inquiry is what Plaintiffs knew or should have known before July 12, 2009.

DISCUSSION

I. Plaintiffs failed to initiate their claims against Charleston Glass within the time allowed by the applicable statute of limitations.

The Plaintiffs' claims are barred by the statute of limitation because they were on notice of their claims before July 12, 2009. In fact, The Plaintiff's were aware of water intrusion issues with the originally-installed and sliding glass doors several years before the commencement of this litigation. On October 7, 2002 Terence J. McKelvey produced an Exterior Condition Survey report identifying water intrusion issues at numerous windows and sliding glass doors. Exterior Condition Survey: 17-21. ("Exhibit 1"). Fred Trombino, a member of the Shipwatch Board of Directors from 2005-2007, testified Shipwatch manager Linda Jernigan told him the project had problems with the sliding glass doors when he joined the Board in 2005. Trombino, 132: 22- 133:14. ("Exhibit 2"). Arnie Schaewe, a Shipwatch board member and unit owner, testified that Plaintiffs knew they had leakage problems at various locations including the sliding glass doors and bay windows when Charleston Glass began work in 2003. Deposition of Arnie Schaewe, page 35:9-19. ("Exhibit 3").

A. The Plaintiffs had knowledge of water intrusion and leaks in the originally-installed balcony sliding glass doors.

HOA Board meeting minutes between 2005-2007 show Plaintiffs' knowledge of issues involving leaking sliding glass doors. In 2005, the Board noted leaks at some sliding glass doors. See Shipwatch Board of Directors Meeting, April 1, 2005, page 2.

("Exhibit 4"). In 2006 the Board discussed that leaking sliding glass doors continued to be problematic, and the leaking persisted despite repairs with caulk. See Shipwatch Board of Directors Meeting, March 18, 2006, page 10 ("Exhibit 5"). In September 2008, Jernigan recommended Plaintiffs remove and replace the "leaking sliding glass doors" because of problems that had been "on-going" or that had not been funded by Plaintiffs in previous years. Deposition of Jernigan, 332:15- 333:13. ("Exhibit 6"). In her deposition Jernigan testified that leaking sliding glass doors had been a problem at Shipwatch since she returned to manage the property in February 2005. Id., page 219:8-18; ("Exhibit 7"); See also PL009964-009968. ("Exhibit 8").

On May 9, 2007 CCS issued Plaintiffs a report of its inspection of the buildings at the HOA's request, which found that "leaks continue to be a problem at and around the old sliding glass doors on the ocean side and street side of the buildings . . . have repeatedly shown Jernigan and board members these doors that are leaking and . . .sure there are damages occurring in the new metal stud walls with the Durrock Systeme that CSS installed in 2003-2004." ("Exhibit 9"). Schaewe testified he remembered discussing this report with CCS and another member, but did not recall what, if anything the Board did to address CCS' concern. Schaewe 152:17-153:24. ("Exhibit 10"). The Plaintiffs were well aware of water intrusion through leaks in the original sliding glass doors for many years prior to the commencement of this litigation.

B. The Plaintiffs had knowledge of water intrusion around the originally-installed windows on the balconies and end walls.

The Plaintiffs also had notice of water intrusion through the originally installed windows at Shipwatch. In a February 5, 2009 Inspection Report from the general contractor Carolina Concrete Systems to Jernigan it is noted that the fixed panel storefront windows on the balconies showed signs of considerable corrosion and needed to be replaced in the near future. PL0630-0632. ("Exhibit 11"). As noted above, Arnie Schaewe, a Shipwatch board member and unit owner, testified that Plaintiffs knew they had problems with leaks at bay windows in 2003. Deposition of Arnie Schaewe, page 35:9-19. ("Exhibit 12").

C. The Plaintiffs had knowledge of water intrusion around newly-installed sliding glass doors.

In 2005 the Board replaced seventy-two (72) sliding glass doors on floors 1-3 on all four buildings. In 2006 and 2007, Plaintiffs received correspondence directly from Defendants that put Plaintiffs on notice of continued water intrusion issues at the sliding glass doors. On July 10, 2006, Robert Sisnroy, P.E., produced a report to Jernigan explaining the results of his visual survey of "chronic water intrusion" conditions at two of the Shipwatch buildings. Sisnroy stated that based on his observations, "it is evident that chronic water intrusion is occurring adjacent to the sliding glass door installations typically at the south walls." Further, Sisnroy cautioned his recommended repair of installing a sill pan with end dams would only be a temporary solution to the leaks, and a long term solution included installation of new doors on an elevated curb. ("Exhibit 13").

In 2007, the HOA building committee reported: "it has been well known by passed boards that there has been leakage problem[s] with . . . a number of sliding glass doors. . . . The regime has put forth concerted effort over the years to remedy this problem by caulking." See Building Report, March 9, 2007, page 2. ("Exhibit 14"). However, leaks continued at the fourth and fifth floor sliding glass doors, and the Board undertook an investigation to determine "whether [the] leakage is from the doors themselves or from other sources." See Building Committee Report, Shipwatch Homeowners' Meeting, January 20, 2007, page 2 ("Exhibit 15").

Beginning in 2008, the Board began replacing a certain number of leaking sliding glass doors (fourteen on the fourth and fifth floor ocean-side balconies) on an annual basis based mainly upon homeowner complaints. Schaewe, page 78, line 11-page 79, line 6. ("Exhibit 16"). The September 13, 2008 HOA Board meeting minutes (page 8) stated: "Out of the 276 sliding glass doors (which has been an ongoing project for many years) we have replaced 85. The cost is very high, over $10,000 per door as they are not stock doors and must be custom made – the cost is for taking off the old door, replacing and shim the door to fit, plus caulking." The minutes noted leaks had been found around new sliding glass doors ("Exhibit 17").

D. The Plaintiffs had knowledge of water intrusion around newly-installed bay windows

Charleston Glass installed some of the bay windows on the end walls in 2003. Jernigan testified in 2007 she was aware of leaking bay windows. Jernigan 307:7-14. ("Exhibit 18"). In the Winter 2008 Newsletter Jernigan reported a bay window unit had been damaged and water intrusion had caused damage to the interior of the

unit. PL009477 ("Exhibit 19"). The Plaintiffs were therefore on notice that water intrusion was occurring at the bay windows at a time after Charleston Glass installed some of the bay windows.

II. Charleston Glass is entitled to summary judgment based on the applicable statute of limitations.

Plaintiffs' claims are barred by any applicable statute of limitations because they were clearly on notice of their claims before July 12, 2009, as discussed previously. The facts in this case are analogous to Dean v. Ruscon Corporation, 321 S.C. 360, 468 S.E.2d 645 (1996). In that case, Susan Dean purchased a building in Charleston on September 1984 after a contractor had inspected it and found it to be structurally sound. Two months later, she noticed a fine crack in the building façade, which she thought might be related to some pile driving done by Ruscon during construction at another location nearby. She immediately hired expert consultants to examine the crack. Several months later Ms. Dean noticed that the original crack had expanded and the facade in that location was beginning to bulge and buckle. A second crack also had appeared in another location. After being informed that the building was no longer structurally sound, Dean brought suit against Ruscon in 1991. At trial, the court directed a verdict against Dean, finding as a matter of law that the statute of limitations had run.

On appeal, the Supreme Court affirmed, holding that the statute of limitations began to run in November 1984 when Dean initially discovered the crack. The court said, "[because Dean had *notice* in November 1984 that she may have a cause of action against Ruscon, there is no need to toll the statute of limitations beyond

that date. (emphasis in original)." Dean, 321 S.C. at 366, 468 S.E.2d at 647. Further, the court said, "Dean's subsequent failure to act with reasonable diligence in pursuing such claim is no reason to toll the statute of limitations until such time as further damage evolved." Id. Moreover, the court said, "The fact that Dean may not have comprehended in 1984 that the original crack would expand causing the building to ultimately buckle is immaterial." Id.

In a similar case, the court upheld summary judgment for the defendant based on the statute of limitations in Barr v. City of Rock Hill, 330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998). The court held a termite inspection report noting moisture in the crawl space of the Plaintiffs' house was sufficient notice of water damage to start the running of the statute of limitations.

In this case, Plaintiffs' clearly knew about possible claims for damage from water intrusion before July 12, 2009, as evidenced by the deposition testimony of Schaewe, Trombino, and Jernigan. Meeting minutes of the HOA board clearly documented numerous discussions surrounding continued issues involving leaks at the sliding glass doors and attempted piece-meal repairs short of removal and replacement. Moreover, Robert Sisnroy and CCS notified Plaintiffs' of water intrusion issues and resulting damage at certain sliding glass doors before July 12, 2009.

III. The UCC limitations period does not apply to Plaintiffs' warranty claims.

S.C. Code Ann. § 36-2-102 states Chapter 2 of the UCC applies to "transactions in goods." South Carolina courts have rejected the application of the UCC warranties to the sale of buildings. E.g., Lane v. Trenholm Building Co., 267 S.C.

497, 229 S.E.2d 728 (1976) (holding "Article II of the UCC was adopted with the stated purpose to standardize the laws governing transactions involving *personalty")* emphasis added). "Goods," as defined in the UCC, "means all things (including specially manufactured goods) which are moveable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities . . . and things in action. 'Goods' also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty [§ 2-107]." S.C. Code Ann. § 36-2-105(1). Generally, identified things attached to realty cannot be considered goods unless they are "capable of severance without material harm thereto." S.C. Code Ann. § 36-2-107(2).

Plaintiffs' did not buy "goods." The Shipwatch Condominiums themselves are clearly not within the UCC definition of "goods" because they are not "moveable." Furthermore, Plaintiffs' claims regarding deficient or defective construction and repairs to various building components are not "capable of severance without material harm thereto" and, therefore, cannot become "goods" within the UCC definition. This reading of the UCC is fitting and sensible, particularly in view of the related legal precepts of product liability law that require proof of a defect existing in a product as of the time of sale, before any subsequent alterations of the product by others. The repairs by the Defendants at Shipwatch consisted of replacing various building components including exterior cladding, windows, and sliding glass doors. The installation of these materials transformed these materials into an integral part of the realty, different in character than the individual components at the time of sale. Plaintiffs' complain about the

performance of these building components after they were incorporated into the Shipwatch buildings and attached to realty.

In Republic Contracting Corp. v. South Carolina Dept. of Highways and Public Transportation, 332 S.C. 197, 503 S.E.2d 761 (Ct. App. 1998) the court held the three-year statute of limitations of S.C. Ann. § 15-3-5301(1) applied to a common law implied warranty claim. Thus, any common law warranties that may arise under the circumstances of this case would be governed by the three-year statute of limitations set forth in S.C. Code Ann § 15-3-530.

CONCLUSION

For these reasons, Charleston Glass respectfully asks this Court to grant its motion for Summary Judgment. In Jackson v. John Doe, 342 S.C. 552, 556, 537 S.E.2d 567, 569 (Ct. App. 2000) the court acknowledged the policy reasons supporting the enactment and strict enforcement of statutes of limitation and the constitutional responsibility of the courts to effectuate the principles of repose, despite hardship in occasional circumstances. In this case, the undisputed facts prove that the statutory period of limitations expired before Plaintiffs commenced litigation against Charleston Glass. Accordingly, this court should grant summary judgment in favor of Charleston Glass.

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Attorneys for Charleston Glass Company

Charleston, South Carolina
Dec 15, 2015

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☐ mailing, ☐ e-mailing, ☐facsimile, or ☐hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

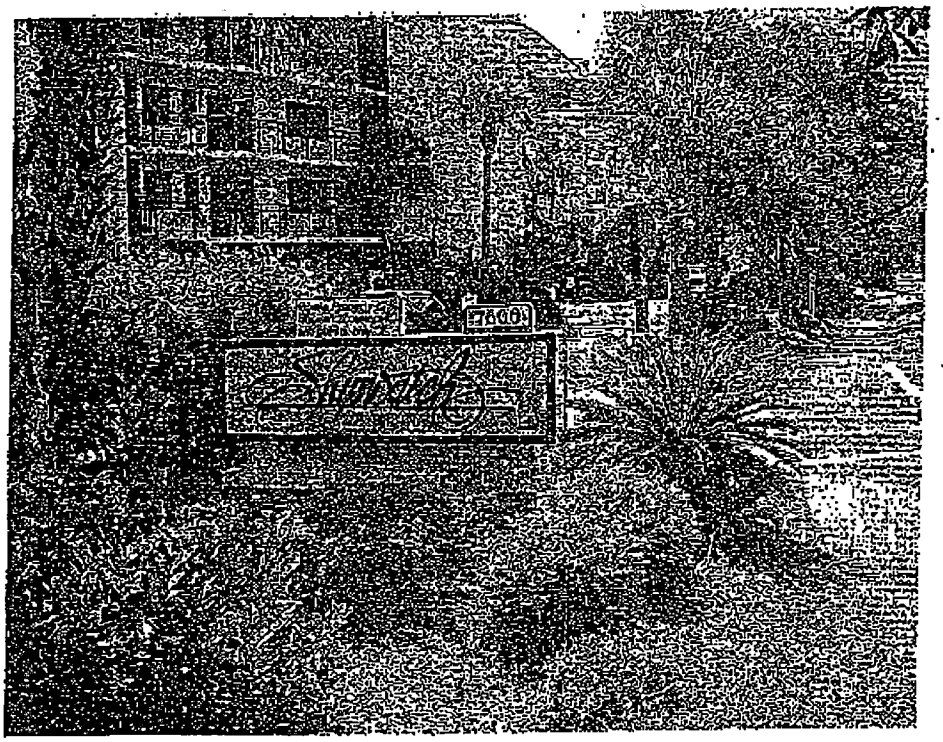
This 15 day of January, 2015

Exhibit 1

Exterior Condition Survey

Shipwatch at Wild Dunes

Shipwatch Horizontal Regime
7600 Palmetto Drive
Isle of Palms, SC



Prepared By:
Terence J. McKelvey, RRO
General Contractor
Environmental Services & Testing²

Date:
October 7, 2002

Observations

Photos

Exterior Condition Survey

Shipwatch at Wild Dunes
Shipwatch Horizontal Regime
7600 Palmetto Drive
Isle of Palms, SC

Tile Roof Information

IRMA

Inverted Roof Membrane Assembly Information

DRICON

FRT Information

Dryvit

Exterior Insulation andFinish System Information

10/07/02

Mold Remediation

Recommended Guidelines

Terence J. McKelvey, RRO, CIE, CMR
1084 Winslow Dr.
James Island, SC 29412
(843) 406-7686 office and fax
(843) 817-8004 mobile

TJM Job #: 600.05
October 7, 2002

Gloria J. May
Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, SC 29451

Re: Exterior Condition Survey
Buildings A, B, C, & D

Dear Gloria;

Pursuant to your request, a visual survey has been performed of selected areas of the buildings of the referenced condominiums. The purpose was to perform an Exterior Condition Survey (ECS) of the buildings and components. The ECS includes observations of the roof, exterior cladding, fenestrations, and side rooms adjacent to the stairwells. The survey was performed over a period of several months and in conjunction with the chimney roof repairs to B-414 & 415, bay window/sliding glass doors and closet survey site visits. In no way does this report identify all of the exterior conditions and deficiencies, nor was it intended to be a complete survey. Information contained herein is of the conditions observed at the time of the site visits. Observed conditions over the period of the ECS may have changed and these changes may not be reflected in the report. Site visits to the above referenced location were made during varied weather conditions of high temperature, wind, and rain. The following report is a summary of findings.

DESCRIPTION

The subject structures, reportedly constructed around 1985, are elevated, five story, oceanfront structures consisting of four buildings. The exterior of the structures are clad with an exterior insulation and finished system (EIFS) reportedly manufactured by Dryvit. The roof coverings for each of the four buildings consist of Monier Classic 100 cementitious tile on the Mansards and a fully adhered forty-five (45) mil Ethylene Propylene Diene Monomer (EPDM) manufactured by Versigard on the parapet walls around the perimeter of each building. An EPDM membrane covers the low-sloped interior roofs of each building. The system covering the interior roofs is known as an inverted roof membrane assembly (IRMA). That is, the EPDM is installed on top of the

structural concrete deck, then the 1-1/2-inch thick closed-cell extruded polystyrene (XPS) insulation board, stone mat fabric cloth and a layer of stone ballast. Traditionally, an EPDM roof membrane has the insulation under the membrane, thus giving this system the name IRMA.
The Buildings suffered wind, water, and projectile damage caused by Hurricane Hugo in September 1989. The magnitude of damage and the scope of repairs from Hurricane Hugo are not known. For orientation purposes of this report, the front elevations of Buildings A, B, C & D are considered to be facing to the West, the rear oceanfront is facing to the east, and the left and right elevations are north and south, respectively.

OBSERVATIONS

The observations are divided into the sections with representative photographs to illustrate the described conditions. Additionally, for the ease of the reader and due to the repeated and similar conditions on Buildings A, B, C, & D, the report identifies common conditions and will only identify specific areas to illustrate individual unit or building conditions.
SECTION I: discusses the roofs and components.
SECTION II: discusses the window and sliding glass door (SGD) units.
SECTION III: discusses the sealant, deck, and wall coatings.
SECTION IV: discusses the metal components.
SUMMARY: summarizes each Section and Estimated Useful Service Life.
RECOMMENDATIONS: gives recommendations for a Scope of Repairs.
CONCLUSION:
PHOTO AND SUPPORT DOCUMENTATION PAGES: shows additional support photographs and support documentation.

SECTION I

Mansards:

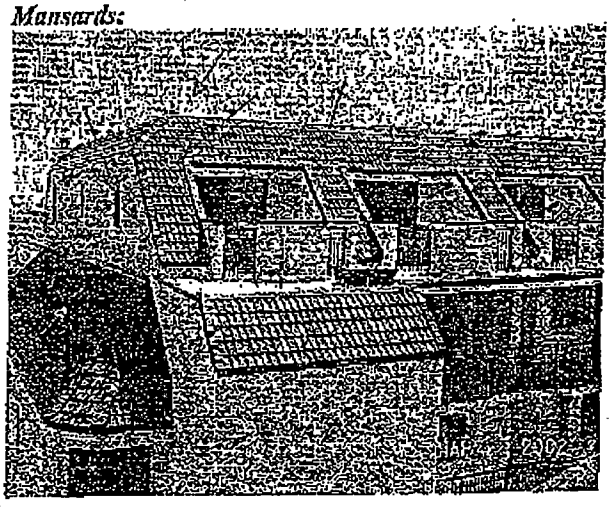


Photo 1: View of the West facing Mansards. Note the numerous architectural features and components that require continual maintenance to ensure proper waterproofing.

Robert M. Stafford, Inc. Roof Investigation report dated April 1997, stated that the cementitious tile is a Monier Classic 100. During the Chimney Roof Repair to the interior Units B-414 & 415 it was observed that the wind clips (hurricane clips) used and installed by Cyclone roofing in 1999, were deficiently installed. As viewed in Photo 2, carbon steel, 6d ringshank, and/or smoothshank nails were used.

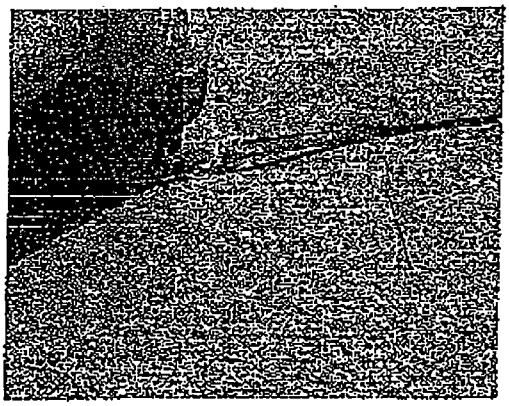


Photo 2: Cyclone installed hurricane clips were easily removed by hand from between the batten and the roof.

The Monier specifications call for two each corrosion resistant, 10d smoothshank nail or screw shank fasteners and one wind clip to be used. Further, the specifications call for the clip to be fastened into the sheathing. Photo 2 illustrates that the clips were deficiently installed by fastening the clip to the vertical side of the batten or inserting the nail between the batten and decking.

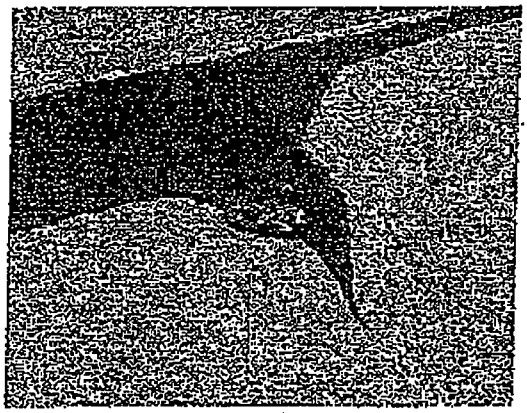


Photo 3: Fastener and clip were extremely corroded. Resistance to high wind up lift would have been minimal.

Metal Cap Flashing:

Metal cap flashing presently installed along the perimeter of the parapet, tenant separation walls, and Mansards is in divergent conditions, many of which are allowing water intrusion and some conditions that may soon allow water intrusion. Numerous conditions such as aged and failed sealant at the laps, screw and nail fasteners backing out, voids in the flashing caused by building movement

due to thermal expansion and contraction. Sealant failure is due to product life, UV exposure, and extreme weather conditions.

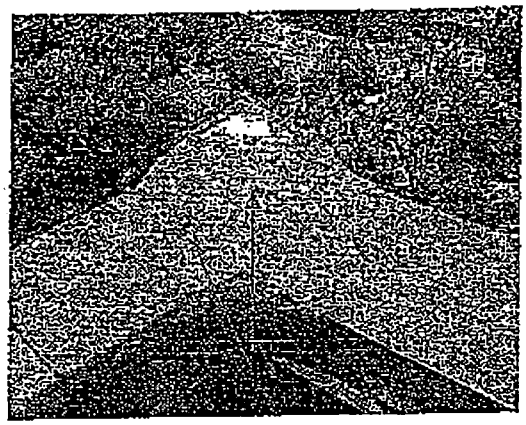


Photo 4: Aged and UV degraded sealant.

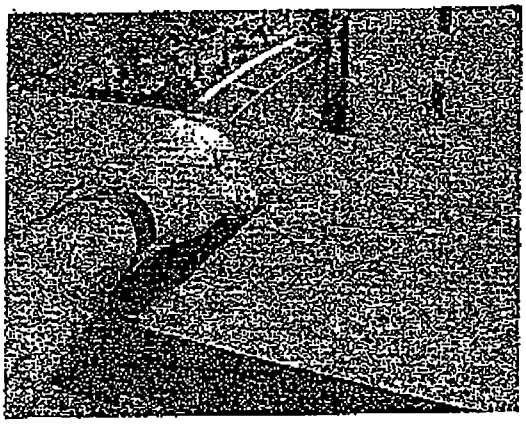


Photo 5: Failed sealant and nail fastener backing out.



Photo 6: Large tear in the metal at the tile hip to corner flashing and in the flexible flashing strip on the coping.

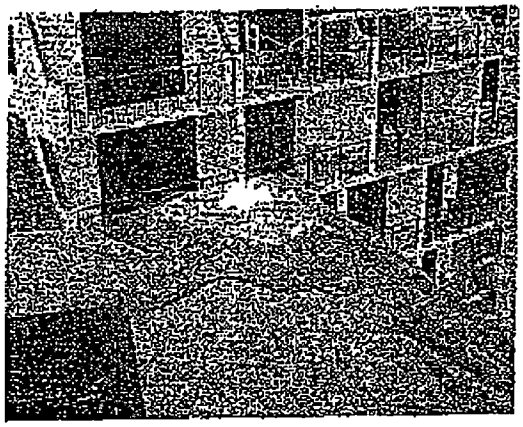


Photo 7: View of ridge tile fastener backing out and aged sealant on the corner-flashing lap. Water intrusion is likely occurring at this location behind the Mansard.

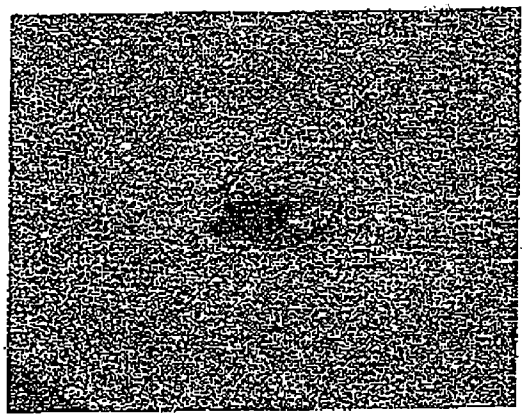


Photo 8: Close up of failed sealant and fastener backing out on the flat coping tile. Water is able to penetrate through the smallest of holes and cause damage to the drywall and wood framing. Additionally, water intrusion will facilitate mold growth.

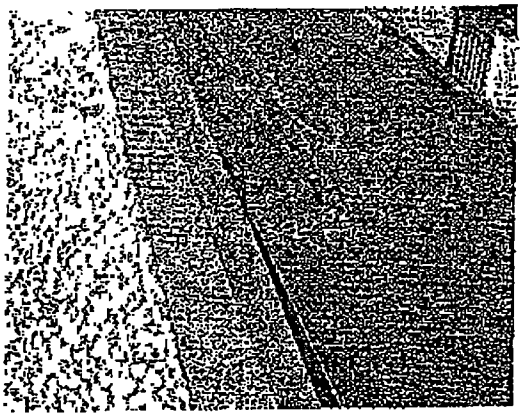


Photo 9: Metal coping has a large split at the break. The sealant is aged and failed. This condition was not typical but may be the result of repairs performed in the adjacent location.

Parapet Wall EPDM:

Midlands Roofing repaired the fully adhered EPDM several years ago. It has thus far has maintained its condition. A few areas were observed to have slight

abrasions and lap sealant failure. No areas of damage to the EPDM parapet were observed that might allow water intrusion.

Tenant Separation Wall Flashing:

Conditions observed were similar in failure to that of the parapet wall flashing. Numerous conditions such as failed sealant at the laps, screw and nail fasteners backing out, and voids in the flashing were observed. These conditions are caused by building movement due to thermal expansion and contraction, UV exposure and long-term age degradation.

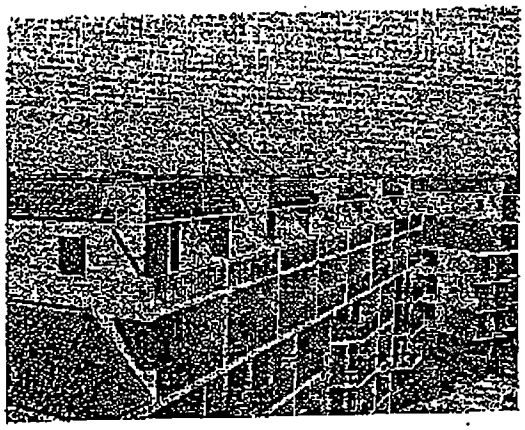


Photo 10: View of the numerous flashing and sealant requirements on the east facing, oceanfront elevation.

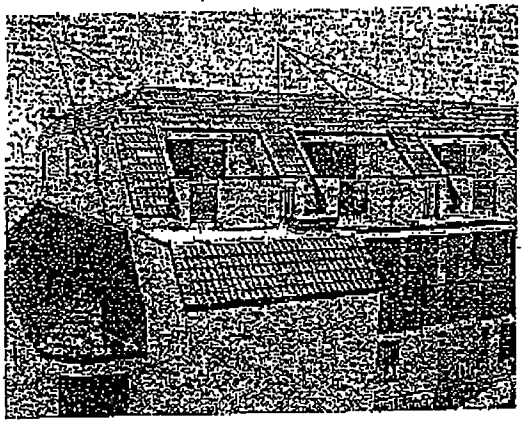


Photo 11: View of the west facing, golf course elevation flashing requirements.

Side Wall and Head Wall Flashing:

Metal flashing (lead and Galvalum) used on the north and south end, trash/storage room roofs and the side walls on the stairwells and oceanfront balconies were accessed by lift for direct close up observations. Photos of these areas, observation from fifth floor windows and from the stairwell roofs revealed numerous deficiencies that are allowing water intrusion. Note in Photo 15, that a

large void in the roof to wall juncture in allowing water intrusion to the South trash room of Building A.

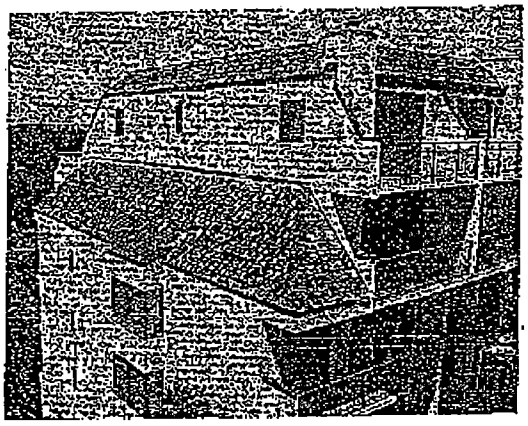


Photo 12: Typical construction on all four buildings. All eight trash rooms had water intrusion stains, deteriorated drywall and /or wood rot and mold growth.

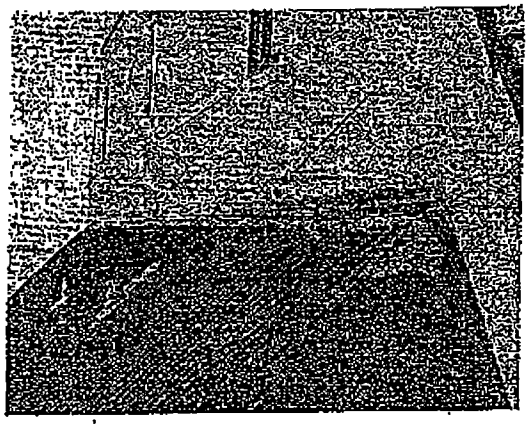


Photo 13: Close up view of the flashing detail on Building D. Water intrusion, stains and mold is present due to failures with the EIFS, windows, sealant, and flashing at the critical junctures.

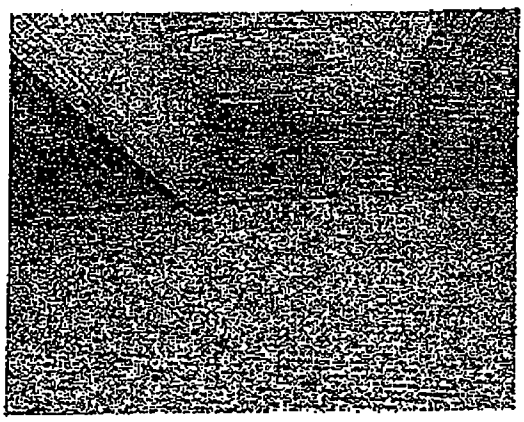


Photo 14: View of the water stains, damaged sheathing, deteriorated drywall, and mold growth in the trash rooms.

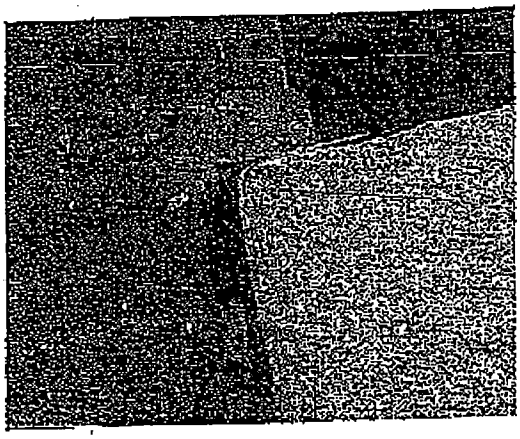


Photo 15: View of missing flashing, unsealed edges of the roof flashing on Building A, south elevation.

Conditions of the end rooms will be discussed later in the report, however, during several site visits and a window water test, water intrusion, water stains and mold was observed in the end rooms due to flashing, sealant, and tile failure.

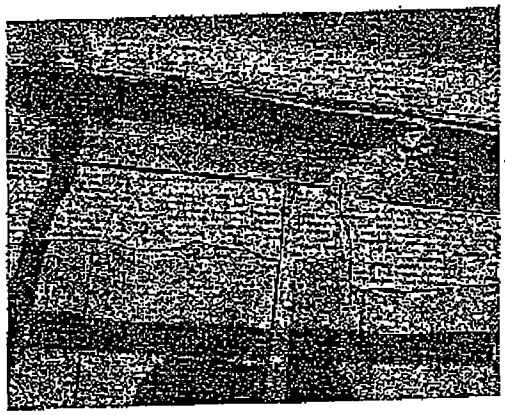


Photo 16: The lead flashing appears to lap onto the tile only three to four inches. Industry standard for tile installation calls for a minimum of six inches.

The lead head flashing was sealed to the tile with a clear type of sealant, possibly silicone. The lead flashing is counter-flashed by a painted galvanized aluminum (Galvalum) metal flashing. In numerous locations checked on Building C, the sealant had lost its adhesion to the lead. The laps and exposed areas of the flashing and tile appear to be caulked with a polyurethane type of sealant. All the exposed sealant exhibited cracking, adhesive, cohesive failure, and loss of bond strength at the laps as viewed in the photo above.

Closer observation revealed that the lead flashing was installed to cover a large void between the tile and the EIFS wall and wall framing as viewed in the photo below.

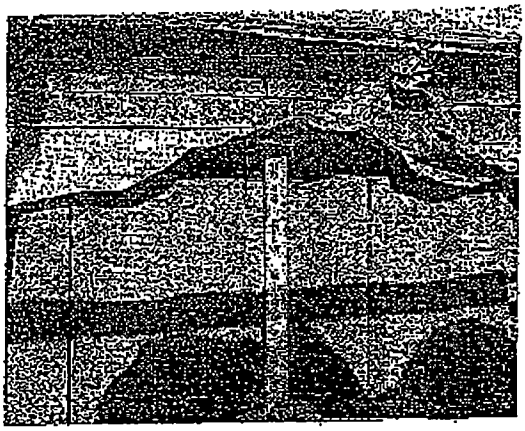


Photo 17: Closer observation revealed a two-inch void that is allowing water intrusion. The lead flashing overlaps the tile 1 1/2 inches.

The void appears to be from original construction, as viewed in Photo 18 below, the void allows water intrusion to the trash room and units below through the numerous areas of failed sealant and inadequate overlaps in the flashing.

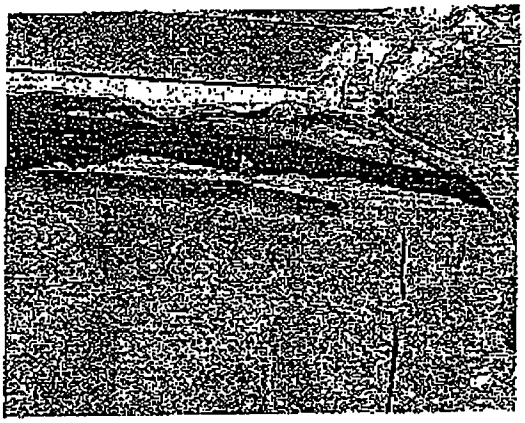


Photo 18: Void between side wall and tile roof.

Termination of the trash room roof and stairwell side wall flashing varied by Building. Lack of properly installed kick out flashing at the terminations has left the EIFS clad cement block walls susceptible to water intrusion and trapped moisture. Specifically, Building A's south elevation, side wall termination was not properly flashed or sealed, as viewed in the Photo 19.

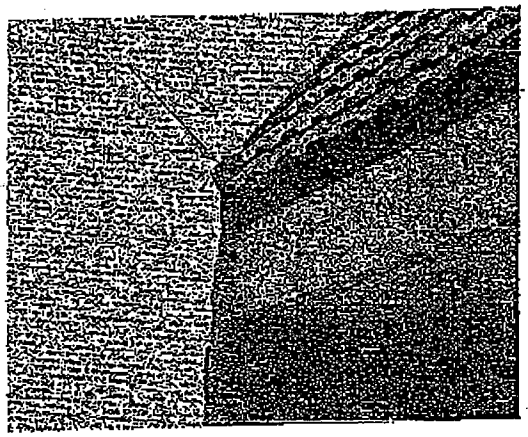


Photo 19: Building A, south elevation, roof to wall juncture. Note the missing counter flashing and unsealed edges of the roof flashing.

Water damage to the rafters, fascia block and rafter ledger has allowed wood rot to occur. This condition under the heavy load of the tile, wood rot to the roof framing, can cause extra stress and movement to the adjacent framing members and roof components. These side wall areas of water intrusion are contributing to the drywall damage to the closets on the three floors below.

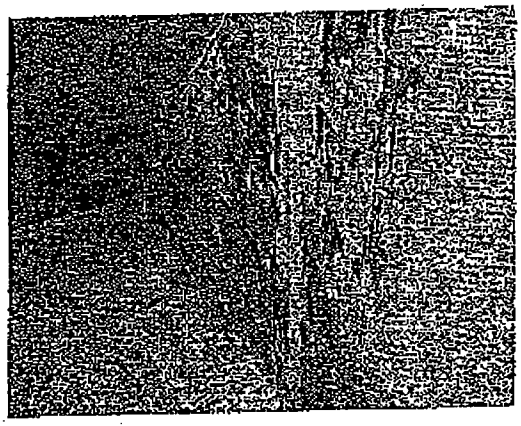


Photo 20: View of the interior of the trash room of Building A. This roof to stairwell juncture has had a long-term leak that caused wood rot and extreme mold growth.

Chimney Caps:

All twenty metal chimney caps have varying degrees of corrosion. The present condition of the caps may be allowing water intrusion behind the EIFS cladding. In most cases, the fasteners and sealant used to secure and seal the caps have corroded to the point that all need replacing. Additionally, mineral deposits from the corrosion have stained the EIFS and some of the fifth floor balconies.

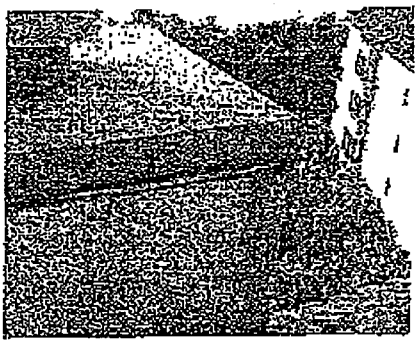


Photo 21: The galvanized chimney caps have heavy corrosion and are in need of replacement.

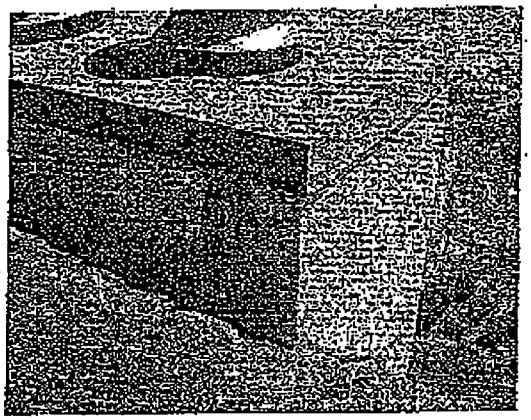


Photo 22: The galvanized caps are deteriorating from corrosion. This is a typical condition.

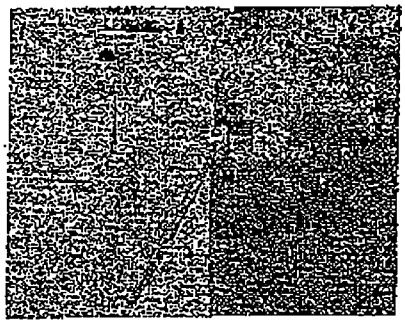


Photo 23: Typical screw fastener backing out, and aged sealant on the chimney caps.

Waste and Vent PVC Pipes:

Polyvinyl chloride (PVC) vent pipes protruding through the IRMA were repaired and re-flashed with Sealoflex several years ago during the parapet wall EPDM repairs.

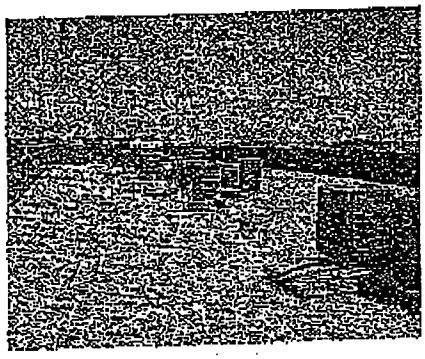


Photo 24: Typical overview of the main roof top components and the PVC pipes.

PVC vent pipes out side the IRMA are typically wrapped with a lead-flashing boot. These vent pipes protruding through the tile roofs were observed from fifth floor windows, stairwell roofs and from a high lift.

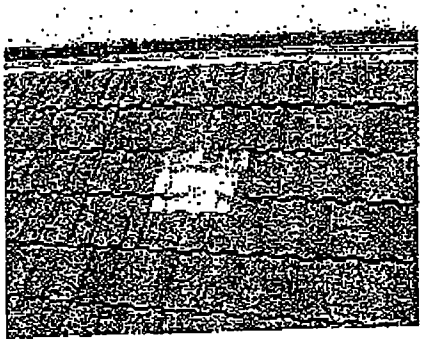


Photo 25: Typical PVC vent pipe outside the IRMA.

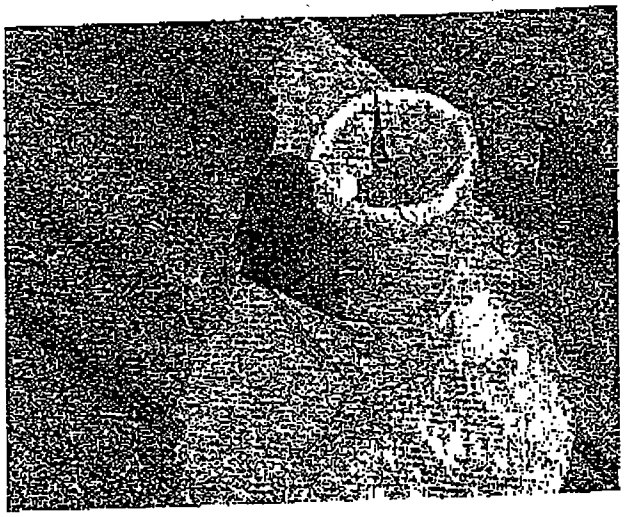


Photo 26: Close up view of the lead boot over the PVC vent pipe.

The vent pipe flashing and sealant appears to be in a deteriorated condition. The PVC pipes appear to be in acceptable condition at the time of the survey, however, long term exposure to ultraviolet (UV) rays cause the loss of plasticizers in the PVC causing it to become brittle. During repairs of any type on the roofs,

if an object hits the pipes they may crack below the visual line of site and allow water intrusion through the roof system.

IRMA & Roof Top Components:

As previously discussed, the roof system is inverted. Roof drains are located on the interior of the roof and protected by metal screen covers. At the time of the ECS, all roof drains and drain flashing appeared to be functioning as designed with no reported leaks or back-ups associated with them.

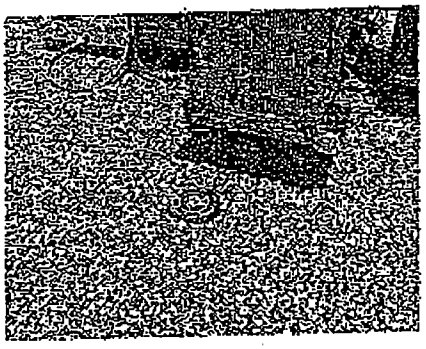


Photo 27: View of typical roof drain near rooftop HVAC units

During remediation of roof components, a through inspection of each drain and a water or smoke pressure test may be recommended. The pressure test could help determine if leakage is occurring within the building envelope.

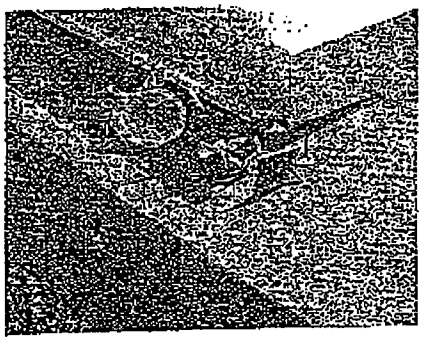


Photo 28: View of debris discarded on the roof.

Debris from various types of work performed on the roofs had been discarded on the roof. Larger objects such as old HVAC components are easily picked up and properly disposed of. Small objects such as glass, wire and fasteners as viewed in Photo 28, that are not picked up may eventually wear into the membrane and cause a failure. It is imperative that roof top technicians remove all debris.

The perimeters of the IRMA to parapet wall junctures were checked and repaired several years ago. At the time of the ECS, no voids were observed nor were any leaks reported that would be attributed to the failure of the IRMA. Reportedly,

the IRMA is the original system installed at the time of construction, circa 1985. At the time of the survey, the IRMA is functioning as designed.

Additional roof top components such as the HVAC units and gas lines were not surveyed.

North and South End Wall Tile Roofs:

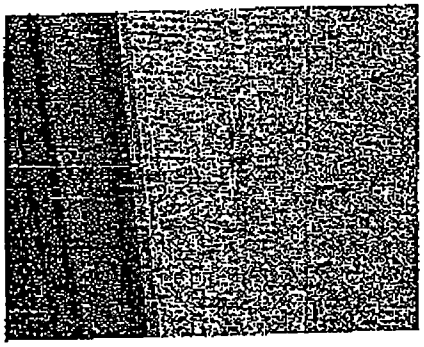


Photo 29: View of DRICON identification stamp on rafter.

Roof framing is of wood construction. The plywood sheathing and 2 x 8 rafters are composed of a Fire Retardant Treated (FRT) material by DRICON and COX as viewed in Photo 29. FRT has been known to cause the wood members to fail under certain conditions. A white powdery substance, similar to efflorescence was noted to be on the plywood sheathing.

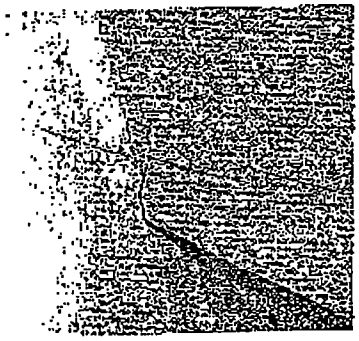


Photo 30: Large split in the FRT 2 x 8 rafter.

During the ECS, minor sheathing failures (delaminated plies) were observed on the underside of the entire end wall roofs from the trash rooms. Several rafters were observed to have large splits that may be indicative to FRT failure also. Further investigations of the FRT and testing the wood for structural integrity should be performed. The tests consist of removing a small section of rafter material and sending it to a laboratory for chemical profiling and strength/loss tests. Results may vary from building to building. Numerous water stains were observed on the sheathing. They appear to be generated from a combination of EIFS, window, wall flashing, and sealant failures.

Stairwell Roofs, Access Hatch, Main Roof (IRMA) Access Ladders, and Elevator Roofs:

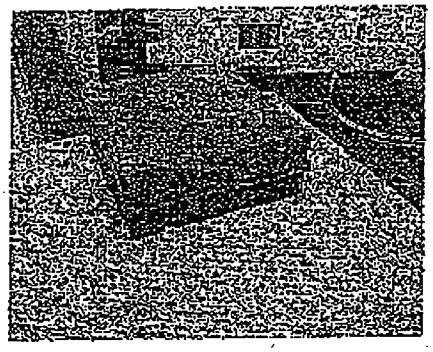


Photo 31: View of the stairwell roof hatch.

The stairwell flat roofs were constructed of concrete. On the front elevation of the stairwells is a short Mansard covered with tile. The drip edge and head flashing is metal. The slope of the flat concrete roofs is such that water is ponding. Waterproof coating failures have allowed water intrusion into several of the stairwell interiors causing mold and drywall damage to the ceilings, specifically on Buildings C & D. Water leakage into the steel and concrete stairs constitutes a life/safety and slip and fall issue. Waterproof coating on the stairwell roofs has been delaminating and failing since the coating was applied. The coating failures, common to all of the roofs, appear to be in conjunction with and may be related to additional component failures such as the metal flashing, fastener corrosion, and sealant degradation. During the remediation and waterproofing, low areas that allow water to pond should be remediated and sloped for proper drainage.

The roof access hatches installed into the stairwell concrete roofs have been flashed with a sixty-mil (60) EPDM (See Photo above). The EPDM has aged and cracked from UV exposure. Bond strength of the adhesive used to fasten the EPDM to the vertical wall of the access hatch is failing and in need of repair and/or replacement in several locations. On Building D, south stairwell roof, the flashing has become detached and filled with rainwater. Temporary repairs were made to the EPDM maintain the roof integrity. However, water seepage through failed sealant and cracks in the EPDM will cause further degradation.

Main roof access ladders are located at the south end of each building by way of the stairwell hatch. The ladders appear to be constructed of cold-rolled, non-galvanized steel. The ladders have had treatment to resist corrosion and in the past five years have had new stainless steel platforms installed.

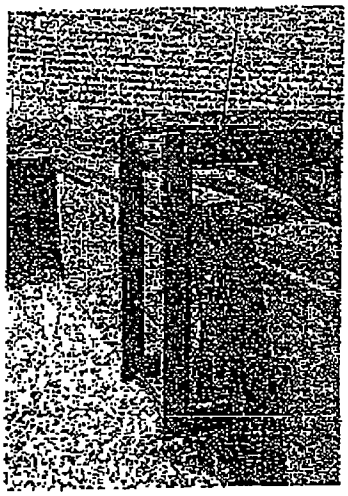


Photo 32: Typical roof top view of the access ladder. Paint delamination and corrosion is evident on all four ladders.

The ladder baseplate connections to the concrete deck exhibit moderate to heavy corrosion to weather exposure.

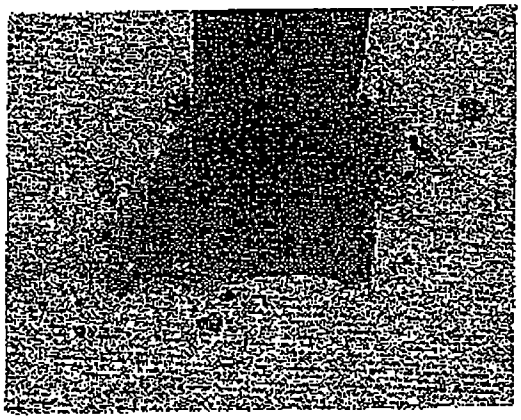


Photo 33: Heavy corrosion of the baseplate and anchor bolts to the concrete deck requires remediation as soon as possible.

Anchor bolts and nuts used to fasten the baseplate exhibit heavy to extreme corrosion. During remediation and waterproofing the access, ladders should be treated for corrosion and the base plate and anchor bolts should checked for failures.

The elevator roofs have been constructed in the same manor as the stairwell roofs and have the same waterproofing system. The areas of failure include the flashing interface with the tile and low-sloped roof. Fasteners used to attach the flashing to the roof deck are backing out and exhibit corrosion. The waterproof coating appears to be holding up, but is at the end of its useful life cycle.

SECTION II

Windows and Sliding Glass Doors Units:

Bay windows, horizontal sliding, fixed and sliding glass door units have on numerous site visits been examined. They have been examined for, but not limited to, the following: water leakage to the interior, insulated glass seal breakage (foggy and/or condensation), mold growth adjacent to unit, stains on the wall/ wallpaper, stains on the ceiling, wet carpet, rust stains, deteriorated wood base trim and howling due to wind. Bay window and SGD replacement has been in the process for several years. Specific units and the observations are listed below in the chart. Some corrections have already taken place and some are currently in the working process. Of the conditions listed above, the most pervasive problems with the units were found to be the following:

- Exterior sealant deterioration at the window and EIFS junctures
- Exterior sealant deterioration in the building control and expansion joints
- Lack of proper head and sill pan flashing
- Weep holes covered with sealant, forcing water to dam up into the hollow metal frames and/or seep to the wall cavity and interior.

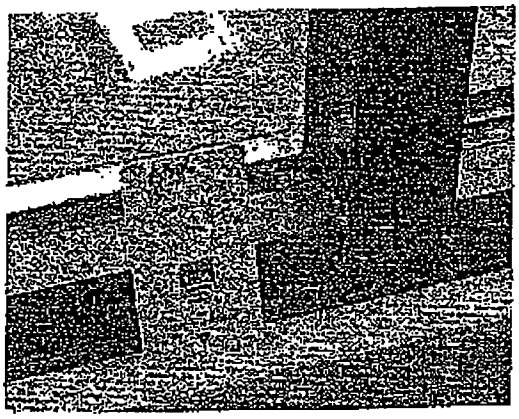


Photo 34: Visual inspection during a rainstorm revealed leakage at the window frame into Unit A-306

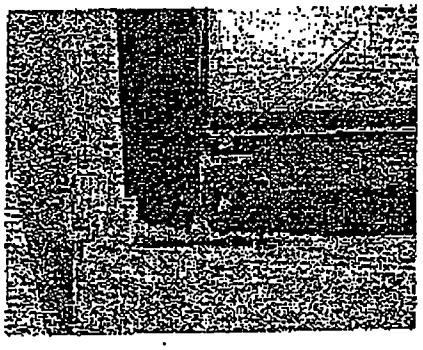


Photo 35: Water leakage at Bay Windows has been a long-term problem. Damage to the drywall, wall treatments, and metal studs has been evident below the window units during replacement.

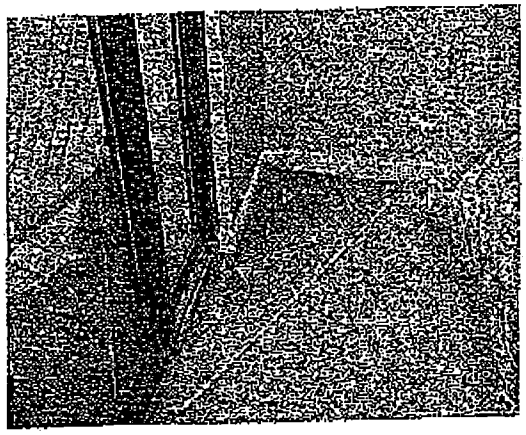


Photo 36: Water leakage at the oceanfront SGD units has also been a long-term problem. The age of the units appear to be around twelve years. Deficient SGD installation and failed sealant has allowed water intrusion to damage interior treatments and allow mold growth.

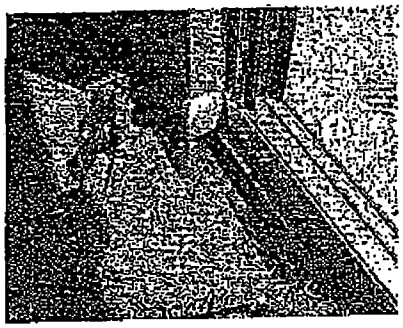
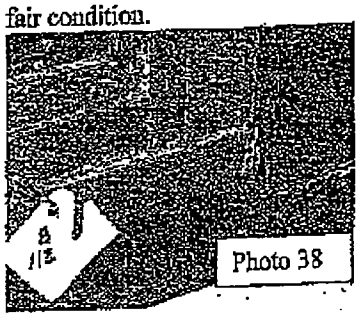
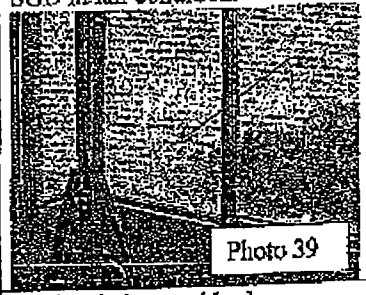


Photo 37: Additional view of damage to the interior treatments at the SGD units.

Bay Window & Sliding Glass Door Conditions were surveyed during the site visit on July 16, 2002 according to the designated list provided by Shipwatch management. Units that have not been surveyed may have similar conditions and should be addressed before remediation and waterproofing.

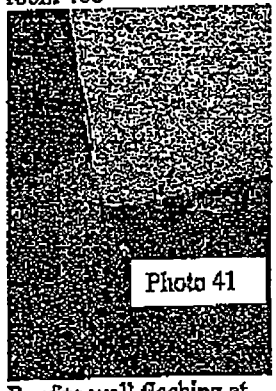
Building & Unit	Condition	Recommendations
A-101	Replaced	
A-201	Replaced	
A-201	Replaced	
A-106	Not accessible	
A-206	Replacement glass on order per Gloria.	
A-306	Bay window leaks to the interior, SGD in fair condition.	Replace Bay window as soon as possible. Watch for mold growth in the wall cavity.
B-107	Bay window leaks at the frame, water in the sill track, efflorescence at the mitered corners. SGD in fair condition.	Replace Bay window as soon as possible. Watch for mold growth in the wall cavity.

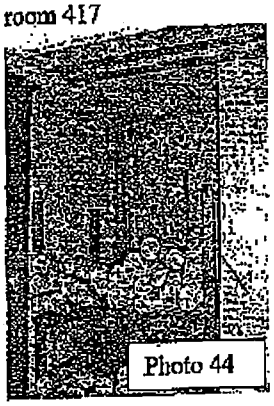
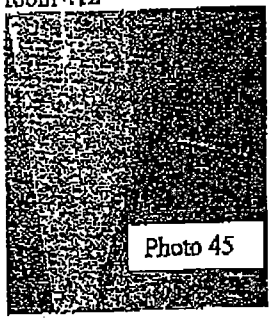
B-112	Bay window leaks at the frame, water in the sill track. Mold and efflorescence observed. SGD in fair condition.  Photo 38	Replace Bay window as soon as possible. Watch for mold growth in the wall cavity.
B-212	Replacement glass on order per Gloria.	
B-312	An exterior surface irregularity allows wind to cause howling. No leaks observed.	Caulk exterior to fill voids. Fill weep holes with cotton wicks.
C-114	Heavy mold growth on interior walls adjacent to SGD. Deteriorated drywall and base trim. A deep void in the concrete was present below the SGD threshold. Fills with water during rainstorms. Water test performed revealed leakage at frame and track.	Replace SGD as soon as possible.
C-213	Bay window leaks at the frame, water in the sill track. Mold and efflorescence observed. SGD in fair condition.	Replace Bay window as soon as possible. Watch for mold growth in the wall cavity.
C-313	Bay window leaks at the frame, water in the sill track. Mold and efflorescence observed. SGD in fair condition.	Replace Bay window as soon as possible. Watch for mold growth in the wall cavity.
C-118	Unit on order per Gloria.	
C-218	Unit on order per Gloria.	
C-318	Unit on order per Gloria.	
D-119	Bay window leaks at the frame, water in the sill track. Mold and efflorescence observed. SGD in fair condition.	Replace Bay window as soon as possible. Watch for mold growth in the wall cavity.

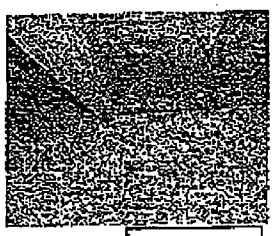
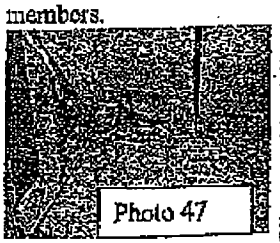
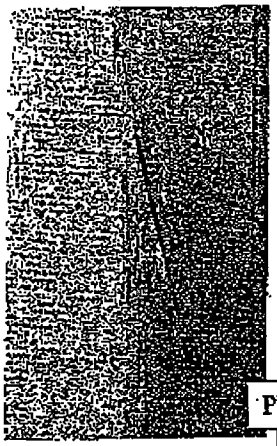
D-219	Insulated glass seal broken, window is foggy, leaks at the frame, water in the sill track. Mold and efflorescence observed. SGD in fair condition.  Photo 39	Replace Bay window as soon as possible. Watch for mold growth in the wall cavity.
D-319	Insulated glass seal broken, window is foggy, leaks at the frame, water in the sill track. Mold and efflorescence observed. SGD in fair condition.	Replace Bay window as soon as possible. Watch for mold growth in the wall cavity.
D-124	On order per Gloria	
D-224	On order per Gloria	
D-324	Unit foggy, water on interior from window leak at frame. On order per Gloria.	

Additional Conditions

Building & Unit	Condition	Recommendation
D-124	Rear deck slopes to SGD at Master bedroom. Carpet wet after rainstorm.	Re-slope deck during remediation and waterproofing.
D-223	SGD in poor condition.	Consider replacement in conjunction with remediation and waterproofing.
D-429	West (rear) SGD water leakage to interior. Likely sealant failure. Damage to drywall at left return wall. Sill track needs cleaning.	Investigate tenant separation wall flashing, possible new door installation during remediation and waterproofing.
D-322	Carpet being installed. Water stains from leakage to interior observed at SGD oceanfront.	

C-421	SGD in fair condition. No leaks observed.	SGD sill track needs cleaning and sealant applied at jamb sill juncture.
C-423	SGD units in poor condition. Sealant around doors failing. Damage to drywall on jambs.	SGD sill tracks need cleaning and sealant applied at jamb sill juncture.
Elevator curtain walls Buildings A, B, C, & D  Photo 40	Glazing gaskets and sealant are in poor and failing condition. Efflorescence observed at the mitered corners. During site visits that had rainy conditions, water was observed at several of the horizontal frames on each building.	Remove and install new gaskets and sealant to window frames. To properly flash sills, removal of the glass may be required.
Closets Building A	**Condition**	**Recommendation**
106, 206, 306, & trash room 406  Photo 41 Roof to wall flashing at A-406. Note the lack of counter flashing and sealant at the termination. This deficiency is allowing water intrusion to the rooms below.	Visible mold growth, deteriorated drywall, and delaminated paint from water/moisture intrusion. Moisture entering through void at roof to wall juncture on 4th floor.  Photo 42 Trash room A-406. Note the massive mold growth. The sheathing, rafter, and ledger have rot.	Repair roof to wall flashing. Mold remediation should be performed by a Certified Mold Remediator (CMR) using industry standard guidelines as delineated by the Environmental Protection Agency and the Indoor Air Quality Association.

Closets Building A	Condition	Recommendations
101, 201, 301, & Trash room 401.  Photo 43	Water intrusion to interior of trash room and units below due to flashing and sealant failure. Wood rot to roof framing members of trash room. Minor paint delaminating and mold in closets.	Repair roof to wall flashing. Mold remediation should be performed by a Certified Mold Remediator (CMR) using industry standard guidelines as delineated by the Environmental Protection Agency and the Indoor Air Quality Association.
Closets Building B	**Condition**	**Recommendations**
107, 207, 307, & Trash room 417  Photo 44	Water intrusion to interior of trash room and units below due to flashing and sealant failure. Mold and drywall deterioration. Wood rot to roof framing members of trash room. Minor paint delaminating and mold in closets.	Repair roof to wall flashing. Mold remediation should be performed by a Certified Mold Remediator (CMR) using industry standard guidelines as delineated by the Environmental Protection Agency and the Indoor Air Quality Association.
Closets Building B	**Condition**	**Recommendations**
112, 212, 312, & Trash room 412  Photo 45	Water intrusion to interior of trash room and units below, due to flashing and sealant failure. Mold and drywall deterioration. Wood rot to roof framing members of trash room. Minor paint delaminating and mold in closets below the trash room.	Repair roof to wall flashing. Mold remediation should be performed by a Certified Mold Remediator (CMR) using industry standard guidelines as delineated by the Environmental Protection Agency and the Indoor Air Quality Association.

Closets Building B	Condition	Recommendations
118, 218, 318, & trash room 424  Photo 46	Water intrusion to interior of trash room on the east and west elevations, due to flashing and sealant deficiencies. Mold and drywall deterioration. No stains observed in the units below. Minor paint delaminating in closets. Wood rot to roof framing members.  Photo 47	Repair roof to wall flashing. Mold remediation should be performed by a Certified Mold Remediator (CMR) using industry standard guidelines as delineated by the Environmental Protection Agency and the Indoor Air Quality Association.
Closets Building C	**Condition**	**Recommendations**
113, 213, 313, & Trash room 417  Photo 48	Water intrusion to interior of trash room on the east and west elevations, due to flashing and sealant deficiencies. Mold and drywall deterioration. No stains observed in the units below. Minor paint delaminating in closets. Could not access complete attic area due to firewall.	Repair roof to wall flashing. Mold remediation should be performed by a Certified Mold Remediator (CMR) using industry standard guidelines as delineated by the Environmental Protection Agency and the Indoor Air Quality Association.
Closets Building D	**Condition**	**Recommendation**
113, 213, 313, & Trash room of 417	Heavy mold growth on drywall at north end Trash room. Closets below in fair condition.	Repair roof to wall flashing. Mold remediation should be performed by a Certified Mold Remediator (CMR)

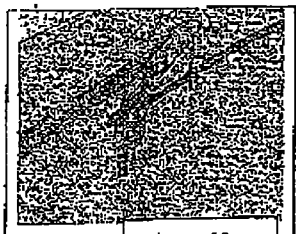


Photo 49

using industry standard guidelines as delineated by the Environmental Protection Agency and the Indoor Air Quality Association.

SECTION III

Sealant, Deck and Wall Coatings:

Caulking is considered the first line of defense against water intrusion. Proper caulking techniques combined with the best available sealant for the building components is one of the essential elements for protecting your investment.

The existing sealant on the metal coping, tile roof, flashing, around the windows and doors, deck to building component terminations and EIFS sealant joints is in poor and failing condition. The sealant has lost its adhesive and cohesive bonding because it is aged, and suffers from UV degradation. All the sealant observed has exceeded the useful service life and is in need of replacement to help prevent further water intrusion.

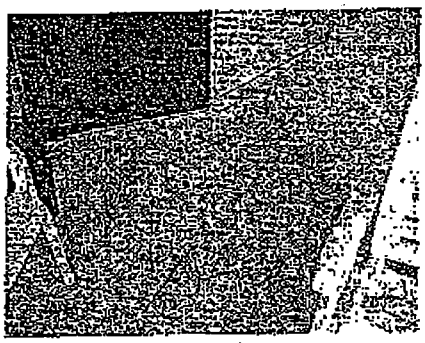


Photo 50: Coating failure at the balconies and along the walkways. Fifth floor, west facing balconies and first through fifth oceanfront, east facing balconies are often sloped to the units. This allows water to pond and seep into the units causing interior damages.

The deck and wall coatings were applied nearly five years ago by Spec Tech Waterproofing Systems. The deck-coating product is a Sonoguard Traffic Deck Coating manufactured by Sonneborn. Within a year of the completion of the deck, coating complaints were made of deck coating failure. The top coat, a one component aliphatic moisture curing urethane, (Sonneborn specification) was peeling (delaminating) away from the base coat. Additionally, the base coat was to have had a skid resistant aggregate (18-30 mesh silica sand) broadcast into the wet base coat. On several occasions, samples of the top coat were removed from the decks. A cursory review by several experts provided the consensus that; the base coat was not properly prepared to receive the top coat, and that the top coat did not fully encapsulate the aggregate.

To my knowledge, the coating failure condition has not been fully investigated to determine the cause. Reportedly, after site visits and conversations with the manager and the manufacturer's representative, Sonneborn supplied additional product and Spec Tech, the applicator returned to re-coat areas of failure. The delaminated coating areas were in front of the elevators, walk ways to the front doors of the units, and low/improperly sloped areas in the concrete decks that allow water to pond. The most significant problem areas with the coating continued to resist the repair attempts. The deck coating is in poor and failed condition and is in need to replacement. Low and improperly sloped concrete conditions must be remediated in order to have a successful waterproofing system installed.

The EIFS wall coating product is a Sonocoat Wall coating System manufactured by Sonneborn. Specifically, the proposed coating product was to be a Hydrocide Colorflex, Hi-Build Elastomeric. The wall coating appears to be performing as designed. The EIFS coating is chalky from UV degradation, but had no observed delaminated failure during my site visits for the ECS. The useful service life of a wall coating, when properly applied, can usually be extended beyond the specified warranty conditions. In Shipwatch's case, it likely that a re-coat is not necessary for another year, maybe two. However, due to other waterproofing and component failure it is recommended that a new wall coating be applied in conjunction with the deck and waterproofing remediation.

SECTION IV

Metal Components:

Oxidation in the form corrosion and rust was observed on nearly all of the structural/non-structural metal components, fasteners, and flashing. Specifically, the steel door frames at the jamb to deck juncture, anchor bolts and nuts that secure the metal awnings, access ladders and hatches, stairs, flashing and chimney caps.

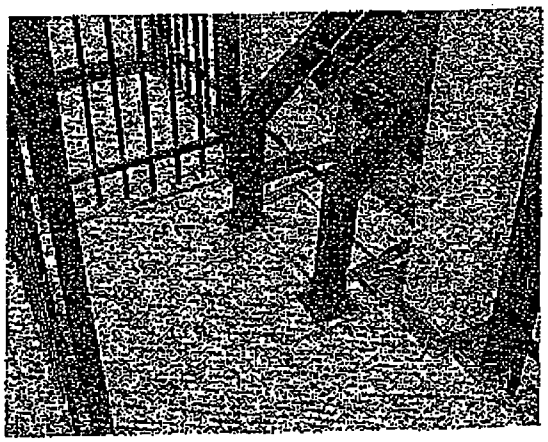


Photo 51: All four access ladders have extreme corrosion at the baseplate to deck connection.

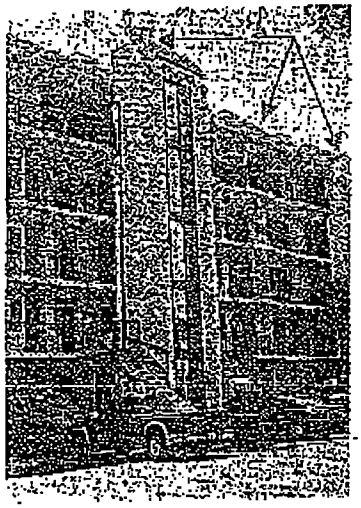


Photo 52: Front elevation Building C. As noted above, the metal components exhibit corrosion. The red pointers illustrate the numerous areas that require remediation. They are, but not limited to, fasteners and flashing, steel doorframes at the jamb to deck juncture, anchor bolts, and nuts that secure the metal awnings, access ladders and hatches, stairs, flashing and chimney caps.

Metal guardrails that accommodate the walkways and balconies were re-coated several years ago by Spec Tech. At the time of the ECS, it appears that the coating is protecting the surface from corrosion. It should be noted that abrasions on several of the balcony top rails and walkway guardrails might begin to oxidize and cause further coating failure adjacent to those areas. The abrasions appear to be from normal wearing attributed to vacation rental clientele. However, on several occasions, I was present during an interior remodeling and/or carpet cleaning. It was observed that the remodeling contractor used a rope over the railing to lift and lower bulk items. The carpet cleaners used a metal hook for holding the water and vacuums hose. In both cases, the coating was scraped off to the bare metal, with no protection provided to prevent this. It is recommended that guidelines and procedures be established to protect the Shipwatch owner's investment and that all service companies agree to comply.

Metal downspout fasteners penetrate the EIFS cladding of the elevator tower. The substrate of the tower is a concrete masonry unit wall (CMU). Several fasteners on the downspout runs have corroded. The voids left by the corroded or backed out fasteners allow water intrusion behind the cladding. The cladding stops on top of the first floor roof/deck over the two electrical rooms on north and south side of the towers. On several site visits after a rainstorm, close observation of Building C revealed water seepage from behind the EIFS on the CMU wall of the north room, below the downspout. Voids were filled with a polyurethane sealant and the seepage stopped.

SUMMARY

Summary of each Section, Estimated Useful Service Life, Recommendations for a Scope of Repairs, and Conclusion.

Discussion of Section I

Roofs and Components:

The Monier Classic 100 tile is made of cementitious material. The remaining service life of the tile is a minimum of 10 to 20 years. It is likely that the tile itself could remain serviceable for many more years after that. No data was available for the exact service life of the tile. The fasteners used for the hurricane clips will likely corrode and fail before the tile.
The hip, rake, head and cave attachment, flashing, mortar, weatherblock, and sealant should be checked on a yearly program after the hurricane season to identify loose or failed components and waterproofing. Remediation should be prompt.

Roof areas that will exhibit accelerated tile failure such as looseness or slippage are those previously identified with flashing and sealant deficiencies that allow water intrusion.

The trash rooms and closets identified with water intrusion, mold growth, and wood rot to the structural framing will require immediate remediation to stop further deterioration.

Metal Cap Flashing:

The cap flashing along the perimeter of the Mansards, tenant separation, and rear elevation privacy walls are in fair to poor condition. The juncture and lap sealant has aged and failed. Nail pops, separation from the walls and tile, and voids in the flashing have allowed water intrusion to damage interior finishes. It is also likely that inner wall components such as metal studs, insulation, and drywall sheathing may suffer damage due to these failures.

The remaining useful service life of the metal flashing would be extended another 4 to 5 years if remediation were to be performed. In lieu of total replacement of the metal cap flashing, all caulking will be required to be removed and replaced. Laps and junctures should be patched with a Silicone strip to accommodate building movement. Flashing that has numerous fasteners and/or break failures will require replacement accordingly.

Parapet Wall EPDM:

The EPDM is in good to fair condition. Lap sealant and patches appeared to be holding up to the UV exposure without observable deterioration. Service life

appears to be another 4 to 5 years, with yearly inspections to identify failures as the components age. Remediation should be prompt.

Tenant Separation Wall:

As previously discussed, the tenant wall flashing is in similar condition and needs to be addressed with the parapet flashing. However, lead counter flashing at the head of the separation walls is in fair to poor condition. Numerous splits in the lead along with aged and failed sealant are allowing water intrusion to the bordering walls below. These conditions require immediate remediation.

Side Wall and Head Wall Flashing:

Deficient flashing, and aged and failed caulking has allowed water intrusion to the fourth floor trash rooms and closets below. Deteriorated conditions due to water intrusion require immediate remediation. There is no remaining service life of the flashing in its present condition. All the trash rooms exhibited water intrusion, mold and drywall and/or wood framing deterioration. As noted, the lead flashing counter flashes the tile with only 1 to 2 inches of protection. Caulking along the EIFS wall and tile has failed. As much as 50 % of the flashing may require removal and replacement. The flashing laps and abutments to the EIFS and tile should be carefully inspected. Deteriorated components and materials such as framing, tile, and flashing require remediation to ensure waterproofing of the rooms below. The installation of additional flashing, to bridge the void between the EIFS and tile, will be required. Kick out flashing with the proper configuration and dimensions should be installed to the required roof to wall junctures.

Chimney Caps:

All twenty chimney caps exhibit varying degrees of corrosion and deficient installation. The remaining service life for each cap is less than one year. In their present condition, the caps will continue to deteriorate and allow water intrusion to the chimney chase. Further deterioration to the metal studs and drywall sheathing will occur if the caps are not replaced. (As previously reported, deficiently installed flashing is allowing water intrusion to the chase. Remediation to that issue is in progress). Several caps have heavy corrosion and the run off is staining the chimney cladding and decks. Chimney cap replacement should take place with the flashing remediation.

Waste and Vent PVC Pipes:

The remaining service life for protected pipes may be as much as 4 to 5 years if re-coated. If not re-coated, the remaining service life is as long as the protection from UV remains in tact. The IRMA pipe penetrations are presently coated with Sealoflex waterproofing. After inspection of each pipe and the roof penetration, the pipes should again be coated with the Sealoflex waterproofing. This will

extend the approximate service life to another 4 to 5 years. PVC pipes outside the IRMA are covered with a lead-flashing boot. Conditions of the lead boots varied from good to poor. During remediation, all pipes should be inspected and remediated accordingly.

IRMA & Roof Top Components:

If maintained, the remaining service life of the IRMA appears to be another 4 to 5 years. However, the roof system is approximately 17 years of age and has weathered numerous storm events. Abrasion and shrinkage related repairs extended the service life several years ago and aided its present condition. With yearly inspections and immediate remediation to failed areas, the roof system may be extended to 10 years.

Drains appear to be functioning as designed. During remediation, each drain penetration flashing should be thoroughly inspected to ensure water-tightness. Drains with conditions that may allow water intrusion should be repaired immediately.

A roof inspection should be performed on a yearly basis. If leaks become problem around penetrations or in the field of the roof then a thorough membrane inspection and remediation may be required.

Technicians requiring access to the roof should be required to remove all debris from their repairs.

North and South End Wall Roof Framing:

The rafter and sheathing framing consists of FRT material by DRICON and COX. FRT has been known to cause strength reduction and material failure in the treated wood members and possibly the tile and hurricane fasteners. The ECS did not identify the framing material used in the Mansards. Additional minor intrusive testing from the rooftop would be required to do so. It would be prudent for the Board to seek legal advice concerning this material. Testing the FRT for strength loss can be performed through Clemson University's, Wood Products Division or other wood testing facilities.

Stairwell Roofs, Access Hatches, Main Roof Access Ladders, and Elevator Roofs

The coating on the stairwell and elevator roofs is the same as on the walkways and balconies. There is no useful service life to the coating. Coating and component failure have allowed water intrusion, damaging the drywall ceiling and allowing mold growth. Temporary repairs to the stairwell roofs of Building C & D have been performed. Remediation of the coating should include re-sloping the roofs for proper drainage of water, refastening of the loose tile, and flashing repair.

Access hatch flashing is in poor and failing condition. There is no useful service life remaining. All hatch flashing should be remediated during the re-coating of the walkways and balconies.

Main roof access ladders are beginning to exhibit corrosion. The top platform pads were replaced several years ago and are in good condition. Rails and rungs exhibit light to moderate protective coating failure. Base plate connections exhibit extreme corrosion. In their present condition, the ladders have a 4 to 5 year useful service life remaining. If remediated and maintained on a regular basis, the useful service life could be 10 years. All ladders and exposed steel should be cleaned of corrosion and re-coated. Baseplate connections should be evaluated and remediated as necessary to ensure the safety of those who use them.

Discussion of Section II

Windows and Sliding Glass Door Units:

At the time of this survey, and to the best of my knowledge, six (6) Bay Window (BW) units have been replaced, eight (8) BW's are on order, one Unit was not accessible for the survey, the remaining nine BW units have water leakage to the interior. Window leakage has been a re-occurring problem. The water intrusion has caused minor to severe damage to interior treatments. Additionally, consequential damages to the interior and exterior drywall, metal studs and the EIFS was observed during several BW replacements. Mold growth was observed around the windows due to water intrusion. In their present condition, it appears that the useful service life will be as long as it takes to replace all of the BW units. During replacement, documentation by photographs would be advisable.

Reportedly, most of the SGD units were installed new in 1990 after Hurricane Hugo in 1989. Around the Sliding Glass Door (SGD) units, numerous areas of drywall and interior treatment damage were observed. This condition may be attributable in part to the renters leaving the doors open during a rain event. However, observations of the SGD units that have been replaced revealed that they were deficiently installed. The units did not have the correct sill pans or head flashing. Installation was not on treated wood, but on a thin layer of composite material. Thresholds were installed flush with the deck surface. Sealant under the threshold and in the jambs was discontinuous. Sealant on the exterior is aged, and failing to prevent water intrusion from ponding water and wind blown rain.

In their present condition, and considering the deficiencies, that sealant failure and improperly sloped decks will continue to allow water intrusion, most of the SGD units, both east and west facing have 4 to 5 years of useful service life.

The most common failures of the SGD units are the sliding mechanisms and the seal of the insulating glass. Mechanisms, during off-season, should be cleaned and serviced on a yearly basis. At that time, the sliding track and jambs should be

cleaned and re-caulked with an appropriate sealant. A general condition of the SGD and adjacent components can be documented during this service.

The remaining useful service life of the SGD units also depends on the quality of the sealant and the ability of the waterproofing remediation to withstand the ponding of water at the thresholds, if not corrected. It is my recommendation, when SGD replacement units are required; the units and thresholds be sized so that the proper type of sill pan with end dams and head flashing can be installed. The units should be raised and installed with a positive sloped to properly shed water away from the interior.

Additionally, mold growth, deteriorated drywall, and interior damage have resulted from the aforementioned deficient conditions. Those conditions resulting in consequential damages will not cease until properly remediated. It is recommended, that the water intrusion conditions be immediately remedied. When the units and adjacent side rooms dry out, proper mold remediation by a Certified Mold Remediator (CMR), who is familiar with such work should proceed. Testing for types of mold is not an issue at this time, however, if complaints of allergenic responses common to Indoor Air Quality (IAQ) issues are reported, testing should be performed by a Certified Indoor Environmentalist (CIE) as a prudent measure for documentation. Additionally, to enhance the indoor air quality, Air Handling Unit (AHU) filters with a Minimum Efficiency Reporting Value (MERV) 8 or higher should be installed. These filters are typically rated for 3 to 4 months of use. Many brands are available. For comparison information, see enclosure.

Discussion of Section III

Sealant, Deck and Wall Coating:

The remaining useful service life of the vertical wall and ceiling coating is 1 to 2 years. UV degradation has caused the product to become chalky to the touch. No areas of delamination were observed on the vertical walls. Numerous areas on each building's ceilings has delaminated coating. The exterior should be power washed and re-coated within the next two years.

The remaining useful service life of the sealant in the wall joints and around the wall penetrations is 0 to 6 months. It is evident that the sealant is at the end of the product life due to the increase of water intrusion reports. Adhesive and cohesive sealant failure is caused by product life, thermal expansion, contraction through cyclical weather conditions, and building movement. As the cooler weather sets in, more voids in the sealant will be noticeable due to less extreme weather and less building component movement.

The walkway and balcony coating is near the end of its useful service life. Peeling and blistering of the coating is evident throughout each Shipwatch building. Locations most effected are high traffic and low to negative sloped

areas that allow water to pond. The present coating was applied over an existing coating that had failed in numerous locations. Prior to the present coating, the steel rebar was spalling at multiple areas of each building and concrete repairs had to be performed due to water intrusion through the failed coating. Currently, no areas of spalled rebar have been visually detected; however, it is near the end of its useful service life.

It is recommended to proceed with remediation of the walkways and balconies to prevent consequential damages due to the failed coating. An aggressive approach to the waterproofing system is recommended. To simply powerwash and apply a coating is not the solution. Each area that is negatively sloped and allows water to pond should be identified, evaluated, and remediated accordingly. An aggressive approach may involve stripping the coating(s) to a clean concrete surface.

Discussion of Section IV

Metal Components:

Metal components will always exhibit corrosion in this harsh environment. Some metals more than others do. Protective coatings inhibit the effect of oxidation somewhat. All metal components require inspection on a yearly basis to ensure they are functioning as designed. The following list begins with the most severely corroded component, and requires an immediate response to amend the condition, to the less corroded metals that have more useful service life by virtue of their present condition.

- Main roof, access ladder baseplate connections. Immediate remediation required.
- Fourth floor metal awning anchor bolts. Immediate remediation required.
- Flashing fasteners. Immediate remediation required.
- Steel door jambs. Brushing and treatment coating required, replacement of jambs or sections may be required in 5 to 6 years
- Steel stairs. Several base connections to the ground floor are corroding. Brushing and treatment coating required. The structural ability is not compromised at this time. 5 to 6 years before present condition requires repair if corrosion is inhibited with remediation.

RECOMENDATIONS

The recommended Scope of Repairs for Buildings A, B, C, & D should include but not be limited to;

A. Repair the chimneys (per the Prototype of B-414 & 4150 due to the deficiently installed flashing. As required, per chimney, re-install removed tile with 20 gauge stainless steel hurricane clips into the sheathing with stainless steel screw fasteners. Replace deteriorating chimney caps with new stainless steel caps. Repair and fasten the tile and chimney caps to meet Building Code requirements for the coastal high wind zone.

B. Remove the metal flashing on the parapet and tenant separation walls. Install a "peel & seal" weather barrier and new metal flashing with greater length and width to cover critical junctures and transitions.. Flashing shall be of corrosion resistant metal, coated and secured with compatible sealant and fasteners.

C. Repair and or replace as necessary, all eave, rake, head, and side wall flashings of the Mansards, trash room roofs, adjacent stairwell tower walls, and balconies. Flashing shall be of greater length and width to cover critical junctures and transitions. Flashing shall be of corrosion resistant metal, coated and secured with compatible sealant and fasteners.

D. Inspect each PVC pipe and flashing penetrating the IRMA and tile roofs. Repair and/or replace PVC and flashing as necessary. Inspect each penetration through the IRMA (dryer vents, HVAC stands) repair as necessary.

E. Remove and replace all existing sealant around the wall, walkway, balcony penetrations and critical junctures i.e. windows, building joints and transitions. (Newly installed SGD and Bay Window sealant exempt) Inspect north and south elevation windows for failure or deficient installation. Repair and/or replace as necessary.

F. Remove elevator windows; replace flashing, gaskets, and sealant. Re-set elevator windows to a watertight condition. Inspect fastener condition and re-fasten to meet requirements for the coastal high wind zone.

G. Remove the existing coating on the walkways, balconies, stairwell and elevator tower roof to clean concrete surface. Remove ceiling coating to clean concrete surface.

H. Inspect and repair concrete, metal corrosion at door jambs and spalling as necessary.

I. Remediate low-sloped areas of concrete that allow water to pond.

J. Clean, repair and re-coat all metal components that exhibit corrosion. Note that the Balcony railings were re-coated two years ago, however, the top rails may need to be re-coated.

K. Treat all deck and wall transitions/junctures with an additional waterproofing system that uses a flexible reinforced mesh.

L. Install a waterproofing system to the walkways, balconies, and roofs. Walkways should receive a high traffic and chemical resistant coating. Balconies should receive a high traffic and UV resistant coating. Roofs should receive a high traffic and UV resistant coating.

M. Power wash and repair all vertical wall surfaces (EIFS) from the ground floor to the fifth floor. Re-coat vertical walls, with an elastomeric, silicone-emulsion, to a dry mil finish of 15 to 20 mils. Re-coat ceiling with high quality exterior grade paint.

N. Mold remediation to all trash rooms and closets should take place after water intrusion and framing repairs are completed. Roof, framing and consequentially damaged tile repairs should be coordinated with the flashing and sealant replacement.

O. General Contractor should provide submittals and details of installation for approval, for all proposed materials and products used in remediation. Provide all necessary insurance and documentation required to perform work as a South Carolina, Licensed General Contractor.

CONCLUSION

The ECS attempted to address the numerous known deficiencies and conditions that allow current water intrusion, future water intrusion and the resulting consequential damages. The existing waterproofing and exterior building conditions have allowed water intrusion to deteriorate numerous structural and non-structural components. Consequential damages to the interior finished surface treatments have resulted due to the exterior failures and deficiencies. Deficiently installed and aged components such as the Bay Window units, sliding glass door deficiencies, flashing, sealant, EIFS cladding, and the deck coating has contributed to the degradation. Lack of a yearly Facility Maintenance Program and an Estimated Life Cycle Checklist has resulted in the deteriorated conditions being inadvertently undiagnosed. A Facility Maintenance Program should be put into action. This will allow the Shipwatch Management to be pro-active on maintenance issues and reduce the re-active repairs. The cost allocation for re-active maintenance and repairs could likely be reduced. The Estimated Life Cycle Checklist could be compiled from the current upgrade work at Shipwatch being performed on the HVAC unit and fenestration replacements. Critical components should be replaced at the end of their useful life before they reach the point of failure.

This ECS report and other available information should be used to compile the Facility Maintenance Program and the Estimated Life Cycle Checklist. Additionally, this report should be used to receive proposals and recommendations for remediation. It is recommended that remediation begin within the next 3 months, earlier if possible. Remediation needs to be comprehensive. It should encompass the known current exterior building conditions and potential hidden damages.
In addition, an EIFS condition survey is in the process of being performed. The survey will identify the method of installation, deficiencies, and the condition of the sheathing and wall framing. The EIFS survey will require intrusive test cuts

at various locations to the cladding of each building and intrusive test cuts of the interior finish surface at various locations.

In summary, Shipwatch Buildings A, B, C, & D require immediate remediation of the waterproofing and component failures. It is recommended that the same General Contractor who is awarded the waterproofing and remediation contract perform repairs to the chimneys involved in the litigation. The EIFS survey will identify the condition of the cladding and the estimated useful life. Finally, the present and future value of the Shipwatch Homeowners' investment relies heavily on the waterproofing, remediation and EIFS condition survey.

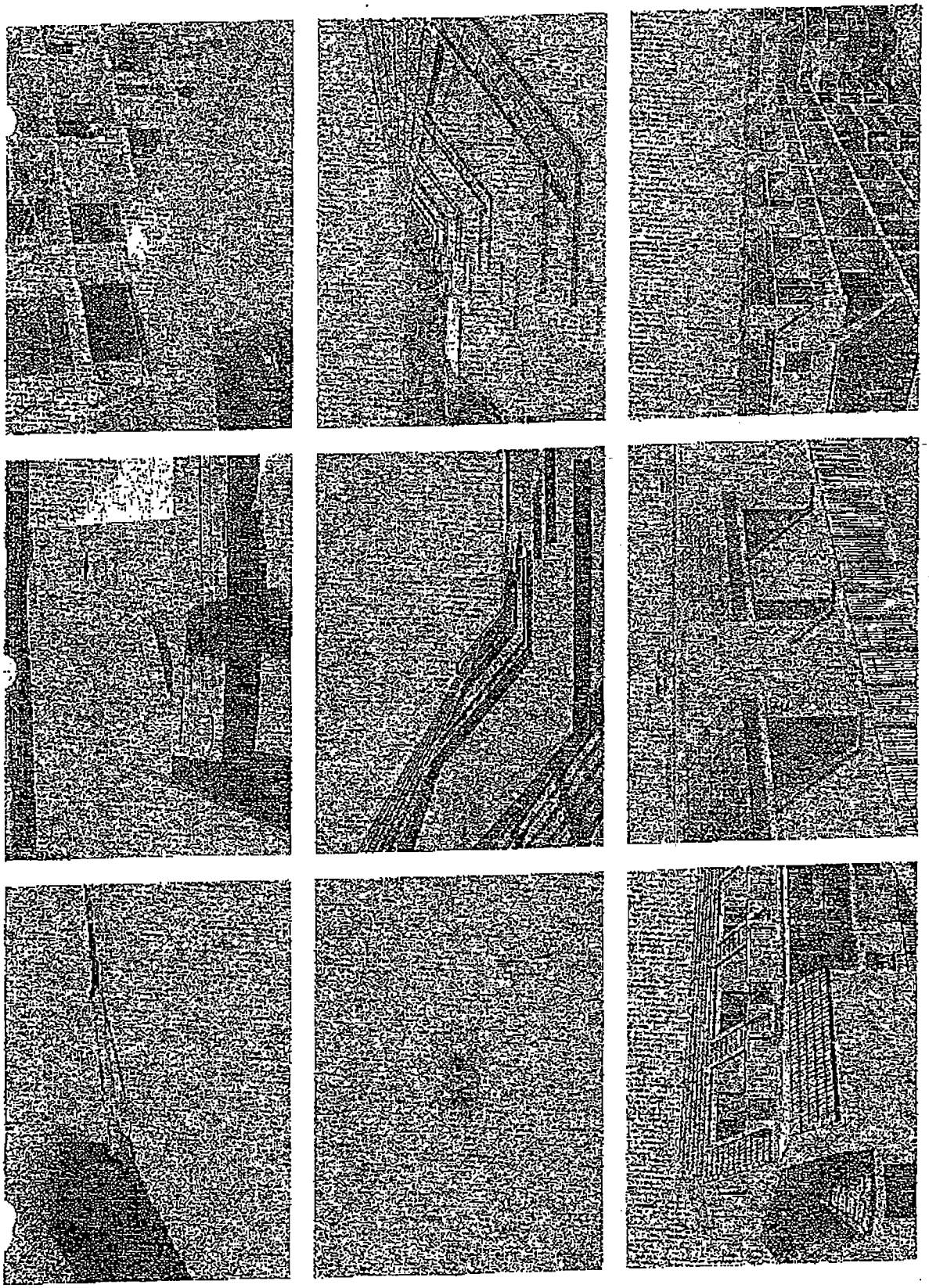
Additional photographs and support documentation have been included for documentation of the above conditions. Thank you for the opportunity to work with you on this project. Please call if you should have any questions.

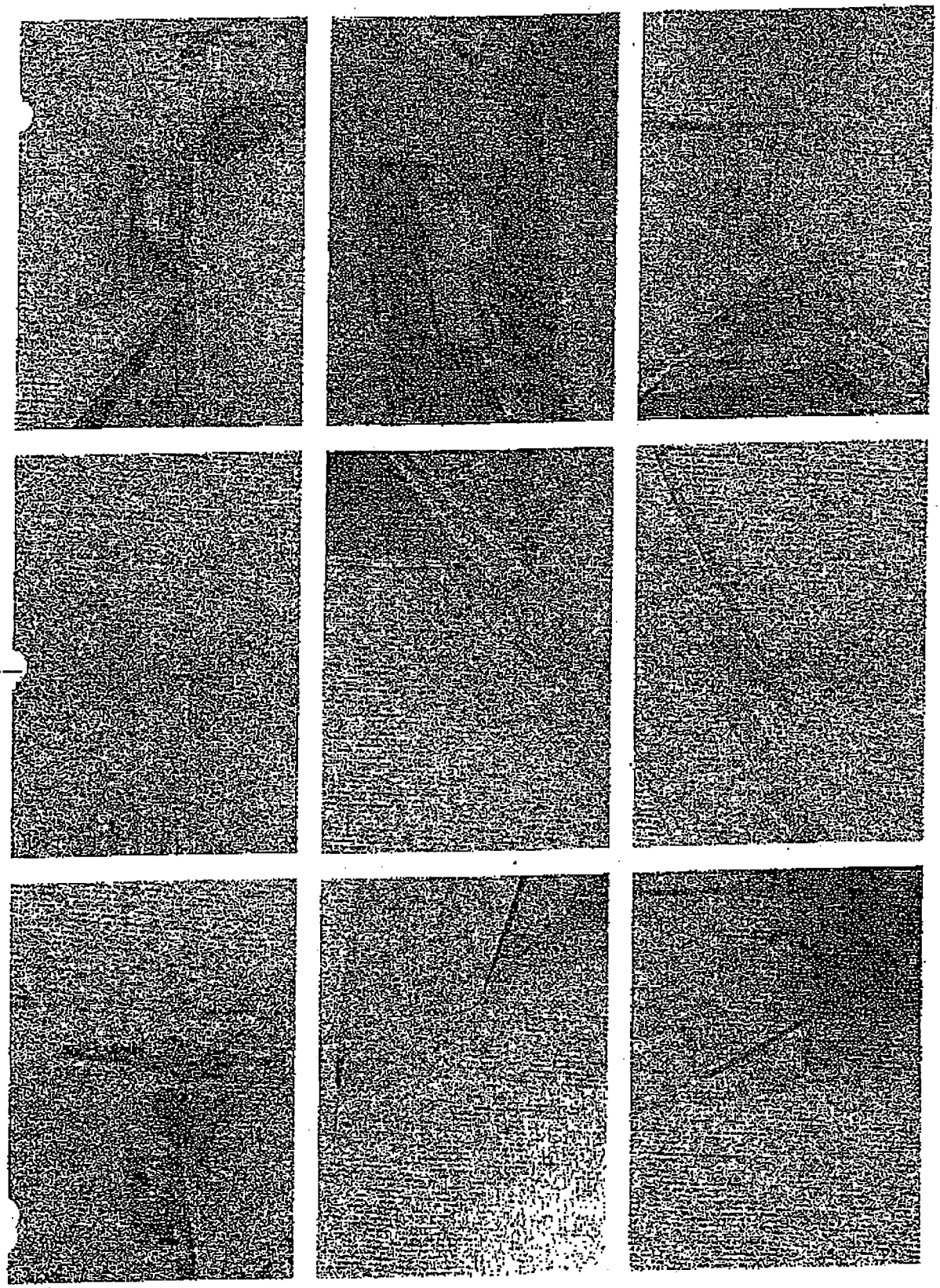
Sincerely,
Terence J. McKelvey General Contractor

Terence J. McKelvey, RRO, CIE, CMR

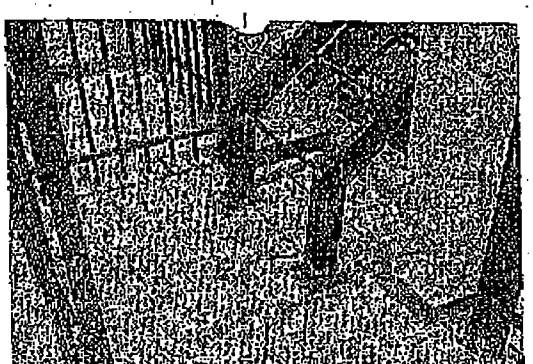
PHOTOS AND SUPPORT DOCUMENTATION

Additional Photographs and Support Documentation













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Exhibit 2

STATE OF SOUTH CAROLINA
THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM ASSOCIATION, Plaintiff, -versus- CAROLINA CONCRETE SYSTEMS, INC., et al., Defendants. OSCAR MENDIONDO, Individually and as representative of a class of similarly situated owners of condominium units in the horizontal property regime known as SHIPWATCH CONDOMINIUMS, Plaintiffs, -versus- CAROLINA CONCRETE SYSTEMS, INC., et al., Defendants.	Case No.: 2012-CP-10-3858

THE DEPOSITION OF FRED TROMBINO was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 10:00 a.m. on Friday, the 18th day of July 2014, at the offices of Carlock Copeland, 40 Calhoun Street, Suite 400, Charleston, South Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

Q Did it leak after Mr. Wiggins performed repair work?
A No.
Q Is there currently any water intrusion into your unit?
A No.
Q I'm going to hand you a document. This is Jernigan Exhibit No. 96. If you'll take a look at that, the second page for me. You may want to take a look at the whole thing, because I'm going to ask you if you know who wrote this.
A This looks like I might have wrote this.
Q And this would have been written while you were a board member?
A Yes.
Q If I look on the second page, it says sliding glass doors.
A Yes.
Q And it reads, "It's been well known by past boards that there's been a leakage problem with a good number of sliding glass doors."
How far back was the board aware that there was a leakage problem with the sliding glass doors?
A How far back? As far back as when I

first got onto the board in 2005. That's when I became aware there was sliding glass door issues.

Q Because you said past boards. I didn't know if you had talked to any previous board members that informed you, hey, this has been going on for --

A No. Just me being a full-time resident at Shipwatch, I would have conversations with Linda, and she would let me know that we've had problems with sliding glass doors.

Q Did she let you know about the problems with sliding glass doors before you became a board member?

A No.

Q So you wouldn't know -- you didn't know about any problems until 2005 when you became --

A That's correct.

Q It says here there are 16 doors that need to be replaced as soon as possible. Do you know how or why those 16 doors were the ones that needed to be replaced as soon as possible as opposed to the other doors that may have been leaking?

A Well, usually we would identify it as a door that needed to be replaced as soon as possible if it was leaking.

Exhibit 3

Deposition of
Arnold E. Schaewe

July 21, 2014

Shipwatch Condominium Association, Inc. v. Carolina Concrete Systems, Inc., et al.
Case Number: 2012-CP-10-03857&58



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work that we did at that time on -- on the ocean side walls and the two end walls on each building.

Q. Do you know specifically why Mr. Wiggins suggested that work? What did he find that would have suggested that you all replace cladding on the end walls on the ocean side?

A. Well, we knew we had -- we knew we had leakage problems in various parts of the building on the -- on the ocean side through -- through doors. He discovered that we had leakage due to construction of the partition walls on the oceanfront balconies.

We had -- we knew we had water intrusion in the bay window areas on the first three floors of the end walls. So we knew we had problems of water intrusion from the exterior at Shipwatch.

And we were being advised by Mr. Wiggins on what we could do about that, so --

Q. And is that then what led to removing the stucco on the end walls and the ocean side --

A. Yes, exactly.

Q. -- and various areas?

Exhibit 4

SHIPWATCH Board of Directors Meeting
April 1, 2005

The April 1st meeting was called to order with all in attendance except Bill Clifton and
Rogerlee Thompson.

Minutes of the January 14th Board of Directors meeting and the January 15th Annual Homeowners meeting were approved by Terry and seconded by John.

Connie presented 2 Financial Reports, one with Capitals and one without. Insurance
premium invoice came on February 14th and was due February 18th. Cost of insurance in conjunction with a higher deductible was found to be negligible because
the Regime rarely presents claims. If we did have more claims the cost would go up.
Because the premium notice didn't come until 2/14 it was decided it would be harder to do the budget if we changed the fiscal year. We will, therefore, stay with the present 11/01-10/31 fiscal year.

Carrie's costs are higher, however, she said it would level off during this summer.

Eric asked if an Incident Report is started when an "incident" happens at the Regime.
Linda has started to implement this type of report.

Building Maintenance & Repairs are over by $16,000 mainly due to screen door maintenance that Lester implemented before he left. The company contracted to do
the work, in the Board's opinion accomplished nothing. Linda said our policy regarding screens is that the Regime is no longer responsible. Linda paid for the screen work so far, but has told them to leave the premises and has asked Walter to
re-screen doors if necessary, making sure everyone has a screen.

A cash flow analysis on the Capital Account will be done and then decide if an assessment or larger Regime fees would be needed.

Coming into April it was decided we needed to put construction issues to a close. Arnie to send a letter to homeowners regarding a cut-off date for construction issues for each unit.

Carl gave his Building Report. Elevators need overhauling badly. We will need to re-tile the floors in porcelain or slate tiles. To re-do the elevators totally would cost approximately $26,000.

(1)

PL05649

Contractors on site are making a mess of Shipwatch. Carl and Linda would like to propose a $500 bond for any new interior construction. Carl and Linda will work on this and also "contractor regulations". We will need a Board policy regarding contractor regulations. Audrey asked if a designated area could be set aside for tile cutting, which seems to be the messiest of the construction.

Pool filter needs fixing. $5,000 is needed to re-plumb the line.

Leaks are still apparent on some sliding glass doors. Carl said he is offering his leaky doors to find a solution to this problem.

Terry offered his landscape report, noting that initial work on the entrances has been done, with more perennial plantings to follow. He indicated installation of up lighting is a priority but since Shipwatch cash flow is tight, that item, plus planting of more perennials will have to wait. The Landscape Master Plan calls for large plantings of perennials instead of annuals, as well as groundcovers to replace so much area now devoted to pine straw that must be continually replaced. The irrigation system is in the process of being checked and dead plants have been. Eric asked that the grass clippings stop being blown on the pine straw and landscaping.

Nothing to new to report regarding the legal procedures with Cyclone.

Linda then gave her Managerial Report. Elevators are contracted at different times. D Building is up June 1st, 2005, the others renewed in the fall of 2004 for 5 years. We are looking into a new provider for service. Linda and Thyssen-Krupp will have a meeting Thursday regarding the contract and their responsibilities.

Linda asked several companies to give bids regarding home inspections for plumbing issues for units.

Carroll LeTellier is updating the 20-year plan. Several chimney caps were found loose. There have been several roof leaks due to bad roof drains. This damaged several units, however, has nothing to do with the new roof we've had installed.

Pool steps must be re-plastered. This repair would require the pool to be closed and partially drained at a cost of $1,200. This is scheduled for April 4th. We are awaiting proposals for Security for this summer.

Linda would like to mark pet areas better and install a post, sign and bags. This was okayed by the Board.

Arnie has categorized systems at Shipwatch with a detailed calendar of when items would need cleaning, repairs or replacement. Linda will make a spread sheet of same.

PL05650

Arnie started a discussion about a Damage Loss Policy. Over the years it has become evident that losses occurring from one unit to another or even from within one unit have not had a clear avenue for remedy as to costs or who pays for what, nor a chain
of command on how to handle such. This policy and the accompanying example will serve the Regime in sorting out and keeping tabs on these items, as none have ever been budgeted for. These costs have found their way mostly into Unscheduled Repairs or Building Maintenance. The Board feels these items need to be itemized and recognized for what they are. A Motion to accept this policy was made by Terry and seconded by Carl. It will take effect April 1, 2005.

The policy shall read:

Damage Loss Accounting

The Shipwatch Board of Directors instructs the Board Treasurer, the Shipwatch Manager, and Bookkeeper to establish a new financial tracking account titled "Damage Loss".

This account will be used for journalizing expenses to the Regime and to individual owners remaining from damages after insurance claims have been settled. At the end of the fiscal year, the Board will review this account and make a decision on whether to assess all owners for the amount in the account.

Also attached to these minutes is an "example" of the procedures to follow if an incident occurs.

Connie suggested the category of Damage Loss Accounting with sub-categories of water damage, and others. Linda would like to see more sub-categories under Building Maintenance to have a better understanding of what items are really cost. Connie said we have many account numbers that have never been used. Connie, Linda and Carrie are to overhaul the categories and sub-categories with accounting numbers.

Audrey has been working on the MD/BL proposed amendments since October 2002,
and with the help of Arnie and past President Charlie Rhoden, we will present these amendments to the homeowners in a special meeting tomorrow, April 2, 2005 for voting. It was suggested by Eric, and approved, that several non-Board homeowners certify the vote of the homeowners. It was decided unanimously that the MD/BL be posted on the Shipwatch web site in either it's current form, or should the amendments be passed, then the new incorporated version of them. A Motion was made to place final version of the MD/BL on the Shipwatch web site. Made by Terry and seconded by Eric.

PL05651

Linda had asked during an earlier meeting with Arnie how she was to maintain Shipwatch without employees. Arnie felt we are in need of a maintenance/janitorial
type person (even if only in a part-time capacity). This person could be utilized for small things – light bulb changing, door closing problems, extra trash removal, washing deck chairs, small painting projects, etc.

The janitorial service we use now will give us a proposal for extra services. The Board and Linda's responsibility is to keep Shipwatch maintained and kept clean. The Board feels that we need to polish Shipwatch image with better landscaping and cleanliness – better housekeeping all around.

We will start with the janitorial service and then address a maintenance person at the June meeting. Walter has been doing a lot of extra miscellaneous work at a cost of
$28 and hour, and his helpers at $20 an hour. Eric mentioned that work by another company called Palmetto Maintenance was well done.

Arnie mentioned setting up the audit sheet for a particular person for a week or at least a few days to see how they work out.

Linda asked about air conditioners. She's been called about several A/C's not working. She was told that all calls are to be referred to Resort Maintenance. It was thought that possibly a page be posted for Q & A of problems for the summer rental people – such as:

Q: The A/C is not working.
A: Call Resort Maintenance at .....

Q: My car has been towed.
A. Call .....

Q: My light bulb is burned out.
A: Call.....

Connie, Linda, and Carrie will have a meeting explaining the chain of command, her responsibilities, and our expectations. Linda also asked if the Board would agree to have Carrie sign a time sheet – the Board agreed. It was stressed that Carrie know she is responsible and working for Linda primarily.

Terry said he'd like to see a part-time intern. He said he would write up a report for our next meeting. Along with this he would write up a volunteer agenda for our homeowners that would like to help the Board and Shipwatch without being tied to an office for 3 years.

Meeting adjourned at 3:30 PM.

Exhibit 5

SHIPWATCH Board of Directors Meeting
March 18, 2006

Meeting called to order at 9:11 am; in attendance were the following: John Ratliff, Connie Foy, Terry Henderson, Arnie Schaewe, Jim McDonough, Fred Trombino, Rogeriee Thompson, William Clifton, David Metts, and Linda Jernigan, Regime Manager.

Board President John Ratliff started the meeting with a summary of his thoughts about **Board structure and operations.** A Board of Directors is a representative form of government with each property unit entitled to one vote for its governing body. Pursuant to the Master Deed which sets forth the Shipwatch Regime governing structure and process, the board is elected to serve property owners in the areas of Regime policy making, finances, levy assessment, spending, property upkeep, maintenance and improvement, safety issues and legal issues. The Board has fiduciary accountability to the owners and to other Board members. Each member must exercise due diligence in performing Board duties using individual thoughtfulness, expertise, and experience as demanded. Otherwise, without such individual diligence Board decisions would be made with less than full board participation. Board deliberations are confidential and must be protected, particularly in light of a litigious legal climate. For example, Board discussions regarding settlement of the pending construction claims must be held in confidence lest settlement negotiations be compromised. Because the Board derives its authority from the Master Deed, individual Board members have no authority to speak or act for the Board unless such authority is appropriately delegated in accordance with the by-laws for the convenience of the Board. All decisions are Board decisions and should be Board decisions after full Board discussion and deliberation. The Board is responsible for hiring the Property Manager.

The duly elected President speaks for the Board on Board decisions but has no more authority than any other Board member. The role of the President is as follows:
The President facilitates the setting of the Board meeting times and agendas and insures the smooth operation of meetings through a formalized protocol. The President determines if consensus has been reached by the full Board and calls for a vote.
The President has no individual decision making authority except in times of emergency, i.e., when an expenditure greater than $5000 is necessary, and no other option is available including polling the Board. The President facilitates committee assignment.

The Board works through Committees as follows:
Committees examine and study problems or issues, meet in person, or by phone or internet to frame and discuss issues or problems, make reasoned recommendations to the Board with considered options outlined. Committees utilize the property manager as a resource.

Upon receipt of Committee recommendations, the full Board deliberates and makes the ultimate decisions.

(3)
PL05609

The Property Manager is hired by the Board and reports to the Board. The Property manager implements and enforces Board decisions and policies, and provides recommendations and information to the Board and its committees in order to assist the Board in its decision making responsibilities. The Property Manager does not work directly for the owners but for the Regime Board for the benefit of the owners.

After outlining his thoughts on Board structure, the floor was opened for comment. All Board members verbally indicated agreement with the President's thoughts.

Motion was made by Terry and seconded by Jim to approve the previously distributed minutes of the January 21, 2006 Board minutes. The minutes were unanimously approved without amendment.

Terry raised a **process question.** The landscape project often calls for decisions regarding contracts and obligations which bind the Board such as pricing, plant selection and placement, and detailed landscape design. Terry noted that the landscape architects and contractors will not proceed in many instances with any work without a formal contract with the Board. Terry thought the process should be centralized and standardized giving the President and or his designee the authority to act for the Board. Equally important, Terry also felt the process should go through the Manager because of scheduling and cash flow problems. Although the Board has approved the general project and budgeted money for same, authority has not been designated to any one Board member or members, or to management to make particularized implementation decisions which have contractual and financial implications for the Regime. Terry expressed discomfort in proceeding with landscape implementation without formal Board authorization.

John noted his agreement with Terry that Board authorization and delegation is needed as the Board's errors and omissions insurance policy will not cover individual board member action not authorized by the full Board. John also reiterated the need for the manager's participation. John felt that all contracts needed some form of Board approval.

The Board discussed how detailed the approval need be, to wit, ministerial tasks vs. substantive obligations involving money or material design.

Bill noted that the Board has the authority to make contemporaneous authorizations as well as retroactively approved authorizations.

If the Board felt comfortable authorizing Terry to proceed with implementation of the Landscape plan within budget, then Terry felt comfortable signing for the Board with management cosigning all contracts and checks.

Arnie suggested that since landscape is one item within the overall construction plan and since a general landscape budget has already been approved, that Terry gets specific cost estimates for the categories of work to be performed and submit same to the Board for approval. Arnie indicated that during the implementation of the plan, if Terry's proposed

actual costs were to exceed the estimates that Terry should return to the Board for further approval.

John felt Terry's process question was a procedural problem rather than a budget issue to wit, is Terry authorized or not to bind the Board. John indicated that contract decisions were Board decisions needing Board approval. He indicated that except in cases of emergency, Terry could utilize current technology to submit contract proposals to the full board via email for a Board vote via the internet.

Rogeriee asked if Terry needed a resolution in order to proceed.

Bill suggested that a resolution was needed in order to allow Terry to speak for the Board as he went forth in implementing the landscaping plan.

Terry felt that a decision on this particular delegation issue would be helpful for the work of all Board committees.

John indicated that to protect the Board and individual directors, particularly in light of the limits of the Board's professional liability policy, Terry should return to the Board for approval of contracts.

Next agenda item was an update on the legal issues.

Glasgow dispute:

Bill reported that Mediation with Glasgow is scheduled for April 17, 2006. Bill explained mediation. A mediator does not decide the dispute but works with both sides to bring the parties together. A good mediator can often facilitate a resolution of the claim. Bill opined that mediation is superior to trial in that it is voluntary and involves an admission of exposure by both sides and a willingness to attempt resolution of the claim. Trial involves the uncertainty of jury reasoning and class bias. Mediation also saves attorney fees.

John reported that he, Arnie, Bill and Rogeriee will represent the Board at mediation. Also present will be Capers and the engineer who provided the Board a professional opinion regarding the proximate cause of the damage.

Capers provided the committee with a mediation packet although Arnie did not receive one. John will provide the entire Board with a copy of the package.

Rogeriee indicated that under the contract with Glasgow, litigation is not an option as the contract provides for binding arbitration if mediation is not successful. John noted that if a suit were filed, it would only involve the court enforcing the mediation clause.

Bill estimated that the mediation would take several hours and a decision if one is to be reached, will take place that day.

The selected mediator is a Charleston attorney with construction experience.

Before a discussion of the Board's low end high end position, the Board discussed the essence of SW's dispute with Glasgow.

In summary, on the D building, the contractor allowed a copious amount of tar to enter the drain pipe, pulling it away from the wall and allowing water which is supposed to be diverted outward by the drain pipe, to instead enter the building, thereby causing massive flooding. For 20 years, the pipe properly drained water as it was so designed. Two days after the contractor concluded work, it rained and D building flooded.

The issue is what constitutes proper roofing practices or standards in the industry. The contractor does not have an engineer's report but Glasgow did conduct a laboratory test which purported to replicate the drainage. Not surprisingly, their tar accumulation test did not result in pipe failure or improper flooding, or damage of any sort. Thus, Glasgow interpreted this lab test to mean that the D Building problem was either an initial construction design defect or a building age problem. The Board agreed that it defied credulity to think that pouring 500 degree tar down a 20 year old drain pipe would not result in significant damage. Moreover, because the drain worked properly for 20 years, it obviously worked well for the use for which it was designed. It was also pointed out that D building was the last of the four buildings to be re-roofed so that Glasgow was well aware by then of the building design. The Board concluded that Glasgow was unacceptably obscuring the real issue, to wit, its faulty workmanship.

A discussion ensued regarding the damages suffered by SW. It was noted that the A building also had tar, rocks and foam improperly injected in its pipes causing SW to expend money to have this material removed.

Linda indicated that a letter was sent to Building D homeowner regarding their individual damage claims. Only two owners have thus far responded.

John stressed that the Regime is responsible for building damages in accordance with the Master deed, specifically exterior building and perimeter wall damage. Owners are responsible for interior, non perimeter wall damage plus upgrades and furniture loss.

The estimated total loss from the construction problem is $92,766.63. Attorney fees for mediation only are approximately $5,000 to $7,000. SW has already incurred legal fees for discovery and pre-hearing exchanges and construction fees to Sissenroy and Wiggins for repairs. The contract does not provide for consequential damages such as that for loss of use.

Terry raised the concern that SW has always had problems with contracts. He indicated that SW always signs whatever contract is presented to us without reading it or without knowing the contents. The Board disagreed with Terry and Rogeriee noted the inherent limitations on the Board's negotiating power for certain types of contracts. Glasgow's

contract is a standard Building Construction contract and the fact that it contains deletions and typed-in additions indicates that someone reviewed and negotiated the terms. Arnie said it was the standard AIA (American Institute of Architects) construction contact used industry wide. Terry felt it problematic that all SW contracts are not filed systematically in the SW office. Bill noted that that concern was a different problem and Rogeriee disagreed that such was even a problem. Terry queried whether all SW contracts should have provisions mandating mediation/arbitration provisions. Bill observed that in theory, all contracts are negotiable but that disagreeing contractors have considerable walk-away leverage and SW may have few contractor options. Arnie pointed out that the current proposed parking lot paving contract is a standard AIA model two contract without an arbitration/mediation provision and that SW has asked the contractor to include such a provision. The request is still under discussion. All agreed that SW should ask for such a provision in every contract but that such a request will likely result in negotiation, depending on the nature and extent of the work being performed. Everyone also agreed that most parties to a contract wish to avoid expensive litigation.

Jim was called upon to give the **Financial Report.**

Jim distributed a Profit and Loss Budget Performance report and a Profit and Loss Budget Performance report with 'Cap Adds.' Jim indicated that the actual expenditures are tracking nicely with the budget. Jim and Linda see no areas of concern in the operating budget. Some areas are currently overspent but will be recaptured in later months, for example, the insurance expenditure. Jim and Linda feel expenditures are on track.

Connie explained the financial process to the Board. The Manager, the bookkeeper and the CPA have different duties to insure checks and balances. Connie, as past Treasurer still receives all bank statements but said statements will now go to Jim. He will review for irregularity of signatures, endorsements, payees, and amounts. Connie felt this process has worked well and should continue in order to insure that SW funds are protected. Jim will continue the process and make recommendations for change if needed.

Connie noted that Carrie hastily resigned causing disruption to the financial system. Gail has been hired, is doing well, but wishes to work from home rather than the SW office. The Board has been given two other bookkeepers' names who Connie feels are qualified on paper. John suggested that Connie and Linda pursue contact with these two individuals. The Board agreed that SW's checks and financial documents should not leave the office.

Jim moved, seconded by Bill, that the Treasurer's financial reports be accepted. The motion carried unanimously.

The Board returned to its discussion of the Glasgow mediation. Linda has received bills as follows: $2300 legal bills from Capers, $2891 from Sissenroy, and $8500 from

Carolina Concrete which includes the repair cost. This amount brings the $92,000 to approximately $106,000.00 including the Wiggins repair.

We have no firm number on the final figure.

John sought a **minimum settlement figure**—the lowest figure for which we would settle. The Board had an extensive discussion of the amounts in issue, repair costs, attorney fees.

Arnie stated that according to Capers, he evaluated our chances of success on the merits at 50%. Rounding off the damages to $100,000 and calculating the cost of mediation, **Arnie moved and Jim seconded that the low settlement figure be $50,000.**

John noted that the Insurance carrier and not Glasgow would be paying this claim and that the carrier's litigation costs would probably run between $10,000 and $15,000. Thus, the insurer's cost would be the litigation costs plus the exposure.

Bill suggested that when mediating, round figures should never be used because they appear too random. When bottom lines are presented out to the penny, it leaves opponents baffled about how the figure was calculated but convinced that the number is legitimate.

Arnie indicated that the actual number he had in mind was $47,293 representing the cost SW would have to pay to owners based upon current estimates. Jim asked if Arnie was proposing that we eat the legal fees and repair costs and seek only the cost for monies paid to the owners. Arnie noted that adding on costs for Capers, Sissenroy and Wiggins would bump us over $50,000. Jim felt that seeking our direct repair costs was a good approach.

Bill reminded all that the discussion was only about bottom line and not what the committee would settle for. John indicated that the actual costs would be $58,846.

Arnie amended his motion to set as a bottom line figure, $58, 846.59. Jim seconded the motion.

Arnie indicated that if we did not reach that figure, it would cost $10,000 to $15,000 more in mediation costs.

Bill indicated that if we set a bottom line figure, that the committee must be flexible depending on the circumstances of the mediation. For instance, if we are $3000 apart, do we walk away? Or if the mediator does not agree with our claim, do we remain inflexible. We must consult with legal counsel to determine if we are on solid legal ground and be flexible.

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Extensive additional discussion ensued on setting a bottom line figure taking into consideration projected damages to SW and individual owners, costs of mediation and the dynamics of mediation.

Arnie was asked to amend his motion to set $39,000 as the bottom figure with the understanding that the committee's goal was to settle as close to the top figure as possible

Arnie declined to amend his motion as his mind was set on a low figure of $45,192.

After further discussion regarding the actual known damages suffered by SW and with strong Board sentiment that the bottom line figure should not be less that 50% of our damages, **Arnie amended his motion to set $48,000 as the low figure with no discretion to the committee to settle for less. Jim seconded the motion.**

After further discussion, Arnie withdrew his motion.

After additional discussion, Jim moved $56,385.50 as the bottom line, seconded by Connie.

The Board reviewed known damage figures as follows: $92,766.63 spent by SW, $9,800 attorney fees, $2,891 fees for Sisnroy, $8,463 to Carolina Concrete, $1,000 fee for Sisnroy's attendance at mediation, $3,000 costs for Board attendance at mediation.

After confusion ensued as to whether a motion was pending, **the Chair ruled that no motion was on the table.** Based upon the detailed discussion as to actual and projected costs, the chair approximated the total damage figure at $117,320.63.

Terry moved to set the bottom line figure at $58,660.311/2. Jim seconded the motion.

The Chair called for a roll-call vote.

Arnie raised more concerns about the costs of litigation and our inflexibility at arbitration. Terry expressed a strong philosophical opinion to remain at 50%. Bill indicated the need to be flexible enough with a bottom line to consider any reasonable recommendation of legal counsel. The board discussed that the cost of mediation could exceed our recovery.

Using $15,000.00 as the approximate cost of binding arbitration **Terry amended his motion to set $43,660.31 ½ the bottom figure, with no committee discretion to go lower. The amended motion did not garner a second.**

A vote was taken on the first motion to set the bottom line at $58,660.31 ½. The vote failed by unanimous vote.

PL05615

Terry moved to set the bottom figure at $43,660.31 ½. Fred seconded the motion.

The discussion temporarily recessed for the Manager to pull documents.

The Chair gave a report on insurance.

The cost of five million in coverage with our current carrier is $208,000. By bifurcating the coverage between two carriers, the cost is reduced to $129,000. SW gets more favorable ratings because of the nature of our concrete structure. Coverage does not include loss from wind driven rain. No such coverage is currently available on the market. Linda pointed out that compared to other regimes, our insurance costs are relatively low. She also queried whether SW is adequately covered at 4.4 million per building. Rogeriee pointed out that the extent of our coverage is unclear based upon the language of the policies. The chair suggested that he and Linda review the policies with our agent before our next board meeting.

The board resumed discussion of the mediation and the pending motion. Adjusting the figure after a reassessment of projected attorney fees, the bottom figure would move to $52,660.31 ½.

A discussion occurred as the whether the committee should be given complete discretion with an understanding that the committee would consider damages, the board discussion, mediation dynamics, and the advice of counsel.

A roll call vote was taken on the pending motion of $43, 660.31 ½. Connie, Terry, Jim, Fred, Bill, David, John voted, nay. Arnie voted, yea. The vote failed.

The discussion continued. Terry moved and Jim seconded the figure of $52,660.31 ½. Further discussion ensured on committee discretion.

A roll call vote was taken. Connie, Arnie, Bill, and Jim voted nay. Terry, Jim, Fred, and David voted yea. The voted failed on a tie vote.

More discussion took place on discretion. **Bill moved and Connie seconded the following motion: The committee be authorized to accept as a minimum $52,660.31 ½ subject to counsel's recommendation.**

Discussion followed on the motion.

A roll call vote was taken. The motion passed unanimously.

Bill gave a report on the Cyclone Roofing litigation. Our original claim was $140,000. Bill recapped the previous SW vs. Cyclone April, 2004 mediation which resulted in an agreement of understanding between the parties of a $107.00 settlement figure. Shortly after the mediation, Cyclone filed for bankruptcy. The matter had been

PL05616

dormant until Capers received a letter from Cyclones attorney offering to now settle for $63.962.50. The Board discussed the pros and cons of accepting the offer.

Bill moved and Connie seconded the motion that SW should accept the settlement offer. The motion passed unanimously.

Arnie gave the Building Committee's Report.

The pool should be completed by April 13, 2006. Progress was delayed because of the stone deck delivery. The portabella color we chose which comes from a quarry in Turkey was not available for sixty days. Another stone, caramel walnut noche, is available in the United States in sufficient quantity and has been selected. Arnie noted that any resemblance of the actual stone to the brochure sample is purely coincidental.

Arnie and Linda prepared and distributed a financial sheet for capital projects. Our original cost projection was $1,160,000.00 and the special assessment was based on this figure. The current scope represents our recent modifications i.e.; the original pool cost was $84,000.00 and the modification due to the change in skit surface is $129.346.00 for and increase of $28,000. Removal of the plaster added $10,000 and repair of pool leaks cost $7,295.00. Cost overages are deducted from the contingency budget line. Excess expenses have reduced that figure from $100,000.00 to $49,544.00.

Arnie next reported on the elevators. SW's elevator maintenance contract is with ThyssenKrupp (hereafter, TK) and cost $9,936 per year. It is a five year auto renewing contract and has been auto renewed for 20 years. Cancellation requires a 90 day notice and must be a cancellation *for cause*. Fred, Karl, Linda and Arnie met with an Otis Elevator Co. representative and Otis's contract cost per year is $13,200, with the same auto renewal and cancellation terms as TK's. Arnie described TK's maintenance contract as more reactionary than preventative though TK has improved subsequent to a meeting with SW management. Elevator stoppages have lessened and no one has been stuck of late but preventative maintenance remains a problem. Otis gave Linda and Arnie an impressive description of their maintenance process as well as their parts replacement and modernization plan.

Arnie proposed to the Board that we attempt to break the TK contract and switch to Otis. The Board discussed Arnie's proposal including issues of proprietary parts that may not be readily available. Establishing a *for cause* termination is difficult since the contract gives TK 30 days to correct any reported problem. John noted that we may have to buy out of the contract if carefully documented complaints would not justify cancellation for cause. SW's financial obligation under the contract is $40,000. A buyout would factor in that amount plus litigation costs.

Arnie moved that the Board authorize the Building committee to negotiate contract termination with TK. Jim seconded the motion.

PL05617

Discussion followed on the motion. John asked the legal committee to review the contract and consult with the Building committee.

The motion passed unanimously.

The Board had a general discussion on contract policy. All contracts should be kept in the SW office and all contracts should be reviewed by the Board or Executive Committee. Terry noted that the Board should never enter into a non-negotiated contract or a contract which automatically renews. Bill indicated his agreement in theory but pointed out that SW may not be able to avoid certain contract provisions deemed standard in some industries. John noted that automatic renewals do serve some legitimate purposes but that the Board must stay mindful of expiration dates. Connie suggested that if automatic renewals are unavoidable, that SW attempt to negotiate shorter renewal periods. John indicated that Linda has a list of SW contracts. Renewal dates are to be noted on the list to assist this Board and future Boards with timely review of contracts.

Arnie noted a significant regime financial risk due to leaking sliding glass doors on the fourth and fifth floors--back and front, living room and bed room. Management has been working with Wiggins to test the leakage and 15 doors are problematic. Replacement costs are between $4000 and $5000 per door and no money is available for such work. Carl has been attempting to repair with caulking and sealing. Wiggins has caulked 16 doors in A building, 5th floor back and front, and leaking persists. Linda will get bids on new doors. Wiggins proposes removing the old doors, putting a pan beneath and replacing the doors but there is uncertainty as to whether this can be done. Linda will get a bid to do such work. If Carl's less expensive approach is successful, SW will follow that approach.

Arnie made a report on the elevator lobby renovation. He noted the completion of the tile and cab work. All Board members had viewed the test panels containing the glazing work. John raised concerns about the challenge of maintenance vis-à-vis the difficulties of matching the glaze when repairs are needed. Terry noted that the surface would be sealed with a hard coat of polyurethane that would adequately protect the glaze. Further discussion ensued and the Board reached consensus about proceeding with the project.

Arnie and Linda recommended that the paving of the parking lot be postponed until the fall as management did not want the pool and paving contractors on grounds simultaneously. Paving this spring just after pool completion would interfere with the rental season. Rogeriee asked if the price would rise and Arnie suggested the final cost would be based on the fair market value of labor and materials at the time of the undertaking. It was the Board's consensus to postpone the paving until fall.

Terry was asked to give the grounds report. Predicated on a $217,000.00 budget, Terry sought access to $90,000 for pre season demolition, relocation, and enlargement of the planter spaces, and relocation of parking spaces; completion of pool landscaping and tree up-lighting and financing of the detail design for completion of the landscaping plan. The balance would be shifted to the fall.

Jim questioned the handicap accessibility issues of all the building because of the placement of the curb stones in the garage areas. Terry and Arnie as committee chairs, will review the issue relative to buildings and grounds planning. Jim also questioned the need to move building D's and not building A's planter box. Terry indicated that aesthetically, it worked for one building but not the other and that it also gave more parking spaces to D.

Arnie moved to make available $90,000.00 for landscaping. Jim seconded the motion. It was unanimously approved.

Linda gave the management report.

Linda indicated ongoing problems with contractors. Fifteen units are currently under renovation and negligent work is causing damages to other parts of the buildings such as water leaks to other units. All renovation work is to be completed by Memorial Day and Linda anticipated compliance problems with the contractors. Monitoring contractors has taken a disproportionate as well as inappropriate amount of Linda's time. Also, Linda questioned what, if any, work does the Board wish to allow between Memorial Day and November. Linda stated the need for a Board letter to owners with explicit rules regarding renovation. Jim questioned whether contractors should be required to sign contracts with individual home owners which incorporate our policies. John noted that contractors now are required to take out permits with SW before work begins. John has asked Linda to prepare a draft letter for Board feedback with proposed construction rules and regulation including financial sanctions for violations which will be sent to owners before the rental season begins.

John thanked Fred for agreeing to serve on the Wild Dunes Regime Committee. A president of another regime is attempting to organize a regime committee to discuss issues and strategies affecting all Resort Regimes.

John sought permission to send a letter to the two D building owners who have yet to submit a claim for damages resulting from the Glasgow roof damage setting an April 10, 2006 deadline for submission of their claims. Bill suggested the letter indicate that a failure to so submit would constitute a waiver of their right to seek reimbursement.

Bill so moved, seconded by Arnie, and the motion passed unanimously.

Arnie next raised his concerns about multiple partner SW unit ownerships. With the escalating increases in the fair market value of SW units, has come a concomitant increase in the number of multiple partner ownerships. These lesser ownership interests have given rise to a group of persons with seemingly less concern for the maintenance and overall well being of the regime. Arnie gave the example of a 1/13 owner who departed SW leaving a leaking washing machine for the next limited owners to contend with. The real estate agent as well as the insurance company sought Linda's intervention, contrary to the notion that a truly invested owner would not have behaved so

irresponsibly in the first place. Arnie proposed that the legal committee confer with Capers to determine whether large multiple ownership interests violate SW's Master Deed which prohibits time shares or otherwise violate South Carolina law, of if neither, should our Master Deed be amended to bar such multiple ownerships.

John agreed that the nature of one's ownership interest changes the community environment and increases communal costs because of resource overuse and suggested that SW should explore with Capers our legal options when we meet with him next month.

Regarding fees, Linda reported that 7 owners had not paid regular assessments for March and 18 had not paid the March special assessment. John reminded the Board of the late fee and interest policy. All owners paid the January special assessment. Two owners requested that the late fees imposed on their special assessment be waived. After Board discussion of the merits of their requests, **Arnie moved and Terry seconded that the fees be waived for the two property owners on a one time basis.**

The vote was unanimous.

Terry next proposed that Linda attend some type of **professional development training.** Rogeriee pointed out that Gloria had attended two special workshops for regime managers. Bill suggested that Linda explore management training opportunities. Linda was previously a member of CSI which has an annual membership fee of approximately $300. The additional expense of that membership comes from seminar and workshop travel and registration fees. John proposed that Linda make a recommendation to the Board about the issue of her professional development.

After unanimous vote on a motion to adjourn made by John, seconded by Jim the meeting concluded at approximately 1:36 pm.

Respectfully submitted,

Bill Clifton and Rogeriee Thompson

PL05620

Exhibit 6

STATE OF SOUTH CAROLINA
THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM ASSOCIATION,	)	
Plaintiff,	)	
-versus-	)	Case No.: 2012-CP-10-3858
CAROLINA CONCRETE SYSTEMS, INC., et al.,	)	
Defendants.	)	
OSCAR MENDIONDO, Individually and as representative of a class of similarly situated owners of condominium units in the horizontal property regime known as SHIPWATCH CONDOMINIUMS,	)	
Plaintiffs,	)	
-versus-	)	
CAROLINA CONCRETE SYSTEMS, INC., et al.,	)	
Defendants.	)	

THE CONTINUATION OF THE DEPOSITION OF LINDA JERNIGAN was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 10:00 a.m. on Tuesday, the 15th day of July 2014, at the offices of Turner Padget, 40 Calhoun Street, Suite 200, Charleston, South Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

have recommended what he recommended.
Q I want to make sure I'm clear. In September of 2008 you recommended to the board that the board enter into the $1.8 million contract with Carolina Concrete Systems to replace the EIFS off of the four buildings at Shipwatch. Correct?
A I don't believe I recommended that they enter into a contract with anyone. I recommended that they do the work that had been recommended that they do for the protection of the buildings.
Q Let me rephrase. In September of 2008 did you recommend to the board that it spend approximately $423,060 per building which can be done in phases totaling $1,800,000 for EIFS replacement of the buildings at Shipwatch?
A Apparently, I recommended whatever it says in here that I recommended. But did I stand up and say I recommend that you sign a contract with someone for this amount of money? No, that's not my place. My place is to do research to know what the buildings need to get the prices, get the information and lay it out for them. And, yes, I recommend that you do what is appropriate for the buildings. But I don't recommend that they sign a contract for a million dollars. That's not my

place.
Q My question to you -- the last question I asked you did not involve you recommending that they contract with anyone.
My question to you was, the September 2008 minutes indicate that you "highly recommended" item No. 6 of the September 2008 budget meetings. Correct?
A That's what it says, yes.
Q Item No. 6 is titled, "EIFS replacement, approximately $423,060 per building which can be done in phases totaling $1,800,000."
A That's what it says, yes, correct.
Q And that work would have involved the complete removal and replacement of all the EIFS on the four buildings at Shipwatch. Correct?
A All that had not already been replaced, yes.
Q And do you recall making that recommendation to the Shipwatch board that they have that work done beginning in 2008?
A I can't say that I specifically remember it, but I'm sure that I would. And it says here that I did.
Q At any point in time after you reviewed

the September 2008 minutes did you ever go to anyone on the board and say you have misquoted me, mischaracterized what I said or did?
A No.
Q And so anybody who is objectively looking at the September 2008 minutes can take these minutes to mean that you in fact did --
A Yes, they can.
Q In 2008?
A Yes, they can.
Q That the Shipwatch board completely remove and replace all the existing EIFS on the four buildings. Correct?
A Sure.
Q And you would agree with me that there was a recognition by the board in 2008 that the three items you listed as "highly recommended" which in their entirety would have totaled over $2 million were things that were either, quote, ongoing or had been held back from previous years?
A What was the question? The board -- What was it? The board what?
Q There is a recognition, is there not, in these September 2008 minutes by the board that you had recommended $2.1 million worth of repairs --

A It says here, yes. The secretary is in the minutes, so yes. I guess that would say that the board is acknowledging that I recommended that they get the EIFS off the building and replace it, yes.
Q Not only that, but dealing with the deck coatings and the sliding glass doors. Correct?
A Yes.
Q And the board recognized in September of 2008 that those three items were either as the minutes reflect, quote, ongoing or had been held back from previous years. Correct?
A Yes, that's what it says.
Q On the last page of the September 2008 minutes there is a note that you told the board in September of 2008 that when Shipwatch opened up the EIFS before, there were problems, and that you notified the board additional problems may arise when opening up the new areas of EIFS, meaning that the costs may be more than expected. Correct?
A It says that, but I don't remember that.
Q Do you have any reason to dispute the accuracy of these minutes?
A No.
Q Let me go back to page 3 of these

Janice Ohlendorf Darby, RPR
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Exhibit 7

side of A and B.
Q Had all of the synthetic stucco been removed from the ocean side of buildings C and D before the 2013/2014 repairs began?
A No. Only the end walls.
Q So there would be some difference in the scopes between phase one and phase two. Correct?
A I don't know why there would be.
Q Well, is the synthetic stucco that has already been removed in phase -- I'm sorry. Let me back up. On phase two, are there repairs to the ocean side involving the removal and replacing of the cladding?
A Yes.
Q What explanation did someone give as far as why that's being done?
A I don't know how I could answer that. That's just kind of beyond my realm of understanding and expertise.
Q In your job as the property manager, how often do you inspect the interior of each unit?
A I don't go in to inspect a unit unless I'm called to for a specific reason.
Q Would you be contacted by either the unit owner or the rental agency?

A Yes. One of them would request or call in about something they had a problem with or something they needed me to look at; or when it rains, you know, we had problems with leaking sliding glass doors. So we would go in after a heavy rain looking for wet carpet, any sign of water.
Q How long has it been a problem with leaking sliding glass doors at Shipwatch?
A Well, I've been there -- this is my ninth year. So there's been problems since I've been there.
Q And you started when?
A February 2005, I think.
Q What kind of problems have you noticed with the leaking sliding glass doors since February of 2005?
A They leak.
Q Anybody ever told you why they leak?
A We've had contractors out there that look. Sometimes they say it was no end dams. Sometimes it was installation. They kind of each had their own opinion.
Q What contractors gave you those comments?
A Carolina Concrete and Charleston Glass.

Q And those comments were given to you as early as February of 2005?
A I don't remember for sure when I might have gotten reports from them. I just know that some doors leaked, and they were the contractors of choice. So whenever there was a problem, that's who I called. And they would come out and investigate and do what they could to stop the leaks. Sometimes they could. Sometimes they couldn't.
Q What problems have existed with windows at Shipwatch?
A I don't really recall any specific problems with windows.
Q Anybody ever reported to you any window leaks?
A I don't recall any.
Q Anybody give you any explanation as to why the windows needed to be replaced as part of the 2013/2014 repairs when there have been no reported problems with the windows?
A It's my understanding that they do not meet code. And when they were replaced, they were replaced with a product that did not meet code.
Q Who explained that to you?
A Well, the building -- the city building

inspector is the one that said it, and then it was explained to me by Sutton-Kennerly.
Q When did you have the discussion with the city building inspector?
A I didn't discuss it with him. Sutton-Kennerly did.
Q That's what I asked you, is who gave you the information about the windows not meeting code? Did the city building inspector talk to you about that?
A Not personally, no. Sutton-Kennerly after their discussion with them.
Q So the only information you've had with the windows not meeting code were comments relayed to you by Sutton-Kennerly?
A Correct.
Q Who from Sutton-Kennerly?
A Jeff Miller.
Q Have you had any discussions with anyone with the Isle of Palms building department about the windows?
A No.
Q Have you had any conversations with anybody, either with Carolina Concrete or Charleston Glass or any of the subcontractors, about why those

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

Exhibit 8

Shipwatch
Managers Report
September 12, 2008

Building Values / Insurance Coverage –
Bucky Drake was the developer that built Shipwatch. He is a very successful builder that continues with upscale high rise condominiums in Myrtle Beach and Florida. I asked if he could recommend someone to appraise our buildings for a replacement cost number for insurances purposes. Our insurance carrier requires that we be insured at least 90% of the replacement cost (it used to be 80%). If you are insured for at least 90% of the replacement cost you would be covered at 100% and claims would be paid as if you were covered 100%. Currently each building is insured for $6.5M that is a replacement cost of $250,000 per unit; that would be 90% of $7.15M each building or $275,000 per unit replacement cost. Bucky believes the cost is more like $320,000 - $325,000 per unit or $8.45M (90% of that is $7.6M minimum per building).

We can take Bucky's opinion as the board has done in the past, or we can have an official insurance appraisal (cost replacement) done. I have a proposal from a Charlotte group to do an insurance appraisal (replacement cost) for a fee of $3,750.

We can pay for a replacement cost appraisal, or we can take this Developer's opinion, but either way we need to increase the covered value to at least $7.6M for the 2009 renewal. We have requested an estimate from the insurance underwriters to see what that increase could mean to our total premium, we have partial information, but are still waiting for more information. We hope to have that information soon and I will send it under separate cover; this information is based on this year's coverage, it of course will be different when the coverage is evaluated for the 2009 renewal.

Board Action: _____ **Approval** _____ **Disapproval**

Insurance Premium Payment– * See Attachment # 6.2
Our premium renewal date is February 18, 2009, last year we paid the premium from reserves and then billed the owners; it took us all of March to collect the payments. We will not have enough money in Reserve to do that for this renewal, I recommend we bill owners based on the 2008 premium or an amount estimated by the insurance company, to be due January 1, then bill the balance once we have actual figures to be due by March 30, keeping any advancement from the Reserve Funds as low as possible.

Board Action: _____ **Approval** _____ **Disapproval**

Sliding Glass Door Maintenance – When I came to Shipwatch in February 2005, there was a major project going on of replacing rollers on sliding glass doors, attaching or replacing handles, adjusting the alignment, and of course repairing screens. They were $17,305 into the project and I couldn't see any organized plan of completion so I stopped the job. It was my opinion that while the Regime owns the doors and the windows for control of replacement purposes, it is not responsible for the maintenance of those doors. However, the board disagreed with me and at their direction, I have again taken on the responsibility and cost of maintenance on the sliding

glass doors. In the past 2 years I have spent over $3,000 in sliding glass door repairs. This has consisted of replacing rollers when bearings give way because they are full of sand (workman say that many times the tracks are so full of sand they must clean it out before they can work on the door), and replacing and reattaching door handles, and sometimes replacing the track that has been chewed up from sand and ruined rollers. So far, all units requiring repairs, with the exception of one, are either on a rental program or are 1/13th partnerships (I include the partnerships because they receive as much traffic as a rental). I have had repeat calls from 3 units, and one of those has spent considerable time working on the door himself; he demands a new door. I have complaints from rental owners that they receive charges from their rental companies monthly for door adjustments or handle tightening and they are not happy. I still believe maintenance on these sliding doors is not a regime responsibility. If the door knob on the front entry door falls off, the Regime would not be responsible for the repair, therefore I believe it would be the same on the sliding door.

I do not have a staff to respond immediately to guest complaints, I use contractors that must schedule work orders and it can take a few days. I am asking for clarification once again that the board wants me to continue routine maintenance on the sliding glass doors.

Board Action: _____ **Approval** _____ **Disapproval**

Pest Control Callbacks –
The pest control schedule is published a year in advance and furnished to owners and rental companies. On the Monday before service on Tuesday (the 2nd Tuesday of every month) a notice is posted in the elevator. Many rental guests, and some owners, refuse to let them in to treat. With the price of fuel affecting everyone, the pest control company has begun keeping a list of units where they were refused entry, then if they are called back before the next month's schedule, they are billing us $35. I believe this is fair, and I believe it is only fair to pass this on to the owner of the unit.

Board Action: _____ **Approval** _____ **Disapproval**

Contractor Policy
The Contractor Policy for unit remodeling has been updated for 2008/09. The changes include; increasing the deposit to $1,500; setting the start date to 9/15 and the end date to 4/15 and adding a fine of $200 per pay for working beyond these dates as agreed to by the board at the June meeting; setting the November no work dates to 11/22-30 and the Christmas no work dates to 12/20 – 1/04. The only other changes consisted of stronger language use for protecting Regime common property. Policy is attached.

Board Action: _____ **Approval** _____ **Disapproval**

Building Inspections
All units were inspected for plumbing issues with stainless hoses being required for commodes and washing machines. We have had fewer leaks between units so far this year than ever before, we believe the inspections and the stainless hoses were the reason. Because the plumbing inspections were so successful, we plan to repeat them this winter. It should be much easier this year with all the stainless hoses in place, we would be looking for dripping faucets, possible

leaks from whirlpools, malfunctioning commodes, and caulk problems etc. The inspections would cost the Regime budget $2,600 ($25 per unit); any necessary repairs would be at owner's expense.

Board Action: _____ **Approval** _____ **Disapproval**

The Oceanside of the buildings has some staining on the floor decking faces that is caused from runoff from the decks and the rails. The cost to do the Oceanside is $8,200 (total all 4 bldgs) that would include the walls and sliding glass doors and window areas of each unit and would require removal of any deck items that could be harmed by the mild chemical used to remove stains. This could be done during the remodeling season if the Board is interested.

Board Action: _____ **Approval** _____ **Disapproval**

Summer Security / Pool Monitoring

The onsite police officer in the evenings continues to keep things quite and orderly at Shipwatch, and I have had a great deal of positive feedback on their presence from both owners and guests. We had excellent pool monitors this summer and they were truly put to the test each day as rental companies short on bracelets told their guests they didn't need them, or one was enough for the group. Our young people were yelled at, insulted, cursed, all kinds of things but they were not ignored. It has been a good summer, except for the 4th of July. What a horrible weekend. The parking lot was full and people were parking in fire lanes, landscaping and because a truck was parked in front of one dumpster enclosure no dumpsters were emptied on our busiest (and hottest) weekend of the year. A few vehicles were from other properties, and many had their pass so the name could not be read, but the biggest problem was obviously more than two vehicles per unit. We chased people down, knocked on doors, ticketed vehicles, and argued with irate owners and guests, and drove security crazy. We were probably 95% occupied and more than one unit had more than two vehicles. Fred had a great suggestion for next year, if we can find the manpower. We can print up special designations that hang on the review mirror for the 4th of July weekend only, provide each owner or rental company with 2 per unit, place someone at the entrance, and not allow any vehicle without the tag into the property. The hard part is to find staff for the days of 24 hour coverage. We need to consider something; this was the worst year yet. The 3 day coverage would cost approximately $2000.

Board Action: _____ **Approval** _____ **Disapproval**

Water Rates

Our water bill expense is coming in under budget, water consumption is down considerably so far this year but it is difficult to say what the reason for it is. We changed out the domestic water pumps in March, they seem to operate more efficiently, and they certainly keep the water pressure even instead of the surges the old booster pumps caused; we did the plumbing inspections last winter and required everyone to install stainless hoses and repair any leaks that were noted; but also rentals are way off with fewer people using water. So we may not know for a couple of years if we are really saving water, but it certainly helped the budget this year.

Board Action: INFORMATION ONLY

PL009966

Power Washing Buildings
The power washing of the buildings was completed in June. It was a huge job requiring access to the fifth floor balconies, repelling over the sides of the buildings in certain areas, a lift to reach areas where repelling was not possible, systematic spraying and rinsing of corridors being used constantly by owners and guests. The buildings look great however there are a few stains that could not be removed. Only three sides of the buildings were washed, access equipment cannot be put on the Oceanside and owners have a lot of personal items in use there. The total cost was $16,000, too costly for a yearly expense, but perhaps continuing to do spot cleaning as we have in the past and whole buildings every two or three years.

Board Action: INFORMATION ONLY

Elevator Emergency Phones –
When the Emergency phone button in the elevator is pushed, the calls have gone directly to the 911 operator. Due to pone line problems, prank calls, and people bumping the button we were experiencing so many 911 calls we were put on notice for being fined. Effective July 31 our calls are now being answered by a Thyssen-Krupp 24 hour operator who will call 911 if there is someone trapped; they will report excessive problem or prank calls to the maintenance, security or my office. This is a much better situation for everyone. There will be no charge for this service.

Board Action: INFORMATION ONLY

UPDATES

Unit A206 Fire Wall Issue
This is the remodeled unit that has only on layer of sheetrock and/or Durock in the firewall that separates it from the unit next to it (2 layers of 5/5" sheetrock is considered the minimum fire protection. I notified the owner by email 4/10/08 of the problem found; I have since spoken with Dr. Tibbs and he asks me to assure the board if his wall is not up to code he will have it repaired during the remodel season and will call on t his office for inspections.

Beach Nourishment Project Finances
At this time we still do not have an accounting from the City on the nourishment project. We do know however that the State did commit $1M for "beach management" but aren't sure if the City used any of it for our project. We also know the entire project was completed early and under budget, but until we have the accounting we do not know if there will be any refunds.

HVAC Maintenance Update
The project to open up the preventive maintenance service to other companies and turning the responsibility over to the unit owner turned out to be a much larger project than I had anticipated, but very necessary. Resort Maintenance had not reported owner changes to American Standard for several years so it was necessary for me to be involved in updating the information with

PL009967

American Standard and staying with it to ensure SW owners were properly covered. I now have a comprehensive list of equipment rooftop and interior, the correct warranty information, and the name of the company servicing that unit.

All rooftop units have been strapped down and all companies have been advised that they are responsible for keeping them strapped. Unit addresses will be marked on the rooftop equipment to ensure against confusion, and the rooftop will be inspected periodically for any issues that might need to be addressed.

CBC Building Report
The report by CBC revealed issues that have required ongoing research and correction. I have followed through on all items outlined in the report and continue to see that corrections are made by those responsible or have taken care of items required of the regime. I have asked Rick Wimmer, author of the report, for corrections in the report that were inaccurate (i.e. building structure; age of parking facility and the attention needed) that I feel may be important issues as we use this report. The emergency lighting was corrected as a matter of routine maintenance. The drip edge at the ends of the building had been an on going issue being addressed it seems weekly, and were installed actually as designed by Carl and Fred. The design is perfect and has kept the garage ceilings dry in even the windiest conditions. Correction of EPDM membranes on the roofs were a Glasgow issue and have been corrected. The HVAC condensing units on rooftops have been strapped down; when I asked Resort Maintenance about this they said they were not asked to strap them down, when I asked the City what the code requirement was they said we were grandfathered in as not required even though all units were removed from the building and replaced on new frames (same situation on Folly Beach – officials required the units to be strapped down). The outstanding issue is the lack of proper kick outs on the mansard roofing. Glasgow denies responsibility, and our engineer, Bob Sisnroy is checking contracts, change orders, and specs to see what the requirements were and who will be held responsible. I expect results from that very soon.

Master Deed Update
We discussed in the past having an attorney update our 25 year old Master Deed. In 2005 changes were made, but many items remain confusing or unclear and perhaps out dated. I have obtained two newer documents that we may compare to see if any major changes or wording are now being used. This is a project for winter time perhaps, or a committee to compare before a legal opinion is sought.

Real Estate Sales Update
We have received two $1,000 transfer fees from sales of partnerships (B412 and A302); I understand a third partnership sale (B412) will be closing right away.

There are 22 listings for sale at Shipwatch. Of those 17 are partnerships and 5 are whole units. The partnerships range from $105,000 to $340,000; four 2BRs are for sale $789,000 - $889,000; one townhouse $1,199,500.

Respectfully submitted,

Linda Jernigan

PL009968

PL009969

Exhibit 9

CAROLINA CONCRETE SYSTEMS, INC.

INSPECTION REPORT

May 9, 2007

MS. LINDA JERNIGAN
Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Exterior Building Inspection Report

Linda,

Here is our report of the conditions of the exterior of the 4 buildings at 7600 Palmetto Drive Isle of Palms, S.C. The exterior inspection report is broken down into left and right ends standing in the parking lot, corridors, stairs and balconies.

1. We inspected and caulked all areas that needed to be caulked on the new windows that were installed with the exception of the one window on D bldg on the 417 unit. I have repeatedly asked Charleston Glass to send someone out to caulk it, as we could not reach it with a lift. I will continue to call them until they send someone out.
2. All light fixtures and receptacles on the balconies that were not caulked or that caulk had failed were recaulked.
3. All vertical and horizontal joints in the stucco system was inspected and found to be in good condition. All areas that needed to be recaulked were done.
4. The hard coat stucco on the stair towers and elevator shafts have a few cracks and this has been shown to Carl Ulm of Ferst Exteriors. He was not alarmed and told us to keep and eye on them.
5. There is one area on the southeast end of the B bldg on the third level right end wall that has a blister and Carl said he would talk with the manufacture of the products he used and would take care of repairing the area.
6. We also checked all the stairs in the stair towers and found several that you had already mentioned to us that need to have new metal welded to the lower riser and treads.
7. We also noticed several areas on the elevator windows that the glazing has failed and we recommend this be repaired in the near future.
8. We did not inspect the roof, however there are a number of problems that we noticed from the lift as we were inspecting the walls and balconies.

DEPOSITION EXHIBIT
JERNIGAN 24

PL 1157

9.The deck coating in the common corridors was inspected and found to be in good condition. They will need to be top coated again next year in order to maintain the 10-year warranty.
10. The balcony deck coatings were also in good condition and will need the same top coating next year. There are a few areas where the coatings have been cut, cigarette burns, furniture rusting and furniture legs gouging into the coating. We recommended after installation of the deck coating that no metal furniture be used on the balconies. However, there are a significant number of units that have the metal furniture.
11. There are a few balconies that will need to be recoated this fall as they have tears and or cuts.
12. There are several areas that need to have the stucco patched on the balconies because of construction in the units. There are a few areas in the parking garages that the stucco has been bumped by cars that need to be fixed.
12. The new bedroom/balcony doors look good and are functioning properly.
13. The handrails inspected are in good condition with the exception of the corridor handrails. Hoses and equipment continue to be drug across the rail cap, which has scraped the paint off.
14. Leaks continue to be a problem at and around the old sliding doors on the beachfront and golf course side of the buildings. We have repeatedly shown you and numerous board members that these doors are leaking and I am sure there is damage that is occuring in the new metal stud walls with the Durock system that we installed during our project. In 2003/2004.
15. I would recommend you have someone inspect the roofs, as they probably have not been looked at since it was installed.

In closing, our inspection tells us that the remediation project that was performed in 2003/2004 has eliminated several reoccurring problems and the systems are performing adequately. However, there are a few problems that remain an issue. General maintenance of the deck coatings, stucco system and caulk inspection and repairs on an annual program should extend the life cycle of the remediation project for years to come.

Sincerely,

Bob Wiggins

843-588-5721 FAX-843-588-5722

P.O. BOX 13149, CHARLESTON, S.C. 29422

PL 1158

Exhibit 10

Deposition of
Arnold E. Schaewe

July 21, 2014

Shipwatch Condominium Association, Inc. v. Carolina Concrete Systems, Inc., et al.
Case Number: 2012-CP-10-03857&58



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A. I'm not sure.
Q. Okay.
A. You lose track of time when you're having fun, you know, so --
Q. Who replaced them, or it, the fixed window?
A. I believe it was -- I believe it was Charleston Glass.
Q. Under?
A. Under Wiggins.
Q. Under Carolina --
A. Under Wiggins, yeah.
Q. Okay. How about, was stucco replaced on the ocean side on the fourth and fifth floors during the '03, '04 time period?
A. I believe so.
Q. If you know. You believe so. But none of the sliding glass doors on the fourth and fifth floors were placed until the earliest of '08.
Is that -- do you know that to be correct?
A. I believe that's true, right.
Q. Okay. Did you receive a report from SKA in 2009 that indicated the sliding glass

doors had a useful life of 10 to 15 years?
A. I was not on the board then, so I don't recall a report like that.
Q. Okay. Do you know if water intrusion -- strike that.
By 2010, had all of the sliders in the living rooms been removed and replaced on the ocean side?
A. No.
Q. Okay.
A. For instance, I -- my unit has the original living room slider in it. By original, I mean 1990.
Q. Right. All the sliders were removed and replaced in 1990 after hurricane Hugo?
A. Right.
Q. Okay. Do you know whether or not -- how many sliders that are from the 1990 era are still in the building on the ocean side prior to the -- you know, the ProTec work?
A. I'm not sure when you relate it to just the ocean side. The numbers I gave earlier, there's 264 sliders. And we replaced somewhere around 160, but I don't know the -- I don't know the split between ocean and street side.

Q. Okay. So 106 have been replaced?
A. 160.
Q. 160.
A. Plus or minus.
Q. And you don't know how many on the ocean side have been removed and replaced? Your question, you don't know how many of them are from the 1990 or old ones?
A. Well, again, in gross -- in gross numbers, like I said, there were 264 1990 sliders. And -- and we've replaced roughly -- roughly 160 of those in the four buildings, but I do not know the split between how many of those are ocean side and how many are street side.
Q. Right. On the fourth and fifth floor, do you know if all the sliding glass doors -- strike that.
Do you know that -- is it true that all the sliding glass doors on the fifth and fourth -- excuse me -- fourth and fifth floor ocean side have not been removed and replaced?
A. I believe that's true, but I'm not certain, so --
Q. Okay. When you were on the board, were there any inspections done by Bob Wiggins where

he complained about old sliding glass doors leaking water behind newly installed DEFS doors?
A. Again, I was not on the board at that time, so I can't -- I can't speak to that.
Q. Gotcha. Were you on a building committee or anything along those lines in May of '07, even though you may not have been on the board?
A. I was not on the building committee at that time.
Q. And you were not on the board in May of 2007?
A. I was kind -- I was kind of an ex officio past president on the board that year.
Q. In '07?
A. In '07, I believe.
Q. Carolina Concrete gave Linda Jernigan an inspection report on May 9th, 2007?
A. Okay.
Q. And in that report Bob Wiggins indicates, leaks continued to be a problem at and around the old sliding doors on the beach front and golf course side of the buildings.
We have repeatedly shown you and numerous board members that these doors are

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leaking and I am sure there is damages occurring in the new metal stud walls with the Durock system that we installed during our project in 2003 and 2004.

Did you know about that complaint in May of 2007 from Bob Wiggins?

A. I believe I did, yes.

Q. Okay. What did -- what, if anything, was done about that to prevent -- I mean, obviously, he's talking about water intrusion occurring after the Durock was put in place and damage occurring.

What was done to prevent that from happening in the future?

A. I recall -- I recall at that time there were quite a bit of discussions with Linda and with Bob and with Carl Grisier and perhaps with me, when I was on-site and trying to seal up those leakages.

And I recall Bob -- Bob, I think, presented a number of methodologies for doing that and actually did some.

Q. Okay. Do you know what was done?

A. No, I don't. I -- I don't recall.

Q. Do you know what --

A. I don't know.

Q. Do you know what -- do you know what sliding glass doors were worked on --

A. Not -- not specifically.

Q. -- post 1997?

A. Not specifically anymore, no.

Q. Do you know if all of the old sliding glass doors that Bob Wiggins complained of in '07 were worked on and the water intrusion remediated?

A. I can't answer that. I mean, I don't know, so --

Q. Okay. Do you know if any of the damage found by SKA behind Durock was a result of leakage from old sliding glass doors? Do you know?

A. I don't recall specifically. I know we found -- I know we found damage, but I don't recall what it was attributed to.

Q. We -- who's we and when was the damage found? Are you talking about SKA found --

A. SKA -- SKA's investigation and report.

Q. -- revealed rust and corroded studs behind the Durock?

A. I believe so, yeah.

Q. All right. And -- but you don't know if they determined what the cause of that rust and deterioration -- that rust was?

A. I don't recall what the conclusion was. I recall seeing pictures of damage in their reports, but I do not recall their conclusion without going back to the report and reviewing it again.

Q. All right. Was SKA advised of which of the sliding glass doors on the ocean side were original?

A. I'm not sure. It's very evident because you can look at them and tell.

Q. So you don't know whether you --

A. I mean, I don't know whether it's an advised thing. It's inherently obvious.

Q. Say that again. I didn't understand that.

A. You can look at --

Q. In what thing?

A. You can look at the door and see if it's new or original. They're different doors.

Q. I got you.

Did water continue after 2007 to leak behind the new Durock from old sliding glass

doors, do you know?

A. Restate the question.

Q. Yeah. We just looked at the report from 2007 where Bob Wiggins is saying, old sliding glass doors are allowing water intrusion behind newly installed Durock. Remember?

A. Right. And then he worked -- and he worked on solutions to that.

Q. Do you know if -- however, do you know whether or not water continued to intrude around old sliding glass doors and caused damage between newly installed Durock?

A. I'm not sure. Because, again, it was about that time that I left the board.

Q. Do you know when the -- do you know that the flat roofs were eventually replaced on the buildings?

A. Yes. That was -- I believe that was done as part of the replacement or about the same time as the replacement from the tile roofs to the metal roofs.

Q. Linda Jernigan said the replacement of the flat roofs concluded around the first part of January -- excuse me -- the first part of 2005, maybe January or February.

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Exhibit 11

CAROLINA CONCRETE SYSTEMS, INC.

INSPECTION REPORT

February 5th, 2009

MS. LINDA JERNIGAN
Shipwatch at Wild Dunes
7600 Palmetto Drive
Isle of Palms, S.C. 29451

Re: Exterior Building Inspection Report

Linda,

Here is our report of the conditions of the exterior of the 4 buildings at 7600 Palmetto Drive Isle of Palms, S.C. The exterior inspection report is broken down into different reports starting at the North end standing in the parking lot and working around to the south end, including corridors, stairs and balconies.

Exterior ends and street side report

1.We inspected and caulked all areas that needed to be caulked including the light fixtures on the golf course side balconies. There are numerous areas on all four buildings that have some cracks in the stucco system. This has been noted and you have sent us a letter directing us to have it repaired. We are communicating this to Ferst Exteriors to repair as they installed the system in 2003 and 2004.
2. All light fixtures and receptacles on the balconies that were not caulked or that the caulk has failed were recaulked.
3. All vertical and horizontal joints in the stucco system was inspected and found to be in good condition. All areas that needed to be recaulked were done.
4. We also noticed several areas on the elevator windows that the glazing has failed and we recommend this be repaired in the near future.
5. We did not inspect the roof, however there are a number of problems that we noticed from the lift as we were inspecting the walls and balconies.
6. We found the roof hatch on A Bldg and B Bldg had loose peel and stick waterproofing that we caulked.
7.The deck coating in the common corridors was inspected and found to be in good condition. This is the 5th year of the warranty period, so they will need to be top coated again next year in order to maintain the 10-year warranty.
8. Elevator door frames were checked and re-caulked if necessary.

PL 0630

9. The handrails are in fair condition and have widespread paint peeling as well as some corrosion appearing. There is one loose rail post on D Bldg that needs to be repaired. There also continues to be hoses dragged over the rails causing paint peeling and stress on the rails.
10. The stairwells were inspected and the areas that were corroded and needed welding have been done with the exception of the risers on the steps. This needs to be fixed as someone could cut a fit on the ragged metal.
11. The stairwell doors and storage doors are showing signs of rust and need to be sanded and painted.
12. The metal shed roof on the 4th floor breezeway has steel bolts that are completely rusted and need to be replaced with stainless anchors. This is a critical issue and needs to be repaired soon.
13. There are several door stops on the corridors that have been broken of and are causing rust stains on the deck coating.
14. There are numerous areas on the EIFS stucco system on the corridors that has been busted and needs to be repaired.
15. The windows on the corridors are exhibiting signs of corrosion and the caulk around the windows is showing signs of cracking.

Beach front balcony inspection

1. The balcony deck coatings were also in fair condition and will need the same top coating next year. There are a few areas where the coatings have been cut, cigarette burns, furniture rusting and furniture legs gouging into the coating. We recommended after installation of the deck coating that no metal furniture be used on the balconies. However, there are a significant number of units that have the metal furniture.
2. There are a few balconies that will need to be recoated this fall as they have tears and or cuts. We are cleaning and recoating A 407 for it has a hole through the base coat and could possible allow moisture into the unit.
3. There are several areas that need to have the stucco patched on the balconies because of construction in the units. There are a few areas in the parking garages that the stucco has been bumped by cars that need to be fixed.
4. The new bedroom/balcony doors look good and are functioning properly.
5. The handrails inspected are in fair condition. There is widespread peeling of paint and some signs of corrosion. There are numerous rail post that are loose and need to be fixed as soon as possible.
6.Leaks continue to be a problem at and around the old sliding doors on the beachfront and golf course side of the buildings. We have repeatedly shown you and numerous board members that these doors are leaking and I am sure there is damage that is occurring in the new metal stud walls with the Durock system that we installed during our project in 2003/2004. We are in the process of replacing 17 doors and I recommend that the remaining old doors be removed and replaced.

PL 0631

7. The fixed panel windows on the beachfront balconies are showing sign of considerable corrosion and the glazing is cracking. These need to be replaced in the near future.
8. There are numerous receptacles broken and wall vents that have rusting screws leaching on the stucco walls.
9. There are numerous spalls on the face of the balconies that need to be repaired so that they don't become a life safety issue.
10. The balconies need to be power washed to removed the salt build up on the windows, doors, handrails and deck coatings.

In closing, our inspection tells us that the buildings are in good condition, however there are several issues that need to be addressed. General maintenance of the doors and windows, deck coatings, stucco system and caulk inspection and repairs on an annual program should extend the life cycle of the remediation project for years to come.

Sincerely,

Bob Wiggins

4th floor N corner
Oceanside
roof gap

International Concrete Repair Institute

"2002 Project of the Year Award Recipient"

"2003 Project of the Year Award Recipient"

843-588-6721 FAX-843-588-6722

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PL 0632

Exhibit 12

Deposition of
Arnold E. Schaewe

July 21, 2014

Shipwatch Condominium Association, Inc. v. Carolina Concrete Systems, Inc., et al.
Case Number: 2012-CP-10-03857&58



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chimneys. And I do not recall the name of that organization, because I was not on the board then.

But that was not successful.

And then we asked Carolina Concrete to come in and check out those leakages and -- so Carolina Concrete then worked on the chimneys.

Q. What about other areas of the building besides the chimneys?

A. The progression was that Carolina Concrete looked at the chimneys and suggested rework of the chimneys.

At the time they were working on the chimneys, they discovered -- the roof on Shipwatch at that time was a tile roof. They discovered that -- that many of the roof tiles were basically loose because the fastening nails were rusted through.

And we decided -- we decided to replace the tile roof with a metal -- with a metal roof.

And then through investigations and advice from Bob Wiggins in talking about other leakages on the building, in consultation with him and through his advice, we proceeded to do more the rather extential (phonetic) cladding

work that we did at that time on -- on the ocean side walls and the two end walls on each building.

Q. Do you know specifically why Mr. Wiggins suggested that work? What did he find that would have suggested that you all replace cladding on the end walls on the ocean side?

A. Well, we knew we had -- we knew we had leakage problems in various parts of the building on the -- on the ocean side through -- through doors. He discovered that we had leakage due to construction of the partition walls on the oceanfront balconies.

We had -- we knew we had water intrusion in the bay window areas on the first three floors of the end walls. So we knew we had problems of water intrusion from the exterior at Shipwatch.

And we were being advised by Mr. Wiggins on what we could do about that, so --

Q. And is that then what led to removing the stucco on the end walls and the ocean side --

A. Yes, exactly.

Q. -- and various areas?

A. Yes.

Q. And you also removed the bay windows; is that correct?

A. The bay windows on the end walls?

Q. Yes, sir.

A. We -- the bay windows, some of them had been replaced previous to Carolina Concrete beginning that work. And then we replaced additional ones during that project.

Q. Do you recall any mention of rusted or corroded metal stud framing --

A. Yes.

Q. -- during Mr. Wiggins investigation?

A. Yes.

Q. What do you recall about that?

A. Pardon?

Q. Do you remember what Mr. Wiggins told you about that?

A. I'm sorry. Every time papers rustle in the background I don't hear you.

Q. Sorry about that.

A. Sorry about that.

Q. What did Mr. Wiggins -- what do you recall Mr. Wiggins telling you all about the rusted or corroded metal studs?

A. Well, we found rusted studs -- you have to remove the cladding to find rusted studs. So when we removed -- when we removed the original EIFS cladding, we found many rusted studs.

Q. Was that on both the end walls?

A. Both -- both the ocean side and end walls.

Q. Was this done on all four buildings?

A. Yes.

(Off the record.)

BY MS. SMITH:

Q. Mr. Schaewe, just to clarify, when you're talking about the removal of the synthetic stucco from the end walls and the ocean side and the corroded and rusted metal stud framing that we're just speaking of, you're talking about in the 2003, 2004 time frame, approximately?

A. If -- if that's what you're saying. Again, I don't recall the exact dates of that. But I'm certain you have the record there, so if it -- if you say it's 2003, 2004, then it's 2003, 2004. So --

Q. Okay. Do you know at that point if there was any issue with the deck sloping?

A. With -- with the what?

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Electronically signed by Brenda Keyser (001-210-526-7800)

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Exhibit 13

WATER INTRUSION AT SLIDING GLASS DOORS
Shipwatch

Prepared for:
Linda Jernigan, General Manager

Prepared by:
Robert G. Sisnroy, P.E.

July 10, 2006

SISNROY ENGINEERING L.L.C.
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DEPOSITION EXHIBIT
JERNIGAN 94
4
PL 0822

SISNROY ENGINEERING L.L.C.
P. O. Box 12806
Charleston, South Carolina 29422
(843) 795-0450
(843) 795-0307 Fax

July 10, 2006
2006-078

Linda Jernigan, General Manager
Shipwatch Horizontal Property Regime
7600 Palmetto Drive
Isle of Palms, South Carolina 29451

RE: Water Intrusion at Sliding Glass Doors

Dear Ms. Jernigan,

On June 22, 2006, a visual survey of chronic water intrusion conditions was performed in Building A and Building C. Based on the observations, it is evident that chronic water intrusion is occurring adjacent to the sliding glass door (SGD) installations typically at the south walls. (See Photo 1) The source of the water intrusion is leakage from the SGD frames at the jamb/sill intersection. The chronic water intrusion has heavily deteriorated tack strips and stained carpet along the SGD frames and adjacent wall areas including portions of interior heated walls. (See Photo 1) Moisture measurements revealed active moisture conditions at several locations. Moreover, it is evident that the leakage source is the jamb/sill intersection of the door frames. (See Photo 2 and 3) Observations revealed holes or separations at the jamb/sill corners of the SGD frames where accumulations of rain or dew can drain and enter the interior and contaminate carpet and wall framing. These conditions are evident at SGD installations elevated on 3 inch concrete curbs and SGD installations at the slab surface.

Consequently, as a damage control measure, it is recommended that the existing door frames be removed and reinstalled in a copper sill pan with end dams. This would require full removal of the SGD frame; grouting the existing concrete floor where necessary; and, installing the sill pan and door along with restoration of interior and exterior finishes to walls and floors. Successful water resistance of the repair would necessitate similar repair scenarios on fourteen additional SGD installations.

As mentioned previously, this is only a damage control measure and not a long term repair application. Although the sill pan is a standard of care for typical exterior door installations, there is no guarantee that this will stop the entirety of the leakage, particularly where door sills are level with the adjacent concrete slab and floor. Bob Wiggins is in agreement that the sill pan could provide a temporary solution to the leakage problem. However, the long term solution is to install a new door, in a full sill pan on an elevated concrete curb.

PL 0823

According to Bob Wiggins, the estimated cost to perform the trial temporary repair is $3600.00. This would include removal of the existing SGD frame; installation of the sill pan, replacement of the same SGD frame, and limited restoration of the interior and exterior wall and deck finishes and caulking. The temporary repair and estimate evolution is contingent on the structural stability of the existing SGD frame, such that it is sound enough to be removed and replaced. Since the integrity of the existing SGD door frames is questionable, it is recommended that a new SGD door assembly be available for the candidate unit at the time of removal of the existing SGD frame.

The repair protocol and estimate is based on available information and observations at the time of development of this letter. It also assumes the existing SGD is viable for reinstallation. If you have any questions, please call me.

Sincerely,

Robert G. Sisnroy

Robert G. Sisnroy, P.E. 7/14/06

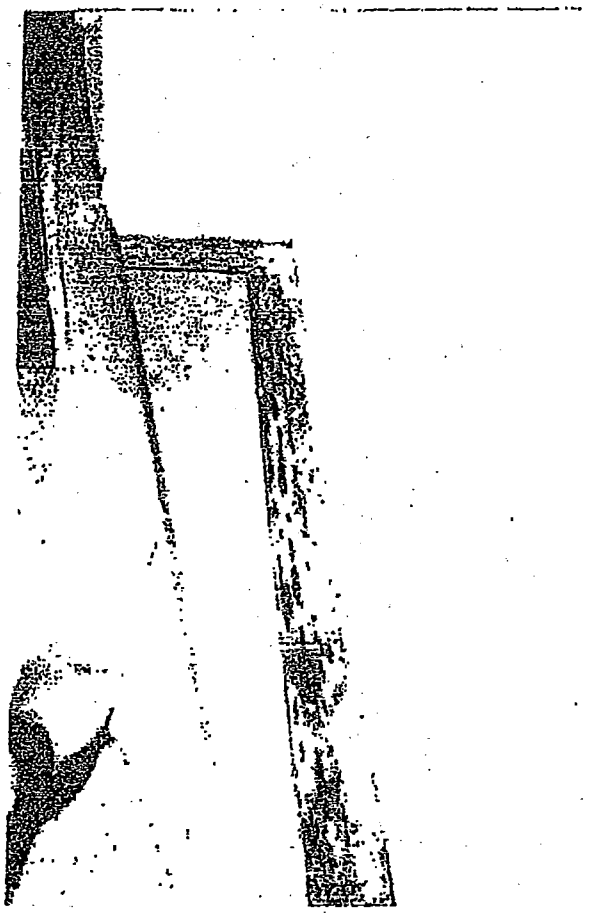


Photo 1: Chronic water intrusion is occurring adjacent to the sliding glass door (SGD) installations typically at the south walls. The chronic water intrusion has heavily deteriorated tack strips and stained carpet along the SGD frames and adjacent wall areas including portions of interior heated walls.

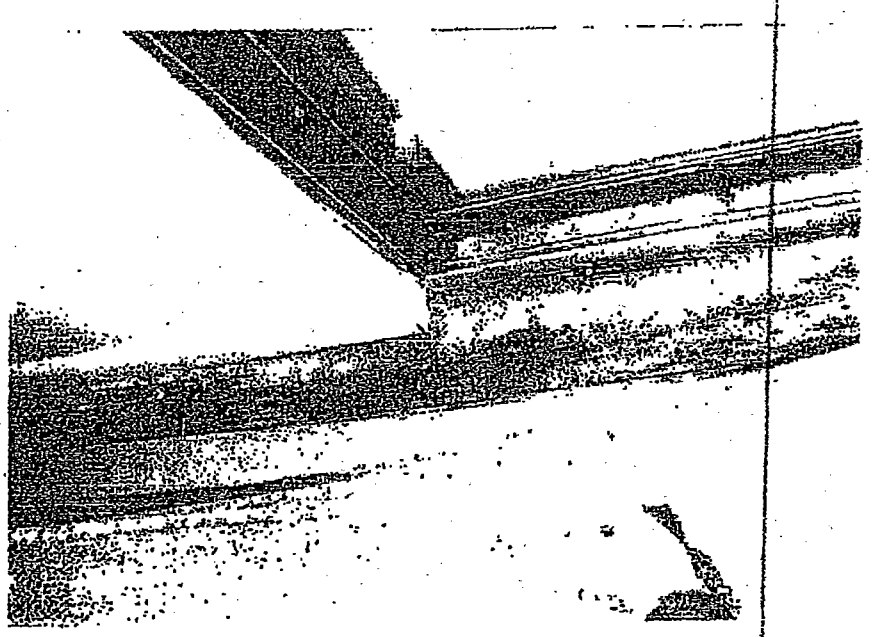


Photo 2: Moisture measurements revealed active moisture conditions at several locations. Moreover, it is evident that the leakage source is the jamb/sill intersection of the door frames.

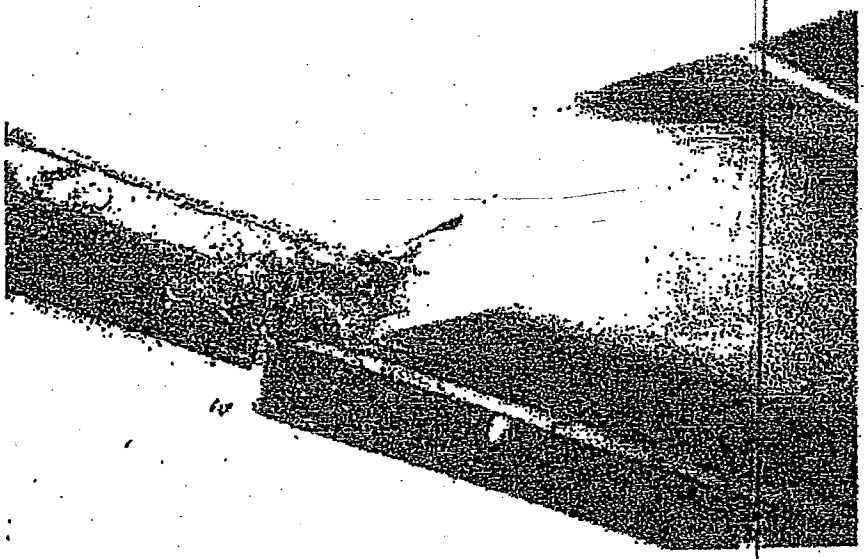


Photo 3: Moisture measurements revealed active moisture conditions at several locations. Moreover, it is evident that the leakage source is the jamb/sill intersection of the door frames.

Exhibit 14

3/09/2007

BUILDING REPORT

1) Renovation Inspections

Carl and I inspected the 17 units that were undergoing remodeling. The visual inspections took 2 ½ hours and the written reports took and additional hour.

Based on that experience, I created an inspection check list, a standardized form for the written report, and a suggested fee schedule. The fee schedule would incorporate the inspector's compensation and Shipwatch's administrative cost. There is also a separate cleaning fee (Linda had recommended, I thought was a great idea) which will be charged on a monthly or part of basis.

All of the concrete violations caused by the contractors have been resolved. There were no other violations noted.

Questions – discussion of fee schedule

Offer inspection position to Chris Weiner

2) Security Cameras

We contacted 2 local companies to give us an education and an estimate. Currently we're looking at cameras for inside the elevators cabs, the elevator lobbies, the outside parking areas incorporating the 2 entrances to Shipwatch, and the pool area. Security Net on Mount Pleasant had stopped by to give us an estimate last week, and they have informed us that they are unable to handle a project of this size. We have received an estimate from Wholesale Industrial Electronics, located Downtown. Their

DEPOSITION EXHIBIT
SERNIGAN 96

5

PL008535

proposal recommends a wireless system utilizing 13 cameras. The office would be equipped with a recording device and a screen capable of viewing past recordings and the ability to monitor live activity.
Cost of this project is $46,484.00 / $450.00 per unit.

3) Sliding Glass Doors

It has been well known by passed boards that there has been a leakage problem with a good number of sliding glass doors. The regime has put forth a concerted effort over the years to remedy this problem by caulking. This has not worked in many cases. There are 16 doors that need to be replaced as soon as possible. We are currently researching door manufacturers. Arnie has suggested Efco Doors. This company supplied the last group of doors installed at Shipwatch, and he seems to be very satisfied. I recommend that once a price for the doors, installation and concrete work has been agreed upon by the board, a replacement schedule be implemented and work begin in the fall. Eventually the remaining 80 doors will have to be replaced and this expense should be addressed at the budget meeting.
Estimated cost to replace 16 doors @ 7,500 each = $120,000.00

4) Water Pressure Pumps

Our pressure pumping systems are definitely aging. The metal support stands that the units rest on are severely rusted. On a positive note, Carl had spoke to the manufacture and said that replacement parts are available. We will continue to research for a replacement system and inform the board of our findings.

Exhibit 15

Building Committee Report
Shipwatch Homeowners' Meeting
January 20, 2007

DEPOSITION EXHIBIT
Trombino 154

Dear Shipwatch Owners,

I am sorry I cannot be with you today to give this report in person. Marcy had knee surgery for a torn meniscus two weeks ago and the doctor has restricted travel for one month. Her knee is coming along fine and she began physical therapy this week. We hope to be at Shipwatch for our winter stay in early February. Be that as it may, I wanted to write this report as the basis for discussion of Shipwatch building status at today's meeting. Shipwatch manager, Linda Jernigan, Building Committee member, Fred Trombino and past Board member, Carl Grisier will be more than able to answer any questions you may have regarding the status of buildings and facilities at Shipwatch.

2006 has been a busy and event filled year of capital improvement for Shipwatch. The Capital Plan that necessitated an owner assessment is nearly complete. As I have said before, none of us want or appreciate an assessment. However, I think we can all agree that the improvements done on the pool, elevator cabs, elevator lobbies, parking lot, landscaping and corridor lights are not only very aesthetically pleasing but are important for improving the equity we have as owners of Shipwatch. Additionally, I trust you are enjoying the convenience and elimination of hassle the retractable screens on living room doors are providing versus the sliding screens.

Attached to this report is a cost and completion status of the project. As you can see, all items are complete except for landscaping, painting of building railings and boardwalk extensions at Buildings A and D. Landscaping work is in progress now and will be completed shortly. Building railings will be painted in March. Extending the boardwalks outward at the A and D buildings is on hold because of the current cycle of beach erosion.

As you review the status sheet, you will notice cost differences (both plus and minus) between our original estimates that went into sizing the assessment amounts and actual costs. Following is a discussion on the difference for the pool, elevator lobby, parking lot repaving, corridor lights and elevator modernization.

1. The original pool estimate for $84,000 was based on plastering and retiling the inside of the pool, replacing and resurfacing the concrete deck and installing new equipment in the pump house. Upon doing further investigation into deck materials, the decision was made to use travertine stone for the deck rather than coated concrete. The cost of the travertine versus coated concrete was an additional $28,052. (Not only is the appearance of travertine much better but the long term maintenance costs justify the additional expenditure. Power washing the concrete was costing up to $5000 per year and recoating cost done every 5-10 years runs about $20,000.) When plastering of the pool was begun, it was found that previous plaster coats were loose and five previous coats needed to be totally

PL009298

removed. This was an additional $10,000. Numerous leaks in pool piping were discovered and repairs needed. This added $6917 to make the total pool cost $128,969.

2. When the existing elevator lobby tiles were removed, it was discovered that the base material under the tile was a gypsum product not suitable as a base for retiling. The gypsum was removed and concrete poured to make a sound base for the new tile. This added $5973 to the cost for the four lobbies.
3. The original schedule for paving the parking lot was March 2006. Because the work on the pool was extended into early April by stone delivery and because we did not want to pave until pool work was done, it was necessary to delay paving until November. The additional cost of $14,416 for paving was due to the increase in asphalt cost because of oil prices.
4. Corridor lights came in well below our original estimate. Linda found a source for the lights we wanted well below the initial investigation and painting and installation of the lights also came in below cost. This saved $19,600 versus estimated cost.
5. The original elevator modernization estimate was based on a quote from our elevator contractor ThyssenKrupp. This work entailed replacing the control system, wiring, signal fixtures, door closure protection and door operators. Because of the large amount of this quote, we contacted two other elevator maintenance firms and asked for their input. Based on this, we scaled down the scope of work to $35,285. Improvements completed include infrared door closure protection, solid state motor starters, emergency return to the 1st floor when there is a power failure, automatic lubrication for rails and heaters for the hydraulic oil.

I'm sure we are all glad to have the past few years of construction and construction costs behind us. However, life on the beach is never dull and it is necessary to be vigilant on maintaining Shipwatch to the high standards owners (and future owners) expect. Therefore, I want to give you a glimpse of capital work under consideration by the Board at this time.

1. A number of units are experiencing water leaks in the area of 4th and 5th floor doors. Investigation is under way to determine whether this leakage is from the doors themselves or from other sources. Linda has identified fifteen suspect doors. All 264 sliding doors at Shipwatch were installed around Hugo time (1989). Seventy two of these doors were replaced two years ago. That leaves 192 doors that are 17 years old and showing various signs of age. We want to identify the doors needing replacement now and proceed with this work during 2007. The cost of a door replacement is between $7000-8000. Additionally, we need to incorporate into annual budgeting, a plan to do a rolling change of all doors.
2. Shipwatch has two water pressure boost pump stations. One is located in the B Building for Buildings A and B and one in the C Building for C and D. These pumping stations are definitely aging. A breakdown in one of them would cause a water shutdown for two whole buildings. We are considering replacement of these pumping stations. Replacement cost for the two stations would be between $50,000 and $100,000.

PL009299

3. Although not a building item, we are all aware of the beach erosion going on now. This item will be discussed in detail in another part of our meeting. I include it here simply to raise the point that erosion is another cost threat for our budget.

Enjoy the meeting and your time at Shipwatch. The floor is open for questions at this time.

If you wish to discuss any of this work with me, please contact me by phone on 513-702-6301.

Arnie Schaewe
Building Committee Chair

PL009300

Exhibit 16

flip seven more pages. The page that I'm looking for, the top starts with, Discussion followed on the motion. That's the first sentence.
A. Got it.
Q. Okay. And as I said, the fourth paragraph down, it says, Arnie noted a significant -- if you could just read that paragraph for me.
A. Out loud?
Q. No, no. To yourself.
A. Okay.
Q. And it states that Arnie noted a significant regime financial risk due to leaking sliding glass doors on the fourth and fifth floors back and front, living room and bedroom.
What did you mean by a significant regime financial risk?
A. It relates back to what I had been saying previously about the sliding glass doors. There's 264 of them. They're very expensive.
And if you multiply 264 times the cost of each door, it is a very significant financial risk.
Q. And at that particular time you all had identified that the fourth and fifth floors, both

sliding glass doors were leaking in various units; is that not correct?
A. Well, I believe it said at this point in time -- I think -- I believe it was Carl working with Mr. Wiggins. At that point it says, had identified 15 as a problem.
Q. And from that point forward, did you all continue to inspect the sliding glass doors for leaks?
A. Yes.
Q. And, additionally, you had homeowners reporting that they had leaking sliding glass doors?
A. Yes.
Q. And throughout the years after 2006, the board decided to replace certain sliding glass doors based on those inspections and complaints by homeowners?
A. Yes.
Q. And each year, would the board determine how much it could afford as far as the number of doors that it could replace?
A. I believe I left the board after 2007, I believe. So I do not know what discussions the board had between my leaving the board and my

coming back to the board in 2012.
Q. Fair enough. But during that time period, additional doors were replaced every year, is that not correct?
A. Yes. As I mentioned earlier, I believe we stand somewhere around 160 right now.
Q. Okay.
(Off the record.)
(Lunch recess was taken from 12:30 to 1:48.)
BY MS. SMITH:
Q. Okay. Mr. Schaewe, we're back on the record. And I just have some few short questions regarding some of the documents that you produced this morning to us.
Specifically, I am looking at what's been Bates stamped AS0297. Do you have those documents in front of you?
A. No, I don't have those with me.
Q. You don't have any of those documents?
A. They're out in the car, in fact.
MS. SMITH: Are we all going to be asking him about the documents?
MR. ROOT: His documents?

MS. SMITH: Yes.
THE WITNESS: Do you want me to go get them for you?
MS. SMITH: Yes.
(Off the record.)
THE WITNESS: I apologize for that. I just received these documents back from Flynn's office, and they're still in the FedEx box.
A. Okay. I have them.
BY MS. SMITH:
Q. I believe what they are is your rental of the unit; is that correct?
A. The -- on the bottom left, those are the -- those are the rentals, right.
Q. Okay. And it's for years -- I can't read it. I think it's 2003 to 2013?
A. Yes. Yes.
Q. Okay.
MS. SMITH: Can we mark that as an exhibit?
THE WITNESS: Pardon?
MS. SMITH: I said I'd like to mark that as an exhibit.
(Off the record.)

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Electronically signed by Brenda Keyser (001-210-526-7800) ba56f871-dbe7-4a01-a302-83ccf8aa6de0

Exhibit 17

BOARD OF DIRECTORS
MEETING September 12 & 13, 2008

The September 12th meeting was called to order at 1 PM, Regime Office Manager Linda, and all Board members except for Rogerlee/Bill and Clintt were present.

MOTION made by Jim McDonough, seconded by Oscar Mendiondo to accept the minutes of June 4th, 2008 with exception of the 4th paragraph to be clarified to read: Terry asked Linda for a change in reporting format for designated and undesignated funds to show a snapshot of financial conditions.

Anne Ossewaarde started the meeting with the Financial Report. Highlights were higher amounts reported for Legal due to the lawsuits and erosion issues; insurance always billed the following year and not knowing the exact amount, and the buildings need caulking. Major items for the budget are beach re-nourishment, sliding doors replacements and water pump replacement. Terry noted that we will hence forth take out the insurance in the budget and bill the Homeowners directly for this amount.

The financial report is attached to these minutes. MOTION to accept the Financial Report by Jim; seconded by Oscar.

Fred Trombino gave the Building Report. 13 sliding doors replaced. During a particularly strong storm in August where rain was not only intense but coming in sideways, there was some water intrusion into a few doors. New caulk was found cracked and was replaced and we will wait and see if that was the problem. This is the first time of wind-driven rain where the new doors have leaked.

We have approximately 5,168 sq ft of EFIS remaining on the 4 buildings, which represents 30.4% of the cladding that needs to be replaced at a cost of $1.7 million.

The painting of the balcony railings/spindles have been on the budget several times and have been under-estimated for the cost. We have taken them off the budget in lieu of more important items, such as water pump replacements, beach re-nourishment, etc. If it weren't for people abusing the railings with keys, equipment, their fingers, etc. the paint would last longer. We have covered over the railings with new paint several times with spot painting, and painting over the paint - it has become obvious that the railings/spindles need to be stripped and painted. Epoxy paint is longer wearing and is a good option. The railings themselves are in good condition. We would want to co-ordinate the colors of the deck coating and the railings. The cost of the 4-step process for the railings would be $132,000 for the ocean and street sides of the buildings. They were painted last about 4 years ago and the painting lasted about 2 years. Fred also would like to find some replacement caps for the spindles of the railings, most of which are missing. If we wanted to do them a building at a time, cost wise it is not efficient as it would cost more each year.

1

DEPOSITION EXHIBIT
JERNIGAN 108

PL05553

Fred has noticed that some of the cladding of the buildings is "bubbling", so Linda got touch with Bob Sisnroy (Engineer who has done much work with Shipwatch in the past) for a report that Fred just received. In the report, dated August 23, 2008 (attached), there are several major problems that need to be addressed. First, the flashing was not installed correctly in certain areas in violation of the IBC (International Building Code) and our contract; also there are portions of the exterior cladding that show blistering, cracking and heavy efflorescence due to water intrusion....these are major problems.

Fred voiced his concern that the amount of money that we spend on major projects such as roofing and the cladding of the buildings, and we find these types of problems now and in the past. Fred proposed that Shipwatch should hire a Project Manager, or an Engineer in that field to oversee the project. We Board Members past and present, nor Linda, have the expertise in these types of projects. With the amount of money spent and lawsuits that follow, it is costing Shipwatch more in the long run.

It is hard for Shipwatch to figure out if the water intrusion was caused by poor roofing, or poor cladding, or both and if we had a Project Manager it would be better. Having a Project Manager will have any project cost more, possibly 10-15% more. That cost sounds a lot, however, in the scheme of things it is well worth it.

Basically, Shipwatch MO is that there is a need to repair or build, estimates are given, we take the cheapest or near cheapest contract, work is done, we pay, we find problems later, we get a report done at more expense, next go to contractor and they say it's not them, we sue at more expense, we go to mediation or arbitration for further frustration, ultimately splitting the costs of fixing the problem. It's a cost of doing business that we must start to hire Project Managers.

Linda has a lot of confidence in Bob Wiggins; and Capers Barr, our attorney, stated that Bob Sisnroy is a well respected Engineer throughout the state of SC. Sisnroy tends to delve into many aspects of whatever he is involved with.

EFIS is still remaining on the 1, 2, 3, 4 floors of the street side and parts of the ocean side of the 1, 2, & 3rd floor. Minimum acceptable for wind pool state policing insurance is 30%. Please see CBC (Commercial Building Consultant's Report of January 31, 2008) for more information. Insurance will charge $50,000 more per building for EFIS that is more than 30%. The Board intuitively feels that insurances will, in future years, reduce the percentage of allowable EFIS and raise the costs of insuring these buildings.

It was decided to carry over this Motion for a Project Manager until tomorrow's meeting.

Ground Report by Terry Henderson – Grounds are in good shape. He'd like to do more, however, we have no money to do it. He would like to put in more lighting and ground cover. Most of the plants that were lost this year were transplants.

Legal Report was not given as Bill and Rogerlee were not in attendance.

Linda stated that if we insured each building for $7.6M this year it would cost an additional $65,000 more in insurance total. We need to have insurance on our buildings that equate to 90% of rebuilding costs (it used to be 80%), to have 100% of insurance. CBC will do an appraisal of Shipwatch for $1,500. If you underinsure the insurance companies will not pay 100% of a claim – they will use a formula and penalize for the amount of being underinsured (paraphrased). Currently our buildings are insured for $6.5M.

MOTION made by Jim, seconded by Oscar to hire CBC to do a building appraisal for insurance purposes for the amount of $1,500.

Discussion turned to does Shipwatch have the right insurance Broker, Gallagher is the largest in the country and shop all insurance companies, however, we are limited to which insurance companies will insure beach properties. Linda feels comfortable using Gallagher, which we have had since 1990. Another thought was to have a higher deductible for a smaller premium. Linda stated that it usually did not make that much difference unless the deduction was huge. Even if we have concrete in our buildings, EFIS is classified as frame and costs more. To formally "self insure" you would have to put about $1M in an account for insurance. It was decided that during our next meeting at Shipwatch that Gallagher come to it.

Insurance for Ocean Club is over $1M and SeaScape is at $500,000.

Insurance renews February 18th, last year we had money in Reserves and then billed HO for the remainder. For 2009 payment, we do not have enough money in Reserves. Lengthy discussion followed how to bill the HO for insurance and also for fines for late payments. It was decided the bill for insurance (based on last years total amount) is due January 1st, with the remainder due March 1st. Any insurance payments will carry a 10% late fee per month.

MOTION made by Oscar, seconded by Jim, that Homeowners will be notified of the insurance amount due based on last years total premium will be due on January 1st, late on January 10th, and penalty fee on or after January 20th; and the remainder insurance payment due March 1st, late on March 10th, with penalty fee on or after March 20th.

MOTION made by John Cipkala, seconded by Audrey Lehner, all insurance payments will carry a 10% penalty late fee per month.

Sliding Glass Doors started another long discussion. Sand gets in the tracks and then eats into the rollers and tracks, getting harder to open and shut, breaking rollers and handles. Linda has spent over $3,000 in the last 2 years replacing these items. One unit she's gone into for the third time for their handle. The Board agreed that the Homeowners should be responsible for maintenance of their sliding doors.

PL05555

MOTION made by Oscar, seconded by Anne that all Homeowners are responsible for the maintenance of their own sliding glass doors.

Next up was Pest Control callbacks. Even though the schedule is presented to Homeowners a year in advance, more and more times the Pest Control workers cannot gain access to the units. Renters or homeowners will not let them in, when they come back there is a charge to the Regime. It was felt that if a Homeowner unit is not treated because of refused entry, that the Homeowner in question be charged for the return visit.

MOTION made by Jim, seconded by Fred...If Pest Control cannot gain access to a unit on the scheduled day, and a callback is made to this unit, a charge of $50 will be billed to the Homeowner of the unit.

Up for discussion next was the updated Contractors Policy. New for the upcoming construction period starting 2008, work can begin September 15, 2008, no work on weekends, no work performed the week of Thanksgiving (11/22-11/30), no work to be performed the week of Christmas 12/20-1/05, no work after April 15, 2009. No noise prior to 10 AM or after 5 PM. Also the deposit will increase to $1,500. A fine of $200 per day for working beyond these dates was agreed to by the Board at the June meeting. Owners who manage their own remodel project they are required to follow the same policies as a General Contractor, however, in addition they must not sell or rent for 2 years after the remodel according to state law. An Owners Acknowledgement must be signed and attached to the City building permit. Several changes to the Contractors Policy consisted of stronger language to protect Regime common property.

MOTION made by Oscar, seconded by Anne to accept the new Contractors Policy.

Next came the Building Inspections. All units were inspected for plumbing issues and replacements of hoses for toilets and washing machines. The inspections and replacements have been a great success as we have had fewer leaks than ever before in this year. Added to the Building Inspections is a check of the sliding glass doors. The Regime will pay $25 per unit for these inspections; any repairs needed will be forwarded to the Homeowner and repairs at the Homeowners expense.

MOTION made by Jim, seconded by Oscar, to do the same Building Inspections as last year, and also include the sliding glass doors to the Inspections. Homeowners will be told of the repairs needed and repairs made at the Homeowners expense.

Oceanside cleaning of the building was not done last year. The cost to do so is $8,200 because the difficulty of moving furniture, and cleaning inside all the patio areas, including the patio doors. They will have to be cleaned in order to do the deck recoating. It was decided to wait on this project.

PL05556

Summer Security/Pool Monitoring this summer was pretty orderly except for the 4th of July – which is always the a bad time, and proved to be the worst this summer. Many complaints and angry people. A truck (a HO) was even parked in front of the garbage area and the garbage truck could not get in to empty our garbage for that week. With occupancy high, we only have 2 cars per unit (and not if everybody is here), also people are coming with more than 2 vehicles. There is nowhere to park their cars if there are no spaces at Shipwatch. Towing will be enforced at Shipwatch. There are only 157 spaces for 104 units. This topic has been ongoing for several years with no answer in sight. Fred came up with issuing a pass just for the 4th of July weekend, to be hung from your rearview mirror to get in the gate (only 2 per unit). We would have a person placed at the entrance(s) and not let anyone in without the pass. Terry asked if they could park up near DWD, but that could not be promised. Three day 24-hour coverage for the 4th of July would be approximately $2,000. Board even mulled over using a boot for vehicles wrongly parked on Shipwatch property, including a hefty fine.

Other condos have a guard at their gate, we have a roving guard. Some condos have a pool monitor and a guard at the gate. If we block on entrance, we have to get the Fire Marshall to agree. As one employee (Linda) she can call the tow company, however, by the time the tow company comes, the vehicle leaves and Linda has to pay a fee for a false alarm. Terry asked Linda to think of something that will make it work for her and the Regime.

D219 new bay window is leaking, however, they just put in new window treatments that were drilled into the bay windows – the leak caused damage into the downstairs unit (D219) bay window header. Costs will be passed on to D219 after the bay window is taken out and inspected.

The owner of A206 notified the Board that if his unit is not up to code (after a recent remodel in A205 that opened up the wall between the bathroom and unit A206) that he will have it repaired during the remodeling season, and will call on Linda for inspections.

Terry asked for a committee to review the Master Deed and newer drafted Master Deeds of other Regimes. Oscar volunteered to be on the committee. Ours is 24 years old and was written in the best interests of the builder; it should be updated to be in the best interests of the Regime.

Meeting adjourned September 12th, 2008 at 3:50 PM and the Board did a "field trip" around the complex for a tour of our buildings.

Respectfully submitted,

Audrey Lehner

PL05557

BOARD OF DIRECTORS
MEETING September 13, 2008

Meeting called to order at 9:10 AM, Linda and all Board Members present except for Rogeriee/Bill and Clintt.

Linda presented what the Regime has spent since November 2007. Terry, with the economic situation has asked Linda to be as lean as we could with the operating budget. Some items have come under, such as water. However, the renters have been off and it's possible that is why there is less water and elevators being used less.

Caulking should be done every other year. With the harsh beach weather the caulk does not last as long, it cracks and moves away from the buildings. Audrey has an EFIS house and knows there is a special caulk to be used on EFIS, she will research the name for it, brought. (Later she sent this information to Linda and the Board members. The caulk was DOW 790.)

The Board went through the budget line by line and then a second time to see where we can save money, or if money would be better spent elsewhere in the budget. Postage was higher this year because we sent out more communications to the Homeowners regarding Insurance and Beach re-nourishment project. Linda would like to be able to have regular time off from the Regime, she works 24/7 on call. The Homeowners was a little more expensive than in years before. Board Expenses also was over because of the increase in cost of travel. Cable TV may increase as well (possibly 5%), as did Pest Control and Pool Maintenance, though less in 2008, will increase in 2009 due to chemicals. Items that were less than expected in 2008 were Building Maintenance/Repair (which is hard to plan for), and the Building Inspections Program. Elevators Maintenance was up slightly due to new phones installed and other not ordinary repairs.

A brief discussion regarding Cable and what we can do to save. Several ideas where thrown into the discussion, but all failed to help with the situation we have.

Linda was looking into using a salt system instead of chemicals, but could not find anyone in the Charleston area that does it commercially. She will research it again.

Linda would like to return to looking into getting an security "arm" at one of the gate entrances to help keep out people that don't belong. She sends rules to all the property managers and rental companies regarding Regime rules - the amount of cars that can come, that the maids cannot use our luggage carts, junk can't accumulate around the front doors, over and over, still it does no good. People will do what they want to do. John and Linda will work on posting rules in the units.

Audrey brought up the non-use of the web page and the money spent on it. The Board hopes that more people will use it. The Homeowners should be told to look at the website instead of calling Linda for information.

Terry would like Linda to avail herself for more CAI meetings, however, they are not close to Charleston and they sometimes are scheduled on days where we have a Board or Annual meeting. Linda said she will try to use it more, possibly 2 meetings a year. The CAI is an organization for Condo Associations. Money was set into the Budget for Educational Training.

A list of items were mentioned that will be needed to be done in the next few years. Listed below are the items and estimates of costs:

1. Sliding glass doors replaced - $177,600
2. Railings/spindles repainted – street and ocean side - $132,000
3. Garage Lattice Work replaced - $15,000
4. Entrance Signs – originally from 1984 - $ $25,000
5. Deck Coating – waterproofed in 2003, to maintain warranty they must be top-coated every 3 years - $200,000*
6. EIFS replacement – approximately $423,060 per building, which can be done in phases (total $1,800,000)
7. Contingency at 5% for projects - $117,230

Not to mention rebuilding the Capital Reserves.

*The Board previously passed on coating the decks because we needed to have money to do other projects (namely the beach) and let the warranty expire. If the decks are not recoated very soon, they will deteriorate to the point the buildings will again have to be closed and decks completely taken down to the bare floors once again, and at considerable expense. The most expensive part of waterproofing is removing the old coat and preparing the concrete for the new coating, so we need to extend the life of the surface as long as possible. Bob Wiggins of Carolina Concrete says though we maintain our decks very well, we need to topcoat to protect the base coat.

Highly recommended by Linda are points #1, #5, and #6. Linda pointed out that Shipboard Boards have always believed in Special Assessment instead of high Reserve funding. Ocean Club unit owners pay $650 per month in Regime fees; they have been also paying $1,388 per month towards beach erosion and will continue paying this amount through December so there will be a total of $750,000 in Capital Reserve; Seascape would like to keep a Reserve of $500,000, they spent their Reserve on sand issues and they may have to borrow money from the bank; Summerhouse have a 20 year plan and they decide what they will do, add a 10% contingency and then build that amount into their budget.

A long discussion about the cost of what is needed and how to divide it in upcoming years. The Board realizes that the items that Linda listed as "highly recommended" were items that either were "on-going" or have been held back from years previous.

7

PL05559

Item #6 is extremely expensive, but will also cost us more in years to come with much higher insurance premiums, if they will insure us at all, but also we still would need to replace the EIFS. The Board does not think there's a problem with the EIFS, however, the insurance companies, especially the wind driven rain portion does.

Our Capital Reserve for many years has been $300,000 minimum and it is becoming increasingly evident that this amount needs to be closer to $500,000. The beach re-nourishment project ($246,500) has almost depleted the Capital Reserve and we have to get that amount back through an assessment, and assess the projects we elect to do in 2009. At the moment we will stay with the $300,000, but possibly as soon as the
next scheduled budget meeting, that amount will need to fluctuate upwards. Fred mentioned that we only assess for what we need at the moment, and nothing more. The 20-year projects list is getting outdated as projects have come up sooner, or of a different scope altogether. Boards have used the 20-year list as a guide, but have never "banked" the monies for these projects.

Previous Boards have never "budgeted" at the September meetings a set figure for the Manager's salary. Instead, they have met after the budget meeting and then decided on an increase and/or bonus, if any. The Board then discussed how to make the process easier, possibly taking an arbitrary 3% increase in the salary and then deciding at the next September meeting if that is the percentage to use for an increase. This is being done with no promise to the manager of that increase amount.

The Board spent considerable time talking about the Capital Reserve and Cash Reserve, and balancing the Operating Budget. Terry had hoped that the Transaction Fee (that we were a year or two late in implementing) would have helped boost the Capital Reserve. Anne mentioned that the Transaction Fee category should be taken off the Operating Budget and put in the Capital Reserve directly. After some discussion, it was decided to keep the Transaction Fee category, and to add a Category called "Carry Forward" to move the Fee and any other amounts into the Capital Reserve with Category #26 Capital Budget Contribution.

Out of the 276 sliding glass doors (which has been an ongoing project for many years) we have replaced 85. The cost is very high, over $10,000 per door as they are not stock doors and must be custom made – the cost is for taking off the old door, replacing and shim the door to fit, plus caulking.

A long 2-hour discussion about which projects we will do, and the possibility of doing them all and instead of doing an assessment the Regime would go to a bank for a loan. If EIFS would be replaced in stages, the 4 & 5 floor ocean side and 5th floor street side should be considered first because of their direct exposure at a cost of $365,000. 1st through 3rd floors were done when the roof was put on. The driving force is to keep the structural intent of the buildings. In the end, it was decided to replace the Capital Reserve Fund, the doors (15), EIFS (first stage), deck coating,

contingency, and Project Manager (Engineer). Bringing the assessment to approximately $1M. Bids will need to be received to firm up the estimates. Once again we will delay the painting of the railings. Most likely there will be another assessment next year, and we are conservatively assessing this year considering the projects listed.

Linda noted that when we opened up EIFS before there were problems and we may find that again when opening up new areas of EIFS, meaning the cost may be more than expected.

The Board also decided on how to spread out the assessment to make it easier for the Homeowners. There will be no increase in monthly Regime fees.

MOTION made by Oscar, seconded by Jim to accept the Operating Budge and assessment for 2009, passed.

Brought up again was the Master Deed and coming more familiar with it, to be able to change it to benefit the Regime. All Board members should know the MD and BL. Terry suggested that we spend some time researching MD's that are out there and be more familiar with ours. Terry, Oscar and Audrey are on the committee. Linda will send samples to the committee.

The Board members that will retire in January are Bill/Rogerlee (2nd term), Jim and Fred (1st terms). Annual Homeowners Meeting will be January 17, 2009 at 11 AM.

Meeting adjourned at 4:00 PM

Respectfully submitted:

Audrey Lehner
Secretary

PL05561

Exhibit 18

A I don't remember how much. I think it was in 2006 we had it resurfaced and new decking put down. I think it was 2006. But I don't remember the cost.
Q Were the pools converted to saltwater at some point?
A They were.
Q When was that done?
A I believe it was 2012.
Q What kind of expense was involved in that?
A I don't remember.
Q What other significant capital improvements have the homeowners had to pay for at Shipwatch other than erosion and the pool, if any?
A We redid the parking lots, the pool, the landscaping. I think that's about all outside of the building expenses that we've done over the years.
(Exhibit No. 100 marked for identification.)
BY MR. COBB:
Q Exhibit No. 100 is Bates stamped PL 05173, and that references a June 19, 2007 report from you to Bob Wiggins noting that a recent storm

caused a bay window in C213 to leak. Correct?
A 213, that's correct. That's what it says.
Q How often were the bay windows leaking in 2007?
A I have no idea.
Q How many bay windows are there in each building?
A Six in each building.
Q So 24 total?
A Correct.
Q And so in 2007 we know of reports of four of the 24 were leaking. Correct?
A Correct.
Q Do you recall any repairs being done to address the leaking bay windows in 2007?
A I don't recall specifically, but I know that Bob Wiggins came out, and I know that Charleston Glass also did some caulking around the bay windows. But I don't remember anything specific.
(Exhibit No. 101 marked for identification.)
BY MR. COBB:
Q I'm going to hand you Exhibit No. 101

which is a July 12, 2007 proposal from Carolina Concrete Systems which deals with the cost associated with the removal and replacement of the remaining EIFS on the building and also replacement of 16 leaking sliding glass doors. Is that correct?
A Yes.
Q July 12, 2007, CCS 997.
And the quote for the removal and replacement of the EIFS with Durock sheathing and Acrocrete hard coat was $1,854,497. Correct?
A Correct.
Q Did the board accept this proposal?
A No.
Q Why not?
A I don't remember specifically why not. This would include -- We did not accept this, is all I remember for sure.
Q The way the document and proposal reads is that you had requested this estimate. Correct?
A Correct.
Q Why did you request the estimate?
A At the direction of the board of directors to continue the process that had been started with the end walls being redone and the fourth and fifth floors of the buildings. It was

just a continuation of the project that had started previously.
Q And did you present this proposal to the board of directors?
A Yes, I would have.
Q Did you make a recommendation of whether or not the board of directors should accept this proposal?
A No. That's not up to me to make a recommendation for something this large.
Q You simply said that you asked me to get an estimate, and I got you an estimate?
A Here it is, correct.
Q And do you recall why the board did not accept this proposal?
A No, I don't.
Q Did the board direct you to obtain any other estimates from any other vendor for this work in 2007?
A I don't know that they did. It was Carolina Concrete exclusively for Shipwatch.
Q The July 12, 2007 proposal also includes an estimate of $156,000 to top coat the beachfront balconies which the proposal says had been damaged from abuse from things such as metal tables and

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

Exhibit 19

Shipwatch AT WILD DUNES

NEWSLETTER WINTER 2008

FROM THE PRESIDENT.....

I hope you will come to the Homeowner's Annual meeting January 17. It will be a good time to renew acquaintances, catch up on news and talk about issues that we are all interested in at Shipwatch. It has been an eventful year and the meeting will be a good opportunity to review financial reports, budgets and goals, discuss capital improvements, and get your views and opinions about the direction that Shipwatch is going.

At this meeting, we will hear from our insurance advisors, the A. J. Gallagher Company from Greenville (see related article below). This is the single largest expenditure for Shipwatch, the one we hate to pay the most, and the one that we can live without the least. At this meeting, you will have a chance to hear a report about our insurance coverage, and learn what factors influence premiums and coverage, as well as trends in South Carolina coastal communities compared to the rest of the nation. Insurance doesn't have to be boring, and we promise this discussion will not be.

In addition, we will discuss our capital improvements program and why the Board felt compelled to increase the Regime fee to cover bare necessities for the coming year. Your input if welcomed and your questions will be answered.

As usual, we will have elections. There are 3 board seats open and anyone that would like to join the board should indicate their interest to either me at thenderson@nc.rr.com or to Fred Trombino at fjtrom454@bellsouth.net during December. We are the nominating committee to discuss with you what is involved with service on the board in terms of time and expectations. If you are interested, please send a short biographical sketch about yourself, including particulars about your work, family, and Shipwatch ownership.

If you come, and you haven't already seen the beach renourishment, you will be surprised and pleased at what a spectacular and large beach we now have. We will have pictures on hand of the dredging process along with personal stories and observations of the project.

I am coming to the end of my service as President, but expect to continue on the board as immediate past president. We have three members who are retiring from the Board. I want to say a special thank you to Rogeriee Thompson and her husband Bill Clifton for their service on the board over several years. They shared a seat and although they have a busy schedule as judges in Rhode Island, they have without fail given tremendous legal and common sense advice, guidance and support for Shipwatch, all with a cheerful heart and a positive outlook. Thanks too to Fred Trombino, who as one of the few full time residents of

PL009474

Shipwatch, gets to enjoy the beach like most of us would. He has been the most wonderful person to have heading up our building committee and has given so much time and

thoughtful attention that we hate to see him step down from this job. Fred has a passionate love of Shipwatch

and is has shown in all that he has done. He vows he will continue to be extra eyes and ears and we will hold him to that.

If you plan to come, please let Linda know so that we can make plans for the meeting which will be at the Sweetgrass Pavilion, like last year, with refreshments and a light lunch to follow our meeting. If you cannot come, please return your proxy so that we can make sure our procedures for voting are in order.

Have a happy holiday season!
All the best,

Terry
Terry Henderson

PL009475

WIRELESS INTERNET ACCESS FOR SHIPWATCH?

Probably the most asked question and one of the most requested services by owners and guests is about wireless internet access (WiFi). AT&T has been the only provider of dependable hi-speed internet . Comcast efforts have been hit and miss, and WD Telecommunication has not been able to offer it wifi thru their phone system (they use Comcast). We are looking into other options that offer dependability and competitive pricing. One of the options we are looking into is a company called Connect Freely. As an example of what we are looking into, Connect Freely has offered to place equipment at Shipwatch to furnish a high speed wifi to reach all units and the pool and grounds. This would be an optional service for a fee for unit owners for their personal use or for their rental guests. The company has offered to provide the service with a personal access code at the rate of $24.95 per month. Any plan we choos will be strictly optional and will not require 100% participation. Other features we are investigating would include an option that if you chose not to subscribe, your guests could still access the wireless system at a higher rate for example $9.95 per day; $24.95 per week; or $34.95 per month. I will keep you posted as I receive information and installation dates. I would also be interested to hear of your experience with Connect Freely or suggestions for features we should look for or avoid in a contract. Let me know what you think with an email to ShipwatchIOP@bellsouth.com . We will discuss this more at the Annual Homeowner's meeting January 17th.

ANNUAL MEETING DATE SET

Our Annual Owner's meeting has been set for January 17, 2009 at 11:00AM in the Sweetgrass Pavilion at Wild Dunes. This is the same lovely place we met last year where we enjoyed plenty of room and the ambience of the new facility next to the Harbor Golf Club House and the Wild Dunes Deli and Tennis Center. We are hoping for volunteers from the ownership to plan the meeting and menu so the meeting represents what YOU want or would like to see. Let me know your interest because that time is fast approaching.

DIGITAL TV SWITCHOVER SOON

February 11 is the big switchover date from analog to digital TV signal. This won't affect your Shipwatch TVs that are on our cable system; however I know many of you have TVs in your guest bedrooms that are not on cable. If those extra TVs are analog you will need to buy a

PL009476

converter that is connected to your rabbit ears, if your TV will accommodate it; older sets don't, newer ones do. You can obtain a coupon ($40) to put towards this purchase by going to a special website and apply as follows: www.dtv2009.gov/ApplyCoupon.aspx. I have seen converters at Circuit City and Best Buy for $59, so that nets to $19 with the coupon.

WATCH OUT FOR THE DEER

Wild Dunes has always been a favorite habitat for deer, there are no hunters and lots of good things to eat. The deer population has increased to the point that you see them farther up the Island and even during the day, and of course you know how they will run right out in front of your vehicle at night. Over the years landscapers have isolated the deer's favorite plants and stopped using them, but the deer adapt by eating their less favorites and moving farther up the Island looking for something they like better; it is a never ending cycle. Looking around Shipwatch with all of our beautifully lush landscaping you will see bushes with more bare than leafy limbs; these plants have become the new staple in their diet. Many early risers at Shipwatch have reported several deer munching shrubs and plants all over Shipwatch.

ANYONE MISSING A SET OF SILVERWARE???

The owners of C315 came to Shipwatch for the Thanksgiving Holiday, their first visit in several weeks, and found a complete set of silverware (with black plastic handles) that had been added to their inventory. If yours is missing let us know. They also discovered that all of their salad forks are missing so if you have discovered the extra forks in your inventory please let us know.

BOOKS STILL MISSING

I have had several requests from owners for the contractor's photo albums that I kept here in my office. A Shipwatch owner borrowed them last year and never returned them to me. PLEASE check your memory banks, drawers, closets, and with your partners to see WHO has the albums and return them to my office so others may use them.

WARNING: DANGEROUS & COSTLY WINDOW TREATMENT INSTALLATIONS

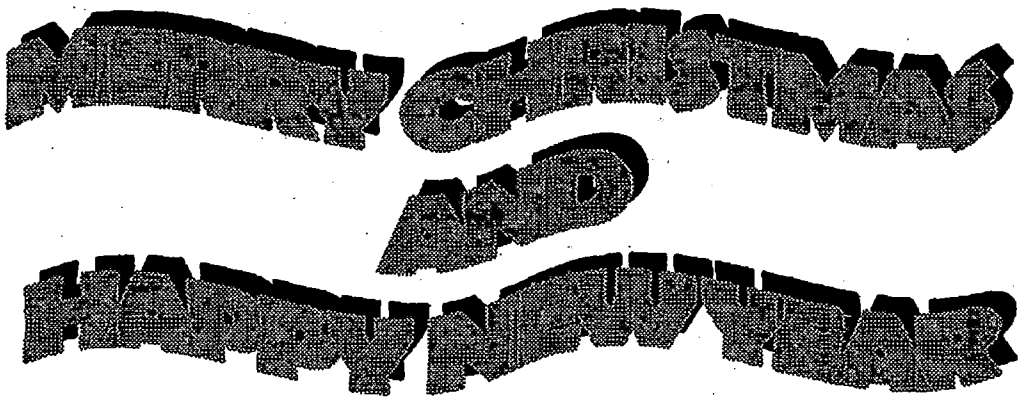
Recently a bay window in one unit had to be removed, repaired, and reinstalled because there was a leak that could not be identified and stopped that caused considerable interior damage. Inspections of caulk, re-caulking both inside and out, and re-inspections were performed over a period of time with no positive results. When the bay window was removed a hole in the pan the window sits in was discovered. The hole was caused when an installer drilled screws into the window frame to attach shutters to the windows. It is amazing that anyone would drill into a window frame to attached window treatments. According to the Master Deed this is a general common element to the Regime and cannot be altered without permission. Permission is never given to do this because of the leak problems is causes. We are still battling with the shutter installer to pay the expense and the repair, so far he has refused and if he does not come through, the owner will be charged. If you or your installer are unclear about installation procedures or want to know options, please check with me BEFORE you proceed with a costly and

UNIT INSPECTIONS AGAIN THIS YEAR

Last year's unit plumbing inspections were so successful we are doing them again. Last year stainless steel hoses were installed on all commodes and washing machines and all dryer vent hoses were brought up to code. During the year we had fewer water leaks than ever before. This

PL009477

year we will be checking all plumbing again, but concentrating on commode tank assemblies. We have had water leaks and commodes running all of the time because some part of the assembly has failed. We are also adding sliding glass doors to the list, checking the condition and operation. The inspection is being paid for by the Regime, but any needed repairs will be the responsibility of the unit owner. Inspections will begin December 8.



PL009478

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Oscar Mendiondo, et al., ☐ Plaintiff v. Carolina Concrete Systems, Inc., et al. ☒ Defendant.	)))))))))	IN THE COURT OF COMMON PLEAS CASE NO. 2012-CP-10-3858 MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
R. Patrick Flynn, Esquire Robertson & Hollingsworth 177 Meeting Street, Suite 300 Charleston, SC 29401 rpf@roblaw.net	R. Britt Kelly, Bar No. 73741 Address: Rosen, Rosen, Hagood 151 Meeting Street, Suite 400 Charleston, SC 29401 phone: 843.577.6726 fax: 843.724.8036 e-mail: bkelly@rrhlawfirm.com

☒ **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: EFCO's Motion for Summary Judgment
Estimated Time Needed: 15 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 Defendant EFCO Corporation, December 4, 2014 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ 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, SCRCP)
☐ 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	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2012-CP-10-3858
	)	
Oscar Mendiondo, individually and as representative of a class of similar situated owners of condominium units in the horizontal property regime known as Shipwatch Condominiums,	)	
Plaintiffs,	)	**EFCO CORPORATION, INC. AND W.C. JOHNSTON ARCHITECTURAL SALES, INC.'S MOTION FOR SUMMARY JUDGMENT AS TO ALL CLAIMS**
vs.	)	
Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corporation, Inc.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corporation; Gary Freeman Architect, Inc.; Gary Freeman, individually;	)	

FILED
2014 DEC -4 PM 2:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Because Plaintiff cannot and has not presented evidence to prove the required elements of his stated causes of action against EFCO Corp. ("EFCO") and W.C. Johnston Architectural Sales, Inc. ("WCJ"), his claims and the putative class claims should be dismissed pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Please take notice that EFCO and WCJ intend to seek such relief at the next hearing relating to this case, or as otherwise scheduled by the Court. Plaintiff has alleged claims against EFCO and WCJ for (1) Negligence, Professional Negligence, and Gross Negligence; (2) Breach of Express and Implied Warranties; and (3) Strict Liability. Because Plaintiff cannot prove essential elements of these causes of action, the claims against EFCO and WCJ fail and should be dismissed.

Co-Defendant Carolina Concrete Systems, Inc. ("CCS") has alleged cross claims against EFCO and WCJ that alleging that EFCO and/or WCJ are responsible for the alleged damages

Plaintiff claims in this case. The cross claims allege causes of action for (1) Negligence; (2) Breach of Warranty; (3) Breach of Contract; and (4) Indemnity. For the same and similar reasons that Plaintiff's claims fail, so do the cross claims of CCS. Therefore, the CCS claims should also be dismissed pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

In support of this motion, EFCO and WCJ rely upon the pleadings and matters filed in this action, memoranda of law to be submitted to the Court, subsequent Affidavits and documents, Plaintiff's expert witness designations (Exhibit A), and the following portions of depositions taken from witnesses, which are attached and marked as the Exhibits noted:

(1) Jeff Miller, PE Deposition Transcript, Pages 347, 559-578; and 609-611 (collective Exhibit B);

(2) Greg Isaacs, PE Deposition Transcript, Pages 301-315; and 541-549 (collective Exhibit C); and

(3) Peter Sherratt, AIA Deposition Transcript, Pages 86, 93-142 (collective Exhibit D).

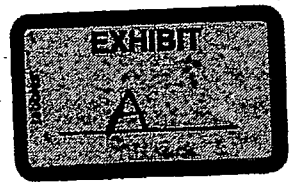
ROSEN, ROSEN & HAGOOD, LLC

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Charleston, S.C. 29402
Attorneys for Defendant EFCO Corporation & WC Johnston Architectural Sales, Inc.

Charleston, South Carolina
December 4, 2014

EXHIBIT A

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) Case No. 2012-CP-10- 3857
Shipwatch Condominium Association, Inc.	)
Plaintiff,	)
vs.	) **PLAINTIFFS' ANSWERS TO GLASSTEC, INC.'S INTERROGATORIES TO ALL PARTIES**
Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually;	)
Defendants.	)
STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) Case No. 2012-CP-10- 3858
Oscar Mendiondo, individually and as representative of a class of similarly situated owners of condominiums units in the horizontal property regime known as Shipwatch Condominiums,	)
Plaintiff,	)
vs.	)
Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney	)



copies of documents obtained through discovery responses by various defendants in this matter, and that information will be made available at a mutually convenient time at the offices of Robertson Hollingsworth & Flynn, 177 Meeting Street, Suite 300, Charleston, South Carolina, 29401.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: None of the Plaintiffs' liability insurance policies provide such coverage for these claims.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case, state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

ANSWER:

SKA Consulting Engineers, Inc.
Jeffrey S. Miller PE
Manager, Building Solutions Group
4651 Charlotte Park Drive, Suite 150
Charlotte, NC 28214
(704) 424-9663

Mr. Miller and his colleagues at SKA Consulting Engineers have performed an engineering investigation into the damages present at the Shipwatch Condominiums, and are evaluating appropriate remedial measures relating to those damages. Information responsive to the sub-parts to the above Interrogatory including, but not limited to, locations of testing, methods, findings, and opinions, is included in the reports issued by Mr. Miller and SKA for this project, which reports are contained in the above-referenced CD containing Plaintiffs' file material. That CD was previously

served by response to Defendant Sisnroy's Requests for Production. Additionally, copies of Mr. Miller and SKA's file material have been provided to counsel pursuant to a subpoena earlier in 2013.

Peter Edwin Sherratt, AIA, Architect
The Sherratt Company
P.O. Box 5786
Hilton Head Island, SC 29938
(843) 689-9777

Mr. Sherratt is conducting an investigation into the damages present at the Shipwatch Condominiums, and is evaluating appropriate remedial measures relating to those damages. He has made several visits to the Shipwatch site since his engagement in or about June 2012. His most recent site visit to Shipwatch was on October 22, 2013 in which he observed conditions on the end walls and the beach-side wall of Building C. He has not produced any written reports at this time, but the requests for production will be supplemented upon receipt of any such reports.

Edward C. Porcher, P.E.
Stantec Consulting Services, Inc.
4969 Centre Pointe Drive, Suite 200
North Charleston, SC 29418

Mr. Porcher and Stantec are serving in a capacity as a non-testifying consulting expert witness for the Plaintiffs at this time.

Commercial Building Consultants, LLC ("CBC")
590 North Semoran Blvd.
Orlando, FL 32807

CBC is serving in a capacity as a non-testifying consulting expert witness for the Plaintiffs at this time.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts

EXHIBIT B

STATE OF SOUTH CAROLINA
THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM ASSOCIATION, Plaintiff, -versus- CAROLINA CONCRETE SYSTEMS, INC., et al., Defendants. OSCAR MENDIONDO, Individually and as representative of a class of similarly situated owners of condominium units in the horizontal property regime known as SHIPWATCH CONDOMINIUMS, Plaintiffs, -versus- CAROLINA CONCRETE SYSTEMS, INC., et al., Defendants.	Case No.: 2012-CP-10-3858

THE CONTINUATION OF THE DEPOSITION OF JEFF MILLER was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 9:30 a.m. on Thursday, the 1st day of May 2014, at the offices of Sutton-Kennerly & Associates, 4651 Charlotte Park Drive, Charlotte, North Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

EXHIBIT B

Q And you don't recall the substance of that conversation?
A Unfortunately, no.
Q I guess you said earlier that there was nothing substantive discussed. Is that correct?
A I probably said that, yes.
Q Sitting here today, you can't recall anything that you-all talked about yesterday. Is that correct? Do you think you talked about the Shipwatch project?
A Obviously. The conversation was meant to be kind of an update prior to depositions. And obviously, I relayed to Pat that I had a hurt back and I was doped up. And I know he was going, I believe, through maybe some questions that the attorneys may be asking. But beyond that, I don't remember. A lot of talking. I probably said one or two words.
Q You didn't receive anything in writing or any e-mails from Mr. Flynn?
A No.
Q Earlier in your prior deposition, specifically referenced on page 432 of that deposition, we talked about the process that took place in the drafting of your affidavit, the back

and forth between you and Mr. Flynn and the use of handwritten notes by you on a pdf document that you believe was attached and sent back and forth via e-mail. Do you recall that testimony?
A Yes.
Q I'll represent to you that I looked in the documents, and I could have missed it, but I did not find that correspondence or that pdf document with handwritten notes. Is that something that you may be able to more easily put your hands on or something that you could put your hands on if you looked within your database or a staff member could?
A It probably would have been easier to find until Debbie gathered everything. I'm not sure how she's messed up my files. But depending upon the hard copy documents that she has assembled, that may or may not be easy to find.
Q I won't tell Debbie you threw her under the bus today, but I'm going to go ahead this afternoon since we probably have some time, if we could talk with her about the possibility of where she thinks it might be, and I'll look with her for that document. Is that acceptable?
A That's fine.
MR. WINTON: Mr. Miller, I don't

think I have any more questions for you at this time.
MR. FLYNN: Janice, just for the record, I believe he does have all the documents that he needs. So I'm not aware of any additional documents that I have that he would need. So when he goes through them, if he can't find something, I'm happy to provide it to him. But he has all the reports that I'm aware of.
THE WITNESS: So there are no other documents other than what was given to me like two years ago?
MR. FLYNN: As far as I -- Yeah.
MR. WINTON: I didn't know if you were testifying for him or what's going on here, but --
MR. FLYNN: I'm talking to you. Because you asked the question about documents, and I wanted to make sure you were aware for the record that I've provided whatever documents he has. It should be in his files.
MR. WINTON: Oh, relative to the affidavit?
MR. FLYNN: No. Just whatever documents that I have in my files, particularly

relating to Mr. Sisnroy. To my knowledge, I've provided everything that he needs. I'm not aware of anything additional that he needs at this time.
MR. WINTON: Understood.
THE WITNESS: That will be easier then. I've got a certain amount of papers to review.
(Lunch recess taken.)
EXAMINATION
BY MR. KELLY:
Q Mr. Miller, we're back from lunch. Are you ready to proceed?
A Yes, sir.
Q My name is Britt Kelly. I represent W.C. Johnston Architectural Sales and EFCO Corporation in this case. I assume you're familiar with EFCO?
A I am familiar with both, yes.
Q And you know Greg Johnston with W.C. Johnston Architectural Sales?
A I know him well, yes.
Q Do you hold any opinions relating to W.C. Johnston Architectural Sales' involvement in the Shipwatch project?
A I don't -- Say that question again.
Q Do you hold any opinions in this case

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related to any fault of W.C. Johnston Architectural Sales for the damages or the repair work that you have specified at the project?
A Well, I guess the best way to answer the question is that obviously we had EFCO non-impact-rated doors and windows improperly installed on this project. And to what responsibility W.C. Johnston or EFCO had regarding those particular units being put into this building when they weren't supposed to is kind of a question mark.
Q Let me try to make sure I fully understand that. So you do not currently hold any opinions relating to any fault of W.C. Johnston Architectural Sales or EFCO may have relating to the installation of non-impact-rated glass products in the buildings at Shipwatch?
A Well, I think I said I don't have the information to thoroughly state – You know, I don't know what W.C. Johnston or EFCO's role was in the project that would place liability on them or not on them. All I know is we've got an inferior, improper code, non-code compliant product that was put in when it shouldn't have been.
Q You realize you've been designated by Mr.

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Flynn's office as an expert witness for the plaintiffs in this case?
A Yes.
Q And this case has been pending for a couple of years now?
A Whatever the time frame, yes.
Q As we sit here today, do you hold any opinions that W.C. Johnston Architectural Sales or EFCO did anything improper that resulted in the installation of non-impact-rated glass in the buildings at Shipwatch?
A I think you just asked me that question.
Q Yes, sir. You didn't answer it, so I would like you to give me a direct answer. Do you or do you not hold an opinion?
A I have not been able to form an opinion without seeing the documentation associated with the windows. Without reviewing the documentation, everything is purely speculative until I see that.
Q So you do not hold an opinion as we sit here today as to the fault, if any, of W.C. Johnston Architectural Sales or EFCO related to the installation of non-impact-rated windows or doors in the buildings at Shipwatch?
A You can say your same sentence 20 more

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times, and I'll give you the same answer. Until I have a chance –
Q Yes, sir. That question calls for a yes-or-no answer. Can you please give me a yes-or-no answer?
A I don't have an answer. I can give you an answer once I review the documents.
Q Do you refuse to answer my question with a yes or no?
A I think I said will be glad to provide the answer once I have documents to be able to form an opinion to give you a yes-or-no answer. I cannot give you a yes-or-no answer now. I know what your question is. You've said it ten times. Keep saying it. We'll keep going over the same thing.
Q You don't have to read too much into it. It's simply a question of do you currently hold an opinion as to whether EFCO or W.C. Johnston Architectural Sales did something improper that led to the installation of non-impact-rated windows and doors in the Shipwatch buildings?
A (No response.)
MR. ROOT: You're not going to respond to him?
THE WITNESS: I've already responded

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twice. I'm not going to respond again.
BY MR. KELLY:
Q Mr. Miller, did you understand my question?
A I did. I responded to it twice.
Q A few minutes have gone by. Do you need some additional time to consider my question to give me a yes-or-no response?
A Yeah, I need to have the documents in front of me for me to review, and then I'll answer your question.
Q You need to have documents in front of you to give me an answer as to whether or not you hold an opinion related to those entities?
A I cannot provide an opinion until I review the documents.
Q I'm not asking you to give me an opinion. I'm asking you to tell me whether or not you have an opinion.
A I've not reviewed any documents, so I therefore have no opinion. How's that?
Q That is a perfectly fine answer. Thank you.
A Thank you.
Q Do you have any opinions related to the

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performance of the EFCO products that are installed in the Shipwatch buildings?
A I do.
Q What are those opinions, please?
A The EFCO products do not meet impact resistance and therefore do not meet code.
Q Do you hold any other opinions regarding the performance of the EFCO products that were installed or are currently installed at the Shipwatch buildings?
A That the sliding glass doors were inadequately fastened. There were no jamb fasteners.
Q Have you endeavored to assign fault to anyone for the fact that there are no jamb fasteners at the EFCO products you have observed at the Shipwatch buildings?
A I have not assigned blame as of yet.
Q Do you hold any other opinions regarding the performance of the EFCO products that were installed in buildings C and D at Shipwatch or currently installed at buildings A and B at Shipwatch?
A Since I've not had a chance to review the file, I am going to reserve that there may be other

opinions. But for the time being, I'm going to say no.
Q Sutton-Kennerly & Associates had water testing performed at the Shipwatch buildings. Correct?
A That's correct.
Q Did you supervise the water testing at the Shipwatch buildings?
A I was aware of all the testing. I didn't supervise it.
Q Who did supervise the testing?
A I had one of my engineers perform the testing.
Q Who performed the testing at Shipwatch on your behalf?
A I don't recall.
Q Who compiled the reports as to whether or not a test resulted in a failure?
A Who provided the reports?
Q Yes, sir. Who compiled the reports?
A The engineer that did the testing.
Q What was Mr. Isaacs' role in that process?
A He may have been one of the testers. I just don't recall. All of that information should

be published in my reports.
Q Did any of the water testing performed by Sutton-Kennerly & Associates at the Shipwatch buildings reveal failures with the EFCO products?
A I don't believe they did.
Q Are you aware of any failure of EFCO products that has led to water intrusion at the Shipwatch buildings?
A Through the actual EFCO units, I am not.
Q When Sutton-Kennerly & Associates first designed a plan for remediating the issues it found at buildings C and D at Shipwatch, did it intend to reuse the EFCO products that were installed in those buildings?
A That was one of the considerations that we had, is to reuse those units, yes.
Q When that consideration was I guess still an option or being considered as an option, did the scope of work that Sutton-Kennerly & Associates envision involve removing those windows or doors in order to fix the other problems surrounding the windows and doors?
A In that scenario, yes, it was envisioned. That was one of the options that we looked at, if we could get the windows and doors grandfathered in

and/or approved by the building official.
Q Under that scenario when you're going to take the windows and doors out of their openings, were you then going to have to go in and beef up the surrounds of those openings?
A We were going to have to beef up the surrounds as well as waterproof the surrounds that were not done properly.
Q Did I understand you to tell me that you went to the building official at Isle of Palms and attempted to grandfather in those EFCO products so that you could use them?
A To grandfather them in and allow them not to be impact rated, I tried that, yes.
Q And what was the response from the building department?
A That that was not acceptable. If it didn't meet code from an impact-rated standpoint, they had to come out and be replaced with code-compliant windows and doors.
Q Did they explain to you why that was not acceptable?
A Because these windows and doors do not meet code from an impact performance and they were not going to allow them in the building.

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Q Is that the only explanation they gave to you?
A Yes.
Q Did they indicate whether or not that opinion that they gave to you held true for the windows and doors on floors four and five of the buildings?
A That held true for every window and door on the project, yes.
Q Did you attempt to have them grandfather in at least the doors on floors four and five even if they wouldn't accept the doors and windows on floors one through three?
A Yes.
Q Did they not agree to do that?
A They did not.
Q Did they give you a different explanation as to why they would not accept that?
A The same reason.
Q So their interpretation of today's code is that the doors on floors four and five had to be impact rated as well?
A From small missile impact, yes.
Q Do you share that belief?
A I'm sorry?

Q Do you share that opinion?
A I'd have to go back and look at the particular language of 2012 IBC, but I'm pretty sure that's the case.
Q Did Sutton-Kennerly & Associates give any consideration to using hurricane shutters or some other method to protect the glass from impact?
A That was also mentioned to the building official and denied.
Q Was there an explanation as to why that was not going to be permitted?
A There was, but I don't recall exactly what it was.
Q Were any of those discussions in writing with the building official, or were they all oral?
A I don't remember. It seems like I had a confirmation e-mail after my meeting with those guys, but I just can't remember.
Q Who were you dealing with at the Isle of Palms building department?
A William Seabrook.
Q Did you have any discussions with Mr. Seabrook as to how it came to be that there was non-impact-rated products installed in the buildings to begin with?

A Did I have a conversation with him as to how I knew that they were not impact rated?
Q No, sir. Did you have a conversation with him as to how it came to be that that product was installed in the buildings?
A My explanation to him was that we had windows put in during the '02 to 2010 time frame that were not impact rated.
Q Did he indicate why that was or how that was permitted if it was permitted?
A He didn't know how that got permitted. There was no permit.
Q Why do you say there was no permit?
A Because he had no record of a permit of that.
Q Did you deal with anyone else at the Isle of Palms building department as to whether or not they would permit the EFCO products to be reinstalled?
A I did have some conversations with -- I think the guy's name is Doug Carr, Kerr, something like that. It seems like initially I spoke with both of those two gentlemen.
Q What was Mr. Carr's or Mr. Kerr's position at the Isle of Palms building department?

A I don't have their titles in front of me.
Q Did you gain an appreciation as to who was his superior or if they had the equivalent role?
A I believe Mr. Kerr or Carr, I think, is the head of that division, and I think Seabrook reports to him.
Q Is it one or both of them who told you you could not reuse the product?
A I don't remember.
Q Was consideration given to reglazing any of the EFCO products with impact-rated glass?
A There was thought given to that, yes.
Q Tell me what went into that thought. Was that something you were involved in or someone else at Sutton-Kennerly & Associates was involved in?
A It seems like we pursued every avenue that we felt that we could to try to keep these windows that were performing from a water-resistant standpoint. They just weren't impact rated.
It seems like we looked and talked about switching the glass out and how the glass set or fit into the frame and that the glazing pocket was such that it may or may not facilitate that.
But I know there was some research and looking to see what, if anything, could be done to

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facilitate that.
Q Was anyone at EFCO consulted as to whether or not impact glass can be installed in any of the EFCO products at Shipwatch?
A I believe there may have been. I believe we contacted somebody with EFCO to discuss that.
Q Who was that, please?
A I'd have to go back to the file. I don't remember.
Q Do you believe that was done via e-mail or phone call?
A I don't remember.
Q Perhaps we should back up. Was that a phone call or a communication that you recall being involved in, or someone had that communication on your behalf?
A I believe it was one of my staff engineers pursuing that for me.
Q Who was that staff engineer?
A I don't remember.
Q Was there any discussion with the building official related to the inability to reuse EFCO products because of how much construction work was going to be performed because of the repairs?
A I don't believe that weighed in on his

decision.
Q Have you been involved in construction or remediation projects where you were able to reuse windows or doors?
A I'm sure I have in the 25 years of my career. I just don't remember exactly when or where.
Q In those cases where you have, do you recall whether or not there was a percentage of construction work that was important to the building official as to whether or not you could remove or replace windows and doors?
A I don't recall. It's typically dictated by the entity with the county that you're actually working with. I just don't remember the specifics of these different projects.
Q Are you familiar with the EFCO 3015 Series sliding glass door?
A Somewhat, yes.
Q Have you specified it on projects?
A I'm sorry. Say that again.
Q Have you specified it on projects that you have designed?
A I believe that is the model number. I don't have it in front of me. But I have spec'd

EFCO sliding glass doors on projects very successfully, yes.
Q And over the last, say, ten years, can you name the projects you can remember where you've spec'd that product?
A I put it on the Windemere condominiums, North Myrtle Beach. I believe I put it on the Harbor Inn condos down in Wrightsville Beach. I'm sure there may be others, but those two come to mind.
Q Was Windemere new construction or repair work?
A It was a remediation project.
Q What was scope of that remediation project?
A Very similar to this particular scope: Replacement of the cladding, replacement of the windows and doors, coatings.
Q All cladding and all windows and doors?
A Yes.
Q What about the Harbor Inn condos?
A That was -- I think they had kind of a combination sliding glass door with fixed panes on the sides that got replaced, coatings, concrete balcony waffle slab repairs, maybe some handrails.

Q How long ago was that project done?
A Harbor Inn, I think, was in '06.
Q When you removed the sliding glass doors in the Harbor Inn condos, was the glass removed from every opening, or was some of the glass left in place?
A No. The entire unit got removed and new units put in.
Q And that was in every condo unit?
A At Harbor Inn, I think there were only 12 or 16 units, but yes.
Q Have you ever provided a design that involved the installation of new EFCO sliding glass doors where not all sliding glass doors or all windows within a regime were being removed and replaced?
A Let me think. Yeah, I think that's happened some. I just don't recall what or where.
Q How would I figure out what or where those projects were?
A I would have to go back through a list of our projects and figure out -- refresh my memory on projects as I look through the database that would involve windows and doors, and then either remember directly from the name of the project or actually

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try to find the electronic file and go through the scope of work that was performed.

Q Do you keep a list of such projects that you've worked on?

A We've got a database of all of our projects since about 1998. I don't know that we have the files for those, but we have a database. Some of those I'll be able to remember once I read through the database.

Q I'm just curious if in advance I can get a printed copy of whatever those projects are so that I know how extensive they are, if there's 40 or 50 or 100 or whatever the number. I'm not asking you to give me a copy today. I'm just wondering if that's a possibility of something that can be done.

A No, not today. Are you looking for projects for SKA or projects that Jeff Miller was involved with?

Q Projects that you were involved with. So, for example, on my computer software at our law firm I can search by matters I'm assigned to, and I can look back at, say, a ten-year period and see all of the cases. I'm just curious if you have something similar where you can print a list of the projects that you were involved in over the last ten

years that would allow you to more easily look and determine if one of those met the criteria that we've been talking about.

A Yeah, our database. I should be able to go through the search engine somehow to narrow down remediation projects if they were coded correctly into the system. And then depending upon what they are, that may tell me -- refresh my memory as to what we did on each of those projects.

Q I would like to do that. I can make a formal request if necessary. I can follow up with a letter or e-mail, whatever is most convenient.

Does Mike Parker still work at Sutton-Kennerly & Associates?

A He does.

Q Have you had any contact with Mike about the Shipwatch project?

A I have not.

Q Have you had any contact with Mike about conversations he had with Linda Jernigan before you became involved in the Shipwatch project?

A I don't know what Mike and Linda may have conversed on.

MR. KELLY: Mr. Miller, understanding that you may have opinions you reach

in the future regarding this case, I'm going to reserve my right to ask you questions about those opinions. As of now, I believe I've asked all the questions I can ask of you today.

EXAMINATION

BY MS. FERGUSON:

Q Mr. Miller, my name is Katherine Ferguson, and I represent Glasstec. I have been here all day listening to your answers, so I'm fully aware that you haven't had time to fully review your files before today's deposition. So some of my questions to you might seem redundant. I can promise you, I'm not trying to be difficult. I just want to ask you some questions as they pertain to my client. Is that okay?

A Sure.

Q Are you familiar with Glasstec?

A I am.

Q Do you know the scope of work that Glasstec performed at the Shipwatch project?

A I do not.

Q Is that because sitting here today you haven't had time to review your file, or you just have no information with regard to Glasstec?

A Well, I believe they put in the majority

of the glass on the project from '02 to 2010. But I also believe there may have been some other glass folks that put other pieces in. But I believe they put in the majority of the glass.

Q I'll represent to you that the last time they performed work at Shipwatch was in 2002.

A Okay.

Q So is it fair to say that sitting here today you don't really know the scope of the work performed by Glasstec at the Shipwatch project?

A I would say that's true.

Q And then sitting here today, do you have any opinion as to the work performed by Glasstec?

A Since I don't know specifically what they did, obviously I have no opinion.

Q Do you believe that you might have a future opinion as to Glasstec?

A I would assume if there are documents available that explain what they did during 2002, I can then form an opinion whether they failed to meet the standard of care in their performance. But I would have to review documents to be able to determine that.

Q Have you been able to determine if any damage or any alleged damage in the Shipwatch

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mechanically anchored to the structural slab. So we found significant deficiencies in the attachment of the units to the framing structure.

Q Could you determine what the resulting damage was specifically from problems with the doors?

A Specifically with the door unit. The door units, at least one, maybe more, were isolated and water tested and successfully passed the water test performance that we did.

The problem with the doors was not the performance of the door units, but it was the impact, the attachment, and the lack or improper waterproofing around the door openings.

Q Right. Can you tell me what the resulting damage was with the attachment and lack of waterproofing of the door opening? Can you tell me --

A Well, the lack of proper waterproofing around the door openings resulted in staining and corrosion of stud framing and staining/deterioration of sheathing and finish components.

Q But there's also problems with the DEFS. Can you break out the damages, or can you determine -- Can you say this resulting damage is

document that summarizes 20 or so different requests.

And then change order No. 3 is something like 43 through 65, and it totals $57,000 after sitting down with the contractor and working that out. That needs to be an official document. But the dollars and the scope and all the items have been gone through and vetted.

Change order No. 4, I'm waiting to get a handful of items that the contractor says is his last request.

Q So that change order No. 1 has always been the same?

A Yes.

MS. SMITH: That's it. Thank you.

E X A M I N A T I O N

BY MR. KELLY:

Q I have two questions and then I'll be done. Before we wrapped up, I wanted to ask a question.

A Yes, sir. Go ahead.

Q Mr. Miller, just for clarity purposes, I want to make sure I understand a couple of things.

The fact that buildings A and B have non-impact windows and doors installed in the

buildings, is the fact that those windows and doors are non-impact causing any damage to the building?

A In and of itself, I would say no.

Q Same question. Prior to the time the windows and doors were removed from buildings C and D, it's my understanding you believe that the windows and doors had non-impact glass. Correct?

A That's correct.

Q Did the presence of non-impact glass in those windows and doors lead to any damage to buildings C and D?

A No damage, fortunately, because we had no hurricane blow through there. But no.

Q I think you indirectly answered this, so I want to ask you directly. Do you agree with me that the EFCO window and door products supplied to the Shipwatch project are not defective in design or fabrication?

A I think I would make the statement that there was no evidence that those units exhibited leakage during our water testing. I did not see shop drawings of those doors and windows from a design or install standpoint.

Obviously, from an install standpoint, if there are no fasteners in the jambs and you've got

fasteners in the sill to a member that's not connected to the structural slab mechanically, but the units themselves exhibited no evidence of water intrusion.

Q Do the units themselves exhibit any evidence of a defect?

A None that I recall.

MR. KELLY: Those are all the questions I have. Thank you, sir.

MR. ROOT: This is David Root, counsel for BASF, noting on the record that Mr. Miller's deposition was noticed for today, Wednesday, the 27th, and Friday, the 29th, and that defense counsel have agreed to withdraw the notice for the 29th on the basis that Mr. Miller's testimony today has indicated he's not been able to get to a point to render final opinions on a number of issues and won't be able to get to that point tomorrow. So that notice is withdrawn and Friday is open.

(End of deposition.)

EXHIBIT C

STATE OF SOUTH CAROLINA
THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM ASSOCIATION,

Plaintiff,

-versus-

CAROLINA CONCRETE SYSTEMS, INC., et al.,

Defendants.

OSCAR MENDIONDO, Individually and as representative of a class of similarly situated owners of condominium units in the horizontal property regime known as SHIPWATCH CONDOMINIUMS,

Plaintiffs,

-versus-

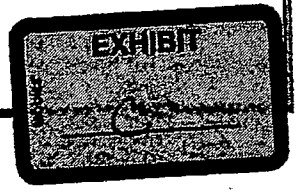
CAROLINA CONCRETE SYSTEMS, INC., et al.,

Defendants.

Case No.: 2012-CP-10-3858

THE CONTINUATION OF THE DEPOSITION OF GREG ISAACS was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 9:30 a.m. on Thursday, the 28th day of August 2014, at the offices of Sutton-Kennerly & Associates, 4651 Charlotte Park Drive, Charlotte, North Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

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when you did your more full report and then started work, do you know of any work that was done between that era or in that era?
A I'm unaware of that.
Q Have you reviewed your reports, the primary reports? By that, I mean the January and April reports. What have you-all been referring to today? The April report?
A Yes, April 2012.
Q Which I think encompasses most of the findings from the January report as well.
In any event, Exhibit 59, did you review that report prior to your deposition today, in preparation for the deposition?
A I did not.
Q You are familiar with the findings in that report. Correct?
A Yes.
Q Do you now deviate or have an opinion contrary to any of those findings?
A I do not.
Q Pro-Tec has been about two or so months late, for lack of a better term, in getting the job done. Correct?
A Yes.

Q They were supposed to be done May 31st. Correct?
A Correct.
Q And it's my understanding that they got to substantial completion, in quotes, around August 1st?
A Correct.
Q Do you know what the cause is for that delay?
A Allocating their resources, project management, getting people scheduled to do the right things at the right time. Just planning and scheduling.
Q On Pro-Tec's behalf?
A Correct.
Q Have there been any particular problems that you-all have experienced during the course of the construction or the remediation?
A Can you be more specific?
Q No, because I'm looking for anything that you've experienced. I don't mean just something that's a one-off or atypical, but something that was just simply not anticipated and has caused a great deal of -- I know there have been change orders, but a great deal of change in either time allocation or

expense allocation?
A We've had change orders, and we've had to address all of those.
Q As far as what would be responsive to that question, meaning something that was an atypical problem that was not perhaps anticipated when the project began, all of those type issues would be incorporated or encompassed within the change orders. Is that correct?
A Yeah, that's fine.
Q Is that fair enough?
A Okay.
Q Well, I'm asking you. Is that fair?
A Yes, that's fine.
Q You keep saying "that's fine." I'm trying to make the most succinct way to get about this, besides from going through all the change orders. If there's something else outside that realm, I wanted to speak about it. But if the change orders encompass the material changes to the work versus what was anticipated on the front end, then we are good. And you're saying yes?
A Yes.
Q Have you come to form any opinions that there was anything wrong with the DEFS as a product?

Meaning not related to installation, but as to it as a product, in its manufacture or design, anything of that nature?
A No. That's more Jeff Miller's realm.
Q Same question as to the deck coating. Do you have any opinion that there are any deficiencies or problems in a general sense with the deck coating as a product, as it's designed or manufactured?
A In terms of the deck coating material itself?
Q Yes, sir.
A No.
Q Have you done any product literature review since we last spoke?
A No. Just I've been working on any new products that we use, but nothing previous.
Q Had any discussions with anyone from BASF since we last met?
A No.
MR. ROOT: Mr. Isaacs, those are all the questions I have for you. I appreciate your time.
EXAMINATION
BY MR. KELLY:
Q Mr. Isaacs, I'm on the phone. I've got

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my kids in the car. This is probably going to be the worst deposition experience ever, but I'm going to give it a shot. I represent EFCO and W.C. Johnston Architectural Sales.

I asked you some questions the last time we had your deposition scheduled. And I heard some things today that made me want to clarify some of the testimony today and testimony previously. That will be the basis for my questioning today, and then we'll see how far we have to go.

At some point in coming up with repair plans for buildings C and D at Shipwatch, did Sutton-Kennerly & Associates consider reusing the EFCO products that were installed at those buildings?

A We did.

Q And if there were performance problems with the EFCO product installed at buildings C and D, would Sutton-Kennerly & Associates have considered reusing those products?

A Say that again.

Q If there were performance problems with the EFCO products that had been installed at buildings C and D, would Sutton-Kennerly & Associates have considered reusing those products?

A No.

Q Did you administer the water testing that took place at Shipwatch?

A Yes. I participated in it with Eric Couch.

Q Did you compile the results, or was that Eric?

A It was both of us.

Q And it's my understanding from your prior testimony that you tested the EFCO product in isolation from the installation of the EFCO products. Is that correct?

A Yes, I believe so.

Q In testing the EFCO products in isolation from the installation methods, did you determine whether or not the EFCO product passed or failed the water testing?

A The EFCO product passed on -- Let's see.

Q Did you observe water penetrating through any of the EFCO product during the water test?

A Yes. I'm looking at test area 14. That is where we isolated just a new EFCO sliding door, covered up the surrounding facade. And we did not have a technical failure of the EFCO product.

We did have some water shown in

photographs 6 and 7, but it was a small amount that is contained and, according to the AAMA guidelines, is not considered a leak.

Q I think you've referred to that at some point as spitting?

A Correct.

Q And you ended up passing that particular product that had been tested?

A That's correct.

Q Did any of the product you tested with water fail at Shipwatch?

A Can you repeat that question again as I look through these notes?

Q Yes, sir. I want to be very careful and precise with our language. So I want to make sure that I understand and everyone else understands that when you were testing window and door products at Shipwatch whether you were testing the window and door surrounds as far as how the product was installed or whether you were testing the product itself. Do you follow me?

A Yeah. We did a variety. Sometimes we would isolate the window or door itself and only test that manufactured product. Other times we would do the reverse and test only the surrounding

cladding. And then other times we would test both at the same time.

Q When you're considering testing a product, are you considering the way the product is installed or the way in which it has been manufactured?

A We are looking at the manufactured component, yes.

Q So when you tested the product to determine whether there were any failures of the manufacturing of the product, did you conclude that any of the tests were failures?

A I'm flipping through our report here. No.

Q Isn't it in fact only the installation methods that failed when you tested the product?

A That's correct.

Q So at various times in your deposition today when you have indicated that the window or door itself leaked, what do you mean by that?

A Do you have a specific location that we were talking about at the time, or are you just kind of saying in general?

Q I don't have anything written down. And I'll tell you my recollection is Mr. Elliott asked

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you some leading questions that ended with the word "correct," and you agreed with him, and asked whether or not the door or window leaked. So what I'm trying to understand is, what did you mean in agreeing to those questions asked whether or not the door or window itself leaked?

MR. ELLIOTT: Object to the form.

A Okay. So we had some -- You know, that includes the installation of the surrounding cladding and the installation of the manufactured unit.

BY MR. KELLY:

Q Did you in any way intend to say that the product itself is permitting water to enter the building?

A We had water come through one of those bay windows, but I believe that was at a drilled hole on the inside, if my memory is correct.

Q Are those bay windows EFCO products?

A I don't know.

Q I didn't mean to cut you off. If you aren't finished with your testimony as to that drilling in the bay window, please continue.

A Just that the leaks are associated with the installation around the window or door.

Q So if someone were to use your testimony, your deposition transcript at a later date to suggest that the product supplied by EFCO for the Shipwatch buildings are leaking, the products themselves as opposed to installation, would that be an incorrect suggestion?

MR. FLYNN: Object to the form.

A The EFCO sliding door we tested did not leak. The manufactured unit did not leak in that test area 14.

BY MR. KELLY:

Q Did any EFCO product that you tested leak?

A Again, I'm not aware of -- didn't go back and dig back through manufacturers of who did what. But the newer door did not leak.

Q Would it make sense that Sutton-Kennerly was going to reuse EFCO products if it found that the EFCO products themselves leaked?

A Right. If we found a unit that was leaking, we would not want to reuse that. Correct.

Q But you had envisioned reusing the EFCO product that had been installed in buildings C and D as part of the repairs at Shipwatch. Right?

A That's correct.

Q So is it not fair for me to assume that you do not believe that the EFCO products themselves were permitting water to enter the building envelope?

A That's correct.

MR. KELLY: I believe those are all the questions I have for you. I appreciate your patience with me. Sorry if it's too hectic here.

EXAMINATION

BY MR. ELLIOTT:

Q Mr. Isaacs, the sliding glass doors and the storefront windows, I asked you if -- We talked about your water test and the DEFS, whether or not it leaked. And I asked another question, did the doors leak. And you said yes. New sliding glass doors leak and new storefront windows leaked. And then I asked you further why are the new sliding glass doors and windows being replaced, and you agreed that it was because they leaked and because of the impact rating.

Now, the sliding glass doors, and we covered the oceanfront, tell me what is it you were talking about that leaked when you said the doors leaked.

A I guess I was using "doors" as too broad

of a term and not precise enough.

Q Let me ask you this. You tested doors and you tested the cladding. You separated the two. Right?

A Correct.

Q And water intrusion occurred when you tested the doors. What part of the door leaked?

A The components at the perimeter of the door.

Q What components?

A For example, test area 14, photograph 4, the water simply went underneath the sliding door unit.

Q Let me get to that real quick, because I remember we talked about it. It leaked under the door where the door meets the built-up --

A That's correct, curb.

Q So something about how the door was installed in a curb allowed the water intrusion to occur?

A Correct.

Q What about the installation, if you can tell me in that detail, caused the leak?

A Photographs 4 and 5, you can see a gap between the door and curb, and it goes through to

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Carolina Concrete and its subs during the work with regards to when they discovered a corroded stud what to do?
A I'm not aware of that.
Q So you're not aware of the instructions that the Shipwatch folks gave to Carolina Concrete about that?
A No, I'm not.
Q With regards to the chimney framing issue, what is the problem with the chimneys that necessitated a complete rebuild?
A Our structural engineer, Tim Cook, determined that they would not adequately meet the wind load requirements.
Q And why not?
A Just the framing components and connections were inadequate.
Q Did you-all test the original construction of the chimneys, or are these remediated chimneys?
A These are the chimneys as we found them in this phase of work.
Q Do you know whether they were original to the building or whether or not they were at some point added later?

A I do not.
Q Did it appear that they were added later?
A It's hard to tell. I don't know.
Q Did anybody do any type of investigation about the chimney caps, whether or not they were leaking or whether or not they needed to be replaced as well?
A Chimney caps?
Q Or the spark arrestor or whatever the apparatus is.
A Oh, those are being replaced. They were corroded and had broken components -- broken metal pieces on them. The caps themselves, I'm not sure if we did water testing on those.
Q Are you aware of any warnings given by Bob Wiggins to Shipwatch about the chimneys, the cap and the spark arrestors during the history of Carolina Concrete's work at the project?
A It's my understanding that Linda Jernigan prior to our work, our design work beginning, was aware of the problems associated with the spark arrestor pieces.
Q And what was she aware of?
A That they needed to be replaced.
Q And who told her about that?

A I do not know.
Q It would be safe to assume that she didn't climb up and inspect that area. Correct?
A That's a reasonable assumption.
MR. COBB: Since we finally agree on something, I'll quit asking you questions. Thank you for your time.
(Recess taken.)
EXAMINATION
BY MR. KELLY:
Q Mr. Isaacs, my name is Britt Kelly. I'm down in Charleston. I'm sorry I couldn't be there with you today, but I'll try to do my best over the phone.
If you would, please allow me to finish my question before you begin to respond and hopefully we'll be okay.
A Okay.
Q My first question for you, have you ever worked for a window manufacturer or distributor?
A I have not.
Q Have you ever worked for any product supplier?
A I have not.
Q Do you believe you're an expert

concerning the duties and responsibilities of a product manufacturer or a distributor?
A I am not.
Q At various points during your examination by Mr. Cobb you referenced -- I think your term was "impact-glass concerns." Do you remember that?
A Yes, sir.
Q Can you describe that for me, please? What exactly are you talking about there?
A When we were looking into information on the sliding doors and windows, our research led us to believe that the sliders are not impact rated. I don't have the notes in front of me, but I think that came from discussions with EFCO technical services and finding out what actual units were on the building.
Q Did you have those discussions with the EFCO technical services people?
A I can't recall. That sounds correct. We could look -- I'm not sure if we have notes on that.
Q Do you typically take notes like that?
A Yeah, we should have something related to that.
Q Do you have your entire file in front of you?

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A We do.
Q Not right now, but maybe at some point we can pull those out. But my question, I guess, what I'm trying to get at is, do you know if the phone call was with the EFCO people at one of their locations or W.C. Johnston folks?
A I can't recall specifically.
Q How long do you think it would take you to put your hands on that note?
A We've got a big pile here. I'm just not sure. I could take some time and start digging.
Q Why don't we table that for a second and we'll come back to that before we wrap up.
Was there any other research that you did to determine whether or not any of the EFCO products was impact rated?
A We did not. I don't think so.
Q Your concern about the impact rated or impact ratings of the glass of the EFCO product, is that limited just to the sliding glass doors, or does it relate to other products?
A I believe it relates to the other products.
Q What other products at Shipwatch do you believe EFCO manufactured and distributed?

A I'm not sure. Off the top of my head, I'm not sure. I guess I was under the assumption that most of the new materials that we discussed in the previous questioning were generally EFCO products -- sliding windows and fixed windows and bay windows. It's my understanding that those were also EFCO. But I don't have notes on that in front of me.
Q How did you gain the understanding that the bay windows were EFCO products?
A Again, I'm not sure. I would have to look in my notes to see if they are or not.
Q What type of notes did you make to show the manufacturer of a product?
A I know on several of the products there are some notes from the manufacturers, either stamped on the aluminum frame or perhaps on the glass.
We've also had some -- I guess some verbal communication with the owner indicating that in general most of the products were EFCO products.
Q Who is the owner you're referring to?
A Linda Jernigan.
Q Mr. Cobb referenced a number of original door and window units on the project. I'm trying to

use his language as best I can. You know when you're out there -- I guess buildings C and D are undergoing the repairs now. But before they did, if you were in one of the units in the living room, there's a sliding glass door and then some fixed windows next to that sliding glass door. Does that sound familiar?
A Yes.
Q The majority of those units, at least you believe that the sliding glass doors and the fixed windows that were installed prior to this latest round of construction work were original to the building?
A I'll pull up that sheet that I just had. It looks like based on these notes -- I forget what exhibit that was, but these elevation drawings of making notes of old versus new, it appears that in the family room most of those sliding doors are old.
Q What about the fixed windows that are next to those sliders on floors one through three of buildings C and D?
A Buildings C and D, those fixed windows are all old according to these notes.
Q Did you gain an appreciation for how old those fixed windows and sliding glass doors in the

living rooms of floors one through three of buildings C and D were?
A Again, what we're calling new was probably within the last eight to ten years approximately. And then what we're calling old, based on the color and things we discussed previously, definitely more than that. 20 plus years would be a reasonable approximation.
Q Remind me how you described the differences between the new product and the old product.
A For these notes, you know, taken from the ground and looking up at the building, and in general when we did go to actual units on balconies and end units, the new windows had a much darker bronze frame with much wider aluminum frame components, and the older units had a noticeably faded color to a lighter brown and more narrow aluminum components.
Q How would you describe the difference, if any, in the glass between the new and the old product?
A I'm not sure I looked too closely at the glass itself. There is a slightly different color in terms of thickness. I'd have to refer back to

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photographs.
Q Based on your experience and your observations in the field at Shipwatch on buildings C and D on floors one through three, you believe that the old doors and fixed units have impact glass within them?
A I do not believe that they had that.
Q When was the decision made to replace all the windows and doors at Shipwatch with impact-rated glass product?
A I guess that would be after our investigative reports. So our last one was April 12th. And after that April 12th report, we met with the Shipwatch HOA and discussed remediation. Specifically a date, I'm not sure of a specific date.
Q Who was at that meeting?
A These were telephone calls and site meetings between Jeff Miller and Shipwatch.
Q Were you part of those?
A I was not an integral part. I may have listened into some phone calls or attended one or two meetings that I don't remember specifically. But Jeff was in charge of leading those discussions.
Q What do you remember about the first

meeting or phone call you had where an issue was brought up about removing and replacing the windows and doors at Shipwatch because of impact glazing?
A What's the question about the impact glazing?
Q What do you recall about the first meeting or phone call that you participated in where an issue was brought up about replacing the windows and doors because of impact-rating concerns?
A I don't recall specifically. I'm sure after we discovered they were not impact rated, we mentioned that to them. I don't specifically remember doing that or when it happened.
Q In 2009, you authored a report with Mr. Parker about the conditions of the building. Correct?
A That's correct.
Q And those same old windows and doors were installed in the building at that time. Right?
A That's correct.
Q And an observation could have been made to determine that those windows and doors did not have impact glazing. Correct?
A Yeah. We were under the impression that the owner had a schedule in place to replace those.

Q How were you under that impression?
A We were told by Shipwatch.
Q Do you recall if the suggestion to replace all the windows and doors was raised by someone at Sutton-Kennerly or raised by the owners?
A That was likely an SKA decision. I think we considered the idea. I think we tried to find out if we could improve the existing newer products, and I think the conclusion was that that was not a preferred method of repairs in terms of, I guess, cost and time. I can't remember if it could or could not have been done at all.
Q It sounds like to me someone reached a conclusion that windows and doors that may not be impact rated could not remain in the buildings at Shipwatch. Is that accurate?
A That's correct.
Q Who made that determination?
A Sutton-Kennerly.
Q Did you participate in that analysis?
A I assisted Jeff Miller in that analysis.
Q How was that determination made that non-impact rated product could not remain in the buildings at Shipwatch?
A Because they are in a wind region that

requires impact-rated components.
Q For new product?
A Yes. That's my understanding.
Q And what standard or authority are you relying upon for that proposition?
A I believe that's in the IBC, International Building Code.
Q What version of the IBC?
A I don't have those in front of me. Like we mentioned earlier, several phases of work were done at different times. So there may be different codes applicable at different times of work being performed.
Q What I'm talking about is what standard you believe governs the decision Sutton-Kennerly made to remove and replace all the product with an impact-rated product?
A I believe that was the building code. We have a structural engineer. I do not personally do structural engineering. And he is more familiar with the building code, and he also assisted Jeff Miller in reaching that conclusion. And he is more familiar with the building code and how it applies to wind-related items than myself.
Q What is his name?

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A Tim Cook, C-o-o-k.
Q It seems that over 50 percent of the building had what was known to everyone as non-impact glazing product within it for a number of years and no recommendation was made to replace all of that product with impact-rated glazing. So how did it come about in 2012 that a decision was made, okay, now we need to replace everything with impact-glazed product?
A Again, we were under the impression in 2009 that a plan was in place already to update those products.
Q So is it acceptable for non-impact rated product to be in the building between 2000 and 2009?
A For it to be in the building at all? Again, I'm not as familiar with the wind requirements in the building code. I believe it applies to the time of installation and repairs. I'm just not sure.
Q What jurisdiction had authority over the replacement work that was performed at Shipwatch in the 2000s?
A Can you repeat that, please?
Q What jurisdiction relative to the

building department had authority over the replacement work at Shipwatch that occurred in the 2000s?
A Well, they would have used South Carolina -- State of South Carolina adopts the International Building Code, and whatever building code they had adopted at that time would be their governing code. And then the Isle of Palms -- the City of Isle of Palms also has a building department for construction work.
Q Do you know what the Isle of Palms' code adoption history is?
A I do not.
Q Do you know if the Isle of Palms building department had authority to permit work at Shipwatch during the 2000s?
A I do not know that for sure, but that seems reasonable.
Q The building official has the ability to permit work under a certain version of the code?
A Yes. I would say, yes, that sounds correct.
Q What building code was the Shipwatch window and door replacement work permitted under?
A I'm not aware.

Q Have you reviewed any of the project documents produced by Carolina Concrete?
A I have not.
Q Same question for Charleston Glass. Have you reviewed any of their project documents?
A I have not.
Q What about EFCO or W.C. Johnston Architectural Sales?
A I have not.
Q Did the 1997 Standard Building Code require impact glazing in window and door products?
A I do not know for sure. I do not believe that it did.
Q I've reviewed your reports and it looks to me like Sutton-Kennerly & Associates water tested several EFCO products, some windows and doors. Do you believe that to be the case?
A Yes.
Q Did any of the water testing performed by Sutton-Kennerly & Associates reveal failures with the EFCO products?
A No. We had some -- a small amount of water come in on one sliding door while applying pressure, but that water did not drip over the edge in order to constitute a leak. So, no, there was

not a failure.
Q Is that the one you referred to in the report as spitting in the glass?
A That's correct.
Q But you deemed that to pass the test?
A I believe so. Let me look up that actual area to remember.
That's correct. Test area 14, no water intrusion was attributed to the manufactured door unit.
Q Are you aware of any failures of the EFCO products that have led to water intrusion into the building or the building cavity?
A I'm not aware of that.
Q And I should specify or should clarify that. I said building. I'm referring to all four buildings at Shipwatch. Are you aware of any failures of EFCO products that have led to water intrusion into any of the four buildings or the building cavity of the four buildings?
A I'm not aware of that.
Q Do you hold any opinions that the EFCO products supplied at the project are defective in design or fabrication?
A I do not have an opinion on that.

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Q Do you know if anyone at SKA has an opinion as it relates to the products supplied to the Shipwatch job as to whether those EFCO products are defectively designed or fabricated?
A Jeff Miller, the project manager, would have that.
Q What do you believe Mr. Miller's opinion to be?
A I can't speak for him. But the water -- You know, the manufactured units passed the water testing. So in terms of water testing that I did, they are not defective in shedding water away from the building.
Q Has Mr. Miller told you that he holds an opinion that the EFCO products supplied to the Shipwatch buildings are defective in some manner?
A He has not told me that.
Q But you believe he holds that opinion, or did I misunderstand you?
A I don't know.
MR. KELLY: If you don't mind, would you take a moment to look for those notes we talked about. If you find them, I would like to get the dates on them. I want to make sure they've been produced to us.

(Lunch recess taken.)
(Exhibit Nos. 58 and 59 marked for identification.)
EXAMINATION
BY MR. ROOT:
Q Mr. Isaacs, my name is David Root. I represent BASF, which is a defendant in this lawsuit brought by the Shipwatch folks. I'll be asking you some questions today, as will these other attorneys.
Because we're not going to finish your deposition in total today, I'm going to limit my questions to a certain span of time reserving the right to ask you questions at a later date. Because there are a lot of photographs, et cetera, that I want to go over and get in some more detail, but at least I can cover some of the general issues today.
As I understood it from some of your earlier testimony, this is the first time you've been deposed?
A That's correct.
Q Let's do some background stuff, because I don't think we covered much of that. Where were you born?
A I was born in New Haven, Connecticut.
Q And when were you born?

A October 24, 1983.
Q And how long have you lived in the Charlotte area?
A I moved here in June of 2006.
Q Tell me about your education.
A I have a bachelor's degree in civil engineering from Clemson University.
Q When did you receive that?
A That was the spring of 2006.
Q Any formal education after that?
A No.
Q All of your registrations, licenses, certifications, could you list those for me?
A I am a professional engineer in North Carolina and South Carolina.
Q I am looking at Exhibit 58, and this is what you've handed to me in response to my request for a CV or resume. I think you gave it with the caveat that this may need updating.
A Yeah, I haven't -- I didn't produce that. That was -- I'm not sure when that was produced. But I asked our administrative assistant for a recent resume, and I haven't had a chance to review it since we sat down.
Q Is this something that is incorporated

within SKA's advertising, marketing-type materials?
A Yes.
Q When you speak of seven years of experience with SKA -- and we'll talk about that. We'll talk about it in reverse chronology. Have you had any jobs in the construction industry prior to SKA?
A I did summer work at a surveying company.
Q When was that?
A I would have to look that up. I believe that was the summer after my freshman year in college. So that would be most likely the summer of 2003.
Q What was the nature of the surveying?
A It was a small surveying company that had a contract to define the boundary of the Redstone Arsenal in Huntsville, Alabama, which is a 30-plus mile perimeter of federal property, and they wanted to establish their property lines for security reasons.
Q When is the next job you held in the construction industry?
A In the construction industry, I did some -- I had some summer work at the University of Alabama Huntsville where I assisted graduate

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EXHIBIT D

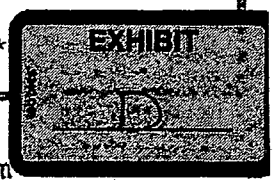
STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-3857
SHIPWATCH CONDOMINIUM ASSOCIATION, INC.,	)	
Plaintiff,	)	
vs.	)	
CAROLINA CONCRETE SYSTEMS, INC., et al.,	)	
Defendants.	)	
STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-3858
OSCAR MENDIONDO, et al.,	)	
Plaintiffs,	)	
vs.	)	
CAROLINA CONCRETE SYSTEMS, INC., et al.,	)	
Defendants.	)	

* * * * * * * * * * * * * * * * *

VOLUME I DEPOSITION

OF:	PETER SHERRATT
DATE TAKEN:	Thursday, November 6, 2014
TIME:	9:50 a.m.
PLACE:	Turner Padget Graham & Laney 40 Calhoun Street, Suite 200 Charleston, South Carolina
REPORTED BY:	EVE WILBANKS Registered Professional Reporter, Certified LiveNote Reporter and Notary Public

* * * * * * * * * * * * * * * * *



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Q. Are you aware of any damage, either to the windows themselves or to any components of the windows or the framing?

A. No. We would have to go back and look at the SKA photos. I am aware of damage below the bay windows at C and D.

Q. Are those the new bay windows or the old bay windows?

A. "New" meaning what?

Q. "Old" meaning original to the building; "new" meaning replaced at some point in the decade of the 2000's.

A. They appear to be at least reflashed in something -- post-original construction.

Q. And you've not done any type of water testing?

A. No.

Q. Do you have any intentions or plans to do any water testing?

A. No.

Q. What criticisms do you have with regards to the design of the repairs by Sisnroy?

A. I don't know if there was a design of the repairs. It seems to me there should have been drawings showing how to install the doors,

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Wiggins?
A. No.
Q. Do you have any opinions about Carolina Concrete Systems?
A. No.
Q. Have you had any conversations with anybody who said they worked with Carolina Concrete Systems?
A. Not that I recall. I don't believe so.
Q. Have you had any conversations with any of the subcontractors about Shipwatch?
A. I've had conversations, but I don't think any of it pertained to Shipwatch.
Q. Have you had any conversations with any of the experts identified by any of the Defendants about Shipwatch?
A. I've had conversations with the folks from SKA.
Q. Other than that? Any of the defense experts?
A. No. I mean, other than just some casual conversation when we happened to be on-site at the same time.
Q. Have you read any of the depositions that have been taken in this case so far?

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A. No.
Q. With regards to the repairs that were done in 2013 and the repairs that are being done now, did you have any role in either coming up with the scope, coming up with the repair methodologies, any role in that?
A. No.
Q. Based on what you know, would you concede that some of the repairs that are being done to the buildings are outside of the responsibility of any of these Defendants?
MR. FLYNN: Object to the form.
A. I'm not aware of the full extent of the work that's in the SKA contract. I know there's been some minor changes, such as the bay windows, meaning the size of the glass panels. And there was some work done with regard to the storefront systems at the elevators, and that may be outside the scope of what Carolina Concrete was asked to do. But I don't know the details of those things.
Q. Would you concede that there are betterments and upgrades being done on the repairs?
A. Not on the exterior wall envelope repairs. On some of the others, as I just

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mentioned, the window was made larger. I wasn't in that loop as to why it was. So there's definitely something different there. And I believe whatever is happening with the roof, that was a separate contract, meaning with Glasgow (ph) and the homeowners.
Q. What is actually being done with the roof? Is the roof being replaced?
A. I believe so. But that needs to be confirmed. I've not been involved in that portion of the work.
Q. With regards to the length of time for the repairs, have you done any type of analysis to figure out whether or not it's been staffed correctly or sequenced in a way that's optimal?
A. No.
Q. What are you going to do with regards to the Shipwatch litigation moving forward?
MR. FLYNN: Object to the form.
A. I'm going to probably go to the site, take more pictures, meaning of A and B, while that work is going on, and I'll review whatever data is provided to me. And I'm sure there will be other things, but I don't have a list right now.
MR. COBB: That's all the questions I

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have for you right now. I'll pass you down the road.
THE WITNESS: Thank you.
EXAMINATION
BY MR. KELLY:
Q. Mr. Sherratt, my name is Britt Kelly. I'm going to ask you a number of questions today related to your investigation and your observations at Shipwatch. Most of them will not have been asked or answered yet, but if I ask you a question you've already been asked, I apologize in advance. Have you done any personal investigation as to the performance of the EFCO doors at Shipwatch?
A. I have read some historic data, and there were some questions raised as to whether the products from EFCO met the current building code that was appropriate at the time of installation and also whether the units met the DP rating. I think there were actually two products. There were doors and there were fixed glass.
Q. What is your understanding -- I didn't mean to cut you off. If you're not finished, please continue.
A. Go ahead.

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Q. What is your understanding as to when the EFCO door products were installed at Shipwatch?
A. Sometime after June of 2001.
Q. Do you have any more specific recollection as to when the doors and how many doors were replaced with EFCO products at Shipwatch?
A. I think earlier today we looked at a document, and I believe it said 72 or 75 at that time.
Q. How many sliding glass doors are at the Shipwatch buildings?
A. I don't have that count.
Q. Do you agree with me that it's more than 72?
A. Yes.
Q. Other than the 72 that were replaced at some point in the early 2000's, do you know whether any other EFCO doors were installed at the Shipwatch buildings?
A. I don't know that.
Q. Have you done any investigation on your own as to the performance of those EFCO doors as it relates to water intrusion through or around

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the doors?
A. I have found damage to the wall system around the doors. I cannot tell you anything about whether the door itself has been damaged.
Q. Do you hold any opinions as to whether the EFCO doors that were installed at some point in the early 2000's leak as a product itself?
A. No. I did not do water testing. That was done by SKA, so it's a better question for Jeff Miller.
Q. Any questions I have about whether or not EFCO doors leak can be directed better to SKA?
A. Yes. With regard to the product.
Q. Yes, sir. Thank you. A similar line of questions, have you done any independent investigation as to whether any of the EFCO windows installed at the Shipwatch project leak as a product itself?
A. No.
Q. Do you know whether any EFCO windows are installed at Shipwatch?
A. Only from what I can read in the historic data.
Q. What do you understand to be EFCO windows that are installed at Shipwatch?

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A. The windows that are somewhat adjacent to the sliding glass doors of the Carolina room or the master bedroom.
Q. So it's fixed glass?
A. Yes, sir.
Q. Do you know when -- do you know how many units received EFCO fixed glass windows on the ocean side?
A. No. I have limited information on the EFCO product. What would be good to look at is the installation instructions from EFCO.
Q. But you haven't looked at those?
A. I haven't located them. If you happen to have them, I would be happy to look at them.
Q. Besides any water intrusion analysis, have you performed any investigation as to whether there are any performance problems with those EFCO doors -- excuse me -- EFCO fixed windows that we were just talking about?
A. I don't know about the fixed windows. There was some correspondence from Mr. Freeman that the doors, in his opinion, didn't meet the applicable building code. And in reading that information, it seemed to be that he tried to obtain that information from either the

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distributor or the factory. And some of the information is that there was a response about -- that -- whichever the product was only had a rating, I think, of 30, when the code was a substantially higher number. But I would have to go back and read that information.
Q. Can you try to find that, please?
A. There were two documents, from Gary Freeman to Bob Wiggins on one, and to Linda on the other one. The one to Mr. Wiggins was November 3, 2010, and to Linda it was November 12, 2010. And they're discussing the design of the product, and they're also referencing the fixed glass. I'll let you look at them.
Q. Thank you. I have those in front of me.
MR. ANDERSON: Have those been marked?
MR. KELLY: The November 3rd e-mail is Exhibit 129, and the November 12th e-mail is Exhibit 133.
Q. And I understood your last answer to tell me that someone from EFCO said that their product only had a 30 PSF rating -- or a 30 DP rating?
A. Right. The letter says 30 PSF, yes.
Q. Do you see anyone from EFCO or W.C.

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Johnson who are listed anywhere on Exhibit 129 or Exhibit 133?
A. I just see the name Mr. Broadway.
Q. Do you know who Mr. Broadway is?
A. No.
Q. Do you know if he's an engineer that was retained by either Randy Morgan of Charleston Glass or Lynn Jernigan to do the analysis of those EFCO products?
MR. FLYNN: Object to the form.
A. What I can read here, that Mr. Broadway did some analysis based on information that a Randy gave him. I don't know who the Randy is. And they were talking about DP ratings or the PSF, and there seemed to be a conflict of whether the appropriate information was given to Broadway from Randy.
Q. But you don't know who Randy is, right?
A. Not right now, no.
Q. And you don't know who Mr. Broadway is?
A. Not in detail. Apparently, he did some analysis, but that's the extent of it.
Q. Do you have any document to show me that someone from EFCO or W.C. Johnson said, Our product only has a DP rating of 30?

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A. I don't know who at EFCO that Mr. Freeman tried to contact.
Q. So you don't have any information to share with me that someone from EFCO told any of the folks involved in these e-mails that their product had a DP rating of 30; is that correct?
A. That would be correct.
Q. Do you know who W.C. Johnson Architectural Sales is?
A. No.
Q. Do you know who EFCO is?
A. I know the name is a window manufacturer, yes.
Q. Have you ever specified EFCO products on any job that you've designed?
A. No. I looked at an EFCO window project in Myrtle Beach within the past year or so. But that's my extent of it.
Q. What job is that?
A. As soon as I think of it, I'll give it to you.
Q. Who were you engaged by?
A. By the homeowners.
Q. Who is the lawyer working for the homeowners?

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A. Well, I was called from the property manager.
Q. Is it in litigation?
A. No.
Q. Do you remember the name of the property manager?
A. It was Kuester Management, Phil McLeod.
Q. What was the issue you were asked to look at by Phil McLeod?
A. There were leaks in and around the windows. And the windows – a sample window or two were removed to see how the installation was as it related to the wall cladding system that was also installed by Baldwin Construction.
Q. What did you find?
A. The findings were that the leak was not caused by the product. There was an installation problem at the termination of the wall cladding system and the roofing system.
Q. Do you know what type of EFCO product that was that you were looking at?
A. I don't have the model number, no.
Q. Was it a window or a door?
A. It was a window.
Q. Fixed or operable?

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A. Operable.
Q. Did you make any recommendations in relationship to the use or reuse of that particular window?
A. No. The source of the water was identified. The source of the water intrusion was identified, and I made recommendations of what needed to be done to fix it and left that with the property manager and the owners association.
Q. What were your recommendations, in general terms?
A. The roof-to-wall intersection had to be reflashed, because there were three planes that came together. There was a sloped roof, a vertical wall above and below the drip line and flanking the drip line. So there was work that had to be involved in the roofing and its related flashing and how it was counter-flashed over the wall system.
Q. Did your recommendation call for the reuse of the EFCO operable window?
A. They were reused.
Q. Do you know when those EFCO windows were originally installed at that project?
A. Well, it was a repair. I would say

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within the last two years or so.
Q. So I understand it correctly, so the buildings underwent a repair in which the EFCO product was installed?
A. Correct.
Q. And you were called out within the last year, which was about roughly a year after the installation of the EFCO product, to look at the product to determine what was causing the leak?
A. Yes. The time frame may adjust a little bit but somewheres in there.
Q. So do you know whether or not you've ever specified, other than that project, perhaps, the use of an EFCO product on any project?
A. I don't recall. It could have been in the past. I know it was not within the past three or four years.
Q. The 72 doors we were talking about that were installed in early 2000, is it your understanding that those doors were installed in the master bedroom opening for each unit on floors 1 through 3 of all four buildings?
A. I don't know if it was the master bedroom and/or the Carolina room.
Q. Just so we're clear, what are you

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referring to as the "Carolina room"?
A. Call it the living room.
Q. Well, if you need to take time to look at any documents, that's fine. But from looking at it -- at the building, would you agree with me that there are 72 openings that are associated with the master bedroom on floors 1 through 3 of the four buildings?
A. It's whatever the math is. I mean, I'm not disputing the number.
Q. Well, it's important for my next question, so I'm going to need -- you've got some plans sitting around here, I think.
MR. FLYNN: It's kind of small.
MR. KELLY: Off the record.
(The deposition went off the record.)
THE WITNESS:
A. It looks like there's six per floor. So that math would get you 72.
Q. Six per floor, three floors per building, four buildings, comes to 72, right?
A. Yes.
Q. You're telling me you don't know from your review of the documentation supplied to you by Mr. Flynn or Ms. Jernigan whether those 72 were

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installed only at the master bedroom doors of floors 1 through 3 or whether they were installed at the living room area?
A. No. I don't know when the other doors were installed. But if you go in the field, there are doors to the living room that are not vintage 1985.
Q. Did you find any doors in the living rooms on floors 1 through 3 of buildings A, B, C or D that were EFCO product?
A. I didn't look for the product identification. So that part I can't tell you. I can tell you that they were newer doors.
Q. Would you agree with me that in a number of the units, when those EFCO doors were replaced, wherever they were on the unit, in the early 2000s, that the rest of the glass on the oceanfront remained original or prior to the 2004 installation?
A. That part I don't know. I don't know when the -- we'll call them sidelights. They're not true sidelights, but the fixed glass, when that went in. And there are areas where there are doors -- new doors, meaning new after 1985, if we just use that as original construction, give or

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take a couple of years, that are in the living room areas.
Q. Do you agree with me that there's at least one unit on each building that when the EFCO doors were installed in 2003 or 2004, whenever it was, still had glass from prior to 1995 installed in either the door or the fixed glass on the oceanfront side?
A. That part I don't have information to give you an answer on.
Q. Based on your investigation, your observations, you can't tell me whether any of those units had glass in them that predated 1995?
A. 1995?
Q. Yes, sir.
A. There were some original doors. If we're talking -- I use the terminology the 1985 doors.
Q. That's fine.
A. But we're talking about the same vintage; is that correct?
Q. The reason I used 1995 is because I don't want to discount the possibility that after Hugo, perhaps one door or one window was replaced with some other piece of glass. So that's why I

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use the 1995 versus 1985.
A. There are some doors that are an older vintage than what was installed in the 2000 era.
Q. Okay. And were those doors -- did they contain impact glass?
A. No.
Q. Do you see other fixed windows that were installed at Shipwatch prior to the 2000s that did not contain impact glass?
A. I did not survey that.
Q. But you don't recall, just from looking at the product, whether or not there was impact glass or not impact glass?
A. I know there were some windows on the walkway side that were not impact. But as far as the fixed glass sections, I didn't survey that. I can go out in the field and look.
Q. What is the purpose of impact glass?
A. It's a requirement similar to a shutter, to keep projectiles from going through it and then allowing the force of the wind to the interior of the building.
Q. Why is the force of the wind to the interior of the building important?
A. It creates a better structure for

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resistance to the hurricane winds. If you allow the force of the wind in, the wind is going to be looking for a place to get out, and then it's going to basically explode the opposite wall.
Q. So in the early 2000 time frame, when some of this new EFCO product was being installed, the 72 doors we talked about, there would have been a number of openings at Shipwatch that would have contained glazing that was not impact-resistant, correct?
A. There would have been some, yes.
Q. That nonimpact-resistant glazing, that was either original to the building or at least predated the 2000 work, could be blown out by wind-blown debris, correct?
A. Yes, it could.
Q. And when that product got blown out, the forces that you're talking about that would be imposed on the building would be imposed because that product was blown out, correct?
A. That's correct so far.
Q. So what difference does it make if the product that was installed in the early 2000's, the EFCO product, was impact or nonimpact if the -- a number of other windows and doors contained

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nonimpact glazing?
A. The building code.
Q. What about the building code?
A. The building code, as Mr. Freeman read it, that was applicable at the time, required either shutters or impact glass.
Q. Well, Mr. Freeman was reading a code that was in effect in 2010, correct? You can have my copy.
A. Can I see the other one?
Q. Yes.
A. The date of his memo, yes, is 2010. He was talking about buildings A and B of the current building code.
Q. Unfortunately, we don't have any e-mails from him or any other architects or engineers from the 2003 or 2004 time period like this, right?
A. You may. I don't.
Q. If I did, I promise you I would show them to you. So the building code Mr. Freeman was talking about in 2010 very well could be a different building code than you're saying the contractors had to adhere to in 2003 or 2004, correct?
A. I don't believe so.

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Q. Why not?
A. Just from my experience. Once it changed to the IBC, there were drastic changes from the '97 version and the adoption of the 2000 code we talked about earlier this morning. There have been some minor changes, but I don't believe the changes applied to the missile test.
Q. So you think the 2000, the 2003 and the 2006 International Building Codes would be the same as it relates to impact-resistant glass?
A. Or very similar.
Q. Do you know -- or have you seen any documents to show you what Carolina Concrete or the window installer ordered in terms of window and door products?
A. There was some reference to that in the two documents you just had.
Q. Okay. Do you want to see those again?
A. Yes. Thank you. In the letter of Freeman to Jernigan of November 12, 2010, in the first paragraph, there's reference to two different EFCO systems as it pertains to the size of the structure, meaning the frame of the unit. And in just reading the words, according to EFCO, the system that they manufactured that has been

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tested to meet the impact requirements is the system S526 system. The size of the S526 frame member is five-by-two-and-a-half. The size of the frames that are being used at Shipwatch are four-and-a-half-by-two in size.

That's the extent of where apparently there's a difference in the product that was made for impact glass versus nonimpact.

Q. Are you inferring something from that as to what was actually ordered from EFCO?

A. The ordering part, I don't think I have information on it. I don't recall seeing an order sheet.

Q. In fairness, you have not been produced documents from EFCO, correct? You have not been provided documents --

A. No. That's what I would like to see, because I also would like to see the attachment requirements.

Q. You have not been provided documents produced by W.C. Johnson Architectural Sales in this case?

A. I have not.

Q. Have you been produced documents or provided documents produced by Charleston Glass

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Company?

A. No.

Q. So you haven't seen the order forms from Charleston Glass to W.C. Johnson?

A. I have seen some documentation, but I don't recall seeing the order form.

Q. I'm going to hand you what we've marked as -- unless you need to keep looking; that's fine.

A. I'm looking at a chart that was provided to me as to a sliding glass — sliding doors replaced at Shipwatch, and it goes through buildings A, B, C and D. And it looks like all of the master bedroom sliders were replaced between '08 and 2011. But there were living room sliders, or the Carolina room, whatever we want to call it, that were replaced in buildings A, B and D. And they have a reference, GBR -- whether that means guest bedroom -- and that part I don't know what -- but that might be a reasonable guess. And it shows replacement in years '08 through '11. So that would be more than the 72 that we talked about.

Q. It would have been. And those are limited to floors 4 and 5, right, on the five

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buildings?

A. It only references 4, but those are the townhouse configuration, and the guest bedroom is on the -- call it the back side or the walkway side of the building.

Q. Okay.

A. So that seems to substantiate GBR meaning guest bedroom.

Q. Does that help you understand anything about what was actually ordered from W.C. Johnson?

A. Not ordered. But we've been talking about 72 of them. It seemed that there was more ultimately done at the project.

Q. That's a good segue. Exhibit 132 is a document that we marked previously in Ms. Jernigan's deposition.

A. Okay.

Q. Have you seen that document before?

A. That, I don't know. I've seen reference to this vista wall before there.

Q. In reviewing that document, do you gain the impression that Randy Morgan and Charleston Glass knew they were purchasing a nonimpact product for use at the Shipwatch project?

A. Yes.

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Q. Do you have any information to share with me otherwise, that the people purchasing the product from EFCO or W.C. Johnson did not understand they were purchasing nonimpact glazing products?

A. No. Based on that document, they were purchasing it. But they were also referencing the '97 code in 2010, if I'm not mistaken. Is that the date on the letter?

Q. I believe that's right.

A. Yes, sir. November 11, 2010.

Q. In 2010, is it your understanding of the building code that you could still use a nonimpact-rated product as long as you had shutters?

A. You could have appropriate storm shutters, yes.

Q. Are you critical of EFCO or W.C. Johnson Architectural Sales for selling their customer nonimpact-rated glazing products?

A. If they're basing it on the '97 code, yes.

Q. If who is basing it on the 1997 code?

A. The author of that document we just read.

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Q. Do you have any information to share with me that W.C. Johnson Architectural Sales or EFCO had any idea as to what building code applied?

A. Clearly, the local distributor should know what building code was applicable.

Q. Do you know where W.C. Johnson Architectural Sales is located?

A. No.

Q. Why do you say, clearly a local distributor should know that?

A. Because he knows exactly where the product is going. There could be an argument from a manufacturer that says, we make windows for all over the U.S., just as an example, and we don't know where it ends up. And there may be some argument there that local codes are different in other areas of the country.

Q. You told us today that you don't know what the 2000 building code says without looking at it, right?

A. No. I need to refer back to it.

Q. You don't know what the 2003 building code says without looking at it?

A. Same thing.

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Q. The same with 2006?

A. Yes.

Q. You're a licensed architect?

A. Yes.

Q. And there are Registered Professional Engineers out there that can't tell you what the code says without looking at it, right?

A. You said, are there?

Q. Yes.

A. Yes. I would think everybody would want to go back and look at the particular section.

Q. In fact, there are engineers and architects out there who can look at it and not tell you what it actually says, in relationship to impact-resistant glass or DP ratings, correct?

MR. FLYNN: Object to the form.

A. And not tell you?

Q. Right.

A. I don't understand the question.

Q. There are architects and engineers who aren't as familiar with what the DP rating requirements are and the impact-resistant glass requirements as perhaps those who are commonly involved in construction litigation; would you agree with that.

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A. I don't think you put the caveat of construction litigation. I would agree that there are architects in other areas of the country that may not be familiar with the requirements of the International Building Code because they may operate under some other code or they don't even have a code in that municipality.

Q. A building department official can give a variance for a code or applicability of certain sections of the code, correct?

A. Yes.

Q. How would a distributor of product know whether a building department official has given a variance to a contractor or not?

MR. FLYNN: Object to the form.

A. The distributor may not know, but you had asked the question as to what the requirements are from the person placing the order, which, in this case, it looks like it's the general contractor.

Q. Have you ever worked for a window or door distributor?

A. No.

Q. Have you ever worked for a product distributor?

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A. No.

Q. Have you ever owned a company that is in the business of distributing products?

A. No.

Q. Are you going to be able to quote me a source that says a duty exists for a distributor of a product to know what building code is in effect for a certain time period and a certain installation method?

MR. FLYNN: Object to the form.

A. It's my opinion they should know.

Q. Why do you hold that opinion?

A. If that's not valid, how would they order the correct product when there are different product lines?

Q. Do you hold that opinion because you've read that in some peer-reviewed publication?

A. No.

Q. Do you hold that opinion because someone in the industry has indicated to you that's the way it's done?

A. I don't hold that, but that circumstance has taken place, yes.

Q. So is there some source that you believe I can reference to tell me that a duty exists for

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a product manufacturer or distributor to know what building code is in effect for a certain time period for a certain application method?

A. I don't know if there's a written document. What I can tell you, there are other window distributors that do that research before the order is placed in the coastal environment.

Q. In 2010, Linda Jernigan was the property manager for Shipwatch, right?

A. I believe so.

Q. And she was told that the product she was getting for installation in 2010 contained nonimpact glass, right?

MR. FLYNN: Object to the form.

A. That's what the document says. If that's the same one we just referenced.

Q. Yes, sir. Look at it if you need to. It's Exhibit 133. That's something you looked at; it's in your file, right, Exhibit 133?

A. Not with the stamp on it. But I believe the document is.

Q. The e-mail is in your file? You referenced it earlier, right?

A. Yes.

Q. That's something you considered in

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forming your opinions in this case, right?

A. I don't disagree with you of what's in paragraph No. 1, with the content of the e-mail.

Q. It says, "The aluminum storefront glazing system that has been installed at oceanfront window openings of the first three floors of buildings A and B does not meet the current building code requirements for impact-resistant systems"?

A. That's correct.

Q. And Shipwatch and Ms. Jernigan did not reject these windows that were installed at Shipwatch in 2010?

MR. FLYNN: Object to the form.

A. I don't know about that. I don't know what discussion has happened after that letter.

Q. You know those windows are still in place out there, right?

A. Right. But I don't know any other discussion about it.

Q. Well, in 2010, Ms. Jernigan is told that the product is nonimpact. Do you agree with me that a customer has a right to make its own decision as to whether to purchase nonimpact or impact-rated products?

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MR. FLYNN: Object to the form.

A. I don't understand the question. It seems there's two questions there.

Q. We'll try it again. Do you agree with me that a customer has the right to determine whether to purchase impact- or nonimpact-rated glazing?

MR. FLYNN: Object to the form.

A. No. No. Because the customer could be a layperson and not involved in these type things. They need to rely on some professional to tell them or the distributor that's providing the product to the area.

Q. Is a contractor a sophisticated -- excuse me -- is a window installation contractor a sophisticated business entity?

A. It should be.

Q. That would be familiar with what building codes may apply to the installation of glazing and window products?

A. They should be.

Q. Would you agree with me that the EFCO products applied at the project are not defective?

A. No. Because, in my opinion, they should have impact glass.

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Q. Is there anything wrong with the product itself, if the building code that's in effect is the 1997 Standard Building Code?

A. If we set aside the glass to answer your question?

MR. FLYNN: Object to the form.

Q. No. If the 1997 Standard Building Code was in effect at the time all the EFCO product was installed, is there anything defective about the EFCO product that was installed at the Shipwatch project?

MR. FLYNN: Same.

Q. You understand --

A. I can't answer that until I go back and confirm with the '97 code.

Q. I'm not asking you to agree or disagree which code is in effect. I'm asking you to assume that the 1997 Standard Building Code was in effect at the time the EFCO products were installed at Shipwatch; assuming that -- realizing you can disagree with that assertion later -- assuming that to be the case, is there anything defective with the EFCO products that were installed at Shipwatch in the 2000s?

A. That, again, I can't answer it until I

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go back and reread the requirements in the '97.
Q. I follow you. So you're not sure whether the 1997 Standard Building Code permitted the use of nonimpact glass?
A. I believe the '97 did, but before I can answer your question, I want to go back and read the appropriate sections.
Q. Which sections? What in general?
A. As to the requirement for shutters or impact glass.
Q. Do you have any information to share with me that W.C. Johnson Architectural Sales or EFCO told the contractors or the owner that they can't use shutters at Shipwatch?
A. I have no information on that. From a code standpoint, you could use an appropriate shutter.
Q. The fact that the EFCO product was nonimpact-rated doesn't make it defective if you use shutters, right?
A. That part would be correct.
Q. So you could take the EFCO products that were installed at Shipwatch and use shutters, and your opinion would be that the EFCO products are not defective?

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A. Based on the information that I have on the product, that part would be correct.
Q. So your opinion is really that the application of the product was an error and not the product itself?
MR. FLYNN: Object to the form.
A. The product, as installed, is defective. If you talk about the application, then clearly the distributor should have known where the product was going.
Q. What is your basis for that statement?
A. Just using your question.
Q. I'm not sure I follow that.
THE WITNESS: Read the question back.
THE COURT REPORTER: "So your opinion is really that the application of the product was an error and not the product itself?"
A. And that's where I'm saying the distributor should have known what the application was, where it was going.
Q. Do you know anything about the education, training or experience of the employees of W.C. Johnson Architectural Sales?
A. I do not.
Q. Don't you think that's relevant upon a

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-- to come to a conclusion as to what their duty was or was not?
A. One would hope that if they're selling a widget -- we'll do this hypothetically -- that if a distributor is selling a widget, that he is instructed by the manufacturer how the widget should be installed so that can be passed on to the distributor's client. And the pros and cons of the product, meaning what can it perform? So there is some education. I don't think there's -- that that education goes down to possibly the mechanic in the field or the warehouse personnel. But somewheres in that organization, that information has to come from the manufacturer to the person who is wholesaling it so it can be passed on to the retail customer.
Q. Do you have any information to share as to whether W.C. Johnson Architectural Sales or EFCO recommended or suggested the use of the products that are incorporated at Shipwatch?
A. I don't know who recommended the product. From my information, the product, though, that was shipped to the job, in my opinion, did not comply and does not comply with the applicable code at the time.

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Q. And you agree with me that if Charleston Glass and Carolina Concrete knew they were purchasing nonimpact-rated product, then EFCO has no responsibility to provide them anything other than what was ordered?
MR. FLYNN: Object to the form.
A. I think you left out the distributor, though, right?
Q. Yes, sir, intentionally. I understand your opinion on that. I was trying to move on.
A. I think the information trail goes right down the line, just as I was trying to explain to you in the hypothetical situation. It's got to come from the entity that produces the widget all the way down to the retail customer, which, in this case, would be whoever is installing the product.
Q. I thought a minute ago you told me that you thought the case could be made for a manufacturer had no responsibility to know what code was in effect at the time his product was installed in the field.
A. No. We're now talking about the product itself, what it can do. That's the way I read your question.

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Q. Okay.
A. Meaning if you make a window product, just hypothetically, and you only make nonimpact product, you ought to know that in a coastal environment the impact product is required. I've run across that with other manufacturers that come into continuing ed programs and, you know, they have a great product but it's not code-compliant. They ought to know that before they go to sell it into a product or some of the products you see marketed from Window World. They ought to know that their product is not code-compliant.
Q. Well, specifically looking at this case, EFCO made impact-rated products. Right?
A. That's what it appears to be, yes.
Q. A customer could have purchased impact-rated products or nonimpact-rated products?
A. The customer being the distributor?
Q. The customer being the window installer.
A. Yes.
Q. And you agreed with me a minute ago that the window installer knew it was purchasing nonimpact-rated products?
A. Yes.
Q. Is it your opinion that EFCO did nothing

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wrong in supplying nonimpact-rated products if its customer intentionally purchased nonimpact-rated products?
MR. FLYNN: Object to the form.
A. No, I don't. If you look at the document from Shannon Andrews, who is a project manager at EFCO, which is a Pella company, and it appears that it went to jamess@wcjsales.com, and Pella or EFCO is saying Shipwatch, and she goes on to say, "I need to know the design pressure on this to determine the length of the stiffener and if steel is required. We have priced it that way based off of the made-up design pressure used on the quote" -- or it reads "quote takeoff," I'm sorry. "Now we're actually going to build something. I'm going to need a real number." So there was some discussion from the manufacturer, at least down to James at WCJ Sales.
Q. As to design pressure?
A. Well, as to the design pressure, but, more importantly, how the window was to be built.
Q. There's no discussion as to whether -- what code is in effect because we need to know whether to build those as nonimpact or impact glazing, right?

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A. That's not what this is referring to, I don't believe.
Q. Right.
A. This is talking about the design pressure and if there's stiffener components that are required. My point being, there was some discussion going on, at least at 12/29/08, about what are the requirements of the EFCO product? What requirements do they need to meet?
Q. Well, there's a question about the design pressure, right?
A. That's a question.
Q. That's the only question?
MR. FLYNN: Object to the form.
Q. Is there something on there that talks about impact glass or nonimpact glass?
A. No.
Q. Is there anything on there that talks about what building code is in effect?
A. No. My point being that there was a dialogue going on between the manufacturer and the sales company, and this was back in '08.
Q. About how to assemble the product?
A. More how the manufacturer needed to design and construct the product.

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Q. For design pressure requirements?
A. That's what this says, yes.
Q. Are you critical in any way of whether the product does or does not meet the design pressure requirements required by the building code?
A. The DP rating should have been more than 30. That doesn't give you numbers that I can respond to.
Q. Do you know what the design pressure rating requirements -- excuse me -- start again. Do you know what the design pressure ratings are for the EFCO products that were supplied in 2004?
A. Only from reading correspondence that -- from Mr. Freeman.
Q. Okay.
A. I think the discussion there was that it was, give or take, a 30, and there was some inquiry to another entity that talked about that it should have been at least a 45.
Q. I saw you and Mr. Flynn looking earlier at some blue pieces of paper that contained some EFCO literature. Do you have that?
A. These?
Q. No. They were blue pages. The copy

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itself was blue.
A. This pile?
Q. I don't know.
MR. FLYNN: I've got an extra copy.
BY MR. KELLY:
Q. This is what I was talking about. Have you seen a document that looks like that?
A. I don't recall seeing this document.
Q. What about the one we just put in front of Mr. Flynn, the blue pages I was talking about?
A. These came about because I had asked if he had any information on the installation requirements, particularly as it applied to attachment at the jambs. In my visit of the past two times into the field, what has been observed is, if you take a 5-in-1 tool and run it down the jamb between the window unit, meaning that product, and the buck that's forming the rough opening, it doesn't get interrupted by a fastener. And that's where this all came about, because I didn't have any installation instructions. You and I talked about that earlier.
Q. Gotcha.
A. So that's how that came about. Now, I scanned this. I didn't see an answer to my

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question.
Q. Can I see that white --
A. Yes, sir.
Q. Just for the record, this is an EFCO Series 3015 Sliding Glass Door Report produced by Construction Consulting Laboratory International. Your testimony was you had not seen this document before?
A. I don't believe I've seen that, sir.
Q. Do you know what design pressure rating was required for the installation of the EFCO sliding glass doors in 2010?
A. Somewheres in the 45 to 50 range.
Q. Do you know what design pressure rating was required for the installation of those fixed window units on the ocean side of the buildings in the 2010 time period?
A. It should have been the same.
Q. What does 90 PSF mean?
A. I would need to look at the document.
Q. Was there a general correlation between numbers -- a number with the PSF and DP ratings?
A. There is, but you have to look at the negative and the positive. And you have to look at the size of the unit.

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Q. I'm going to hand you this document we were referring to a moment ago, which is the EFCO Series 3015 Sliding Glass Door Report created by Construction Consulting Laboratory International, and there's a Bates stamp, Charleston Glass 87, in the bottom right-hand corner. That's the page I want to reference. You can look at however much of it you would like.
A. And your question is?
Q. I think my question was, is there a correlation between 90 PSF and a DP rating?
A. Yes.
Q. What is the correlation?
A. I can't give you the engineering aspect of it.
Q. Are you qualified to testify about what the design pressure rating should be on the project?
MR. FLYNN: Object to the form.
A. With regard to if it's in compliance with the applicable building code, yes.
Q. Okay. Are you qualified to give an opinion as to what the DP ratings of the EFCO products installed at Shipwatch are?
A. I don't see that listed here.

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Q. My question was, are you qualified to give that opinion?
MR. FLYNN: Same objection.
A. I can get the opinion.
Q. How do you get the opinion?
A. If I was designing it, I would go to the structural engineer.
Q. To get the opinion of what the door or window product's DP rating is?
A. Yes. But, more importantly, if the rough opening is framed, to take the rating of the door or the window.
Q. Well, that doesn't have anything to do with the door or window product itself, does it?
A. Well, it does for the end product. If the rough opening was not framed such that it was compliant with the requirements of the door or window unit and the applicable building code, then you could put a door in the hole and it would still not work. You have to look at all of those aspects.
Q. Well, a window manufacturer or distributor has no responsibility for framing the rough opening that's going to receive a door or a window, does it?

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MR. FLYNN: Object.
A. The window manufacturer?
Q. Right.
A. No. Not as far as the actual framing. But the window manufacturer would normally give deflection limits, meaning you could not put a stiffer product in a hole where the rough opening is going to flex. The window manufacturer, through its attachment requirements, would also tell you the performance of what the frame needs to be. It wouldn't typically tell you it has to be metal stud or wood stud, just as an example. It would tell you the requirements that that opening has to comply with in the performance of the opening.
Q. Are windows and doors typically shipped with information about their DP rating?
A. They should be.
Q. And aren't those ratings typically taken from the test report like you're looking at?
A. From the information here, yes.
Q. So the information to determine what the DP ratings of the EFCO doors are should be right there in your hands?
A. No. The DP rating, typically, at least

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nowadays – and I can't tell you what EFCO did back in '04, but there's a sticker on the window unit.
Q. Where do you think the number for that sticker comes from?
A. From the manufacturer.
Q. Where does the manufacturer get the number?
A. They design the product.
Q. Right. Well, how do they determine the number through their design of the product?
MR. FLYNN: Object to the form.
A. That's from their engineer.
Q. You don't know, is the answer, right?
A. No. The answer is – to the question is from the engineering and the design of the product.
Q. Have you ever designed a window?
A. No. You asked me that.
Q. I think I asked you if you ever worked for a distributor. Have you ever designed a door?
A. No.
Q. Have you ever fabricated a door?
A. No.
Q. Have you ever fabricated a window?

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A. No.
Q. Sir, are you offering any opinions that there are any issues with the DP ratings of the EFCO doors or windows at Shipwatch?
A. If the information shows that it didn't comply with the applicable building code, then, yes, I will.
Q. As we sit here today, do you have any information to share that the product supplied did not meet the DP ratings in the building codes that were in effect at the time the Shipwatch projects were constructed?
A. No. I relay to the Gary Freeman documents, and I'm trying to find the documents from the manufacturer that we already talked about.
Q. And that test report I just showed you for the 3015 Series doors you don't think helped you at all in determining whether or not the DP ratings for the doors installed at Shipwatch are appropriate?
A. I didn't see it spelled out on that document.
MR. FLYNN: Did we mark that?
MR. KELLY: I did not mark it. I think

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I referenced the Bates label.
MR. FLYNN: You did. So I don't need it. It's the Charleston Glass doc.
BY MR. KELLY:
Q. Can an owner pull a building permit?
A. In some cases, yes.
Q. And they do in some cases, right?
A. In some cases.
Q. Do you have any knowledge as to Ms. Jernigan's familiarity with the building department at Isle of Palms?
A. No.
Q. Do you have any knowledge as to Ms. Jernigan's familiarity with the building permit process at Isle of Palms?
A. No.
Q. Do you know whether any of the units at Shipwatch have hurricane shutters?
A. I do not know. There's one unit that has some type of a track at the sill but nothing at the head. But to answer your question, I don't know.
Q. What about before the repairs were done at building C and D; do you know whether any of those units had hurricane shutters on them?

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A. Not that I recall.
Q. If any of the units had hurricane shutters, would that address the concern or criticism you had about the use of nonimpact glass?
A. It could.
Q. Why do you qualify that it could as opposed to would?
A. Because I don't know what the design of the shutter is.
Q. I don't know enough about shutters. So can you explain to me why that's important?
A. Well, someone may figure that a cosmetic shutter is suitable as the substitution. And in most cases, that is not the case. If it is a true storm shutter that resists the proper impact, meaning the missile test, then, yes, that could be a substitute for not having impact glass.
Q. What is a cosmetic shutter versus -- like I'm used to these roll-out, sort of steel-looking things that come around the doors?
A. Some little cosmetic shutter on each side of the window, whether it operates or not.
Q. Could the owners use plywood to protect their glass?

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A. At least in the beginning, I believe, yes, they could. Whether it's currently approved or not, that part, I don't know. Because that would be a decision from the building official.
Q. This is what I don't understand. If the owners have the ability to protect nonimpact glass with shutters or plywood, at least in the beginning, why would you be critical in any way of the distributor or the manufacturer for selling nonimpact glass?
MR. FLYNN: Object to the form.
A. Because they sold it or distributed it to a project and they should have known where it is. And if they sold it and understood that impact glass or a shutter was there, it seems to me the obligation is, we have this product but it can only be used if you have the appropriate hurricane shutters.
Q. Or plywood?
A. Well, that -- it depends on the window of time. You can't use plywood.
Q. I apologize. I was trying to limit my question to the time period when plywood could be used, which I understood to be in the early 2000s?
MR. FLYNN: Object to the form.

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A. They could use plywood early on.
Q. So the contractor could have told them, You can use plywood in the event of a storm to protect your glass?
A. Then the general contractor, by the building code, had to provide the shutters and have them all numbered and put the studs in the wall such that they could be put up, and the product needs to be stored on-site someplace.
Q. And you think it's reasonable for a distributor of building materials to know the terms of the contract and the field directives between a contractor and an owner?
A. I think it's incumbent upon the distributor and the retailer, who may be the installer, to know that something needs to be there. Either to say, You need to put up hurricane shutters, or, This needs to be impact glass.
Q. Can you tell me why you believe it's incumbent upon the distributor to do that?
A. If the distributor knows where it's going, and he should, then I think that's part of the service.
Q. Have you ever sat on a board or any sort

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of committee that is charged with developing standards or rules for window and door manufacturers or distributors?
A. No, I have not sat on a board.
Q. In designing projects, is it common for you to rely upon information provided to you by the product manufacturer?
A. Yes.
Q. Is that because the product manufacturer is the expert on its products?
A. No. It's because the product manufacturer -- and if we use windows as an example -- may tell you that a window has a certain DP rating of the window tested being a single unit. And what I have found in the printed literature is that once you gang the windows together, there are only a couple manufacturers that then provide you a new DP rating, because the rating is for the assembled product. So you can't take a bunch of small products, gang them together and expect to get the same DP rating.
Q. Do you know whether any of the EFCO products were ganged together at Shipwatch?
A. No. I'm just giving you an example, because yours was more hypothetical, of the

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manufacturer.
Q. Were you aware that Sutton-Kennerly & Associates attempted to reuse the EFCO products that are installed at Shipwatch as part of its redesign?
A. No.
Q. Is that significant to you in any way?
A. I don't know all the details about it. I would have to know more to answer your question.
MR. KELLY: All right. I'm going to let some of these other folks ask some questions. Thanks for your time.
MR. FLYNN: Do you want to take a couple minutes?
(The deposition went off the record.)
EXAMINATION
BY MR. WINTON:
Q. Mr. Sherratt, we've met before, but for the benefit of the record, my name is Tyler Winton. I work at Carlock, Copeland, and I'm here on behalf of Sisnroy Engineering and Bob Sisnroy. I know you're obviously familiar with my client, and I listened to some of your testimony before regarding documents that you have from Mr. Sisnroy relative to this matter and some of your opinions.

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You mentioned at one point that you read something where Mr. Sisnroy called for copper pan flashing to be installed at aluminum sliding doors; is that correct?
A. Yes.
Q. And you noted that that would be an issue if it was installed; is that correct?
A. The two products need to be isolated. You could still use the copper. The copper should not be in contact with the concrete, nor should it be in contact with the aluminum. But there are methods to isolate at those joints, meaning the materials.
Q. Have you ever seen -- what are those methods, just real quickly?
A. Well, one, you could take the waterproofing and roll it over the top or underneath where the door is going to be. That would isolate you from the concrete. And you could use a rubberized product to isolate metal to metal.
Q. All right. Have you ever seen the application of copper pan flashing and at an aluminum window door or slider?
A. Yes.

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Q. I think that was in a -- I wrote it down, but it was in a June or July letter, July 10th, 2006. Could you pull that back up and could we mark that as an exhibit? If you think it's going to take too long to look for it, I will try to track it down when some other folks ask you questions.
A. Why don't you go ahead and ask and I'll keep looking for it.
Q. Also, I thought I heard you talking about the lack of design drawings in this case. Are you blaming or criticizing Mr. Sisnroy because there's not a set of design plans for the renovation work that was performed out at Shipwatch?
A. As I read the building code, there needs to be an appropriate set of plans and specs -- specs could be on the plans -- for any construction work.
Q. That's any construction work?
A. Well, short of doing a doghouse or something like that. But to keep it in perspective, a project like this. And if you look at what the building code says in the first chapter, it talks about specific details at

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dissimilar materials or intersections of different materials.
Q. And what building code are you referring to?
A. The 2000 and 2003. And then as you come forward, the same terminology is in the subsequent codes.
Q. The 2000 and 2003 IBCs?
A. Yes. When I say code, I'm always referencing the IBC.
Q. I understand that now.
A. This is that document you asked about.
Q. Do you mind if we mark this as an exhibit to your deposition and have a copy made?
A. Can you make a copy and give it back to me now; I mean before we --
Q. I bet we can. I don't have Mr. Cobb's copying skills.
MR. WINTON: Let's do that.
(Deposition Exhibit No. 184, 7/10/06 letter from Sisnroy Engineering to Linda Jernigan, was marked for identification.)
BY MR. WINTON:
Q. Is it okay if I put this sticker on it?
A. Yeah. Just give me a copy back. I'd

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2012-CP-10-3858
	)	
Oscar Mendiondo, individually and as representative of a class of similar situated owners of condominium units in the horizontal property regime known as Shipwatch Condominiums,	)	
Plaintiffs,	)	**EFCO CORPORATION, INC. AND W.C. JOHNSTON ARCHITECTURAL SALES, INC.'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT AS TO ALL CLAIMS**
vs.	)	
Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corporation, Inc.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corporation; Gary Freeman Architect, Inc.; Gary Freeman, individually;	)	
Defendants.	)	

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY

As it relates to EFCO Corporation, Inc. ("EFCO") and W.C. Johnston Architectural Sales, Inc. ("WCJ"), this is a products liability case relating to some of the windows and sliding glass doors installed at the Shipwatch condominium buildings between 2002 and 2010. Because Plaintiff presented no evidence of a defect with the window and door products supplied by EFCO and WCJ, the Plaintiff's claims should be dismissed. Likewise, Plaintiff's claims should be dismissed because it is undisputed that the window and door products did not cause or contribute to any property damage at Plaintiff's unit.

FACTS

Plaintiff has an ownership interest in an entity that owns one of the condominium unit at the Shipwatch condominiums in Wild Dunes. Shipwatch was constructed in the mid-1980s and

has been governed since by a Master Deed, dated April 24, 1984.[1] The Shipwatch Regime is comprised of four buildings, A, B, C, and D, which each have five floors of conditioned space. In total, there are 104 condominium units in the four Shipwatch buildings. Plaintiff has an ownership interest in condominium unit D-431, which is a two story unit occupying part of the 4th and 5th floors in building D. Originally, the buildings were constructed with a synthetic stucco exterior cladding system (EIFS) and approximately 344 windows and approximately 264 sliding glass doors that did not contain impact rated glass products. Plaintiff's condominium unit includes three sliding glass doors (two on the ocean side), and one or two windows on the street side corridor. At the time this lawsuit was filed, the street side windows and the street side sliding glass door in the condominium unit were original to the building (non-EFCO products). In the fall of 2010, the two ocean side sliding glass doors in Plaintiff's unit were replaced with EFCO sliding glass doors. Prior to renovations made to Buildings C and D in 2013-2014, Plaintiff's unit had hurricane shutters that existed to protect the sliding glass doors from glass breakage in the event of a hurricane.

In approximately 2002, Shipwatch began a relationship with Carolina Concrete Systems, Inc. ("CCS") for periodic building inspections and improvements/repairs. The Board of Directors at Shipwatch chose to undertake a piece meal repair and replacement of the synthetic stucco cladding on the building from 2002-2010. At various points between 2003 and 2010, the Board of Directors also authorized CCS to replace a number of the original windows and sliding glass doors. For example, 72 sliding glass doors were replaced on floors 1-3 of the four buildings in the 2003-2004 timeframe. In 2008, approximately 14 sliding glass doors were replaced on the 4th

[1] As argued in EFCO and WCJ's memorandum filed in support of summary judgment in the companion case filed by the Shipwatch Regime, the individual condominium unit owners have the responsibility to maintain and replace the glass in the sliding glass doors and windows under the Master Deed. Because the claims against EFCO and WCJ allege deficiencies with the glass of the windows and doors, the individual unit owners, not the Regime, own and control the claims against EFCO and WCJ.

and 5th floors. An additional 17 sliding glass doors, approximately, were replaced in 2009, and approximately 18 sliding glass doors were replaced in 2010. Like the original windows and doors, none of the product installed at Shipwatch between 2003 and 2010 by CCS contained impact rated glass.

EFCO, a Missouri based company, manufactures commercial grade windows and sliding glass doors. From 2003-2010, it manufactured and sold impact rated products and non-impact rated products. From 2003-2010, WCJ was the distributor of EFCO products in South Carolina. During that time, WCJ offered impact rated and non-impact rated products for sale to commercial contractors in this area. EFCO manufactured and WCJ sold window and door products installed into the Shipwatch buildings between 2003 and 2010. Neither EFCO nor WCJ had any responsibility for the installation of windows and sliding glass doors at Shipwatch.

Charleston Glass and Mirror Company, Inc. ("Charleston Glass") is in the business of installing windows and doors on commercial projects in the Charleston County area. The company was incorporated in 1964. Randy Morgan is the President of Charleston Glass. Charleston Glass has purchased EFCO products from WCJ since approximately 1995. In 2003, Charleston Glass contacted WCJ about purchasing certain EFCO products and submitted a purchase order. WCJ was Charleston Glass' only contact for EFCO product; Charleston Glass did not have direct contact with EFCO.

As part of its sales process, WCJ has its customers fill out an order form and confirm that they are asking for the products that WCJ intends to supply. In 2004, Randy Morgan signed a WCJ order form and confirmed that Charleston Glass wanted to purchase EFCO product that did not contain impact rated glass. The process repeated itself for orders in 2008, 2009, and 2010. On each occasion, Charleston Glass confirmed that it intended to order EFCO products with non-

impact glass. With each order, EFCO extended a Limited Warranty for the products supplied. The Limited Warranty represents that the products will be free from material defects and disclaims implied warranties of merchantability and fitness for a particular purpose.

In addition to the order forms, various proposals of Charleston Glass and CCS that were reviewed by Shipwatch establish that the contractors intended to purchase non-impact rated EFCO products. A November 11, 2010, fax from Mr. Morgan at Charleston Glass to the head of CCS explains that the contractors did not believe impact rated products were necessary for the projects they were performing at Shipwatch. This communication was made because a question was raised by Gary Freeman, an architect retained by the Shipwatch Regime to observe and report on construction, about the non-impact rated EFCO window and door product that was being installed in the building in 2010. Neither WCJ nor EFCO were involved in this communication.

During construction, Mr. Freeman reported concerns to the Shipwatch Regime's designated agent, Linda Jernigan, about the non-impact rated EFCO products. Mr. Freeman informed Ms. Jernigan and the Shipwatch Regime that the contractor was required to use impact rated glass for window and door products being installed in the buildings in 2010. In response to Mr. Freeman's concerns about the sliding glass doors, Ms. Jernigan wrote,

> "Gary,
> The board considers the siding doors regular maintenance, they chose the doors they wanted and approved the installation in 2002, so it is not requesting your assistance in this project."

Jernigan Deposition, Exhibit 134.

Clearly, Plaintiff did not reject the non-impact rated EFCO products being installed at Plaintiff's condominium unit and permitted them to become part of the building system. No request was

made in 2010 for WCJ to sell or EFCO to manufacture different product. No request was made by CCS or Charleston Glass that impact glass be provided.

Plaintiff alleges causes of action against EFCO and WCJ for negligence, breach of warranties, and strict liability relating to its supply of non-impact rated glass products to the Shipwatch project. To support its claims against the Defendants, Plaintiff has disclosed Jeff Miller, PE with Sutton Kennerly & Associates and Peter Sherratt, AIA as testifying expert witnesses. Mr. Miller and Mr. Sherratt are to offer opinions as to the nature of the problems with the buildings at Shipwatch and the cause of the damages.[2]

As part of a comprehensive building evaluation in 2012, Mr. Miller asked his project team to conduct water testing of various portions of the building, including windows and doors. The water testing of the windows and doors was conducted in such a manner that Mr. Miller's team could test the method of installation of the windows and doors in one test and the window and door products themselves in other tests. The testing ordered by Mr. Miller revealed no deficiencies in the EFCO products supplied to the job, as the EFCO products passed the water tests.

After concluding his investigation of the buildings, Mr. Miller was asked to design a repair for buildings C &D at Shipwatch. Mr. Miller's originally conceived repair for buildings C & D included the EFCO product that was then installed in the buildings. Because of the scope (removal and replacement of all windows and doors in the buildings) and timing of the repairs being made at Shipwatch, the Isle of Palms building official required the design to include impact rated products for all window and door openings. Therefore, Mr. Miller could not incorporate the non-impact rated EFCO products into the final design to repair the buildings.

[2] To date, Mr. Miller has been deposed for three days and Mr. Sherratt has been deposed for one day. Greg Isaacs, an engineer with Sutton Kennerly and Associates who worked with Mr. Miller on the project, has also been deposed for three days.

Plaintiff's experts admit that the ECFO products are not contributing or causing any water intrusion at the buildings. Likewise, they admit that no property damage has resulted from the EFCO products. Plaintiff's experts have not pointed to any defect with the product, and the undisputed evidence is that the product has performed as intended.

I. BECAUSE PLAINTIFF HAS NOT SUSTAINED PROPERTY DAMAGE OR INJURY FROM THE NON-IMPACT GLASS, THE PLAINTIFF'S CLAIMS SHOULD BE DISMISSED

The Plaintiff has sued EFCO and WCJ for negligence, breach of warranties, and strict liability. To recover, each of these causes of action require the Plaintiff to prove that the product caused property damage or injury. Because the EFCO window and door products have not caused property damage or injury, the causes of action should be dismissed.

To recover on its negligence action, the Plaintiff must prove (1) a duty of care owed to the Plaintiff by EFCO and WCJ; (2) a breach of the duty by a negligent act or omission by EFCO and WCJ; and (3) **damages proximately resulting from the breach**. Crolley v. Hutchins, 387 S.E.2d 716 (S.C. Ct. App. 1989). Likewise, a strict liability claim under section 15-73-20 of the South Carolina Code requires the Plaintiff to prove "physical harm caused to the ultimate user or consumer, or to his property. . ." Finally, Plaintiff cannot recover on its warranty claims without proving the alleged product defects caused property damage or injury. Wilson v. Style Crest Products, Inc., 627 S.E.2d 733 (S.C. 2006).

Wilson is a remarkably similar case where the Supreme Court of South Carolina affirmed the granting of summary judgment because the plaintiff class could not prove that allegedly defectively designed and assembled mobile homes had suffered any damages from high wind events. The Wilson mobile home owner class plaintiffs asserted claims for negligence, negligence per se, breach of express warranty, breach of implied warranty of workmanlike

service, breach of implied warranty of merchantability, fraud and misrepresentation, negligent misrepresentation, and fraudulent concealment. On appeal, the plaintiffs dropped the negligence claims and argued that they could recover on the warranty and fraud claims despite the fact that the owners' property had not been damaged or injured. The South Carolina Supreme Court disagreed and found that the lack of damages meant that the mobile homes had performed satisfactorily and were, in fact, merchantable. Accordingly, the court affirmed the granting of summary judgment by the trial judge.

As in Wilson, the Plaintiff, through its expert, has admitted that the non-impact rated EFCO windows and doors are performing and have not caused any damage to Plaintiff's unit or the Shipwatch buildings in whole. The following exchanges took place at the most recent deposition of Mr. Miller:

Q. The fact that buildings A and B have non-impact windows and doors installed in the buildings, is the fact that those windows and doors are non-impact causing any damage to the building?

A In and of itself, I would say no.

Miller, Jeff - Vol. 3, (Page 609:24 to 610:03)

Q. Did the presence of non-impact glass in those windows and doors lead to any damage to buildings C and D?

A No damage, fortunately, because we had no hurricane blow through there. But no.

Miller, Jeff - Vol. 3, (Page 610:9 to 610:13).

Like in Wilson, the failure to prove damages caused by the allegedly defective product is fatal to Plaintiff's claims.[3] Accordingly, the claims should be dismissed.

II. NO EVIDENCE OF A DEFECT WITH THE PRODUCT HAS BEEN PRESENTED BY PLAINTIFF

Plaintiff cannot recover on any of its product liability claims against EFCO and WCJ unless it can prove that the EFCO products were defective in some way. The strict liability claim requires Plaintiff to prove that the product was sold in a defective condition and is unreasonably dangerous. Similarly, a claim for breach of implied warranty of merchantability requires the Plaintiff to prove that the products were not "fit for the ordinary purposes for which [they] are used" and that they would not "pass without objection in the trade under the contract description." S.C. Code Ann § 36-2-314.

Plaintiff has presented no evidence that the product is defective or that it is unreasonably dangerous. In fact, the only evidence is that the EFCO products are performing as intended. As indicated above, the failure to prove damages resulting from an allegedly defective product is evidence that a product is merchantable and not defective. Wilson, 627 S.E.2d at 736. Because no evidence of a defective product has been presented by Plaintiff, the claims against EFCO and WCJ should be dismissed.

III. EFCO AND WCJ HAVE NO LIABILITY FOR SELLING SOPHISTICATED CUSTOMERS EXACTLY WHAT WAS ORDERED

Charleston Glass, WCJ's customer, purchased exactly what it intended to purchase, non-impact rated window and door products from EFCO. The documents to the transaction establish that the window installation contractor that has been in business since the 1960s knew what it

[3] It should be pointed out that Plaintiff had already removed and replaced the EFCO products from buildings C and D at the time of Mr. Miller's deposition. The removal and replacement of the EFCO products from buildings A and B are underway.

was purchasing. The records further reflect that CCS knew it was obtaining non-impact rated products, and, in 2010 at a minimum, the Plaintiff, through the Shipwatch Regime agents, knew that it was receiving non-impact rated products. There is no dispute Charleston Glass, CCS, nor Plaintiff ever paid for impact rated windows and doors. EFCO and WCJ willingly would have supplied the products.

A. Plaintiff cannot establish that EFCO or WCJ had a duty to sell impact rated products.

In furtherance of its negligence claim, Plaintiff seeks to invent a duty that it alleges WCJ and EFCO had when selling and/or manufacturing window and door products for the Shipwatch project. Through one of its experts, Plaintiff appears prepared to argue that WCJ, as a product distributor, has a duty to advise its customers on the requirements and conditions of the building codes that might be applied by the jurisdiction where the construction is taking place as it relates to window and door building components. While the testimony is less clear from Plaintiff's expert, Mr. Sherratt appears prepared to offer the same opinion against the product manufacturer, the Missouri based EFCO. Therefore, Plaintiff appears to argue that the terms and conditions of the commercial contract between WCJ and Charleston Glass are meaningless.

The terms of the agreement between WCJ and Charleston Glass, however, are of paramount importance. Both companies are commercially sophisticated entities. Charleston Glass had the option to order impact glass or non-impact glass from WCJ. It unequivocally made the informed decision to purchase non-impact rated glass. The only duty WCJ owed was to provide its customer what it promised to provide through the order agreement. Plaintiff's theory would require a vendor of a product to essentially become a building designer and dictate what products should and should not be used in the construction of buildings. It is a novel theory with no precedent in the law or in the construction materials industry.

Plaintiff's theory is an even greater stretch when applied to EFCO, the manufacturer of the door and window products. EFCO did not have direct contact with Charleston Glass concerning the purchase of products or the location of the project. WCJ simply informed EFCO as to what Charleston Glass intended to purchase. In return, EFCO fabricated the products requested and supplied them to Charleston Glass.

While novel, Plaintiff's theory is akin to a "failure to warn" negligence claim. Products liability law is clear that there is no duty to warn of dangers when the customer purchasing the products in question has equal or greater knowledge about the dangers of the products than the supplier or manufacturer. *See* Lawing v. Trinity Mfg. Inc., 749 S.E.2d 126 (S.C. Ct. App. 2013)(confirming that the sophisticated user doctrine is the law of South Carolina). Because Charleston Glass was a sophisticated glass contractor and had knowledge of the performance limitations of the glass contained within the window and door products it chose to purchase, WCJ had no duty to warn or to advise Charleston Glass or Plaintiff concerning any potential dangers associated with the non-impact glass that was selected for purchase.

Because the law does not support Plaintiff's theory of the duty it alleges EFCO and WCJ owed in regards to the sale of non- impact rated windows and doors, Plaintiff's claim for negligence fails and should be dismissed.

B. Plaintiff cannot succeed on a claim for breach of warranty for a particular purpose because WCJ and EFCO did not recommend or suggest the use of products with non-impact glass

Where implied warranties are not disclaimed, section 36-2-315 of the South Carolina Code creates an implied warranty for situations where the buyer relies on the skill and judgment of a seller to furnish suitable goods. Plaintiff has presented no evidence to suggest that

Charleston Glass was relying on WCJ or EFCO to furnish the "suitable goods" for the Shipwatch project. The only evidence is that Charleston Glass knowingly and intentionally purchased non-impact rated windows and doors instead of impact rated products offered for sale by WCJ and EFCO because it believed that non-impact rated products were acceptable for the projects.

C. EFCO and WCJ disclaimed all implied warranties

The warranty claims also fail because EFCO and WCJ disclaimed all implied warranties as part of the sale of the commercial windows and sliding glass door products to Charleston Glass. The first page of the limited warranty document contains a paragraph that states "[t]here are no warranties which extend beyond the description on the face hereof," and the final sentence in the document states that "[t]here are no other expressed or implied warranties from EFCO." The only warranty made in the limited warranty document is a limited express warranty. Plaintiff's implied warranty claims are barred by the clear disclaimers of warranties that are clearly communicated in the limited warranty document.

Plaintiff has asserted claims against EFCO and WCJ alleging that they breached implied warranties of merchantability and fitness for a particular purpose. The general rule is that "a warranty that [] goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind." S.C. Code Ann. § 36-2-314(1) (1976). Implied warranties, however, may be disclaimed by the seller's language. S.C. Code Ann. § 36-2-316 (1976). Under section 36-2-316(2) of the South Carolina Code, the implied warranty of merchantability is disclaimed where the purported disclaimer (1) mentions "merchantability", (2) is conspicuous if in writing, and (3) is specific so as not to create an ambiguity in the contract. S.C. Code Ann. § 36-2-316(2).

EFCO and WCJ specifically disclaimed the implied warranty of merchantability and fitness for a particular purpose when it sold products to Charleston Glass for use in the Plaintiff's project by including the written disclaimers in the limited warranty document in such a way that the disclaimer referenced the word "merchantability" and the customer was aware of the disclaimers. Using bold font in a paragraph in the middle of the first page of the document and set apart from other language in regular font, EFCO and WCJ disclaimed the implied warranties of merchantability and fitness for a particular purpose by stating: "**EFCO CORPORATION excludes any implied warranties of merchantability and fitness for a particular purpose.**"

The disclaimer made by EFCO and WCJ specifically states the word "merchantability" and thereby satisfies the first requirement of section 36-2-316(2) of the South Carolina Code. Likewise, the disclaimer meets the second and third elements of section 36-2-316(2), as it was conspicuous and was not likely to create an ambiguity. Language is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. S.C. Code § 36-1-201(10). It must be in a distinctive color or type. Id. ("Language in the body of a form is 'conspicuous' if it is in larger or other contrasting type or color."). Factors to be considered in determining whether a written disclaimer is conspicuous for purposes of § 36-2-316(2) include the following:

> (1) the color of print in which the purported disclaimer appears; (2) the style of print in which the disclaimer is written; (3) the size of the disclaiming language, particularly in relation to other print in the document; (4) the location of the disclaimer in the contract; (5) the appearance of the term "merchantability" with respect to color, style, size, and type of print in the disclaimer clause; and (6) the status of the parties contesting the validity of the disclaimer, namely whether they be consumers or commercially sophisticated entities.

Myrtle Beach Pipeline Corp. v. Emerson Elec. Co., 843 F. Supp.1027, 1038 (D.S.C. 1993). The factors listed above are not individually dispositive nor are they exhaustive of all the criteria that can be used in examining a disclaimer. Id.

EFCO and WCJ's disclaimer of the implied warranty of merchantability and fitness for a particular purpose meets the conspicuous requirement of section 36-2-316(2) because it is set forth as a separate paragraph in the middle of the first page of the document and styled in bold font where the remainder of the language on the page is not in bold font. Accordingly, Plaintiff's claims for relief under any implied warranty theory should be dismissed.

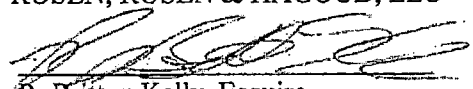
IV. THE CROSS CLAIMS OF CCS SHOULD ALSO BE DISMISSED AS THEY ARE DERIVATIVE CLAIMS

CCS has asserted cross claims against EFCO and WCJ asserting various theories of liability based on the general argument that EFCO and WCJ are responsible for any damages claimed by Plaintiff. For the same reasons discussed above, CCS' claims against EFCO and WCJ fail and should be dismissed. Additionally, the CCS claims are really just disguised indemnity claims. There is no contract between CCS and EFCO or CCS and WCJ. Accordingly, there are no contractual indemnity claims that can be advanced by CCS against EFCO or WCJ. Any claim for equitable indemnity fails because of the lack of a special relationship and the unclean hands of CCS in contributing to the damages it alleges are the responsibility of EFCO and WCJ.

CONCLUSION

For the reasons stated above, all claims of the Plaintiff and CCS against EFCO and WCJ should be dismissed.

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Charleston, South Carolina
January 14, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED
APR 13 2015
SC Court of Appeals

Circuit Case No. 2012-CP-10-3858

Appellate Case No. 2014-002765

Oscar Mendiondo, individually and as representative of a class of similarly situated owners of condominium units in the horizontal property regime known as Shipwatch Condominiums, ...Appellants,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually,

Of Which Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually, are..... Respondents.

APPELLANT'S RETURN TO ACROCRETE, INC.'S AND GLASSTEC, INC.'S JOINT MOTION TO DISMISS APPEAL

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On April 2, 2015, Appellant received Acrocrete, Inc.'s and Glasstec, Inc.'s Joint Motion to Dismiss Appeal as to those respondents (hereinafter "the Motion"). Acrocrete and Glasstec take the position that they should be dismissed from this appeal because they are not "adverse parties" to the Appellant. That position is without merit and unsupported by the South Carolina Appellate Court Rules or case law, and this Joint Motion must be denied.

These Respondents attempt to justify their position from the language of Rule 202(a), SCACR. However, that rule only provides guidance as to the proper nomenclature of the parties in an appeal, and does not provide any guidance as to the qualifications of either party to an appeal. Indeed, the rule only employs the term "adverse party" in order to distinguish the relative positions of the appellant and the respondent. "The party appealing shall be known as the appellant and the adverse party as the respondent." Id.

It is not disputed that Acrocrete and Glasstec are defendants in the underlying cases now on appeal. Additionally, Acrocrete and Glasstec do not dispute in their Joint Motion that they performed work on the Shipwatch project as subcontractors to Respondent Carolina Concrete Systems, as alleged in the Complaint. Appellant asserted that Acrocrete and Glasstec were negligent in the performance of their work at Shipwatch, among other causes of action. Acrocrete and Glasstec denied those allegations, thus taking an adverse position to Appellant in this matter.

A plain reading of the hearing transcript indicates that the lower court denies Appellant's right to assert any claims for work performed at the Shipwatch project prior to 2010. Transcript of Motion Hearing October 27, 2014, at p. 6. Appellant alleges in the Complaint that Acrocrete and Glasstec performed work at the project before 2010, thus making the substance of this appeal applicable to the claims and defenses relating to these two Respondents, which fully justifies their

inclusion as Respondents which are affected by the matter in this appeal.

Acrocrete and Glasstec are not, however, required to file a separate Brief of Respondent if they choose not to do so. Rule 208(b)(6), SCACR, provides: "In cases involving more than one appellant or respondent, including cases consolidated for appeal, any number of parties may join in a single brief, and any party may adopt by reference all or any part of the brief of another."

Moreover, it is appropriate to have all parties affected by the appeal, especially those who have taken adverse positions in the matter on appeal, included as Respondents in order to ensure that they receive copies of all filings and communications from the parties and the Court, in order to allow them the opportunity to submit briefs and participate as they deem appropriate.

Based upon the foregoing, the joint motion by Acrocrete and Glasstec must be denied, as they are adverse parties to Appellant and are properly included as Respondents in this Appeal.

Respectfully submitted,

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April 10, 2015

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Of Counsel

June 15, 2015

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SC Court of Appeals

South Carolina Court of Appeals
Clerk of Court
Attn: Diane Greene
1015 Sumter Street
Columbia, South Carolina 29201

Re: Oscar Mendiondo, individually and as representative of a class of similar situated owners of Condominiums units in the horizontal property regime known as Shipwatch Condominiums vs. Carolina Concrete Systems, *et al*
Appellate Case No. 2014-002765

Dear Ms. Greene:

I enclose herewith for filing the unbound original and fifteen (15) copies of the following documents in the above referenced matter:

-Final Brief of Appellant

-Final Reply Brief and of Appellant

I have also enclosed for filing fifteen (15) copies of the Record on Appeal, and the Certificate of Counsel.

By copy of this letter, I am serving the same upon all counsel of record.

If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,

Frances Klotsch
Legal Assistant to R. Patrick Flynn

RPF/fak
Enclosures

cc: All Counsel of Record (via US Mail and email)