

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

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 II
PAGES 465-762**

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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF CHARLESTON) Court of Common Pleas
 3) Case No. 2012-CP-10-3857
 4) 2012-CP-10-3858
 5)
 6 SHIPWATCH CONDOMINIUM ASSOCIATION,)
 7 INC., et al,)
 8)
 9 Plaintiff,)
 10 vs.) Transcript of Record
 11)
 12 CAROLINA CONCRETE SYSTEMS, ET AL,)
 13)
 14 Defendant.)
 15)
 16) DATE: October 27, 2014
 17)

18 B E F O R E:

19 The Honorable Judge R. Markley Dennis, Jr.

20

21 A P P E A R A N C E:

22

23 Patrick R. Flynn and and Christopher M. Ramsey
 24 For the Plaintiff

25

David Starr Cobb
 For the Defendant, Carolina Concrete Systems

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27

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Karen V. Andersen, RMR, CRR, CSR
 Circuit Court Reporter

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1 THE COURT: Two motions for summary judgment.

2 MR. FLYNN: Well, I think one in each case.

3 THE COURT: Before you identify yourselves, all
4 memorandum filed in conjunction with this motion are
5 incorporated fully for the purposes of review. And each of
6 you may rely on the memos as submitted. Thank you very much.
7 Appreciate it.

8 All right. If you would identify yourselves.

9 MR. COBB: Good morning, Your Honor. I'm David
10 Cobb. I'm here on behalf of Carolina Concrete Systems, which
11 is the defendant, one of the defendants in both the Shipwatch
12 and the Mendiondo lawsuits. It is our motion for summary
13 judgment. We are doing it based on the statute of
14 limitations. I'll probably be about two minutes to explain
15 the motion.

16 THE COURT: Sure. Take your time.

17 MR. COBB: This is a condo project at Wild Dunes in
18 Isle of Palms. The lawsuit was filed against Carolina
19 Concrete Systems and various subcontractors in June of 2012.
20 The project was built in 1985. And none of these defendants
21 in this lawsuit had anything to do with the original
22 construction of the buildings.

23 Carolina Concrete Systems started around 2003 doing
24 various what we refer to as piecemeal repairs at various
25 parts of the buildings, all with contracts through the HOA.

1 The lawsuit that the plaintiffs filed in 2012 seeks
2 to recover costs and damages associated with the original
3 EIFS system applied to the building, sliding glass doors,
4 windows, of which were originally installed in the buildings
5 in 1995, and also for some other issues, such as failed and
6 peeling ceiling paint on balconies and some other things.
7 Those are damages that the plaintiffs seek to recover for in
8 this lawsuit.

9 And the reason why the statute of limitations
10 applies in this case, and clearly, three-quarters of what we
11 handed to you this morning as part of our summary judgment
12 motions, are various homeowner minutes and deposition
13 excerpts from two of the board members and from the regime
14 manager, Linda Jernigan.

15 Ms. Jernigan was at Shipwatch before Hugo left, but
16 came back in 2005, so has been there since 2005. The board
17 members, who we included as part of our package, include
18 Ernie Schawe, I think it's S-c-h-a-w-e, and also Ernie
19 Trombino, T-r-o-m-b-i-n-o. Those gentlemen and Ms. Jernigan
20 and the HOA minutes, which are 2006, 2007, and 2008, clearly
21 identify that the plaintiffs knew about problems with the
22 synthetic stucco, with the EIFS well before 2009.

23 In fact, probably the most telling piece of exhibit
24 is in September of 2008, Ms. Jernigan goes to the board
25 saying that she has a contract, an estimate for \$2.3 million

1 to do various repairs of the project, 1.8 million of which is
2 for the removal of the remaining parts of this synthetic
3 stucco off the buildings.

4 The 2003, 2004, 2005, moving forward, repairs that
5 Carolina Concrete Systems performed included removing some of
6 the EIFS off of some of the buildings, but not all of them.
7 The 2008 contract that Ms. Jernigan presented to the board
8 was for the removal of the remaining parts of the synthetic
9 stucco off of the buildings.

10 There are also -- in 2003, 2004, 2005, the HOA
11 implemented a program to remove somewhere in the neighborhood
12 of 5 to 15 sliding glass doors and some periodic windows
13 because of various leaks. And they have Bob Sisnroy out
14 there in 2006/2007 time frame as well. Mr. Sisnroy provided
15 them with reports showing them that they had problems with
16 the leaking sliding glass doors, and problems with leaking
17 windows at this project in 2006/2007. And, again, that is
18 the damage that they are including as part of this lawsuit.

19 Now, Carolina Concrete Systems also did work out
20 there in 2010 and so forth. If the claim is just going to be
21 related to that work, then I think they survive summary
22 judgment as to those claims. But as far as the work and cost
23 associated with removing things that they clearly knew about
24 in 2005, 2006, 2007 and 2008, that's what we are trying to
25 sever from this lawsuit. And that includes the sliding glass

1 doors, the windows, and the cost associated with removing the
2 synthetic stucco. Thank you.

3 MR. FLYNN: Your Honor, I have a couple of --

4 THE COURT: I don't need all of this. This is
5 summary judgment, isn't it?

6 MR. FLYNN: It is, Your Honor. Actually, one of the
7 things I will do is --

8 THE COURT: It's not going to influence me. Maybe
9 it will influence you. If it makes you feel better, put it
10 up.

11 MR. FLYNN: Yes, sir. Your Honor, I'm not sure
12 exactly what --

13 THE COURT: Well, why don't you start by telling me
14 how in the world you get any action for damages done for work
15 in 2005?

16 MR. FLYNN: Your Honor, because this has nothing to
17 do with the original artificial stucco.

18 THE COURT: Tell me about 2005.

19 MR. FLYNN: 2005, Your Honor, this was one project.
20 This began in 2002 and it ended in 2011.

21 THE COURT: Well, what I'm asking you for is the
22 work that was done and mistakes that you are claiming was
23 done -- were done in 2005.

24 MR. FLYNN: Your Honor, we had no idea that there
25 were problems.

1 THE COURT: That's your position?

2 MR. FLYNN: It is, Your Honor.

3 THE COURT: And notwithstanding Mr. Sisnroy's
4 report?

5 MR. FLYNN: Well, Your Honor, they corrected any
6 defects which were associated --

7 THE COURT: So there's no cause of action for
8 anything in 2005?

9 MR. FLYNN: Well, they corrected it as far as what
10 Mr. Sisnroy pointed out. But, Your Honor, in 2011, they were
11 getting ready to do the final stage of all of these repairs.
12 And they were all over the buildings all of the time, this
13 being the defendant, Carolina Concrete Systems. And, Your
14 Honor, I've got documentation in my brief --

15 THE COURT: Mr. Flynn, look, you are arguing the
16 same thing he just said. They are seeking action. They are
17 seeking to recover for work done after 2010. Fine. I've got
18 no gripe.

19 MR. FLYNN: Your Honor, what he's saying is that --

20 THE COURT: Well, I'm helping him. Granted. You
21 are entitled to sue him for anything you can relate to things
22 that he did in 2010. Okay? Thank you, sir.

23 MR. FLYNN: Thank you, Your Honor.

24 THE COURT: Prepare the order. Thank you.
25 Appreciate it.

1 And, Mr. Flynn, for the record, if you will give me
2 the name -- your name and party you are representing, please.

3 MR. FLYNN: Yes, sir. It's Patrick Flynn. I
4 represent the plaintiffs, Oscar Mendiondo class action and
5 Shipwatch Homeowners Association.

6 MR. RAMSEY: Chris Ramsey also on behalf
7 Shipwatch.

8 THE COURT: Appreciate it. Mr. Flynn, I didn't mean
9 to cut you off with that, but it seemed to be more than
10 something. When I started hearing you, really focused on
11 that. Thank you very much.

12 MR. FLYNN: Yes, Your Honor.

13 (End of transcript.)

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CERTIFICATE OF REPORTER

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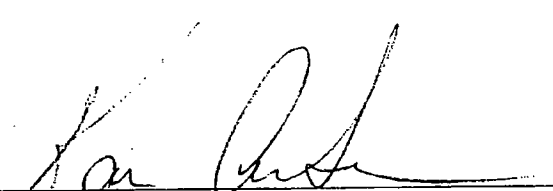
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I, Karen V. Andersen, Registered Merit Reporter
certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 30th day of October, 2014, at Charleston,
Charleston County, South Carolina.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

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.

THE DEPOSITION OF LINDA JERNIGAN was taken
as a witness on behalf of the Defendants, pursuant
to South Carolina Rules of Civil Procedure, at 9:30
a.m. on Tuesday, the 25th day of March 2014, at the
offices of Turner Padgett, 40 Calhoun Street, Suite
200, in the City of Charleston, State of South
Carolina, before Janice O. Darby, Registered
Professional Reporter and Notary Public in and for
the State of South Carolina.

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1 LINDA JERNIGAN

2 having been first duly sworn, was called as a
3 witness herein and was examined and testified as
4 follows:

5 E X A M I N A T I O N

6 BY MR. ELLIOTT:

7 Q Ms. Jernigan, good morning. My name is
8 James Elliott. I represent First Exteriors, LLC,
9 and Glasgow Roofing in this litigation brought by
10 the Shipwatch Homeowners' Association. I'm going to
11 take your deposition today. Have you ever given a
12 deposition before?

13 A No, I have not.

14 Q Well, the process is going to be, I'm
15 just going to ask you some questions throughout the
16 day. And one of the rules is you need to give us
17 verbal responses so our court reporter can take down
18 what you say. Okay?

19 A Mm-hmm. Yes.

20 Q That was my test. A lot of folks do
21 that. They will shake their head and make some
22 utterance to evidence a response, and we can't do
23 that today because we don't want Janice to have to
24 interpret what you say or she'll just write down a
25 nod or something, and then we won't know when the

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1 some documents.

2 A I think when Lester Griffin was there, he
3 had no previous property management experience.

4 Q Was he the police officer?

5 A He was a police officer. So I think they
6 hired Mike Parades, CCM, to support him and give the
7 board advice until I came. Since I had experience,
8 they no longer needed Mike Parades.

9 Q Now, the history of Shipwatch, the
10 construction was in 1984 to '86? Do you know?

11 A It was turned over to the homeowner
12 association in 1984, April of 1984.

13 Q So construction was done by 1984?

14 A I assume all four buildings. I know A
15 and B were phase one. C and D was phase two. But
16 they were very close to the same time.

17 Q And they've always had -- they always
18 have a board of directors for the history of the
19 organization. Right?

20 A Correct.

21 Q And the board of directors meet monthly?

22 A No. They meet quarterly.

23 Q Typically does the manager attend the
24 meetings?

25 A Yes.

Janice Ohlendorf Darby, RPR
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1 to not take minutes.

2 A To not take minutes, right.

3 Q Do you know if that occurred here?

4 A I don't think so.

5 Q How was the decision made -- It's a broad
6 question, and we'll get into some detail, but how
7 was the decision made to file this lawsuit?

8 A We hired Sutton-Kennerly & Associates
9 Engineers to do a study of our buildings.

10 Q Who made that decision?

11 A The board.

12 Q It was a study brought on by what? Why
13 did you decide to do that?

14 A We had been doing upgrades to the
15 buildings piecemeal because of money, I would
16 assume. And we were doing -- Like they did the end
17 walls and the roofs, and then they started to do the
18 ocean side of two buildings. And Oscar Mendiondo as
19 president said, you know, we just need to be sure
20 that we're doing everything just right. So it was
21 his idea to hire someone to do a study of the
22 buildings, and Sutton-Kennerly had been highly
23 recommended to us.

24 Q Who gave you that recommendation?

25 A The first recommendation came from Bob

1 few windows, that sort of thing.

2 Q Were all the sliding glass doors replaced
3 after Hurricane Hugo?

4 A I don't know. I don't recall that they
5 were.

6 Q Were the sliding glass doors --
7 Obviously, the original construction, the sliding
8 glass doors were in the complex. The building
9 hasn't been changed.

10 A Right.

11 Q To that extent?

12 A Correct.

13 Q Do you know what the useful life on the
14 sliding glass doors was?

15 A No.

16 Q Are there sliding glass doors in place
17 currently that are original?

18 A I don't know that they are original, but
19 there are older doors in the building.

20 Q Do you have any surveys that indicate
21 when sliding glass doors were replaced?

22 A I keep track of everything that has been
23 replaced since 2003, 2004, before I came. I know
24 what doors were replaced, and I know what doors have
25 been replaced since I came.

1 Q Do you have that written down somewhere?

2 A Mm-hmm.

3 Q Yes?

4 A Yes.

5 Q Has that been produced?

6 A I think so, yes.

7 Q This is a collection of documents that is
8 titled Attachments: 2010 Schedule. Just take a
9 look at this and tell me if this is the document
10 that you created to illustrate what sliding glass
11 doors have been replaced and which ones are
12 original.

13 A These are definitely things that I've
14 created. This is not the very last one, but this is
15 of the fourth and fifth floor sliding glass doors.
16 2010, I think, would have been the last year that we
17 did any sliding glass doors. We were replacing
18 three or four or five a year. I think we did ten
19 one year, five, because it was so costly. We were
20 only replacing those that were leaking.

21 Q I'm trying to start with some sort of
22 document control. I've put as a collection
23 documents that seem to concern sliding glass doors,
24 and they are not Bates stamped sequentially. For
25 the record, they are all CCS documents, came from

1 Carolina Concrete's files: 1483, 1443, 1421, 1422,
2 1423, 1234, 1220, 1206, 1187, 1188, 1189, 1193 and
3 1194. Can you tell me which one of these documents
4 that you created?

5 A 1483 has my name on it. 1443 has my name
6 on it. 1421 looks like something that I would do.

7 Q Set the ones that you think you created
8 aside separated from the ones that you did not.

9 A I think I did all of these.

10 Q Well, let's mark that as an exhibit then.

11 A That's not my handwriting, but that's a
12 form that I would have --

13 Q Bates stamp number?

14 A 1193 and 1194. I created the form, but I
15 did not do the handwriting.

16 Q Do you know if those documents combined
17 illustrate all the sliding glass doors that have
18 been removed and replaced?

19 A Well, at least through 2009. But I think
20 there were some in 2010, a few, all on the fourth
21 and fifth floor.

22 (Exhibit No. 1 marked for
23 identification.)

24 BY MR. ELLIOTT:

25 Q When did you guys start replacing sliding

1 glass doors?

2 A Before I came. '02 or '03 or '04, before
3 I came, all of the first, second and third floor
4 master bedrooms --

5 Q Time out one second. Before you came in
6 '90?

7 A I came in 2005. Before I came back.
8 Sorry.

9 Q Do you know what sliders were replaced
10 between -- Well, let me ask you this. Between '90
11 and '93, were any sliding glass doors replaced? Do
12 you know?

13 A I don't know.

14 Q Do you know if any were replaced between
15 '93 and 2005?

16 A Yes.

17 Q Which ones?

18 A As part of the project being done in the
19 time frame of 2002, 2003, 2004, all of the first,
20 second and third floor master bedroom sliding glass
21 doors were replaced.

22 Q Give me those dates one more time. '02
23 to '04?

24 A '02, '03, '04. When I came in 2005, they
25 were completed.

1 Q All sliding glass doors master bedroom?
 2 A First, second and third floor.
 3 Q All buildings?
 4 A All four buildings.
 5 Q And how do you know that?
 6 A Because they were replaced.
 7 Q You looked at them and could tell?
 8 You've talked to people?
 9 A Yes. It was part of the project.
 10 Q Are there sliding glass doors on the
 11 ocean side other than the master bedrooms?
 12 A Living rooms all have sliding glass
 13 doors.
 14 Q Those were not replaced between '02 to
 15 '04?
 16 A They were not.
 17 Q And none on the fourth and fifth floors?
 18 A The fourth and fifth floors are
 19 different. That's what all of these papers are
 20 about. Fourth and fifth floor sliding glass doors
 21 were replaced --
 22 Q Exhibit 1 is about fourth and fifth
 23 floor, all buildings, only?
 24 A Correct.
 25 Q And they weren't touched until the

1 done at some point during 2005 and 2010, 2011 maybe.
 2 And then we replaced living rooms and
 3 fifth floor street side bedrooms as we could as they
 4 were leaking.
 5 Q The first phase of Carolina Concrete's
 6 work, what did that include?
 7 A I don't really know for sure. I know it
 8 had something to do with chimneys and party walls or
 9 dividing walls between units on the fifth floor.
 10 Q So it was the chimneys and the fifth
 11 floor party walls only?
 12 A I don't know. I know that was included.
 13 I don't know --
 14 Q -- what else?
 15 A Huh-uh.
 16 Q Are the party walls and privacy walls
 17 different?
 18 A No. It's just terminology.
 19 Q In the buildings if you're on the decks,
 20 there is a wall -- the full-height wall and then a
 21 smaller wall. And I think the full-height wall is
 22 adjacent to the living space of the unit next door.
 23 Is that right?
 24 A Yes.
 25 Q And then there's a smaller wall that

1 '09-2010 time period?
 2 A No. I really don't know when it started.
 3 I don't know if any were done prior to when I came
 4 in 2005. I don't remember.
 5 Q On the fourth and fifth floors?
 6 A On the fourth and fifth floors. But from
 7 at least 2008 to 2010, I had some replaced.
 8 Q Have any of the living room sliding glass
 9 doors been replaced?
 10 A Yes.
 11 Q Do you know which ones?
 12 A No.
 13 Q Do you know how many?
 14 A No.
 15 Q Do you know when the first one was
 16 replaced or a time frame of when however many were
 17 replaced it began and ended?
 18 A When I came in 2005, I don't know if any
 19 on the fourth and fifth floors at any point have
 20 been replaced. I just don't know. I don't
 21 remember.
 22 But my records would indicate that I
 23 continued to replace sliding glass doors. We did
 24 all master bedrooms first, fourth and fifth -- well,
 25 fifth floor master bedrooms. All of those have been

1 extends to the end of the deck, I guess. Right?
 2 A (Witness nodded).
 3 Q And you can see over it to the next deck.
 4 Right?
 5 A Yes.
 6 Q Is the smaller wall what they call the
 7 privacy wall and the full-height wall the tenant
 8 separation wall? Do you know?
 9 A I don't know.
 10 Q And the master bedroom sliding glass
 11 doors are adjacent to the tenant separation wall?
 12 Does that make sense?
 13 A Well, there would be a wall on each side.
 14 I mean, I can't really picture it.
 15 Q When you walk out on the decks, don't you
 16 go -- Like you go through the living room and
 17 there's a door on the side that goes into the deck,
 18 and there's a deck area, and to your left would be
 19 the master bedroom, and then there's a wall that's
 20 adjacent to the --
 21 A No. We're talking about the fourth and
 22 fifth floor townhouses?
 23 Q I'm talking about one through three, I
 24 think.
 25 A Oh, one through three? Yes, you are

1 oceanfront. What did First Exteriors do on the
 2 oceanfront side?

3 A A and B.

4 Q Just A and B?

5 A Correct.

6 Q Nothing on C and D?

7 A No.

8 Q On the ocean side?

9 A Correct.

10 Q How about on the street side?

11 A No.

12 Q Nothing on the street side?

13 A Nothing had been done.

14 Q How about the elevator towers?

15 A I believe all of the elevator towers were
 16 done, but I don't know -- I was not there, so I
 17 don't know what.

18 Q So it's true that there's oceanfront
 19 stucco on C and D currently?

20 A Correct.

21 Q It's synthetic stucco?

22 A Correct.

23 Q It's been there since day one?

24 A Yes.

25 Q Who did you-all hire to do the work

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Page 73 1 Do you know what was involved with the 2 glazing of all bay windows in March of 2000? 3 A I do not. 4 Q Do you know if the work was done? 5 A I do not. 6 (Exhibit No. 15 marked for 7 identification.) 8 BY MR. ELLIOTT: 9 Q No. 15 looks like a report from Terry 10 McKelvey to Gloria May who was the manager in that 11 time period regarding B-414/415 chimney/roof 12 remediation field report. Take a look at that. 13 McKelvey indicates at the top he is 14 making a site visit to meet with Watertight Systems, 15 the company that's performing the prototype 16 remediation to the chimneys and roofs due to the 17 deficiently installed flashing. Do you know 18 anything about the work that Watertight is doing 19 during this time period? 20 A I do not. 21 Q Do you know if these chimneys and roofs 22 are the same chimneys and roofs that Carolina 23 Concrete Services worked on I think sometime later 24 in 2002? 25 A I think they were actually brought in	Page 75 1 have done post-Hugo, right, based on what we've seen 2 so far? 3 A I believe so, yes. 4 Q And new flashing shall be installed in 5 accordance with good practices. Do you know if 6 Watertight attempted to do that work? 7 A I do not know. 8 Q And he goes on to talk about new chimney 9 caps should be incorporated into the remediation to 10 provide protection for the chimney. It sounds like 11 you don't know whether or not Watertight did that or 12 someone after them in the form of Carolina Concrete? 13 A It seems like Watertight was hired to do 14 like a mockup or something and they only did that 15 and no more. Carolina Concrete took over, is what I 16 believe. 17 Q And I know we're stretching, but do you 18 know if Carolina Concrete was to follow the mockup 19 or the go-by done by Watertight? 20 A I don't know. 21 Q And overseen by McKelvey? 22 A I do not know. 23 (Exhibit No. 16 marked for 24 identification.) 25 BY MR. ELLIOTT:
Page 74 1 during this time for their opinion and they were 2 hired. 3 Q They were brought in to review the work 4 of Watertight and provide an opinion as to how to 5 fix the problems? 6 A I don't know why they were brought in 7 with Watertight. I just know that they kept finding 8 more water intrusion, so they brought in Carolina 9 Concrete. 10 Q Look at the next page, recommendations 11 from McKelvey. No. 1 he says, "Due to the chimney 12 sheathing deterioration from water intrusion, the 13 EIFS cladding and sheathing will have to be removed. 14 New sheathing and cladding should be installed." 15 Was Watertight, do you know, retained to 16 do that work initially and then Carolina brought in 17 afterwards? 18 A I don't really understand how the two 19 worked together. I just know Carolina Concrete 20 replaced Watertight. 21 Q And did work on all chimneys. Right? 22 A I believe so, yes. 23 Q No. 2 is the flashing installed by 24 Cyclone Roofing will have to be removed and 25 replaced. So this is flashing that Cyclone would	Page 76 1 Q Exhibit No. 16 is an Exterior Condition 2 Survey from Terry McKelvey Bates stamped Plaintiff's 3 1 through 104. It's dated October 7, '02. Have you 4 ever seen that? 5 A I'm aware of it. I never looked at it. 6 Q It's still before your time? 7 A Yes. 8 Q Do you know if it was a basis for the 9 contract that was ultimately entered into by 10 Carolina Concrete Services? 11 A I do not know. 12 Q Look at Plaintiff's 19, Windows and 13 Sliding Glass Door Units. Are you with me? 14 A Yes. 15 Q On that Bates stamped page it says, "Bay 16 windows, horizontal sliding, fixed and sliding glass 17 door units have on numerous site visits been 18 examined. They have been examined for, but not 19 limited to, the following: Water leakage to the 20 interior, insulated glass seal breakage, mold growth 21 adjacent to unit, stains on the wall/wallpaper, 22 stains on ceilings, wet carpet, rust stains, 23 deteriorated wood base trim and howling due to 24 wind." 25 Were you aware that Shipwatch was having

19 (Pages 73 to 76)

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1 Right?

2 A Yes.

3 Q But we still don't know what work was
4 being done, if it's replacing stucco on all the
5 floors or replacing stucco on just fourth and fifth
6 or something different. You can't shed any light on
7 that right now?

8 A I can only say my understanding is the
9 fourth and fifth floors ocean side were done and the
10 fifth floor street side and the end walls.

11 Q In the '02, '03 time period?

12 A Right.

13 Q Back to the sliding glass doors and fixed
14 windows, do we know if they were replaced then?

15 A To me, that was the time period that that
16 work was done as well.

17 Q Though it doesn't mention that in our
18 little outline here?

19 A Yeah, this was 2003. That was probably
20 2004, because it was finished when I came in 2005.

21 Q What was finished?

22 A Sliding glass doors, master bedroom,
23 first, second and third floor were completed.

24 Q On the page 6415 where we --

25 A I don't have 15.

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

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

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

13 Q And you started when?

14 A February 2005, I think.

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

18 A They leak.

19 Q Anybody ever told you why they leak?

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

24 Q What contractors gave you those comments?

25 A Carolina Concrete and Charleston Glass.

1 Q Any place other than sliding glass doors?

2 A Fourth floor units are townhouses. So
3 they incorporate the fourth and the fifth floors.
4 And there will be water penetration in the fourth
5 floor bedroom street side, which is right below the
6 fifth floor sliding glass door. That's how we would
7 be able to find a leaking sliding glass door on the
8 fifth floor.

9 Q How long have you had the problem with
10 the leaking fifth floor sliding glass doors?

11 A We've had leaking problems since I came
12 in 2005.

13 Q Any other places where the homeowners
14 have complained about water intrusion?

15 A Not that I can think of.

16 Q Have any of the homeowners complained
17 about roof leaks?

18 A I think we had a couple of -- I remember
19 having Carolina Concrete come out and make some
20 repairs -- they had to make some repairs to roof
21 drains. I don't remember -- I know they had to cut
22 into the ceilings of some of the townhouses to make
23 the repair. I don't remember if there was a leak
24 inside -- I don't remember why we had to do that,
25 but they had to make some repairs to roof drains.

1 caused a bay window in C213 to leak. Correct?

2 A 213, that's correct. That's what it
3 says.

4 Q How often were the bay windows leaking in
5 2007?

6 A I have no idea.

7 Q How many bay windows are there in each
8 building?

9 A Six in each building.

10 Q So 24 total?

11 A Correct.

12 Q And so in 2007 we know of reports of four
13 of the 24 were leaking. Correct?

14 A Correct.

15 Q Do you recall any repairs being done to
16 address the leaking bay windows in 2007?

17 A I don't recall specifically, but I know
18 that Bob Wiggins came out, and I know that
19 Charleston Glass also did some caulking around the
20 bay windows. But I don't remember anything
21 specific.

22 (Exhibit No. 101 marked for
23 identification.)

24 BY MR. COBB:

25 Q I'm going to hand you Exhibit No. 101

1 have recommended what he recommended.

2 Q I want to make sure I'm clear. In
3 September of 2008 you recommended to the board that
4 the board enter into the \$1.8 million contract with
5 Carolina Concrete Systems to replace the EIFS off of
6 the four buildings at Shipwatch. Correct?

7 A I don't believe I recommended that they
8 enter into a contract with anyone. I recommended
9 that they do the work that had been recommended that
10 they do for the protection of the buildings.

11 Q Let me rephrase. In September of 2008
12 did you recommend to the board that it spend
13 approximately \$423,060 per building which can be
14 done in phases totaling \$1,800,000 for EIFS
15 replacement of the buildings at Shipwatch?

16 A Apparently, I recommended whatever it
17 says in here that I recommended. But did I stand up
18 and say I recommend that you sign a contract with
19 someone for this amount of money? No, that's not my
20 place. My place is to do research to know what the
21 buildings need to get the prices, get the
22 information and lay it out for them. And, yes, I
23 recommend that you do what is appropriate for the
24 buildings. But I don't recommend that they sign a
25 contract for a million dollars. That's not my

1 place.

2 Q My question to you -- the last question I
3 asked you did not involve you recommending that they
4 contract with anyone.

5 My question to you was, the September
6 2008 minutes indicate that you "highly recommended"
7 item No. 6 of the September 2008 budget meetings.
8 Correct?

9 A That's what it says, yes.

10 Q Item No. 6 is titled, "EIFS replacement,
11 approximately \$423,060 per building which can be
12 done in phases totaling \$1,800,000."

13 A That's what it says, yes, correct.

14 Q And that work would have involved the
15 complete removal and replacement of all the EIFS on
16 the four buildings at Shipwatch. Correct?

17 A All that had not already been replaced,
18 yes.

19 Q And do you recall making that
20 recommendation to the Shipwatch board that they have
21 that work done beginning in 2008?

22 A I can't say that I specifically remember
23 it, but I'm sure that I would. And it says here
24 that I did.

25 Q At any point in time after you reviewed

1 the September 2008 minutes did you ever go to anyone
2 on the board and say you have misquoted me,
3 mischaracterized what I said or did?

4 A No.

5 Q And so anybody who is objectively looking
6 at the September 2008 minutes can take these minutes
7 to mean that you in fact did --

8 A Yes, they can.

9 Q In 2008?

10 A Yes, they can.

11 Q That the Shipwatch board completely
12 remove and replace all the existing EIFS on the four
13 buildings. Correct?

14 A Sure.

15 Q And you would agree with me that there
16 was a recognition by the board in 2008 that the
17 three items you listed as "highly recommended" which
18 in their entirety would have totaled over \$2 million
19 were things that were either, quote, ongoing or had
20 been held back from previous years?

21 A What was the question? The board -- What
22 was it? The board what?

23 Q There is a recognition, is there not, in
24 these September 2008 minutes by the board that you
25 had recommended \$2.1 million worth of repairs --

1 A It says here, yes. The secretary is in
2 the minutes, so yes. I guess that would say that
3 the board is acknowledging that I recommended that
4 they get the EIFS off the building and replace it,
5 yes.

6 Q Not only that, but dealing with the deck
7 coatings and the sliding glass doors. Correct?

8 A Yes.

9 Q And the board recognized in September of
10 2008 that those three items were either as the
11 minutes reflect, quote, ongoing or had been held
12 back from previous years. Correct?

13 A Yes, that's what it says.

14 Q On the last page of the September 2008
15 minutes there is a note that you told the board in
16 September of 2008 that when Shipwatch opened up the
17 EIFS before, there were problems, and that you
18 notified the board additional problems may arise
19 when opening up the new areas of EIFS, meaning that
20 the costs may be more than expected. Correct?

21 A It says that, but I don't remember that.

22 Q Do you have any reason to dispute the
23 accuracy of these minutes?

24 A No.

25 Q Let me go back to page 3 of these

1 time I turned around, they were coming, wanting a
2 broken handle replaced or the rollers making the
3 door hard to open. They never cleaned out the sand
4 out of the tracks. And then you yank on the thing,
5 and eventually the handle breaks.

6 So I brought it to the attention of the
7 board, and they determined that maintenance --
8 cleaning and maintenance items on the interior was
9 the owner's responsibility. So I have not since
10 that time replaced a handle or rollers on a sliding
11 glass door.

12 Q On page 5 of the September 2008 minutes
13 it reflects yet another bay window that's leaking.
14 Correct? This time at unit D219 caused by the
15 installation of window treatments.

16 A I think this is the same one we talked
17 about before, D219. And that's where they had
18 screwed into the framework and it caused damage
19 below in D119. It was No. 106.

20 Q Let me go back to page 7 of the September
21 2008 minutes. Under the asterisk there at the
22 middle of the page it says, "The board previously
23 passed on the coating of the decks because we needed
24 to have money to do other projects (namely the
25 beach) and let the warranty expire." What is the

THE COURT OF COMMON PLEAS

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.

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 Thursday, the 17th day of July 2014, at the offices of Turner Padgett, 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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1 A Correct.
 2 (Exhibit No. 126 marked for
 3 identification.)
 4 BY MR. COBB:
 5 Q I'm going to hand you what I've marked as
 6 Exhibit 126, Bates stamp PL 006986, 87 and 88, three
 7 pages titled Shipwatch Budget Proposal 2008. Can
 8 you just explain to me what this document shows?
 9 A This is a worksheet that I create for the
 10 board with the budget proposal for any particular
 11 year. This one 2008. And as a comparison, I show
 12 them what we budgeted the year before, 2007. And
 13 because the year is not over, I do a projected
 14 actual total.
 15 MR. COBB: Let me take a quick
 16 break, because I think my hour is up. The only
 17 thing I want to put on the record is we have not
 18 completed the review of the documents that have just
 19 recently been provided, so we reserve our right to
 20 at some point -- and we can schedule it with
 21 everybody -- to bring you back for more questioning.
 22 (Recess taken.)
 23 EXAMINATION
 24 BY MR. KELLY:
 25 Q Ms. Jernigan, my name is Britt Kelly. I

1 line. Who are those folks? Not their names, but
 2 what is their significance as it relates to
 3 Shipwatch?
 4 A They were the board members at that time.
 5 Q I see in the subject line it says,
 6 "Addendum to Manager's Report 3.5." Tell me about
 7 manager's reports. What are those?
 8 A Usually prior to a board meeting I just
 9 write up a report of things that have been going on
 10 at the property, things that I have done, work
 11 that's been accomplished. Sometimes I do them more
 12 often, but usually just before a board meeting.
 13 Q So obviously this goes to the board and
 14 not to the membership at large?
 15 A Correct.
 16 Q Why 3.5?
 17 A When I put together the board meeting
 18 package, everything has to be numbered. And this
 19 just happens to be on the agenda -- the manager's
 20 section is No. 3, and anything that I have for them
 21 is numbered with a three something.
 22 Q And on Exhibit 127, is the discussion
 23 taking place here about the work that will
 24 eventually be done in the fall of 2010?
 25 A Yes, I believe so.

1 represent EFCO and W.C. Johnston Architects in this
 2 case.
 3 I'll remind you during the deposition, if
 4 you would, please let me finish my question before
 5 you begin to respond, even if you know where I'm
 6 going with my question. Is that okay?
 7 A Yes.
 8 Q I want to kind of focus my questioning
 9 for the time being on the 2010 time period. I know
 10 there were some repairs or some renovation work done
 11 by Carolina Concrete in the fall of that year. I
 12 kind of want to understand how those repairs came to
 13 be, how the board made the decision to go forward
 14 with those.
 15 (Exhibit No. 127 marked for
 16 identification.)
 17 BY MR. KELLY:
 18 Q I want to mark as Exhibit 127 an e-mail
 19 dated March 2, 2010, Bates labeled PL 028295. Take
 20 a minute to look at it and tell me if you recognize
 21 it.
 22 A Okay.
 23 Q Is that an e-mail from you?
 24 A Yes, it is.
 25 Q And I see a bunch of names in the "To"

1 Q How did the board decide to do the
 2 stationary window replacement work and the
 3 additional work that was going to be done in the
 4 fall of 2010?
 5 A How did they determine?
 6 Q What led them to choose to do that work?
 7 A Well, we had leaking sliding glass doors
 8 in some areas. It was a continuation of work that
 9 had already been accomplished by Carolina Concrete
 10 and others. They had already done the end walls of
 11 all four buildings. They had already done the
 12 fourth and fifth floors, I believe, of all four
 13 buildings, at least parts of those two floors. And
 14 this was going to be a continuation of it.
 15 They had also done the ocean-side master
 16 bedrooms on first, second and third floor. So this
 17 was just considered a continuation of all the other
 18 projects.
 19 Q And on the second page of Exhibit 127,
 20 first full paragraph, it indicates that a
 21 conversation took place with you and Sutton-Kennerly
 22 about the costs of designing a remediation and
 23 putting together a scope of work for that work to be
 24 done in the fall of 2010?
 25 A Yes.

1 Q It looks like you're relating to the
2 board that Fred and Carl did not feel that an
3 engineer is needed for that work. Is that correct?

4 A Correct.

5 Q What do you recall about your
6 conversations with Fred and Carl about the lack of a
7 need for an engineer to scope the work to be done in
8 the fall of 2010?

9 A Well, in the previous projects that I had
10 just mentioned, Bob Sisroy had been the engineer.
11 And Bob Wiggins, Carolina Concrete, had been the
12 general contractor. So they were using the same
13 product, which was EFCO doors, the same wall system,
14 which was Durock, so they just felt like Bob Wiggins
15 knew what he was doing. It was just a repeat, a
16 continuation. So they didn't see the need for
17 someone coming in cold and getting involved.

18 Q Am I correct from your e-mail here,
19 Exhibit 127, that paragraph, that Fred and Carl and
20 the board did not want to incur the cost of an
21 engineer to do that work?

22 A Correct.

23 Q And the work was more expansive than the
24 sliding glass door and the Durock work. Right?

25 A In 2010?

1 Q Yes, ma'am.

2 A No, I don't think so.

3 Q If we look at the first page of Exhibit
4 127, it's talking about replacing stationary windows
5 on the first through third floors of the buildings.
6 Right?

7 A Oh, right.

8 Q And none of that work had been done
9 previously at Shipwatch. Correct?

10 A No. Only sliding glass doors at that
11 time.

12 Q So no one had ever scoped -- By scope, I
13 mean no engineer sat down and prepared a scope of
14 work for the stationary windows to be replaced at
15 Shipwatch. Right?

16 A Not to my knowledge.

17 Q Why was the board interested in replacing
18 those stationary windows at Shipwatch?

19 A I believe it was a recommendation by Bob
20 Wiggins because those -- like the sliding glass
21 doors, those stationary windows were sitting
22 directly on the concrete. And I guess at their age
23 they were reaching their usefulness and would have
24 to be repaired or replaced sometime in the near
25 future. So it was just more feasible to do it while

1 they were changing out the synthetic stucco on the
2 outside.

3 Q And the synthetic stucco replacement work
4 that they wanted to take place in 2010, was that
5 limited to a certain number of buildings, or was it
6 for all the buildings?

7 A It was going to be just two buildings, A
8 and B.

9 Q So the stationary windows, the first and
10 third floors, would have been for buildings A and B?

11 A Correct.

12 Q And there are 36 in each building? Is
13 that what you told us on Tuesday?

14 A There are -- Oh, the number of windows?
15 Yes.

16 Q You indicate on Exhibit 127 in that third
17 paragraph that you estimate a price for the new
18 windows and concrete curbs?

19 A Yes.

20 Q How did you estimate that?

21 A I don't really remember for sure, but I
22 know that the sliding glass doors, I think, were
23 estimated at \$11,000 each. So I'm sure I just was
24 getting this information from Bob Wiggins in
25 proposals or just in estimates.

1 Q The first paragraph of this Exhibit 127
2 reads, "I met with Carl Grisier and Fred Trombino
3 who act as our building consultants." Do you see
4 that?

5 A Yes.

6 Q What did you mean that Carl Grisier and
7 Fred Trombino act as building consultants?

8 A Well, it probably wasn't a wise choice of
9 words, but -- Let's see. Were they on the board? I
10 guess neither one of them were actually on the board
11 at that time, but they both lived there, and so they
12 were on site. Carl Grisier had been there -- Well,
13 they had both been there for the end wall work that
14 was done. So because they lived there, they are
15 just there to give guidance and support and they
16 stay involved.

17 Q The board of directors that's listed here
18 in Exhibit 127, were they all out-of-town owners?

19 A Rick Fain, B412, is actually a local,
20 Mt. Pleasant. The rest of them are all out of town
21 or out of state.

22 Q During 2010, did Mr. Fain have any
23 involvement during the building repair and
24 renovation work?

25 A Only as a board member.

1 Q Did the board in 2010 appoint or
2 designate Carl Grisier and/or Fred Trombino to serve
3 in a building repair oversight capacity?
4 A No, I don't believe so. I don't remember
5 specifically that they were assigned to it.
6 Q They were just interested in it?
7 A Well, you know, all the owners are
8 interested. So if they are around, they are out
9 there looking. But I don't remember them having
10 specific roles to inspect or anything like that.
11 Q Do you recall in the 2010 time frame
12 whether Mr. Trombino or Mr. Grisier were reporting
13 back to the board as to their findings or their
14 opinions concerning either the work of the repair
15 contractors or their proposals?
16 A I don't remember that they did.
17 Q When did Mr. Trombino come on to the
18 board?
19 A I don't know. Perhaps it was -- You can
20 only serve on the board two terms. And I think he
21 went -- must have been on the board prior to this.
22 I am honestly not sure the years that he was on.
23 Q Do you remember if he came on to the
24 board at some point after March 2, 2010?
25 A Yes, he did. You can serve two

1 three-year terms, and then you have to be off for at
2 least a year, and then you can be reelected. And so
3 he is serving for the second time now.
4 Q Do you know how many years are left on
5 his term?
6 A This is it. He'll be complete -- At the
7 annual meeting in January of 2015, they will elect
8 new board members.
9 Q Does it seem right that he was out in
10 2010 and back on in 2011?
11 A I honestly don't remember.
12 Q I think I'm finished with that one for
13 the time being.
14 What do you remember about the regime
15 hiring Gary Freeman?
16 A I don't -- I think it was kind of
17 instigated by me. I felt that we needed some kind
18 of expert guidance through the process of the work
19 being done. And so I did some research on different
20 local architects or engineers, and this was just
21 someone that -- actually, Bob Wiggins gave me the
22 name of and we met with. I don't know. Out of two
23 or three we talked to, we chose him to guide us
24 through that phase of the remediation project.
25 (Exhibit No. 128 marked for

1 identification.)
2 BY MR. KELLY:
3 Q Let me give you what I've marked as
4 Exhibit 128. It appears to be a letter from
5 Mr. Freeman dated September 22, 2010, addressed to
6 you as the general manager at Shipwatch.
7 A Yes.
8 Q Do you recall this letter?
9 A Well, not this letter specifically, but I
10 do know that I had correspondence with Mr. Freeman.
11 Q And in the first paragraph of Exhibit 128
12 Mr. Freeman indicates that he is offering services
13 to you as an architect to provide limited
14 construction administration duties during the
15 project. Do you see that?
16 A Yes.
17 Q Is that your understanding of what
18 Mr. Freeman is being hired to do at Shipwatch?
19 A Yes.
20 Q Was the project in question the Carolina
21 Concrete repair and renovation work of the EIFS
22 replacement and the addition of the 72 stationary
23 windows?
24 A I'm sorry?
25 Q Was the project that he's referencing

1 here in Exhibit 128 the work that Carolina Concrete
2 was going to do to replace 72 stationary windows,
3 add some sliding glass doors and replace the EIFS?
4 A Yes.
5 Q This letter is dated September 22, 2010.
6 I assume it's fair for me to believe that the work
7 had not been done yet at this point?
8 A I would assume so. I don't remember the
9 specific date that the work started.
10 Q Who served as the regime's point person
11 during the repairs for communicating with
12 Mr. Freeman?
13 A I guess it would be me.
14 Q Who served as the regime's point person
15 during the repairs for interacting with Bob Wiggins?
16 A It would be me.
17 Q Did you also deal with the subcontractors
18 for Mr. Wiggins, or simply Mr. Wiggins?
19 A I was familiar with all of them, but my
20 direction would be with Bob Wiggins.
21 Q If it's part of Mr. Freeman's
22 responsibility for limited construction
23 administration duties during the project, if he
24 would raise a concern with you, how are those
25 concerns addressed?

1 A He would send me a letter, and I would
 2 share it with the board.
 3 Q How would you share it with the board?
 4 A Through e-mail.
 5 Q During the project in the fall of 2010
 6 being done by Carolina Concrete, Gary Freeman told
 7 you that the EFCO windows being supplied did not
 8 contain impact glass, didn't he?
 9 A I honestly don't remember conversations
 10 specifically. I would have to look at his records.
 11 But I'm sure if they are in the records that he did.
 12 (Exhibit No. 129 marked for
 13 identification.)
 14 BY MR. KELLY:
 15 Q I'm going to mark as Exhibit 129 this
 16 e-mail. Take a minute to review it, and then I'm
 17 going to ask you if you recognize it.
 18 A I don't understand this, but I do recall.
 19 Q Exhibit 129 appears to be an e-mail from
 20 Gary Freeman to Bob Wiggins where you were copied
 21 dated November 3, 2010. Is that correct?
 22 A Yes.
 23 Q Do you recall receiving this e-mail?
 24 A Not specifically, no. But I do recall
 25 the Mr. Broadway. That's what rings a bell with me.

1 I think he was an engineer that did a report to
 2 answer these questions. I remember that. I don't
 3 understand the language here, but I do recall that
 4 he did some kind of special report for Charleston
 5 Glass.
 6 Q The bottom right-hand corner of Exhibit
 7 129 has a stamp on it. Do you see that PL 022008?
 8 A Yes.
 9 Q That indicates that it came from the
 10 files produced by Pat Flynn's office. I'll just
 11 tell you that this came from the e-mails that we
 12 received last week. The CC line, Linda Jernigan,
 13 says iopship@bellsouth.net. Is that your e-mail
 14 account?
 15 A Yes, it is.
 16 Q Do you have any reason to dispute whether
 17 you received this?
 18 A Oh, not at all, no.
 19 Q On this date, November 3, 2010,
 20 Mr. Freeman tells you that the windows probably need
 21 to be impact rated. Correct?
 22 MR. RAMSEY: Object to the form.
 23 A He was raising the question, yes.
 24 BY MR. KELLY:
 25 Q Well, on the fourth paragraph of Exhibit

1 129 doesn't he relay a conversation to you with
 2 Brian Pietras where he was told that they probably
 3 need to be impact rated?
 4 A Yes. I think that's the reason for --
 5 the whole reason for this e-mail.
 6 Q In item No. 4 in the bottom of Exhibit
 7 129 he's asking the question, "Are the windows
 8 impact rated? Is it required?" Correct?
 9 A Yes.
 10 (Exhibit Nos. 130 and 131
 11 marked for identification.)
 12 BY MR. KELLY:
 13 Q Have you had time to review Exhibit 130?
 14 A Yes.
 15 Q Do you recognize it as an e-mail from
 16 Gary Freeman to Bob Wiggins where you're copied
 17 dated November 5, 2010, about these windows?
 18 A Yes.
 19 Q Am I correct that on November 5, 2010,
 20 Mr. Freeman is asking for a meeting with you and
 21 Randy Morgan and Bob Wiggins?
 22 A Yes.
 23 Q And he asks the question again is impact
 24 glazing required for the windows being installed as
 25 part of Carolina Concrete's scope of work in 2010?

1 A Yes.
 2 Q He also says at the bottom, correct, that
 3 the questions about impact glazing also relate to
 4 the slider doors that are to be installed?
 5 A Yes.
 6 Q Exhibit 131 is another one of these
 7 e-mails that I was able to locate on either Monday
 8 or Tuesday through the review of the e-mails that
 9 were produced from your files. And the only reason
 10 I marked it is it indicated that on November 8th you
 11 forwarded this e-mail that we marked as Exhibit 130
 12 to Fred Trombino.
 13 A Yes.
 14 Q It's my understanding that he was not on
 15 the board at that time. Correct?
 16 A I don't really know.
 17 Q Well, we looked at that March 2010
 18 e-mail. He was not on it then. Right?
 19 A That's correct.
 20 Q And when do the board elections normally
 21 take place?
 22 A In January.
 23 Q So is it fair to assume that he was not
 24 on the board as of November 8, 2010?
 25 A Yes, it would.

1 Q Why was Mr. Trombino receiving a copy of
2 this e-mail?

3 A Well, there was another e-mail back here
4 that you had that said that we were using Fred
5 Trombino and Carl Grisier as building consultants.
6 Bad choice of words, but there it is.

7 Q Were they, for lack of a better term, the
8 intermediary for you and the board for these
9 building issues?

10 A I guess that would be a good way to put
11 it. They were owners. I am not. So they would
12 talk to the board in more of a position than I would
13 be in. But it also was just to support me in trying
14 to get the work done.

15 Q I wasn't able to find any e-mails where
16 you forwarded these communications to anyone else at
17 the regime including any board members. Do you know
18 whether you did or did not?

19 A I don't know that I did or did not. If
20 they weren't in there, I probably didn't. I don't
21 really know.

22 Q Do you e-mail Mr. Trombino when every
23 issue comes up on the project?

24 A No.

25 Q What was so significant about this issue

1 e-mails?

2 A I don't remember it. I don't remember
3 sending the e-mail either. It's just too far back,
4 too many things.

5 (Exhibit No. 132 marked for
6 identification.)

7 BY MR. KELLY:

8 Q Exhibit 132 appears to be a fax from
9 Randy Morgan with Charleston Glass on November 11,
10 2010, to Bob Wiggins. If you would take a minute to
11 read that, please.

12 A Okay.

13 Q The meeting Mr. Freeman had proposed was
14 going to be on Wednesday afternoon, November 10th.
15 And this document is dated November 11th. I'll tell
16 you that I didn't attach it, but attached to this
17 fax was a copy of the report from Jason Broadway.

18 Have you ever seen this document before
19 that we marked as Exhibit 132?

20 A I don't recall seeing it, but I am sure I
21 would have.

22 Q Why do you believe you would have seen
23 that document?

24 A Well, it's all based on that information
25 about the project, so I would assume I saw it at

1 that you felt you needed to e-mail it to
2 Mr. Trombino?

3 A Well, it was raising questions that I had
4 no clue about. They were raising issues that were
5 part of a continuation of another project when I was
6 not there, and I did not know what to do. So I was
7 seeking some support.

8 Q Did you attend a meeting with Randy
9 Morgan and Bob Wiggins and Gary Freeman about this
10 issue?

11 A I honestly don't remember. In a way, it
12 seems like we might have. But I just don't really
13 specifically remember.

14 I know Mr. Freeman, his parents were in
15 another state and they were in ill health and he
16 made several trips away during that time. So a lot
17 of what we were doing was on the phone. But yet it
18 just seems like maybe we did have this meeting when
19 Randy Morgan presented the drawing or whatever it
20 was from the other engineer.

21 Q Jason Broadway?

22 A Broadway, yes.

23 Q Do you recall any of your
24 conversations -- Let me back up. Did you have
25 conversations with Mr. Trombino about these

1 some point.

2 Q In Exhibit 132, Mr. Morgan states that
3 the sliding glass door replacement work his company
4 did over the past several years was done at the
5 Shipwatch buildings in accordance with the 1997
6 Standard Building Code. Do you see that?

7 A I see that.

8 Q He also says that the 72 fixed windows
9 were installed during this 2010 replacement work
10 based on the 1997 Standard Building Code, contracts,
11 proposals and conversations. Do you see that?

12 A Yes, I do.

13 Q Were you part of any conversations with
14 Mr. Morgan or Mr. Wiggins about which building code
15 the regime expected their work to be performed
16 under?

17 MR. RAMSEY: Object to the form.

18 A I don't recall anything, other than I do
19 remember the Broadway report. As far as
20 conversations, I honestly don't remember whether I
21 did or not.

22 BY MR. KELLY:

23 Q What do you remember about the Broadway
24 report?

25 A That it played a big role in this. I

1 think the project was well in hand, if not
2 completed, almost completed by the time the report
3 came in. And that everyone felt -- everyone, Bob
4 Wiggins, Randy Morgan -- were confident that it was
5 sufficient to continue on.

6 Q The Jason Broadway report concerns the
7 design pressure rating. Do you know that?

8 A I know that it was a scientific type
9 thing that made everybody -- Bob Wiggins, Randy
10 Morgan -- confident that they met everything that
11 they needed to meet.

12 Q If you look back at Exhibit 131 and you
13 look down in Mr. Freeman's list, do you see in No. 2
14 he asks about the required design pressure rating?

15 A Mm-hmm. Yes.

16 Q And then in No. 4 he asks about impact
17 glazing?

18 A Yes.

19 Q Did you understand that impact glazing
20 and design pressure ratings were two different
21 things?

22 A I don't think that I truly understood
23 that at the time.

24 Q Were you part of any conversations with
25 Mr. Wiggins, Mr. Morgan or Mr. Freeman as to which

1 Q You said Mr. Wiggins told you that this
2 project in the fall of 2010 was a continuation of
3 previous projects which called for work to be done
4 in the same way. Did I understand that correctly?

5 A The end walls and the sliding glass doors
6 for the master bedrooms, one, two and three floors.

7 Q What about the stationary windows on
8 floors one, two and three of buildings A and B?

9 A Well, that was a new part of the project,
10 continuation project.

11 Q What significance did you take from his
12 comment that this was a continuation of an ongoing
13 project?

14 A Well, Shipwatch had always had complete
15 trust and faith in Bob Wiggins. So if he was
16 confident and comfortable, then so were we.

17 Q Did you understand at that time that
18 building code changes had taken place in Isle of
19 Palms?

20 A I was not familiar with that, but that's
21 what I was understanding. And that's why I think
22 they continued to say that the design had been for
23 the 1997 building code and this is a continuation.

24 Q So you were told that this work, for lack
25 of a better term, would be grandfathered in under

1 building code would apply to the work that they were
2 performing in the fall of 2010?

3 A I don't remember anything specific, other
4 than Bob Wiggins continually said that this was a --
5 this project was a continuation of the previous
6 project which called for it to be done the same way.
7 It was just a continuation. It was not a new
8 project in his eyes. I don't remember if it was at
9 this point in time or not, but I went to Bob
10 Sisnroy, called Bob Sisnroy, and asked him to
11 provide the documents showing the design of
12 everything and what he had recommended as the
13 original project, because it was being said that it
14 was a continuation, not new. And I was not there
15 before.

16 After quite some time he sent me an
17 e-mail which should be in here somewhere that said
18 that he was not able to find any of his design
19 drawings, and he sent me a bill for \$500 for
20 looking.

21 Q So without those documents, how did the
22 regime proceed?

23 A Well, I think that the project was
24 probably about completed, if not completed, at this
25 point.

1 the prior building code because it's a continuation
2 of the work?

3 A I don't remember the words "grandfathered
4 in" ever being used, but it was a continuation.
5 That's what they kept saying.

6 Q Was the impression you obtained from the
7 comments of Mr. Wiggins and those conversations lead
8 you to believe that the work was being done under a
9 prior building code because it was a continuation?

10 A That's the impression that I got.

11 Q Did you report that to the board?

12 A I'm sure I did.

13 Q Did anyone object to that?

14 A Not that I know of.

15 Q Again, Exhibit 132 is dated November 11,
16 2010.

17 A Yes.

18 Q Just for our frame of reference.
19 (Exhibit No. 133 marked for
20 identification.)

21 BY MR. KELLY:

22 Q Exhibit 133 is an e-mail from Gary
23 Freeman to you dated November 12, 2010. You're
24 welcome to read the entire e-mail, but I'm going to
25 ask you questions only about paragraphs one, two and

1 three.
 2 A Okay. Go ahead.
 3 Q On November 12, 2010, Gary Freeman told
 4 you that the aluminum storefront and glazing system
 5 that has been installed at the oceanfront window
 6 openings of the first three floors of buildings A
 7 and B does not meet the current building code
 8 requirements of impact-resistant systems. Correct?
 9 A Yes.
 10 Q Did you have any questions as to what
 11 that statement meant?
 12 A No. I think I was probably in total
 13 panic about that time, because the project was, I
 14 believe, either in full swing or about finished. I
 15 don't remember the time frame start to finish of the
 16 project. But, once again, Bob Wiggins continued to
 17 say to us and believe himself that it was a
 18 continuation, so that everything was okay. And that
 19 Gary Freeman -- or Gary Morgan of Charleston Glass
 20 had provided something saying that we were good. We
 21 had nothing else to go on. We believed them.
 22 Q Has anyone suggested to you during the
 23 course of this litigation that Mr. Wiggins' belief
 24 was incorrect?
 25 A I don't know.

1 Q Have you had any conversations with Jeff
 2 Miller or Greg Isaacs or Mike Parker as to whether
 3 or not their belief was incorrect?
 4 A Oh, those, yes.
 5 Q Tell me about those conversations.
 6 A Well, they did a report for Shipwatch,
 7 and in that report they stated that they should have
 8 been impact glass and that they were not.
 9 Q Tell me about that report. I don't think
 10 I've ever seen that.
 11 A Oh, I'm sure it's been provided. It was
 12 an investigation report done in 2011, 2012.
 13 Q I've seen a 2012 report of SKA which was
 14 pretty comprehensive, but it doesn't talk about the
 15 doors or windows not being impact-resistant glass.
 16 Are you aware of any other report?
 17 A No, not specifically.
 18 Q Do you recall any conversations -- Tell
 19 me about the conversations you've had with Jeff
 20 Miller about whether Mr. Wiggins' belief as to his
 21 work being done under the 1997 Standard Building
 22 Code was proper or not.
 23 A I don't know that I've had any specific
 24 conversations with Jeff or Greg about Bob Wiggins
 25 and his opinion. I honestly don't recall any

1 conversations.
 2 Q Have you had any conversations with the
 3 Isle of Palms building officials as to whether or
 4 not Mr. Wiggins' belief was correct in 2010?
 5 A I have not had any conversations with the
 6 building department of the Isle of Palms, but I do
 7 know that Jeff Miller went to them and asked them if
 8 we could be grandfathered in with the doors that
 9 were already in place. And they said no, that we
 10 had to replace them to impact glass because that's
 11 what we should have done.
 12 Q We are going to talk about all of that
 13 here in a little while. So we'll table that for the
 14 time being.
 15 Exhibit No. 133, looking back at this
 16 e-mail from Gary Freeman to you on November 12,
 17 2010, in paragraph three Mr. Freeman tells you that
 18 the windows in the first three floors must be impact
 19 rated or otherwise the opening must have protection
 20 such as shutters, plywood, et cetera. Correct?
 21 A Correct.
 22 Q Did you have any misunderstanding as to
 23 what he was telling you there?
 24 A No, I don't think so.
 25 Q No. 3 in Exhibit 133, Mr. Freeman tells

1 you on November 12, 2010, that Mr. Wiggins believes
 2 the 1997 Standard Building Code to be in effect for
 3 this work in 2010 and that the products that are
 4 being installed could be non-impact rated. Is that
 5 correct?
 6 A That's what it says, yes.
 7 Q Mr. Freeman goes on to tell you in that
 8 November 12, 2010 e-mail that he disagrees with
 9 Mr. Wiggins as to the applicability of that code.
 10 Is that correct?
 11 A That is correct.
 12 Q After receiving this e-mail from
 13 Mr. Freeman on November 12, 2010, what did you do
 14 with it?
 15 A I had asked Bob Wiggins, Carolina
 16 Concrete, about a permit, because I needed to put a
 17 permit in the window, and I continually asked him
 18 for that permit. He said, well, he had it
 19 somewhere. He had a lot of stuff on Shipwatch and
 20 he would provide it and was never ever able to come
 21 up with it.
 22 Once again, by then the project was close
 23 to completion, if not completed. So there really
 24 wasn't much we could do.
 25 Q You could require that he take the

1 windows out and replace them. Right?
 2 A Well, first, you have to have a
 3 replacement window to put in it. So that would have
 4 meant somebody had to design and somebody had to
 5 order and somebody had to pay for replacing what was
 6 already done. It's a little late to take much
 7 action.

8 Q So the 72 windows that had been installed
 9 were left in place. Correct?

10 A Yes.

11 Q And they were accepted by the board even
 12 though the board knew that the windows did not
 13 contain impact glass and that impact glass was
 14 required?

15 MR. RAMSEY: Object to the form.

16 A They were pretty ticked off.

17 BY MR. KELLY:

18 Q They didn't reject them. Right?

19 MR. RAMSEY: Object to the form.

20 BY MR. KELLY:

21 Q Did they reject the windows?

22 A No. They are still in place.

23 Q Is there any writing to anyone saying
 24 take these windows out of our building?

25 A I don't believe so.

1 Q Was there any contact made to EFCO as to
 2 whether or not they would provide a replacement
 3 product?

4 A Not by me.

5 Q During this same time period sliding
 6 glass doors were being replaced. Correct?

7 A Yes.

8 Q And the board at Shipwatch considered the
 9 sliding glass door replacement work to be regular
 10 maintenance. Correct?

11 A No, I don't think so. It's capital
 12 money. Apparently, we do.

13 (Exhibit No. 134 marked for
 14 identification.)

15 BY MR. KELLY:

16 Q In Exhibit 134 there are two e-mails, one
 17 from Gary Freeman to Bob Wiggins where you're copied
 18 on December 7, 2010, at 10:23 a.m. Correct?

19 A Yes.

20 Q And in that e-mail Mr. Freeman is asking
 21 questions about the slider doors, about their DP
 22 rating, about manufacturer's requirements and
 23 manufacturer's information. Is that correct?

24 A Yes.

25 Q And seven minutes later you respond to

1 Mr. Freeman. Is that right?

2 A Yes.

3 Q And in that e-mail on December 7, 2010,
 4 at 10:30 a.m. you told Mr. Freeman that the board
 5 considers the sliding doors regular maintenance.
 6 Correct?

7 A Yes.

8 Q And you also tell Mr. Freeman that the
 9 board chose the doors they wanted and approved the
 10 installation in 2002?

11 A That's what I said.

12 Q So in 2010 when Mr. Wiggins and
 13 Mr. Morgan were installing sliding glass doors at
 14 Shipwatch it was the board's desire that those doors
 15 conform to the doors that were installed back in
 16 2004. Correct?

17 A Yes.

18 Q Is that so that unit owners would have
 19 the same product?

20 A I guess.

21 Q And prior to this December 7, 2010 e-mail
 22 that we've marked as Exhibit 134, Mr. Freeman had
 23 suggested that the sliding glass doors did not
 24 contain impact glass and were required to have
 25 impact glass under the current building code. Is

1 that right?

2 A Yes.

3 Q I know on Tuesday and perhaps in your
 4 first day of deposition -- in fact, it may have only
 5 been the first day of your deposition -- you
 6 testified that some of the owners wanted to purchase
 7 sliding glass doors off the shelves, like at Lowe's?

8 A Yes.

9 Q Is it fair to say that the owners were
 10 concerned about the cost of the doors and thought
 11 they could get doors for less money than what the
 12 regime was having to pay?

13 A That's correct.

14 Q And was Tom Miller one of those people?

15 A Probably.

16 Q Is Tom Miller on the board?

17 A He is now, yes.

18 Q Was he in 2010?

19 A I don't know for sure. Yes, he was.

20 (Exhibit No. 135 marked for
 21 identification.)

22 BY MR. KELLY:

23 Q Exhibit 135 is another one of these
 24 e-mails I was able to get from the document
 25 production made on Monday. Do you see in the bottom

1 right-hand corner it says PL 033455?
 2 A Mm-hmm.
 3 Q And the bottom e-mail seems to be from
 4 you to Jim McDonough dated September 14, 2010. And
 5 I read Exhibit 135 to indicate that Tom Miller went
 6 to Randy Morgan's office at Charleston Glass to try
 7 to talk to him about obtaining a less-expensive
 8 sliding glass door.
 9 A Yes.
 10 Q And on September 14, 2010?
 11 A Correct.
 12 Q Tell me about that, please. What all do
 13 you remember?
 14 A I'm kind of remembering after reading
 15 this. He just believed that we were paying too much
 16 money for sliding glass doors, and he just wanted to
 17 talk to the provider or the contractor for that. He
 18 does that. He just has -- he likes to talk to
 19 people directly. So he does that sometimes.
 20 Q You seem concerned about it because you
 21 e-mailed Jim McDonough to see whether or not "we"
 22 were asking for an appointment with Randy Morgan?
 23 A Well, they were asking me if we wanted
 24 the appointment. Was it Shipwatch, or was it just
 25 an owner? That they didn't want to particularly

1 Q Do you remember that to be the case?
 2 A I know she brought it up several times.
 3 I do recall that.
 4 Q Other than Mr. Miller and Ms. Lehner,
 5 were other people on the board concerned about the
 6 cost of the sliding glass doors?
 7 A Well, everyone was concerned about the
 8 cost. They are very expensive. But the
 9 misunderstanding was the word "custom." When you
 10 say we have custom doors, they are thinking that
 11 they went in every unit and made a measurement of
 12 the hole and then built a door to fit that hole,
 13 which is not the case.
 14 The doors are custom, but they are most
 15 all of them the same size. The fourth and fifth
 16 floors are larger, but the first, second and third
 17 floors, those doors are all the same size but they
 18 are custom made. You could not go to Lowe's and get
 19 a door that size to fit.
 20 (Exhibit No. 137 marked for
 21 identification.)
 22 BY MR. KELLY:
 23 Q Ms. Jernigan, we're marking as Exhibit
 24 No. 137 another e-mail that came from these files
 25 produced on Monday marked PL 024987. This one is

1 talk to just anybody that came up. And so they
 2 wanted to know if we wanted them to provide him
 3 information, I guess. So I was just calling to
 4 confirm that Shipwatch -- He was going to be there
 5 representing Shipwatch, not just himself.
 6 Q Mr. Miller was not the only person
 7 concerned about the cost of those doors who served
 8 on the board. Correct?
 9 A Correct.
 10 Q Is it Audrey Lehner?
 11 A Lehner.
 12 (Exhibit No. 136 marked for
 13 identification.)
 14 BY MR. KELLY:
 15 Q Let me show you Exhibit 136. You can
 16 again read the whole thing. I'm mostly concerned
 17 about her e-mail, which is in the middle of the
 18 first page of Exhibit 136.
 19 A Okay.
 20 Q On this e-mail which is August 22, 2013,
 21 Ms. Lehner says that she has been on the board for
 22 12 years and had brought up the question as to the
 23 sliding glass door size and associated costs every
 24 year. Is that right?
 25 A Yes.

1 dated January 6, 2009. It seems to be an e-mail
 2 exchange between you and Colleen Moring.
 3 A Yes.
 4 Q Who is Colleen Moring?
 5 A She is an owner in a partnership that
 6 owns A402.
 7 Q On January 6, 2009, did you tell
 8 Ms. Moring that the board can only replace so many
 9 doors a year to keep regime expenses affordable?
 10 A Okay.
 11 Q I'm referencing the last line of the
 12 first paragraph on Exhibit 137.
 13 On January 6, 2009, did you tell
 14 Ms. Moring that the regime can only afford to
 15 replace so many doors a year to keep regime expenses
 16 affordable?
 17 A I don't think that's the essence of this
 18 e-mail exchange. She was asking about repairing
 19 work -- repairing stuff inside her unit, and I was
 20 saying that we were not going to make the interior
 21 repairs, but she would have a \$500 credit when her
 22 sliding glass doors were replaced to spend on
 23 interior repairs that were caused by the exchange of
 24 the door.
 25 Our bylaws say that as long as we are

1 attempting to make repairs, then we are not as an
2 association responsible for interior damage as long
3 as we are actively trying to stop the problem. And
4 that's what I was saying to her.

5 Q So why would you have referenced so many
6 doors in that sentence as to the regime expenses?

7 A Because that's how many sliding glass
8 doors we have. And if I went in and made repairs to
9 every door, her regime fee would be extremely high.
10 Because you have to remember -- and what I have to
11 constantly remind owners is -- there is no them and
12 us. They are the association. And every dollar I
13 spend, part of that dollar comes from their pocket.
14 So if everything was done for everyone, they
15 wouldn't be able to afford the regime fees. That
16 was the point I was trying to make.

17 Q In January 2009, was the regime concerned
18 about the expenses that would be incurred if it
19 replaced all the sliding glass doors at the
20 Shipwatch buildings?

21 A I'm sorry?

22 Q In January of 2009, was the regime
23 concerned about the expenses that would be incurred
24 to replace all sliding glass doors at the Shipwatch
25 buildings?

1 welcome to review the whole thing. I'm mostly
2 concerned about the e-mail in the middle here right
3 above your name.

4 A Okay.

5 Q The way I read this e-mail, September 14,
6 2010, from you to Ms. Ossewaarde was that Jim -- who
7 I assume was the president of the board?

8 A Yes, at that time.

9 Q -- was planning to do no sliding glass
10 door replacement in 2011 to keep the assessment as
11 low as possible. Is that correct?

12 A Since I only ordered 11 sliding glass
13 doors this year, is that --

14 Q Yes, ma'am.

15 A Okay. I'm lost on the question. Sorry.

16 Q You read the first part. "I only ordered
17 the 11 sliding doors for this year, and I think Jim
18 is going to discuss doing none next year to keep the
19 operating the same and the assessment as low as
20 possible." Do you see that?

21 A Yes, I do.

22 Q Was the president of the board of
23 directors of Shipwatch concerned in September of
24 2010 about the cost of replacing sliding glass doors
25 because of the assessment that would be required to

1 A I wasn't talking about replacing them. I
2 was talking about making repairs. But, of course,
3 replacing 264 doors at one time would have been
4 extremely expensive, is the point I was trying to
5 make.

6 Q This is post Lehman Brothers crash.
7 Right? We are in the recession in January of 2009.

8 A I don't remember. Yeah, I guess that
9 was. That was in 2008.

10 Q In January of 2009, was the board of
11 Shipwatch concerned about the finances of the regime
12 and the impact and assessment it would have on the
13 homeowners to replace all sliding glass doors at
14 Shipwatch?

15 A Yes, I would imagine so.

16 (Exhibit No. 138 marked for
17 identification.)

18 BY MR. KELLY:

19 Q Exhibit 138 is another one of these
20 e-mails I took from the documents produced to us
21 recently. It appears to be an e-mail exchange dated
22 September 14, 2010, with you and -- I'm going to
23 need help with her last name.

24 A Ossewaarde.

25 Q Anne Ossewaarde. And again, you're

1 the homeowners?

2 A Yes.

3 Q Was it your understanding that regular
4 maintenance work involving the replacement of the
5 sliding glass doors did not have to meet the
6 requirements of the current building code?

7 A I would not think that, no.

8 Q You would not think that?

9 A No. Oh, wait a minute. Let me think
10 about that. Okay. This is what Bob Wiggins
11 explained to me. Unless you did more than 50
12 percent replacement or remediation, you were not
13 required to bring everything up to today's code.
14 And that was another reason why he believed that
15 this was a continuation of the project and it was
16 never more than 50 percent, if that makes sense.
17 I'm only repeating what I think I know, what I was
18 told.

19 Q Did you ever relay that conversation to
20 Jeff Miller or Greg Isaacs to obtain their opinion?

21 A I probably did, because it's like I just
22 repeated to you what I've been told, and that would
23 be my route. I would say that to you or to anyone
24 that asked me. This is my understanding. As long
25 as you do less than 50 percent at any one time, you

1 do not have to bring the buildings up to the current
2 code. And because of the work that we are doing now
3 being so extensive, we are required to bring
4 everything up to today's building code.

5 MR. KELLY: I think we're probably
6 at a pretty good place to break.

7 (Lunch recess taken.)

8 BY MR. KELLY:

9 Q Over lunch did you have any additional
10 thoughts about the impact glass issue as it related
11 to the 2010 fall repairs?

12 A No.

13 Q Exhibit 96 is a document that was
14 previously marked, I think, by Mr. Cobb on Tuesday
15 dated March 9, 2007. Do you recall looking at this
16 building report with Mr. Cobb?

17 A Actually, no.

18 Q To help you, I'm just going to ask you
19 questions about the second page. So if you just
20 want to scan through that or read it word for word,
21 whatever your pleasure.

22 A Okay.

23 Q There is a reference to a gentleman named
24 Arnie. Remind me of who that is, please?

25 A Arnie Schaewe.

1 on the fourth and fifth floors at Shipwatch?

2 A Yes.

3 Q I think you said the board ultimately
4 decided to go with the per unit price exterior
5 sliding glass doors rather than a lump sum cost. Is
6 that right?

7 A I don't remember that that was the
8 discussion or the decision. This was just a
9 proposal for a per door price that they chose to
10 accept.

11 Q The second page of this Exhibit 103 or 33
12 reads, "We have not been able to secure a price for
13 the impact-resistant glass yet but are still working
14 on this price." Do you see that?

15 A Yes.

16 Q Was the price for impact-resistant glass
17 provided to you on behalf of Shipwatch for this 2008
18 sliding glass door replacement work?

19 A Not that I remember.

20 Q Would you agree with me that as of
21 September 2007 some consideration was being given to
22 using impact-resistant glass in the sliding glass
23 doors at Shipwatch?

24 A I honestly don't know specifically, but
25 it certainly says here that he was trying to secure

1 Q What was Arnie's role at Shipwatch in
2 March of 2007?

3 A I'm not sure if he was still board
4 president or if he was just a member of the board.

5 Q Exhibit 96 indicates that Mr. Schaewe
6 suggested using EFCO doors as part of the exterior
7 sliding door replacement project?

8 A Yes. The EFCO doors had been chosen for
9 the previous door replacement and they wanted to
10 continue using the same door.

11 Q It indicates that Mr. Schaewe was very
12 satisfied with the EFCO products?

13 A Yes.

14 Q Do you remember that being the case in
15 2007?

16 A Yes. I think they were satisfied with
17 the doors enough to continue using them.

18 Q We've marked twice an exhibit that was
19 given I think No. 33 and No. 103, which is a
20 Carolina Concrete Systems, Inc., proposal dated
21 September 6, 2007. Again, this proposal was from
22 Carolina Concrete Systems to you for Shipwatch?

23 A Yes.

24 Q And part of this proposal was for the
25 removal and replacement of new sliding glass doors

1 a price. So they must have been aware that there
2 might be one coming.

3 Q Even though he hadn't secured a price for
4 impact-resistant glass yet, he gave you a price for
5 removal and replacement of new doors. Right?

6 A Yes.

7 Q Is it fair for me to understand that
8 Exhibit 103 is a quote for the replacement of
9 sliding glass doors without impact glass?

10 A Correct.

11 (Exhibit No. 139 marked for
12 identification.)

13 BY MR. KELLY:

14 Q Exhibit 139, you'll see, has Bates labels
15 in the bottom right-hand corner of CCS 1086. This
16 came from Carolina Concrete's file, and it appears
17 to be a fax to Carolina Concrete from Randy Morgan
18 at Charleston Glass. Have you ever seen this
19 document before?

20 A I don't believe so.

21 Q It's dated January 18, 2008, and purports
22 to be a proposal for the replacement of 16 sliding
23 glass doors. Would you agree with that?

24 A Yes.

25 Q And inclusive of material, meaning the

1 doors, the quote is for \$63,120?

2 A Correct.

3 Q Were you made aware in January of 2008
4 that a proposal for sliding glass doors had been
5 made by Charleston Glass for \$63,120?

6 A I don't recall. They ultimately did the
7 work, but I don't recall any discussion about their
8 proposal to Carolina Concrete.

9 Q Do you see any reference to impact glass
10 on this Exhibit 139?

11 A No, I do not.

12 Q Do you see the line that says, "Doors
13 will match previous doors"?

14 A Yes.

15 Q Was it your understanding that Charleston
16 Glass as the subcontractor to Carolina Concrete was
17 to use the same type of door that had been installed
18 at Shipwatch in 2004?

19 A Correct.

20 Q Did you have discussions with Mr. Morgan
21 or Mr. Wiggins about that desire that the doors
22 match what was installed at Shipwatch in 2004?

23 A I don't remember any discussion.

24 Q And the way I understood it was that in
25 2007 when you got the quote and then in January of

1 installed in January ordered in the prior fall
2 typically?

3 A I can't remember for sure what happened.
4 It seems like we did some doors early, which looks
5 like we did more than we would ordinarily have done.
6 Like I might have budgeted for ten, and we put in
7 16, and I was making clear that everybody understood
8 that six would have been done in January, which
9 would have been the next budget year, but it was
10 done earlier.

11 Q In 2010, it was done earlier because
12 Mr. Wiggins and Carolina Concrete were out there
13 working on the EIFS. Right?

14 A I assume so.

15 Q In other words, the units that are marked
16 with 2011 on them were installed in that fall time
17 period where Mr. Wiggins and Mr. Morgan were
18 removing and replacing sliding glass doors at
19 Shipwatch?

20 A Yes.

21 Q If I look at unit D431, do you see that?

22 A Yes.

23 Q That's Dr. Mendiondo's unit?

24 A Yes, it is.

25 Q So his sliding glass doors that were

1 2008 you got the quote, that those doors would have
2 been installed later in 2008. Is that right?

3 A It appears to be, yes.

4 Q And then in the fall of 2008 would you
5 have been ordering doors to be installed in 2009?

6 A I would assume so, since it says they
7 will try to ship by February of 2008.

8 (Exhibit No. 140 marked for
9 identification.)

10 BY MR. KELLY:

11 Q I've marked as Exhibit 140 another
12 document that came from the files produced by the
13 plaintiffs' lawyers. Who generated the document?

14 A I did.

15 Q And why was this document generated?

16 A I always keep track of the doors that are
17 replaced; and when they are replaced, to keep track
18 of those that have been done and those that still
19 need to be done.

20 Q And in the top right-hand corner it says,
21 "2011 doors actually installed September 2010 would
22 usually be installed January 2011." Do you see
23 that?

24 A Yes.

25 Q So were the doors that were usually

1 replaced in the fall of 2010 were the doors we
2 talked about earlier today. Right?

3 A Yes.

4 Q Those were the doors that Mr. Freeman had
5 questioned and suggested did not contain impact
6 glass?

7 A No.

8 Q Those are not?

9 A That was not part of the project that --
10 The 2010 project was A and B buildings ocean side.
11 I consider the fourth and fifth floor sliding glass
12 doors as something separate, because we didn't do
13 all of them. And this was in building D, not in A
14 and B.

15 Q If we look back at Exhibit 130, let's
16 just start with that. That's the e-mail from
17 Mr. Freeman to Bob Wiggins where you're copied on
18 November 5, 2010, asking for a meeting to discuss,
19 among other things, whether impact glazing is
20 required for the windows. Right?

21 A Yes.

22 Q And the last paragraph, the first
23 sentence says, "The same questions that he has about
24 the windows, including the impact glazing, apply to
25 slider doors."

1 A Correct.
 2 Q So the slider doors that were installed
 3 in 2010 in the fall were part of the same work that
 4 Mr. Wiggins and Carolina Concrete was performing?
 5 A Yes. But in my mind, I have to keep them
 6 separate for my sanity. But, yes, obviously it was
 7 all to be done at that time. But because it wasn't
 8 part of specific building A and B, in my mind it's
 9 something separate.
 10 But, yes, it was part of the work they
 11 did in that time.
 12 Q If we look at Exhibit 132, Mr. Morgan
 13 says in that first paragraph that 11 sliders are
 14 ready to be installed that are non-impact. Right?
 15 A Yes.
 16 Q So these sliders that were installed in
 17 the fall of 2010 that were known to not have impact
 18 glass were installed in a number of units including
 19 that of Dr. Mendiondo?
 20 A Correct.
 21 Q Looking at this Exhibit 140, we talked
 22 already about the doors that were installed in 2008.
 23 Correct?
 24 A Yes.
 25 Q Just so we're clear, since you've been at

1 glass door was installed in that unit in that year?
 2 A Correct.
 3 Q And the same thing goes for 2009?
 4 A Correct.
 5 Q Did the regime choose to use the same
 6 door as part of its replacement in 2009 that it used
 7 in previous years?
 8 A Yes.
 9 Q Was any consideration given in 2009 to
 10 using a different product?
 11 A Not to my knowledge.
 12 Q While we're on that subject, in 2010
 13 there seemed to be an estimate from Gary Moore with
 14 Salem or Structural Preservation -- whatever the
 15 name of the group is -- Structural SPS for sliding
 16 glass door replacement at Shipwatch?
 17 A Oh.
 18 Q Do you recall obtaining an estimate from
 19 Structural in 2010?
 20 A I do now, yes.
 21 Q Why was that estimate obtained?
 22 A I think it was -- I don't know that it
 23 was really solicited. I think they came and knew
 24 that we were doing work and wanted to give us a
 25 price. And it was the same type door, just a

1 the regime prior to the time of this 2013/2014 work,
 2 the only sliding glass doors that were replaced with
 3 EFCO products were on the fourth and fifth floors.
 4 Right?
 5 A No. All of the master bedrooms on the
 6 first, second and third floor, all four buildings,
 7 were replaced with EFCO doors before I came. And
 8 when they refer to the same EFCO doors, that's what
 9 they are referring to.
 10 Q I tend to mumble and am not clear all the
 11 time. Let me try to rephrase my question.
 12 Since you came back to the regime in
 13 2005, you did not coordinate the installation of any
 14 EFCO doors on floors one, two or three of any of the
 15 buildings?
 16 A Correct.
 17 Q So the only EFCO doors that were
 18 installed during your second tenure as property
 19 manager were on floors four and five. Correct?
 20 A Yes.
 21 Q We've talked already about the ones that
 22 were installed in 2008. Correct?
 23 A Yes.
 24 Q So on Exhibit 140 if I see where 2008 is
 25 written next to a unit, I can assume an EFCO sliding

1 different -- It was an EFCO door. Just by someone
 2 in North Carolina or something. And they felt like
 3 they could give us a better price. So they made a
 4 proposal.
 5 Q What were they given to quote that job?
 6 A I don't know.
 7 Q Was there any sort of specifications
 8 given to them?
 9 A I honestly don't know. I really think
 10 that it was like unsolicited. They just knew that
 11 we were doing work and just wanted to see if they
 12 could give us a better price.
 13 Q Were they asked to give a proposal? I
 14 know you're saying it was unsolicited. But once
 15 they came in and told you that we would like to do
 16 this, were they asked to give a quote for the same
 17 type of door that had been installed previously?
 18 A I honestly don't know. I would assume so
 19 since that's what they gave us. Honestly, I just
 20 barely remember that that happened.
 21 Q Who did you deal with? There's a guy
 22 named Greg Fuquay (phonetic) and then there's Gary
 23 Moore.
 24 A It was Gary Moore, I'm thinking. I just
 25 kind of barely remember it. I had forgotten

1 completely until you brought it up.
2 (Exhibit No. 141 marked for
3 identification.)

4 BY MR. KELLY:

5 Q Exhibit 141 is another one of these
6 e-mails I found in this recent production between
7 what appears to be you and Mike Parker at
8 Sutton-Kennerly dated June 5, 2009.

9 A Yes.

10 Q I think this pre-dates any report that
11 Sutton-Kennerly issued for Shipwatch. I could be
12 wrong about that, but I believe that's the case.

13 It looks to me from reading this e-mail
14 that there was some sort of communication prior to
15 this June 5, 2009 e-mail based on the way it's
16 worded.

17 A Yes. But can I read it?

18 Q Oh, absolutely. Take your time.

19 A Okay.

20 Q Exhibit 141, a June 5, 2009 e-mail from
21 you to Mike Parker. Correct?

22 A Yes.

23 Q It looks to me reading it based on the
24 verbiage that there was a conversation or a
25 communication that preceded this e-mail.

1 year?

2 Q This e-mail says June 5, 2009. So I was
3 saying the spring of 2009, you think it was?

4 A I'm assuming, yes.

5 Q At that meeting was it just you,
6 Mr. Wiggins and Mr. Parker?

7 A I believe so, yes.

8 Q And was the recommendation for Mr. Parker
9 made prior to the meeting or during the meeting?

10 A I think that Bob just -- I was looking
11 for someone to give me guidance in maintenance.
12 Like we used to have a 20-year plan. It was no
13 longer working. I needed something else. And Bob
14 recommended -- he knew Mike Parker with
15 Sutton-Kennerly, and that they would be very good at
16 that. And so we just met him for lunch.

17 Q Did Mr. Wiggins recommend anyone else
18 with Sutton-Kennerly?

19 A I don't think so. He just introduced me
20 to Mike Parker.

21 Q So his recommendation at that time was
22 for Mr. Parker as opposed to Jeff Miller?

23 A Well, it wasn't really a recommendation
24 other than this is an excellent person if you're
25 interested and I will introduce you, and what you do

1 A Yes.

2 Q Can you tell me about that, please?

3 A Bob Wiggins introduced me to Mike Parker
4 from Sutton-Kennerly at a lunch, just because we
5 were having issues that we needed to make sure
6 proper maintenance was done each year. And he said
7 that this is a good firm, they are highly respected,
8 I know of no one that would criticize them. So I
9 said sure.

10 So we had lunch and he gave me his card
11 and wanted me to send him apparently information,
12 and it was put on my desk with everything else.
13 When I finally came across it again, I said that I
14 would meet with him.

15 Q Do you recall how far in advance of this
16 e-mail that was? You indicated it's taken a long
17 time to get back to him, so I'm assuming it's some
18 period of time.

19 A I said it is the season, which means it
20 was May, June, July, August. And then I refer again
21 to I had to have something in August. So I probably
22 told him I would do it that day or the next day, and
23 it was a few weeks or a month later. Just guessing.

24 Q Probably spring of 2009?

25 A Well, you don't think it was the same

1 beyond that does not concern me. It was more of
2 that.

3 Yes, Mike Parker is the person that I met
4 and apparently contacted for the first visual
5 inspection that was done.

6 Q The reason I ask, it seemed like you said
7 earlier that Mr. Wiggins recommended
8 Sutton-Kennerly, and I was just trying to understand
9 whether he actually recommended Sutton-Kennerly as a
10 firm or Mr. Parker.

11 A Well, that's a good question. I don't
12 think of one different from the other. He probably
13 had a project going with Mike Parker or something.
14 He recommended Sutton-Kennerly. But Mike Parker is
15 the person he introduced me to that was from
16 Sutton-Kennerly. But I don't think of them
17 separately.

18 Q I understand that. My curiosity is when
19 he said I've got -- Did he say I have someone I
20 would like to introduce you to, or I have a group
21 that does this that I want to introduce you to?

22 A He referred to it as Sutton-Kennerly
23 always.

24 Q Back on Exhibit 141, in that second
25 paragraph there is a discussion about the kick-out

1 situation. Do you see that?
 2 A Yes.
 3 Q And you indicate you think it's a matter
 4 of forcing the contractor to do the work as part of
 5 a larger contract?
 6 A Yes.
 7 Q Who was that contractor you're referring
 8 to?
 9 A Glasgow Roofing.
 10 Q And you indicate you believe the design
 11 would have already been agreed upon?
 12 A Correct.
 13 Q What design are we talking about?
 14 A This would go back to the project that
 15 was -- what I would say is Bob Sisnroy was the
 16 engineer representing Shipwatch doing the design
 17 work for them at that time. And the kick-outs are
 18 part of the roofing system. So that would have been
 19 Glasgow Roofing, is my reason for saying that.
 20 Q Apparently during your conversation with
 21 Mr. Parker he had some concern about the EFCO doors
 22 that were being installed at the regime. Is that
 23 right?
 24 A We were having problems with them
 25 leaking, I think, is why I brought that up, because

1 I said I certainly hope we have done it correctly.
 2 Q Right, and you say there are over a
 3 hundred that have been installed already?
 4 A Correct.
 5 Q But not all of them are leaking. Right?
 6 A Correct.
 7 Q It sounds like from your prior testimony
 8 there were a few new ones that had leaks around them
 9 after they were installed?
 10 A Correct.
 11 Q I'm interpreting your e-mail to suggest
 12 Mr. Parker had a concern that was more systemic. Am
 13 I misinterpreting that?
 14 A Honestly, I don't remember. I just
 15 honestly don't remember. "Also, the EFCO doors we
 16 are installing, we have already done over 100, so I
 17 certainly hope we have done it correctly." He was
 18 just going to come and do a visual inspection of the
 19 buildings, I believe, to see that we were doing
 20 things right. Just a confirmation that we had done
 21 things right.
 22 Q Did Mr. Parker talk to you about a
 23 concern over the design pressure rating of the doors
 24 being installed at Shipwatch back in 2009?
 25 A I don't remember having any -- I think

1 really the only conversation I had with him was over
 2 lunch, maybe on the phone once after that. But
 3 after that, I never dealt with him again or talked
 4 to him.
 5 Q In June of 2009, did Mr. Parker raise any
 6 questions with you about whether the EFCO products
 7 needed to have impact glass?
 8 A I don't remember that.
 9 Q When these door replacements took place
 10 in 2008, 2009, 2010, did the unit owners or their
 11 tenants have to vacate those premises?
 12 A Yes.
 13 Q For how long?
 14 A For however long it took them to take
 15 them out and put them back in.
 16 Q Let's take it by unit. D429 is
 17 Mr. Cipkala's unit?
 18 A Yes.
 19 Q And he had his master bedroom slider
 20 replaced in 2009?
 21 A Correct.
 22 Q And that's on the fifth floor?
 23 A Correct.
 24 Q Did he have to vacate his entire unit for
 25 some period of time while that single door was

1 replaced?
 2 A Yes.
 3 Q Was there additional work that was being
 4 done to the fifth floor of his unit while that door
 5 was being replaced?
 6 A No.
 7 Q Just the door replacement?
 8 A Just the door.
 9 Q And your testimony is you don't know how
 10 long he had to vacate his unit for that door
 11 replacement?
 12 A I honestly don't. I honestly don't
 13 remember. I'm sure he could tell you.
 14 Q Less than a week?
 15 A Probably more like a couple of weeks or
 16 so.
 17 Q Have you managed any regimes that have
 18 had doors removed and replaced while owners stayed
 19 in their units?
 20 A No.
 21 Q Are you aware of other regimes that have
 22 had unit owners stay in the units while doors or
 23 windows were replaced?
 24 A I don't know any that have or have not.
 25 Q Was there a requirement imposed by the

1 regime that the unit owner vacate the unit during
2 the door replacement work?

3 A Well, I think it probably was at the
4 requirement of the contractor so that they were not
5 liable for anybody being injured while the door was
6 going in, going out or out. They put plywood over
7 the whole opening which made it very dark.

8 Q You're thinking on the outside two weeks
9 is about the time it takes to replace a single door?

10 A I'm really embarrassed to tell you, I
11 just have no clue. I just don't remember. If it's
12 just a door, no outside work being done, they remove
13 the door, they do whatever they have to do to the
14 framing, they pour a concrete curb, that takes 24
15 hours to dry. So a week or two would be my thought,
16 but I sure wouldn't want to take it to the bank. I
17 don't remember specifically.

18 Q There's been a general discussion in the
19 prior two days of your deposition and a few moments
20 ago about some door leaks.

21 A Yes.

22 Q It's my understanding that a certain
23 number of newer doors had water coming in around
24 them after they were replaced. Is that right?

25 A Yes. Correct.

1 Q Can you give me a number of how many
2 doors, new EFCO doors have experienced water
3 intrusion through or around them?

4 A No. I'm sure it's recorded somewhere.

5 Q How would I find where it's recorded?

6 A Well, one of the items that we had
7 yesterday or Tuesday was when we had gone in to look
8 to see leaks and they were recorded and how many
9 times they had leaked. That was one of the items
10 that would say which of the new doors had leaked.

11 Q Is that the best place to look to find
12 historical data about leaks at new EFCO doors?

13 A Yes, I think so.

14 Q When you're talking about a door leak, it
15 was my understanding from your testimony on Tuesday
16 that you determined a leak by determining wetness
17 around the door?

18 A That's correct.

19 Q Have you ever actually observed water
20 coming in, around or through glass?

21 A No. I only went in afterwards to feel
22 the carpet. That's the only -- I don't think I've
23 ever been in a condo when the rain was pouring down.
24 It was usually afterwards that I would go in.

25 Q When you used the term "door leak," are

1 you using it generically to say water is coming in
2 the location where the door is in the hole?

3 A Generically to tell you that the carpet
4 was wet around a sliding glass door area.

5 Q So it's fair to say that you have not
6 made a determination when you say "door leak" that
7 water has penetrated through the EFCO door?

8 A No, not at all. There's a wall, ocean
9 side. There's the sliding glass door. We would
10 check from corner to corner, and any wetness from
11 corner to corner would be noted, and it would be
12 said to the left of the door, right of the door.
13 But it was never specifically meant to say that
14 there was water coming in around that glass. That's
15 not -- My terminology may be really bad for
16 lawsuits. It's just a water leak is wet carpet.

17 Q So if someone interprets your testimony
18 about door leaks to mean the EFCO product itself
19 leaked, meaning water came through it, that would be
20 an incorrect interpretation?

21 A That would be incorrect.

22 Q In your tenure as property manager, has
23 the glass with any sliding glass doors or windows
24 been broken?

25 A Not to my knowledge. I don't think so.

1 Q Does the regime have a policy on how it
2 handles glass replacement within sliding glass doors
3 and windows?

4 A I don't know that we have a policy. I
5 only remember it happening once or twice. And it
6 was because glass fogged up and we replaced glass
7 because of that. I don't think we've ever had a
8 broken sliding glass door.

9 Q Who paid for the cost to replace the
10 fogged glass?

11 A On the sliding glass door, I believe
12 Shipwatch paid for it, considering it -- since we
13 are responsible for the door, we did.

14 There was a window or two, the stationary
15 living room windows, first, second and third floor,
16 I think there were a couple of those that were
17 foggy. But they were not in the budget, and so the
18 owner was offered, if you want to have it done, I'll
19 get the work done, but you have to pay for it. And
20 I don't believe they did it.

21 (Exhibit No. 142 marked for
22 identification.)

23 BY MR. KELLY:

24 Q I've marked as Exhibit 142 what's
25 entitled the Master Deed of Shipwatch Horizontal

1 Property Regime. It says phase one at the bottom.
 2 I'll tell you that I don't know if this is a
 3 complete copy of it. If you could flip through and
 4 tell me whether this is a document that you
 5 recognize as the master deed.
 6 A I recognize it, yes.
 7 Q Do I seem to be missing any substantial
 8 part of this exhibit?
 9 A This is complete in that it's all of the
 10 verbiage. It's incomplete as far as the amendment,
 11 which would just be drawing in buildings C and D.
 12 So I would consider it complete.
 13 Q I've flagged a page in what I've handed
 14 you and marked as Exhibit 142 just for your
 15 reference. You'll actually need to turn back to
 16 page 10. At the bottom where it says "maintenance
 17 and repair by co-owners of apartments," can you just
 18 read that to yourself, read that paragraph, please.
 19 A Okay.
 20 Q On the page I've marked, page 11 of
 21 Exhibit 142, that first full sentence reads, "Such
 22 co-owner shall further be responsible and liable for
 23 maintenance, repair and replacement of any and all
 24 window glass, glass doors, wall, ceiling and floor
 25 surfaces or coverings," et cetera.

1 A Correct.
 2 Q Does the regime understand that provision
 3 of the master deed to make the glass in the sliding
 4 glass doors and the windows the responsibility of
 5 the unit owner to replace?
 6 A It's one of the biggest arguments that we
 7 have in the association. To me, when I read it, I
 8 interpret it as, yes, they are responsible. The
 9 association chooses to relay that as -- If you read
 10 farther on, in areas it will describe the common
 11 areas and the limited common areas, and the doors
 12 and windows are listed as limited common. And there
 13 is a section that says that those are the
 14 responsibility of the association.
 15 So when I tell you that the maintenance
 16 of it, which we talked about Tuesday -- cleaning the
 17 tracks and replacing the handle -- that, to me, is
 18 maintenance. And the board allows me to tell the
 19 owner you have to take care of it. But when it
 20 comes to replacing a door or a window, the
 21 association does that.
 22 Q I assume you know it from your past
 23 experience managing regimes. It's possible to
 24 replace just glass and not the entire window or door
 25 frame?

1 A Yes.
 2 Q Has the board taken a position on whether
 3 or not the regime or the unit owners themselves are
 4 responsible for the replacement of glass versus the
 5 entire frame of the door or window?
 6 A That's what I was referring to earlier.
 7 For example, A407 had fogged glass in the sliding
 8 glass door. And I had that glass replaced at
 9 association expense.
 10 Q Have any amendments been filed to the
 11 master deed attempting to clarify or change the way
 12 in which glass or glass for doors or windows falls
 13 upon the unit owner as the responsible party?
 14 A There have been amendments, but I think
 15 it really leans more to clarifying that the
 16 association will be responsible for replacement. It
 17 recognizes that the limited common area, which would
 18 be the balcony, stating that the owner would be
 19 responsible for keeping that clean, they would be
 20 responsible for screens. But that's the only
 21 changes that have been made. More to that rather
 22 than the regime being responsible for replacing a
 23 broken door.
 24 Q Look back at 140. I don't know if you've
 25 still got it there. We talked about D429, Cipkala,

1 and Dr. Mendiondo's unit D431.
 2 A Yes.
 3 Q D431, Dr. Mendiondo had two sliding glass
 4 doors replaced in the fall of 2010. Right?
 5 A Correct.
 6 Q And Mr. Cipkala only had one door
 7 replaced in 2009. Right?
 8 A Correct.
 9 Q And B409 is Mr. Trombino. Is that right?
 10 A Yes.
 11 Q Is that an end unit?
 12 A That's an end unit townhouse.
 13 Q So it's different than Dr. Mendiondo's
 14 unit. Correct?
 15 A Correct.
 16 Q Even though Dr. Mendiondo is on the
 17 fourth and fifth floor and Mr. Trombino is, their
 18 units are different?
 19 A Only in that Mr. Trombino being on the
 20 end has windows on the outside wall. Mr. Mendiondo
 21 is an interior unit, so he has another unit on each
 22 side.
 23 Q And Mr. Cipkala is an interior unit as
 24 well?
 25 A Correct.

1 Q And all three of those units are
2 different than every unit on the first through three
3 floors of buildings A, B, C and D?

4 A Yes.

5 Q In terms of windows and doors, buildings
6 C and D before this latest repair and interior unit
7 on floors one through three only had one EFCO
8 sliding glass door. Right?

9 A I'm sorry?

10 Q Let me try again. Floors one through
11 three on buildings C and D before this latest round
12 of repairs, an interior unit on those floors only
13 had one EFCO product installed?

14 A Correct.

15 Q And the end units would have had the same
16 one sliding glass door, but it may have had some
17 windows as well?

18 A Correct.

19 Q In fact, it would have had one sliding
20 glass door in the bathroom as an EFCO product.
21 Right?

22 A The end unit, first, second and third
23 floor, had a bathroom window on the outside that was
24 replaced during that first project.

25 Q And buildings A and B, the units on

1 Q No owners paid for the installation of
2 impact glazing in doors and windows installed at
3 Shipwatch either. Right?

4 A Not to my knowledge.

5 Q And the regime did not contract with any
6 contractors to install impact glazing in the doors
7 and windows at Shipwatch. Right?

8 A Prior to?

9 Q Prior to 2013 or 2014.

10 A Correct.

11 Q Would you agree with me that impact glass
12 is much more expensive than regular insulated glass?

13 MR. RAMSEY: Object to the form.

14 A I don't -- I would assume that it is. I
15 don't know that I looked at the bill for an
16 impact-rated sliding glass door. I don't know that
17 I've looked at it. That would be my assumption.

18 BY MR. KELLY:

19 Q And as part of the 2013/2014 repairs,
20 additional structural support is being added to the
21 window and door openings on buildings C and D.
22 Correct?

23 A Correct.

24 Q Would you agree with me that Shipwatch
25 did not pay any contractors to install that

1 floors one through three would have had an EFCO
2 sliding glass door -- or still do have an EFCO
3 sliding glass door and two stationary EFCO windows?

4 A Correct.

5 Q And Dr. Mendiolo's unit, for example,
6 D429, does not have those stationary windows?

7 A It does not.

8 Q Neither does Mr. Cipkala's or
9 Mr. Trombino's?

10 A Correct.

11 Q Do you agree that adding windows and
12 doors to the Shipwatch buildings that have
13 impact-rated glass is an upgrade?

14 A It would depend on what you were talking
15 about. It's an upgrade if you're talking about
16 property values. But it's a requirement when you're
17 talking about code requirements.

18 Q Do you agree with me that the Shipwatch
19 regime did not pay for impact glass in any of the
20 doors or windows installed at Shipwatch?

21 A Previously?

22 Q Before the repairs done in 2013/2014, the
23 regime did not pay for any impact glass in sliding
24 glass doors or windows?

25 A Correct.

1 additional support prior to 2013 and 2014 at
2 buildings C and D?

3 A I don't know how to answer that.

4 Q Tell me what's troubling you and I'll see
5 if I can try and reword it.

6 A When you say we didn't pay anyone to beef
7 up the studs prior to this project, we paid a
8 contractor to install a sliding glass door to
9 replace the -- the synthetic stucco, replace it with
10 the Durock stuff. We just paid them to do the job.
11 If it required studs, they were to do that.

12 Q You've dealt with contractors for a long
13 time as a regime manager. Right?

14 A Yes.

15 Q And you understand that they price or
16 make quotes based on the amount of work and the
17 amount of materials the job requires. Right?

18 A Yes.

19 Q So they did not quote you or charge you
20 based on going in to structurally improve or enhance
21 these door and window openings when they did the
22 work back in 2010 or prior. Correct?

23 A I don't remember, other than it seems
24 like there's -- it's like a per unit cost. If they
25 add a stud, you're going to be charged X amount for

1 it. That's why, I'm sorry, I don't really know how
2 to answer it, because I don't know that they were
3 told to add studs. I just know that if there was
4 one that needed to be replaced or sistered, that
5 they would do that and bill us for it.
6 Q Is it your understanding that the work
7 that is being done around windows and doors on
8 buildings C and D at Shipwatch to enhance or improve
9 the structural capacity of openings is being done to
10 support these wind rated and higher DP rated windows
11 and doors?
12 A That is my understanding, yes.
13 Q Would you agree with me that the regime
14 did not ask Carolina Concrete or any other
15 contractor to do the same beefing-up work around the
16 doors and windows prior to 2013/2014?
17 A I don't think I can agree with that,
18 because they gave us a proposal to replace or put in
19 studs as needed. So I don't think that the
20 association would have said specifically put them
21 in. They said put them in as necessary and they
22 gave us a price. If we put them in, this is what
23 it's going to cost you.
24 Q In 2010 when Carolina Concrete was
25 replacing 72 stationary windows and whatever number

1 of doors -- 11, I believe -- was it your expectation
2 that they were going to go into the walls in
3 buildings A through D at Shipwatch and install new
4 support?
5 A If it was needed, yes.
6 Q Did you believe that if it was needed you
7 would have to pay more money as part of a change
8 order?
9 A I'm pretty sure there was a price for
10 extra studs. I don't just don't remember specific.
11 Q So if extra stud work was going to be
12 done around the window and door openings, the regime
13 would have had to pay for it back in 2010?
14 A Extra stuff, yes.
15 Q And you can't tell me today whether it
16 did, in fact, or did not pay for extra studs to be
17 added to support the new windows and doors that were
18 being installed?
19 A I cannot answer specifically. It gets
20 very complicated.
21 (Exhibit No. 143 marked for
22 identification.)
23 BY MR. KELLY:
24 Q Exhibit 143 appears to be a letter from
25 you sent via e-mail dated June 19, 2012, to Mary

1 Beth Wilkins at Wells Fargo Home Mortgage?
2 A Yes.
3 Q Who is Mary Beth Wilkins at Wells Fargo
4 Home Mortgage?
5 A I have no clue. It must have been
6 someone trying to refinance their condo or
7 something.
8 Q So this would not have related to any
9 loan that the regime was taking out or attempting to
10 take out?
11 A I don't think so. With Wells Fargo Home
12 Mortgage? No.
13 Q On June 19, 2012, in your letter to
14 Ms. Wilkins, you're telling her that Shipwatch
15 regime plans upgrades to the buildings beginning
16 2012 that include replacing doors and windows with
17 impact glass. Correct?
18 A Let me find that. Okay. I'm looking for
19 the word "upgrade." I don't see that.
20 Q Word five of the only paragraph.
21 A Oh, okay. I was looking farther down.
22 Upgrades and repairs to the buildings, yes.
23 Q In writing this letter to Ms. Wilkins,
24 were you telling her that the replacement of doors
25 and windows with impact glass was an upgrade to the

1 Shipwatch buildings?
2 A Not necessarily, I don't think.
3 Q We are going to fast forward to the
4 2013/2014 time frame and perhaps the 2012 time
5 frame. So maybe we're not fast forwarding that
6 much.
7 The original plan for the repairs or
8 renovations at Shipwatch was to leave in the, quote,
9 new EFCO product. Right?
10 A Yes.
11 Q And the Shipwatch regime was happy with
12 the performance of the EFCO products?
13 MR. RAMSEY: Object to the form.
14 A I believe so, yes.
15 (Exhibit No. 144 marked for
16 identification.)
17 BY MR. KELLY:
18 Q I've marked as Exhibit 144 a document
19 that I'm going to tell you I think Mr. Trombino
20 prepared based on the data behind the data of
21 electronic documents that you produced. Do you
22 recognize the document that I marked as Exhibit 144?
23 A Not specifically, but I'm sure I've seen
24 it.
25 Q We kind of alluded to this earlier. I'll

1 call your attention to the last two paragraphs.
 2 A Okay.
 3 Q I believe you testified earlier that Jeff
 4 Miller and Sutton-Kennerly Associates were
 5 attempting to get the EFCO products installed at the
 6 buildings grandfathered in. Correct?
 7 A They did ask, yes.
 8 Q And it was the building official at the
 9 Isle of Palms building department that informed
 10 Mr. Miller that because of these repairs that were
 11 taking place at Shipwatch all of the products had to
 12 meet the current building code. Is that right?
 13 A I think it's my understanding he said
 14 that they had to be replaced.
 15 Q Has anyone talked to you about whether or
 16 not they could have stayed in had they not come out
 17 of their hole? Do you understand what I'm talking
 18 about?
 19 A Well, I think one of the questions that
 20 Jeff Miller at Sutton-Kennerly asked was if there's
 21 something we could do, like put up hurricane
 22 shutters, to protect them, and they said no.
 23 Q Is that information coming from
 24 Mr. Miller?
 25 A That was told to us by Mr. Miller, yes.

1 Q Is it your understanding that the work is
 2 having to comply with the code in effect in 2013?
 3 A Yes.
 4 Q That last paragraph of Exhibit 144 says
 5 that based on the mandate from the Isle of Palms
 6 building department, it's necessary to beef up the
 7 framing around the windows and doors to meet the
 8 code in effect in 2013. Right?
 9 A Yes.
 10 (Exhibit No. 145 marked for
 11 identification.)
 12 BY MR. KELLY:
 13 Q Exhibit 145 is another document that came
 14 from this recent production. Maybe we had it
 15 before, but I don't remember seeing it.
 16 A Me either.
 17 Q Look at it for a minute and just kind of
 18 give me an idea of what you think it is, that would
 19 be helpful.
 20 A I think this was just a report. And I
 21 believe that it would be by Mr. Trombino to the
 22 board of directors.
 23 Q And Mr. Trombino's report here in Exhibit
 24 145 about five paragraphs down indicates that the
 25 building department's requirement that all the glass

1 in the doors and windows at Shipwatch be impact
 2 rated increases the projected cost of the project by
 3 about \$1 million. Correct?
 4 A Correct.
 5 Q Do you understand that to be the case?
 6 In other words, do you have any disagreement with
 7 Mr. Trombino's report?
 8 A Yeah, I can't substantiate it, but I
 9 wouldn't disagree with it.
 10 Q It also indicates in the next paragraph
 11 that due to the extensive framing and drywall work
 12 that has to be done to make the building walls code
 13 compliant, an additional increase of approximately
 14 \$400,000 is needed.
 15 A Correct.
 16 Q Any reason to disagree with his
 17 recitation?
 18 A No.
 19 Q Was there any discussion with the
 20 building official or Mr. Miller as to whether the
 21 impact rating issue was for all floors or just
 22 floors one through three?
 23 A I don't remember.
 24 (Exhibit No. 146 marked for
 25 identification.)

1 BY MR. KELLY:
 2 Q Exhibit 146 appears to be an e-mail
 3 exchange on June 2, 2012, between Tom Miller and a
 4 group of people that seems to include you. Is that
 5 correct?
 6 A Yes.
 7 Q Do you recall this exchange?
 8 A No, but I've been exposed to these things
 9 before. So, yes, I'm sure I saw it.
 10 Q Mr. Tom Miller is raising the question
 11 with I guess the board and you as to whether the
 12 sliding glass doors and windows that are being
 13 completely removed and replaced can simply be
 14 reglazed in place.
 15 A Yes.
 16 Q Was that question asked of Jeff Miller?
 17 A I believe it probably was. Tom Miller,
 18 he just came up with the idea of putting a coating
 19 over the glass in place. And I think Jeff did
 20 answer that saying that it would not meet the proper
 21 wind loads or something. It was the same guy that
 22 went to Charleston Glass on his own.
 23 Q Did Mr. Miller contact anyone at EFCO to
 24 determine whether or not that was possible?
 25 A I don't know whether he talked to EFCO or

1 not. But I would think that he talked to someone,
 2 another engineer, in his office or himself or
 3 someone. He wouldn't just pop off. No matter how
 4 silly the question that's asked, he always gives
 5 them a sincerely serious, proper answer. He doesn't
 6 just pop off like I do.
 7 Q There's an e-mail that I didn't print
 8 that was kind of a response saying Mr. Jeff Miller
 9 is looking into it and intends to contact EFCO about
 10 that option. I'm just wondering if Jeff Miller ever
 11 reported to you or the board as to what he found
 12 out, if anything, from EFCO or its dealer?
 13 A I don't know if he reported to us that he
 14 spoke with someone at EFCO. He did inform us that
 15 that was not acceptable.
 16 Q For any of the doors or windows?
 17 A Correct.
 18 (Exhibit No. 147 marked for
 19 identification.)
 20 BY MR. KELLY:
 21 Q Exhibit 147 is another document produced
 22 to us recently. You can look at the whole thing or
 23 the highlighted portion. That's what I'm going to
 24 ask you about.
 25 A Okay.

1 Q First of all, these are draft minutes or
 2 final minutes of the Shipwatch Horizontal Property
 3 Regime Board of Directors?
 4 A They would be final minutes.
 5 Q Did you attend that meeting?
 6 A I did.
 7 Q I understand that paragraph and
 8 particularly that highlighted portion to be saying
 9 that the board is rescinding their policy of
 10 permitting hurricane shutters because it would be
 11 redundant to have hurricane shutters and
 12 impact-rated glass.
 13 A Correct.
 14 Q How many units had hurricane shutters
 15 prior to the commencement of work at Shipwatch in
 16 2013?
 17 A Maybe four or five units. But, of
 18 course, that would be all doors in their unit. The
 19 master deed states that nothing can be attached to
 20 the building without board of director's approval,
 21 which included storm shutters. And after Hugo so
 22 many people requested that the board said, okay, if
 23 you meet certain specifications, it has to be a real
 24 hurricane shutter by a real hurricane company. They
 25 have to be bronze. They would allow them to be

1 installed.
 2 There's not that many. I don't even know
 3 if I could go back and figure out who all had them.
 4 But this was just saying that they would no longer
 5 allow those to be attached to the new stucco.
 6 Q On buildings C and D. Correct?
 7 A Well, in any building after this work is
 8 completed.
 9 Q So what about at buildings A and B when
 10 the work has not yet been done, can they put
 11 hurricane shutters on their windows and doors?
 12 A I'm sure they could if they wanted to
 13 spend that kind of money for one month.
 14 Q Dr. Mendiondo had hurricane shutters on
 15 his sliding glass doors?
 16 A Yes, he did.
 17 Q When were those removed?
 18 A Prior to this project. Prior to
 19 September 2013.
 20 Q What about Mr. Trombino? Does he have
 21 hurricane shutters?
 22 A Yes.
 23 Q What about Mr. Cipkala?
 24 A I don't know. I don't remember for sure.
 25 Q I read the comment here on Exhibit 147

1 about the redundancy of hurricane shutters with
 2 impact-rated glass to mean that they accomplish the
 3 same purpose?
 4 A Correct. That's what I would think, yes.
 5 Q Tell me about the policy, how it actually
 6 works. When Dr. Mendiondo, for example, decided he
 7 wanted hurricane shutters on his unit, does he come
 8 through you to do that?
 9 A No. He would have contacted me to say
 10 that he wanted to get hurricane shutters, and I
 11 would just remind him that they had to be bronze.
 12 They had to be real hurricane shutters installed by
 13 a real company, a reputable company. And that's
 14 all.
 15 Q Who brought up the idea of the hurricane
 16 shutters? Was that while you were there or before?
 17 A It was after I left. I was there until
 18 1993. Up until that time, no one had them. And
 19 apparently new owners coming in felt the need
 20 because of Hugo. So the board decided to allow it.
 21 Q When you came back in 2005, was the
 22 policy already in place?
 23 A Yes. There were some hurricane shutters
 24 on the building.
 25 Q Did people add hurricane shutters after

1 you came back in 2005?
2 A Dr. Mendiondo. I think the owners of
3 B311. That's all I remember for sure.

4 Q Mr. Trombino had his master bedroom
5 slider and his guest bedroom slider replaced in
6 2008/2009. I guess they would have had to remove
7 his hurricane shutters and reinstall them?

8 A Correct.

9 Q For example, for Mr. Trombino on the
10 hurricane shutters going back in 2008 and 2009, the
11 regime knew that the glass in those sliding glass
12 doors were not impact rated. Right?

13 A Say it again.

14 Q For Mr. Trombino, unit B409, when his
15 hurricane shutters were removed, his master bedroom
16 slider was replaced and the hurricane shutters were
17 reattached, the regime knew at that time that the
18 glass in his exterior sliding glass door in the
19 master bedroom was not impact rated?

20 A In what year?

21 MR. RAMSEY: Object to the form.

22 BY MR. KELLY:

23 Q 2008.

24 A Wasn't that something that we already
25 discussed in 2010? I don't remember, other than

1 Q They couldn't have had the Broadway
2 report at that time. Right?

3 A Okay. So the question is did we believe
4 they were impact glass at that time?

5 Q Right.

6 A I don't know that we'd even thought about
7 it.

8 MR. KELLY: I think those are all
9 the questions I have for you. Thank you for your
10 time.

11 (Recess taken.)

EXAMINATION

12 BY MR. BARFIELD:

13 Q I'm Michael Barfield. I represent Gary
14 Freeman and Gary Freeman Architects, Inc., in this
15 case. I understand there's already been some
16 discussion today about Mr. Freeman's work at
17 Shipwatch, but obviously I want to get into some
18 pretty significant detail as to what he did, what he
19 was supposed to do and your recollection of his time
20 out there.

21 I've got some documents to show you, but
22 first I would like to just talk to you and get your
23 recollection of how Mr. Freeman came to be on the
24 project and your preliminary discussions with him.
25

1 what we've talked about today.

2 Q If hurricane shutters accomplish the same
3 purpose as impact glass, why would the hurricane
4 shutters be needed if the regime believed that the
5 glass in the windows and doors were impact rated?

6 A I don't know that we believed they were
7 impact.

8 Q That's my question. Did the regime
9 believe in 2008 and 2009 when Mr. Trombino
10 reattaches hurricane shutters to the outside of his
11 sliding glass doors that the glass in those doors
12 were impact rated?

13 MR. RAMSEY: Object to the form.

14 A I think that they had in their hands the
15 engineering report from Mr. Broadway that they were
16 sufficient. But I don't think that we used the term
17 "impact" in our normal conversations. To me, it was
18 always wind rated, 120 mile or 140 mile an hour wind
19 rated windows.

20 BY MR. KELLY:

21 Q Mr. Broadway's report didn't get
22 generated until 2010, November. And Mr. Trombino's
23 sliding glass doors and hurricane shutters were
24 reattached in 2008, 2009.

25 A So the question is?

1 A Well, what I remember is we were shopping
2 for an engineer or architect to guide us through the
3 project that was to replace the synthetic stucco on
4 the ocean side of A and B building and install the
5 DEFS, the Durock thing.

6 And I was just looking for different
7 ones, and Bob Wiggins said he had a project going
8 that Gary Freeman was the architect on. Shipwatch
9 is always so mindful of their money. He said he
10 works by himself. I think he's very reasonable if
11 you'd might like to meet with him. So I called Gary
12 and set up an interview.

13 Q Now, before we talk about that initial
14 interview, I would like to put a finer point on what
15 you mean by you were looking for an architect or
16 engineer to, quote, guide you through the project.
17 What did you mean by guide?

18 A Well, you have a contractor and you have
19 me. There has to be somebody that keeps the
20 contractor on target appropriately, properly, and
21 that's not me. And I was not comfortable -- Even
22 though it was a continuation of the previous
23 projects, I was not comfortable going through it
24 myself.

25 Q I think we can both agree that

1 Mr. Freeman -- it was never contemplated that
 2 Mr. Freeman was going to be doing any actual design
 3 work at Shipwatch. Is that correct?
 4 A That's correct.
 5 Q You set up an initial interview with him.
 6 Did that meeting take place?
 7 A I'm sure it did. I honestly don't
 8 remember it.
 9 Q What is the first direct interaction with
 10 Gary Freeman that you do recall?
 11 A I'm sorry. I honestly cannot pinpoint
 12 specific meetings with him. I know I talked to him
 13 on the phone several times. I know he came to my
 14 office. I know he visited the job site. If he
 15 walked in the room, I would know who he is. He
 16 always wore a hat. But specific times, dates,
 17 reasons, I can't tell you.
 18 Q Do you recall discussing with him as a
 19 preliminary matter what it is that you were
 20 retaining him to do?
 21 A I would think, yes. I think that is the
 22 reason why I contacted both Bob Wiggins and Bob
 23 Sisnroy to ask them for the original design so that
 24 he would have something to know how to guide these
 25 people through the job they were getting ready to

1 do. Neither one of them could supply it, and the
 2 job started.
 3 Q To the best of your recollection,
 4 Mr. Freeman performed his work start to finish
 5 without the benefit of any design drawings?
 6 A Yes, no specific design drawings from Bob
 7 Sisnroy, other than there was information in one of
 8 the notebooks there that Bob Sisnroy had stated that
 9 he preferred to use an Acrocrete wall system. That
 10 was his recommendation. So that would have been the
 11 only thing that Gary Freeman would have had to guide
 12 him through the work.
 13 Q If I may, how was Mr. Freeman supposed to
 14 guide, to use your word, the contractor through the
 15 process if he did not have any documents to inform
 16 him as to what he was guiding the contractor
 17 through?
 18 MR. RAMSEY: Object to the form.
 19 A I don't know, other than he is an
 20 architect. He knows stuff. And he knows an
 21 Acrocrete wall system that he would be looking at.
 22 BY MR. BARFIELD:
 23 Q Are you certain that he is familiar with
 24 the Acrocrete product or was at the time?
 25 A Well, like I said, I don't even remember

1 the conversations that I had with him. So
 2 specifically I can't say.
 3 Q Let me show you what's already been
 4 marked as Exhibit 128. This is a letter from
 5 Mr. Freeman to you dated September 22, 2010. You
 6 can look at that again just to refresh your
 7 recollection.
 8 A Okay.
 9 Q What is that document, to the best of
 10 your recollection?
 11 A It looks to me like it's an introduction
 12 letter showing his interest in working for us and
 13 what he would need or why he thought that he would
 14 be a good fit for the job.
 15 Q Let me show you another letter dated a
 16 couple of weeks before from Mr. Freeman. This is
 17 dated September 3, 2010. I've marked it as Exhibit
 18 148.
 19 (Exhibit No. 148 marked for
 20 identification.)
 21 A It's the same letter.
 22 BY MR. BARFIELD:
 23 Q Not quite. Have you had an opportunity
 24 to compare?
 25 A I did. I see a couple of sentences in

1 here that are different.
 2 Q So do you recall receiving the first
 3 letter from Mr. Freeman?
 4 A Again, I remember talking to him. I know
 5 he sent me a lot of letters and stuff. And I
 6 remember him. But specifics, I'm sorry, I just
 7 don't.
 8 Q Well, would you agree with me that the
 9 scope of work that he's proposing from one letter to
 10 the next is slightly different?
 11 A No. But if you'd help me, I probably
 12 would.
 13 Q Let's walk through the two paragraphs --
 14 the paragraph in each letter that begins, "My
 15 services include".
 16 A Yes.
 17 Q So in the September 3rd letter, he says,
 18 "My services include reviewing the existing contract
 19 documents to familiarize myself with the design and
 20 their intent."
 21 A Yes.
 22 Q That line is identical in the September
 23 22nd letter. Correct?
 24 A Yes.
 25 Q September 3rd, the next line reads, "At

1 the start of the work I will conduct a
 2 pre-construction meeting with the contractor, the
 3 major subcontractors and your staff to ensure
 4 everyone's awareness of safety concerns, the work
 5 schedule and any issues that should be discussed
 6 impacting the project."
 7 A Yes.
 8 Q Would you agree with me that that line is
 9 absent from the later letter?
 10 A Yes, I would.
 11 Q So the next line on the earlier letter
 12 says, "During construction, I will visit the site
 13 weekly to meet with the construction team to discuss
 14 any issues or concerns and to observe the status of
 15 the work."
 16 A Yes.
 17 Q The line in the September 22nd letter is
 18 similar but slightly different. It reads, "During
 19 construction, I will visit the site on a weekly
 20 basis to observe and document the status of the
 21 work."
 22 A Yes.
 23 Q Next line on the September 3rd letter
 24 reads, "I document these meetings with photographs
 25 and a field report of the items discussed."

1 A Yes.
 2 Q That line is missing from the later
 3 letter, is it not?
 4 A Yes.
 5 Q Going back to the September 3rd letter,
 6 "When pay applications are submitted, I will review
 7 them for compliance with the work to ensure the
 8 percentage of work complete is in accordance with
 9 the percentage of the costs being requested."
 10 A Yes.
 11 Q That line is also absent from the later
 12 letter, is it not?
 13 A Yes.
 14 Q And then the September 3rd letter goes to
 15 the next paragraph, but the September 22nd letter
 16 goes on to say, "After each site visit, I will
 17 prepare a field report listing the general status of
 18 the work and any items discussed on site with the
 19 contractor. Per our discussion on September 21,
 20 2010, there will not be a need to review and approve
 21 monthly applications for payment."
 22 A Correct.
 23 Q So having compared those two paragraphs
 24 line by line, you would agree with me that the scope
 25 of work being proposed is somewhat different on

1 September 22nd than it was initially on September
 2 3rd?
 3 A I would agree.
 4 Q And would you have any reason to disagree
 5 with Mr. Freeman's statement that there was a
 6 meeting with you on September 21, 2010?
 7 A No.
 8 Q Do you recall anything about that
 9 meeting?
 10 A No.
 11 Q Do you recall meeting with him at any
 12 point between September 3rd and September 22, 2010,
 13 to discuss exactly what it was you were retaining
 14 him to do?
 15 A Well, once again, I remember him. I
 16 remember having conversations with him. I remember
 17 meeting him. And when I read these things, I
 18 remember discussions with him. Specifics, I can't
 19 say I remember specifically meeting face to face or
 20 talking to him on the phone between September 3rd
 21 and September 22nd, but I will say, yes, I'm sure I
 22 did.
 23 Q Would it be a fair statement to say that
 24 based on meetings or negotiations with you his
 25 initial proposed scope of work was dialed back to

1 something less?
 2 A Yes, I would agree with that.
 3 Q He was not retained to approve pay
 4 applications. Correct?
 5 A Correct.
 6 Q Who did approve pay applications?
 7 A That probably would have been done by a
 8 board member.
 9 Q If I told you that your signature was on
 10 pay app approvals, would that refresh your
 11 recollection?
 12 A Well, I would have approved them after
 13 being told I could approve them by a board member,
 14 whether it be verbally or what. But, yes, I'm not
 15 surprised.
 16 Q Speaking of the board, I meant to ask you
 17 this earlier. Did Gary Freeman ever interact
 18 directly with the board, or was it always through
 19 you?
 20 A I honestly don't know, but it would not
 21 surprise me if it was only through me. But I don't
 22 know.
 23 Q I'll represent to you that I've seen
 24 nothing in writing in the way of meeting minutes
 25 that reflects him having dealt with anybody but you.

1 A Right.
 2 Q I'm going to show you -- For some reason,
 3 I only have one copy of this. But I'm going to show
 4 you a document bearing Mr. Freeman's letterhead that
 5 says Professional Services Agreement. This will be
 6 149.
 7 A I have seen it, and I signed it.
 8 (Exhibit No. 149 marked for
 9 identification.)
 10 BY MR. BARFIELD:
 11 Q Do you recall it?
 12 A Not specifically do I recall it, but I am
 13 the only person that is there to receive these
 14 things. And with board approval, whether it be
 15 verbal or otherwise, I signed them.
 16 Q Would you agree with me that that
 17 document reflects the terms and conditions of your
 18 contract with Mr. Freeman?
 19 A I would, yes.
 20 Q And when I say Mr. Freeman, I want to
 21 make sure that we're on the same page. Gary Freeman
 22 individually is a defendant in this case. Gary
 23 Freeman Architect, Inc., his company, is also a
 24 defendant in this case. I'll represent to you that
 25 in the complaint that's been filed in this case no

1 distinction is made between work done by Mr. Freeman
 2 individually or work done by his entity.
 3 When you executed that contract with Gary
 4 Freeman Architect, Inc., did you distinguish between
 5 the individual and the company in your mind?
 6 A No.
 7 Q So in your mind, Gary Freeman, the
 8 individual, and Gary Freeman, the company, were the
 9 same thing?
 10 A I would not even have thought to think
 11 that. I knew that he worked alone. So as far as
 12 thinking about him, the company and him the
 13 individual, that's not my thought process.
 14 Q So whatever terms and conditions in that
 15 contract in your mind that would apply to the
 16 company, you would hold Mr. Freeman individually to
 17 those terms as well. Correct?
 18 A See, I don't know how to answer that,
 19 because I've never been in a lawsuit before. I
 20 don't know legal things. I don't think about them
 21 separately or as one. So I don't know how to answer
 22 that.
 23 Q Well, I'm asking you as a party to the
 24 contract or at least a representative of a party to
 25 the contract. I just want to make sure that in your

1 mind the contract with Gary Freeman Architect, Inc.,
 2 was a contract with Gary Freeman?
 3 A I would have to assume so.
 4 Q Now, the terms and conditions outlined in
 5 that Professional Services Agreement don't address
 6 specifically what it is he was being hired to do?
 7 A No.
 8 Q Would you agree with me that what -- that
 9 the last written word on what he was being hired to
 10 do, as far as you know, is in the September 22, 2010
 11 letter?
 12 A As far as I know, yes.
 13 Q Let me show you another document that
 14 will just take hopefully a second to address.
 15 (Exhibit No. 150 marked for
 16 identification.)
 17 BY MR. BARFIELD:
 18 Q I don't know if this has already been
 19 made an exhibit at some point along the way. I
 20 apologize if I'm double marking something. I marked
 21 this as 150. This is an AIA Standard Form Contract
 22 Between Owner and Contractor, signed by Bob Wiggins.
 23 I'm going to ask you if you recall that document?
 24 A I'm sure I've seen this before.
 25 Q Do you know whose handwriting that is on

1 the first page?
 2 A This one (indicating)?
 3 Q Yes.
 4 A It kind of looks like the same
 5 handwriting as Bob Wiggins, Carolina Concrete.
 6 Q Somebody has handwritten on the first
 7 page of that document that Gary Freeman is the
 8 architect for purposes of that contract. Correct?
 9 A Correct.
 10 Q If you look at that contract, it
 11 contemplates that the architect is performing design
 12 services, but that is not the case. Correct?
 13 A That's correct.
 14 Q Gary Freeman never signed a contract to
 15 perform design services --
 16 A He did not.
 17 Q -- on this job. And Gary Freeman is not
 18 a signature to that AIA contract, is he?
 19 A He is not.
 20 Q Do you recall Mr. Freeman taking issue
 21 with being referred to as the architect, defined
 22 term, when he saw that contract?
 23 A I don't know.
 24 Q I want you to look at paragraph four in
 25 Exhibit 133. This is an e-mail from Mr. Freeman to

1 you dated November 12, 2010. Could you read that
2 out loud, please?

3 A Out loud? No. 4?

4 Q Yes.

5 A "The AIA contract that I received
6 yesterday is not dated, and the copy I received was
7 not signed by a representative of the regime. Is
8 there a signed copy? I am listed as the architect.
9 That is not true as there was no original design
10 architect. I am, however, providing architectural
11 services in the form of limited construction
12 administration per my agreement with the regime
13 initiated by me on 9/21/10."

14 Q Do you disagree with anything in that
15 paragraph?

16 A I do not.

17 Q I'm going to try and save us a little
18 time. I know that earlier Mr. Kelly asked you a
19 series of questions about the selection of the
20 windows during the period of time that Mr. Freeman
21 was involved. Do you recall those questions?

22 A I recall being asked questions.

23 Q Fair enough. Do you recall him asking
24 some questions about Mr. Freeman's role in that
25 process?

1 so he did not need to act further.

2 Q To the best of your recollection, when
3 the work started in 2010, what was Gary Freeman out
4 there doing?

5 A Well, the whole idea to me to hire him to
6 begin with was to oversee the work being done to
7 ensure that it was done properly and appropriately.
8 That was my whole idea. So in my mind that's what
9 his purpose was.

10 Q How was he supposed to know if the work
11 was being done appropriately if he had nothing to
12 show him what the work was?

13 MR. RAMSEY: Object to the form.

14 A I'm supposed to try to answer that?

15 BY MR. BARFIELD:

16 Q Please.

17 A Well, once again, I have to say that as a
18 professional architect, knowing that they were using
19 a specific system, that he would know what was
20 required and how to do it. Maybe I was wrong, but
21 that was my thought process.

22 Q Well, we've already established that his
23 letter of September 22, 2010, sets forth what it is
24 that he was being paid to do. Can you look back
25 over that letter and tell me what line in that

1 A Yes.

2 Q Would you agree with me that Mr. Freeman
3 raised some concerns about the windows that had been
4 selected for that scope of work?

5 A Yes.

6 Q And would you also agree with me that
7 acting on those concerns you, Mr. Wiggins and
8 ultimately an engineer by the name of Broadway
9 undertook to investigate the appropriateness of
10 those windows?

11 A Yes.

12 Q And ultimately that group of individuals,
13 including yourself, were satisfied that the windows
14 were satisfactory to install?

15 A Yes.

16 Q Ultimately that was reported back to
17 Mr. Freeman?

18 A I would assume so.

19 Q You would also agree with me that
20 Mr. Freeman was told that he was not to concern
21 himself with anything related to the sliding glass
22 doors?

23 A I know that I was shown a letter earlier
24 that I sent saying that -- I think it was the one
25 that said that we were considering it maintenance,

1 letter or what part of that letter says he was
2 supposed to do what you just described?

3 A Well, there may be something in here
4 further that refutes that. But it says, "Most of my
5 work involves water intrusion and the investigation
6 of its causes and effects. A majority of the
7 failures I see are a result of either improper
8 design or improper installation of the components of
9 the building envelope. Many of these problems can
10 be avoided with the involvement of a design
11 professional during construction."

12 So I could be wrong, but to me that says
13 I know that if it's not done properly you can have
14 leaks, and I can identify improper procedures.
15 That's why I would think that if he was there and he
16 looked at the work they were doing, he would
17 instantly know that if they weren't putting in
18 backer rod, that they were wrong. I mean, to me,
19 that was the whole idea of him being there. And, to
20 me, that's what he was going to do and what he did.

21 Q But that's not the part of the letter
22 that says what he's agreeing to do, is it?

23 A Why don't you just tell me what you
24 understand out of this and I'll try to understand
25 it.

1 Q The paragraph that we compared line by
2 line with the earlier letter, that says what he's
3 being hired to do, doesn't it?

4 A He says, "Each week, I estimate spending
5 from two to four hours with the site visit and
6 preparing and issuing the field report." And the
7 field report to me is to tell me what he saw and any
8 problems that he might have envisioned. Isn't that
9 what a field report is?

10 Q You tell me. Mr. Freeman did submit
11 field reports, did he not?

12 A Yes, I believe so. I never did say he
13 didn't do what I asked him to do. You were the one
14 who was suggesting that I was out in left field.

15 Q So you believe Mr. Freeman did do what he
16 was hired to do?

17 A I would not be wanting to say that he did
18 not. Whether he did it efficiently and
19 appropriately and timely, I would not say. But as
20 far as I'm concerned, he was hired to look over the
21 shoulders and make sure they weren't doing anything
22 wrong.

23 Q With regard to the frequency of his
24 visits out there, he was to be out on that job
25 site --

1 illness out of state. He was gone a lot. A lot of
2 our conversations and correspondence were done on
3 the phone. When he would come back into town,
4 sometimes the crews had already quit for the day,
5 and Gary would be out there going around behind
6 them. So, yes, I think he did the best he could.

7 Q He did, in fact, make some observations
8 about concerns he had?

9 A Yes, he did.

10 Q Despite his concerns, the work progressed
11 as it was originally?

12 A I could be wrong, but the way I remember
13 it --

14 MR. RAMSEY: Object to the form.

15 A -- his field reports were -- which is
16 typical of field reports, but this was a very short
17 project. And his field reports would come in, and
18 the work -- considerable work had been done since
19 before the report was received, and so it just
20 continued on. So, yes, it continued on as they had
21 done in previous contracts because they just kept
22 moving forward, even though he did bring up
23 questions, yes.

24 BY MR. BARFIELD:

25 Q Going back to Exhibit 133, this was the

1 A Each week.

2 Q For how long does he estimate?

3 A Two to four hours.

4 Q You would agree with me that even if his
5 scope of work was, as you say it was, to look over
6 the shoulder and report anything wrong, that his
7 ability to do that was relegated to the time that he
8 was out there. Correct?

9 A Yes.

10 Q So crews were out there five days a week
11 at that time?

12 A Yes.

13 Q And they are working full days. Correct?

14 A Yes, I think so.

15 Q If your expectation of Mr. Freeman was
16 that he was supposed to catch everything that was
17 going wrong, how was he supposed to do that in two
18 to four hours a week on a job of that size?

19 A That was his determination, not mine. I
20 told him what I needed, and this is what he came up
21 with that he was willing to do or could do or that
22 we could pay for or whatever.

23 And I will tell you this. I think he did
24 fine when he was there. But there was a period
25 of -- During this period of time, he had a family

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

6 A Yes, he did.

7 Q Do you remember discussing that with
8 Mr. Freeman?

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

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

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

21 Q And you were satisfied with that?

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

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

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

1 A I don't think so. My board is basically
 2 all out of state. They only come in, you know --
 3 required to come in twice a year. I don't know that
 4 any of them actually met Mr. Freeman.
 5 Q Do you remember having any conversations
 6 with Mr. Freeman about why it would not be a good
 7 idea for him to speak with any of the town officials
 8 about that issue?
 9 A I don't remember any conversation about
 10 that. Did he have a conversation with them?
 11 Q Not that I'm aware of. Do you not
 12 remember telling Mr. Freeman that the relationship
 13 between the town and Shipwatch was less than ideal
 14 and it would be best not to get the town involved?
 15 A I tell everybody the situation between
 16 the city building inspector and Linda Jernigan is
 17 anything but good, and it's never a good idea to
 18 draw attention to the fact that they are dealing
 19 with her. So I probably did say that. I don't
 20 think I would ever say don't contact them. I'm just
 21 saying we're asking for trouble, because they don't
 22 like me down there.
 23 Q Why are they not Linda Jernigan fans down
 24 there?
 25 A Two reasons. Number one, which is

1 another reason why this is embarrassing at the time
 2 for me, I don't allow any homeowner contractor to do
 3 any work without getting a building permit. I
 4 insist and make them do it, even though it may not
 5 be something the city requires. I make them do it
 6 anyway. So if I make everybody else go get a
 7 permit, why wouldn't I get one myself?
 8 The other reason that I'm not popular
 9 down there was beach erosion. We placed our sand
 10 bags in a logical place, but it's not the place that
 11 they wanted them placed, and they sued us. And
 12 being the representative, I had to go to court and
 13 we won.
 14 Q Approximately when was that? What
 15 year?
 16 A 2008, 2009.
 17 Q With regard to the field reports that
 18 Mr. Freeman was drafting during this time frame,
 19 were you the person that he was submitting those
 20 reports to?
 21 A I was a recipient, yes.
 22 Q And what was it that you did with reports
 23 when you received them?
 24 A I would share them with the board and
 25 just file them.

1 Q Did you read them?
 2 A Yes.
 3 Q Did you look at the photographs?
 4 A Yes.
 5 Q To the extent that a given report raised
 6 any particular concern, what would you do about that
 7 issue?
 8 A What I do is pass on any concerns I have
 9 to the board of directors, building committee, if
 10 not the whole board. And I would not be afraid to
 11 ask Bob Wiggins.
 12 We trusted Bob Wiggins with everything we
 13 did at Shipwatch. So it would not be uncommon for
 14 me to go to Bob and say what is this.
 15 Q So in that circumstance you would go
 16 directly to Bob because you had that comfort level
 17 with him?
 18 A Because of that concern, yeah.
 19 Q Were you satisfied with the amount of
 20 photographic documentation that Mr. Freeman provided
 21 with his weekly field reports?
 22 A Yes.
 23 Q Did you look at the photos yourself?
 24 A Yes.
 25 Q Did you ever share the photos with

1 Mr. Wiggins?
 2 A Wasn't he copied on the field report?
 3 Q Actually, he was, you're right. So you
 4 didn't have to. Mr. Wiggins saw the photos. Any
 5 concerns by Mr. Freeman would have been raised
 6 directly to Mr. Wiggins?
 7 A Yes.
 8 Q At the same time they were raised to you?
 9 A Yes.
 10 Q Did you use Mr. Freeman's field reports
 11 to provide you with sufficient information to
 12 approve the pay apps?
 13 A I don't know. I don't know. I don't
 14 remember. I don't even remember how many pay apps
 15 there were. Was there more than one or two? It
 16 just all goes to timing.
 17 Q Do you know whether or not Mr. Freeman
 18 was ever provided with the manufacturer's
 19 installation instructions for the Durock system?
 20 A I'm not sure, but I'm thinking that he
 21 printed it off himself from the internet.
 22 Q What makes you think that?
 23 A It just seems like I remember that.
 24 Q Did you ever communicate to Mr. Freeman
 25 that you were dissatisfied with the amount of time

1 your deposition is being kept open because nobody
 2 has had an opportunity to review all 70,000
 3 something documents. I've tried my best but have
 4 not made it through all of them.
 5 I'm going to try and make today's
 6 questioning fairly brief to try and enable some of
 7 the other folks in the room to go forward. I know
 8 you've heard that before. I'm going to shoot for an
 9 hour today.
 10 If you need to take a break at any time,
 11 go ahead and let me know.
 12 As we continue today, if I ask you a
 13 question and you answer my question, is it fair for
 14 me to assume that you've understood my question and
 15 that you've answered it truthfully?
 16 A The truthful part, yes.
 17 Q Well, part and parcel of that, I don't
 18 want you to answer any question of mine that you
 19 don't understand.
 20 A I understand.
 21 Q So if you do not understand one of my
 22 questions, simply ask me to rephrase it and I'll
 23 attempt to do so. Okay?
 24 A Okay.
 25 Q How many years did you work with my

1 he was spending out there?
 2 A I don't think so.
 3 Q To the best of your knowledge, did
 4 Mr. Freeman visit the job site with the frequency
 5 that he proposed in his September 22, 2010 letter?
 6 A I don't even know whether he did or not.
 7 I just remember that he was out of town with his
 8 parents, which is anybody's priority, and I
 9 understood that and I knew that. He would come in
 10 when he could. And he would do his reports based on
 11 what he could see. How can you not say you're
 12 satisfied, because I know where my priority would
 13 have been.
 14 MR. BARFIELD: I think that's all I
 15 have for the time being. We are leaving it open.
 16 THE WITNESS: Well, apparently I've
 17 moved in.
 18 (Recess taken.)
 19 EXAMINATION
 20 BY MR. WINTON:
 21 Q Ms. Jernigan, my name is Tyler Winton.
 22 I'm an attorney at Carlock upstairs. And I'm here
 23 today on behalf of Bob Sisnroy and Sisnroy
 24 Engineering.
 25 Everybody said this, but I'll repeat that

1 client? When I refer to my client, obviously Bob
 2 Sisnroy or Sisnroy Engineering.
 3 A Personally, I came in 2005. So at least
 4 up until 2010.
 5 Q You believe that Mr. Sisnroy was involved
 6 out at Shipwatch until 2010?
 7 A Well, I won't say how long. I'm just
 8 guessing. But I know my first involvement was with
 9 2005, and I don't remember when it ended.
 10 Q Yesterday I was happy to hear that you
 11 said that my client was an excellent engineer.
 12 However, there are a couple of things that I just
 13 need to confirm.
 14 During the time that you worked with
 15 Mr. Sisnroy, did you find him to be trustworthy?
 16 A Yes.
 17 Q Did you find him to be professional at
 18 all times?
 19 A Yes.
 20 Q Did you find him to be thorough in his
 21 work and services that he provided?
 22 A Oh, yes.
 23 Q You kind of rolled your eyes. Why was
 24 that? Do you consider him to be very nitpicky --
 25 A Very detailed. Very detailed.

STATE OF SOUTH CAROLINA

THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM	)	
ASSOCIATION,	)	
	)	
Plaintiff,	)	
	)	Case No.:
-versus-	)	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

1 BY MR. COBB:

2 Q Before 2011, the board had decided that
3 it was going to remove all the sliding glass doors?

4 A Yes.

5 Q The board had decided that it was going
6 to remove all of the EIFS off the buildings.

7 Correct?

8 A Yes.

9 Q And the board wanted to do those over a
10 number of years because of the concern about cost
11 and occupancy?

12 A Correct.

13 Q And those two considerations primarily
14 drove the decision not to do all of that work at
15 once at some point in 2009, 2010, 2011. Correct?

16 A Yes.

17 Q That's the work that's being done now as
18 part of these 2013/2014 repairs. Correct?

19 A That is correct.

20 Q When did you first learn that there was
21 an issue at Shipwatch about the synthetic stucco or
22 EIFS?

23 A When I was on the board the first time.

24 Q So sometime in the 2005 to 2007 time
25 period you learned as a board member that synthetic

1 stucco was a problem for Shipwatch?

2 A That is correct.

3 Q What did you learn?

4 A I learned that the synthetic stucco was a
5 problem, not the right application for a coastal
6 environment.

7 Q Who told you that?

8 A I believe the insurance company told us
9 they were charging us a premium for insurance for
10 the EIFS.

11 Q Did you also get told at that point in
12 time about issues with water intrusion and EIFS?

13 A Yes.

14 Q What were you told about that?

15 A We were told that EIFS has a tendency
16 to -- water tends to get behind the EIFS, rotting
17 the studs, causing failure.

18 Q Did the board hire anyone in 2005, 2006
19 or 2007 to inspect the buildings to see if there
20 were problems to the structure because of EIFS or
21 any water intrusion to the building because of EIFS?

22 A Not that I'm aware of.

23 Q And why not?

24 A We were in the process of removing the
25 EIFS, replacing studs, probably the reason.

1 costs associated with replacing the original
2 synthetic stucco that was installed on the
3 buildings?

4 A Yes.

5 Q Would you agree with me that none of
6 these defendants have responsibility for the costs
7 associated with repairing or replacing the metal
8 roof which the insurance company paid Shipwatch
9 \$500,000 for?

10 A Yes.

11 Q Would you agree with me that none of
12 these defendants have responsibility for the cost
13 associated with the remediation and recoating of the
14 balcony ceilings on the breezeways on the street
15 side of the buildings?

16 A I don't know.

17 Q How long has the issue about the
18 condition of the ceilings in the breezeways on the
19 street side been present at Shipwatch?

20 A It's been a constant problem.

21 Q Since when?

22 A Since I've been on the board.

23 Q Since 2005?

24 A At least.

25 Q And what were those concerns about those

1 ceilings?

2 A Peeling.

3 Q Since 2005, has Shipwatch ever paid for
4 any type of repairs or replacement or repainting of
5 those breezeway ceilings?

6 A 2005? I don't recall if we painted them
7 during that time.

8 Q Would you agree with me that none of
9 these defendants have any responsibility for the
10 costs associated with the installation of the new
11 handrails at the buildings?

12 A Yes.

13 Q When the homeowners or the board decided
14 to move forward with the curtain elevator repairs in
15 2012, how were those repairs funded?

16 A Through assessment.

17 Q Do you recall the amount of the
18 assessment?

19 A No.

20 Q When the repairs were decided with
21 regards to building C and D and then now A and B
22 with 2013/2014, when was that first communicated to
23 the homeowners?

24 Let me back up. Were you on the board
25 that decided to take the issue to the homeowners or

1 Q Did it leak after Mr. Wiggins performed
2 repair work?

3 A No.

4 Q Is there currently any water intrusion
5 into your unit?

6 A No.

7 Q I'm going to hand you a document. This
8 is Jernigan Exhibit No. 96. If you'll take a look
9 at that, the second page for me. You may want to
10 take a look at the whole thing, because I'm going to
11 ask you if you know who wrote this.

12 A This looks like I might have wrote this.

13 Q And this would have been written while
14 you were a board member?

15 A Yes.

16 Q If I look on the second page, it says
17 sliding glass doors.

18 A Yes.

19 Q And it reads, "It's been well known by
20 past boards that there's been a leakage problem with
21 a good number of sliding glass doors."

22 How far back was the board aware that
23 there was a leakage problem with the sliding glass
24 doors?

25 A How far back? As far back as when I

1 first got onto the board in 2005. That's when I
2 became aware there was sliding glass door issues.

3 Q Because you said past boards. I didn't
4 know if you had talked to any previous board members
5 that informed you, hey, this has been going on
6 for --

7 A No. Just me being a full-time resident
8 at Shipwatch, I would have conversations with Linda,
9 and she would let me know that we've had problems
10 with sliding glass doors.

11 Q Did she let you know about the problems
12 with sliding glass doors before you became a board
13 member?

14 A No.

15 Q So you wouldn't know -- you didn't know
16 about any problems until 2005 when you became --

17 A That's correct.

18 Q It says here there are 16 doors that need
19 to be replaced as soon as possible. Do you know how
20 or why those 16 doors were the ones that needed to
21 be replaced as soon as possible as opposed to the
22 other doors that may have been leaking?

23 A Well, usually we would identify it as a
24 door that needed to be replaced as soon as possible
25 if it was leaking.

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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1 area, or did you do any investigation as to where
2 the water was coming from?

3 A. I in -- I investigated the sliding
4 door. And I thought it might be a leak at the
5 lower -- lower joint in the door. And I caulked
6 it.

7 Q. Why did you think it was a problem with
8 the joint at the bottom of the door?

9 A. That -- it -- that's when the original
10 doors at Shipwatch -- it was installed in 1990
11 after Hugo, so it was rather old. And I thought
12 the caulk that was there was either missing or
13 leaking.

14 Q. Where was this caulk located?

15 A. At the -- the bottom of the door has a
16 catch pan. And then the left side -- the left
17 side of the door, which is part of the door
18 frame, butts into that.

19 And so it was the lower -- the lower
20 left corner of the door.

21 Q. Is that where it butts up against the
22 cladding, the exterior cladding, the stucco?

23 A. No. It actually butts up against the
24 wood stud at the -- the vertical wood stud that
25 the door is mounted to.

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

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

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

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

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

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

24 A. Yes, exactly.

25 Q. -- and various areas?

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

5 Q. Was that on both the end walls?

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

8 Q. Was this done on all four buildings?

9 A. Yes.

10 (Off the record.)

11 BY MS. SMITH:

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

18 A. If -- if that's what you're saying.
19 Again, I don't recall the exact dates of that.
20 But I'm certain you have the record there, so if
21 it -- if you say it's 2003, 2004, then it's 2003,
22 2004. So --

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

25 A. With -- with the what?

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1 Q. Same type of question regarding the
2 storefront windows.

3 There's a number of storefront windows
4 that have not been replaced and that are original
5 to the construction of the building in the 1980s.

6 Should Mr. Wiggins be responsible for
7 the replacement and the cost to replace those
8 specific original windows?

9 MR. FLYNN: Same objection.

10 A. That one's a little bit harder for me
11 to answer. If the cladding around the windows --
12 if the cladding around the windows was replaced,
13 then the answer is yes.

14 If it wasn't, then the answer is no.

15 BY MS. SMITH:

16 Q. Okay. I don't understand your answer
17 in the fact that I'm talking about the windows
18 themselves, the cost associated with removing and
19 replacing those original windows.

20 Should Mr. Wiggins be held responsible
21 for that cost of replacement?

22 MR. FLYNN: Object to form.

23 A. My answer is no.

24 BY MS. SMITH:

25 Q. The handrails that are being replaced

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1 during the current repairs, are those handrails
2 original to the construction of the buildings in
3 the 1980s?

4 A. No. They were 1990 vintage.

5 Q. They were installed, as you said, in
6 the 1990s --

7 A. In 19-- --

8 Q. -- should Mr. Wiggins -- I'm sorry?

9 A. In -- in 1990. That was a Hugo piece
10 of work.

11 Q. Okay. Another post-Hugo repair.

12 Should Mr. Wiggins be responsible for
13 the removal and replacement of the handrails
14 in this litigation?

15 A. My answer is no.

16 Q. Do you have a current contract yet for
17 the buildings A and B?

18 A. Do we have a current contract for the
19 work on -- the remediation work on --

20 Q. On buildings A and B?

21 A. No, we do not.

22 Q. Okay. Have you received bids for the
23 repair work on A and B?

24 A. Yes.

25 Q. And who have you received bids from?

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1 sliding glass doors were leaking in various
2 units; is that not correct?

3 A. Well, I believe it said at this point
4 in time -- I think -- I believe it was Carl
5 working with Mr. Wiggins. At that point it says,
6 had identified 15 as a problem.

7 Q. And from that point forward, did you
8 all continue to inspect the sliding glass doors
9 for leaks?

10 A. Yes.

11 Q. And, additionally, you had homeowners
12 reporting that they had leaking sliding glass
13 doors?

14 A. Yes.

15 Q. And throughout the years after 2006,
16 the board decided to replace certain sliding
17 glass doors based on those inspections and
18 complaints by homeowners?

19 A. Yes.

20 Q. And each year, would the board
21 determine how much it could afford as far as the
22 number of doors that it could replace?

23 A. I believe I left the board after 2007,
24 I believe. So I do not know what discussions the
25 board had between my leaving the board and my

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1 coming back to the board in 2012.

2 Q. Fair enough. But during that time
3 period, additional doors were replaced every
4 year, is that not correct?

5 A. Yes. As I mentioned earlier, I believe
6 we stand somewhere around 160 right now.

7 Q. Okay.

8 (Off the record.)

9 (Lunch recess was taken from 12:30 to
10 1:48.)

11 BY MS. SMITH:

12 Q. Okay. Mr. Schaewe, we're back on the
13 record. And I just have some few short questions
14 regarding some of the documents that you produced
15 this morning to us.

16 Specifically, I am looking at what's
17 been Bates stamped AS0297. Do you have those
18 documents in front of you?

19 A. No, I don't have those with me.

20 Q. You don't have any of those
21 documents?

22 A. They're out in the car, in fact.

23 MS. SMITH: Are we all going to be
24 asking him about the documents?

25 MR. ROOT: His documents?

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

THE COURT OF COMMON PLEAS

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 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 Monday, the 28th day of April 2014, at the
offices of Sutton-Kennerly & Associates, 4651
Charlotte Park Drive, in the City of Charlotte,
State of North Carolina, before Janice O. Darby,
Registered Professional Reporter and Notary Public
in and for the State of South Carolina.

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1 curtain walls.

2 BY MR. COBB:

3 Q So you've got the January 11, 2012 report
4 and the January 25, 2012 addendum?

5 A Which is signed by Tim Cook.

6 Q What's the next one?

7 A Proposal for performing additional
8 evaluation of direct-applied exterior finish systems
9 and providing preliminary schematic design services,
10 February 10, 2012.

11 Q Signed by?

12 A Jeff Miller and myself.

13 Q The next one?

14 A The next one is a draft. I couldn't find
15 our hard copy of the report of evaluation of
16 direct-applied exterior finish systems. My draft
17 here is dated March 27, 2012. I believe the final
18 sealed copy was early April, but I couldn't locate
19 our hard copy of that.

20 Q Who signed that?

21 A Again, this is the draft, but no one
22 signed this draft. But it will be Jeff Miller and
23 myself for the final report.

24 Q Are there any other reports or documents
25 after April 2012?

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1 A We are involved in the repairs going on
2 now, so it depends on how much you want to get into
3 those documents.

4 Q We are going to get into all of it.
5 What's the easiest way to get a copy of everything
6 that you've generated since that date?

7 I know we sent a subpoena, but one of the
8 things we're trying to do is verify that we've got
9 everything, because the production has been somewhat
10 stop and go, stop and go.

11 A I was under the impression that everybody
12 had everything.

13 Q Do you have a list? Is there a way for
14 you to get a list or a chart of what you've
15 generated since April of 2012?

16 A That would be a very extensive list. Are
17 you looking for just reports and proposals, or what
18 exactly are you looking for?

19 Q Anything in writing.

20 A Anything in writing. I mean, that pile
21 of papers is what we have. We're working on the
22 current repairs going on, and it's an ongoing
23 project, and there are a lot of field reports and a
24 lot of materials that should be included in the
25 documents.

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

SHIPWATCH CONDOMINIUM)
ASSOCIATION,)

Plaintiff,)

) Case No.:
-versus-) 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 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 Tuesday, the 29th
day of April 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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1 GREG ISAACS

2 having been previously duly sworn, was called as a
3 witness herein and was examined and testified as
4 follows:

5 EXAMINATION

6 BY MR. COBB:

7 Q Good morning. I need to ask you a couple
8 of questions about the deck coating on the
9 breezeway. Were you there when the EIFS was removed
10 off the breezeway on the street side of the
11 building?

12 A Some of it, yeah.

13 Q Was there any resulting damage because of
14 the way the deck coating ended at the EIFS?

15 A There was corrosion on the metal studs
16 behind the EIFS.

17 Q And can you attribute that to the deck
18 coating?

19 A I'm not exactly sure whether -- the point
20 of entry where that water came in.

21 Q Any other issues with any damage observed
22 after the EIFS was removed?

23 A The corrosion, and I guess there was also
24 some black staining that we talked about
25 yesterday.

1 elements in the facade adjacent to the windows.

2 Q How many of the windows that are being
3 replaced are original to the building?

4 A I'm not sure. Approximately most of the
5 breezeway windows. Approximately half of the
6 U-shaped bay windows. And I would have to look into
7 our field notes and photos to comment on the fixed
8 windows, how many of those were done.

9 Q So most of the breezeway windows, half of
10 the U-shaped windows and some portion of the fixed
11 windows are all original to the building?

12 A I believe so, yes.

13 Q Any idea of the total number of windows
14 that are being replaced?

15 A Not off the top of my head. I can look
16 it up.

17 Q How long will that take you to do?

18 A A couple of minutes.

19 Q If you don't mind, yeah, because I would
20 like to have a range of the number of windows being
21 replaced and the number that are original to the
22 building.

23 A For the four buildings, based on this
24 count we have 144 of the fixed windows, which are
25 about eight foot by three foot.

1 Q Can you attribute the black staining at
2 all to the deck coating?

3 A I do not know the specific point of entry
4 of that water.

5 Q We stopped yesterday with the issue of
6 the removal of the sliding glass doors. I talked to
7 you about page 6 of your January 11, 2012 report,
8 item D, No. 2, item C, "New replacement fixed
9 windows are" -- The syntax is not comprehensible,
10 because it says, "New replacement fixed windows are
11 on installed on the first three floors of the ocean
12 side balconies." Do you see where I am?

13 A I do.

14 Q How should that be worded?

15 A I think that should probably read, New
16 replacement fixed windows have been installed on the
17 first three floors of the ocean side of balconies.

18 Q Is that all four buildings?

19 A I'm not sure.

20 Q What repairs are being done with regards
21 to any windows now?

22 A We are replacing all of the windows.

23 Q And what engineering theories support the
24 removal and replacement of all the windows?

25 A The tying-in of the waterproofing

1 Q They are what? 144 of the fixed windows
2 are what?

3 A Total on the four buildings.

4 Q So that's the total number of fixed
5 windows?

6 A Yes, on the project.

7 Q And how many of those 144 fixed windows
8 are being removed? All of them?

9 A All of them.

10 Q And how many of the 144 are original to
11 the building?

12 A That's probably another note. I've got
13 totals here of each type. I would have to go
14 through --

15 Q Let's do the totals and then we'll go ...

16 A Windows that are approximately four foot
17 by four foot, the total for all four buildings is
18 144.

19 Q Are these also fixed windows?

20 A These are sliding -- I'm sorry,
21 single-hung windows. Excuse me. They were
22 previously sliding. I believe we are installing
23 single-hung.

24 Then there are 32 small windows that are
25 approximately two foot by three and a half feet.

1 And there are 32 total of those on the four
2 buildings.

3 Q And what are they being replaced with?

4 A They are being replaced with a
5 single-hung window.

6 And then on the U-shaped bay windows,
7 there are 24 total for the four buildings.

8 Q So there are no other windows other than
9 those four categories. Correct?

10 A Within -- I mentioned approximately four
11 foot by four foot windows. In our repairs we found
12 the breezeways were all one type at four foot by
13 four foot. A couple of those on the end walls were
14 a couple inches different. But in terms of getting
15 quantities, I grouped those together.

16 Q So if we do the math, whatever 144 plus
17 144 plus 32 plus 24, that's the total number of
18 windows?

19 A Yes.

20 Q Now, have you got notes that indicate how
21 many of the 144 eight foot by three foot fixed
22 windows were original to the building?

23 A I should.

24 Q Before we start talking about them, what
25 are the four pages that you pulled? What are those?

1 A Yes. Ocean elevation, sliding glass
2 doors, fixed windows and the bay windows.

3 Q Help me decipher what you've got here.

4 A Okay. Basically the N is for new, the O
5 is for old. There is an elevation -- ocean
6 elevation of each building. Subtotal on each page
7 for each building. And then building D -- The page
8 for building D has a total of those amounts for new
9 sliders, new fixed, old sliders and old fixed.

10 Q If we go to the fourth page, which is
11 labeled building D, the window counts are only for
12 the ocean side?

13 A Correct.

14 Q Do you have window counts for the other
15 three elevations?

16 A In terms of old versus new, I don't have
17 field notes on that. But all breezeway windows are
18 old windows. And to the best of my knowledge, all
19 the end wall windows, you know, not including the
20 U-shaped bay windows, on north and south elevations
21 are also new.

22 Q So all breezeway windows are old. All
23 end wall, not including the U-shaped, windows are
24 new?

25 A Yes.

1 A These are field notes taken from either
2 the ground or a balcony which are -- Basically I've
3 marked -- That's an elevation drawing of the
4 building, and I've marked whether it appears to be
5 an old or new either door or window. So going
6 through these, there should be a total.

7 Q I want to mark that as an exhibit. Is
8 that something I can give to Janice and have her
9 reproduce and then mail back to you, or can you-all
10 make color copies?

11 A We can make copies right now.

12 Q Can you make color copies?

13 A Yeah.

14 Q If we can have a color copy made.
15 (Recess taken.)

16 A I should clarify. These are
17 approximations taken some from the balcony but some
18 notes from the ground. So there may be a small
19 margin of error in these.

20 (Exhibit No. 57 marked for
21 identification.)

22 BY MR. COBB:

23 Q If we do the math -- What we've marked as
24 Exhibit 57 also includes the sliding glass doors as
25 well?

1 Q Are there any other windows on the
2 breezeway street side other than old windows?

3 A There is not.

4 Q Are there any of the windows on the end
5 walls other than the U-shaped windows and then these
6 new windows that you just described?

7 A No. I think there are six of those other
8 windows per end wall. That's not shown on these
9 sheets.

10 Q So the end walls, there are a total of
11 six non-U-shaped windows?

12 A Yes.

13 Q And then there's three U-shaped windows
14 per side. Correct?

15 A Yes.

16 Q With regards to the total, on the ocean
17 side of the four buildings there's, by your
18 calculation, 111 new sliding glass doors that are
19 being replaced?

20 A Correct.

21 Q 72 fixed windows being replaced?

22 A Correct.

23 Q 97 old sliding glass doors being
24 replaced?

25 A Correct.

- 1 Q And 72 old fixed windows being replaced?
- 2 A Correct. Again, these were field notes
- 3 taken from the ground level. So they may not be
- 4 perfect, but they are the best I could decipher from
- 5 the ground.
- 6 Q Of the fixed windows that are new and
- 7 old, how many of those are the 8 x 3s versus the
- 8 4 x 4s?
- 9 A All fixed windows are 8 x 3s.
- 10 Q On the ocean side?
- 11 A Yes.
- 12 Q So when you gave me earlier a total of
- 13 144 fixed windows 8 x 3, 72 of them are old and 72
- 14 are new. So the math works out as 50 percent?
- 15 A Yes.
- 16 Q The 144 4 x 4 sliding windows that are
- 17 being replaced with single-hung, where are they
- 18 located?
- 19 A That includes all the breezeways and two
- 20 windows on each end wall.
- 21 Q If there are two on each end wall, that's
- 22 four per building. So that's 16?
- 23 A Yes.
- 24 Q So of the 144 4 x 4 sliding windows being
- 25 replaced with single hung, only 16 of those are new

- 1 some point during some repair?
- 2 A Right. New referring to something that
- 3 appears to have been replaced in the last maybe ten
- 4 years or so, and then old being -- appearing to be
- 5 quite older than ten years.
- 6 Q How many of these windows did you water
- 7 test?
- 8 A I'd have to look in our report here.
- 9 Looking at this sheet in our 2012 report, the final
- 10 in April, the site plan, it looks like five of our
- 11 15 -- I'm sorry, five of our 14 test areas included
- 12 windows.
- 13 Q Which windows?
- 14 A Test area three includes small windows on
- 15 building C, south elevation. And those are the
- 16 small two foot windows.
- 17 Q South elevation is one of the sides?
- 18 A Yes. Building B, test area 11, ocean
- 19 elevation, unit 108 is a tall eight foot fixed
- 20 window.
- 21 Q And looking at the chart, is that an old
- 22 window or a new window?
- 23 A It looks like a new window.
- 24 Q What's the third one?
- 25 A Test area two is on building B, south

- 1 windows and the remaining 128 are old windows?
- 2 A Yes.
- 3 Q The 32 2 x 3 and a half foot windows
- 4 being replaced with single-hung windows, where are
- 5 they located?
- 6 A On the first, second and third floor of
- 7 the end walls. I'd have to look at a photograph. I
- 8 think there's also one on the fifth floor that's not
- 9 shown on these marked-up drawings that we're looking
- 10 at.
- 11 Q Are those original windows or new
- 12 windows?
- 13 A Those are new.
- 14 Q And then the 24 U-shaped bay windows are
- 15 on the sides of the building?
- 16 A Yes.
- 17 Q And there are six per building?
- 18 A Yes.
- 19 Q Are those old or new?
- 20 A Earlier I estimated about half and half.
- 21 Let's see. 12. So it looks like it is half are old
- 22 and half are new based on these notes.
- 23 Q And then for purposes of our discussions
- 24 years from now, old is -- you equate old to be
- 25 original, new being something that was replaced at

- 1 elevation, unit 416, and that's a fifth floor
- 2 window.
- 3 Q Is that an old or a new window?
- 4 A It should be a new window. Yes, that
- 5 looks like a new window.
- 6 Q No. 4?
- 7 A Test area one, bay windows at building B,
- 8 as in boy, south elevation. In that location our
- 9 water was sprayed above the third floor window and
- 10 cascaded down all three. The top two, second floor
- 11 and third floor are old. The first floor is new.
- 12 Q Did any of those windows leak?
- 13 A They did. The second floor window.
- 14 Q Did the first floor window leak?
- 15 And I guess just to be precise, did the
- 16 first floor window fail your water testing?
- 17 A We had water intrusion on level two and
- 18 three. We did not observe water intrusion on level
- 19 one.
- 20 Q If there is no observable water intrusion
- 21 on the new window which is at the first level, why
- 22 is that window being replaced?
- 23 A Similar to what we've discussed
- 24 yesterday, in tying the surrounding wall cladding
- 25 elements into that opening is preferred to trying to

1 leave a unit in place and tie into an existing
2 window or door, either pulling it out and putting it
3 back in or tying into the in-place unit.

4 Q Is there a construction deficiency that
5 justifies the removal and replacement of that
6 window?

7 A Of that window on -- that specific
8 window? I would have to look into that to see if
9 that falls into our impact-rated concerns. I'm not
10 sure.

11 Q Other than there being some issue about
12 the window possibly not being impact rated, is there
13 any other construction deficiency that would justify
14 the removal of that window?

15 A The tying in of the components and
16 cladding adjacent to it.

17 Q What's wrong with the cladding adjacent
18 to that window?

19 A Based on our test cuts, the waterproofing
20 is not tied into the windows in those areas.

21 Q But you just water tested it and it
22 didn't leak. Correct?

23 A Yes, sir.

24 Q That would indicate, wouldn't it, that
25 the waterproofing was adequate for the volume of

1 window.

2 A No water intrusion was observed in that
3 area.

4 Q What's the basis of removing and
5 replacing that window if it passed your spray test?

6 A The same concerns as the others in the
7 tying in of the cladding to that window.

8 Q How much water did you subject that
9 window to?

10 A We did a two hour cascading water test
11 with no pressure.

12 Q Are you aware of that window being
13 exposed or subjected to that volume of water in the
14 historical use of that window?

15 A I have not looked into that.

16 Q Do you know whether your spray test
17 subjected the window to more water than it has ever
18 been subjected to during its existence at that
19 project?

20 A I do not know that.

21 Q Isn't that one of the requirements of the
22 AAMA testing?

23 A AAMA in forensic testing allows for some
24 judgment to be used in using procedures from other
25 AAMA tests, and we have seen in previous cases of

1 water that you subjected that window to?

2 A In that particular case, yes. But if
3 those are representative installations of the rest
4 of the building, then we are concerned with those
5 installations.

6 Q You have concerns, but you tested your
7 concern at least as to that window, and that window
8 did not exhibit any signs of leaking. Correct?

9 A That specific window did not.

10 Q So you would agree with me that there is
11 no known construction deficiency that justifies the
12 removal of that window?

13 MR. FLYNN: Object to the form.

14 A Within the manufactured unit of the
15 window, that would get into our impact rating
16 discussion. But besides that, within the
17 manufactured unit, I'm not aware of whether there
18 are issues there.

19 BY MR. COBB:

20 Q Let's jump back. The first three windows
21 where you spray tested, did those three leak?

22 A Which one do you want to look at first?

23 Q No. 3.

24 A Test area three?

25 Q Small window, C elevation, small two foot

1 water testing where, you know, water saturates
2 through the components and can be an issue, and that
3 is what we addressed there.

4 Q I'm going to be fair to you. I represent
5 some window manufacturers. Where in AAMA 511 does
6 it say what you just said?

7 A Do you have --

8 Q I do not have a copy with me.

9 A I believe it discusses cascading water
10 tests.

11 Q Didn't AAMA 511 also require there to be
12 some historical investigation into the amount of
13 water or the problems?

14 A It might.

15 Q Do you know that?

16 A It probably does.

17 Q And you didn't do that, did you?

18 A I did not do that.

19 Q Does AAMA 511 specifically say that you
20 can use other methodologies and comply with AAMA
21 511, or does it say that AAMA 511 is the sole test
22 to be done on a forensic examination of a window
23 that's been installed for greater than six months?

24 A AAMA 511 references -- I believe it's
25 AAMA 502 and 503.

- 1 Q And 502 refers to newly manufactured
2 windows. Correct?
- 3 A I would have to pull them up.
- 4 Q If 502 refers to newly installed or newly
5 manufactured windows, that would not apply to what
6 was done at Shipwatch. Correct? Or likewise --
- 7 A Again, if we can pull that up, we can
8 look at it and I'll confirm that.
- 9 Q Likewise, if 511 says that it's the sole
10 test for windows that have been installed in the
11 field for greater than six months, that would be the
12 test that AAMA would recognize as appropriate for
13 Shipwatch. Correct?
- 14 A Yeah, we'd have to look at that.
- 15 Q Spray test No. 2 was test No. 11D, ocean
16 side, unit 108. Did that window fail your spray
17 test?
- 18 A In that location we tested the
19 surrounding components and cladding only and water
20 intrusion was observed within the metal stud
21 framing.
- 22 Q How much water did you subject that
23 window to?
- 24 A We did a 30 minute cascading water test.
- 25 Q How much pressure?

- 1 A Zero pressure.
- 2 Q How far away was the nozzle?
- 3 A 12 inches.
- 4 Q In your opinion does that accurately
5 replicate wind-driven rain?
- 6 A Because we didn't have air pressure
7 pulled on it, I guess not wind-driven rain.
- 8 Q The third spray test is at test No. 2, B
9 building south, unit 416. Did that window fail your
10 spray test?
- 11 A You said test area two. Correct?
- 12 Q You told me that it was No. 2, B south,
13 unit 416, fifth floor.
- 14 A Yes.
- 15 Q How much water did you subject that
16 window to?
- 17 A We ran the test for 75 minutes. We
18 observed water 30 minutes into the test.
- 19 Q How much pressure?
- 20 A No pressure.
- 21 Q And how far away was the nozzle?
- 22 A 12 inches.
- 23 Q Let's go to the fifth spray test. We
24 haven't talked about that one yet.
- 25 A Test area 13 is on the south side of

- 1 building A. Water spray testing was not performed.
2 We did a sill dam test. And this test area includes
3 two different windows on level five of unit 408.
- 4 Q What AAMA test authorizes a sill dam
5 test?
- 6 A I can't recall.
- 7 Q Are you aware whether any AAMA testing
8 protocol authorizes a sill dam test?
- 9 A I am not.
- 10 Q Did either of these windows fail your
11 sill dam test?
- 12 A They did not.
- 13 Q And were those new windows or old
14 windows?
- 15 A Those were new windows.
- 16 Q What size windows?
- 17 A One of them was approximately 4 x 4, and
18 the other was one of the two foot windows.
- 19 Q So what's the justification for replacing
20 either of those windows?
- 21 A That would get into the impact-rated
22 concerns and the tying in of the surrounding
23 components and cladding to those windows.
- 24 Q And you would agree with me that the
25 volume pressure on your sill dam test was probably

- 1 greater than either of those windows would be
2 subjected to during a normal rain event. Correct?
- 3 A During an average rain event, yes, it
4 would be more than average.
- 5 Q Let's talk about the sliding glass door
6 count. According to the fourth page of Exhibit 57,
7 there are 208 sliding glass doors on the property?
- 8 A That only counts the ocean elevation.
- 9 Q So 208 sliding glass doors on the ocean
10 elevation?
- 11 A Correct.
- 12 Q And you've got that of the 208, 111 are
13 considered new and 97 are considered old or
14 original. Correct?
- 15 A Yes, sir.
- 16 Q And the repairs include removing and
17 replacing all 208 of those sliding glass doors on
18 the ocean side. Correct?
- 19 A Yes.
- 20 Q How many sliding glass doors are there
21 elsewhere on the property?
- 22 A The fifth floor street or west elevations
23 have eight total sliding glass doors per building.
- 24 Q So 32 total.
- 25 A And then --

Page 271 1 Q How many of those 32 are old and new? 2 A That's probably in another set of notes 3 that I can look for if you'd like me to. 4 Q Sure. While you're doing that, there 5 aren't any other sliding glass doors, are there? 6 A There are some right here (indicating). 7 We've been calling those corner balconies. It's 8 facing the street, but it's on the end wall. 9 There's one on each floor, floors one, two and 10 three. 11 Q So end wall corners have one sliding 12 glass door per side? 13 A Per balcony, yeah, per floor. So six per 14 building, three per side. 15 Q So six per building? 16 A 24 on the total property. 17 Q For a grand total of 264 sliding glass 18 doors. 19 A I've got notes on three buildings. I 20 would have to dig through photographs to find that 21 information on building D. Is that something you'd 22 like me to do? 23 Q No. Let's see if we can plug along. So 24 the fifth floor street side; 32 sliding glass doors, 25 you've got three of the four buildings?	Page 273 1 A We observed water intrusion in the 2 adjacent wall components. 3 Q Is that an old or a new sliding glass 4 door? 5 A That is new. 6 Q And how long did it take for the water to 7 appear? 8 A That is not in this report. That may be 9 in notes that are on the digital files; or it could 10 be that we ran the water, and that when we stopped 11 and cut open, we saw water. I'm not sure based on 12 what we're showing here exactly when that water 13 began. 14 Q What was the construction deficiency that 15 led to the water intrusion? 16 A Improper terminations of the facade 17 components adjacent to the door. 18 Q What does that mean? 19 A Waterproofing wasn't tied in in the wall. 20 Q Did you spray test any other fifth floor 21 street side sliding glass door? 22 A We did not. 23 Q The sliding glass doors that are at the 24 end wall corners, which are six per building, are 25 those old or new?
Page 272 1 A Yes. I have field notes for three of the 2 four buildings on whether or not they are old or 3 new. 4 Q So just give me the building and old or 5 new. 6 A Building A, the notes are showing seven 7 of the eight. 8 Q Are? 9 A Are new. 10 Q Building B? 11 A Building B, the notes are showing three 12 of the sliding doors are new. These notes are by 13 Ryan Weyant, W-e-y-a-n-t. 14 Building C, notes show three of the eight 15 sliding doors are new on the fifth floor street 16 side. 17 Q Did any of the water spray testing that 18 you performed involve any of the fifth floor street 19 side sliding glass doors? 20 A I believe so. Test area 12. 21 Q Where was that? 22 A That is the fifth floor street side of 23 building D, unit No. 427. 24 Q Did that sliding glass door fail your 25 spray test?	Page 274 1 A I'm not sure. That, I would have to look 2 at photographs. I'm not sure we have field notes on 3 that. 4 Q Did you spray test any of those? 5 A We did not. 6 Q Do you have photographs that you can look 7 at to tell me whether or not they are old or new? 8 A Yeah. 9 Q Can you do that real quick? 10 A I can do it. I'm not sure how long that 11 will take, but I can try to. 12 Q When we go out there and look at this 13 area that you described as the end wall corners, 14 what would we be looking for to decide whether it is 15 an old sliding glass door or a new sliding glass 16 door? 17 A The old versus the new are visibly 18 different in terms of color and size of the aluminum 19 frame. 20 Q What's the difference in color? 21 A The older ones are a lighter brown, where 22 the newer ones are a darker bronze. 23 Q Thanks for looking. Let's see if we can 24 move on a bit. 25 Going back to Exhibit 57, I want to

7 (Pages 271 to 274)

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1 confirm a couple of things. With regards to the
 2 windows, the totals, you told me that there were 72
 3 old eight foot by three foot windows. Correct? On
 4 the ocean side. Correct?
 5 A Yes.
 6 Q And the 72 old eight foot by three foot
 7 windows are all located on the ocean side of
 8 building C and D. Correct?
 9 A That's correct.
 10 Q There are no new eight foot by three foot
 11 windows currently installed on the ocean side of
 12 buildings C and D. Correct?
 13 A Right, prior to our work.
 14 Q So the repair work that's being done is
 15 the removal of the 72 old eight foot by three foot
 16 windows on the ocean side of buildings C and D.
 17 Correct?
 18 A Yes.
 19 Q With regards to the sliding glass doors,
 20 there are 52 sliding glass doors on the ocean side
 21 of each building. Correct?
 22 A That sounds correct.
 23 Q One sliding glass door per unit.
 24 Correct?
 25 A Yes. The fourth floor -- fourth and

1 fifth floor is one unit. So they will have a slider
 2 on the fourth floor -- one slider on the fourth and
 3 one on the fifth. That is a two-story unit.
 4 Q And exactly half of the sliding glass
 5 doors being removed and replaced on buildings C and
 6 D are old. Correct?
 7 A Half of sliders, C and D?
 8 Q 52 out of 104. 26 per building.
 9 A That sounds correct. Would you repeat
 10 that again? Half of the old sliders on -- Yes.
 11 Yes, that's correct.
 12 Q And you would agree with me that none of
 13 the folks involved in subsequent repairs after
 14 original construction are responsible for the
 15 problems associated with the old sliding glass doors
 16 or the old windows. Correct?
 17 MR. FLYNN: Object to the form.
 18 A We're getting into, again, the tying in
 19 of components to an opening and evaluating
 20 responsibility for that, and I have not done that.
 21 BY MR. COBB:
 22 Q On the ocean side of these buildings C
 23 and D, are the old windows installed in anything
 24 other than EIFS?
 25 A On C and D? There is some DEFS on the

1 ocean side of C and D. The exact locations, I'm not
 2 a hundred percent sure where it stops and starts.
 3 I'm not sure that I know of a pattern of it.
 4 Q Where is the DEFS installed on the ocean
 5 side of buildings C and D?
 6 A I'm not sure. There is some EIFS and
 7 some DEFS. I would say most of it is DEFS, but I
 8 couldn't quantify that, or I have not quantified
 9 that.
 10 Q Is there DEFS on the first floor of the
 11 ocean side of building C and D?
 12 A I believe there was, yes.
 13 Q Can you tell me where?
 14 A Again, I specifically don't know. You
 15 know, during our demo of the current work, there was
 16 EIFS and DEFS. Most of it DEFS. Some of it EIFS.
 17 I can't recall where one portion specifically
 18 stopped and the other began. During their demo can
 19 be -- they don't want necessarily want engineers
 20 standing right behind them.
 21 Q Let's move along. Page 7 of your January
 22 11, 2012 report, item 2, little e, "Some doors have
 23 storm shutters installed on the outside face of the
 24 surrounding facade and top of the balcony deck. The
 25 shutters have been moved in many locations leaving

1 unsealed fastener holes through the deck coating and
 2 wall cladding."
 3 Did you do anything to spray test those
 4 areas to find out how much water intrusion had
 5 occurred as a result of the removed storm shutters
 6 and lack of sealant on those holes?
 7 A Can you repeat the page that you're on?
 8 Q Page 7.
 9 A Of the April 2012?
 10 Q Of the January 11, 2012 report.
 11 A Could you please repeat the question?
 12 Q That paragraph (indicating).
 13 A Right. I was flipping to that.
 14 Q Did you do any water testing to determine
 15 if there's water intrusion where folks did not seal
 16 the fastener holes?
 17 A I did not do water testing in that
 18 location.
 19 Q Any idea of when you say "some doors have
 20 storm shutters that have been removed" what the
 21 count is?
 22 A Actually, I don't. It was hit or miss
 23 where those storm shutters were.
 24 Q Let's talk about the deck coating, which
 25 is item No. 3 on page 7 of the January 11, 2012

1 Carolina Concrete and its subs during the work with
2 regards to when they discovered a corroded stud what
3 to do?

4 A I'm not aware of that.

5 Q So you're not aware of the instructions
6 that the Shipwatch folks gave to Carolina Concrete
7 about that?

8 A No, I'm not.

9 Q With regards to the chimney framing
10 issue, what is the problem with the chimneys that
11 necessitated a complete rebuild?

12 A Our structural engineer, Tim Cook,
13 determined that they would not adequately meet the
14 wind load requirements.

15 Q And why not?

16 A Just the framing components and
17 connections were inadequate.

18 Q Did you-all test the original
19 construction of the chimneys, or are these
20 remediated chimneys?

21 A These are the chimneys as we found them
22 in this phase of work.

23 Q Do you know whether they were original to
24 the building or whether or not they were at some
25 point added later?

1 A I do not know.

2 Q It would be safe to assume that she
3 didn't climb up and inspect that area. Correct?

4 A That's a reasonable assumption.

5 MR. COBB: Since we finally agree on
6 something, I'll quit asking you questions. Thank
7 you for your time.

8 (Recess taken.)

9 EXAMINATION

10 BY MR. KELLY:

11 Q Mr. Isaacs, my name is Britt Kelly. I'm
12 down in Charleston. I'm sorry I couldn't be there
13 with you today, but I'll try to do my best over the
14 phone.

15 If you would, please allow me to finish
16 my question before you begin to respond and
17 hopefully we'll be okay.

18 A Okay.

19 Q My first question for you, have you ever
20 worked for a window manufacturer or distributor?

21 A I have not.

22 Q Have you ever worked for any product
23 supplier?

24 A I have not.

25 Q Do you believe you're an expert

1 A I do not.

2 Q Did it appear that they were added later?

3 A It's hard to tell. I don't know.

4 Q Did anybody do any type of investigation
5 about the chimney caps, whether or not they were
6 leaking or whether or not they needed to be replaced
7 as well?

8 A Chimney caps?

9 Q Or the spark arrestor or whatever the
10 apparatus is.

11 A Oh, those are being replaced. They were
12 corroded and had broken components -- broken metal
13 pieces on them. The caps themselves, I'm not sure
14 if we did water testing on those.

15 Q Are you aware of any warnings given by
16 Bob Wiggins to Shipwatch about the chimneys, the cap
17 and the spark arrestors during the history of
18 Carolina Concrete's work at the project?

19 A It's my understanding that Linda Jernigan
20 prior to our work, our design work beginning, was
21 aware of the problems associated with the spark
22 arrestor pieces.

23 Q And what was she aware of?

24 A That they needed to be replaced.

25 Q And who told her about that?

1 concerning the duties and responsibilities of a
2 product manufacturer or a distributor?

3 A I am not.

4 Q At various points during your examination
5 by Mr. Cobb you referenced -- I think your term was
6 "impact-glass concerns." Do you remember that?

7 A Yes, sir.

8 Q Can you describe that for me, please?
9 What exactly are you talking about there?

10 A When we were looking into information on
11 the sliding doors and windows, our research led us
12 to believe that the sliders are not impact rated. I
13 don't have the notes in front of me, but I think
14 that came from discussions with EFCO technical
15 services and finding out what actual units were on
16 the building.

17 Q Did you have those discussions with the
18 EFCO technical services people?

19 A I can't recall. That sounds correct. We
20 could look -- I'm not sure if we have notes on that.

21 Q Do you typically take notes like that?

22 A Yeah, we should have something related to
23 that.

24 Q Do you have your entire file in front of
25 you?

1 A We do.

2 Q Not right now, but maybe at some point we
3 can pull those out. But my question, I guess, what
4 I'm trying to get at is, do you know if the phone
5 call was with the EFCO people at one of their
6 locations or W.C. Johnston folks?

7 A I can't recall specifically.

8 Q How long do you think it would take you
9 to put your hands on that note?

10 A We've got a big pile here. I'm just not
11 sure. I could take some time and start digging.

12 Q Why don't we table that for a second and
13 we'll come back to that before we wrap up.

14 Was there any other research that you did
15 to determine whether or not any of the EFCO products
16 was impact rated?

17 A We did not. I don't think so.

18 Q Your concern about the impact rated or
19 impact ratings of the glass of the EFCO product, is
20 that limited just to the sliding glass doors, or
21 does it relate to other products?

22 A I believe it relates to the other
23 products.

24 Q What other products at Shipwatch do you
25 believe EFCO manufactured and distributed?

1 use his language as best I can. You know when
2 you're out there -- I guess buildings C and D are
3 undergoing the repairs now. But before they did, if
4 you were in one of the units in the living room,
5 there's a sliding glass door and then some fixed
6 windows next to that sliding glass door. Does that
7 sound familiar?

8 A Yes.

9 Q The majority of those units, at least you
10 believe that the sliding glass doors and the fixed
11 windows that were installed prior to this latest
12 round of construction work were original to the
13 building?

14 A I'll pull up that sheet that I just had.
15 It looks like based on these notes -- I forget what
16 exhibit that was, but these elevation drawings of
17 making notes of old versus new, it appears that in
18 the family room most of those sliding doors are old.

19 Q What about the fixed windows that are
20 next to those sliders on floors one through three of
21 buildings C and D?

22 A Buildings C and D, those fixed windows
23 are all old according to these notes.

24 Q Did you gain an appreciation for how old
25 those fixed windows and sliding glass doors in the

1 A I'm not sure. Off the top of my head,
2 I'm not sure. I guess I was under the assumption
3 that most of the new materials that we discussed in
4 the previous questioning were generally EFCO
5 products -- sliding windows and fixed windows and
6 bay windows. It's my understanding that those were
7 also EFCO. But I don't have notes on that in front
8 of me.

9 Q How did you gain the understanding that
10 the bay windows were EFCO products?

11 A Again, I'm not sure. I would have to
12 look in my notes to see if they are or not.

13 Q What type of notes did you make to show
14 the manufacturer of a product?

15 A I know on several of the products there
16 are some notes from the manufacturers, either
17 stamped on the aluminum frame or perhaps on the
18 glass.

19 We've also had some -- I guess some
20 verbal communication with the owner indicating that
21 in general most of the products were EFCO products.

22 Q Who is the owner you're referring to?

23 A Linda Jernigan.

24 Q Mr. Cobb referenced a number of original
25 door and window units on the project. I'm trying to

1 living rooms of floors one through three of
2 buildings C and D were?

3 A Again, what we're calling new was
4 probably within the last eight to ten years
5 approximately. And then what we're calling old,
6 based on the color and things we discussed
7 previously, definitely more than that. 20 plus
8 years would be a reasonable approximation.

9 Q Remind me how you described the
10 differences between the new product and the old
11 product.

12 A For these notes, you know, taken from the
13 ground and looking up at the building, and in
14 general when we did go to actual units on balconies
15 and end units, the new windows had a much darker
16 bronze frame with much wider aluminum frame
17 components, and the older units had a noticeably
18 faded color to a lighter brown and more narrow
19 aluminum components.

20 Q How would you describe the difference, if
21 any, in the glass between the new and the old
22 product?

23 A I'm not sure I looked too closely at the
24 glass itself. There is a slightly different color
25 in terms of thickness. I'd have to refer back to

1 photographs.

2 Q Based on your experience and your
3 observations in the field at Shipwatch on buildings
4 C and D on floors one through three, you believe
5 that the old doors and fixed units have impact glass
6 within them?

7 A I do not believe that they had that.

8 Q When was the decision made to replace all
9 the windows and doors at Shipwatch with impact-rated
10 glass product?

11 A I guess that would be after our
12 investigative reports. So our last one was April
13 12th. And after that April 12th report, we met with
14 the Shipwatch HOA and discussed remediation.
15 Specifically a date, I'm not sure of a specific
16 date.

17 Q Who was at that meeting?

18 A These were telephone calls and site
19 meetings between Jeff Miller and Shipwatch.

20 Q Were you part of those?

21 A I was not an integral part. I may have
22 listened into some phone calls or attended one or
23 two meetings that I don't remember specifically.
24 But Jeff was in charge of leading those discussions.

25 Q What do you remember about the first

1 Q How were you under that impression?

2 A We were told by Shipwatch.

3 Q Do you recall if the suggestion to
4 replace all the windows and doors was raised by
5 someone at Sutton-Kennerly or raised by the owners?

6 A That was likely an SKA decision. I think
7 we considered the idea. I think we tried to find
8 out if we could improve the existing newer products,
9 and I think the conclusion was that that was not a
10 preferred method of repairs in terms of, I guess,
11 cost and time. I can't remember if it could or
12 could not have been done at all.

13 Q It sounds like to me someone reached a
14 conclusion that windows and doors that may not be
15 impact rated could not remain in the buildings at
16 Shipwatch. Is that accurate?

17 A That's correct.

18 Q Who made that determination?

19 A Sutton-Kennerly.

20 Q Did you participate in that analysis?

21 A I assisted Jeff Miller in that analysis.

22 Q How was that determination made that
23 non-impact rated product could not remain in the
24 buildings at Shipwatch?

25 A Because they are in a wind region that

1 meeting or phone call you had where an issue was
2 brought up about removing and replacing the windows
3 and doors at Shipwatch because of impact glazing?

4 A What's the question about the impact
5 glazing?

6 Q What do you recall about the first
7 meeting or phone call that you participated in where
8 an issue was brought up about replacing the windows
9 and doors because of impact-rating concerns?

10 A I don't recall specifically. I'm sure
11 after we discovered they were not impact rated, we
12 mentioned that to them. I don't specifically
13 remember doing that or when it happened.

14 Q In 2009, you authored a report with
15 Mr. Parker about the conditions of the building.
16 Correct?

17 A That's correct.

18 Q And those same old windows and doors were
19 installed in the building at that time. Right?

20 A That's correct.

21 Q And an observation could have been made
22 to determine that those windows and doors did not
23 have impact glazing. Correct?

24 A Yeah. We were under the impression that
25 the owner had a schedule in place to replace those.

1 requires impact-rated components.

2 Q For new product?

3 A Yes. That's my understanding.

4 Q And what standard or authority are you
5 relying upon for that proposition?

6 A I believe that's in the IBC,
7 International Building Code.

8 Q What version of the IBC?

9 A I don't have those in front of me. Like
10 we mentioned earlier, several phases of work were
11 done at different times. So there may be different
12 codes applicable at different times of work being
13 performed.

14 Q What I'm talking about is what standard
15 you believe governs the decision Sutton-Kennerly
16 made to remove and replace all the product with an
17 impact-rated product?

18 A I believe that was the building code. We
19 have a structural engineer. I do not personally do
20 structural engineering. And he is more familiar
21 with the building code, and he also assisted Jeff
22 Miller in reaching that conclusion. And he is more
23 familiar with the building code and how it applies
24 to wind-related items than myself.

25 Q What is his name?

1 A Tim Cook, C-o-o-k.

2 Q It seems that over 50 percent of the
3 building had what was known to everyone as
4 non-impact glazing product within it for a number of
5 years and no recommendation was made to replace all
6 of that product with impact-rated glazing. So how
7 did it come about in 2012 that a decision was made,
8 okay, now we need to replace everything with
9 impact-glazed product?

10 A Again, we were under the impression in
11 2009 that a plan was in place already to update
12 those products.

13 Q So is it acceptable for non-impact rated
14 product to be in the building between 2000 and
15 2009?

16 A For it to be in the building at all?
17 Again, I'm not as familiar with the wind
18 requirements in the building code. I believe it
19 applies to the time of installation and repairs.
20 I'm just not sure.

21 Q What jurisdiction had authority over the
22 replacement work that was performed at Shipwatch in
23 the 2000s?

24 A Can you repeat that, please?

25 Q What jurisdiction relative to the

1 Q Have you reviewed any of the project
2 documents produced by Carolina Concrete?

3 A I have not.

4 Q Same question for Charleston Glass. Have
5 you reviewed any of their project documents?

6 A I have not.

7 Q What about EFCO or W.C. Johnston
8 Architectural Sales?

9 A I have not.

10 Q Did the 1997 Standard Building Code
11 require impact glazing in window and door products?

12 A I do not know for sure. I do not believe
13 that it did.

14 Q I've reviewed your reports and it looks
15 to me like Sutton-Kennerly & Associates water tested
16 several EFCO products, some windows and doors. Do
17 you believe that to be the case?

18 A Yes.

19 Q Did any of the water testing performed by
20 Sutton-Kennerly & Associates reveal failures with
21 the EFCO products?

22 A No. We had some -- a small amount of
23 water come in on one sliding door while applying
24 pressure, but that water did not drip over the edge
25 in order to constitute a leak. So, no, there was

1 building department had authority over the
2 replacement work at Shipwatch that occurred in the
3 2000s?

4 A Well, they would have used South
5 Carolina -- State of South Carolina adopts the
6 International Building Code, and whatever building
7 code they had adopted at that time would be their
8 governing code. And then the Isle of Palms -- the
9 City of Isle of Palms also has a building department
10 for construction work.

11 Q Do you know what the Isle of Palms' code
12 adoption history is?

13 A I do not.

14 Q Do you know if the Isle of Palms building
15 department had authority to permit work at Shipwatch
16 during the 2000s?

17 A I do not know that for sure, but that
18 seems reasonable.

19 Q The building official has the ability to
20 permit work under a certain version of the code?

21 A Yes. I would say, yes, that sounds
22 correct.

23 Q What building code was the Shipwatch
24 window and door replacement work permitted under?

25 A I'm not aware.

1 not a failure.

2 Q Is that the one you referred to in the
3 report as spitting in the glass?

4 A That's correct.

5 Q But you deemed that to pass the test?

6 A I believe so. Let me look up that actual
7 area to remember.

8 That's correct. Test area 14, no water
9 intrusion was attributed to the manufactured door
10 unit.

11 Q Are you aware of any failures of the EFCO
12 products that have led to water intrusion into the
13 building or the building cavity?

14 A I'm not aware of that.

15 Q And I should specify or should clarify
16 that. I said building. I'm referring to all four
17 buildings at Shipwatch. Are you aware of any
18 failures of EFCO products that have led to water
19 intrusion into any of the four buildings or the
20 building cavity of the four buildings?

21 A I'm not aware of that.

22 Q Do you hold any opinions that the EFCO
23 products supplied at the project are defective in
24 design or fabrication?

25 A I do not have an opinion on that.

1 Q Do you know if anyone at SKA has an
2 opinion as it relates to the products supplied to
3 the Shipwatch job as to whether those EFCO products
4 are defectively designed or fabricated?

5 A Jeff Miller, the project manager, would
6 have that.

7 Q What do you believe Mr. Miller's opinion
8 to be?

9 A I can't speak for him. But the water --
10 You know, the manufactured units passed the water
11 testing. So in terms of water testing that I did,
12 they are not defective in shedding water away from
13 the building.

14 Q Has Mr. Miller told you that he holds an
15 opinion that the EFCO products supplied to the
16 Shipwatch buildings are defective in some manner?

17 A He has not told me that.

18 Q But you believe he holds that opinion, or
19 did I misunderstand you?

20 A I don't know.

21 MR. KELLY: If you don't mind, would
22 you take a moment to look for those notes we talked
23 about. If you find them, I would like to get the
24 dates on them. I want to make sure they've been
25 produced to us.

1 A October 24, 1983.

2 Q And how long have you lived in the
3 Charlotte area?

4 A I moved here in June of 2006.

5 Q Tell me about your education.

6 A I have a bachelor's degree in civil
7 engineering from Clemson University.

8 Q When did you receive that?

9 A That was the spring of 2006.

10 Q Any formal education after that?

11 A No.

12 Q All of your registrations, licenses,
13 certifications, could you list those for me?

14 A I am a professional engineer in North
15 Carolina and South Carolina.

16 Q I am looking at Exhibit 58, and this is
17 what you've handed to me in response to my request
18 for a CV or resume. I think you gave it with the
19 caveat that this may need updating.

20 A Yeah, I haven't -- I didn't produce that.
21 That was -- I'm not sure when that was produced.
22 But I asked our administrative assistant for a
23 recent resume, and I haven't had a chance to review
24 it since we sat down.

25 Q Is this something that is incorporated

1 (Lunch recess taken.)
2 (Exhibit Nos. 58 and 59 marked
3 for identification.)

4 EXAMINATION

5 BY MR. ROOT:

6 Q Mr. Isaacs, my name is David Root. I
7 represent BASF, which is a defendant in this lawsuit
8 brought by the Shipwatch folks. I'll be asking you
9 some questions today, as will these other attorneys.

10 Because we're not going to finish your
11 deposition in total today, I'm going to limit my
12 questions to a certain span of time reserving the
13 right to ask you questions at a later date. Because
14 there are a lot of photographs, et cetera, that I
15 want to go over and get in some more detail, but at
16 least I can cover some of the general issues today.

17 As I understood it from some of your
18 earlier testimony, this is the first time you've
19 been deposed?

20 A That's correct.

21 Q Let's do some background stuff, because I
22 don't think we covered much of that. Where were you
23 born?

24 A I was born in New Haven, Connecticut.

25 Q And when were you born?

1 within SKA's advertising, marketing-type materials?

2 A Yes.

3 Q When you speak of seven years of
4 experience with SKA -- and we'll talk about that.
5 We'll talk about it in reverse chronology. Have you
6 had any jobs in the construction industry prior to
7 SKA?

8 A I did summer work at a surveying company.

9 Q When was that?

10 A I would have to look that up. I believe
11 that was the summer after my freshman year in
12 college. So that would be most likely the summer of
13 2003.

14 Q What was the nature of the surveying?

15 A It was a small surveying company that had
16 a contract to define the boundary of the Redstone
17 Arsenal in Huntsville, Alabama, which is a 30-plus
18 mile perimeter of federal property, and they wanted
19 to establish their property lines for security
20 reasons.

21 Q When is the next job you held in the
22 construction industry?

23 A In the construction industry, I did
24 some -- I had some summer work at the University of
25 Alabama Huntsville where I assisted graduate

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

SHIPWATCH CONDOMINIUM)
ASSOCIATION,)

Plaintiff,)

) Case No.)
-versus-) 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 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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1 when you did your more full report and then started
2 work, do you know of any work that was done between
3 that era or in that era?

4 A I'm unaware of that.

5 Q Have you reviewed your reports, the
6 primary reports? By that, I mean the January and
7 April reports. What have you-all been referring to
8 today? The April report?

9 A Yes, April 2012.

10 Q Which I think encompasses most of the
11 findings from the January report as well.

12 In any event, Exhibit 59, did you review
13 that report prior to your deposition today, in
14 preparation for the deposition?

15 A I did not.

16 Q You are familiar with the findings in
17 that report. Correct?

18 A Yes.

19 Q Do you now deviate or have an opinion
20 contrary to any of those findings?

21 A I do not.

22 Q Pro-Tec has been about two or so months
23 late, for lack of a better term, in getting the job
24 done. Correct?

25 A Yes.

1 expense allocation?

2 A We've had change orders, and we've had to
3 address all of those.

4 Q As far as what would be responsive to
5 that question, meaning something that was an
6 atypical problem that was not perhaps anticipated
7 when the project began, all of those type issues
8 would be incorporated or encompassed within the
9 change orders. Is that correct?

10 A Yeah, that's fine.

11 Q Is that fair enough?

12 A Okay.

13 Q Well, I'm asking you. Is that fair?

14 A Yes, that's fine.

15 Q You keep saying "that's fine." I'm
16 trying to make the most succinct way to get about
17 this, besides from going through all the change
18 orders. If there's something else outside that
19 realm, I wanted to speak about it. But if the
20 change orders encompass the material changes to the
21 work versus what was anticipated on the front end,
22 then we are good. And you're saying yes?

23 A Yes.

24 Q Have you come to form any opinions that
25 there was anything wrong with the DEFS as a product?

1 Q They were supposed to be done May 31st.
2 Correct?

3 A Correct.

4 Q And it's my understanding that they got
5 to substantial completion, in quotes, around August
6 1st?

7 A Correct.

8 Q Do you know what the cause is for that
9 delay?

10 A Allocating their resources, project
11 management, getting people scheduled to do the right
12 things at the right time. Just planning and
13 scheduling.

14 Q On Pro-Tec's behalf?

15 A Correct.

16 Q Have there been any particular problems
17 that you-all have experienced during the course of
18 the construction or the remediation?

19 A Can you be more specific?

20 Q No, because I'm looking for anything that
21 you've experienced. I don't mean just something
22 that's a one-off or atypical, but something that was
23 just simply not anticipated and has caused a great
24 deal of -- I know there have been change orders, but
25 a great deal of change in either time allocation or

1 Meaning not related to installation, but as to it as
2 a product, in its manufacture or design, anything of
3 that nature?

4 A No. That's more Jeff Miller's realm.

5 Q Same question as to the deck coating. Do
6 you have any opinion that there are any deficiencies
7 or problems in a general sense with the deck coating
8 as a product, as it's designed or manufactured?

9 A In terms of the deck coating material
10 itself?

11 Q Yes, sir.

12 A No.

13 Q Have you done any product literature
14 review since we last spoke?

15 A No. Just I've been working on any new
16 products that we use, but nothing previous.

17 Q Had any discussions with anyone from BASF
18 since we last met?

19 A No.

20 MR. ROOT: Mr. Isaacs, those are all
21 the questions I have for you. I appreciate your
22 time.

EXAMINATION

23 BY MR. KELLY:

24 Q Mr. Isaacs, I'm on the phone. I've got
25

1 my kids in the car. This is probably going to be
2 the worst deposition experience ever, but I'm going
3 to give it a shot. I represent EFCO and W.C.
4 Johnston Architectural Sales.

5 I asked you some questions the last time
6 we had your deposition scheduled. And I heard some
7 things today that made me want to clarify some of
8 the testimony today and testimony previously. That
9 will be the basis for my questioning today, and then
10 we'll see how far we have to go.

11 At some point in coming up with repair
12 plans for buildings C and D at Shipwatch, did
13 Sutton-Kennerly & Associates consider reusing the
14 EFCO products that were installed at those
15 buildings?

16 A We did.

17 Q And if there were performance problems
18 with the EFCO product installed at buildings C and
19 D, would Sutton-Kennerly & Associates have
20 considered reusing those products?

21 A Say that again.

22 Q If there were performance problems with
23 the EFCO products that had been installed at
24 buildings C and D, would Sutton-Kennerly &
25 Associates have considered reusing those products?

1 photographs 6 and 7, but it was a small amount that
2 is contained and, according to the AAMA guidelines,
3 is not considered a leak.

4 Q I think you've referred to that at some
5 point as spitting?

6 A Correct.

7 Q And you ended up passing that particular
8 product that had been tested?

9 A That's correct.

10 Q Did any of the product you tested with
11 water fail at Shipwatch?

12 A Can you repeat that question again as I
13 look through these notes?

14 Q Yes, sir. I want to be very careful and
15 precise with our language. So I want to make sure
16 that I understand and everyone else understands that
17 when you were testing window and door products at
18 Shipwatch whether you were testing the window and
19 door surrounds as far as how the product was
20 installed or whether you were testing the product
21 itself. Do you follow me?

22 A Yeah. We did a variety. Sometimes we
23 would isolate the window or door itself and only
24 test that manufactured product. Other times we
25 would do the reverse and test only the surrounding

1 A No.

2 Q Did you administer the water testing that
3 took place at Shipwatch?

4 A Yes. I participated in it with Eric
5 Couch.

6 Q Did you compile the results, or was that
7 Eric?

8 A It was both of us.

9 Q And it's my understanding from your prior
10 testimony that you tested the EFCO product in
11 isolation from the installation of the EFCO
12 products. Is that correct?

13 A Yes, I believe so.

14 Q In testing the EFCO products in isolation
15 from the installation methods, did you determine
16 whether or not the EFCO product passed or failed the
17 water testing?

18 A The EFCO product passed on -- Let's see.

19 Q Did you observe water penetrating through
20 any of the EFCO product during the water test?

21 A Yes. I'm looking at test area 14. That
22 is where we isolated just a new EFCO sliding door,
23 covered up the surrounding facade. And we did not
24 have a technical failure of the EFCO product.

25 We did have some water shown in

1 cladding. And then other times we would test both
2 at the same time.

3 Q When you're considering testing a
4 product, are you considering the way the product is
5 installed or the way in which it has been
6 manufactured?

7 A We are looking at the manufactured
8 component, yes.

9 Q So when you tested the product to
10 determine whether there were any failures of the
11 manufacturing of the product, did you conclude that
12 any of the tests were failures?

13 A I'm flipping through our report here.
14 No.

15 Q Isn't it in fact only the installation
16 methods that failed when you tested the product?

17 A That's correct.

18 Q So at various times in your deposition
19 today when you have indicated that the window or
20 door itself leaked, what do you mean by that?

21 A Do you have a specific location that we
22 were talking about at the time, or are you just kind
23 of saying in general?

24 Q I don't have anything written down. And
25 I'll tell you my recollection is Mr. Elliott asked

1 you some leading questions that ended with the word
2 "correct," and you agreed with him, and asked
3 whether or not the door or window leaked. So what
4 I'm trying to understand is, what did you mean in
5 agreeing to those questions asked whether or not the
6 door or window itself leaked?

7 MR. ELLIOTT: Object to the form.

8 A Okay. So we had some -- You know, that
9 includes the installation of the surrounding
10 cladding and the installation of the manufactured
11 unit.

12 BY MR. KELLY:

13 Q Did you in any way intend to say that the
14 product itself is permitting water to enter the
15 building?

16 A We had water come through one of those
17 bay windows, but I believe that was at a drilled
18 hole on the inside, if my memory is correct.

19 Q Are those bay windows EFCO products?

20 A I don't know.

21 Q I didn't mean to cut you off. If you
22 aren't finished with your testimony as to that
23 drilling in the bay window, please continue.

24 A Just that the leaks are associated with
25 the installation around the window or door.

1 Q So is it not fair for me to assume that
2 you do not believe that the EFCO products themselves
3 were permitting water to enter the building
4 envelope?

5 A That's correct.

6 MR. KELLY: I believe those are all
7 the questions I have for you. I appreciate your
8 patience with me. Sorry if it's too hectic here.

9 EXAMINATION

10 BY MR. ELLIOTT:

11 Q Mr. Isaacs, the sliding glass doors and
12 the storefront windows, I asked you if -- We talked
13 about your water test and the DEFS, whether or not
14 it leaked. And I asked another question, did the
15 doors leak. And you said yes. New sliding glass
16 doors leak and new storefront windows leaked. And
17 then I asked you further why are the new sliding
18 glass doors and windows being replaced, and you
19 agreed that it was because they leaked and because
20 of the impact rating.

21 Now, the sliding glass doors, and we
22 covered the oceanfront, tell me what is it you were
23 talking about that leaked when you said the doors
24 leaked.

25 A I guess I was using "doors" as too broad

1 Q So if someone were to use your testimony,
2 your deposition transcript at a later date to
3 suggest that the product supplied by EFCO for the
4 Shipwatch buildings are leaking, the products
5 themselves as opposed to installation, would that be
6 an incorrect suggestion?

7 MR. FLYNN: Object to the form.

8 A The EFCO sliding door we tested did not
9 leak. The manufactured unit did not leak in that
10 test area 14.

11 BY MR. KELLY:

12 Q Did any EFCO product that you tested
13 leak?

14 A Again, I'm not aware of -- didn't go back
15 and dig back through manufacturers of who did what.
16 But the newer door did not leak.

17 Q Would it make sense that Sutton-Kennerly
18 was going to reuse EFCO products if it found that
19 the EFCO products themselves leaked?

20 A Right. If we found a unit that was
21 leaking, we would not want to reuse that. Correct.

22 Q But you had envisioned reusing the EFCO
23 product that had been installed in buildings C and D
24 as part of the repairs at Shipwatch. Right?

25 A That's correct.

1 of a term and not precise enough.

2 Q Let me ask you this. You tested doors
3 and you tested the cladding. You separated the two.
4 Right?

5 A Correct.

6 Q And water intrusion occurred when you
7 tested the doors. What part of the door leaked?

8 A The components at the perimeter of the
9 door.

10 Q What components?

11 A For example, test area 14, photograph 4,
12 the water simply went underneath the sliding door
13 unit.

14 Q Let me get to that real quick, because I
15 remember we talked about it. It leaked under the
16 door where the door meets the built-up --

17 A That's correct, curb.

18 Q So something about how the door was
19 installed in a curb allowed the water intrusion to
20 occur?

21 A Correct.

22 Q What about the installation, if you can
23 tell me in that detail, caused the leak?

24 A Photographs 4 and 5, you can see a gap
25 between the door and curb, and it goes through to

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)
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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 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 Wednesday, the 30th day of April 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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1 BY MR. COBB:

2 Q Who is the first person, regardless of
3 where they were, that mentioned to you that the
4 homeowners were going to pursue a lawsuit,
5 litigation, claim?

6 A I don't remember who the initial
7 respondent was. I know that I was asked for names
8 of potential attorneys that could provide assistance
9 to Shipwatch in a litigation case.

10 Q When was that?

11 A I'm just guessing that would have been in
12 the 2012 time frame. I may have some sort of
13 handwritten scribble notes somewhere.

14 Q What time frame in 2012? Exhibit 64,
15 which is your January 25, 2012 report, would have
16 been about that period of time?

17 A Well, it could have been -- it may have
18 been after that. I don't know the time frame,
19 because we did a more in-depth report. This was
20 basically a visual survey and a roof moisture
21 survey. It wasn't until August of 2012 that we
22 really got in and started opening up walls and that
23 we got in and did water testing. So it could have
24 been after the issuance of the second, more alarming
25 report on August 5th that litigation questioning

1 And then the second part of this addendum
2 was to actually issue the infrared roof survey
3 report, which I reviewed from our field guys that
4 actually did that test. So I did co-sign and was in
5 agreement with this report.

6 Q Other than reviewing, did you do any
7 actual hands-on on-site investigation that resulted
8 in anything that's included in either the January
9 25, 2012 report or the January 11, 2012 report, or
10 were you simply just reviewing what other people had
11 done?

12 A No. I was on site and participated
13 firsthand in observing and looking and authoring
14 this report. So I actually participated on site in
15 looking at each of the conditions. I sent down a
16 task of my project engineers to do the testing, and
17 then I witnessed a good portion of that testing, of
18 the results, made my own test cuts, made my own
19 observations, walked the site to see all that had
20 been cut, so that I had full knowledge of what was
21 going on in each and every one of these reports.
22 And I believe that I probably wrote 80 percent of
23 the text in both of those reports.

24 Q Both the January 25, 2012 report and the
25 January 11, 2012 report, or are you referring to the

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

SHIPWATCH CONDOMINIUM)
ASSOCIATION,)

Plaintiff,)

) Case No.:
-versus-) 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 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.

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1 MS. MIARS: That is all I have.

2 Thank you very much for your time.

3 EXAMINATION

4 BY MR. EARHART:

5 Q My name is Marshall Earhart. I represent
6 Charleston Glass. Are you familiar with Charleston
7 Glass?

8 A Nothing other than they are in Charleston
9 and they did some work on this job.

10 Q I'll represent to you that they installed
11 some of the -- they installed some of the new
12 sliders on the ocean-side balconies as well as some
13 of the fixed windows on the ocean-side balconies and
14 possibly some of the bay windows, U-shaped bay
15 windows. I want to talk about -- I guess we can do
16 this fairly methodically.

17 As it pertains to the sliders on the
18 ocean-side balconies, what in your opinion did the
19 installer do wrong?

20 A Well, that question can't be answered
21 exactly, because that gets back to knowing what each
22 of the individual defendants was responsible in
23 doing. So at this point I can only point out the
24 deficiencies and the defects that resulted in damage
25 and problems that is responsible for one or more

1 mechanically anchored to the structural slab. So we
2 found significant deficiencies in the attachment of
3 the units to the framing structure.

4 Q Could you determine what the resulting
5 damage was specifically from problems with the
6 doors?

7 A Specifically with the door unit. The
8 door units, at least one, maybe more, were isolated
9 and water tested and successfully passed the water
10 test performance that we did.

11 The problem with the doors was not the
12 performance of the door units, but it was the
13 impact, the attachment, and the lack or improper
14 waterproofing around the door openings.

15 Q Right. Can you tell me what the
16 resulting damage was with the attachment and lack of
17 waterproofing of the door opening? Can you tell
18 me --

19 A Well, the lack of proper waterproofing
20 around the door openings resulted in staining and
21 corrosion of stud framing and staining/deterioration
22 of sheathing and finish components.

23 Q But there's also problems with the DEFS.
24 Can you break out the damages, or can you
25 determine -- Can you say this resulting damage is

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1 Q And you don't recall the substance of
2 that conversation?

3 A Unfortunately, no.

4 Q I guess you said earlier that there was
5 nothing substantive discussed. Is that correct?

6 A I probably said that, yes.

7 Q Sitting here today, you can't recall
8 anything that you-all talked about yesterday. Is
9 that correct? Do you think you talked about the
10 Shipwatch project?

11 A Obviously. The conversation was meant to
12 be kind of an update prior to depositions. And
13 obviously, I relayed to Pat that I had a hurt back
14 and I was doped up. And I know he was going, I
15 believe, through maybe some questions that the
16 attorneys may be asking. But beyond that, I don't
17 remember. A lot of talking. I probably said one or
18 two words.

19 Q You didn't receive anything in writing or
20 any e-mails from Mr. Flynn?

21 A No.

22 Q Earlier in your prior deposition,
23 specifically referenced on page 432 of that
24 deposition, we talked about the process that took
25 place in the drafting of your affidavit, the back

1 think I have any more questions for you at this
2 time.

3 MR. FLYNN: Janice, just for the
4 record, I believe he does have all the documents
5 that he needs. So I'm not aware of any additional
6 documents that I have that he would need. So when
7 he goes through them, if he can't find something,
8 I'm happy to provide it to him. But he has all the
9 reports that I'm aware of.

10 THE WITNESS: So there are no other
11 documents other than what was given to me like two
12 years ago?

13 MR. FLYNN: As far as I -- Yeah.

14 MR. WINTON: I didn't know if you
15 were testifying for him or what's going on here,
16 but --

17 MR. FLYNN: I'm talking to you.
18 Because you asked the question about documents, and
19 I wanted to make sure you were aware for the record
20 that I've provided whatever documents he has. It
21 should be in his files.

22 MR. WINTON: Oh, relative to the
23 affidavit?

24 MR. FLYNN: No. Just whatever
25 documents that I have in my files, particularly

1 and forth between you and Mr. Flynn and the use of
2 handwritten notes by you on a pdf document that you
3 believe was attached and sent back and forth via
4 e-mail. Do you recall that testimony?

5 A Yes.

6 Q I'll represent to you that I looked in
7 the documents, and I could have missed it, but I did
8 not find that correspondence or that pdf document
9 with handwritten notes. Is that something that you
10 may be able to more easily put your hands on or
11 something that you could put your hands on if you
12 looked within your database or a staff member could?

13 A It probably would have been easier to
14 find until Debbie gathered everything. I'm not sure
15 how she's messed up my files. But depending upon
16 the hard copy documents that she has assembled, that
17 may or may not be easy to find.

18 Q I won't tell Debbie you threw her under
19 the bus today, but I'm going to go ahead this
20 afternoon since we probably have some time, if we
21 could talk with her about the possibility of where
22 she thinks it might be, and I'll look with her for
23 that document. Is that acceptable?

24 A That's fine.

25 MR. WINTON: Mr. Miller, I don't

1 relating to Mr. Sisroy. To my knowledge, I've
2 provided everything that he needs. I'm not aware of
3 anything additional that he needs at this time.

4 MR. WINTON: Understood.

5 THE WITNESS: That will be easier
6 then. I've got a certain amount of papers to
7 review.

8 (Lunch recess taken.)

9 EXAMINATION

10 BY MR. KELLY:

11 Q Mr. Miller, we're back from lunch. Are
12 you ready to proceed?

13 A Yes, sir.

14 Q My name is Britt Kelly. I represent W.C.
15 Johnston Architectural Sales and EFCO Corporation in
16 this case. I assume you're familiar with EFCO?

17 A I am familiar with both, yes.

18 Q And you know Greg Johnston with W.C.
19 Johnston Architectural Sales?

20 A I know him well, yes.

21 Q Do you hold any opinions relating to W.C.
22 Johnston Architectural Sales' involvement in the
23 Shipwatch project?

24 A I don't -- Say that question again.

25 Q Do you hold any opinions in this case

1 related to any fault of W.C. Johnston Architectural
2 Sales for the damages or the repair work that you
3 have specified at the project?

4 A Well, I guess the best way to answer the
5 question is that obviously we had EFCO
6 non-impact-rated doors and windows improperly
7 installed on this project. And to what
8 responsibility W.C. Johnston or EFCO had regarding
9 those particular units being put into this building
10 when they weren't supposed to is kind of a question
11 mark.

12 Q Let me try to make sure I fully
13 understand that. So you do not currently hold any
14 opinions relating to any fault of W.C. Johnston
15 Architectural Sales or EFCO may have relating to the
16 installation of non-impact-rated glass products in
17 the buildings at Shipwatch?

18 A Well, I think I said I don't have the
19 information to thoroughly state -- You know, I don't
20 know what W.C. Johnston or EFCO's role was in the
21 project that would place liability on them or not on
22 them. All I know is we've got an inferior, improper
23 code, non-code compliant product that was put in
24 when it shouldn't have been.

25 Q You realize you've been designated by Mr.

1 times, and I'll give you the same answer. Until I
2 have a chance --

3 Q Yes, sir. That question calls for a
4 yes-or-no answer. Can you please give me a
5 yes-or-no answer?

6 A I don't have an answer. I can give you
7 an answer once I review the documents.

8 Q Do you refuse to answer my question with
9 a yes or no?

10 A I think I said will be glad to provide
11 the answer once I have documents to be able to form
12 an opinion to give you a yes-or-no answer. I cannot
13 give you a yes-or-no answer now. I know what your
14 question is. You've said it ten times. Keep saying
15 it. We'll keep going over the same thing.

16 Q You don't have to read too much into it.
17 It's simply a question of do you currently hold an
18 opinion as to whether EFCO or W.C. Johnston
19 Architectural Sales did something improper that led
20 to the installation of non-impact-rated windows and
21 doors in the Shipwatch buildings?

22 A (No response.)

23 MR. ROOT: You're not going to
24 respond to him?

25 THE WITNESS: I've already responded

1 Flynn's office as an expert witness for the
2 plaintiffs in this case?

3 A Yes.

4 Q And this case has been pending for a
5 couple of years now?

6 A Whatever the time frame, yes.

7 Q As we sit here today, do you hold any
8 opinions that W.C. Johnston Architectural Sales or
9 EFCO did anything improper that resulted in the
10 installation of non-impact-rated glass in the
11 buildings at Shipwatch?

12 A I think you just asked me that question.

13 Q Yes, sir. You didn't answer it, so I
14 would like you to give me a direct answer. Do you
15 or do you not hold an opinion?

16 A I have not been able to form an opinion
17 without seeing the documentation associated with the
18 windows. Without reviewing the documentation,
19 everything is purely speculative until I see that.

20 Q So you do not hold an opinion as we sit
21 here today as to the fault, if any, of W.C. Johnston
22 Architectural Sales or EFCO related to the
23 installation of non-impact-rated windows or doors in
24 the buildings at Shipwatch?

25 A You can say your same sentence 20 more

1 twice. I'm not going to respond again.

2 BY MR. KELLY:

3 Q Mr. Miller, did you understand my
4 question?

5 A I did. I responded to it twice.

6 Q A few minutes have gone by. Do you need
7 some additional time to consider my question to give
8 me a yes-or-no response?

9 A Yeah, I need to have the documents in
10 front of me for me to review, and then I'll answer
11 your question.

12 Q You need to have documents in front of
13 you to give me an answer as to whether or not you
14 hold an opinion related to those entities?

15 A I cannot provide an opinion until I
16 review the documents.

17 Q I'm not asking you to give me an opinion.
18 I'm asking you to tell me whether or not you have an
19 opinion.

20 A I've not reviewed any documents, so I
21 therefore have no opinion. How's that?

22 Q That is a perfectly fine answer. Thank
23 you.

24 A Thank you.

25 Q Do you have any opinions related to the

1 performance of the EFCO products that are installed
 2 in the Shipwatch buildings?
 3 A I do.
 4 Q What are those opinions, please?
 5 A The EFCO products do not meet impact
 6 resistance and therefore do not meet code.
 7 Q Do you hold any other opinions regarding
 8 the performance of the EFCO products that were
 9 installed or are currently installed at the
 10 Shipwatch buildings?
 11 A That the sliding glass doors were
 12 inadequately fastened. There were no jamb
 13 fasteners.
 14 Q Have you endeavored to assign fault to
 15 anyone for the fact that there are no jamb fasteners
 16 at the EFCO products you have observed at the
 17 Shipwatch buildings?
 18 A I have not assigned blame as of yet.
 19 Q Do you hold any other opinions regarding
 20 the performance of the EFCO products that were
 21 installed in buildings C and D at Shipwatch or
 22 currently installed at buildings A and B at
 23 Shipwatch?
 24 A Since I've not had a chance to review the
 25 file, I am going to reserve that there may be other

1 opinions. But for the time being, I'm going to say
 2 no.
 3 Q Sutton-Kennerly & Associates had water
 4 testing performed at the Shipwatch buildings.
 5 Correct?
 6 A That's correct.
 7 Q Did you supervise the water testing at
 8 the Shipwatch buildings?
 9 A I was aware of all the testing. I didn't
 10 supervise it.
 11 Q Who did supervise the testing?
 12 A I had one of my engineers perform the
 13 testing.
 14 Q Who performed the testing at Shipwatch on
 15 your behalf?
 16 A I don't recall.
 17 Q Who compiled the reports as to whether or
 18 not a test resulted in a failure?
 19 A Who provided the reports?
 20 Q Yes, sir. Who compiled the reports?
 21 A The engineer that did the testing.
 22 Q What was Mr. Isaacs' role in that
 23 process?
 24 A He may have been one of the testers. I
 25 just don't recall. All of that information should

1 be published in my reports.
 2 Q Did any of the water testing performed by
 3 Sutton-Kennerly & Associates at the Shipwatch
 4 buildings reveal failures with the EFCO products?
 5 A I don't believe they did.
 6 Q Are you aware of any failure of EFCO
 7 products that has led to water intrusion at the
 8 Shipwatch buildings?
 9 A Through the actual EFCO units, I am not.
 10 Q When Sutton-Kennerly & Associates first
 11 designed a plan for remediating the issues it found
 12 at buildings C and D at Shipwatch, did it intend to
 13 reuse the EFCO products that were installed in those
 14 buildings?
 15 A That was one of the considerations that
 16 we had, is to reuse those units, yes.
 17 Q When that consideration was I guess still
 18 an option or being considered as an option, did the
 19 scope of work that Sutton-Kennerly & Associates
 20 envision involve removing those windows or doors in
 21 order to fix the other problems surrounding the
 22 windows and doors?
 23 A In that scenario, yes, it was envisioned.
 24 That was one of the options that we looked at, if we
 25 could get the windows and doors grandfathered in

1 and/or approved by the building official.
 2 Q Under that scenario when you're going to
 3 take the windows and doors out of their openings,
 4 were you then going to have to go in and beef up the
 5 surrounds of those openings?
 6 A We were going to have to beef up the
 7 surrounds as well as waterproof the surrounds that
 8 were not done properly.
 9 Q Did I understand you to tell me that you
 10 went to the building official at Isle of Palms and
 11 attempted to grandfather in those EFCO products so
 12 that you could use them?
 13 A To grandfather them in and allow them not
 14 to be impact rated, I tried that, yes.
 15 Q And what was the response from the
 16 building department?
 17 A That that was not acceptable. If it
 18 didn't meet code from an impact-rated standpoint,
 19 they had to come out and be replaced with
 20 code-compliant windows and doors.
 21 Q Did they explain to you why that was not
 22 acceptable?
 23 A Because these windows and doors do not
 24 meet code from an impact performance and they were
 25 not going to allow them in the building.

1 Q Is that the only explanation they gave to
2 you?
3 A Yes.
4 Q Did they indicate whether or not that
5 opinion that they gave to you held true for the
6 windows and doors on floors four and five of the
7 buildings?
8 A That held true for every window and door
9 on the project, yes.
10 Q Did you attempt to have them grandfather
11 in at least the doors on floors four and five even
12 if they wouldn't accept the doors and windows on
13 floors one through three?
14 A Yes.
15 Q Did they not agree to do that?
16 A They did not.
17 Q Did they give you a different explanation
18 as to why they would not accept that?
19 A The same reason.
20 Q So their interpretation of today's code
21 is that the doors on floors four and five had to be
22 impact rated as well?
23 A From small missile impact, yes.
24 Q Do you share that belief?
25 A I'm sorry?

1 Q Do you share that opinion?
2 A I'd have to go back and look at the
3 particular language of 2012 IBC, but I'm pretty sure
4 that's the case.
5 Q Did Sutton-Kennerly & Associates give any
6 consideration to using hurricane shutters or some
7 other method to protect the glass from impact?
8 A That was also mentioned to the building
9 official and denied.
10 Q Was there an explanation as to why that
11 was not going to be permitted?
12 A There was, but I don't recall exactly
13 what it was.
14 Q Were any of those discussions in writing
15 with the building official, or were they all oral?
16 A I don't remember. It seems like I had a
17 confirmation e-mail after my meeting with those
18 guys, but I just can't remember.
19 Q Who were you dealing with at the Isle of
20 Palms building department?
21 A William Seabrook.
22 Q Did you have any discussions with
23 Mr. Seabrook as to how it came to be that there was
24 non-impact-rated products installed in the buildings
25 to begin with?

1 A Did I have a conversation with him as to
2 how I knew that they were not impact rated?
3 Q No, sir. Did you have a conversation
4 with him as to how it came to be that that product
5 was installed in the buildings?
6 A My explanation to him was that we had
7 windows put in during the '02 to 2010 time frame
8 that were not impact rated.
9 Q Did he indicate why that was or how that
10 was permitted if it was permitted?
11 A He didn't know how that got permitted.
12 There was no permit.
13 Q Why do you say there was no permit?
14 A Because he had no record of a permit of
15 that.
16 Q Did you deal with anyone else at the Isle
17 of Palms building department as to whether or not
18 they would permit the EFCO products to be
19 reinstalled?
20 A I did have some conversations with -- I
21 think the guy's name is Doug Carr, Kerr, something
22 like that. It seems like initially I spoke with
23 both of those two gentlemen.
24 Q What was Mr. Carr's or Mr. Kerr's
25 position at the Isle of Palms building department?

1 A I don't have their titles in front of me.
2 Q Did you gain an appreciation as to who
3 was his superior or if they had the equivalent role?
4 A I believe Mr. Kerr or Carr, I think, is
5 the head of that division, and I think Seabrook
6 reports to him.
7 Q Is it one or both of them who told you
8 you could not reuse the product?
9 A I don't remember.
10 Q Was consideration given to reglazing any
11 of the EFCO products with impact-rated glass?
12 A There was thought given to that, yes.
13 Q Tell me what went into that thought. Was
14 that something you were involved in or someone else
15 at Sutton-Kennerly & Associates was involved in?
16 A It seems like we pursued every avenue
17 that we felt that we could to try to keep these
18 windows that were performing from a water-resistant
19 standpoint. They just weren't impact rated.
20 It seems like we looked and talked about
21 switching the glass out and how the glass set or fit
22 into the frame and that the glazing pocket was such
23 that it may or may not facilitate that.
24 But I know there was some research and
25 looking to see what, if anything, could be done to

1 facilitate that.

2 Q Was anyone at EFCO consulted as to
3 whether or not impact glass can be installed in any
4 of the EFCO products at Shipwatch?

5 A I believe there may have been. I believe
6 we contacted somebody with EFCO to discuss that.

7 Q Who was that, please?

8 A I'd have to go back to the file. I don't
9 remember.

10 Q Do you believe that was done via e-mail
11 or phone call?

12 A I don't remember.

13 Q Perhaps we should back up. Was that a
14 phone call or a communication that you recall being
15 involved in, or someone had that communication on
16 your behalf?

17 A I believe it was one of my staff
18 engineers pursuing that for me.

19 Q Who was that staff engineer?

20 A I don't remember.

21 Q Was there any discussion with the
22 building official related to the inability to reuse
23 EFCO products because of how much construction work
24 was going to be performed because of the repairs?

25 A I don't believe that weighed in on his

1 EFCO sliding glass doors on projects very
2 successfully, yes.

3 Q And over the last, say, ten years, can
4 you name the projects you can remember where you've
5 spec'd that product?

6 A I put it on the Windemere condominiums,
7 North Myrtle Beach. I believe I put it on the
8 Harbor Inn condos down in Wrightsville Beach. I'm
9 sure there may be others, but those two come to
10 mind.

11 Q Was Windemere new construction or repair
12 work?

13 A It was a remediation project.

14 Q What was scope of that remediation
15 project?

16 A Very similar to this particular scope:
17 Replacement of the cladding, replacement of the
18 windows and doors, coatings.

19 Q All cladding and all windows and doors?

20 A Yes.

21 Q What about the Harbor Inn condos?

22 A That was -- I think they had kind of a
23 combination sliding glass door with fixed panes on
24 the sides that got replaced, coatings, concrete
25 balcony waffle slab repairs, maybe some handrails.

1 decision.

2 Q Have you been involved in construction or
3 remediation projects where you were able to reuse
4 windows or doors?

5 A I'm sure I have in the 25 years of my
6 career. I just don't remember exactly when or
7 where.

8 Q In those cases where you have, do you
9 recall whether or not there was a percentage of
10 construction work that was important to the building
11 official as to whether or not you could remove or
12 replace windows and doors?

13 A I don't recall. It's typically dictated
14 by the entity with the county that you're actually
15 working with. I just don't remember the specifics
16 of these different projects.

17 Q Are you familiar with the EFCO 3015
18 Series sliding glass door?

19 A Somewhat, yes.

20 Q Have you specified it on projects?

21 A I'm sorry. Say that again.

22 Q Have you specified it on projects that
23 you have designed?

24 A I believe that is the model number. I
25 don't have it in front of me. But I have spec'd

1 Q How long ago was that project done?

2 A Harbor Inn, I think, was in '06.

3 Q When you removed the sliding glass doors
4 in the Harbor Inn condos, was the glass removed from
5 every opening, or was some of the glass left in
6 place?

7 A No. The entire unit got removed and new
8 units put in.

9 Q And that was in every condo unit?

10 A At Harbor Inn, I think there were only 12
11 or 16 units, but yes.

12 Q Have you ever provided a design that
13 involved the installation of new EFCO sliding glass
14 doors where not all sliding glass doors or all
15 windows within a regime were being removed and
16 replaced?

17 A Let me think. Yeah, I think that's
18 happened some. I just don't recall what or where.

19 Q How would I figure out what or where
20 those projects were?

21 A I would have to go back through a list of
22 our projects and figure out -- refresh my memory on
23 projects as I look through the database that would
24 involve windows and doors, and then either remember
25 directly from the name of the project or actually

1 try to find the electronic file and go through the
2 scope of work that was performed.

3 Q Do you keep a list of such projects that
4 you've worked on?

5 A We've got a database of all of our
6 projects since about 1998. I don't know that we
7 have the files for those, but we have a database.
8 Some of those I'll be able to remember once I read
9 through the database.

10 Q I'm just curious if in advance I can get
11 a printed copy of whatever those projects are so
12 that I know how extensive they are, if there's 40 or
13 50 or 100 or whatever the number. I'm not asking
14 you to give me a copy today. I'm just wondering if
15 that's a possibility of something that can be done.

16 A No, not today. Are you looking for
17 projects for SKA or projects that Jeff Miller was
18 involved with?

19 Q Projects that you were involved with.
20 So, for example, on my computer software at our law
21 firm I can search by matters I'm assigned to, and I
22 can look back at, say, a ten-year period and see all
23 of the cases. I'm just curious if you have
24 something similar where you can print a list of the
25 projects that you were involved in over the last ten

1 in the future regarding this case, I'm going to
2 reserve my right to ask you questions about those
3 opinions. As of now, I believe I've asked all the
4 questions I can ask of you today.

EXAMINATION

6 BY MS. FERGUSON:

7 Q Mr. Miller, my name is Katherine
8 Ferguson, and I represent Glasstec. I have been
9 here all day listening to your answers, so I'm fully
10 aware that you haven't had time to fully review your
11 files before today's deposition. So some of my
12 questions to you might seem redundant. I can
13 promise you, I'm not trying to be difficult. I just
14 want to ask you some questions as they pertain to my
15 client. Is that okay?

16 A Sure.

17 Q Are you familiar with Glasstec?

18 A I am.

19 Q Do you know the scope of work that
20 Glasstec performed at the Shipwatch project?

21 A I do not.

22 Q Is that because sitting here today you
23 haven't had time to review your file, or you just
24 have no information with regard to Glasstec?

25 A Well, I believe they put in the majority

1 years that would allow you to more easily look and
2 determine if one of those met the criteria that
3 we've been talking about.

4 A Yeah, our database. I should be able to
5 go through the search engine somehow to narrow down
6 remediation projects if they were coded correctly
7 into the system. And then depending upon what they
8 are, that may tell me -- refresh my memory as to
9 what we did on each of those projects.

10 Q I would like to do that. I can make a
11 formal request if necessary. I can follow up with a
12 letter or e-mail, whatever is most convenient.

13 Does Mike Parker still work at
14 Sutton-Kennerly & Associates?

15 A He does.

16 Q Have you had any contact with Mike about
17 the Shipwatch project?

18 A I have not.

19 Q Have you had any contact with Mike about
20 conversations he had with Linda Jernigan before you
21 became involved in the Shipwatch project?

22 A I don't know what Mike and Linda may have
23 conversed on.

24 MR. KELLY: Mr. Miller,
25 understanding that you may have opinions you reach

1 of the glass on the project from '02 to 2010. But I
2 also believe there may have been some other glass
3 folks that put other pieces in. But I believe they
4 put in the majority of the glass.

5 Q I'll represent to you that the last time
6 they performed work at Shipwatch was in 2002.

7 A Okay.

8 Q So is it fair to say that sitting here
9 today you don't really know the scope of the work
10 performed by Glasstec at the Shipwatch project?

11 A I would say that's true.

12 Q And then sitting here today, do you have
13 any opinion as to the work performed by Glasstec?

14 A Since I don't know specifically what they
15 did, obviously I have no opinion.

16 Q Do you believe that you might have a
17 future opinion as to Glasstec?

18 A I would assume if there are documents
19 available that explain what they did during 2002, I
20 can then form an opinion whether they failed to meet
21 the standard of care in their performance. But I
22 would have to review documents to be able to
23 determine that.

24 Q Have you been able to determine if any
25 damage or any alleged damage in the Shipwatch

1 work that the roofing contractor may have performed,
2 could the repairs related to the roof be made
3 without the unit owners moving out?

4 A Yes.

5 Q And that goes for every component of the
6 roof work?

7 A I would think so.

8 MS. NETTLES: Then I'll pass you on.
9 Thank you so much.

EXAMINATION

10 BY MS. SMITH:

11 Q I have one follow-up question. We were
12 just talking about change order Nos. 1, 2, 3 and 4.
13 When we spoke this morning, you started with No. 2.
14 I just want to clarify. Is there a No. 1?

15 A Yeah, maybe I didn't -- Change order
16 No. 1 is an official document that has been
17 processed. It's an accumulative \$29,000 deduct.
18 And that should be in the file of documents that
19 you-all were given.

20 Change order No. 2 accomplishes something
21 like requests 20 through 40. I'm just guessing.
22 And of that there was an agreed-upon settlement of
23 225. And just needs to be written up by me in the
24 official change order document. But that is a
25

1 buildings, is the fact that those windows and doors
2 are non-impact causing any damage to the building?

3 A In and of itself, I would say no.

4 Q Same question. Prior to the time the
5 windows and doors were removed from buildings C and
6 D, it's my understanding you believe that the
7 windows and doors had non-impact glass. Correct?

8 A That's correct.

9 Q Did the presence of non-impact glass in
10 those windows and doors lead to any damage to
11 buildings C and D?

12 A No damage, fortunately, because we had no
13 hurricane blow through there. But no.

14 Q I think you indirectly answered this, so
15 I want to ask you directly. Do you agree with me
16 that the EFCO window and door products supplied to
17 the Shipwatch project are not defective in design or
18 fabrication?

19 A I think I would make the statement that
20 there was no evidence that those units exhibited
21 leakage during our water testing. I did not see
22 shop drawings of those doors and windows from a
23 design or install standpoint.

24 Obviously, from an install standpoint, if
25 there are no fasteners in the jambs and you've got

1 document that summarizes 20 or so different
2 requests.

3 And then change order No. 3 is something
4 like 43 through 65, and it totals \$57,000 after
5 sitting down with the contractor and working that
6 out. That needs to be an official document. But
7 the dollars and the scope and all the items have
8 been gone through and vetted.

9 Change order No. 4, I'm waiting to get a
10 handful of items that the contractor says is his
11 last request.

12 Q So that change order No. 1 has always
13 been the same?

14 A Yes.

15 MS. SMITH: That's it. Thank you.

EXAMINATION

16 BY MR. KELLY:

17 Q I have two questions and then I'll be
18 done. Before we wrapped up, I wanted to ask a
19 question.

20 A Yes, sir. Go ahead.

21 Q Mr. Miller, just for clarity purposes, I
22 want to make sure I understand a couple of things.

23 The fact that buildings A and B have
24 non-impact windows and doors installed in the
25

1 fasteners in the sill to a member that's not
2 connected to the structural slab mechanically, but
3 the units themselves exhibited no evidence of water
4 intrusion.

5 Q Do the units themselves exhibit any
6 evidence of a defect?

7 A None that I recall.

8 MR. KELLY: Those are all the
9 questions I have. Thank you, sir.

10 MR. ROOT: This is David Root,
11 counsel for BASF, noting on the record that
12 Mr. Miller's deposition was noticed for today,
13 Wednesday, the 27th, and Friday, the 29th, and that
14 defense counsel have agreed to withdraw the notice
15 for the 29th on the basis that Mr. Miller's
16 testimony today has indicated he's not been able to
17 get to a point to render final opinions on a number
18 of issues and won't be able to get to that point
19 tomorrow. So that notice is withdrawn and Friday is
20 open.

21 (End of deposition.)

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 Padgett 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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1 APPEARANCES 2 REPRESENTING THE PLAINTIFFS: 3 R. PATRICK FLYNN, ESQUIRE 4 Robertson, Hollingsworth & Flynn 5 177 Meeting Street, Suite 300 6 Charleston, South Carolina 29401 7 Rpf@roblaw.net 8 REPRESENTING THE DEFENDANTS CAROLINA CONCRETE 9 SYSTEMS: 10 DAVID S. COBB, ESQUIRE 11 Turner Padgett Graham & Lancy 12 40 Calhoun Street, Suite 200 13 Charleston, South Carolina 29401 14 Dcobb@turnerpadgett.com 15 REPRESENTING SISNROY ENGINEERING, LLC, and ROBERT 16 G. SISNROY: 17 TYLER P. WINTON, ESQUIRE 18 Carlock Copeland & Stair 19 40 Calhoun Street, Suite 400 20 Charleston, South Carolina 29401 21 Twinton@carlockcopeland.com 22 REPRESENTING FIRST EXTERIORS, LLC: 23 SAMIA H. NETTLES, ESQUIRE 24 Richardson Plowden & Robinson, P.A. 25 40 Calhoun Street, Suite 220 Charleston, South Carolina 29401 Snettles@richardsonplowden.com J.J. ANDERSON, ESQUIRE Anderson Stephens & Reynolds 37 1/2 Broad Street P.O. Box 87 Charleston, South Carolina 29402 Janderson@arslawsc.com	1 INDEX 2 TESTIMONY OF PETER SHERRATT 3 EXAMINATION BY MR. COBB 5 4 EXAMINATION BY MR. KELLY 93 5 EXAMINATION BY MR. WINTON 142 6 EXAMINATION BY MS. NETTLES 161 7 EXAMINATION BY MR. ROOT 162 8 REPORTER'S CERTIFICATE 167 9 10 INDEX OF EXHIBITS 11 Number Description Page 12 13 Deposition Exhibit No. 183 Peter Sherratt 52 14 PowerPoint presentation 15 Deposition Exhibit No. 184 7/10/06 letter 145 16 from Sisnroy 17 Engineering to 18 Linda Jernigan 19 Deposition Exhibit No. 185 Affidavit of Peter 152 20 Sherratt 21 Deposition Exhibit No. 186 Peter Sherratt 166 22 file (retained by 23 Mr. Flynn) 24 25
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1 REPRESENTING GARY FREEMAN ARCHITECT, INC., and 2 GARY FREEMAN, INDIVIDUALLY: 3 K. MICHAEL BARFIELD, ESQUIRE 4 Barnwell Whaley Patterson & Helms 5 288 Meeting Street, Suite 200 6 Charleston, South Carolina 29401 7 Mbarfield@barnwell-whaley.com 8 REPRESENTING EPCO CORP., INC. and W.C. JOHNSON 9 ARCHITECTURAL SALES, INC.: 10 R. BRITTON KELLY, ESQUIRE 11 Rosen, Rosen & Hagood, LLC 12 151 Meeting Street, Suite 400 13 Charleston, South Carolina 29401 14 Bkelly@rrhlawfirm.com 15 REPRESENTING GLASSTEC, INC. (VIA TELEPHONE): 16 STACEY P. CANADAY, ESQUIRE 17 Tupper, Gimsley & Dean 18 P.O. Box 2055 19 611 Bay Street 20 Beaufort, South Carolina 29901 21 Staceyannaday@ggpa.com 22 REPRESENTING BASF: 23 DAVID A. ROOT, ESQUIRE 24 Kernodle Root & Coleman 25 P.O. Box 13897 Charleston, South Carolina 29422 Droot@kernodelaw.com REPRESENTING CHARLESTON GLASS COMPANY, INC. (VIA TELEPHONE): AMANDA R. MAYBANK, ESQUIRE Maybank Law Firm P.O. Box 12579 Charleston, South Carolina 29422 Amanda@maybanklaw.com REPRESENTING ACROCRETE: ADRIANE BELTON, ESQUIRE Womble Carlyle Sandridge & Rice P.O. Box 999 Charleston, South Carolina 29901	1 STIPULATIONS 2 It is hereby stipulated and agreed by and 3 between the parties hereto, through their 4 respective counsel, that the reading and signing 5 of the transcript is reserved by the Deponent. 6 PETER SHERRATT, SWORN. 7 EXAMINATION 8 BY MR. COBB: 9 Q. Good morning. 10 A. Good morning. 11 Q. When did you first get contacted about 12 Shipwatch? 13 A. Sometime prior to May of 2012. 14 Q. Would it have been calendar year 2012? 15 A. I believe so. 16 Q. And who contacted you? 17 A. That, I don't recall. 18 Q. Was it someone associated with Shipwatch 19 or was it a lawyer? 20 A. That's what I don't recall, whether it 21 was Linda from Shipwatch or whether it was from 22 Pat's office. 23 Q. Had you ever dealt with Linda Jernigan 24 before 2012? 25 A. I don't believe so.

1 photographs are taken looking up adjacent to the
2 flue pipe.

3 Q. And have you done any determination to
4 conclude what -- the source of where the water was
5 getting into the shaft?

6 A. No. SKA has done that.

7 Q. What is your understanding is their
8 conclusion?

9 A. That, I don't know. I would have to go
10 back and look at their report.

11 Q. And you would rely on whatever they
12 concluded as being the issue?

13 A. Yes.

14 THE WITNESS: We're getting close to
15 lunch.

16 MR. COBB: Do you want to eat lunch?

17 THE WITNESS: Yes.

18 MR. COBB: Let's break for lunch.

19 (The deposition went off the record.)

20 BY MR. COBB:

21 Q. I want to finish up and button up a
22 couple of issues and then I'm going pass you. I
23 think by agreement we're going to stop somewhere
24 around 3 or 3:30 today, because we won't finish.

25 When you mentioned earlier about the

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1 Q. Are you aware of any damage, either to
2 the windows themselves or to any components of the
3 windows or the framing?

4 A. No. We would have to go back and look
5 at the SKA photos. I am aware of damage below the
6 bay windows at C and D.

7 Q. Are those the new bay windows or the old
8 bay windows?

9 A. "New" meaning what?

10 Q. "Old" meaning original to the building;
11 "new" meaning replaced at some point in the decade
12 of the 2000's.

13 A. They appear to be at least reflashed in
14 something -- post-original construction.

15 Q. And you've not done any type of water
16 testing?

17 A. No.

18 Q. Do you have any intentions or plans to
19 do any water testing?

20 A. No.

21 Q. What criticisms do you have with regards
22 to the design of the repairs by Sisnroy?

23 A. I don't know if there was a design of
24 the repairs. It seems to me there should have
25 been drawings showing how to install the doors,

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Page 90 1 Wiggins? 2 A. No. 3 Q. Do you have any opinions about Carolina 4 Concrete Systems? 5 A. No. 6 Q. Have you had any conversations with 7 anybody who said they worked with Carolina 8 Concrete Systems? 9 A. Not that I recall. I don't believe so. 10 Q. Have you had any conversations with any 11 of the subcontractors about Shipwatch? 12 A. I've had conversations, but I don't 13 think any of it pertained to Shipwatch. 14 Q. Have you had any conversations with any 15 of the experts identified by any of the Defendants 16 about Shipwatch? 17 A. I've had conversations with the folks 18 from SKA. 19 Q. Other than that? Any of the defense 20 experts? 21 A. No. I mean, other than just some casual 22 conversation when we happened to be on-site at the 23 same time. 24 Q. Have you read any of the depositions 25 that have been taken in this case so far?	Page 92 1 mentioned, the window was made larger. I wasn't 2 in that loop as to why it was. So there's 3 definitely something different there. And I 4 believe whatever is happening with the roof, that 5 was a separate contract, meaning with Glasgow (ph) 6 and the homeowners. 7 Q. What is actually being done with the 8 roof? Is the roof being replaced? 9 A. I believe so. But that needs to be 10 confirmed. I've not been involved in that portion 11 of the work. 12 Q. With regards to the length of time for 13 the repairs, have you done any type of analysis to 14 figure out whether or not it's been staffed 15 correctly or sequenced in a way that's optimal? 16 A. No. 17 Q. What are you going to do with regards to 18 the Shipwatch litigation moving forward? 19 MR. FLYNN: Object to the form. 20 A. I'm going to probably go to the site, 21 take more pictures, meaning of A and B, while that 22 work is going on, and I'll review whatever data is 23 provided to me. And I'm sure there will be other 24 things, but I don't have a list right now. 25 MR. COBB: That's all the questions I
Page 91 1 A. No. 2 Q. With regards to the repairs that were 3 done in 2013 and the repairs that are being done 4 now, did you have any role in either coming up 5 with the scope, coming up with the repair 6 methodologies, any role in that? 7 A. No. 8 Q. Based on what you know, would you 9 concede that some of the repairs that are being 10 done to the buildings are outside of the 11 responsibility of any of these Defendants? 12 MR. FLYNN: Object to the form. 13 A. I'm not aware of the full extent of the 14 work that's in the SKA contract. I know there's 15 been some minor changes, such as the bay windows, 16 meaning the size of the glass panels. And there 17 was some work done with regard to the storefront 18 systems at the elevators, and that may be outside 19 the scope of what Carolina Concrete was asked to 20 do. But I don't know the details of those things. 21 Q. Would you concede that there are 22 betterments and upgrades being done on the 23 repairs? 24 A. Not on the exterior wall envelope 25 repairs. On some of the others, as I just	Page 93 1 have for you right now. I'll pass you down 2 the road. 3 THE WITNESS: Thank you. 4 EXAMINATION 5 BY MR. KELLY: 6 Q. Mr. Sherratt, my name is Britt Kelly. 7 I'm going to ask you a number of questions today 8 related to your investigation and your 9 observations at Shipwatch. Most of them will not 10 have been asked or answered yet, but if I ask you 11 a question you've already been asked, I apologize 12 in advance. Have you done any personal 13 investigation as to the performance of the EFCO 14 doors at Shipwatch? 15 A. I have read some historic data, and 16 there were some questions raised as to whether the 17 products from EFCO met the current building code 18 that was appropriate at the time of installation 19 and also whether the units met the DP rating. I 20 think there were actually two products. There 21 were doors and there were fixed glass. 22 Q. What is your understanding -- I didn't 23 mean to cut you off. If you're not finished, 24 please continue. 25 A. Go ahead.

24 (Pages 90 to 93)

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Page 94 1 Q. What is your understanding as to when 2 the EFCO door products were installed at 3 Shipwatch? 4 A. Sometime after June of 2001. 5 Q. Do you have any more specific 6 recollection as to when the doors and how many 7 doors were replaced with EFCO products at 8 Shipwatch? 9 A. I think earlier today we looked at a 10 document, and I believe it said 72 or 75 at that 11 time. 12 Q. How many sliding glass doors are at the 13 Shipwatch buildings? 14 A. I don't have that count. 15 Q. Do you agree with me that it's more than 16 72? 17 A. Yes. 18 Q. Other than the 72 that were replaced at 19 some point in the early 2000's, do you know 20 whether any other EFCO doors were installed at the 21 Shipwatch buildings? 22 A. I don't know that. 23 Q. Have you done any investigation on your 24 own as to the performance of those EFCO doors as 25 it relates to water intrusion through or around	Page 96 1 A. The windows that are somewhat adjacent 2 to the sliding glass doors of the Carolina room or 3 the master bedroom. 4 Q. So it's fixed glass? 5 A. Yes, sir. 6 Q. Do you know when -- do you know how many 7 units received EFCO fixed glass windows on the 8 ocean side? 9 A. No. I have limited information on the 10 EFCO product. What would be good to look at is 11 the installation instructions from EFCO. 12 Q. But you haven't looked at those? 13 A. I haven't located them. If you happen 14 to have them, I would be happy to look at them. 15 Q. Besides any water intrusion analysis, 16 have you performed any investigation as to whether 17 there are any performance problems with those EFCO 18 doors -- excuse me -- EFCO fixed windows that we 19 were just talking about? 20 A. I don't know about the fixed windows. 21 There was some correspondence from Mr. Freeman 22 that the doors, in his opinion, didn't meet the 23 applicable building code. And in reading that 24 information, it seemed to be that he tried to 25 obtain that information from either the
Page 95 1 the doors? 2 A. I have found damage to the wall system 3 around the doors. I cannot tell you anything 4 about whether the door itself has been damaged. 5 Q. Do you hold any opinions as to whether 6 the EFCO doors that were installed at some point 7 in the early 2000's leak as a product itself? 8 A. No. I did not do water testing. That 9 was done by SKA, so it's a better question for 10 Jeff Miller. 11 Q. Any questions I have about whether or 12 not EFCO doors leak can be directed better to SKA? 13 A. Yes. With regard to the product. 14 Q. Yes, sir. Thank you. A similar line of 15 questions, have you done any independent 16 investigation as to whether any of the EFCO 17 windows installed at the Shipwatch project leak as 18 a product itself? 19 A. No. 20 Q. Do you know whether any EFCO windows are 21 installed at Shipwatch? 22 A. Only from what I can read in the 23 historic data. 24 Q. What do you understand to be EFCO 25 windows that are installed at Shipwatch?	Page 97 1 distributor or the factory. And some of the 2 information is that there was a response about -- 3 that -- whichever the product was only had a 4 rating, I think, of 30, when the code was a 5 substantially higher number. But I would have to 6 go back and read that information. 7 Q. Can you try to find that, please? 8 A. There were two documents, from Gary 9 Freeman to Bob Wiggins on one, and to Linda on the 10 other one. The one to Mr. Wiggins was November 3, 11 2010, and to Linda it was November 12, 2010. And 12 they're discussing the design of the product, and 13 they're also referencing the fixed glass. I'll 14 let you look at them. 15 Q. Thank you. I have those in front of me. 16 MR. ANDERSON: Have those been marked? 17 MR. KELLY: The November 3rd e-mail is 18 Exhibit 129, and the November 12th e-mail is 19 Exhibit 133. 20 Q. And I understood your last answer to 21 tell me that someone from EFCO said that their 22 product only had a 30 PSF rating -- or a 30 DP 23 rating? 24 A. Right. The letter says 30 PSF, yes. 25 Q. Do you see anyone from EFCO or W.C.

25 (Pages 94 to 97)

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Page 98 1 Johnson who are listed anywhere on Exhibit 129 or 2 Exhibit 133? 3 A. I just see the name Mr. Broadway. 4 Q. Do you know who Mr. Broadway is? 5 A. No. 6 Q. Do you know if he's an engineer that was 7 retained by either Randy Morgan of Charleston 8 Glass or Lynn Jernigan to do the analysis of those 9 EFCO products? 10 MR. FLYNN: Object to the form. 11 A. What I can read here, that Mr. Broadway 12 did some analysis based on information that a 13 Randy gave him. I don't know who the Randy is. 14 And they were talking about DP ratings or the PSF, 15 and there seemed to be a conflict of whether the 16 appropriate information was given to Broadway from 17 Randy. 18 Q. But you don't know who Randy is, right? 19 A. Not right now, no. 20 Q. And you don't know who Mr. Broadway is? 21 A. Not in detail. Apparently, he did some 22 analysis, but that's the extent of it. 23 Q. Do you have any document to show me that 24 someone from EFCO or W.C. Johnson said, Our 25 product only has a DP rating of 30?	Page 100 1 A. Well, I was called from the property 2 manager. 3 Q. Is it in litigation? 4 A. No. 5 Q. Do you remember the name of the property 6 manager? 7 A. It was Kuester Management, Phil McLeod. 8 Q. What was the issue you were asked to 9 look at by Phil McLeod? 10 A. There were leaks in and around the 11 windows. And the windows -- a sample window or 12 two were removed to see how the installation was 13 as it related to the wall cladding system that was 14 also installed by Baldwin Construction. 15 Q. What did you find? 16 A. The findings were that the leak was not 17 caused by the product. There was an installation 18 problem at the termination of the wall cladding 19 system and the roofing system. 20 Q. Do you know what type of EFCO product 21 that was that you were looking at? 22 A. I don't have the model number, no. 23 Q. Was it a window or a door? 24 A. It was a window. 25 Q. Fixed or operable?
Page 99 1 A. I don't know who at EFCO that Mr. 2 Freeman tried to contact. 3 Q. So you don't have any information to 4 share with me that someone from EFCO told any of 5 the folks involved in these e-mails that their 6 product had a DP rating of 30; is that correct? 7 A. That would be correct. 8 Q. Do you know who W.C. Johnson 9 Architectural Sales is? 10 A. No. 11 Q. Do you know who EFCO is? 12 A. I know the name is a window 13 manufacturer, yes. 14 Q. Have you ever specified EFCO products on 15 any job that you've designed? 16 A. No. I looked at an EFCO window project 17 in Myrtle Beach within the past year or so. But 18 that's my extent of it. 19 Q. What job is that? 20 A. As soon as I think of it, I'll give it 21 to you. 22 Q. Who were you engaged by? 23 A. By the homeowners. 24 Q. Who is the lawyer working for the 25 homeowners?	Page 101 1 A. Operable. 2 Q. Did you make any recommendations in 3 relationship to the use or reuse of that 4 particular window? 5 A. No. The source of the water was 6 identified. The source of the water intrusion was 7 identified, and I made recommendations of what 8 needed to be done to fix it and left that with the 9 property manager and the owners association. 10 Q. What were your recommendations, in 11 general terms? 12 A. The roof-to-wall intersection had to be 13 reflashed, because there were three planes that 14 came together. There was a sloped roof, a 15 vertical wall above and below the drip line and 16 flanking the drip line. So there was work that 17 had to be involved in the roofing and its related 18 flashing and how it was counter-flashed over the 19 wall system. 20 Q. Did your recommendation call for the 21 reuse of the EFCO operable window? 22 A. They were reused. 23 Q. Do you know when those EFCO windows were 24 originally installed at that project? 25 A. Well, it was a repair. I would say

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1 within the last two years or so.
2 Q. So I understand it correctly, so the
3 buildings underwent a repair in which the EFCO
4 product was installed?

5 A. Correct.

6 Q. And you were called out within the last
7 year, which was about roughly a year after the
8 installation of the EFCO product, to look at the
9 product to determine what was causing the leak?

10 A. Yes. The time frame may adjust a little
11 bit but somewhere in there.

12 Q. So do you know whether or not you've
13 ever specified, other than that project, perhaps,
14 the use of an EFCO product on any project?

15 A. I don't recall. It could have been in
16 the past. I know it was not within the past three
17 or four years.

18 Q. The 72 doors we were talking about that
19 were installed in early 2000, is it your
20 understanding that those doors were installed in
21 the master bedroom opening for each unit on floors
22 1 through 3 of all four buildings?

23 A. I don't know if it was the master
24 bedroom and/or the Carolina room.

25 Q. Just so we're clear, what are you

1 installed only at the master bedroom doors of
2 floors 1 through 3 or whether they were installed
3 at the living room area?

4 A. No. I don't know when the other doors
5 were installed. But if you go in the field, there
6 are doors to the living room that are not vintage
7 1985.

8 Q. Did you find any doors in the living
9 rooms on floors 1 through 3 of buildings A, B, C
10 or D that were EFCO product?

11 A. I didn't look for the product
12 identification. So that part I can't tell you. I
13 can tell you that they were newer doors.

14 Q. Would you agree with me that in a number
15 of the units, when those EFCO doors were replaced,
16 wherever they were on the unit, in the early
17 2000s, that the rest of the glass on the
18 oceanfront remained original or prior to the 2004
19 installation?

20 A. That part I don't know. I don't know
21 when the -- we'll call them sidelights. They're
22 not true sidelights, but the fixed glass, when
23 that went in. And there are areas where there are
24 doors -- new doors, meaning new after 1985, if we
25 just use that as original construction, give or

1 referring to as the "Carolina room"?

2 A. Call it the living room.

3 Q. Well, if you need to take time to look
4 at any documents, that's fine. But from looking
5 at it -- at the building, would you agree with me
6 that there are 72 openings that are associated
7 with the master bedroom on floors 1 through 3 of
8 the four buildings?

9 A. It's whatever the math is. I mean, I'm
10 not disputing the number.

11 Q. Well, it's important for my next
12 question, so I'm going to need -- you've got some
13 plans sitting around here, I think.

14 MR. FLYNN: It's kind of small.

15 MR. KELLY: Off the record.

16 (The deposition went off the record.)

17 THE WITNESS:

18 A. It looks like there's six per floor. So
19 that math would get you 72.

20 Q. Six per floor, three floors per
21 building, four buildings, comes to 72, right?

22 A. Yes.

23 Q. You're telling me you don't know from
24 your review of the documentation supplied to you
25 by Mr. Flynn or Ms. Jernigan whether those 72 were

1 take a couple of years, that are in the living
2 room areas.

3 Q. Do you agree with me that there's at
4 least one unit on each building that when the EFCO
5 doors were installed in 2003 or 2004, whenever it
6 was, still had glass from prior to 1995 installed
7 in either the door or the fixed glass on the
8 oceanfront side?

9 A. That part I don't have information to
10 give you an answer on.

11 Q. Based on your investigation, your
12 observations, you can't tell me whether any of
13 those units had glass in them that predated 1995?

14 A. 1995?

15 Q. Yes, sir.

16 A. There were some original doors. If
17 we're talking -- I use the terminology the 1985
18 doors.

19 Q. That's fine.

20 A. But we're talking about the same
21 vintage; is that correct?

22 Q. The reason I used 1995 is because I
23 don't want to discount the possibility that after
24 Hugo, perhaps one door or one window was replaced
25 with some other piece of glass. So that's why I

Page 106 1 use the 1995 versus 1985. 2 A. There are some doors that are an older 3 vintage than what was installed in the 2000 era. 4 Q. Okay. And were those doors -- did they 5 contain impact glass? 6 A. No. 7 Q. Do you see other fixed windows that were 8 installed at Shipwatch prior to the 2000s that did 9 not contain impact glass? 10 A. I did not survey that. 11 Q. But you don't recall, just from looking 12 at the product, whether or not there was impact 13 glass or not impact glass? 14 A. I know there were some windows on the 15 walkway side that were not impact. But as far as 16 the fixed glass sections, I didn't survey that. I 17 can go out in the field and look. 18 Q. What is the purpose of impact glass? 19 A. It's a requirement similar to a shutter, 20 to keep projectiles from going through it and then 21 allowing the force of the wind to the interior of 22 the building. 23 Q. Why is the force of the wind to the 24 interior of the building important? 25 A. It creates a better structure for	Page 108 1 nonimpact glazing? 2 A. The building code. 3 Q. What about the building code? 4 A. The building code, as Mr. Freeman read 5 it, that was applicable at the time, required 6 either shutters or impact glass. 7 Q. Well, Mr. Freeman was reading a code 8 that was in effect in 2010, correct? You can have 9 my copy. 10 A. Can I see the other one? 11 Q. Yes. 12 A. The date of his memo, yes, is 2010. He 13 was talking about buildings A and B of the current 14 building code. 15 Q. Unfortunately, we don't have any e-mails 16 from him or any other architects or engineers from 17 the 2003 or 2004 time period like this, right? 18 A. You may. I don't. 19 Q. If I did, I promise you I would show 20 them to you. So the building code Mr. Freeman was 21 talking about in 2010 very well could be a 22 different building code than you're saying the 23 contractors had to adhere to in 2003 or 2004, 24 correct? 25 A. I don't believe so.
Page 107 1 resistance to the hurricane winds. If you allow 2 the force of the wind in, the wind is going to be 3 looking for a place to get out, and then it's 4 going to basically explode the opposite wall. 5 Q. So in the early 2000 time frame, when 6 some of this new EFCO product was being installed, 7 the 72 doors we talked about, there would have 8 been a number of openings at Shipwatch that would 9 have contained glazing that was not 10 impact-resistant, correct? 11 A. There would have been some, yes. 12 Q. That nonimpact-resistant glazing, that 13 was either original to the building or at least 14 predated the 2000 work, could be blown out by 15 wind-blown debris, correct? 16 A. Yes, it could. 17 Q. And when that product got blown out, the 18 forces that you're talking about that would be 19 imposed on the building would be imposed because 20 that product was blown out, correct? 21 A. That's correct so far. 22 Q. So what difference does it make if the 23 product that was installed in the early 2000's, 24 the EFCO product, was impact or nonimpact if the 25 -- a number of other windows and doors contained	Page 109 1 Q. Why not? 2 A. Just from my experience. Once it 3 changed to the IBC, there were drastic changes 4 from the '97 version and the adoption of the 2000 5 code we talked about earlier this morning. There 6 have been some minor changes, but I don't believe 7 the changes applied to the missile test. 8 Q. So you think the 2000, the 2003 and the 9 2006 International Building Codes would be the 10 same as it relates to impact-resistant glass? 11 A. Or very similar. 12 Q. Do you know -- or have you seen any 13 documents to show you what Carolina Concrete or 14 the window installer ordered in terms of window 15 and door products? 16 A. There was some reference to that in the 17 two documents you just had. 18 Q. Okay. Do you want to see those again? 19 A. Yes. Thank you. In the letter of 20 Freeman to Jernigan of November 12, 2010, in the 21 first paragraph, there's reference to two 22 different EFCO systems as it pertains to the size 23 of the structure, meaning the frame of the unit. 24 And in just reading the words, according to EFCO, 25 the system that they manufactured that has been

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Page 110 1 tested to meet the impact requirements is the 2 system S526 system. The size of the S526 frame 3 member is five-by-two-and-a-half. The size of the 4 frames that are being used at Shipwatch are 5 four-and-a-half-by-two in size. 6 That's the extent of where apparently 7 there's a difference in the product that was made 8 for impact glass versus nonimpact. 9 Q. Are you inferring something from that as 10 to what was actually ordered from EFCO? 11 A. The ordering part, I don't think I have 12 information on it. I don't recall seeing an order 13 sheet. 14 Q. In fairness, you have not been produced 15 documents from EFCO, correct? You have not been 16 provided documents -- 17 A. No. That's what I would like to see, 18 because I also would like to see the attachment 19 requirements. 20 Q. You have not been provided documents 21 produced by W.C. Johnson Architectural Sales in 22 this case? 23 A. I have not. 24 Q. Have you been produced documents or 25 provided documents produced by Charleston Glass	Page 112 1 buildings? 2 A. It only references 4, but those are the 3 townhouse configuration, and the guest bedroom is 4 on the -- call it the back side or the walkway 5 side of the building. 6 Q. Okay. 7 A. So that seems to substantiate GBR 8 meaning guest bedroom. 9 Q. Does that help you understand anything 10 about what was actually ordered from W.C. Johnson? 11 A. Not ordered. But we've been talking 12 about 72 of them. It seemed that there was more 13 ultimately done at the project. 14 Q. That's a good segue. Exhibit 132 is a 15 document that we marked previously in Ms. 16 Jernigan's deposition. 17 A. Okay. 18 Q. Have you seen that document before? 19 A. That, I don't know. I've seen reference 20 to this vista wall before there. 21 Q. In reviewing that document, do you gain 22 the impression that Randy Morgan and Charleston 23 Glass knew they were purchasing a nonimpact 24 product for use at the Shipwatch project? 25 A. Yes.
Page 111 1 Company? 2 A. No. 3 Q. So you haven't seen the order forms from 4 Charleston Glass to W.C. Johnson? 5 A. I have seen some documentation, but I 6 don't recall seeing the order form. 7 Q. I'm going to hand you what we've marked 8 as -- unless you need to keep looking; that's 9 fine. 10 A. I'm looking at a chart that was provided 11 to me as to a sliding glass -- sliding doors 12 replaced at Shipwatch, and it goes through 13 buildings A, B, C and D. And it looks like all of 14 the master bedroom sliders were replaced between 15 '08 and 2011. But there were living room sliders, 16 or the Carolina room, whatever we want to call it, 17 that were replaced in buildings A, B and D. And 18 they have a reference, GBR -- whether that means 19 guest bedroom -- and that part I don't know what 20 -- but that might be a reasonable guess. And it 21 shows replacement in years '08 through '11. So 22 that would be more than the 72 that we talked 23 about. 24 Q. It would have been. And those are 25 limited to floors 4 and 5, right, on the five	Page 113 1 Q. Do you have any information to share 2 with me otherwise, that the people purchasing the 3 product from EFCO or W.C. Johnson did not 4 understand they were purchasing nonimpact glazing 5 products? 6 A. No. Based on that document, they were 7 purchasing it. But they were also referencing the 8 '97 code in 2010, if I'm not mistaken. Is that 9 the date on the letter? 10 Q. I believe that's right. 11 A. Yes, sir. November 11, 2010. 12 Q. In 2010, is it your understanding of the 13 building code that you could still use a 14 nonimpact-rated product as long as you had 15 shutters? 16 A. You could have appropriate storm 17 shutters, yes. 18 Q. Are you critical of EFCO or W.C. Johnson 19 Architectural Sales for selling their customer 20 nonimpact-rated glazing products? 21 A. If they're basing it on the '97 code, 22 yes. 23 Q. If who is basing it on the 1997 code? 24 A. The author of that document we just 25 read.

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Page 114 1 Q. Do you have any information to share 2 with me that W.C. Johnson Architectural Sales or 3 EFCO had any idea as to what building code 4 applied? 5 A. Clearly, the local distributor should 6 know what building code was applicable. 7 Q. Do you know where W.C. Johnson 8 Architectural Sales is located? 9 A. No. 10 Q. Why do you say, clearly a local 11 distributor should know that? 12 A. Because he knows exactly where the 13 product is going. There could be an argument from 14 a manufacturer that says, we make windows for all 15 over the U.S., just as an example, and we don't 16 know where it ends up. And there may be some 17 argument there that local codes are different in 18 other areas of the country. 19 Q. You told us today that you don't know 20 what the 2000 building code says without looking 21 at it, right? 22 A. No. I need to refer back to it. 23 Q. You don't know what the 2003 building 24 code says without looking at it? 25 A. Same thing.	Page 116 1 A. I don't think you put the caveat of 2 construction litigation. I would agree that there 3 are architects in other areas of the country that 4 may not be familiar with the requirements of the 5 International Building Code because they may 6 operate under some other code or they don't even 7 have a code in that municipality. 8 Q. A building department official can give 9 a variance for a code or applicability of certain 10 sections of the code, correct? 11 A. Yes. 12 Q. How would a distributor of product know 13 whether a building department official has given a 14 variance to a contractor or not? 15 MR. FLYNN: Object to the form. 16 A. The distributor may not know, but you 17 had asked the question as to what the requirements 18 are from the person placing the order, which, in 19 this case, it looks like it's the general 20 contractor. 21 Q. Have you ever worked for a window or 22 door distributor? 23 A. No. 24 Q. Have you ever worked for a product 25 distributor?
Page 115 1 Q. The same with 2006? 2 A. Yes. 3 Q. You're a licensed architect? 4 A. Yes. 5 Q. And there are Registered Professional 6 Engineers out there that can't tell you what the 7 code says without looking at it, right? 8 A. You said, are there? 9 Q. Yes. 10 A. Yes. I would think everybody would want 11 to go back and look at the particular section. 12 Q. In fact, there are engineers and 13 architects out there who can look at it and not 14 tell you what it actually says, in relationship to 15 impact-resistant glass or DP ratings, correct? 16 MR. FLYNN: Object to the form. 17 A. And not tell you? 18 Q. Right. 19 A. I don't understand the question. 20 Q. There are architects and engineers who 21 aren't as familiar with what the DP rating 22 requirements are and the impact-resistant glass 23 requirements as perhaps those who are commonly 24 involved in construction litigation; would you 25 agree with that.	Page 117 1 A. No. 2 Q. Have you ever owned a company that is in 3 the business of distributing products? 4 A. No. 5 Q. Are you going to be able to quote me a 6 source that says a duty exists for a distributor 7 of a product to know what building code is in 8 effect for a certain time period and a certain 9 installation method? 10 MR. FLYNN: Object to the form. 11 A. It's my opinion they should know. 12 Q. Why do you hold that opinion? 13 A. If that's not valid, how would they 14 order the correct product when there are different 15 product lines? 16 Q. Do you hold that opinion because you've 17 read that in some peer-reviewed publication? 18 A. No. 19 Q. Do you hold that opinion because someone 20 in the industry has indicated to you that's the 21 way it's done? 22 A. I don't hold that, but that circumstance 23 has taken place, yes. 24 Q. So is there some source that you believe 25 I can reference to tell me that a duty exists for

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Page 118 1 a product manufacturer or distributor to know what 2 building code is in effect for a certain time 3 period for a certain application method? 4 A. I don't know if there's a written 5 document. What I can tell you, there are other 6 window distributors that do that research before 7 the order is placed in the coastal environment. 8 Q. In 2010, Linda Jernigan was the property 9 manager for Shipwatch, right? 10 A. I believe so. 11 Q. And she was told that the product she 12 was getting for installation in 2010 contained 13 nonimpact glass, right? 14 MR. FLYNN: Object to the form. 15 A. That's what the document says. If 16 that's the same one we just referenced. 17 Q. Yes, sir. Look at it if you need to. 18 It's Exhibit 133. That's something you looked at; 19 it's in your file, right, Exhibit 133? 20 A. Not with the stamp on it. But I believe 21 the document is. 22 Q. The e-mail is in your file? You 23 referenced it earlier, right? 24 A. Yes. 25 Q. That's something you considered in	Page 120 1 MR. FLYNN: Object to the form. 2 A. I don't understand the question. It 3 seems there's two questions there. 4 Q. We'll try it again. Do you agree with 5 me that a customer has the right to determine 6 whether to purchase impact- or nonimpact-rated 7 glazing? 8 MR. FLYNN: Object to the form. 9 A. No. No. Because the customer could be 10 a layperson and not involved in these type things. 11 They need to rely on some professional to tell 12 them or the distributor that's providing the 13 product to the area. 14 Q. Is a contractor a sophisticated -- 15 excuse me -- is a window installation contractor a 16 sophisticated business entity? 17 A. It should be. 18 Q. That would be familiar with what 19 building codes may apply to the installation of 20 glazing and window products? 21 A. They should be. 22 Q. Would you agree with me that the EFCO 23 products applied at the project are not defective? 24 A. No. Because, in my opinion, they should 25 have impact glass.
Page 119 1 forming your opinions in this case, right? 2 A. I don't disagree with you of what's in 3 paragraph No. 1, with the content of the e-mail. 4 Q. It says, "The aluminum storefront 5 glazing system that has been installed at 6 oceanfront window openings of the first three 7 floors of buildings A and B does not meet the 8 current building code requirements for 9 impact-resistant systems"? 10 A. That's correct. 11 Q. And Shipwatch and Ms. Jernigan did not 12 reject these windows that were installed at 13 Shipwatch in 2010? 14 MR. FLYNN: Object to the form. 15 A. I don't know about that. I don't know 16 what discussion has happened after that letter. 17 Q. You know those windows are still in 18 place out there, right? 19 A. Right. But I don't know any other 20 discussion about it. 21 Q. Well, in 2010, Ms. Jernigan is told that 22 the product is nonimpact. Do you agree with me 23 that a customer has a right to make its own 24 decision as to whether to purchase nonimpact or 25 impact-rated products?	Page 121 1 Q. Is there anything wrong with the product 2 itself, if the building code that's in effect is 3 the 1997 Standard Building Code? 4 A. If we set aside the glass to answer your 5 question? 6 MR. FLYNN: Object to the form. 7 Q. No. If the 1997 Standard Building Code 8 was in effect at the time all the EFCO product was 9 installed, is there anything defective about the 10 EFCO product that was installed at the Shipwatch 11 project? 12 MR. FLYNN: Same. 13 Q. You understand -- 14 A. I can't answer that until I go back and 15 confirm with the '97 code. 16 Q. I'm not asking you to agree or disagree 17 which code is in effect. I'm asking you to assume 18 that the 1997 Standard Building Code was in effect 19 at the time the EFCO products were installed at 20 Shipwatch; assuming that -- realizing you can 21 disagree with that assertion later -- assuming 22 that to be the case, is there anything defective 23 with the EFCO products that were installed at 24 Shipwatch in the 2000s? 25 A. That, again, I can't answer it until I

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Page 122 1 go back and reread the requirements in the '97. 2 Q. I follow you. So you're not sure 3 whether the 1997 Standard Building Code permitted 4 the use of nonimpact glass? 5 A. I believe the '97 did, but before I can 6 answer your question, I want to go back and read 7 the appropriate sections. 8 Q. Which sections? What in general? 9 A. As to the requirement for shutters or 10 impact glass. 11 Q. Do you have any information to share 12 with me that W.C. Johnson Architectural Sales or 13 EFCO told the contractors or the owner that they 14 can't use shutters at Shipwatch? 15 A. I have no information on that. From a 16 code standpoint, you could use an appropriate 17 shutter. 18 Q. The fact that the EFCO product was 19 nonimpact-rated doesn't make it defective if you 20 use shutters, right? 21 A. That part would be correct. 22 Q. So you could take the EFCO products that 23 were installed at Shipwatch and use shutters, and 24 your opinion would be that the EFCO products are 25 not defective?	Page 124 1 -- to come to a conclusion as to what their duty 2 was or was not? 3 A. One would hope that if they're selling a 4 widget -- we'll do this hypothetically -- that if 5 a distributor is selling a widget, that he is 6 instructed by the manufacturer how the widget 7 should be installed so that can be passed on to 8 the distributor's client. And the pros and cons 9 of the product, meaning what can it perform? So 10 there is some education. I don't think there's -- 11 that that education goes down to possibly the 12 mechanic in the field or the warehouse personnel. 13 But somewhere in that organization, that 14 information has to come from the manufacturer to 15 the person who is wholesaling it so it can be 16 passed on to the retail customer. 17 Q. Do you have any information to share as 18 to whether W.C. Johnson Architectural Sales or 19 EFCO recommended or suggested the use of the 20 products that are incorporated at Shipwatch? 21 A. I don't know who recommended the 22 product. From my information, the product, 23 though, that was shipped to the job, in my 24 opinion, did not comply and does not comply with 25 the applicable code at the time.
Page 123 1 A. Based on the information that I have on 2 the product, that part would be correct. 3 Q. So your opinion is really that the 4 application of the product was an error and not 5 the product itself? 6 MR. FLYNN: Object to the form. 7 A. The product, as installed, is defective. 8 If you talk about the application, then clearly 9 the distributor should have known where the 10 product was going. 11 Q. What is your basis for that statement? 12 A. Just using your question. 13 Q. I'm not sure I follow that. 14 THE WITNESS: Read the question back. 15 THE COURT REPORTER: "So your opinion is 16 really that the application of the product was 17 an error and not the product itself?" 18 A. And that's where I'm saying the 19 distributor should have known what the application 20 was, where it was going. 21 Q. Do you know anything about the 22 education, training or experience of the employees 23 of W.C. Johnson Architectural Sales? 24 A. I do not. 25 Q. Don't you think that's relevant upon a	Page 125 1 Q. And you agree with me that if Charleston 2 Glass and Carolina Concrete knew they were 3 purchasing nonimpact-rated product, then EFCO has 4 no responsibility to provide them anything other 5 than what was ordered? 6 MR. FLYNN: Object to the form. 7 A. I think you left out the distributor, 8 though, right? 9 Q. Yes, sir, intentionally. I understand 10 your opinion on that. I was trying to move on. 11 A. I think the information trail goes right 12 down the line, just as I was trying to explain to 13 you in the hypothetical situation. It's got to 14 come from the entity that produces the widget all 15 the way down to the retail customer, which, in 16 this case, would be whoever is installing the 17 product. 18 Q. I thought a minute ago you told me that 19 you thought the case could be made for a 20 manufacturer had no responsibility to know what 21 code was in effect at the time his product was 22 installed in the field. 23 A. No. We're now talking about the product 24 itself, what it can do. That's the way I read 25 your question.

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Page 126 1 Q. Okay. 2 A. Meaning if you make a window product, 3 just hypothetically, and you only make nonimpact 4 product, you ought to know that in a coastal 5 environment the impact product is required. I've 6 run across that with other manufacturers that come 7 into continuing ed programs and, you know, they 8 have a great product but it's not code-compliant. 9 They ought to know that before they go to sell it 10 into a product or some of the products you see 11 marketed from Window World. They ought to know 12 that their product is not code-compliant. 13 Q. Well, specifically looking at this case, 14 EFCO made impact-rated products. Right? 15 A. That's what it appears to be, yes. 16 Q. A customer could have purchased 17 impact-rated products or nonimpact-rated products? 18 A. The customer being the distributor? 19 Q. The customer being the window installer. 20 A. Yes. 21 Q. And you agreed with me a minute ago that 22 the window installer knew it was purchasing 23 nonimpact-rated products? 24 A. Yes. 25 Q. Is it your opinion that EFCO did nothing	Page 128 1 A. That's not what this is referring to, I 2 don't believe. 3 Q. Right. 4 A. This is talking about the design 5 pressure and if there's stiffener components that 6 are required. My point being, there was some 7 discussion going on, at least at 12/29/08, about 8 what are the requirements of the EFCO product? 9 What requirements do they need to meet? 10 Q. Well, there's a question about the 11 design pressure, right? 12 A. That's a question. 13 Q. That's the only question? 14 MR. FLYNN: Object to the form. 15 Q. Is there something on there that talks 16 about impact glass or nonimpact glass? 17 A. No. 18 Q. Is there anything on there that talks 19 about what building code is in effect? 20 A. No. My point being that there was a 21 dialogue going on between the manufacturer and the 22 sales company, and this was back in '08. 23 Q. About how to assemble the product? 24 A. More how the manufacturer needed to 25 design and construct the product.
Page 127 1 wrong in supplying nonimpact-rated products if its 2 customer intentionally purchased nonimpact-rated 3 products? 4 MR. FLYNN: Object to the form. 5 A. No, I don't. If you look at the 6 document from Shannon Andrews, who is a project 7 manager at EFCO, which is a Pella company, and it 8 appears that it went to james@wcjsales.com, and 9 Pella or EFCO is saying Shipwatch, and she goes on 10 to say, "I need to know the design pressure on 11 this to determine the length of the stiffener and 12 if steel is required. We have priced it that way 13 based off of the made-up design pressure used on 14 the quote" -- or it reads "quote takeoff," I'm 15 sorry. "Now we're actually going to build 16 something. I'm going to need a real number." So 17 there was some discussion from the manufacturer, 18 at least down to James at WCJ Sales. 19 Q. As to design pressure? 20 A. Well, as to the design pressure, but, 21 more importantly, how the window was to be built. 22 Q. There's no discussion as to whether -- 23 what code is in effect because we need to know 24 whether to build those as nonimpact or impact 25 glazing, right?	Page 129 1 Q. For design pressure requirements? 2 A. That's what this says, yes. 3 Q. Are you critical in any way of whether 4 the product does or does not meet the design 5 pressure requirements required by the building 6 code? 7 A. The DP rating should have been more than 8 30. That doesn't give you numbers that I can 9 respond to. 10 Q. Do you know what the design pressure 11 rating requirements -- excuse me -- start again. 12 Do you know what the design pressure ratings are 13 for the EFCO products that were supplied in 2004? 14 A. Only from reading correspondence that -- 15 from Mr. Freeman. 16 Q. Okay. 17 A. I think the discussion there was that it 18 was, give or take, a 30, and there was some 19 inquiry to another entity that talked about that 20 it should have been at least a 45. 21 Q. I saw you and Mr. Flynn looking earlier 22 at some blue pieces of paper that contained some 23 EFCO literature. Do you have that? 24 A. These? 25 Q. No. They were blue pages. The copy

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Page 130 1 itself was blue. 2 A. This pile? 3 Q. I don't know. 4 MR. FLYNN: I've got an extra copy. 5 BY MR. KELLY: 6 Q. This is what I was talking about. Have 7 you seen a document that looks like that? 8 A. I don't recall seeing this document. 9 Q. What about the one we just put in front 10 of Mr. Flynn, the blue pages I was talking about? 11 A. These came about because I had asked if 12 he had any information on the installation 13 requirements, particularly as it applied to 14 attachment at the jambs. In my visit of the past 15 two times into the field, what has been observed 16 is, if you take a 5-in-1 tool and run it down the 17 jamb between the window unit, meaning that 18 product, and the buck that's forming the rough 19 opening, it doesn't get interrupted by a fastener. 20 And that's where this all came about, because I 21 didn't have any installation instructions. You 22 and I talked about that earlier. 23 Q. Gotcha. 24 A. So that's how that came about. Now, I 25 scanned this. I didn't see an answer to my	Page 132 1 Q. I'm going to hand you this document we 2 were referring to a moment ago, which is the EFCO 3 Series 3015 Sliding Glass Door Report created by 4 Construction Consulting Laboratory International, 5 and there's a Bates stamp, Charleston Glass 87, in 6 the bottom right-hand corner. That's the page I 7 want to reference. You can look at however much 8 of it you would like. 9 A. And your question is? 10 Q. I think my question was, is there a 11 correlation between 90 PSF and a DP rating? 12 A. Yes. 13 Q. What is the correlation? 14 A. I can't give you the engineering aspect 15 of it. 16 Q. Are you qualified to testify about what 17 the design pressure rating should be on the 18 project? 19 MR. FLYNN: Object to the form. 20 A. With regard to if it's in compliance 21 with the applicable building code, yes. 22 Q. Okay. Are you qualified to give an 23 opinion as to what the DP ratings of the EFCO 24 products installed at Shipwatch are? 25 A. I don't see that listed here.
Page 131 1 question. 2 Q. Can I see that white -- 3 A. Yes, sir. 4 Q. Just for the record, this is an EFCO 5 Series 3015 Sliding Glass Door Report produced by 6 Construction Consulting Laboratory International. 7 Your testimony was you had not seen this document 8 before? 9 A. I don't believe I've seen that, sir. 10 Q. Do you know what design pressure rating 11 was required for the installation of the EFCO 12 sliding glass doors in 2010? 13 A. Somewheres in the 45 to 50 range. 14 Q. Do you know what design pressure rating 15 was required for the installation of those fixed 16 window units on the ocean side of the buildings in 17 the 2010 time period? 18 A. It should have been the same. 19 Q. What does 90 PSF mean? 20 A. I would need to look at the document. 21 Q. Was there a general correlation between 22 numbers -- a number with the PSF and DP ratings? 23 A. There is, but you have to look at the 24 negative and the positive. And you have to look 25 at the size of the unit.	Page 133 1 Q. My question was, are you qualified to 2 give that opinion? 3 MR. FLYNN: Same objection. 4 A. I can get the opinion. 5 Q. How do you get the opinion? 6 A. If I was designing it, I would go to the 7 structural engineer. 8 Q. To get the opinion of what the door or 9 window product's DP rating is? 10 A. Yes. But, more importantly, if the 11 rough opening is framed, to take the rating of the 12 door or the window. 13 Q. Well, that doesn't have anything to do 14 with the door or window product itself, does it? 15 A. Well, it does for the end product. If 16 the rough opening was not framed such that it was 17 compliant with the requirements of the door or 18 window unit and the applicable building code, then 19 you could put a door in the hole and it would 20 still not work. You have to look at all of those 21 aspects. 22 Q. Well, a window manufacturer or 23 distributor has no responsibility for framing the 24 rough opening that's going to receive a door or a 25 window, does it?

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Page 134 1 MR. FLYNN: Object. 2 A. The window manufacturer? 3 Q. Right. 4 A. No. Not as far as the actual framing. 5 But the window manufacturer would normally give 6 deflection limits, meaning you could not put a 7 stiffer product in a hole where the rough opening 8 is going to flex. The window manufacturer, 9 through its attachment requirements, would also 10 tell you the performance of what the frame needs 11 to be. It wouldn't typically tell you it has to 12 be metal stud or wood stud, just as an example. 13 It would tell you the requirements that that 14 opening has to comply with in the performance of 15 the opening. 16 Q. Are windows and doors typically shipped 17 with information about their DP rating? 18 A. They should be. 19 Q. And aren't those ratings typically taken 20 from the test report like you're looking at? 21 A. From the information here, yes. 22 Q. So the information to determine what the 23 DP ratings of the EFCO doors are should be right 24 there in your hands? 25 A. No. The DP rating, typically, at least	Page 136 1 A. No. 2 Q. Sir, are you offering any opinions that 3 there are any issues with the DP ratings of the 4 EFCO doors or windows at Shipwatch? 5 A. If the information shows that it didn't 6 comply with the applicable building code, then, 7 yes, I will. 8 Q. As we sit here today, do you have any 9 information to share that the product supplied did 10 not meet the DP ratings in the building codes that 11 were in effect at the time the Shipwatch projects 12 were constructed? 13 A. No. I relay to the Gary Freeman 14 documents, and I'm trying to find the documents 15 from the manufacturer that we already talked 16 about. 17 Q. And that test report I just showed you 18 for the 3015 Series doors you don't think helped 19 you at all in determining whether or not the DP 20 ratings for the doors installed at Shipwatch are 21 appropriate? 22 A. I didn't see it spelled out on that 23 document. 24 MR. FLYNN: Did we mark that? 25 MR. KELLY: I did not mark it. I think
Page 135 1 nowadays -- and I can't tell you what EFCO did 2 back in '04, but there's a sticker on the window 3 unit. 4 Q. Where do you think the number for that 5 sticker comes from? 6 A. From the manufacturer. 7 Q. Where does the manufacturer get the 8 number? 9 A. They design the product. 10 Q. Right. Well, how do they determine the 11 number through their design of the product? 12 MR. FLYNN: Object to the form. 13 A. That's from their engineer. 14 Q. You don't know, is the answer, right? 15 A. No. The answer is -- to the question is 16 from the engineering and the design of the 17 product. 18 Q. Have you ever designed a window? 19 A. No. You asked me that. 20 Q. I think I asked you if you ever worked 21 for a distributor. Have you ever designed a door? 22 A. No. 23 Q. Have you ever fabricated a door? 24 A. No. 25 Q. Have you ever fabricated a window?	Page 137 1 I referenced the Bates label. 2 MR. FLYNN: You did. So I don't need 3 it. It's the Charleston Glass doc. 4 BY MR. KELLY: 5 Q. Can an owner pull a building permit? 6 A. In some cases, yes. 7 Q. And they do in some cases, right? 8 A. In some cases. 9 Q. Do you have any knowledge as to Ms. 10 Jernigan's familiarity with the building 11 department at Isle of Palms? 12 A. No. 13 Q. Do you have any knowledge as to Ms. 14 Jernigan's familiarity with the building permit 15 process at Isle of Palms? 16 A. No. 17 Q. Do you know whether any of the units at 18 Shipwatch have hurricane shutters? 19 A. I do not know. There's one unit that 20 has some type of a track at the sill but nothing 21 at the head. But to answer your question, I don't 22 know. 23 Q. What about before the repairs were done 24 at building C and D; do you know whether any of 25 those units had hurricane shutters on them?

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Page 138 1 A. Not that I recall. 2 Q. If any of the units had hurricane 3 shutters, would that address the concern or 4 criticism you had about the use of nonimpact 5 glass? 6 A. It could. 7 Q. Why do you qualify that it could as 8 opposed to would? 9 A. Because I don't know what the design of 10 the shutter is. 11 Q. I don't know enough about shutters. So 12 can you explain to me why that's important? 13 A. Well, someone may figure that a cosmetic 14 shutter is suitable as the substitution. And in 15 most cases, that is not the case. If it is a true 16 storm shutter that resists the proper impact, 17 meaning the missile test, then, yes, that could be 18 a substitute for not having impact glass. 19 Q. What is a cosmetic shutter versus -- 20 like I'm used to these roll-out, sort of 21 steel-looking things that come around the doors? 22 A. Some little cosmetic shutter on each 23 side of the window, whether it operates or not. 24 Q. Could the owners use plywood to protect 25 their glass?	Page 140 1 A. They could use plywood early on. 2 Q. So the contractor could have told them, 3 You can use plywood in the event of a storm to 4 protect your glass? 5 A. Then the general contractor, by the 6 building code, had to provide the shutters and 7 have them all numbered and put the studs in the 8 wall such that they could be put up, and the 9 product needs to be stored on-site someplace. 10 Q. And you think it's reasonable for a 11 distributor of building materials to know the 12 terms of the contract and the field directives 13 between a contractor and an owner? 14 A. I think it's incumbent upon the 15 distributor and the retailer, who may be the 16 installer, to know that something needs to be 17 there. Either to say, You need to put up 18 hurricane shutters, or, This needs to be impact 19 glass. 20 Q. Can you tell me why you believe it's 21 incumbent upon the distributor to do that? 22 A. If the distributor knows where it's 23 going, and he should, then I think that's part of 24 the service. 25 Q. Have you ever sat on a board or any sort
Page 139 1 A. At least in the beginning, I believe, 2 yes, they could. Whether it's currently approved 3 or not, that part, I don't know. Because that 4 would be a decision from the building official. 5 Q. This is what I don't understand. If the 6 owners have the ability to protect nonimpact glass 7 with shutters or plywood, at least in the 8 beginning, why would you be critical in any way of 9 the distributor or the manufacturer for selling 10 nonimpact glass? 11 MR. FLYNN: Object to the form. 12 A. Because they sold it or distributed it 13 to a project and they should have known where it 14 is. And if they sold it and understood that 15 impact glass or a shutter was there, it seems to 16 me the obligation is, we have this product but it 17 can only be used if you have the appropriate 18 hurricane shutters. 19 Q. Or plywood? 20 A. Well, that -- it depends on the window 21 of time. You can't use plywood. 22 Q. I apologize. I was trying to limit my 23 question to the time period when plywood could be 24 used, which I understood to be in the early 2000s? 25 MR. FLYNN: Object to the form.	Page 141 1 of committee that is charged with developing 2 standards or rules for window and door 3 manufacturers or distributors? 4 A. No, I have not sat on a board. 5 Q. In designing projects, is it common for 6 you to rely upon information provided to you by 7 the product manufacturer? 8 A. Yes. 9 Q. Is that because the product manufacturer 10 is the expert on its products? 11 A. No. It's because the product 12 manufacturer -- and if we use windows as an 13 example -- may tell you that a window has a 14 certain DP rating of the window tested being a 15 single unit. And what I have found in the printed 16 literature is that once you gang the windows 17 together, there are only a couple manufacturers 18 that then provide you a new DP rating, because the 19 rating is for the assembled product. So you can't 20 take a bunch of small products, gang them together 21 and expect to get the same DP rating. 22 Q. Do you know whether any of the EFCO 23 products were ganged together at Shipwatch? 24 A. No. I'm just giving you an example, 25 because yours was more hypothetical, of the

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1 manufacturer.

2 **Q. Were you aware that Sutton-Kennerly &**

3 **Associates attempted to reuse the EFCO products**

4 **that are installed at Shipwatch as part of its**

5 **redesign?**

6 **A. No.**

7 **Q. Is that significant to you in any way?**

8 **A. I don't know all the details about it.**

9 **I would have to know more to answer your question.**

10 **MR. KELLY: All right. I'm going to let**

11 **some of these other folks ask some questions.**

12 **Thanks for your time.**

13 **MR. FLYNN: Do you want to take a couple**

14 **minutes?**

15 **(The deposition went off the record.)**

16 **EXAMINATION**

17 **BY MR. WINTON:**

18 **Q. Mr. Sherratt, we've met before, but for**

19 **the benefit of the record, my name is Tyler**

20 **Winton. I work at Carlock, Copeland, and I'm here**

21 **on behalf of Sisnroy Engineering and Bob Sisnroy.**

22 **I know you're obviously familiar with my client,**

23 **and I listened to some of your testimony before**

24 **regarding documents that you have from Mr. Sisnroy**

25 **relative to this matter and some of your opinions.**

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1 **You mentioned at one point that you read**

2 **something where Mr. Sisnroy called for copper pan**

3 **flashing to be installed at aluminum sliding**

4 **doors; is that correct?**

5 **A. Yes.**

6 **Q. And you noted that that would be an**

7 **issue if it was installed; is that correct?**

8 **A. The two products need to be isolated.**

9 **You could still use the copper. The copper should**

10 **not be in contact with the concrete, nor should it**

11 **be in contact with the aluminum. But there are**

12 **methods to isolate at those joints, meaning the**

13 **materials.**

14 **Q. Have you ever seen -- what are those**

15 **methods, just real quickly?**

16 **A. Well, one, you could take the**

17 **waterproofing and roll it over the top or**

18 **underneath where the door is going to be. That**

19 **would isolate you from the concrete. And you**

20 **could use a rubberized product to isolate metal to**

21 **metal.**

22 **Q. All right. Have you ever seen the**

23 **application of copper pan flashing and at an**

24 **aluminum window door or slider?**

25 **A. Yes.**

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1 **Q. I think that was in a -- I wrote it**

2 **down, but it was in a June or July letter, July**

3 **10th, 2006. Could you pull that back up and could**

4 **we mark that as an exhibit? If you think it's**

5 **going to take too long to look for it, I will try**

6 **to track it down when some other folks ask you**

7 **questions.**

8 **A. Why don't you go ahead and ask and I'll**

9 **keep looking for it.**

10 **Q. Also, I thought I heard you talking**

11 **about the lack of design drawings in this case.**

12 **Are you blaming or criticizing Mr. Sisnroy because**

13 **there's not a set of design plans for the**

14 **renovation work that was performed out at**

15 **Shipwatch?**

16 **A. As I read the building code, there needs**

17 **to be an appropriate set of plans and specs --**

18 **specs could be on the plans -- for any**

19 **construction work.**

20 **Q. That's any construction work?**

21 **A. Well, short of doing a doghouse or**

22 **something like that. But to keep it in**

23 **perspective, a project like this. And if you look**

24 **at what the building code says in the first**

25 **chapter, it talks about specific details at**

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1 dissimilar materials or intersections of different

2 materials.

3 **Q. And what building code are you referring**

4 **to?**

5 **A. The 2000 and 2003. And then as you come**

6 **forward, the same terminology is in the subsequent**

7 **codes.**

8 **Q. The 2000 and 2003 IBCs?**

9 **A. Yes. When I say code, I'm always**

10 **referencing the IBC.**

11 **Q. I understand that now.**

12 **A. This is that document you asked about.**

13 **Q. Do you mind if we mark this as an**

14 **exhibit to your deposition and have a copy made?**

15 **A. Can you make a copy and give it back to**

16 **me now; I mean before we --**

17 **Q. I bet we can. I don't have Mr. Cobb's**

18 **copying skills.**

19 **MR. WINTON: Let's do that.**

20 **(Deposition Exhibit No. 184, 7/10/06**

21 **letter from Sisnroy Engineering to Linda Jernigan,**

22 **was marked for identification.)**

23 **BY MR. WINTON:**

24 **Q. Is it okay if I put this sticker on it?**

25 **A. Yeah. Just give me a copy back. I'd**

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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 Rogerie 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.

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 an 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.

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 costs 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, Rogerice 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.

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 contract 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 than 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 Sisroy, \$8,463 to Carolina Concrete, \$1,000 fee for Sisroy'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 \$58,660.31 1/2. 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 1/2 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 1/2. 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. Rogerie 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 to 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 ensued on committee discretion.

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

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. Rogerice 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.

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JERNIGAN 94

④

PL 0822

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 an 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**

JERNIGAN 9/6

PL008535

5

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.

PL008536

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 an 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

May 10, 2007

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"

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

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

CCS 969

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.

February 9, 2009

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"

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PL 0632

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
in the year 2002
(In words, indicate day, month and year)

Fifth day of November

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.

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

AIA Document A101-1997, 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.

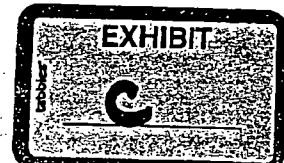
This document has been approved and endorsed by The Associated General Contractors of America.



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AIA DOCUMENT A101-1997
OWNER-CONTRACTOR
AGREEMENT

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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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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 (\$249,546⁰⁰),
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 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 after the application date fixed above, payment shall be made by the Owner not later than 15 days after the Architect 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, shall be used as a basis for reviewing the Contractor's Applications for Payment.



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5.15 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.

5.16 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.

5.17 The progress payment amount determined in accordance with Subparagraph 5.16 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.

5.18 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 5.16.1 and 5.16.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

5.19 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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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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PL 1154

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 A201-1997.

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
different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date

unless a



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PL 1155

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 Project Regime

Charles W. Rhoaden, Jr.
OWNER (Signature)

Robert M. Higgins
CONTRACTOR (Signature)

Charles W. Rhoaden, Jr.
(Printed name and title)

(Printed name and title)

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

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

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

The attached 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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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 Seventeen 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:

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 involved in Subparagraphs 5.6.1 and 5.6.2 above, and this is not excluded 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.)

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	

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		

9.1.5 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

Carl A. Griser
(Signature)
CARL A. GRISER
DIRECTOR
(Printed name and title)

CONTRACTOR

Robert M. Wiggins
(Signature)
Robert M. Wiggins President
(Printed name and title)



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A101/CMA-1992 8

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
in the year
(In words, indicate day, month and year)

Nineteenth
2008

day of December

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

Shipwatch
7600 Palmetto
Isle of Palms, S.C. 29451

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

CAROLINA Concrete Systems Inc.
PO Box 13149
Charleston, S.C. 29422

The Project is:
(Name and location)

Removal and Replacement of
16 EFCO DOORS in the specified
units.

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

The Owner and Contractor agree as follows.

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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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.)

February 25th 2008

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 30 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.)

, 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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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 One Hundred Sixty Nine Thousand Six Hundred Dollars (\$169,600), 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:

\$10,600⁰⁰ per door Replacement

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: Payment due within

10 DAYS OF Receipt of INVOICE

5.1.3 Provided that an Application for Payment is received by the Architect not later than the N/A day of a month, the Owner shall make payment to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than days after the Architect 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, shall be used as a basis for reviewing the Contractor's Applications for Payment.

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CCS 1169

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 percent (%). 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 percent (%);
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.



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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)

LINDA JERNIGAN

7.4 The Contractor's representative is:

(Name, address and other information)

Robert Wiggins

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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(Printed name and title)

(Printed name and title)

CCS 1171

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 _____, and are as follows:

Document	Title	Pages

Proposal	Sept 6 th 2007	

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

unless a



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OWNER-CONTRACTOR
AGREEMENT

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

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PL 0793

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.

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

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PL 0794

PRELIMINARY SCOPE OF WORK/OPINION OF CONSTRUCTION COSTS
SHIPWATCH AT WILD DUNES CONDOMINIUMS, ISLE OF PALMS, SOUTH CAROLINA
SICA PROJECT NO. 090432.3

OCEAN SIDE ELEVATIONS

A. Base Scope

- | Item |
|---|
| 1. Remove existing DEFS cladding and underlying cement board sheathing back to existing metal studs on all ocean side elevation walls. Work includes main building walls (between doors and windows), balcony dividing walls, and all chimney surfaces. |
| 2. Remove existing EIFS cladding and underlying gypsum board sheathing back to existing metal studs on all ocean side elevation walls. Work includes main building walls (between doors and windows) and balcony dividing walls. |
| 3. Install supplemental metal stud framing (track and stud) at all sliding door and fixed window jambs. |
| 4. Install supplemental metal stud framing (sistered stud) at each existing stud at all dividing walls and buildings walls. |
| 5. Remove and dispose of existing old sliding doors and fixed windows. |
| 6. Temporarily remove and store for reinstallation existing EFCO sliding doors and fixed windows. |
| 7. Install new concrete curbs one inch above the finished balcony surface at all sliding door and fixed window locations. 352 locations |
| 8. Install new sill pan flashings on concrete curbs. 352 locations |
| 9. Install new hard coat stucco cladding on all ocean side elevation walls. System includes new gypsum sheathing, new liquid applied air/moisture barrier, new metal lath and new 7/8-inch thick hard coat stucco. |
| 10. Create new 1/2-inch wide expansion joints and install backer rod and sealant at the perimeter of each sliding glass door and fixed window, and at ceiling-to-wall intersection. |
| 11. Wrap new air/moisture barrier and install new membrane flashing into the rough openings of windows and doors. |
| 12. Install new stainless steel through wall flashing and membrane flashing at balcony wall-to-slab transitions. Install a new strip of deck coating. Deck coating to extend 6 inches onto wall sheathing and 12 inches onto balcony slab. |
| 13. Install new flashings at chimneys. |
| 14. Install new EFCO sliding glass doors and fixed windows. |
| 15. Reinstall existing stored EFCO sliding doors and fixed windows. |
| 16. Install new backer rod and sealant at all wall cladding penetrations including light fixtures, electrical outlets, and vents. |
| 17. Remove spark arrestors on each chimney and replace with new water resistant fixtures. |
| 18. Repair isolated locations of delaminated balcony deck coatings. |

B. Additional Scope Items

- | Item |
|---|
| 1. Remove and replace handrails on all balconies. |
| 2. Install new urethane top coating over all balcony slab surfaces. |
| 3. Remove existing loose and delaminated paint coatings on balcony ceilings and install new breathable coating. |

STREET SIDE ELEVATIONS

A. Base Scope (Fifth Floor Balcony Repairs)

- | Item |
|---|
| 1. Remove existing DEFS cladding and underlying cement board sheathing back to existing metal studs around sliding doors. |
| 2. Install supplemental metal stud framing (track and stud) at all sliding door jambs. |
| 3. Temporarily remove and store for reinstallation existing EFCO sliding doors. |
| 4. Remove and discard existing old sliding doors |
| 5. Install new concrete curbs 1-inch above the finished balcony surface at all sliding door locations. |
| 6. Install new sill pan flashings on concrete curbs |

7.	Install new hard coat stucco cladding around sliding doors. System includes new gypsum sheathing, new liquid applied air/moisture barrier, new metal lath and new 7/8-inch thick hard coat stucco.
8.	Create new 1/2-inch wide expansion joints and install backer rod and sealant at the perimeter of each sliding glass door, at ceiling-to-wall intersection, and at intersection of balcony dividing wall.
9.	Wrap new air/moisture barrier and install new membrane flashing into the rough openings of doors.
10.	Install new stainless steel through wall flashing and membrane flashing at balcony wall-to-slab transitions. Install a new strip of deck coating. Deck coating to extend 6 inches onto wall sheathing and 12 inches onto balcony slab.
11.	Remove 6-inch wide strip of existing DEFS cladding back to cement board sheathing along bottom of guard wall (adjacent to railing). Salvage existing Tyvek. Install new stainless steel enclosure to wrap bottom of wall. Replace DEFS.
12. a.	(1) Remove existing DEFS cladding back to underlying cement board sheathing. (2) Install new hard coat stucco cladding. System includes new liquid applied air/moisture barrier, new metal lath and new 7/8-inch thick hard coat stucco. (3) Install new stainless steel through wall flashing and membrane flashing at balcony wall-to-slab transitions. Install a new strip of deck coating. Deck coating to extend 6 inches onto wall sheathing and 12 inches onto balcony slab.
12. b.	(1) Identify the location of all existing studs (16 inches on-center). Install new supplemental fasteners through DEFS at eight inches on center into each stud. Install new basecoat and mesh over fastener heads. <i>4,140 ea</i> (2) Remove a 1-foot wide strip of DEFS cladding directly above balcony slab back to cement board sheathing. Salvage existing Tyvek. Install new strip of deck coating to extend 6 inches onto cement board sheathing and 12 inches onto balcony slab. Install new stainless steel through-wall flashing and membrane flashing. (3) Remove a 6-inch wide strip of DEFS cladding adjacent to building wall back to cement board sheathing. Salvage existing Tyvek and install new membrane flashing to tie in with building wall repairs. (4) Replace DEFS cladding at removed locations. (5) Install new finish coat over all DEFS surfaces.
B. Additional Scope Items	
Item	
1.	Remove and replace handrails on floors 1 through 5.
2.	Install new urethane top coating over all balcony and breezeway slab surfaces of floors 1 through 5.
3.	Remove existing loose and delaminated paint coatings on balcony and breezeway ceilings and install new breathable coating on floors 1 through 4.
4.	a. Remove existing EIFS cladding back to existing underlying gypsum board sheathing on floors 1 through 4. Replace damaged sheathing sections. b. Remove existing sliding windows on the level 1 through 4 breezeways. Install new membrane flashing at jambs, new sill pan flashing, and new head flashing. Install new EFCO sliding windows. c. Install new hard coat stucco cladding on all street side elevation walls of floors 1 through 4. System includes new liquid applied air/moisture barrier, new metal lath and new 7/8-inch thick hard coat stucco. d. Create new 1/2-inch wide expansion joints and install backer rod and sealant at the perimeter of each sliding window, door, and at ceiling-to-wall intersections. e. Install new stainless steel through wall flashing and membrane flashing at breezeway balcony wall-to-slab transitions. Install a new strip of deck coating. Deck coating to extend 6 inches onto wall sheathing and 12 inches onto balcony slab. f. Install new backer rod and sealant at all wall cladding penetrations including light fixtures, electrical outlets, and vents. g. Repair or replace metal doors at storage and trash areas.
5.	Curtain wall replacement. Remove and dispose of all existing curtain wall units at each elevator. Install new structural steel support member at each floor line. Install new aluminum framed curtain wall units including all flashings

END WALL ELEVATIONS

A. Base Scope

Item	
1.	Corner Balconies
a.	Remove existing DEFS cladding and underlying cement board sheathing back to metal stud framing on all corner balconies. Continue removal in a 12-inch wide continuous strip at adjacent CMU stairwell walls.
b.	Replace damaged interior sheathing and metal studs.
c.	Remove and dispose of all old sliding glass doors.
d.	Install new supplemental jamb studs (track and stud) at each door jamb.
e.	Install new concrete curbs 1-inch above the finished balcony surface at all sliding door locations. 24ea
f.	Install new sill pan flashings on concrete curbs. 24ea
g.	Install new hard coat stucco cladding. System includes new gypsum sheathing, new liquid applied air/moisture barrier, new metal lath and new 7/8-inch thick hard coat
h.	Create new 1/2-inch wide expansion joints and install backer rod and sealant at the perimeter of each sliding glass door and at ceiling-to-wall intersection.
i.	Wrap new air/moisture barrier and install new membrane flashing into the rough openings of doors.
j.	Install new stainless steel through wall flashing and membrane flashing at balcony wall-to-slab transitions. Install a new strip of deck coating. Deck coating to extend 6 inches onto wall sheathing and 12 inches onto balcony slab.
k.	Install a new membrane flashing over expansion joint between the stairwell and main building wall for the full height of the building. Create new 1/2-inch wide expansion joint in new cladding at existing joint.
l.	Install new EFCO doors.
m.	Install new backer rod and sealant at all wall cladding penetrations including light fixtures, electrical outlets, and vents.
2.	DEFS Cladding Replacement
a.	Remove all existing DEFS cladding on end wall surfaces levels 1 through 5 back to underlying cement board sheathing.
b.	Remove existing 16-inch wide strip of cement board sheathing adjacent to all bay and horizontal sliding window jambs. Install new supplemental jamb studs (sistered stud) at each jamb. Replace sheathing.
c.	Temporarily remove existing EFCO bay windows and store for reinstallation.
d.	Remove and dispose of old bay windows.
e.	Temporarily remove all horizontal sliding EFCO windows and store for reinstallation.
f.	Install new stainless steel sill pan flashing at each window (bay and horizontal sliding). 440 ft.
g.	Install new stainless steel head flashings at each window (bay and horizontal sliding).
h.	Install new hard coat stucco cladding. System includes new liquid applied air/moisture barrier, new metal lath and new 7/8-inch thick hard coat stucco.
i.	Install new through wall flashing, membrane flashing, and casing beads at horizontal floor lines on levels 1 through 3.
j.	Install new through wall flashing, membrane flashing, and casing beads at bottom of walls above parking garage.
k.	Install new control joints above window heads and sills.
l.	Wrap the new air/moisture barrier and install membrane flashings into the rough openings of each window (bay and horizontal sliding). 72ea
m.	Install new stainless steel through wall flashing above fourth floor mansard roof.
n.	Install new stainless steel kick-out flashings at each end of mansard roof.
o.	Install 2 new vertical control joints in stucco at 20-ft centers.
p.	Reinstall existing stored EFCO bay windows.
q.	Install new EFCO bay windows.
r.	Reinstall existing stored EFCO horizontal sliding windows.
s.	Install new backer rod and sealant at all wall cladding penetrations including light fixtures, electrical outlets, vents and window perimeters.

Alternate Scope

Item	
DEFS Cladding Repairs	
a.	Remove existing DEFS cladding and underlying cement board sheathing back to existing metal studs above and below bay windows. Install new gypsum sheathing and new liquid-applied air/moisture barrier.
b.	Remove 1-foot wide strip of existing DEFS cladding and underlying cement board sheathing back to existing metal studs along each "drop" at bay window jambs. Install new supplemental metal stud framing (new "sistered" stud) adjacent to bay windows. Install new gypsum sheathing and new liquid-applied air/moisture barrier.
c.	Remove 1-foot wide strip of existing DEFS cladding and underlying cement board sheathing back to existing metal studs/floor slab at each floor line joint on levels 1 through 3. Replace cement board sheathing leaving 3/4-inch wide expansion joint at bottom of floor slab and install new membrane flashing over joint. Install new air/moisture barrier, new control joint accessory and new stainless steel through wall flashing at each floor joint.
d.	Remove 1-foot wide strip of existing DEFS cladding back to underlying cement board sheathing along the full length of the top edge of the 4th floor mansard roof. Install new continuous through-wall flashing and membrane flashing to lap over the existing mansard roof.
e.	Remove 4 square foot area of existing DEFS cladding back to underlying cement board sheathing at the far end of the mansard roof on both sides. Install new stainless steel kickout flashings and membrane flashings. 64 sf
f.	Remove 6-inch wide strip of existing DEFS cladding back to underlying cement board sheathing along the bottom of the wall above the garage entrance. Install new continuous through wall flashing and membrane flashing.
g.	Remove 1-foot wide strip of existing DEFS cladding back to underlying cement board sheathing around the perimeter of all horizontal sliding windows on floors 1 through 5. Install new supplemental jamb stud at each window and replace sheathing.
h.	Remove 6-inch wide strip of existing DEFS cladding back to underlying cement board sheathing at each existing vertical control joint above and below fifth floor windows. Install new control joint accessory.
i.	Temporarily remove existing EFCO bay windows and store for reinstallation.
j.	Temporarily remove existing EFCO horizontal sliding windows and store for reinstallation.
k.	Remove and dispose of old bay windows.
l.	Install new head flashing at each window (bay and horizontal sliding). 72 ea
m.	Install new stainless steel pan flashing at each window (bay and horizontal sliding). 440 lf
n.	Salvage existing Tyvek for tie-in to new moisture barrier at all demolished areas.
o.	Install new vertical control joint at 2 locations on levels 1 through 3. 16 ea
p.	Reinstall existing stored EFCO bay windows.
q.	Reinstall existing stored EFCO horizontal sliding windows.
r.	Install new EFCO bay windows.
s.	Identify the location of all existing studs (16 inches on center). Install new supplemental fasteners through DEFS at eight inches on center into each stud. Install new basecoat and mesh over fastener heads. 15,200 ea
t.	Replace DEFS cladding at removed locations.
u.	Install new finish coat over all DEFS surfaces.

C. Additional Scope Items

Item	
1.	Remove and replace handrails on all corner balconies.
2.	Install new top coating over all corner balcony surfaces.
3.	Remove existing paint coatings on all breezeway ceilings. Install new breathable coating.

MISCELLANEOUS ADDITIONAL SCOPE ITEMS

Item	
1.	Replace mansard roof panels
2.	Install new and replace existing gutters on level 5 street side floor slab including the stair buildings and elevator. Install new drip edge metal flashing and strip-in 1-foot of new deck coating.
3.	Install new gutters on level 5 balconies at the mansard roof overhangs on the ocean and street elevations.

SUMMARY OF COSTS	
General Conditions	
	Staging, Insurance, Project Manager, Superintendent, Trailer, Dumpster, Bonds, Landscaping etc.
Ocean Side Repairs	
	Base Scope
	Handrails
	Deck Coating
	Ceiling
Street Side Repairs	
	Base Scope With Dividing Wall Replacement
	Base Scope With Dividing Wall Repair (Alternate)
	Handrails
	Deck Coating
	Ceiling
	Breezeway BIFS
	Curtain Walls
End Wall Repairs	
	Corner Balconies and End Wall DEFS Replacement
	Corner Balconies and End Wall DEFS Repair (Alternate)
	Corner Balcony Handrails
	Corner Balcony Deck Coating
	Corner Balcony Ceilings
Miscellaneous Repairs	
	Mansard Roof
	Fifth Floor Slab Edge
	Fifth Floor Balcony Gutters
Construction Totals (With DEFS Replacement Options)	
Construction Total (With DEFS Repair Options)	
Construction Contingency (10%)	
Engineering - Design, Bidding, Construction Administration	

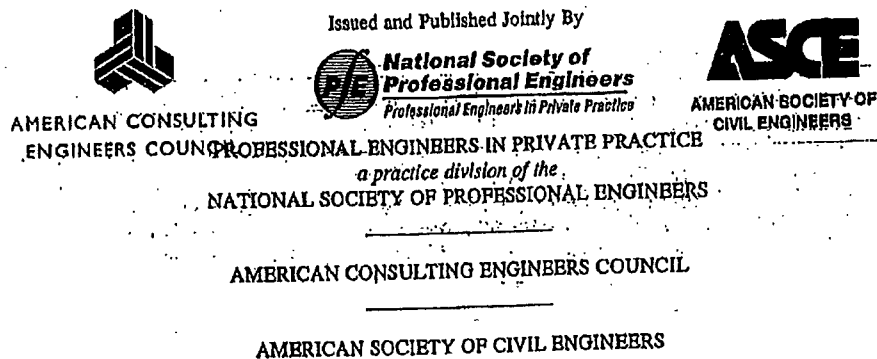
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STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR ON THE BASIS OF A STIPULATED PRICE

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and



This document has been approved and endorsed by

The Associated General



Contractors of America

Construction Specifications Institute



This Standard Form of Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. The suggested language for instructions of bidders contained in the Guide to the Preparation of Instructions to Bidders (No. 1910-12, 1996 Edition) is also carefully interrelated with the language of this Agreement. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). See also Guide to the Preparation of Supplementary Conditions (No. 1910-17, 1996 Edition).

EJCDC No. 1910-8-A-1 (1996 Edition)

Note to User

Certain states and federal agencies require provisions in public contracts which permit Contractors to deposit acceptable securities with Owner or a stakeholder in lieu of retainage. Many Owners will not accept this procedure except where required by Laws or Regulations. In the event such a procedure is required, the provisions of this Agreement and possibly those of the other Contract Documents dealing with retainage should be amended, and an attorney should be consulted to prepare the revised language. Among the issues to be addressed by such language are: initial and subsequent valuations of the securities, right to withdraw excess collateral and obligation to deposit additional collateral as market value changes, who is entitled to interest and dividends on deposited collateral, responsibilities of stakeholder, may collateral be freely sold in the event of Contractor default and method of such sale, and application of Uniform Commercial Code and state and federal security laws to the arrangement.

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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2715

American Consulting Engineers Council
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers
345 East 47th Street, New York, NY 10017

Introduction

This Agreement between Owner and Contractor on the Basis of a Stipulated Price ("Agreement") has been prepared for use with the Guide to the Preparation of Instructions to Bidders ("Instructions") (No. 1910-12, 1996 Edition) and with the Standard General Conditions of the Construction Contract ("General Conditions") (No. 1910-8, 1996 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the others. Comments concerning their usage are contained in the Commentary on Agreements for Engineering Services and Construction Related Documents ("Commentary") (No. 1910-9, 1996 Edition). For guidance in the preparation of Supplementary Conditions and coordination with Instructions to Bidders, see Guide to the Preparation of Supplementary Conditions ("Supplementary Conditions") (No. 1910-17, 1996 Edition). See also Guide to Preparation of the Bid Form ("Bid Form") (No. 1910-18, 1996 Edition). The EJCDC has not prepared a suggested form of Advertisement or Invitation to Bid because such documents will vary widely in response to statutory requirements.

This form and the other Bidding Documents prepared and issued by the EJCDC assume acceptance of the Project Manual concept of the Construction Specifications Institute which provides for an organizational format for location of all bound documentary information for a construction project, namely: Bidding Requirements (which term refers to the Advertisement or Invitation to Bid, the Instructions, and any bid form that may be suggested or prescribed, all of which provide information and guidance for all Bidders) and the Contract Documents (defined in Article 1 of the General Conditions), which include the Agreement, Bonds and Certificates, the General Conditions, the Supplementary Conditions, the Drawings, and the Specifications. The Bidding Requirements are not considered part of the Contract Documents because much of their substance pertains to the relationships prior to the award of the Contract and has little effect or impact thereafter and because many contracts are awarded without going through the bidding process. In some cases, however, the actual Bid may be attached as an exhibit to the Agreement to avoid extensive retyping. (The terms "Bidding Documents" and "Bidding Requirements" are defined in Article 1 of the General Conditions.) The Project Manual concept is explained in the *Manual of Practice* issued by the Construction Specifications Institute.

Suggested language is presented herein with "Notes to User" to assist in preparing the Agreement. Much of the language should be usable on most projects, but modifications and additional provisions will often be necessary. The suggested language has been coordinated with the other standard forms produced by the EJCDC. When modifying the suggested language or writing additional provisions, the user must check the other documents thoroughly for conflicts and coordination of language usage and make appropriate revisions in all affected documents.

For brevity, referenced paragraphs of the Instructions to Bidders with the prefix "I," those of the Bid Form with the prefix "BF," and those of this Agreement with the prefix "A."

Refer to Contract Documents Bibliography (No. 1910-24, 1996 Edition), which will be helpful in preparing the Agreement, and see in particular the discussions in EJCDC's *Recommended Competitive Bidding Procedures for Construction Projects* ("Bidding Procedures") (No. 1910-9-D, 1987 Edition) by Robert J. Smith, P.E., Esq., on the particular paragraphs of which frequent reference is made below.

NOTES:

1. EJCDC publications may be ordered from NSPB headquarters at 1420 King Street, Alexandria VA 22314-2715; or ACEC headquarters at 1015 15th Street NW, Washington DC 20005; or ASCE headquarters at 345 East 47th Street, New York NY 10017.
2. CSI publications may be ordered from CSI headquarters at 601 Madison Street, Alexandria VA 22314.
3. AIA publications may be obtained from most local AIA chapter offices or by writing to AIA headquarters at 1735 New York Avenue NW, Washington, DC 20006.
4. The Associated General Contractors of America has a series of construction related documents which may be of interest. The AGC's Publications and Services Catalog may be obtained from AGC headquarters at 1957 E Street NW, Washington, DC 20006.

**EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

THIS AGREEMENT is by and between Shipwatch at Wild Dunes Homeowners Association
(hereinafter called OWNER) and Charlotte Paint Co. Inc., dba Pro-Tec Finishes
(hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Phase 1 Repairs at buildings C and D.

1. Removal and disposal of existing windows, sliding glass doors, standing seam metal roof system, aluminum handrails, EIFS cladding system, and DEFS cladding system.
2. Installation of new sliding glass doors, windows, curtain walls, standing seam metal roof system; aluminum handrails, and hardcoat stucco cladding.
3. Installation of new deck coatings.
4. Installation of new flashings.
5. Painting of breezeway/balcony ceilings.
6. Metal-stud framing repairs.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

All work as described in "Project Manual - Construction Documents, Building Envelope Remediation for Shipwatch at Wild Dunes," dated June 2013; Addendum No. 1, dated May 10, 2013; and Project Drawings titled, "Building Envelope Remediation for Shipwatch at Wild Dunes," dated June 2013.

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by

SKA Consulting Engineers, Inc.

who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 Time of the Essence

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Dates for Substantial Completion and Final Payment

A. The Work will be substantially completed on or before May 15, 2014, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before May 31, 2014.

[or]

4.02 Days to Achieve Substantial Completion and Final Payment

~~A. The Work will be substantially completed within _____ days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within _____ days after the date when the Contract Times commence to run.~~

4.03 Liquidated Damages

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER \$ 750 for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER \$ 750 for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

~~NOTE TO USER~~

- ~~1. Where failure to reach a Milestone on time is of such consequence that the assessment of liquidated damages for failure to reach one or more Milestones on time is to be provided, appropriate amending or supplementing language should be inserted here.~~

ARTICLE 5 - CONTRACT PRICE

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 5.01.A, 5.01.B, and ~~5.01.C~~ below:

A. For all Work including Unit Price Work, a Lump Sum of:

Five million, six hundred seventy one thousand, nine hundred and twenty three dollars.

(use words)

(\$5,671,923.00)

(figure)

All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.02 of the General Conditions. Cash allowances include \$25,000 for water testing, \$50,000 for electrical repairs, \$5,000 for replacing damaged light fixtures.

B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 5.01.B:

UNIT PRICE WORK

No.	Item	Unit	Estimated Quantity	Unit Price	Total Estimated

(See attached Bid Form for unit rates and quantities that can adjust lump sum cost up or down.)

TOTAL OF ALL UNIT PRICES

\$ (dollars)

(use words)

As provided in paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

~~C. For all Work, at the prices stated in CONTRACTOR's Bid, attached hereto as an exhibit.~~

NOTES TO USER

- ~~1. If adjustment prices for variations from stipulated Base Bid quantities have been agreed to, insert appropriate provisions. See DF-4.~~
- ~~2. Depending upon the particular project bid form used, use A-5.01.A alone, A-5.01.A and A-5.01.B together, A-5.01.B alone, or A-5.01.C alone, deleting those not used and renumbering accordingly. If A-5.01.C is used, CONTRACTOR's Bid is attached as an exhibit and listed in A-9.~~

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

6.02 Progress Payments; Retainage

A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the 10th day of each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions:

a. 90 % of Work completed (with the balance being retainage). If the Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed less the aggregate of payments previously made; and

b. 90 % of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 100 % of the Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less 100 % of ENGINEER's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 7 - INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 5 % per annum.

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

~~D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.~~

~~NOTE TO USER~~

- ~~1. If the reports and/or drawings referred to in A-8.01.D do not exist, either modify A-8.01.D or delete A-8.01.D and renumber accordingly.~~

~~E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.~~

~~NOTE TO USER~~

- ~~1. If the reports and/or drawings referred to in A-8.01.D do not exist, delete the phrase "additional or supplementary" in the first sentence of A-8.01.E.~~

F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.

H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 8, inclusive);
2. Performance Bond (pages _____ to _____, inclusive);
3. Payment Bond (pages _____ to _____, inclusive);
4. Other Bonds (pages _____ to _____, inclusive);
 - a. N/A (pages _____ to _____, inclusive);
 - b. N/A (pages _____ to _____, inclusive);
 - c. N/A (pages _____ to _____, inclusive);
5. General Conditions (pages 1 to 41, inclusive); with noted modifications Revised
6. Supplementary Conditions (pages 1 to 8, inclusive);
7. Specifications as listed in the table of contents of the Project Manual;
8. Drawings consisting of a cover sheet and sheets numbered S1.1; S2.1-S2.8; S4.1-S4.8; S5.1-S5.2; S6.1-S6.7; S7.0-S7.6; S8.1-S8.4; S9.1; R1.1-R1.2; R2.1-R2.4, with each sheet bearing the following general title: Building Envelope Remediation for Shipwatch at Wild Dunes.
9. Addenda (numbers 1 to 1, inclusive);
10. Exhibits to this Agreement (enumerated as follows):
 - a. Notice of Award (pages 1 to 1, inclusive);
 - b. CONTRACTOR's Bid (pages 1 to 11, inclusive); with noted modifications.
 - c. ~~Documentation submitted by CONTRACTOR prior to Notice of Award (pages _____ to _____, inclusive);~~
 - d. _____;
11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Written Amendments;
 - b. Work Change Directives;
 - c. Change Order(s).

B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

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D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.05 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 Terms

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 Other Provisions

~~NOTE TO USER~~

~~1. Insert other provisions here if applicable.~~

1. Alternate No. 4 (Neogard 7470 finish coat in lieu of 7430 finish coat) is included in the contract at \$0.00 cost.
2. No other alternates are included in the Contract.
3. Pro-Tec shall designate Roger Koehler as full time Project Manager on Project. Only a medical condition, employment termination, or Owner requirement will be acceptable cause for change in Project Manager.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

NOTE TO USER

1. See I-21 and correlate procedures for format and signing between the two documents.

This Agreement will be effective on _____, _____ (which is the Effective Date of the Agreement).

OWNER:

Shipwatch at Wild Dunes Homeowners Association

By: _____

[CORPORATE SEAL]

Attest _____

Address for giving notices:

(If OWNER is a corporation, attach evidence of authority to sign. If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of OWNER-CONTRACTOR Agreement.)

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

CONTRACTOR:

Charlotte Paint Co. Inc., dba Pro-Tec Finishes

By: _____

[CORPORATE SEAL]

Attest _____

Address for giving notices:

License No. _____
(Where applicable)

Agent for service of process: _____

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

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BUILDING ENVELOPE REMEDIATION
SHIPWATCH AT WILD DUNES
ISLE OF PALMS, SOUTH CAROLINA

SECTION 00 41 13

BID FORM - STIPULATED SUM (SINGLE-PRIME CONTRACT)

PART I - GENERAL

Name of Bidder: CHARLOTTE PAINT CO. INC., DBA PRO-TEC FINISHES
Business Address: PO BOX 766
MT HOLLY NC 28120
Telephone No.: (704) 827-3330
License No.: SC GC 10674
Name of Contact: TERRY MCCLAIN (704-621-7820)
TO: SHIPWATCH AT WILD DUNES

PHASE I - BUILDINGS C AND D ONLY

1. In submitting this Bid, the Bidder represents that:

- A. The undersigned, having examined, compared, and familiarized himself with the Invitation to Bid, the Instructions to Bidders, and the Contract Documents as prepared by SKA Consulting Engineers, Inc., and having examined the site of the work and familiarized himself with all conditions and requirements pertaining thereto, hereby proposes to furnish all material, labor, equipment, services, and transportation necessary to complete the work in accordance with the Contract Documents for the Project entitled:

Building Envelope Remediation
Shipwatch at Wild Dunes
Isle of Palms, South Carolina

- B. Bidder has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, and studies which pertain to the physical conditions at the site or otherwise may affect the cost, progress, performance, or furnishing of the work as bidder considers necessary for the performance or furnishing of the work at the contract price, in accordance with the other terms and conditions of the Contract Documents, of the General Requirements, and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by bidder for such purposes.
- C. Bidder has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing facilities at or contiguous to the site and assumes responsibility for the accurate location of said facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said facilities are or will be required by bidder in order to perform and furnish the work at the contract price, within the contract time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the General Requirements.

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BUILDING ENVELOPE REMEDIATION
SHIPWATCH AT WILD DUNES
ISLE OF PALMS, SOUTH CAROLINA

LUMP SUM ITEMS:

The Contractor shall provide the following lump sum costs, which will form a part of the total lump sum base bid. Estimated quantities are provided for the contractor's use. The contractor, however, shall perform his own quantity takeoffs in preparing his bid. Please note that the "Description of Items" listed below may not include a line item breakdown for all work required by the Project Documents. The Contractor shall include the cost of all work in these Lump Sum numbers, except for the specific items listed under Unit Rate Items and Cash Allowances.

<u>Description of Items</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Lump Sum</u>
General:			
1. General Conditions, bonds, mobilization, demobilization, insurance, permits, etc.	LS	N/A	\$ <u>904,568.⁰⁰</u>
2. Staging/Building Access	LS	N/A	\$ <u>394,324.⁰⁰</u>
Cladding Replacement:			
3. Remove and dispose of existing Exterior Insulation System (EIFS) and Direct Applied Exterior Finish System (DEFS) cladding, including all exterior sheathing, flashings and accessories back to existing framing. Install new 5/8-inch sheathing, moisture barrier, felt paper, metal lath, hardcoat stucco, stucco accessories, through-wall flashings, sealants, membrane flashings, closure flashings, and other miscellaneous items as shown on drawings.	42,000 SF	N/A	\$ <u>1,326,804.⁰⁰</u>
4. Remove EIFS cladding back to concrete on 4' wide ocean front privacy walls (floors grade through 3). Install new direct applied stucco, control joints, and weep screed at grade.	1,900 SF	N/A	\$ <u>290,618.⁰⁰</u>
Window and Door Replacement:			
5. Construct temporary interior demising walls and remove and dispose of existing fixed windows (W1) and concrete curb below window. Install new concrete curbs, rough opening flashings, metal head flashing, perimeter sealants, and new aluminum-framed, impact rated fixed windows.	72 EA	N/A	\$ <u>276,613.⁰⁰</u>
6. Construct temporary interior demising walls and remove and dispose of existing horizontal sliding windows (W2). Install new rough opening flashings, metal head flashing, perimeter sealants, and new aluminum-framed, impact rated single hung windows.	16 EA	N/A	\$ <u>19,836.⁰⁰</u>
7. Construct temporary interior demising walls and remove and dispose of existing horizontal sliding windows (W3). Install new rough opening flashings, metal head flashing, perimeter sealants, and new aluminum-framed, impact rated single hung windows.	72 EA	N/A	\$ <u>246,368.⁰⁰</u>

(\$ 249W Savings)

Mod. Final PV Interview
5-30-13

BUILDING ENVELOPE REMEDIATION
SHIPWATCH AT WILD DUNES
ISLE OF PALMS, SOUTH CAROLINA

<u>Description of Items</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Lump Sum</u>
Window and Door Replacement (Continued):			
8. Construct temporary interior demising walls and remove and dispose of existing sliding glass doors (D1 and D2) and concrete curbs below doors. Install new concrete curbs, rough opening flashings, metal head flashing, perimeter sealants, and new aluminum-framed, impact rated sliding glass doors.	132 EA	N/A	\$ <u>1,053,957.⁰⁰</u>
Bay Windows at End Walls:			
9. Construct temporary interior demising walls. Remove and dispose of existing aluminum-framed bay window units and metal stud framing and sheathing below windows. Install new rough opening flashings, stainless steel pan flashing, head flashing, and perimeter sealants. Install new aluminum-framed, impact rated floor-to-floor curtain wall units (CW-1). Install new hardcoat stucco and related flashings over the face of concrete floor slab between curtain wall units.	12 EA	N/A	\$ <u>193,757.⁰⁰</u>
Light Gauge Framing Repairs:			
10. Install new supplemental jamb studs at each side of opening at W1 fixed windows and D4 steel doors.	147 EA	N/A	\$ <u>26,132.⁰⁰</u>
11. Install new supplemental jamb studs at each side and jack studs/clip angles at head tracks at D3 steel doors.	56 EA	N/A	\$ <u>19,223.⁰⁰</u>
12. Install new supplemental jamb studs at each side and new jack studs/clip angles at each corner at W2 windows.	16 EA	N/A	\$ <u>42.17.⁰⁰</u>
13. Install new supplemental jamb studs at each side, new supplemental tracks at head and sill, and clip angles at each corner at W3 windows.	72 EA	N/A	\$ <u>18,978.⁰⁰</u>
Balcony and Breezeways:			
14. Remove and dispose of portions of existing guard walls on 5 th floor street side balconies. Construct new guard walls consisting of HSS tubes, steel angle/plates, metal stud framing, sheathing, flashings, metal coping, and hardcoat stucco.	32 EA	N/A	\$ <u>49,852.⁰⁰</u>
15. Remove and dispose of existing guard walls on 1 st , 2 nd , 3 rd , 4 th , and 5 th floor ocean side/end wall balconies. Construct new guard walls consisting of HSS tubes, steel angle/plates, metal stud framing, sheathing, flashings, deck coating, metal coping, and hardcoat stucco.	20 EA	N/A	\$ <u>45,852.⁰⁰</u>

Modified per
5.30.13 Interview (4249W Savings)

**BUILDING ENVELOPE REMEDIATION
SHIPWATCH AT WILD DUNES
ISLE OF PALMS, SOUTH CAROLINA**

<u>Description of Items</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Lump Sum</u>
Balcony and Breezeways (Continued):			
16. Remove and dispose of all existing handrails. Core and patch existing handrail posts pockets. Install new plate-mounted aluminum handrails.	2,500 LF	N/A	\$ <u>279,282.⁰⁰</u>
17. Remove existing U-shaped guard walls and install new plate-mounted aluminum handrails on 5 th floor street side balconies between each unit.	160 LF	N/A	\$ <u>17,384.⁰⁰</u>
18. Pressure wash existing deck coating system and install new deck coating (repair type "A" and "B") at breezeway doors, stairwell landings, and elsewhere. Install new deck coating (repair type "C") over all balcony and breezeway horizontal surfaces.	24,000 SF	N/A	\$ <u>48,843.⁰⁰</u>
19. Install new 6" wide horizontal and 6" wide vertical deck coating (Repair Type B") at bottom of all stucco wall bases (metal stud, concrete, CMU framed walls). Install new stainless steel through-wall flashing, membrane flashing, termination bar, and sealant joints.	4,000 LF	N/A	\$ <u>23,294.⁰⁰</u>
20. Clean surfaces and install new balcony/breezeway coating on all concrete ceiling areas.	24,000 SF	N/A	\$ <u>29,924.⁰⁰</u>
21. Install new OSHA compliant fall safety line along the 5th floor street side balcony edge.	200 LF	N/A	\$ <u>6,130.⁰⁰</u>
22. Remove existing flashings, gutters, and deck coating and notch existing slab at outer edge of 5 th floor street side balconies. Install new PT blocking, membrane flashings, metal flashings, drip edge flashing, closure flashing, and deck coating.	230 LF	\$ <u>32.97</u> LF	\$ <u>7,360.⁰⁰</u>
Roofing:			
23. Remove and dispose of existing standing seam metal roofing down to original plywood roof decking on buildings C and D. Install new pre-finished aluminum standing seam metal roofing, including roof membrane underlayment and all flashings, copings, counter-flashings, trim closures, sealants, and other materials as required for complete installation.	10,000 SF	N/A	\$ <u>226,172.⁰⁰</u>
24. Remove and dispose of existing standing seam metal roofing down to original plywood roof decking on the office, pool house, and pump room. Install new pre-finished aluminum standing seam metal roofing, including roof membrane underlayment and all flashings, copings, counter-flashings, trim closures, sealants and other materials as required for complete installation.	1,850 SF	N/A	\$ <u>36,208.⁰⁰</u>

Modified
Per 5-30-13
Interview (\$249K Savings)

BUILDING ENVELOPE REMEDIATION
SHIPWATCH AT WILD DUNES
ISLE OF PALMS, SOUTH CAROLINA

<u>Description of Items</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Lump Sum</u>
Roofing (Continued):			
25. Remove existing and install new roof access ladders extending from 5 th floor street side balcony slab to main roof.	2 EA	N/A	\$ <u>3,923.00</u>
26. Install new fully-adhered modified bitumen roof system at elevator tower, including tapered insulation, protection layer, and all flashings and accessories.	200 SF	N/A	\$ <u>9,808.00</u>
27. Install new framing repairs at 5 th floor street side balcony knee walls	18 EA	<u>373.00</u> /EA	\$ <u>6,714.00</u>
28. Install new "sistered" rafters, blocking, and Simpson anchors at 4 th floor end wall attics.	3,400 SF	<u>12.25</u> /SF	\$ <u>41,650.00</u>
Miscellaneous:			
29. Remove and dispose of existing hard coat stucco at corners of stairwells and elevator towers. Install new membrane flashings, through-wall flashings, tie-in flashings at wall-to-slab transitions, sealants, hardcoat stucco, and stucco accessories.	550 SF	N/A	\$ <u>13,375.00</u>
30. Prepare surfaces and install new elastomeric coating over existing stucco at stairwell and elevator towers.	6,800 SF	N/A	\$ <u>12,505.00</u>

UNIT RATE ITEMS:

The Contractor shall provide the following unit rates and lump sum prices for items included in the lump sum base bid. The unit prices shall apply throughout the life of the Contract. Unit prices shall be applied as appropriate to adjust the lump sum cost for the work up or down depending on the actual quantities encountered. Unit rate quantities that vary by 15 percent or more from those listed below entitle the owner or contractor the ability to negotiate the unit price up or down. The lump sum bid shall include the quantities listed.

<u>Description of Items</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Lump Sum</u>
Cladding Repairs:			
1. Remove and replace existing batt insulation within wall system where deteriorated.	1,000 SF	\$ <u>2.45</u> /SF	\$ <u>2,450.00</u>
2. Install new control joints in stucco at miscellaneous locations required by Engineer that are <u>not</u> shown on the drawings.	50 LF	\$ <u>37.00</u> /LF	\$ <u>1,850.00</u>
Interior Repairs:			
3. Remove and replace interior drywall around windows and doors and other miscellaneous locations.	9,500 SF	\$ <u>12.25</u> /SF	\$ <u>116,470.00</u>

Mod. P. 1
Per 5-30-13 Interview (\$249K Savings)

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BUILDING ENVELOPE REMEDIATION
SHIPWATCH AT WILD DUNES
ISLE OF PALMS, SOUTH CAROLINA

<u>Description of Items</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Lump Sum</u>
Interior Repairs (Continued):			
4. Install new primer coat (corner to corner) over interior drywall to receive Owner finish coat.	13,000 SF	\$ <u>50</u> /SF	\$ <u>6,500.00</u>
Light Gauge Framing Repairs:			
5. Install two new supplemental jamb studs each side of D1-A and D2-A sliding glass doors.	116 EA	\$ <u>54.00</u> /EA	\$ <u>6,264.00</u>
6. Install new supplemental jamb studs each side, new double track at head, new clip angles at head corners, and new infill head studs at D1-B and D2-B sliding glass doors.	16 EA	\$ <u>784.00</u> /EA	\$ <u>12,544.00</u>
7. Install new clip angle at top and bottom of each full height existing metal stud to concrete slab	2,500 STUDS	\$ <u>43.00</u> /STUD	\$ <u>107,500.00</u>
8. Install new lateral bridging between existing/new metal studs.	3,000 LF	\$ <u>12.26</u> /LF	\$ <u>36,780.00</u>
9. Install new supplemental full height metal stud "sistered" to existing stud at building corners and where clear height exceeds 8 feet.	300 EA	\$ <u>55.00</u> /EA	\$ <u>16,500.00</u>
10. Remove existing corroded metal studs and replace with new 16-gauge studs, attached at top and bottom with new clip angles.	50 STUDS	\$ <u>55.00</u> /STUD	\$ <u>2,750.00</u>
11. Install new partial height infill metal studs above and below W2 and W3 windows and D3 doors.	900 LF	\$ <u>12.25</u> /LF	\$ <u>11,025.00</u>
12. Clean and remove corrosion from existing metal studs/tracks and prime with rust-inhibiting coating.	300 LF	\$ <u>370</u> /LF	\$ <u>1,110.00</u>
Window and Door Replacement:			
13. Remove and replace deteriorated wood blocking at perimeter rough openings of windows and doors.	3,000 LF	\$ <u>613</u> /LF	\$ <u>18,390.00</u>
Balcony and Breezeways:			
14. Remove and patch ceiling finish where delaminated or texture is missing.	3,000 SF	\$ <u>245</u> /SF	\$ <u>7,350.00</u>
15. Install new deck coating (Repair Type "A") in front of W1 windows and sliding glass doors.	1,000 LF	\$ <u>700</u> /LF	\$ <u>7,000.00</u>
16. Install new deck coating (Repair Type "B") in front of W1 windows and sliding glass doors in lieu of Type "A".	200 LF	\$ <u>425</u> /LF	\$ <u>850.00</u>
17. Patch existing deck coating where deteriorated.	300 SF	\$ <u>613</u> /SF	\$ <u>1,839.00</u>

00-71-1530
BUILDING ENVELOPE REMEDIATION
SHIPWATCH AT WILD DUNES
ISLE OF PALMS, SOUTH CAROLINA

<u>Description of Items</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Lump Sum</u>
Balcony and Breezeways (Continued):			
18. Install new deck coating slurry to provide positive slope of the deck surfaces.	500 SF	\$ <u>6¹³</u> /SF	\$ <u>3,066.⁰⁰</u>
19. Install new DEFS accent board around concrete columns.	250 LF	\$ <u>18⁴⁰</u> /LF	\$ <u>4,600.⁰⁰</u>
20. Install new side-mounted aluminum handrails around roof access hatch areas on 5 th floor street side balconies.	20 LF	\$ <u>98.⁹⁹</u> /LF	\$ <u>1,960.⁰⁰</u>
21. Install new surface-mounted aluminum handrails around roof access hatch area on 5 th floor street side balconies.	125 LF	\$ <u>93.⁰⁰</u> /LF	\$ <u>11,625.⁰⁰</u>
22. Install new gutters.	230 LF	\$ <u>12.²⁵</u> /LF	\$ <u>2,817.⁰⁰</u>
23. Repair miscellaneous spalled concrete by patching concrete with approved repair mortar.	50 CF	\$ <u>214.⁰⁰</u> /CF	\$ <u>10,700.⁰⁰</u>
24. Remove and reinstall existing canopies on the 5 th floor street sides balcony slabs below the existing gutters.	50 LF	\$ <u>30.⁶⁵</u> /LF	\$ <u>1,532.⁰⁰</u>
Roofing:			
25. Replace existing plywood decking where deteriorated or required for attic access.	500 SF	\$ <u>3.⁷⁰</u> /SF	\$ <u>1,850.⁰⁰</u>
26. Replace spark arrestors with new water resistant fixtures.	16 EA	\$ <u>43.⁰⁰</u> /EA	\$ <u>688.⁰⁰</u>
27. Remove and replace existing deteriorated wood nailers.	100 BF	\$ <u>8.⁰⁰</u> /BF	\$ <u>800.⁰⁰</u>
28. Install new miscellaneous Simpson anchors at roof framing-to-slab connections.	50 EA	\$ <u>153.⁰⁰</u> /EA	\$ <u>7,650.⁰⁰</u>
29. Install new miscellaneous Simpson anchors at wood framing connections.	50 EA	\$ <u>73.⁵⁰</u> /EA	\$ <u>3,675.⁰⁰</u>
Cash Allowance Items (Base Bid):			
1. The Contractor shall include in the Base Bid a cash allowance of \$25,000 for water testing of the new windows and doors.	N/A	N/A	\$25,000
2. The Contractor shall include in the Base Bid a cash allowance of \$50,000 for electrical repairs.	N/A	N/A	\$50,000

BUILDING ENVELOPE REMEDIATION
SHIPWATCH AT WILD DUNES
ISLE OF PALMS, SOUTH CAROLINA

Description of Items	Quantity	Unit Price	Lump Sum

Cash Allowance Items (Base Bid):

3. The Contractor shall include in the Base Bid a cash allowance of \$5,000 for replacing light fixtures that are damaged during removal and installation.	N/A	N/A	\$5,000

TOTAL LUMP SUM COST

Five Million Nine Hundred Twenty Three and 00/100
\$ *5,920,823.00*
Use Words Use Numbers

ALTERNATE BID ITEMS:

The Contractor shall provide the following lump sum cost for Alternate Bid Items, which may be substituted for other items already listed in the Base Bid as determined by the Owner as described in Section 01 23 00, Alternates: *Per 5-30-13 Interview*

1. <u>Alternate No. 1:</u> Install new horizontal sliding windows manufactured by Kawneer at W2 and W3 windows in lieu of single hung windows manufactured by YKK.	\$ <i>No Bid</i>	(Increase/Decrease)
2. <u>Alternate No. 2:</u> Install new curtain walls manufactured by Kawneer at CW-1 in lieu of curtain walls manufactured by YKK.	\$ <i>No Bid</i>	(Increase/Decrease)
3. <u>Alternate No. 3:</u> Install new curtain walls manufactured by Old Castle at CW-1 in lieu of curtain walls manufactured by YKK...	\$ <i>No Bid</i>	(Increase/Decrease)
4. <u>Alternate No. 4:</u> Install Neogard 7470 finish top coat in lieu of 7430 finish top coat at the balcony and breezeway deck coating (repair Type "C").	\$ <i>0.00</i>	(Increase/Decrease)
5. <u>Alternate No. 5:</u> Execute hurricane evacuation preparedness plan.	\$ <i>137,312.00</i>	(Increase/Decrease)
6. <u>Alternate No. 6:</u> Install new anodized finish over aluminum handrails in lieu of kynar coating.	\$ <i>No Bid</i>	(Increase/Decrease)
7. <u>Alternate No. R1:</u> Provide and install new pre-fabricated, 22 gage galvalume, coated, standing seam roof panels complete with all accessories in lieu of pre-finished aluminum panels.	\$ <i>2,810.00</i>	(Increase/Decrease)
8. <u>Alternate No. R2:</u> Provide and install new pre-manufactured, pre-finished aluminum standing seam metal roof system with all accessories on Buildings C and D, pool house, pump house, and office as described in the base bid. Install continuous self-adhering waterproofing membrane underlayment and new Metal-Era vented system at ridges and eaves in lieu of materials described in base bid. Install new unfaced batt insulation in attic areas over all occupied spaces.	\$ <i>24,520.00</i>	(Increase/Decrease)
9. <u>Alternate No. R3:</u> Provide and install new pre-fabricated aluminum standing seam metal roof panels with anodized finish complete with all accessories in lieu of fluorocarbon coating.	\$ <i>42,910.00</i>	(Increase/Decrease)

NO WARRANTY WILL BE PROVIDED ON THIS ALTERNATE

**BUILDING ENVELOPE REMEDIATION
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10. Alternate No. R4: Provide and install new pre-fabricated aluminum standing seam metal roof panels with "pencil-rib" panels complete with all accessories in lieu of "flat" panels.

\$ 0.02 (Increase/Decrease)

PHASE II - BUILDINGS A & B

Phase II construction is anticipated to begin September 2014 or September 2015 and be completed by May 30 of the following year. It is the Owner's intent to award a Phase II contract to the successful Phase I contractor near or following successful completion of Phase I repairs. If deemed to be in the Owner's best interest, the Owner will negotiate a contract with the Phase I contractor to complete the same scope of repairs to Buildings A and B as a Phase II project. The negotiated contract price for the Phase II contract will be based on the Phase I contract prices adjusted for inflation as dictated by the consumer price index.

The undersigned acknowledges that he has received and reviewed the below enumerated addenda and has taken them into account in the preparation of this proposal.

Addendum No. 1 Dated MAY 10, 2013

Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

The undersigned acknowledges that he has reviewed and attached the following documents to his bid:

1. Signature Page of "Bidder's Qualifications"
2. Signature page of "Supplementary Conditions"
3. The names, addresses, telephone numbers, South Carolina license number for their specific trade, and five references (including contact name and number) for each of the following subcontractors proposed for use on the project:
 - Glass Subcontractor RIPLEY GLASS
 - Hardcoat Stucco Subcontractor FOX VALLEY
 - Pedestrian Deck Coating Subcontractor PRO-TEC
 - Handrail Subcontractor ARG
 - Roofing Subcontractor METAL SYSTEMS INSTALLATIONS, INC.
 - Sealant Subcontractor PRO-TEC
 - Painting/Coating Subcontractor PRO-TEC
4. Preliminary schedule for construction TO BE SUBMITTED BY 5/20/2013
5. Bid Bond ☒

Provide Contractor's South Carolina General Contractors License Number: SC GC 10674

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BUILDING ENVELOPE REMEDIATION
SHIPWATCH AT WILD DUNES
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Respectfully submitted this 17TH day of MAY, 2013.

By: Charlotte Paint Co. Inc. dba PRO-TEC FINISHES
(Name of Firm or Corporation making bid)

By: Jimmy J. Garbino
Vice President
Title: (Owner, Partner, or Corp. Pres. or Vice-Pres. Only).

WITNESS:

(Proprietorship or Partnership)

ATTEST:

By: Charles A. Hooley
Title: Secretary, Treasurer
(Corp. Sec. or Assist. Sec. Only)

(CORPORATE SEAL)



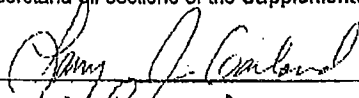
END OF SECTION 00 41 13

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BUILDING ENVELOPE REMEDIATION
SHIPWATCH AT WILD DUNES
ISLE OF PALMS, SOUTH CAROLINA

- 1.32 Balcony Items: Prior to construction, the Owner will remove all furniture and belongings to avoid damage of these items during the construction work. The Contractor will not be responsible for damage to existing balcony furniture and belongings left in place by the Owner.
- ~~1.33~~ Interior Valuables: The Owner will move or secure all valuables within the unit that they feel could be stolen or damaged prior to the work. ~~The Contractor will not be responsible for valuables left unsecured in the units.~~
- 1.34 Unit Access and Demising Walls: Although the Owner will not occupy the Buildings during construction, unit access shall be accomplished primarily from the exterior and not through the units. The Contractor shall construct and maintain a temporary demising "wall" that separates the building interior from the exterior during the replacement of the windows and doors. The demising wall shall protect the building interior from the elements. Interior repairs associated with damage from the demising walls shall be repaired by the Contractor at no cost to the Owner. The contractor shall submit the proposed demising wall construction with his Bid.
- 1.35 Roof Protection: The Contractor will be responsible for protection of the existing modified bitumen roof on the main buildings. The existing roof is under warranty and damage to the roof shall be repaired by an approved roof contractor to maintain the warranty at no cost to the Owner.
- 1.36 Changes in the Work: In addition to the justifiable equipment, materials, labor and other charges, Contractor shall be permitted to add a maximum of 15 percent overhead and profit to change order work.
- 1.37 Superintendent: The Contractor will assign and maintain one (1) superintendent during the remediation repair work. This superintendent will be on site 100 percent of the time repair work is being performed.

I have read and understand all sections of the Supplementary Conditions. This page must be submitted with bid.

Signed By:


Vice President

Title: (Owner, Partner or Corporate President or Vice President only)

END OF SECTION 00 73 00

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BUILDING ENVELOPE REMEDIATION
SHIPWATCH AT WILD DUNES
ISLE OF PALMS, SOUTH CAROLINA

"SECTION 00 73 00

REVISED SUPPLEMENTARY CONDITIONS

PART I - GENERAL

- 1.01 Project Startup: Mobilization and construction on this project shall not begin before September 3, 2013. Pre-construction activities, including submittals, shop drawings, material orders, schedules, pre-construction meeting, and other pre-construction activities, shall begin immediately after execution of the Contract. The Owner intends on awarding a contract with the successful bidder in June 2013.
- 1.02 Time for Completion: Time is of the essence on this project. The work for this project shall be substantially complete by May 15, 2014 and final completion shall be achieved by May 31, 2014.
- 1.03 Notice of Award: A written Notice of Award will be given by the Engineer to the General Contractor following selection of the successful Bidder by the Owner. The Notice of Award is anticipated to be issued within approximately (7) days from receipt of bids. The Notice of Award notifies the successful Bidder of the Owner's intent to contract with them pending execution of the Contract by both parties. The Owner intends on executing the Contract in June 2013.
- 1.04 Work Schedule: The Contractor shall coordinate, schedule, and complete the work of this project within the required contract time.
- 1.05 Notice to Proceed: Written notice to proceed will be given by the Engineer to the General Contractor promptly after the materials and subcontracts have been evaluated and evidence of the required insurance and insurance certificates are furnished to the Owner and the Contract agreement with the General Contractor is executed.
- 1.06 Hurricane Evacuation Preparedness Plan: All ordinances of the local, state, and federal jurisdictions, specifying requirements which must be instituted on an active construction project in the event of a hurricane watch, hurricane warning, and/or mandatory evacuation order issued by the Governor of the State of South Carolina and City of Isle of Palms shall be strictly followed. The Contractor shall formulate and submit a plan to apply to this project and shall submit it with this bid. A lump sum price or other pricing schedule which shall apply to the work outlined shall also be submitted with the plan. In the event that this plan is executed as the result of an impending hurricane, the cost of the work will be added to the contract by change order. All materials and work of this Contract are the responsibility of the Contractor. No compensation will be provided by the Owner for hurricane protection for work that extends past the project end date.
- 1.07 Scheduling the Project:
 - A. It is essential that this project be completed by the specified dates in the Contract. The Contractor shall evaluate the work to be accomplished and shall make a determination as to how he can accomplish the work within this specified time period. Based upon his expectations, the Contractor shall prepare a detailed schedule outlining the manpower requirements necessary to accomplish the work.
 - B. With the bid, Contractor shall submit a preliminary schedule of how he will perform the work on this project, outlining the manpower requirements necessary to accomplish the work. If no schedule is submitted, the bid will be considered unresponsive.

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- 1.08 Permitting: The City of Isle of Palms requires permitting for this remediation. Contractor shall obtain and pay for all necessary permits for the work described in the Contract Documents.
- 1.09 Owner Access/Securing and Protection of the Site: No Owner access will be allowed within Buildings C and D during the work. Owner access will be allowed in the adjacent Buildings A and B on site. The Contractor will provide signage and barricades to protect site, buildings, pedestrians, and direct pedestrians from areas where work is being done. Contractor shall provide and maintain access to Buildings A and B and other common areas (including office, pool, streets, etc.), which can be occupied by Owner and Tenants. The Contractor shall comply with all regulations and requirements of the City of Isle of Palms related to providing an adequate protective work zone around the building as required by the International Building Code, current edition. Procedures for securing and protection of the entire work area shall be submitted *with the Bid* to the Owner for review.
- 1.10 Work Hours: Construction will be allowed 6 days/week (no Sundays) during the hours of 7:00 am to 6:00 pm as needed by the Contractor.
- 1.11 General Explanation of Bid Procedure: It is the purpose and intent of the following specifications to include items of material, work, services, and equipment necessary to the work of the entire project as shown on the drawings and including those portions, if any, which are to be added by unit cost adjustment to the contract.
- 1.12 Project Expediter:
- A. It shall be the responsibility of the General Contractor to act as Project Expediter on this project.
 - B. The Contractor shall maintain the progress schedule, making weekly adjustments, updates, corrections, etc., that are necessary, keeping all Subcontractors, the Owner and the Engineer fully informed.
- 1.13 Manufacturer's Directions: All items and materials shall be installed in accordance with the manufacturer's printed directions or in accordance with the specifications and recommendations of applicable trade or manufacturer's association as required in these specifications unless specifically directed otherwise in writing by the Engineer.
- 1.14 Engineer: Wherever in the Agreement or the General Conditions the word "Engineer" occurs they shall refer to the Engineer, SKA Consulting Engineers, Inc., 4651 Charlotte Park Drive, Suite 150, Charlotte, North Carolina 28217.
- 1.15 Contractor: Wherever in the Agreement or the General Conditions the word "Contractor" occurs, it shall refer to the person, partnership, corporation, or firm to whom the contract for the work is awarded. The Contractor is understood and agreed to be an independent contractor and not the agent of the Owner in any respect. The Contractor has no right to incur any obligation whatsoever for the account of or in the name of the Owner. The Contractor shall be solely liable and responsible for his acts and omissions or those of his employees or subcontractors.
- 1.16 Installation: Wherever the words "install," "provide," or "furnish" occur, they shall be understood to include all unloading, rigging, hoisting and storing, and the furnishing of all tools, equipment, labor, and materials required to furnish, handle, and completely install the work, unless specifically Indicated otherwise.

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 BUILDING ENVELOPE REMEDIATION
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 ISLE OF PALMS, SOUTH CAROLINA

1.17 Enumeration of Plans and Specifications:

A. Drawings:

<u>1.</u>	<u>Sheet Numbers</u>	<u>Drawing Title</u>
	CS.1	Cover Sheet
	S1.0A	Appendix B
	S1.1	Statement of Special Inspections
	S2.1	Site Plan
	S2.2	Floor Plans 1, 2 & 3
	S2.3	Floor Plan 4
	S2.4	Floor Plan 5 Roof Plan
	S2.5	Ground Floor Plan
	S2.6	Partial Plans
	S2.7	Partial Plans
	S2.8	Partial Plans
	S4.1	West Elevation – Street Side
	S4.2	East Elevation – Ocean Side – Buildings A & B
	S4.3	East Elevation – Ocean Side – Buildings C & D
	S4.4	
	S4.4	North & South Elevations – End Walls
	S4.5	Partial Elevations
	S4.6	Partial Elevations
	S4.7	Partial Elevations
	S4.8	Partial Elevations
	S5.1	Structural Sections and Details (Schedules)
	S5.2	Structural Sections and Details
	S6.1	Stucco Sections and Details
	S6.2	Stucco Sections and Details
	S6.3	Stucco Sections and Details
	S6.4	Stucco Sections and Details – Corner Balconies
	S6.5	Stucco Sections and Details
	S6.6	Stucco Sections and Details
	S6.7	Stucco Sections and Details
	S7.0	Window & Door Elevations
	S7.1	Window & Door Sections & Details – Windows
	S7.2	Window & Door Sections & Details – Window Flashing
	S7.3	Window & Door Sections & Details – Sliding Doors
	S7.4	Window & Door Sections & Details
	S7.5	Window & Door Sections & Details – Curtain Wall
	S7.6	Window & Door Sections & Details
	S8.1	Balcony & Waterproofing Sections & Details
	S8.2	Balcony & Waterproofing Sections & Details
	S8.3	Balcony & Waterproofing Sections & Details
	S8.4	Balcony & Waterproofing Sections & Details
	S9.1	Concrete Repair Sections & Details

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R1.1	Roof Plan
R1.2	Roof Plan & Partial Roof Plan
R2.1	Roofing Sections & Details
R2.2	Roofing Sections & Details
R2.3	Roofing Sections & Details
R2.4	Roofing Sections & Details

B. Specifications:

1. Non-Technical: Division Number 00, which includes the following: Invitation to Bid, Instructions to Bidders, Bidder's Qualifications, Supplementary Conditions, Bid Form, Form of Agreement, Standard General Conditions of the Construction Contract, Performance and Payment Bond, and Special Forms.
2. Technical: Divisions 01 through 49.
3. Also forming a part of each contract are any addenda issued prior to the date set for receiving bids or for any postponement thereof.

1.18 Definitions:

- A. Contract Documents: The documents for this contract include all the drawings in the set and the complete specifications. No allowance will be made for the Contractor's failure to familiarize him/herself with the complete Contract Documents.
- B. Owner: Shipwatch at Wild Dunes Homeowners Association, Isle of Palms, South Carolina.
- C. Engineer: SKA Consulting Engineers, Inc., 4651 Charlotte Park Drive, Suite 150, Charlotte, North Carolina, 28217, (704) 424-9663.
- D. Provide: Shall be understood to mean "furnish and install."
- E. Approval: Shall be understood to mean submission to the Engineer and their specific written approval prior to action.

1.19 Project Controls:

- A. Material Storage: Construction materials may be stored on the site at locations designated by the Owner, and shall not be placed to block or cause a hazard to the Owner's facility's pedestrian or vehicular traffic. The Owner shall designate a reasonable area for material and equipment storage and a job trailer. Any area so designated shall be fully restored by the Contractor to its original condition.
- B. Parking: The Contractor is allowed to park within the confines of the construction area and at other locations designated by the Owner.
- C. Clean Up: Contractor shall clean up all visible debris on a daily basis and upon completion of work.
- D. Demolition: Contractor should make provisions to remove demolished materials and debris by means, which are acceptable to Owner and without damage to the property.

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- 1.20 Explanation: In some Divisions of the specifications under "Scope of the Work", such work may be described using specific sheet numbers of the drawings as reference. Where this occurs, it is intended for reference and emphasis and the Contractor shall not interpret the "Scope of Work" required by the Division as limited to those referenced sheets.
- 1.21 Site Inspection: All prospective bidders will be required to visit the site prior to submission of their bid in order to verify existing conditions.
- 1.22 Safety: The Contractor shall adhere to the rules, regulations, and interpretations of the Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926 published in Volume 39, Number 122, Part II, June 24, 1974 Federal Register) which are hereby incorporated in these specifications and to all other applicable state and local regulations governing the safe operation of a construction project.
- 1.23 Drawings and Dimensions: Drawings are not to be scaled for dimensions not shown. Dimensions of existing facilities are to be field measured. Where adjustments are necessary to suit field conditions, or where additional dimensions or other clarification is required, the Contractor shall promptly request such clarifications as provided by the General Conditions of the Contract.
- 1.24 Deviations from Working Drawings or Specifications: Deviations from Working Drawings or Specifications shall not be made in the execution of this work without the specific written approval of the Engineer.
- 1.25 Insurance:
- A. **Builders Risk (Bid Alternate):** Contractor's bid shall include a bid alternate for the cost of adding Builders Risk Insurance coverage to cover work to be completed including materials and supplies that will become a permanent part of the building for the full value of the contract. Builders Risk coverage is to be written on a special form basis including theft for the full value of the contract and shall be with insurance companies with A. M. Best Rating of A- VI or better. Include the insurance company name, policy form, and deductibles. Owner may at their option elect to provide the builders risk coverage.
 - B. Contractor is required to carry Workmen's Compensation Insurance per statutory limits, auto liability coverage, and general liability coverage.
 - C. **Workers Compensation coverage shall include the following:**
 - 1. **Statutory Benefits**
 - 2. **Employers Liability: \$500,000 Each Accident**
\$500,000 Disease – Policy Limit
\$500,000 Disease – Each Employee
 - D. Comprehensive General Liability Insurance, including Contractor's Protective, Completed Operations, and General Contractual Liability Insurance. **Commercial General Liability coverage shall include the following:**
 - 1. **\$2,000,000 General Aggregate**
 - 2. **\$2,000,000 Products Completed Operations Aggregate**
 - 3. **\$1,000,000 Each Occurrence**
 - 4. **Coverage on an occurrence basis**
 - 5. **Aggregate Limits of Insurance on a per project basis**

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6. Completed operations coverage will be in effect for a minimum of 7 years after completion
 7. Can have no residential / habitational exclusions
 - E. Comprehensive Automobile Liability Insurance covering Contractor for claims arising from all owned, hired, and non-owned vehicles, minimum coverage of \$1,000,000 combined single limit bodily injury and property damage.
 - F. Independent Contractor's coverage and Owner's-Contractor's protective are also required under general liability coverage.
 - G. Excess liability umbrella coverage in the amount of \$10,000,000 each occurrence/aggregate shall be required. Coverage on occurrence basis.
 - H. The Contractor shall include the Owner and Engineer as additional insured on the project.
 - I. Insurance coverage amounts as listed above shall be specifically for the Shipwatch project only.
 - J. All insurance policies are to be written with a company duly authorized to transact business within the jurisdiction of the Project site and shall be with insurance companies acceptable to Owner and with A. M. Best Rating of A- VI or better. The Owner shall be included as an Additional Insured on the General Liability including ongoing and completed operations, Automobile Liability and Umbrella policies. Coverage is primary and non-contributory with respect to any insurance carried by the Owner. Waiver of Subrogation in favor of Owner to be included on General Liability, Workers Compensation and Umbrella coverages. Policies should have a provision to notifying Owner thirty (30) days prior to cancellation or non-renewal of any such policies.
- 1.26. Assignment of Contract: Contractor shall not assign, transfer, convey, or otherwise dispose of the contract, or if its legal right, title, or interest in or to the same or to any part thereof, without the prior written consent of the Owner. Contractor shall not assign by power of attorney or otherwise any monies due him and payable under this Contract without the prior written consent of the Owner. Such consent, if given, will in no way relieve the Contractor from any of the obligations of this Contract.
- 1.27. Applications for Payments: Article 14.02.A.1: Replace "At least 20 days before the date established for each progress payment." with "At least 25 days before the date established for each progress payment."
- A. The Contractor shall submit an updated construction schedule with each payment application. Applications received without an updated schedule will be considered incomplete and will be returned to the Contractor unprocessed.
 - B. The Contractor shall submit an AIA Document G706A with every pay application and submit an AIA Document G706 with final pay application.
 - C. The Contractor awarded the bid will be required to have the *majority* owner of that company sign each payment application.
- 1.28. Liquidated Damages: Time is of the essence on this project and delays in construction will financially impact the Owner. Therefore, the Owner will assess liquidated damages as a penalty if work is not completed within the contract time. Liquidated damages will commence May 16,

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2014 for each calendar day the work is not Substantially Complete. Liquidated damages of \$750 per day shall be imposed if the contract time is exceeded. The liquidated damages will be set forth in the Form of Agreement. Liquidated damages of \$750 per day will also commence June 1, 2014 for each calendar day the work does not reach Final Completion. **Calendar days are based on seven days a week, including Sundays.**

- 1.29 Landscaping/Costs: The Contractor shall notify the Owner of specific landscaping issues that will affect Contractor during work of this Project. Owner will retain their landscaping company to address landscaping issues on the project, including removal of landscaping that will be salvaged and replacement of landscaping that will be installed.
- 1.30 Isle of Palm Access Fee: The Contractor shall be responsible for all fees required to access the site through the Isle of Palms Security Office during work on this project. Fees currently are believed to be \$15 vehicle/day. It is believed that an unlimited contractor's pass can be purchased for \$135/vehicle, \$100/vehicle (5 or more vehicles), and \$270/vehicle (for 6 wheel vehicles). Exact costs for vehicles can be obtained by contacting the Isle of Palms Security Office."
- 1.31 Interior Furnishings: Prior to construction, along the exterior perimeter walls, the Owner will remove all pictures, blinds, curtains and other furnishings to avoid damage of these items during the construction work. The Owner will also move all furniture within the units, which are located within 4 feet of a window or door that is being replaced and "roll back" the carpet in front of the windows and doors a distance of 4.5 feet. **The Owner will also be responsible for removal and salvaging existing interior molding and trim (i.e. crown, chair rail, wainscot, etc) that they deem necessary within the 4 foot area described above around windows and doors.** The Contractor will not be responsible for damage to existing pictures, blinds, curtains, or other furnishings located on or attached to the perimeter exterior walls or interior furniture or carpet left in place within 4 feet of the windows and doors, **or interior molding and trim left in place adjacent to the windows and doors.** The contractor will be responsible for protecting all other furnishings in the units, including hardwoods and tile in front of windows/doors, and will be required to repair or replace damaged materials to the full satisfaction of the Owner. **The contractor will be required to replace damaged or removed interior floor base boards and prime, ready to receive finish painting by Owner.** After construction, the Owner will replace Owner-removed furnishes as described above.
- 1.32 Protection of Interior Hardwoods, Tile and Laminate: Contractor shall survey existing condition of hardwoods, tile and laminate in front of windows/doors and document existing damage. Documented damaged areas shall be confirmed by Owner's representative prior to installation of protective coverings so that Contractor is not held responsible for existing damage. Contractor shall saw cut and remove outer edges of existing hardwoods, tile and laminate as necessary to facilitate new window/door installation and install protective coverings in a manner to facilitate such removal. After installation of protective coverings by Contractor, Contractor and Owner's representative shall observe in-place protective coverings and confirm that reasonable protection has been installed.
- 1.33 Balcony Items: Prior to construction, the Owner will remove all furniture and belongings to avoid damage of these items during the construction work. The Contractor will not be responsible for damage to existing balcony furniture and belongings left in place by the Owner.
- 1.34 Interior Valuables: The Owner will move or secure all valuables within the unit that they feel could be stolen or damaged prior to the work. The Contractor will not be responsible for valuables left unsecured in the units.
- 1.35 Unit Access and Demising Walls: Although the Owner will not occupy the Buildings during construction, unit access shall be accomplished primarily from the exterior and not through the units. The Contractor shall construct and maintain a temporary demising "wall" that separates the building

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interior from the exterior during the replacement of the windows and doors. The demising wall shall protect the building interior from the elements. Interior repairs associated with damage from the demising walls shall be repaired by the Contractor at no cost to the Owner. The contractor shall submit the proposed demising wall construction with his Bid.

- 1.36 Roof Protection: The Contractor will be responsible for protection of the existing modified bitumen roof on the main buildings. The existing roof is under warranty and damage to the roof shall be repaired by an approved roof contractor to maintain the warranty at no cost to the Owner.
- 1.37 Changes in the Work: In addition to the justifiable equipment, materials, labor and other charges, Contractor shall be permitted to add a maximum of 15 percent overhead and profit to change order work.
- 1.38 Superintendent: The Contractor will assign and maintain one (1) superintendent during the remediation repair work. This superintendent will be on site 100 percent of the time repair work is being performed.
- 1.39 Modifications of Standard General Conditions of the Construction Contract: The Owner will require the following modifications to the Standard General Conditions of the Construction Contract, EJCDC C-700 document, provided in the Project Documents, during execution of the Owner-Contractor Agreement:
- A. Deletion of "Section 5.07 Waiver of Rights", in its entirety on page 00700-17.
 - B. Deletion of "Paragraph B, Section 5.08 Receipt and Application of Insurance Proceeds", in its entirety on page 00700-17.

I have read and understand all sections of the **Supplementary Conditions**. This page must be submitted with bid.

Signed By: _____

Title: (Owner, Partner or Corporate President or Vice President only)

END OF SECTION 00 73 00"



4651 Charlotte Park Drive
Suite 150
Charlotte, NC
28217-1191

P: 704.424.9663
F: 704.424.9665

www.skaeng.com

Groups

Structural

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Wilmington, NC

Birmingham, AL

June 10, 2013

Pro-Tec Finishes
PO Box 765
Mt. Holly, North Carolina 28120

Attention: Mr. Terry McClain

Reference: Notice of Award
Building Envelope Remediation
Shipwatch at Wild Dunes
Isle of Palms, South Carolina
SKA Job No. 090432.4

Dear Mr. McClain:

The purpose of this letter is to notify you that you are the successful bidder on the building envelope remediation project at the Shipwatch at Wild Dunes Condominiums. The Shipwatch Condominiums HOA intends on contracting with you for the Phase 1 remediation work for the lump sum cost of \$5,671,923, as contained in your bid. SKA will begin preparation of the Contracts for execution by you and the Owner.

Prior to receiving Contracts, you are hereby requested to notify your subcontractors and begin obtaining the insurance certificates and bonds as required by the Project Documents.

We congratulate you on the award of this project and look forward to working with you. Please contact me if you have any questions.

Respectfully submitted,

SKA CONSULTING ENGINEERS, INC.

Jeffrey S. Miller, PE
Manager, Building Solutions Group

Britt Kelly

From: Don Michel <DMichel@charlestoncounty.org>
Sent: Tuesday, January 13, 2015 2:23 PM
To: 'R. Patrick Flynn'; Eversole Amy R.; Caroline Crisler. Leonard; Britt Kelly
Cc: Sperry, Paul E.; Winton, Tyler P.; Jsmith@turnerpadget.com; erindean@tgdpa.com; staceycanaday@tgdpa.com; droot@kernodlelaw.com; Nate Head; snettles@richardsonplowden.com; dcobb@turnerpadget.com; Laura Croft; mbarfield@barnwell-whaley.com; amanda@maybanklaw.com; marshall@maybanklaw.com; elizabeth@maybanklaw.com; jelliott@richardsonplowden.com; sgladden@richardsonplowden.com; shatch@barnwell-whaley.com; janderson@arlawsc.com; dwegener@arlawsc.com; jdunning@arlawsc.com; Ghorton@wcsr.com; Rgilsenan@wcsr.com; abelton@wcsr.com; jdavid@wcsr.com; jhladek@richardsonplowden.com; mckelvey.gc@gmail.com; etobul@turnerpadget.com; jcanaday@kernodlelaw.com; Chris Ramsey; Frances Klotsch; Bill Lyles; Teddy Manos
Subject: RE: Shipwatch and Mendiondo: 2012-CP-10-3857 and 3858

All,

Judge Dennis is unable to make a ruling based on the previous emails submitted. And since you are unable to come to an agreement, he will be happy to hear both sides out, on the record, regarding why these motions should be heard. We can do this at the originally scheduled time on the 15th. You need to be ready to argue them should he allow them to move forward. He has asked me to pass along to please let us know if you are able to resolve this issue on your own.

Please let me know if you have any questions or concerns.

Don

Don Michel
Court Management Supervisor
Charleston County Clerk of Court
100 Broad St. Suite 106
Charleston, SC 29401
Direct: 843-958-5013
Fax: 843-958-5020



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From: R. Patrick Flynn [mailto:rpf@roblaw.net]
Sent: Monday, January 12, 2015 6:53 PM
To: Eversole Amy R.; Caroline Crisler. Leonard; Don Michel; 'Britt Kelly'
Cc: Sperry, Paul E.; Winton, Tyler P.; Jsmith@turnerpadget.com; erindean@tgdpa.com; staceycanaday@tgdpa.com; droot@kernodlelaw.com; Nate Head; snettles@richardsonplowden.com; dcobb@turnerpadget.com; Laura Croft; mbarfield@barnwell-whaley.com; amanda@maybanklaw.com; marshall@maybanklaw.com; elizabeth@maybanklaw.com;

jelliott@richardsonplowden.com; sgladden@richardsonplowden.com; shatch@barnwell-whaley.com;
janderson@arlawsc.com; dwegener@arlawsc.com; jdunning@arlawsc.com; Ghorton@wcsr.com; Rgilsenan@wcsr.com;
abelton@wcsr.com; j david@wcsr.com; jhladek@richardsonplowden.com; mckelvey.gc@gmail.com;
etobul@turnerpadget.com; jcanaday@kernodlelaw.com; Chris Ramsey; Frances Klotsch; Bill Lyles; Teddy Manos
Subject: RE: Shipwatch and Mendiondo: 2012-CP-10-3857 and 3858

The motions are not on the roster for Thursday. I have not heard anything further or seen any motions to lift the stay in order to get the motions heard during the appeal. ----Pat

From: Eversole Amy R. [mailto:aeversole@carlockcopeland.com]
Sent: Monday, January 12, 2015 5:17 PM
To: 'Caroline Crisler. Leonard'; R. Patrick Flynn; Don Michel; 'Britt Kelly'
Cc: Sperry, Paul E.; Winton, Tyler P.; Jsmith@turnerpadget.com; erindean@tgdpa.com; staceycanaday@tgdpa.com; droot@kernodlelaw.com; Nate Head; snettles@richardsonplowden.com; dcobb@turnerpadget.com; Laura Croft; mbarfield@barnwell-whaley.com; amanda@maybanklaw.com; marshall@maybanklaw.com; elizabeth@maybanklaw.com; jelliott@richardsonplowden.com; sgladden@richardsonplowden.com; shatch@barnwell-whaley.com; janderson@arlawsc.com; dwegener@arlawsc.com; jdunning@arlawsc.com; Ghorton@wcsr.com; Rgilsenan@wcsr.com; abelton@wcsr.com; j david@wcsr.com; jhladek@richardsonplowden.com; mckelvey.gc@gmail.com; etobul@turnerpadget.com; jcanaday@kernodlelaw.com; Chris Ramsey; Frances Klotsch; Bill Lyles; Teddy Manos
Subject: RE: Shipwatch and Mendiondo: 2012-CP-10-3857 and 3858

Good evening –

I just want to make sure that I have not missed an email re the hearing, currently set for Thursday. Thank you.

Amy

From: Caroline Crisler. Leonard [mailto:ccleonard@charlestoncounty.org]
Sent: Tuesday, January 06, 2015 10:59 AM
To: 'R. Patrick Flynn'; Don Michel; 'Britt Kelly'
Cc: Sperry, Paul E.; Winton, Tyler P.; Eversole Amy R.; Jsmith@turnerpadget.com; erindean@tgdpa.com; staceycanaday@tgdpa.com; droot@kernodlelaw.com; Nate Head; snettles@richardsonplowden.com; dcobb@turnerpadget.com; Laura Croft; mbarfield@barnwell-whaley.com; amanda@maybanklaw.com; marshall@maybanklaw.com; elizabeth@maybanklaw.com; jelliott@richardsonplowden.com; sgladden@richardsonplowden.com; shatch@barnwell-whaley.com; janderson@arlawsc.com; dwegener@arlawsc.com; jdunning@arlawsc.com; Ghorton@wcsr.com; Rgilsenan@wcsr.com; abelton@wcsr.com; j david@wcsr.com; jhladek@richardsonplowden.com; mckelvey.gc@gmail.com; etobul@turnerpadget.com; jcanaday@kernodlelaw.com; Chris Ramsey; Frances Klotsch; Bill Lyles; Teddy Manos
Subject: RE: Shipwatch and Mendiondo: 2012-CP-10-3857 and 3858

Judge Dennis has been advised of this matter and I will defer to his decision about how he wishes to proceed.

Caroline C. Leonard
Charleston County Clerk of Court
100 Broad Street
Charleston, Sc 29401
ccleonard@charlestoncounty.org



From: R. Patrick Flynn [<mailto:rpf@roblaw.net>]
Sent: Tuesday, January 06, 2015 10:58 AM
To: Caroline Crisler. Leonard; Don Michel; 'Britt Kelly'
Cc: Psperry@carlockcopeland.com; twinton@carlockcopeland.com; aeversole@carlockcopeland.com; Jsmith@turnerpadget.com; erindean@tgdpa.com; staceycanaday@tgdpa.com; droot@kernodlelaw.com; Nate Head; snettles@richardsonplowden.com; dcobb@turnerpadget.com; Laura Croft; mbarfield@barnwell-whaley.com; amanda@maybanklaw.com; marshall@maybanklaw.com; elizabeth@maybanklaw.com; jelliott@richardsonplowden.com; sgladden@richardsonplowden.com; shatch@barnwell-whaley.com; janderson@arlawsc.com; dwegener@arlawsc.com; jdunning@arlawsc.com; Ghorton@wcsr.com; Rgilsenan@wcsr.com; abelton@wcsr.com; j david@wcsr.com; jhladek@richardsonplowden.com; mckelvey.gc@gmail.com; etobul@turnerpadget.com; jcanaday@kernodlelaw.com; Chris Ramsey; Frances Klotsch; Bill Lyles; Teddy Manos
Subject: RE: Shipwatch and Mendiondo: 2012-CP-10-3857 and 3858

Caroline – based on my email below, Plaintiffs object to these motions being placed on the roster. Thanks – Pat Flynn

From: Caroline Crisler. Leonard [<mailto:ccleonard@charlestoncounty.org>]
Sent: Tuesday, January 6, 2015 10:53 AM
To: Don Michel; R. Patrick Flynn; 'Britt Kelly'
Cc: Psperry@carlockcopeland.com; twinton@carlockcopeland.com; aeversole@carlockcopeland.com; Jsmith@turnerpadget.com; erindean@tgdpa.com; staceycanaday@tgdpa.com; droot@kernodlelaw.com; Nate Head; snettles@richardsonplowden.com; dcobb@turnerpadget.com; Laura Croft; mbarfield@barnwell-whaley.com; amanda@maybanklaw.com; marshall@maybanklaw.com; elizabeth@maybanklaw.com; jelliott@richardsonplowden.com; sgladden@richardsonplowden.com; shatch@barnwell-whaley.com; janderson@arlawsc.com; dwegener@arlawsc.com; jdunning@arlawsc.com; Ghorton@wcsr.com; Rgilsenan@wcsr.com; abelton@wcsr.com; j david@wcsr.com; jhladek@richardsonplowden.com; mckelvey.gc@gmail.com; etobul@turnerpadget.com; jcanaday@kernodlelaw.com; Chris Ramsey; Frances Klotsch; Bill Lyles; Teddy Manos
Subject: RE: Shipwatch and Mendiondo: 2012-CP-10-3857 and 3858

Because of past communication and no opposition, I continued these off the roster. If you wish, I can put these on Judge Dennis' roster for the 15th if that is acceptable.

Caroline C. Leonard
Charleston County Clerk of Court
100 Broad Street
Charleston, Sc 29401
ccleonard@charlestoncounty.org



From: Don Michel

Sent: Tuesday, January 06, 2015 10:48 AM

To: 'R. Patrick Flynn'; 'Britt Kelly'; Caroline Crisler. Leonard

Cc: Psperry@carlockcopeland.com; twinton@carlockcopeland.com; aeversole@carlockcopeland.com; Jsmith@turnerpadget.com; erindean@tgdpa.com; staceycanaday@tgdpa.com; droot@kernodlelaw.com; Nate Head; snettles@richardsonplowden.com; dcobb@turnerpadget.com; Laura Croft; mbarfield@barnwell-whaley.com; amanda@maybanklaw.com; marshall@maybanklaw.com; elizabeth@maybanklaw.com; jelliott@richardsonplowden.com; sgladden@richardsonplowden.com; shatch@barnwell-whaley.com; janderson@arlawsc.com; dwegener@arlawsc.com; jdunning@arlawsc.com; Ghorton@wcsr.com; Rgilsenan@wcsr.com; abelton@wcsr.com; j david@wcsr.com; jhladek@richardsonplowden.com; mckelvey.gc@gmail.com; etobul@turnerpadget.com; jcanaday@kernodlelaw.com; Chris Ramsey; Frances Klotsch; Bill Lyles; Teddy Manos

Subject: RE: Shipwatch and Mendiondo: 2012-CP-10-3857 and 3858

Thank you for your reply, Pat. I believe that Caroline has forwarded your responses to Judge Jefferson. I am also forwarding all of this to Judge Dennis since you were before him a few weeks ago. I will let you know when I hear back.

Don Michel
Court Management Supervisor
Charleston County Clerk of Court
100 Broad St. Suite 106
Charleston, SC 29401
Direct: 843-958-5013
Fax: 843-958-5020



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From: R. Patrick Flynn [mailto:rpf@roblaw.net]

Sent: Tuesday, January 06, 2015 10:45 AM

To: Don Michel; 'Britt Kelly'; Caroline Crisler. Leonard

Cc: Psperry@carlockcopeland.com; twinton@carlockcopeland.com; aeversole@carlockcopeland.com; Jsmith@turnerpadget.com; erindean@tgdpa.com; staceycanaday@tgdpa.com; droot@kernodlelaw.com; Nate Head; snettles@richardsonplowden.com; dcobb@turnerpadget.com; Laura Croft; mbarfield@barnwell-whaley.com; amanda@maybanklaw.com; marshall@maybanklaw.com; elizabeth@maybanklaw.com; jelliott@richardsonplowden.com; sgladden@richardsonplowden.com; shatch@barnwell-whaley.com; janderson@arlawsc.com; dwegener@arlawsc.com; jdunning@arlawsc.com; Ghorton@wcsr.com; Rgilsenan@wcsr.com; abelton@wcsr.com; j david@wcsr.com; jhladek@richardsonplowden.com; mckelvey.gc@gmail.com; etobul@turnerpadget.com; jcanaday@kernodlelaw.com; Chris Ramsey; Frances Klotsch; Bill Lyles; Teddy Manos

Subject: RE: Shipwatch and Mendiondo: 2012-CP-10-3857 and 3858

Don and Caroline –

It is the Plaintiffs' position that the other motions are absolutely "affected by the appeal" as the order on appeal purports to dismiss a substantial portion of damages claimed by the Plaintiffs against each defendant. All defendants are named respondents in the appeal. Based on these circumstances, this case is automatically stayed by the appeal, and jurisdiction was transferred to the Court of Appeals upon filing and service of the Notice of Appeal. Any respondent contesting this posture must seek relief by motion to the Court of Appeals. It is Plaintiffs' position that the Circuit Court has no jurisdiction to hear any motions while this appeal is pending. Thanks –Pat

From: Don Michel [<mailto:DMichel@charlestoncounty.org>]

Sent: Tuesday, January 6, 2015 10:15 AM

To: 'Britt Kelly'; Caroline Crisler. Leonard; R. Patrick Flynn

Cc: Psperry@carlockcopeland.com; twinton@carlockcopeland.com; aeversole@carlockcopeland.com; jsmith@turnerpadget.com; erindean@tgdpa.com; staceycanaday@tgdpa.com; droot@kernodlelaw.com; Nate Head; snettles@richardsonplowden.com; dcobb@turnerpadget.com; Laura Croft; mbarfield@barnwell-whaley.com; amanda@maybanklaw.com; marshall@maybanklaw.com; elizabeth@maybanklaw.com; jelliott@richardsonplowden.com; sgladden@richardsonplowden.com; shatch@barnwell-whaley.com; janderson@arlawsc.com; dwegener@arlawsc.com; jdunning@arlawsc.com; Ghorton@wcsr.com; Rgilsenan@wcsr.com; abelton@wcsr.com; j david@wcsr.com; jhladek@richardsonplowden.com; mckelvey.gc@gmail.com; etobul@turnerpadget.com; jcanaday@kernodlelaw.com; Chris Ramsey; Frances Klotsch; Bill Lyles

Subject: RE: Shipwatch and Mendiondo: 2012-CP-10-3857 and 3858

Britt,

Once we get a ruling on the motions, do you take the position that the cases can move on to trial or you can only move forward with motions while the appeal is pending? Let me know.

Don

Don Michel
Court Management Supervisor
Charleston County Clerk of Court
100 Broad St. Suite 106
Charleston, SC 29401
Direct: 843-958-5013
Fax: 843-958-5020



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From: Britt Kelly [<mailto:bkelly@rrhlawfirm.com>]

Sent: Tuesday, January 06, 2015 9:44 AM

To: Caroline Crisler. Leonard; 'R. Patrick Flynn'

Cc: Don Michel; Psperry@carlockcopeland.com; twinton@carlockcopeland.com; aeversole@carlockcopeland.com; jsmith@turnerpadget.com; erindean@tgdpa.com; staceycanaday@tgdpa.com; droot@kernodlelaw.com; Nate Head; snettles@richardsonplowden.com; dcobb@turnerpadget.com; Laura Croft; mbarfield@barnwell-whaley.com; amanda@maybanklaw.com; marshall@maybanklaw.com; elizabeth@maybanklaw.com; jelliott@richardsonplowden.com; sgladden@richardsonplowden.com; shatch@barnwell-whaley.com; janderson@arlawsc.com; dwegener@arlawsc.com; jdunning@arlawsc.com; Ghorton@wcsr.com; Rgilsenan@wcsr.com; abelton@wcsr.com; j david@wcsr.com; jhladek@richardsonplowden.com; mckelvey.gc@gmail.com; etobul@turnerpadget.com; jcanaday@kernodlelaw.com; Chris Ramsey; Frances Klotsch; Bill Lyles

Subject: RE: Shipwatch and Mendiondo: 2012-CP-10-3857 and 3858

Dear Caroline:

I was in a mediation yesterday when Mr. Flynn sent his email to you about this case and have been unable to respond to his request until now. The Notice of Appeal filed by Mr. Flynn's clients only relate to one order granting partial

summary judgment to Carolina Concrete Systems. My clients, EFCO and WCJ Architectural Sales, have pending motions for summary judgment that are scheduled to be heard on the 15th. The Order being appealed does not affect the claims against my clients and is really unrelated to my clients' summary judgment motions. As Judge Dennis indicated at our latest status conference (last month), the appeal does not automatically stay the entire case and the trial court retains jurisdiction over the matters not affected by the appeal. My clients, therefore, respectfully request that their motions remain scheduled for a hearing before Judge Dennis on the 15th.

Thank you for your consideration, and I apologize again that I could not have responded sooner.

Britt Kelly
| Attorney at Law |

151 Meeting Street
Suite 400, Charleston SC 29401
| office | 843-577-6726
| fax | 843-724-8036
| direct phone | (843) 266-8127
| direct fax | (843) 266-2242
bkelly@rrhlawfirm.com
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www.rrhlawfirm.com



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From: Caroline Crisler. Leonard [<mailto:ccleonard@charlestoncounty.org>]

Sent: Monday, January 5, 2015 11:36 AM

To: 'R. Patrick Flynn'

Cc: Don Michel; Psperry@carlockcopeland.com; twinton@carlockcopeland.com; aeversole@carlockcopeland.com; jsmith@turnerpadget.com; erindean@tgdp.com; staceycanaday@tgdp.com; droot@kernodlelaw.com; Nate Head; snettles@richardsonplowden.com; dcobb@turnerpadget.com; Britt Kelly; Laura Croft; mbarfield@barnwell-whaley.com; amanda@maybanklaw.com; marshall@maybanklaw.com; elizabeth@maybanklaw.com; jelliott@richardsonplowden.com; sgladden@richardsonplowden.com; shatch@barnwell-whaley.com; janderson@arlawsc.com; dwegener@arlawsc.com; jdunning@arlawsc.com; Ghorton@wcsr.com; Rgilsenan@wcsr.com; abelton@wcsr.com; j david@wcsr.com; jhladek@richardsonplowden.com; mckelvey.gc@gmail.com; etobul@turnerpadget.com; jcanaday@kernodlelaw.com; Chris Ramsey; Frances Klotsch; Bill Lyles
Subject: RE: Shipwatch and Mendiondo: 2012-CP-10-3857 and 3858

I have removed the matters from the roster.

Caroline C. Leonard

Charleston County Clerk of Court
100 Broad Street
Charleston, Sc 29401
ccleonard@charlestoncounty.org



From: R. Patrick Flynn [<mailto:rpf@roblaw.net>]
Sent: Monday, January 05, 2015 11:28 AM
To: Caroline Crisler. Leonard
Cc: Don Michel; Psperry@carlockcopeland.com; twinton@carlockcopeland.com; aeversole@carlockcopeland.com; Jsmith@turnerpadget.com; erindean@tgdpa.com; staceycanaday@tgdpa.com; droot@kernodlelaw.com; Nate Head; snettles@richardsonplowden.com; dcobb@turnerpadget.com; bkelly@rrhlawfirm.com; lcroft@rrhlawfirm.com; mbarfield@barnwell-whaley.com; amanda@maybanklaw.com; marshall@maybanklaw.com; elizabeth@maybanklaw.com; jelliott@richardsonplowden.com; sgladden@richardsonplowden.com; shatch@barnwell-whaley.com; janderson@arlawsc.com; dwegener@arlawsc.com; jdunning@arlawsc.com; Ghorton@wcsr.com; Rgilsenan@wcsr.com; abelton@wcsr.com; j david@wcsr.com; jhladek@richardsonplowden.com; mckelvey.gc@gmail.com; etobul@turnerpadget.com; jcanaday@kernodlelaw.com; R. Patrick Flynn; Chris Ramsey; Frances Klotsch; Bill Lyles
Subject: Shipwatch and Mendiondo: 2012-CP-10-3857 and 3858

Caroline –

There are a number of motions listed on the roster for Judge Dennis on January 15, 2015 in the Shipwatch (2012-CP-10-3857) and Mendiondo (2012-CP-10-3858) cases. Please be advised that both of these cases are now on appeal. I have attached the Notice of Appeal filed in each case for your reference.

If you have any questions, please let me know. Thanks ----Pat Flynn

R. Patrick Flynn
Robertson Hollingsworth & Flynn
177 Meeting Street, Suite 300
Charleston, SC 29401
(843) 723-6470
cell (843) 834-3426

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Britt Kelly

From: R. Patrick Flynn <rpf@roblaw.net>
Sent: Tuesday, April 14, 2015 3:41 PM
To: Caroline Crisler. Leonard (ccleonard@charlestoncounty.org); Don Michel (dmichel@charlestoncounty.org)
Cc: Charlie Patrick (JNicholsonLC@sccourts.org); Psperry@carlockcopeland.com; twinton@carlockcopeland.com; aeversole@carlockcopeland.com; Jsmith@turnerpadget.com; erindean@tgdpa.com; staceycanaday@tgdpa.com; droot@kernodlaw.com; Nate Head; snettles@richardsonplowden.com; dcobb@turnerpadget.com; Britt Kelly; Laura Croft; mbarfield@barnwell-whaley.com; amanda@maybanklaw.com; marshall@maybanklaw.com; elizabeth@maybanklaw.com; jelliott@richardsonplowden.com; sgadden@richardsonplowden.com; shatch@barnwell-whaley.com; janderson@arlawsc.com; dwegener@arlawsc.com; jdunning@arlawsc.com; Ghorton@wcsr.com; Rgilsenan@wcsr.com; abelton@wcsr.com; j david@wcsr.com; jhladek@richardsonplowden.com; mckelvey.gc@gmail.com; etobul@turnerpadget.com; jcanaday@kernodlaw.com; R. Patrick Flynn; Chris Ramsey; Frances Klotsch; Dean@besthoneycutt.com; Dani@besthoneycutt.com
Subject: FW: Motion "MSUMJM-Motion/Summary Judgment by defendant, crt/srv" for Case "2012CP1003857- Shipwatch Condominium Association Inc VS Carolina Concrete Systems Inc , defendant, et al" was added to a Motions Roster for 5/4/2015 at 2:30 PM

Caroline and Don -

The motions in Shipwatch (2012-CP-10-3857) and Mendiondo (2012-CP-10-3858) referenced in the scheduling email below were addressed by Judge Dennis in a hearing on January 15, 2015.

At that hearing Judge Dennis ruled that all motions would be stayed until the appeals of the Shipwatch and Mendiondo cases are resolved. Those appeals were filed on December 30, 2014. Accordingly, I request that you please remove all of the motions in these two cases from the roster. If you have any questions, please do not hesitate to contact me.

Thanks and best regards ---Pat Flynn

R. Patrick Flynn
Robertson Hollingsworth & Flynn
177 Meeting Street, Suite 300
Charleston, SC 29401
(843) 723-6470
Cell: (843) 834-3426

-----Original Message-----

From: cpas@charlestoncounty.org [mailto:cpas@charlestoncounty.org]
Sent: Tuesday, April 14, 2015 3:06 PM
To: R. Patrick Flynn
Subject: Motion "MSUMJM-Motion/Summary Judgment by defendant, crt/srv" for Case "2012CP1003857- Shipwatch Condominium Association Inc VS Carolina Concrete Systems Inc , defendant, et al" was added to a Motions Roster for 5/4/2015 at 2:30 PM

MOTIONS ARE SCHEDULED IN COURTROOM 3E WITH JUDGE NICHOLSON PRESIDING.

ALL REQUESTS FOR CONTINUANCES MUST BE FILED WITH JUDGE NICHOLSON'S OFFICE.
CHARLIE PATRICK, JUDGE NICHOLSON'S LAW CLERK, CAN BE REACHED AT
jnicholsonlc@sccourts.org

IF YOU HAVE QUESTIONS PLEASE CONTACT CAROLINE LEONARD AT:
ccleonard@charlestoncounty.org.

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MASTER DEED

OF

SHIPWATCH

HORIZONTAL PROPERTY REGIME

Wild Dunes Beach and Racquet Club

Charleston County

Isle of Palms, South Carolina

Phase I

DEPOSITION
EXHIBIT

JERNIGAN 142

T.M.S 604-12-03-246

MASTER DEED

for

SHIPWATCH

Horizontal Property Regime
(An Expandable Regime)

Charleston County, Isle of Palms, South Carolina

Drake Development Corporation, having its principal office at 1813 Hampton Street, Columbia, South Carolina, hereinafter referred to as "the Grantor", as the sole owner of the land and improvements hereinafter described, does hereby make, declare and publish its intention and desire to submit, and does hereby submit, the land and buildings hereinbelow described, together with all other improvements thereon, including all easements, rights and appurtenances thereto belonging, to a Horizontal Property Regime (to be known as Shipwatch Horizontal Property Regime, hereinafter called "the Regime") in the manner provided for by the South Carolina Horizontal Property Act, as amended, S.C. Code Ann. §§27-31-10 et seq. (1976). The Master Deed is for Phase (Stage) I only, but may be amended by Grantor to submit Phase II to the regime. In conformity with Sections 27-31-30 and 27-31-100 of said Act, the Grantor sets forth the following particulars:

I

LEGAL DESCRIPTION

The land (the "Real Property") which is hereby submitted to the Regime is described on Exhibit "A" attached hereto and made a part hereof by reference. The Real Property as so described has an area set forth on the survey referenced in said Exhibit "A".

II

SURVEY AND DESCRIPTION OF IMPROVEMENTS

Incorporated herein by reference as if set forth in full herein is a plat referred to in Exhibit "A" showing the location of the buildings and other improvements (a copy of which is attached hereto as Exhibit A-1), a set of plans of the buildings which show graphically the dimensions, area and location of each Apartment and General Common Elements affording access to each Apartment. Each Apartment is identified thereon by specific number and no Apartment bears the same designation as any other Apartment. Said set of plans is attached hereto as Exhibit "B". The buildings containing the Apartments have an aggregate area set forth thereon.

III

APARTMENTS AND GENERAL AND LIMITED COMMON ELEMENTS

The Regime consists of Apartments and General and Limited Common Elements in Stage I and any other stages hereinafter submitted to the Regime, as said terms are hereinafter defined.

Apartments, as the term is used herein, shall mean and comprise the fifty-two (52) separate and numbered Apartments in Stage I which are designated in Exhibit "B" to this Master Deed, including but not limited to the space, partition walls, air conditioning and heating units, fixtures and appliances therein, excluding, however, all spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of the perimeter walls and floors, and above the undecorated and/or unfinished inner surfaces of the ceilings of each Apartment, and further excluding all spaces and improvements lying beneath the undecorated and/or unfinished inner surface of all interior loadbearing columns, and further excluding all pipes, ducts, wires, conduits and other facilities running through any interior wall or partition for the furnishing of utility services to Apartments and Limited and General Common Elements. The general description and

number of each Apartment, expressing its area, general location and any other data necessary for its identification, also appears in Exhibit "B". The Apartments include living room, kitchen, including appliances therein, bathrooms, bedrooms and closets. Said Apartments are located in two (2) buildings on the real property set out in Exhibit "A" to this Master Deed. Each is more fully shown on the referenced plans. The following types of Apartments are located in the following Buildings:

BUILDING A

TYPE 1 - Apartments 401 and 408 are two (2) Story Townhouse Apartments located on the ends of the 4th and 5th Floors of the building with a living room, dining area, bedroom, bathroom, kitchen with appliances, wet bar or additional sink area, three (3) closets and an exterior storage room on the 4th Floor and with two (2) bedrooms, two (2) bathrooms, two (2) closets, utility closet, and enclosed washer and dryer on the 5th Floor.

TYPE 2 - Apartments 402, 403, 404, 405, 406 and 407 are two (2) Story Townhouse Interior Apartments located on the 4th and 5th Floors of the building with a living room, dining area, bedroom, bathroom, kitchen with appliances, wet bar or additional sink area, three (3) closets and an exterior storage room on the 4th Floor and with two (2) bedrooms, two (2) bathrooms, two (2) closets, utility closet, and enclosed washer and dryer on the 5th Floor.

TYPE 3 - Apartments 301, 308, 201, 208, 101 and 106 are one (1) Story Flats located on the ends of the 3rd, 2nd and 1st Floors of the building, respectively with a living room, dining area with bay window, three (3) bedrooms, three (3) bathrooms, five (5) closets, utility closet, enclosed washer and dryer, kitchen with appliances, wet bar or additional sink area and an exterior owner's storage room.

TYPE 4 - Apartments 302, 305, 202, 205, 102, and 105 are one (1) Story Flats located on the interior of the 3rd, 2nd and 1st Floors of the building, respectively, with a living room, dining area, three (3) bedrooms, three (3) bathrooms, five (5) closets, utility closet, enclosed washer and dryer, kitchen with appliances, wet bar or additional sink area, and an exterior owner's storage room.

TYPE 5 - Apartments 303, 304, 203, 204, 103, 104 are one (1) Story Flats located on the interior of the 3rd, 2nd and 1st Floors of the building, respectively, with a living room, dining area, two (2) bedrooms, two (2) bathrooms, three (3) closets, utility closet, enclosed washer and dryer, kitchen with appliances and wet bar or additional sink area, and an exterior owner's storage room.

BUILDING B

TYPE 1 - Apartments 409 and 416 are two (2) Story Townhouse Apartments located on the ends of the 4th and 5th Floors of the building with a living room, dining area, bedroom, bathroom, kitchen with appliances, wet bar or additional sink area, three (3) closets and an exterior storage room on the 4th Floor and with two (2) bedrooms, two (2) bathrooms, two (2) closets, utility closet, and enclosed washer and dryer on the 5th Floor.

TYPE 2 - Apartments 410, 411, 412, 413, 414 and 415 are two (2) Story Townhouse Interior Apartments located on the 4th and 5th Floors of the building with a living room, dining area, bedroom, bathroom, kitchen with appliances, wet bar or additional sink area, three (3) closets and an exterior storage room on the 4th Floor and with two (2) bedrooms, two (2) bathrooms, two (2) closets, utility closet, and enclosed washer and dryer on the 5th Floor.

TYPE 3 - Apartments 307, 312, 207, 212, 107 and 112 are one (1) Story Flats located on the ends of the 3rd, 2nd and 1st Floors of the building, respectively with a living room, dining area with bay window, three (3) bedrooms, three (3) bathrooms, five (5) closets, utility closet, enclosed washer and dryer, kitchen with appliances, wet bar or additional sink area and an exterior owner's storage room.

TYPE 4 - Apartments 308, 311, 208, 211, 108 and 111 are one (1) Story Flats located on the interior of the 3rd, 2nd and 1st Floors of the building, respectively, with a living room, dining area, three (3) bedrooms, three (3) bathrooms, five (5) closets, utility closet, enclosed washer and dryer, kitchen with appliances, wet bar or additional sink area, and an exterior owner's storage room.

TYPE 5 - Apartments 309, 310, 209, 210, 109 and 110 are one (1) Story Flats located on the interior of the 3rd, 2nd and 1st Floors of the building, respectively,

with a living room, dining area, two (2) bedrooms, two (2) bathrooms, three (3) closets, utility closet, enclosed washer and dryer, kitchen with appliances and wet bar or additional sink area, and an exterior owner's storage room.

General Common Elements means and includes:

- (1) The land on which the buildings stand, more fully described above, together with all of the other real property described in Exhibit "A";
- (2) The foundations, main walls, common storage areas, roofs, walkways, lobbies, stairways, elevators, railings and entrance and exit or communication ways, basement and roofs in each Building, "A & B";
- (3) The yards, gardens, shrubs, vegetation, boardwalks, exterior lights, trash containers, fire alarms, fire hoses, fire hydrants, signs, storm drainage system, and dryer exhausts, except as otherwise provided or stipulated;
- (4) The compartments or installations of central services such as power, light, telephone, television, cable television, gas, water, sewer, elevators, water tanks and pumps, and the like;
- (5) The parking areas, roads, driveways and all appurtenances thereto;
- (6) In general, all devices or installations existing for common use;
- (7) The swimming pool, decks and all equipment for servicing same;
- (8) All other elements of the property rationally of common use or necessary to its existence, upkeep and safety;
- (9) The general common area contains such areas as are shown on said plat location of the General Common Elements are shown, insofar as possible, on the and the Plans attached.

Limited Common Elements means and includes:

- (1) Any railings and surface area of all balconies, doorsteps, stoops, porches, balconies, patios, air conditioning compressors, ducts and lines, Apartment entrance ways and all exterior doors and window screens or other fixtures designed to serve one or more but less than all Apartments, are Limited Common Elements allocated exclusively to such Apartment or Apartments.
- (2) If any chute, flue, duct, wire, conduit, load bearing wall, plumbing, cable, sewer line or load bearing column, or any other fixture lies partially within and partially outside the designated boundaries of an Apartment, any portion serving only that Apartment is a Limited Common Element allocated solely to that Apartment. Insofar as possible, the Limited Common Elements are shown graphically and described in detail in words and figures in the plat, and plans.
- (3) All material, including but not limited to, studs, sheetrock, attached to or on the inside of the perimeter wall, floor and ceiling of an Apartment.

IV

OWNERSHIP OF APARTMENTS AND APPURTENANT INTEREST IN GENERAL COMMON ELEMENTS

Once the Real Property and Common Elements in a Stage are submitted to the Regime, an Apartment in the Regime may be individually conveyed and encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other Apartments in the Regime of which it forms a part, and the corresponding individual titles and interests shall be recordable.

Any apartment may be held and owned by more than one person as tenants in common or in any other recognized form of real property ownership except pursuant to a "Vacation Time Sharing Ownership Plan or Lease Plan" as defined in the S. C. Code of Laws 1976, as amended.

An Apartment owner shall have the exclusive ownership of his Apartment and shall have a common right to a share, with the other co-owners, in the common elements of the Regime, equivalent to the percentage representing the value of the individual Apartment, with relation to the value of the whole Regime. This percentage is set forth on Exhibit "C" attached hereto and made a part hereof by reference, shall have a permanent character, and shall not be altered without the acquiescence of the co-owners representing all the Apartments of the Regime.

The basic value, which shall be fixed for the sole purpose of this Master Deed and irrespectively of the actual value, shall not prevent each co-owner from fixing a different circumstantial value to his Apartment in all types of acts and contracts.

V

**RESTRICTION AGAINST FURTHER SUBDIVIDING
OF APARTMENTS AND SEPARATE CONVEYANCE
OF APPURTENANT COMMON ELEMENTS, AND
VACATION TIME SHARING OWNERSHIP PLAN OR
LEASE PLANS, ETC.**

No Apartment may be divided or subdivided into a smaller Apartment or smaller Apartment than as described in Exhibit "B" attached hereto, nor shall any Apartment, or portion thereof, be added to or incorporated into any other Apartments. The undivided interest in the General and Limited Common Elements declared to be an appurtenance to each Apartment shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Apartment and the undivided interest in General and Limited Common Elements appurtenant to each Apartment shall be deemed conveyed, devised, encumbered or otherwise included with the Apartment even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such Apartment. Any conveyance, mortgage, or other instrument which purports to affect the conveyance, devise or encumbrance, or which purports to grant any right, interest or lien in, to, or upon, any Apartment, shall be null, void and of no effect insofar as the same purports to affect any interest in an Apartment or its appurtenant undivided interest in General and Limited Common Elements, unless the same purports to convey, devise, encumber or otherwise trade or deal with the entire Apartment. Any instrument conveying, devising, encumbering or otherwise dealing with any Apartment which described said Apartment by the Apartment Number assigned thereto in Exhibit "B" without limitation or exception, shall be deemed and construed to affect the entire Apartment and its appurtenant undivided interest in the General and Limited Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Apartment and its appurtenant undivided interest in the General and Limited Common Elements by more than one person or entity as tenants in common, joint tenants, or by any other recognized form of real property ownership. Provided, however, that an Apartment can not be sold, owned or leased pursuant to a "Vacation Time Sharing Ownership Plan or Lease Plan" as defined in the laws of the State of South Carolina.

VI

**HORIZONTAL PROPERTY REGIME
SUBJECT TO RESTRICTIONS, ETC.**

Each and every Apartment and the General and Limited Common Elements shall be, and the same are hereby declared to be, subject to the restrictions, easements, conditions and covenants prescribed and established herein and prescribed and established in the Covenants for Properties in Isle of Palms Beach and Racquet Club, and Covenants and Restrictions of the Isle of Palms Beach and Racquet Club Community Association and By-Laws, as these documents have been amended from time to time, governing the use of said Apartment and General and Limited Common Elements, of Isle of Palms Beach and Racquet Club Properties, and setting forth the obligations and responsibilities incident to ownership of each Apartment and its appurtenant undivided interest in the General and Limited Common Elements and said Apartments and General and Limited Common Elements are further declared to be subject to the restrictions, easements, conditions, and limitations now of record affecting the land and improvements or the Apartment as set out in Exhibit "A".

VII

**PERPETUAL NON-EXCLUSIVE EASEMENT
IN GENERAL COMMON ELEMENTS**

The General Common Elements shall be, and the same are hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the co-owners of Apartments in the Horizontal Property Regime for their use and the use of their immediate families, guests, and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, or the enjoyment of said co-owners of Apartments. Notwithstanding anything above provided in this article, the Shipwatch Condominium Association, Inc. (a South Carolina eleemosynary corporation, hereinafter called "the Association"), shall have the right to establish the rules and regulations pursuant to which the co-owner or co-owners of any Apartment may be entitled to the use of and enjoyment of the General and Limited Common Elements.

VIII

**RIGHTS OF ELIGIBLE MORTGAGE HOLDERS AND
ELIGIBLE INSURERS OR GUARANTORS**

1. Notice of Action: Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Apartment number or address, any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Regime or any Apartment on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(b) Any delinquency in the payment of assessments or charges owed by a co-owner of an Apartment subject to a first mortgage held, insured or guaranteed by such eligible holder or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in this Master Deed.

IX

RESIDENTIAL USE RESTRICTION APPLICABLE TO APARTMENTS

Each Apartment is hereby restricted to residential use by the co-owner or co-owners thereof, their immediate families, guests, tenants, lessees, licensees and invitees, to such use as so restricted by the Covenants and Restrictions referred to in Exhibit "A": provided, however, that so long as the Grantor, its successors or assigns or Wild Dunes Associates, its successor or assigns, shall own any interest in the Regime or an Apartment, it may utilize an Apartment or Apartments of their choice and the Temporary Model Unit, either one of them may use it, from time to time, for sales office(s), model(s), or other usage for the purpose of selling Apartments in said Regime. Grantor may assign this usage right to such other persons or entities as it may choose; provided, however, that when all Apartments have been sold, this right of said usage shall immediately cease. Grantor retains title to the Temporary Model Unit and Grantor, its successors and assigns may remove same from the premises at anytime. No "For Sale" signs or the like shall be permitted on any General and Limited Common Element or any Apartment so as to be visible from any General or Limited Common Element or public street or area. Notwithstanding the foregoing, Grantor, its successors and assigns, may make such use of unsold Apartments and the Common Elements as may facilitate completion and sale of such Apartments, including, but not limited to the maintenance of a sales office in an Apartment, the use of an Apartment as a model unit for Phase I or

any subsequent phase, and the showing of Apartments and the display of signs. Nothing herein shall prevent the Association from granting licenses and easements over the common areas for utilities, roads, and other purposes reasonably necessary or usable for the proper maintenance and operation of the Regime.

X

EXPANSION OF REGIME

Development in Stages. The Grantor proposes to develop the real estate shown on the master site plan marked Exhibit "B", as a single regime, by annexing to the property, the parcel of additional real estate shown on the master plat plan.

Maximum Number of Apartments. The maximum number of Apartments in the second stage of additional real estate shall be fifty-two (52) Apartments and all improvements shall be completed prior to annexation and shall be used for residential purposes.

Timetable. The Grantor, its successors and assigns or any persons owning adjoining property may, at their sole discretion, stage the development and construction of the Project into more than one stage or in two (2) separate projects, with no guarantee to the Apartment Purchasers that subsequent stages or projects will be developed. Grantor, will, in Stage I, construct an elevator in each building, swimming pool, kiddie pool and parking areas. It is the Grantor's intention to develop property owned by Grantor in the vicinity of the Regime as a staged condominium (horizontal property) regime. The development may consist of only Stage I in which the Apartment is located or may, at the sole option of the Grantor, its successors and assigns or persons owning adjoining property be developed in two or more stages as allowed and provided by the laws of the State of South Carolina or the development may consist of two or more projects. The Grantor, its successors and assigns or persons owning adjoining property hereby reserve the right and privilege to determine on or before May 1, 1988 whether or not to proceed with additional stages of development and the parties hereto agree that if the Grantor so decides, the Apartment may be in a condominium regime which consists of two stages. The determination of the Grantor, its successors and assigns or persons owning adjoining property as to the stages of the project may be on, before or after the closing of the Apartment.

Percentage Interest Chart. The percentage interests in the General and Limited Common Elements of each Apartment owner before and after addition of Stage II of proposed development shall be according to the chart attached hereto as Exhibit "C".

Compatibility. All buildings and Apartments erected upon each portion of Stage II will be compatible with the other Buildings and Apartments in the Regime in terms of architectural style, quality of construction and principal materials employed in construction, and size.

Restriction to Apply to New Apartments. All restrictions in this Master Deed affecting use, occupancy, and alienation of Apartments will apply to Apartments within Stage II.

Location of Building. To the extent possible, the location of Building and other improvements in Stage II shall be as shown in the master site plan.

Limited Common Elements. Any Limited Common Elements created within Stage II will be of the same general types and sizes as those within the other parts of the Regime.

Grantor Not Bound if Property Not Annexed. Any representations made in this Master Deed regarding Stage II do not apply if the additional real estate is not annexed to the Regime.

Property Annexed by Amending Master Deed. To add additional real estate pursuant to the option reserved under this article, the Grantor shall prepare, execute, and record an amendment to this Master Deed that shall contain a plot plan showing the location of the Building and any other improvements, and a set of floor plans of the Building which shall show graphically the dimensions, area, and location of each Apartment therein, and the location of General and Limited Common Elements affording access to each Apartment. The plans shall show graphically insofar as possible and describe in detail the Common Elements in the Building, both Limited and General. The plans shall be certified to by an engineer or architect authorized and licensed to

practice in this state. Instead of recording new plot plans and floor plans as required, the Grantor may record new certifications by a licensed engineer or architect of plot plans and floor plans previously recorded if those plans show all of improvements required by this section.

Grantor Owner of All Apartments Created. The Grantor shall be the owner of all Apartments hereby created. The amendment to the Master Deed must assign an identifying number of each Apartment created within the additional real estate and reallocate percentage interests in the Regime.

Assessments. During the period of time in which structures within a particular stage are under construction by the Grantor and not completed, no assessments shall be charged against the Grantor as the Co-Owner of Apartments in that stage until both the completion of said Apartments in that Stage and its inclusion in the Regime and the dues shall be assessed against the Co-Owners (including the Grantor) of those Apartments in that Stage which shall have been completed, proportionately, inter se.

XI

RIGHT OF GRANTOR TO REPRESENTATION ON BOARD OF DIRECTORS AND OTHER RIGHTS AND OBLIGATIONS OF GRANTOR

Council of Co-Owners Association, Control of Board of Director. Subject to the remainder of this paragraph, the Grantor may appoint and remove members of the Board of Director of the Association of the Council of Co-Owners ("Board") for a period not exceeding five (5) years from the date of the first conveyance of an Apartment to a person other than the Grantor. The period of Grantor control terminates no later than sixty (60) days after conveyance of seventy-five percent (75%) Apartments to Apartment owners other than the Grantor. The Grantor may voluntarily surrender the right to appoint and remove members of the Board before termination of that time period. In determining whether the period of Grantor control has terminated or whether Apartment owners other than the Grantor are entitled to elect members of the Board, the percentage of the Apartments conveyed shall be calculated as if all of the Apartments the Grantor has built, or retains an unexpired reservation of the right to build in this Master Deed, were included in the Regime.

Whenever Grantor shall be entitled to designate and select any person or persons to serve on any Board of Directors of Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or By-Laws of the Association, and Grantor shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any director or directors so removed from the remainder of the unexpired term of any director or directors so removed. Any director designated and selected by Grantor need not be a resident in the Regime. Anything to the contrary notwithstanding, the power in the Grantor to designate directors shall terminate on May 1, 1988.

Any representative of Grantor serving on the Board of Directors of the Association shall not be required to disqualify himself upon any vote upon any management contract or other matter between Grantor and Association where the said Grantor may have a pecuniary or other interest. Similarly, Grantor as a member of Association, shall not be required to disqualify itself in any vote which may come before the membership of the Association upon any management contract or other matter between Grantor and Association where Grantor may have a pecuniary or other interest.

Sale of Apartments. The Grantor shall have the right at anytime to sell, transfer, lease or re-let any Apartment(s) which the Grantor continues to own after this Master Deed has been recorded, without regard to any restrictions relating to the sale, transfer, lease or form of lease of Apartments contained herein and without the consent or approval of the Council of Co-Owners or any other Co-Owner being required, except that Grantor is prohibited from selling, transferring, leasing or otherwise letting any Apartment pursuant to a "Vacation Time Sharing Ownership Plan or Lease Plan", as defined in the laws of South Carolina.

Sales Office Rights. The Grantor may maintain in each Building at least one Apartment owned by it, as sales offices, or models, and may maintain signs advertising Apartments for sale. Grantor may assign this usage right to Wild Dunes Associates, its successors or assigns.

Easement Reservation. The Grantor reserves an easement, including a construction easement, through all General and Limited Common Elements as may be reasonably necessary for the purpose of discharging Grantor's right or obligations of exercising special Grantor rights reserved in this Master Deed.

Transfer of Rights. All rights, duties and obligations of the Grantor herein may be experienced or performed by the Grantor, its successors and assigns or the title holder of additional properties.

Reservation of Construction and Maintenance Easement. As part of the reservation of the option in Grantor to add additional property to this Regime, Grantor reserves unto itself, and its successors and assigns, easements for ingress and egress over, under and across all Common Elements, Limited and General and such other reasonable right of access to and use of the Common Elements Limited and General subject to this Regime as may be necessary for the construction, maintenance and marketing of the additional Apartments.

Taxes and Assessments Prior to Merger. Prior to filing any amendment to this Master Deed adding additional property to this Regime, Grantor shall be responsible for all taxes and other assessments relating to the property reserved to Grantor.

XII

**USE OF GENERAL COMMON ELEMENTS
SUBJECT TO RULES OF ASSOCIATION AND
ISLE OF PALMS BEACH AND RACQUET CLUB
COMMUNITY ASSOCIATION**

The use of General Common Elements by the co-owner or co-owners of all Apartments, and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use, or which may hereafter be prescribed and established by the Association or the Isle of Palms Beach and Racquet Club Community Association.

XIII

**HORIZONTAL PROPERTY REGIME TO BE USED FOR
LAWFUL PURPOSES. RESTRICTION AGAINST NUISANCES, ETC.**

No immoral, improper, offensive or unlawful use shall be made of any Apartment or of the General and Limited Common Elements, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction over the Regime shall be observed. No co-owner of any Apartment shall permit or suffer any thing to be done or kept in his Apartment, or on the General or Limited Common Elements, which will increase the rate of insurance on the Regime, or which will obstruct or interfere with the rights of other occupants of the building or annoy them by unreasonable noises, nor shall any such co-owner undertake any use or practice which shall create and constitute a nuisance to any other co-owner of an Apartment, or which interferes with the peaceful possession and proper use of any other Apartment or the General or Limited Common Elements.

XIV

RIGHT OF ENTRY INTO APARTMENTS IN EMERGENCIES

In case of any emergency originating in or threatening any Apartment, regardless of whether the co-owner is present at the time of such emergency, the Board of Directors of the Association or any other person or firm authorized by it, or the building superintendent or managing agent, shall have the right to enter such Apartment for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate, and to facilitate entry in the event of any such emergency, the co-owner of each Apartment shall deposit under the control of the Association a key to such Apartment.

XV

**RIGHT OF ENTRY FOR MAINTENANCE
OF GENERAL COMMON ELEMENTS**

Whenever it is necessary to enter any Apartment for the purpose of performing any maintenance, alteration or repair to any portion of the Common Elements, the co-owner of each Apartment shall permit other co-owners or their representatives, or the duly constituted and authorized agent of the Association, to enter such Apartment, provided that such entry shall be made only at reasonable times and with reasonable advance notice.

XVI

**LIMITATION UPON RIGHT OF CO-OWNERS
TO ALTER AND MODIFY APARTMENTS**

No co-owner of an Apartment shall make or permit there to be made any structural modification or alterations therein without first obtaining the written consent of the Association and the Wild Dunes Beach & Racquet Club Architectural Review Board, which consent may be withheld in the event that a majority of the Board of Directors of said Association determine, in their sole discretion, that such structural modifications or alterations would affect or in any manner endanger the building in part or in its entirety. If the modification or alteration desired by the co-owner of any Apartment involves the removal of any permanent interior partition, the Association shall have the right to permit such removal so long as the permanent interior partition to be removed is not a load-bearing partition, and so long as the removal thereof would in no manner affect or interfere with the provision of utility services constituting General or Limited Common Elements located therein. No co-owner shall cause the balconies abutting his Apartment to be enclosed, or cause any improvements or changes to be made on the exterior of the building, including painting or other decoration, or the installation of electrical wiring, television antenna, machines or air conditioning units which may protrude through the walls or roof of the building, or in any manner change the appearance of any portion of the building alter, change or modify any perimeter or exterior wall or door not within the walls of such Apartment, nor shall storm panels or awnings be affixed, without the written consent of the Association being first obtained. Provided, however, if the owners of two (2) or more adjoining Apartments desire to remove any interior walls between the adjoining Apartments or construct doors or opening(s) therein, they may do so without approval of the Association as long as the removal of such walls or the construction of such door or opening(s) does not interfere with any load bearing columns or the provision of utility services constituting General or Limited Common Elements located therein. Such modifications shall not be considered a subdivision of an Apartment or an incorporation of one (1) Apartment into the other. The Apartments will remain individual Apartments and the owners of such Apartments will be responsible for reconstructing said walls or removing said doors at their cost upon sale of other Apartment unless the purchaser accepts same without such modification. Any Apartments so modified shall be subject to the assessment provisions set forth in paragraph IX (b) of the By-Laws.

XVII

**RIGHT OF THE ASSOCIATION TO ALTER AND IMPROVE
GENERAL AND LIMITED COMMON ELEMENTS AND ASSESSMENT THERE-ON**

The Association shall have the right to make or cause to be made such alterations, modifications and improvements to the General and Limited Common Elements, provided such alterations, modifications or improvements are first approved in writing by the Board of Directors of the Association and also by the co-owners of sixty-seven percent (67%) or more of the Apartments in the entire Regime and by the Wild Dunes Beach & Racquet Club Architectural Review Board; and the cost of such alterations, modifications or improvements shall be assessed as common expenses and collected from the co-owners of all Apartments according to their percentage of ownership of the General and Limited Common Elements.

XVIII

MAINTENANCE AND REPAIR BY CO-OWNERS OF APARTMENTS

Every co-owner must perform promptly all maintenance and repair work within his Apartment which, if omitted, would adversely affect the Regime in its entirety or in a part belonging to other co-owners, being expressly responsible for the damages and liability which his failure to do so may engender. The co-owner of each Apartment shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment, hot water heaters, stoves, refrigerators, garbage disposals, dishwashers, fans, or other appliances or equipment, including any fixtures and/or their connections or receptacles required to provide water, light, power, telephone, television, sewerage and sanitary service to his Apartment and

which may now or hereafter be situated in his Apartment including, toilets, laboratories, sinks, tubs and showers. Such co-owner shall further be responsible and liable for maintenance, repair, and replacement of any and all window glass, glass doors, wall, ceiling and floor surfaces or coverings, painting, decorating and furnishings, and all other accessories which such co-owner may desire to place or maintain in his Apartment. Whenever the maintenance, repair and replacement of any items for which the co-owner of an Apartment is obligated to maintain, repair or replace at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association, or the Insurance Trustee hereinafter designated, shall be used for the purpose of making such maintenance, repair and replacement as shall exceed the deductible. The floor and interior walls of the balcony attached to his Apartment shall be maintained by the co-owner at his expense. Reference is made to S.C. Code Ann. §27-31-250 (1976), which code section is controlling of insurance proceeds use when said code section is applicable by its terms.

XIX

**MAINTENANCE AND REPAIR OF GENERAL
AND LIMITED COMMON ELEMENTS BY THE ASSOCIATION**

The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the General and Limited Common Elements, including those portions thereof which contribute to the support of the building, and all conduits, ducts, plumbing, wiring and other facilities located in the General or Limited Common Elements for the furnishing of utility services to the Apartments and said General and Limited Common Elements, and should any incidental damage be caused to any Apartment by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair, or replacement of any General or Limited Common Elements, the Association shall, at its expense, repair such incidental damage.

XX

**PERSONAL LIABILITY AND RISK OF LOSS OF CO-OWNER
OF APARTMENT AND SEPARATE INSURANCE COVERAGE, ETC.**

The co-owner of each Apartment may, at his own expense, obtain insurance coverage for loss of or damage to any furniture, furnishings, personal effects and other personal property belonging to such co-owner and may, at his own expense and option, obtain insurance coverage against personal liability or injury to the person or property of another while within such co-owner's Apartment or upon the General or Limited Common Elements. All such insurance obtained by the co-owner of each Apartment shall, where available, provide that the insurer waives its right of subrogation as to any claims against other co-owners of Apartments, the Association, and the respective servants, agents and guests of said other co-owners and the Association. Risk of loss of or damage to any furniture, furnishings, personal effects and other personal property (other than such furniture, furnishings and personal property constituting a portion of the General or Limited Common Elements or insured by the Association) belonging to or carried on the person of the co-owner of or in, to or upon General or Limited Common Elements shall be borne by the co-owner of each such Apartment. All furniture, furnishings and personal property constituting a portion of the General or Limited Common Elements and held for the joint use and benefit of all co-owners of all Apartments shall be covered by such insurance as shall be maintained in force and effect by Association as hereinafter provided. The co-owner of an Apartment shall have no personal liability for any damages caused by the Association or in connection with the use of the General or Limited Common Elements. The co-owner of an Apartment shall be liable for injuries or damage resulting from an accident in his own Apartment, to the same extent and degree that the co-owner of a house would be liable for an accident occurring within the house.

XXI

CONDEMNATION

A. Apartments Acquired. If an Apartment is acquired by eminent domain, or if part of an Apartment is acquired by eminent domain leaving the Apartment owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Master Deed, the award must compensate the Apartment owner for his Apartment and its General and Limited Common Element interest, whether or not any General or Limited Common Element interest is acquired. Upon acquisition, unless the decree

otherwise provides, that Apartment's entire General and Limited Common Element interest, votes in the Association and common expense liability are automatically reallocated to the remaining Apartments in proportion to the respective interests and votes, and the Association shall promptly prepare, execute, and record an amendment to this Master Deed reflecting the reallocations. Any remnant of an Apartment remaining after part of an Apartment is taken under this subsection is thereafter a General and Limited Common Element.

B. Part of Apartment Acquired. Except as provided above, if part of an Apartment is acquired by eminent domain, the Award must compensate the Apartment owner for the reduction of value of the Apartment and its common element interest. Upon acquisition, (1) that Apartment's Limited and General Common Element percentage interest, votes in the Association, and common expense liability are reduced in proportion to the reduction in size of the Apartment, and (2) the portion of Limited and General Common Element interest, votes and common expense liability divested from the partially acquired Apartment are automatically reallocated to that Apartment and the remaining Apartments in the percentages set out in Exhibit "C".

XXII

INDEMNIFICATION

The co-owners shall indemnify, hold harmless and save the Grantor and the Association their successors and assigns, from all liability, claims, damages, losses, and judgments, including attorneys fees incurred in enforcing the indemnity or defending any such action arising out of the following:

- a) Use of the swimming pool and amenities thereto, including, but not limited to, that portion of the pool and amenities situate and lying upon that property known as Tract E, Block D-2 Isle of Palms.
- b) Construction upon that property known as Tract E, Block D-2, Isle of Palms, including but not limited to construction of Stage II of this Regime, if any there be.

XXIII

INSURANCE

A. Hazard Insurance. The Association shall insure all Apartments and all General and Limited Common Elements against all hazards and risks normally covered by a standard hazard policy including fire and lightning, the hazards and risks covered by "extended coverage", vandalism and malicious mischief, and by the National Flood Insurance Act, windstorm and hail policies and all other coverage commonly required by lending institutions in the area. All Apartments and all General and Limited Common Elements shall be insured for the full replacement cost thereof, and where possible, the policy of insurance shall have a full replacement cost rider. Each year the Association shall update the replacement value cost rider. Such insurance shall cover only the Apartments and General and Limited Common Elements. No insurance of the contents of the Apartment (other than the fixtures originally installed therein by Grantor and being a part of such Apartment) shall be provided by the Association. The hazard insurance obtained by the Association may provide that any amount not to exceed one thousand (\$1,000.00) Dollars shall be deductible from any indemnity payable on account of a single loss, but any such deductible portion shall be borne by the Association as a Common Expense regardless of the number of co-owners directly affected by the loss.

B. Liability Insurance. The Association shall also obtain premises liability insurance on all Apartments and General and Limited Common Elements and the policy shall provide for a single limit indemnity of not less than one million (\$1,000,000.00) Dollars and cover bodily and personal injury and property damage. Such liability insurance shall cover claims of one or more co-owners against one or more co-owners as well as claims of third parties against one or more co-owners. The Association shall not be required however, to obtain public liability insurance covering accidents occurring within the limits of an Apartment or off the Regime Property. If available at a reasonable cost, the Association shall cause to be included within the policy of liability insurance, premises medical payment coverage.

C. General Provisions. All insurance obtained on the Apartments and General and Limited Common Elements by the Association shall be written in the name of the Association as trustee for the Owners, and the cost of such insurance shall be

a common expense. All such insurance shall be obtained from a company or companies licensed to do business in the State of South Carolina and currently rated "A" or better by Best's Insurance Ratings. No such insurance shall be permitted to expire except upon resolution of sixty-seven percent (67%) of the co-owners to that effect and all mortgagees. Duplicate originals of all policies of hazard insurance obtained on the Property by the Board of Directors, together with proof of payment of the premiums thereon, shall be delivered upon request to any co-owner or to any person holding a security interest in an Apartment.

D. Hazard Policy Provisions. All policies of hazard insurance on the Apartments and General and Limited Common Elements obtained by the Board of Directors shall provide as follows:

1. The indemnity payable on account of any damage to or destruction of the Apartments or General and Limited Common Elements shall be payable to the owner and/or to any persons holding security interests in any damaged Apartments as their interests may appear;
2. The policy shall not be cancelled without thirty (30) days' prior written notice to the Board of Directors and to every holder of a security interest in any Apartment who is named in the policy or an endorsement thereto;
3. No co-owner shall be prohibited from insuring his own Apartment for his own benefit;
4. No insurance obtained by a co-owner on his own Apartment shall be brought into contribution with the insurance obtained by the Board of Directors;
5. If the Board of Directors determines that it is possible to obtain such a provision, no right to subrogation shall exist against any owner or members of his household or his social guests;
6. If possible, the policy should provide that the insurer shall not be entitled to reconstruct in lieu of paying the indemnity in cash if the owners determine in the manner provided in the Master Deed not to repair or restore the damaged property; and
7. The policy shall not be cancelled on account of the actions of one or more, of the co-owners.

If a policy of insurance containing all of the foregoing provisions cannot be obtained at a reasonable cost, one or more of such provisions may be waived by resolution of a sixty-seven percentage (67%) of the co-owners and fifty-one percent (51%) of the mortgagees of Apartments.

E. Claims. The Board of Directors of the Association shall have exclusive authority to negotiate and settle on behalf of the owners all claims arising under policies of hazard insurance obtained on the Property by the Board of Directors except to the extent institutional mortgagees are granted such rights by co-owners. In the event of damage to or destruction of any portion of the Apartments or General or Limited Common Elements, the Board of Directors shall promptly file claim for any indemnity due under any such policies. The Board of Directors shall simultaneously notify the holders of any security interests in the Property who may be entitled to participate in such claim of the filing of same.

F. Insurance Proceeds. If the insurance proceeds exceed Five Thousand (\$5,000.00) Dollars, the net proceeds received by the Board of Directors from any indemnity paid under a policy of hazard insurance obtained on the Property by the Board of Directors shall promptly be paid by the Board of Directors to an Insurance Trustee as trustee or the co-owners as hereinafter provided. The Insurance Trustee shall be a state or federally chartered bank or savings and loan association selected by the Board of Directors and having trust powers and capital and surplus of five million (\$5,000,000.00) Dollars or more. The Insurance Trustee shall hold the insurance proceeds in trust and disburse said proceeds, after deduction of all reasonable fees and expenses of the Insurance Trustee, as follows:

1. If the co-owners determine in the manner provided in the Master Deed not to reconstruct the damaged property, the Insurance Trustee shall

distribute the insurance proceeds among all the owners and/or mortgagees with liens upon the Apartments, as their respective interests may appear, in proportion to their respective undivided interests in the portion or portions of the property damaged or destroyed.

2. If the Board of Directors is required to provide for the reconstruction of the damaged property, the Insurance Trustee shall disburse the insurance proceeds to the person or persons employed by the Board of Directors to effect such reconstruction in accordance with written authorizations submitted to the Insurance Trustee by the architect supervising the reconstruction or by the Board of Directors. Any portion of the insurance proceeds remaining after all the costs of reconstructing the Property have been paid shall be disbursed to the co-owners and their mortgagees in proportion to their interests in the portion or portions of the property repaired or restored.

In making disbursements of the insurance proceeds, the Insurance Trustee shall be entitled to rely without further inquiry upon the written authorization submitted as provided above or upon any written certification of facts submitted to the Insurance Trustee by the Board of Directors as hereinafter provided. The Insurance Trustee shall in no event be responsible for obtaining insurance on the Property, paying the premiums on any such insurance or filing claims for any payments due under any such insurance.

G. Insurance by Owners. Each co-owner shall be responsible for obtaining such amounts of the following types of insurance as he deems necessary or desirable:

1. Hazard insurance on his dwelling for his own benefit;
2. Hazard insurance on the contents of his dwelling and on improvements made to his dwelling; and
3. Liability insurance covering accidents occurring within the boundaries of his dwelling.

Any owner who obtains hazard insurance on his dwelling for his own benefit shall within thirty (30) days of obtaining the same deliver to the Board of Directors a copy of the policy of insurance, should the Board request.

XXIV

APPORTIONMENT OF TAX OR SPECIAL ASSESSMENT IF LEVIED AND ASSESSED AGAINST THE REGIME AS A WHOLE

In the event that any taxing authority having jurisdiction over the Regime shall levy or assess any tax or special assessment against the Regime as a whole, as opposed to levying and assessing such tax or special assessment against each Apartment and its appurtenant undivided interest in General and Limited Common Elements as now provided by law, then such tax or special assessment so levied shall be paid as a common expense by the Association, and any taxes or special assessments which are to be levied shall be included wherever possible, in the estimated annual budget of Association, or shall be separately levied and collected as an assessment by the Association, against all of the co-owners of Apartments and said Apartments if not included in said annual budget. The amount of any tax or special assessment paid or to be paid by Association in the event that such tax or special assessment is levied against the Regime, as a whole, instead of against each separate Apartment and its appurtenant undivided interest in General and Limited Common Elements shall be apportioned among the co-owners of all Apartments so that the amount of such tax or special assessment so paid or to be paid by the Association and attributable to and to be paid by the co-owner or co-owners of each Apartment shall be that portion of such total tax or special assessment which bears the same ratio to said total tax or special assessment as the undivided interest in General and Limited Common Elements appurtenant to each Apartment bears to the total undivided interest in General and Limited Common Elements appurtenant to all Apartments. In the event that any tax or special assessment shall be levied against the Regime in its entirety, without apportionment by the taxing authority of the Regime and appurtenant undivided interests in General and Limited Common Elements, then the assessment by Association which shall include the proportionate share of such tax or special assessment attributable to each Apartment and its appurtenant undivided interest in General and Limited Common Elements, shall separately specify and identify the amount of such assessment attributable to such tax or special assessments, and the amount of such tax or special assessment so designated shall be and constitute a lien

prior to all mortgages and encumbrances upon any Apartment and its appurtenant undivided interest in General and Limited Common Elements, regardless of the date of the attachment and/or recording of such mortgage or encumbrance, to the same extent as though such tax or special assessment had been separately levied by the taxing authority upon each Apartment and its appurtenant undivided interest in General and Limited Common Elements.

XXV

AMENDMENT OF MASTER DEED

Subject to the provisions of Article VIII and Article X, which provides for amendments to this Master Deed by Grantor, its successor and assigns, to add additional phases of this Master Deed, neither this Master Deed nor any of its provisions shall be revoked or amended except an amendment to add the additional phase by the Grantor or its successors and assigns, without the acquiescence of the co-owners owning at least two-thirds of the Apartments and at least two-thirds of the total interest in the General and Limited Common Elements and the record holders of encumbrances affecting at least two-thirds of the Apartment and at least two-thirds of the total interest in the General and Limited Common Elements, except that the system of administration as set forth in the Articles of Incorporation and By-Laws may be amended and modified from time to time in accordance with the provisions of the South Carolina Horizontal Property Act and other applicable provisions of the Code of Laws of South Carolina, the Articles and By-Laws of the Association. Any such amendment or revocation shall be executed and subscribed with the same formalities required in South Carolina for the making of deeds, and recorded in the public records of Charleston County.

Without limiting the foregoing, the Grantor shall have the power, but not the obligation, acting alone, at any time (and from time to time) so long as the Grantor owns at least one Apartment in the Regime to amend the Master Deed to cause the same to conform to the requirements of the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation, as set forth, respectively, in "FNMA Conventional Home Mortgage Selling Contract Supplement" and "Seller's Guide to Conventional Mortgages", as the same may be amended from time to time.

XXVI

REMEDIES IN EVENT OF DEFAULT

The co-owner or co-owners of each Apartment shall be governed by and shall comply with the provisions of this Master Deed, and the Articles and the By-Laws of the Association and its rules and regulations as any of the same are now constituted or as they may be adopted and/or amended from time to time. A default by the co-owner or co-owners of any Apartment shall entitle the Association or the co-owner or co-owners of other Apartment or Apartments to the following relief:

A. Failure to comply with any of the terms of this Master Deed or other restrictions and regulations contained in the Articles of Incorporation, By-Laws of the Association, or its rules and regulations, or decisions made pursuant thereto, shall be grounds for relief which may include, without intending to limit the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof and which relief may be sought by Association, or if appropriate, by an aggrieved co-owner of an Apartment or both;

B. The co-owner or co-owners of each Apartment shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of an Apartment or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of right of subrogation.

C. In any proceeding arising because of an alleged default by the co-owner of any Apartment, the Association, if successful, shall be entitled to recover the costs of the proceedings, and such reasonable attorney's fees as may be determined by the Court, but in no event shall the co-owner of any Apartment be entitled to such attorney's fees.

holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants hereof or the remaining portions of any terms, provisions, or covenants held to be partially invalid or unenforceable.

XXX

**MASTER DEED BINDING UPON GRANTOR, ITS
SUCCESSOR AND ASSIGNS, AND SUBSEQUENT CO-OWNERS**

The restrictions and burdens imposed by the covenants of this Master Deed are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Apartment and its appurtenant undivided interest in General and Limited Common Elements and this Master Deed shall be binding upon Grantor, its successors and assigns, and upon all parties who may subsequently become co-owners of Apartments in the Regime, and their respective heirs, legal representative, successors and assigns.

XXXI

DEFINITIONS

The definitions contained in S. C. Code Ann., §27-31-10 (1976), are hereby incorporated herein and made a part hereof by reference. The word "Unit" shall have the same meaning as "Apartment" and the words "Phase" or "Phases" shall have the same meaning as "Stage" or "Stages."

XXXII

MISCELLANEOUS

Attached hereto as Exhibit "D" and made a part hereof by reference is the Architect's Certificate required by S. C. Code Ann., §27-31-110 (1976).

Attached hereto as an Appendix and made a part hereof by reference is a copy of the By-Laws of the Association, as required by S. C. Code Ann., §27-31-150 (1976).

IN WITNESS WHEREOF, the Grantor has executed this Master Deed this 24th day of April, 1984.

WITNESSES:

DRAKE DEVELOPMENT CORPORATION

Cheryl Shoux Cronin

By: *[Signature]* (SEAL)
M. Russell Drake, Jr.
Its President

Deborah A. Bauer

APPROVED:

WILD DUNES ASSOCIATES

By: *[Signature]*
Its General Partner

Witnesses:
[Signature]
[Signature]

EXHIBIT "A"LEGAL DESCRIPTION

ALL that certain lot, piece or parcel of land together with improvements thereon, situate, lying and being in Isle of Palms, Charleston, South Carolina designated as Tract E, Block D-1, Isle of Palms Beach and Racquet Club and shown upon a plat of Shipwatch Horizontal Property Regime, Phase I, prepared by Joel P. Porcher, R.P.E. & L.S. Engineering, Surveying and Planning, Inc., dated April 23, 1984, revised April 26, 1984, and duly recorded in the Office of the RMC Office for Charleston County in Plat Book _____ at Page _____. Said tract having such size, shape, dimensions, buttings and boundings, more or less, as thereby referenced upon said plat.

The property hereby conveyed is subject to the following:

- (a) The Apartment shall not be used for or subject to any type of Vacation Time Sharing Plan as defined by the 1976 Code of Laws for the State of South Carolina, as amended, Section 27-32-10, et seq.
- (b) That certain "Covenants and Properties in the Isle of Palms Beach and Racquet Club", dated April 5, 1977 and duly recorded in the R.M.C. Office for Charleston County in Book B-112, Page 257; and AMENDMENT THERETO, dated December 22, 1978 and recorded in the said R.M.C. Office in Book W-117, Page 227;
- (c) That certain "Declaration of Covenants and Restrictions of Isle of Palms Beach and Racquet Club Community Association" dated April 5, 1977, and duly recorded in the R.M.C. Office for Charleston County in Book B-112, at Page 259, and AMENDMENT THERETO, dated September 18, 1980 and recorded in Book Y-123, Page 367;
- (d) The Covenants Affecting Beach Residential Areas in Isle of Palms Beach and Racquet Club dated April 5, 1977 and duly recorded in the R.M.C. Office for Charleston County in Book B-112, Page 258;
- (e) Easement to Wild Dunes Associates, its successors and assigns, for the construction and maintenance of the rock revetment referred to in Deed recorded in the Office of the R.M.C. for Charleston County in Book P132 at Page 16;
- (f) That certain Declaration of Right to Use and Covenant Maintenance Assessments dated 24 April, 1984, and recorded in the Office of the R.M.C. for Charleston County in Book _____ at Page _____.
- (g) That certain 10' Beach Access Easement to Isle of Palms Beach & Racquet Club Community Association, Inc., its successors and assigns, recorded in the Office of the R.M.C. for Charleston County in Book _____ at Page _____.
- (h) Stipulations by the Beach Co., recorded in the R.M.C. Office for Charleston County, South Carolina, on June 22, 1972, in Book M99 at Page 152.
- (i) Notwithstanding any other language to the contrary contained herein, no warranty of title is given to any portion of the premises now lying below the mean high water mark or which in its natural state lies below the mean high water mark or which did lie below the mean high water mark of abutting tidal waters as of July 1, 1977;
- (j) Other Restrictions, Easements and Rights-of-Way of record or affecting the property, including but not limited to, those set forth in the Title Commitment issued to the Grantee(s) herein.

3K U136PG403

The property submitted includes:

All of the grantor's right, title or interest in the property above described including the grantor's interest in any adjoining or accreted property between the boundary line of the above referenced property and the mean high water mark of the Atlantic Ocean as it existed when this tract was initially developed or subdivided, if any, deeded to it by quit-claim deed from Wild Dunes Associates, A South Carolina Partnership, dated April 23, 1984, and recorded simultaneously herewith.

TMS# 604-12-00-246

SQUARE FOOTAGES

Building A

UNIT TYPE 1:	Apartment Area	1,616.00 square feet
	Limited Common Area	366.00 square feet
UNIT TYPE 2:	Apartment Area	1,616.00 square feet
	Limited Common Area	366.00 square feet
UNIT TYPE 3:	Apartment Area	1,348.00 square feet
	Limited Common Area	231.15 square feet
UNIT TYPE 4:	Apartment Area	1,338.00 square feet
	Limited Common Area	192.75 square feet
UNIT TYPE 5:	Apartment Area	1,100.00 square feet
	Limited Common Area	234.25 square feet

COMMON AREAS:

Lobby	224.25 square feet (includes equip. rooms)
First Floor	1,245.50 square feet
Second Floor	1,245.50 square feet
Third Floor	1,245.50 square feet
Fourth Floor	2,959.00 square feet
Fifth Floor	1,335.50 square feet
Roof	7,250.00 square feet

Total Common Area, Building A: 15,505.25 square feet

Building B

UNIT TYPE 1:	Apartment Area	1,616.00 square feet
	Limited Common Area	366.00 square feet
UNIT TYPE 2:	Apartment Area	1,616.00 square feet
	Limited Common Area	366.00 square feet
UNIT TYPE 3:	Apartment Area	1,348.00 square feet
	Limited Common Area	231.15 square feet
UNIT TYPE 4:	Apartment Area	1,338.00 square feet
	Limited Common Area	192.75 square feet
UNIT TYPE 5:	Apartment Area	1,100.00 square feet
	Limited Common Area	234.25 square feet

COMMON AREAS:

Lobby	224.25 square feet (includes equip. rooms)
First Floor	1,245.50 square feet
Second Floor	1,245.50 square feet
Third Floor	1,245.50 square feet
Fourth Floor	2,959.00 square feet
Fifth Floor	1,335.50 square feet
Roof	7,250.00 square feet

Total Common Area, Building B: 15,505.25 square feet

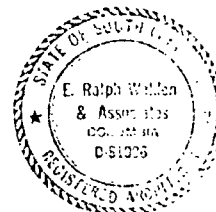


EXHIBIT "C"

APARTMENTS	STAGE I PERCENTAGE INTEREST	STAGES I & II PERCENTAGE INTEREST	BASIC VALUES
BLDG. A			
TYPE 1 401 and 408	2.392	1.196	\$ 270,000.00
TYPE 2 402, 403, 404, 405, 406, 407	2.214	1.107	\$ 250,000.00
TYPE 3 301, 306, 201, 206, 101, 106	1.94	0.970	\$ 219,000.00
TYPE 4 302, 305, 202, 205, 102, 105	1.78	0.890	\$ 201,000.00
TYPE 5 303, 304, 203, 204, 103, 104	1.602	0.801	\$ 181,000.00
BLDG. B			
TYPE 1 409 and 416	2.392	1.196	\$ 270,000.00
TYPE 2 410, 411, 412 413, 414, 415	2.214	1.107	\$ 250,000.00
TYPE 3 307, 312, 207, 212, 107, 112	1.94	0.970	\$ 219,000.00
TYPE 4 308, 311, 208, 211, 108, 111	1.78	0.890	\$ 201,000.00
TYPE 5 309, 310, 209, 210, 109, 110	1.602	0.801	\$ 181,000.00
TOTAL BASIC VALUE IN STAGE I		\$ 11,292,000.00	
TOTAL BASIC VALUE IN STAGES I & II		\$ 22,584,000.00	

K U136PG428

EXHIBIT "D"

ARCHITECT'S CERTIFICATE

Pursuant to S. C. Code Ann. §27-31-110 (1976), I certify that the Regime plans described in the attached Exhibit "B" and the written description of fifty-two (52) Apartments of the Shipwatch Horizontal Property Regime (situate upon real estate described in the attached Exhibit "A"), fully depict the layout, dimensions, location, area and number identification of the Apartments and the Common Elements both Limited and General of each Regime.

D-31006
Architect's S.C. License No.

E. Ralph Walden
E. RALPH WALDEN

Columbia, South Carolina
April 25, 1984.



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,

Plaintiffs,

vs.

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

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-10-3858

AFFIDAVIT OF GREG JOHNSTON

FILED
2015 JAN 13 PM 4:51
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PERSONALLY APPEARED before me, Greg Johnston, who being duly sworn does
state as follows:

1. I am over the age of eighteen years and am competent in all other respects to make this Affidavit.
2. I have personal knowledge of all matters set forth herein.
3. From March 1, 1995 until December 31, 2011, I served as the Owner/President of WC Johnston Architectural Sales, Inc. ("WCJ").
4. EFCO Corporation, Inc. ("EFCO") is a Missouri based corporation that is in the business of manufacturing window and door products.

5. For approximately 17 years, WCJ was an independent South Carolina manufacturer's representative of EFCO window and doors products, including during the 2003-2010 time period.
6. WCJ was the designated sales entity for this geographic area. WCJ was Charleston Glass' only contact for purchasing EFCO product.
7. I am not aware of any direct contact between Charleston Glass and EFCO on the Shipwatch project.
8. As the President of WCJ, I was involved in sales and frequently interacted with customers.
9. During the 2003-2010 time period, EFCO manufactured both impact rated and non-impact rated door and window products.
10. During the 2003-2010 time period, WCJ sold both impact rated and non-impact rated door and window products.
11. In approximately 2003, Randy Morgan with Charleston Glass and Mirror Company, Inc. ("Charleston Glass") contacted WCJ about purchasing EFCO products for use in construction work taking place at the Shipwatch condominiums in Isle of Palms, South Carolina.
12. At the time, Charleston Glass had been a customer of WCJ for approximately 15 years.
13. In 2004, Charleston Glass sent a purchase order for non-impact rated EFCO products from WCJ, including 72 3015 Series sliding glass doors. WCJ was informed that no architectural plans or specifications existed for the project.

14. As part of the sales process with Charleston Glass, Mr. Morgan signed a "Customer Make Size Order Form" to confirm the materials being ordered by Charleston Glass. The order form is attached hereto as Exhibit 1.
15. The 2004 Charleston Glass order was for doors with non-impact glazing.
16. When additional 3015 Series sliding glass doors were ordered in 2008, 2009, and 2010, the same "Customer Make Size Order Form" was used to formalize the Charleston Glass order. The order forms for 2008-2010 are attached hereto as Exhibits 2, 3, 4, and 5.
17. The order forms for 2008, 2009, and 2010 also requested EFCO doors with non-impact glazing. Mr. Morgan confirmed each order by signature or through a separate document with a notation that the glass being ordered was "ok."
18. Charleston Glass purchased both impact and non-impact rated EFCO window and door products prior to 2008.
19. From 2003-2010, the impact rated glazing products cost approximately 30-35% more than non-impact glazing products.
20. WCJ would willingly have sold Charleston Glass impact rated products instead of non-impact rated products from 2003-2010. WCJ routinely sold other customers both impact rated products and non-impact rated products.
21. With the sale of the EFCO product to Charleston Glass, WCJ passed on the EFCO Corporation Limited Warranty. Written warranties issued on December 22, 2003, and February 26, 2008, are attached hereto as Exhibits 6 and 7, respectively.
22. The Limited Warranty was extended with each sale of EFCO product to Charleston Glass for the Shipwatch project. Charleston Glass did not make a request for any additional or different warranties.

23. No request was ever made by Charleston Glass or the Shipwatch owners for WCJ to replace the provided EFCO non-impact rated products with impact rated products.



FURTHER AFFIANT SAYETH NOT.

SWORN TO BEFORE ME this
8th day of January 2015

[Signature]
Notary for South Carolina

My Commission Expires: 5/6/23

[Signature]
Greg Johnston



CUSTOMER MAKE SIZE ORDER FORM

SHEET 1 OF

4

☒ JOB NAME: Shipwatch 2

☐ EFCO JOB #: _____

EFCO PRODUCT TYPES

WINDOW SERIES: 3015 SGD

FINISH TYPE AND COLOR:

CLEAR
ANODIZED

CLASS 1 (AA-M12-C22-A41) 215-R1

☐ CLASS 2 (AA-M12-C22-A31) 204-R1

CLASS 3 (AA-M12-C22-A21) 202-R1

~~COLOR
ANODIZED~~

☒ CLASS 1 (AA-M12-C22-A44) .7 MILL

☐ CLASS II (AA-M12-C22-A34) .4-.7 MILL

☐ COMMERCIAL - LESS THAN .4 MILL

☒ DARK BRONZE
RANGE

☐ MED. BRONZE
RANGE

☐ LIGHT BRONZE
RANGE

☐ CHAMPAGNE
DANCE☐ BLACK

NOTE:

NOTE: COLOR ANODIZED (ULTRALOK) FINISHES ARE BASED ON AN APPROVED RANGE. EFCO CANNOT GUARANTEE A SPECIFIC COLOR WITHIN ANY GIVEN COLOR RANGE.

PAINT

☐ FLUROCRYL (30%)

☐ KYNAR (70%)

☐ ACROFLUR (50%)

☐ OTHER

☐ TWO COAT

THREE COAT

COLOR DESCRIPTION:

SHIPPING INSTRUCTIONS

SPECIAL SHIPPING INSTRUCTIONS REQUIRED

☐ YES

☐ NO _____

APPROVAL & AUTHORIZATION SIGNATURE:

SIGNATURE

DATE _____

104.144
Charleston Glass0515

121

717

GLAZING SCHEDULE

SHEET 2 OF

A
2

NOTE: EFCO RESERVES THE RIGHT TO SUPPLY, AT OUR DISCRETION ANY OF THE FOLLOWING SPACER TYPES. INSULATED GLASS WARRANTY WILL BE THE SAME FOR EITHER SPACER PROVIDED.
1) TUBULAR GLASS SPACER. 2) P.P.G. WARM EDGE SPACER. 3) ANY COMBINATION OF BOTH.

GLAZING TYPE	DESCRIPTION
(1)	1" IG (3/16" bronze temp ext - 5/8" A.S. - 3/16" Clear Temp. int)
(2)	
(3)	
(4)	

ANY SPECIAL FABRICATION INSTRUCTIONS

7482 Subhead & 3184 Starter Sill

☐ BLINDS BLIND COLOR: _____☐ 1" BLIND THICKNESS☐ 5/8" BLIND THICKNESS

WINDOW HARDWARE:

LOCKING: S.S. deadlocks, thumbturn

OPERATING: S.S. Rollers

OTHER: _____

☐ LIMITED OPENING (PROJECTED) _____☐ SASH TRAVEL (HUNG/SLIDER) _____

LIMIT DEVICE _____

INSECT SCREENS

ALUMINUM MESH	FIBERGLASS MESH
☒ GUNMETAL	☐ CHARCOAL
☐ BRITE COAT	☐ SILVER GRAY
☐ OTHER	☐ OTHER
TYPE: _____	TYPE: _____

104.144
Charleston Glass 0516

4 of 6



EFCO CORPORATION
1000 County Road
Monett, MO 65708
417-235-3193 800-221-4169
Fax 417-235-7313
www.efcoorp.com

Date _____

Page _____ of _____

Bid Date _____

Job Number _____

Job Location _____

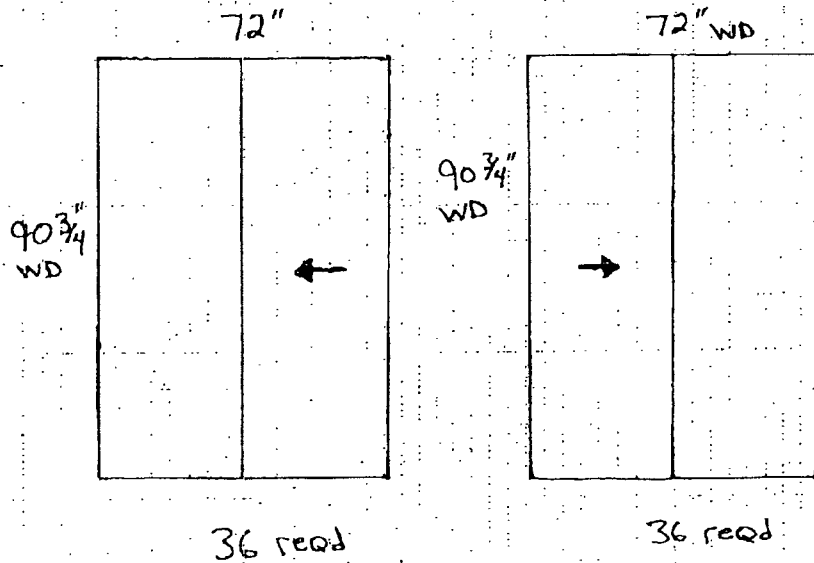
Architect _____

Contact _____

Finish _____

Series _____

Notes:



90 3/4"

1 1/2" 2x4

1/4" waterproofing

2" HAMS

24 sill



4101 Hardscrabble Road
Columbia, SC 29223
Phone: 803-788-9040
Fax: 803-788-4201
Email: gregj@wcjsales.com

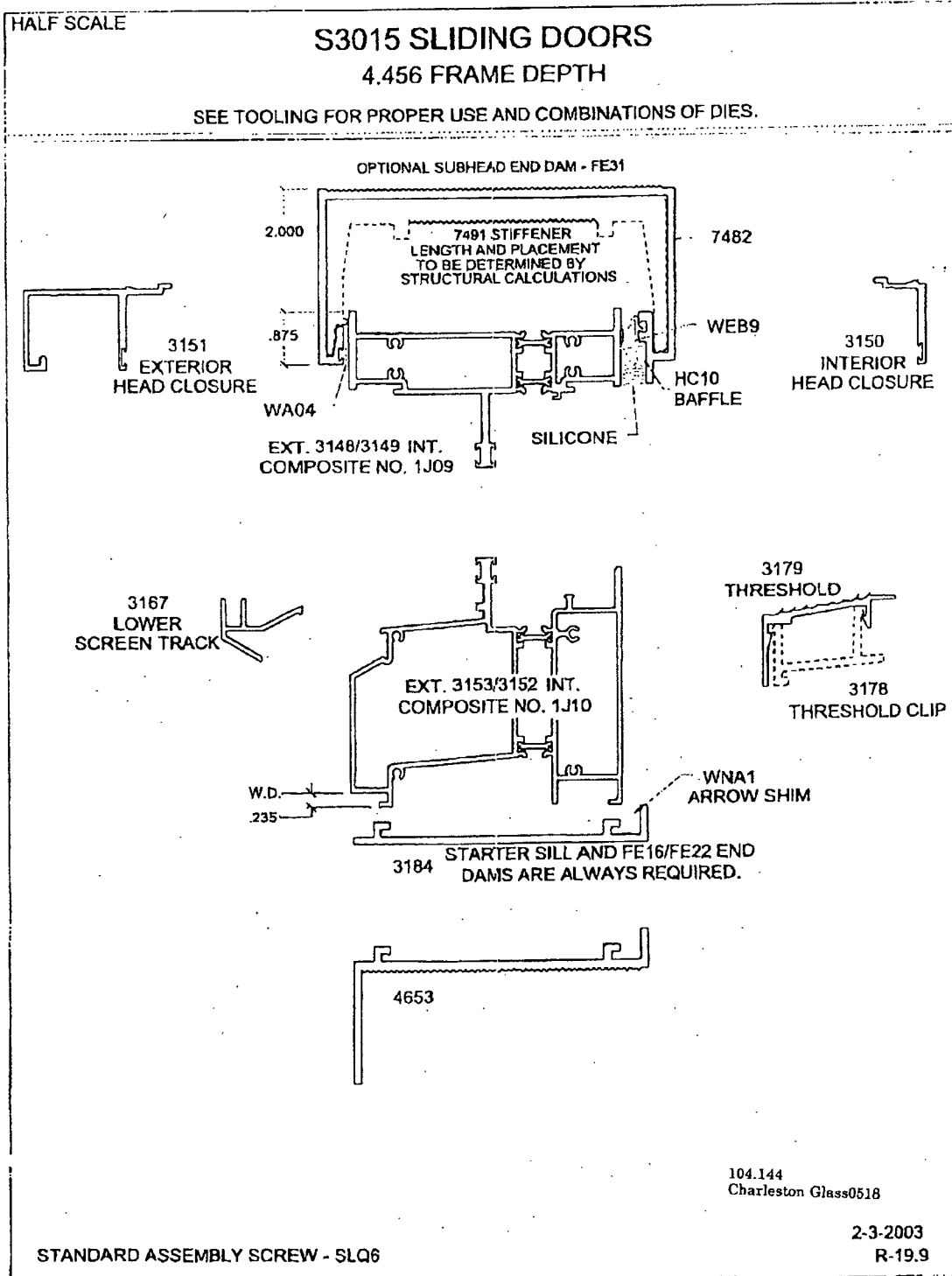
Use as a drawing sheet

94 3/4"
1 1/2" CRACK JOINT
95 1/4"

104.144
Charleston Glass0517

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526



Jul 14 2004 16:37

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
S042 GREG JOHNSTON	NORMAL	14,16:37	1'13"	4	* O K	

07/13/2004 16:53

CUSTOMER MAKE SIZE ORDER FOR

☒ JOB NAME: Shipwatch 2
☐ EFCO JOB #: _____

EFCO PRODUCT TYPES

WINDOW SERIES: 3015 SGD

SHIPPING INSTRUCTIONS
SPECIAL SHIPPING INSTRUCTIONS REQUIRED

☐ YES _____

☐ NO _____

FINISH TYPE AND C

CLEAR
ANDDIZED

☐ CLASS 1 ()
☐ CLASS 2 ()
☐ CLASS 3 ()

~~COLOR
ANODIZED~~

☒ CLASS I (AA-
☐ CLASS II (AA-
☐ COMMERCIAL

☒ DARK BRONZE
RANGE

☐ MED BR
RANGE

☐ CHAMPAGNE
RANGE

☐ BLACK

NOTE:
COLOR ANODIZED (ULTRALOK) IS
AN APPROVED RANGE. EFCO C/
SPECIFIC COLOR WITHIN ANY C

PAINT

☐ FLUROCRYL
☐ ACROFLUR
☐ TWO COAT

COLOR DESCRIF

APPROVAL & AUTHORIZATION

SIGNATURE

104.144
Charleston Glass0519

1-22-08
RTF afgm

446

CUSTOMER MAKE SIZE ORDER FORM SHEET 1 OF ____

☒ JOB NAME: Ship Watch II☐ EFCO JOB #: 9-1561-01 / OA

DESIGN PRESSURE _____

EFCO PRODUCT TYPES

WINDOW SERIES: 3015 Sliding doors

FINISH TYPE AND COLOR:

☐ CLEAR
☐ ANODIZED☐ CLASS 1 (AA-M12-C22-A41) 215-R1☐ CLASS 2 (AA-M12-C22-A31) 204-R1☐ CLASS 3 (AA-M12-C22-A21) 202-R1☒ COLOR
☐ ANODIZED☒ CLASS 1 (AA-M12-C22-A44) .7 MILL☐ CLASS 2 (AA-M12-C22-A36) .4-.7 MILL☐ COMMERCIAL - LESS THAN .4 MILL☒ DARK BRONZE
RANGE☐ MED. BRONZE
RANGE☐ LIGHT BRONZE
RANGE☐ CHAMPAGNE
RANGE☐ BLACKNOTE:
COLOR ANODIZED (ULTRALOK) FINISHES ARE BASED ON
AN APPROVED RANGE. EFCO CANNOT GUARANTEE A
SPECIFIC COLOR WITHIN ANY GIVEN COLOR RANGE.

PAINT

☐ FLUOROCYL (30%)☐ KYNAR (70%)☐ ACROFLUR (30%)☐ OTHER☐ TWO COAT☐ THREE COAT

COLOR DESCRIPTION:

SHIPPING INSTRUCTIONS

SPECIAL SHIPPING INSTRUCTIONS REQUIRED

☐ YES☐ NO

APPROVAL & AUTHORIZATION SIGNATURE:

SIGNATURE

DATE

EXHIBIT

2

EFCO/Ship01398

PAGE 85

PAGE 84

MC JOHNSON

MC JOHNSON

8/1/21/2008 15:18 0037984281

0037984281

GLAZING SCHEDULE

SHEET 2 OF _____

NOTE: EFCO RESERVES THE RIGHT TO SUPPLY, AT OUR DISCRETION ANY OF THE FOLLOWING SPACER TYPES. (INSULATED GLASS WARRANTY WILL BE THE SAME FOR OTHER SPACER PROVIDED.)
1) TUBULAR GLASS SPACER, 2) P.P.G. WARM EDGE SPACER, 3) ANY COMBINATION OF BOTH.

GLAZING TYPE	DESCRIPTION
(1)	1" IG (1/4" bronze temp. - 1/2" A.S. - 1/4" clear temp.)
(2)	
(3)	
(4)	

ANY SPECIAL FABRICATION INSTRUCTIONS

7482 Sub Frame e head
3184 Starter sill

- ☐ BLINDS BLIND COLOR: _____
- ☐ 1" BLIND THICKNESS
- ☐ 5/8" BLIND THICKNESS

WINDOW HARDWARE:

LOCKING: SS. DEMOLOCK BLIND TIGHTEN

OPERATING: Stainless Steel Rollers

OTHER: _____

- ☐ LIMITED OPENING (PROJECTED) _____
- ☐ SASH TRAVEL (HUNG/SLIDER) _____
- LIMIT DEVICE: _____

INSECT SCREENS

ALUMINUM MESH	FIBERGLASS MESH
☒ CORONA	☒ CORONA
☐ WHITE COAT	☐ SILVER GRAY
☐ OTHER	☐ OTHER
TYPE: _____	TYPE: _____

No Alum

546

0037984281

01-21-2008

9/3

EPCO CORPORATION
1000 County Road
Marble, NC 27904
417-235-3193 800-221-4169
Fax 417-235-7312
www.epco.com

Date _____

Page _____ of _____

Old Date _____

Job Number _____

Job Location _____

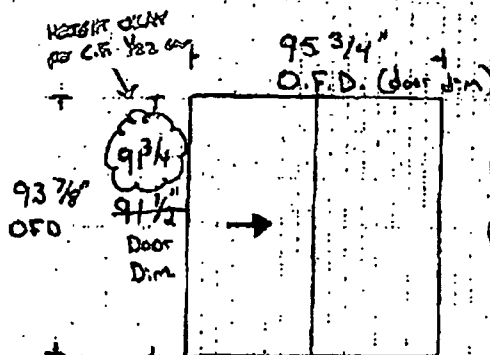
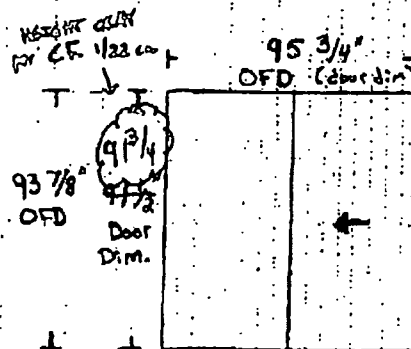
Architect _____

Contact _____

Finish _____

Series _____

Notes:



To: James
NOTE CHARLES

Thanks

Don Johnston

3 PAGES

WC JOHNSTON
4101 Hardacre Road
Columbia, SC 29223
Phone: 803-788-0040
Fax: 803-788-4201
Email: greg@wcjohnston.com

Use on a drawing sheet

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6 of 6

WC JOHNSTON ARCHITECTURAL SALES

4101 Hardscrabble Rd.
Columbia, SC 29223

Phone: 803-788-9040

Fax: 803-788-4201

WINDOW ORDER RELEASE FORM

TO: Randy Morgan
Charleston Glass

FROM: James Stout
WCJ Architectural Sales

Please review the following information for accuracy. It is important to make sure all the information on this list is correct.

- O.K. • Finish
- ☒ • Sizes – Formulas for calculating sizes and where dimensions were taken from are included
- O.K. • Quantities
- O.K. • Glass
- O.K. • Hardware

After reviewing make necessary changes required and sign giving approval to release this material into production. All windows for this project will be released per the attached sheets and your corrections. These order sheets will take precedence over any previously submitted documents, drawings and verbal conversations.

Returned signed sheets by fax at your earliest convenience so production will not be delayed.

WCJ Architectural Sales

TO: JAMES

FROM: RANDY

5 PAGES

104.144
Charleston Glass 0228

PLEASE PROVIDE SHOP
DATE WHEN YOU REC.

EXHIBIT	
tabler	3

shells 3/4/6

CUSTOMER MAKE SIZE ORDER FORM SHEET 1 OF ____

☒ JOB NAME: Ship watch

☐ EFCO JOB #: _____

DESIGN PRESSURE _____

EFCO PRODUCT TYPES

WINDOW SERIES: 3015 Sliding glass door

[illegible]

SHIPPING INSTRUCTIONS

SPECIAL SHIPPING INSTRUCTIONS REQUIRED

☐ YES☐ NO _____

FINISH TYPE AND COLOR:

CLEAR
ANODIZED

☐ CLASS 1 (AA-M12-C22-A41) 215-R1

☐ CLASS 2 {AA-M12-C22-A31} 204-R1

☐ CLASS 3 (AA-M12-C22-A21) 202-R1



☒ CLASS 1 (AA-M12-C22-A44) .7 MILL

☐ CLASS II (AA-M12-C22-A34) .4-.7 MILL

☐ COMMERCIAL - LESS THAN .4 MILL

☒ DARK BRONZE
RANGE

☐ MED. BRONZE
RANGE

☐ LIGHT BRONZE
RANGE

☐ CHAMPAGNE RANGE

☐ BLACK

NOTE:
COLOR ANODIZED (ULTRALOK) FINISHES ARE BASED ON
AN APPROVED RANGE. EFCO CANNOT GUARANTEE A
SPECIFIC COLOR WITHIN ANY GIVEN COLOR RANGE.

PAINT

☐ FLUOROCRYL (30%)

☐ KYNAR (70%)

☐ ACROFLUR (50%)

☐ OTHER

☐ TWO COAT

☐ THREE COAT

COLOR DESCRIPTION:

APPROVAL & AUTHORIZATION SIGNATURE:

SIGNATURE

DATE _____

104.144
Charleston Class0229

一

726

GLAZING SCHEDULE

SHEET 2 OF _____

NOTE: EFCO RESERVES THE RIGHT TO SUPPLY, AT OUR DISCRETION ANY OF THE FOLLOWING SPACER TYPES. INSULATED GLASS WARRANTY WILL BE THE SAME FOR EITHER SPACER PROVIDED.
1) TUBULAR GLASS SPACER, 2) P.P.G. WARM EDGE SPACER, 3) ANY COMBINATION OF BOTH.

GLAZING TYPE	DESCRIPTION
(1)	1" IG (1/4" bronze temp. ext. - 1/2" A.S. - 1/4" clear temp. int.)
(2)	
(3)	
(4)	

ANY SPECIAL FABRICATION INSTRUCTIONS

7482 Sub head
4726 Starter Sill

☐ BLINDS BLIND COLOR: _____

☐ 1" BLIND THICKNESS

☐ 5/8" BLIND THICKNESS

WINDOW HARDWARE:

LOCKING: S.S. dead lock w/ thumbturn

OPERATING: Stainless Steel Rollers

OTHER: _____

☐ LIMITED OPENING (PROJECTED) _____

☐ SASH TRAVEL (HUNG/SLIDER) _____

LIMIT DEVICE _____

INSECT SCREENS

ALUMINUM MESH	FIBERGLASS MESH
☐ GUNMETAL	☒ CHARCOAL
☐ BRITE COAT	☐ SILVER GRAY
☐ OTHER	☐ OTHER
TYPE: _____	TYPE: _____

 104.144
Charleston Glass 0230

44.1



EFCO CORPORATION
1000 County Road
Mcmett, MO 65708
417-235-3193 800-221-4169
Fax 417-235-7313
www.efcocrp.com

Date _____

Page _____ of _____

Bid Date _____

Job Number _____

Job Location _____

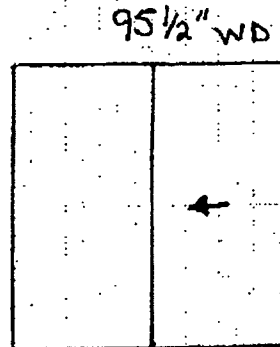
Architect _____

Contact _____

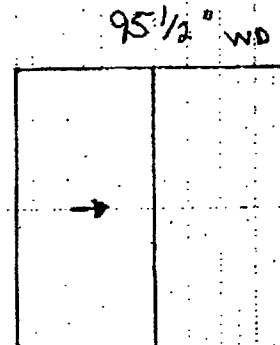
Finish _____

Series _____

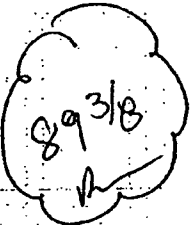
Notes:



7 req'd

89"
W.D.

8 req'd

89"
W.D.

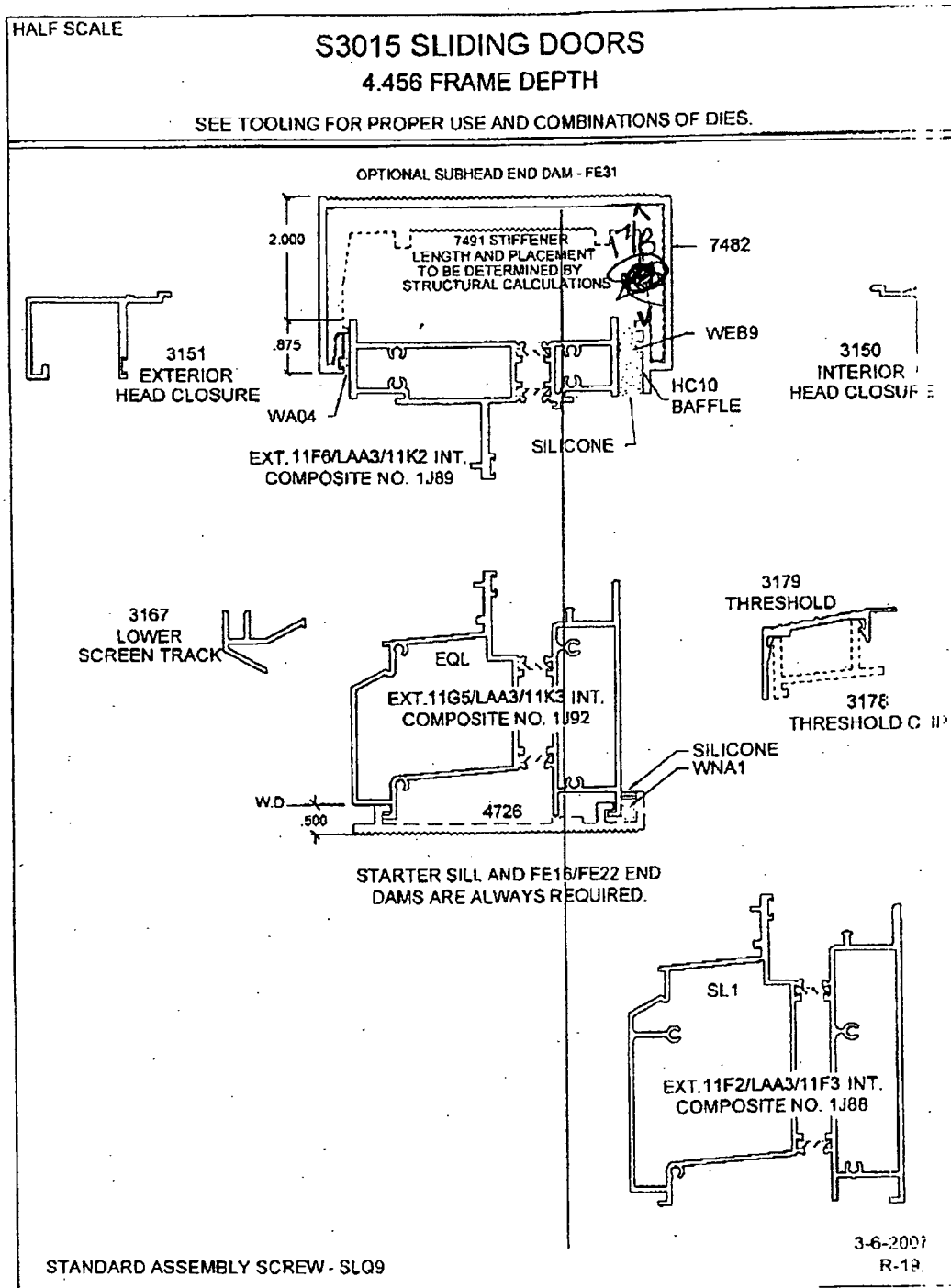
4101 Hardscrabble Road
Columbia, SC 29223
Phone: 803-788-9040
Fax: 803-788-4201
Email: gregj@wcjsales.com

Use as a drawing sheet.

104.144
Charleston Glass0231

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561



104.144
Charleston Glass0232

636

Transmission Report

Date/Time	12-24-2008	10:26:13 a.m.	Transmit Header Text	
Local ID 1	8437470188		Local Name 1	charleston glass and mirror
Local ID 2			Local Name 2	

This document : Confirmed
(reduced sample and details below)
Document size : 8.5"x11"

***** PAGE 82

WC JOHNSTON ARCHITECTURAL SALES

4101 Harderabble Rd.
Columbia, SC 29223
Phone: 803-788-9040 Fax: 803-788-4201

WINDOW ORDER RELEASE FORM

TO: Randy Morgan
Charleston Glass

FROM: James Stout
WCJ Architectural Sales

Please review the following information for accuracy. It is important to make sure all the information on this list is correct.

- ☒ Finish
- ☒ Sizes - Formulas for calculating sizes and where dimensions were taken from are included
- ☒ Quantities
- ☒ Glass
- ☒ Hardware

After reviewing make necessary changes required and sign giving approval to release this material into production. All windows for this project will be released per the attached sheets and your corrections. These order sheets will take precedence over any previously submitted documents, drawings and verbal conversations.

Returned signed sheets by fax at your earliest convenience so production will not be delayed.

WCJ Architectural Sales

TO: JAMES
FROM: RANDY
5 PAGES

PLEASE PROVIDE STEP
DATE WHEN YOU REC.

104.144
Charleston Glass0233

Total Pages Scanned : 5

Total Pages Confirmed : 5

No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
001	533	8037884201	10:23:50 a.m. 12-24-2008	00:01:37	5/5	1	EC	HS	CP14400

Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	TU: Terminated by user
HR: Host receive	PR: Polled remote	CP: Completed	TS: Terminated by system
WS: Waiting send	MS: Mailbox save	FA: Fail	RP: Report
			G3: Group 3
			EC: Error Correct

WC Johnston Architectural Sales

PHONE 803-788-9040

FAX 803-788-4201

FACSIMILE TRANSMITTAL SHEET

TO: Randy Morgan

FROM: James Stout

COMPANY: Charleston Glass

DATE: 12/23/2008

FAX NUMBER:

TOTAL NO. OF PAGES:

PHONE NUMBER:

SENDER'S REF. NUMBER:

REF:

YOUR REF. NUMBER:

Shipwatch

☐ URGENT☐ FOR REVIEW☐ PLEASE COMMENT☐ PLEASE REPLY

NOTES/COMMENTS:

Randy,

Please check the following order. If everything is correct please sign the make size order in the space provided and fax back to me to release for production.

Please note that I have sent a detail of the subhead and starter sill to show you how the height was determined.

Please fax back tomorrow AM as I will be leaving early.

thanks

James

104.144
Charleston Glass 0234

176

WC Johnston Architectural Sales

PHONE 803-788-9040

FAX 803-788-4201

FACSIMILE TRANSMITTAL SHEET

TO: Randy Morgan/Tracey

FROM: James Stout

COMPANY: Charleston Glass

DATE: 12/2/2009

FAX NUMBER:

TOTAL NO. OF PAGES:

PHONE NUMBER:

SENDER'S REF. NUMBER:

REF:
Shipwatch

YOUR REF. NUMBER:

☐ URGENT☐ FOR REVIEW☐ PLEASE COMMENT☐ PLEASE REPLY

NOTES/COMMENTS:

Randy/Tracey

Please find attached the make size order that I need for you to check and sign if everything is correct. I based this on the last order, so please make sure that everything is correct.

The cost for these is \$25,569.00. I will add this to your purchase order if you do not have any objection.

I will not have a definite ship date until this is signed and sent to Efco, but they are running approximately eight weeks.

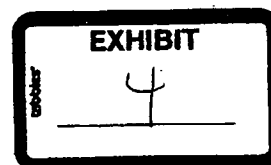
Please sign and fax back to release for production.

thanks

James

James Stout
12-2-09
Please shoot for
1-18-10
thanks.
James

104-144
Charleston Glass0471



1 of 5

WC JOHNSTON ARCHITECTURAL SALES

4101 Hardscrabble Rd.
Columbia, SC 29223

Phone: 803-788-9040

Fax: 803-788-4201

WINDOW ORDER RELEASE FORM

TO: Randy Morgan/Tracey
Charleston Glass

FROM: James Stout
WCJ Architectural Sales

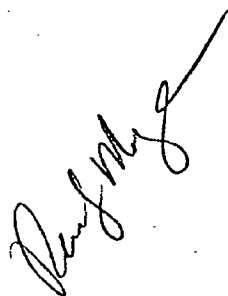
Please review the following information for accuracy. It is important to make sure all the information on this list is correct.

- Finish
- Sizes – Formulas for calculating sizes and where dimensions were taken from are included
- Quantities
- Glass
- Hardware

After reviewing make necessary changes required and sign giving approval to release this material into production. All windows for this project will be released per the attached sheets and your corrections. These order sheets will take precedence over any previously submitted documents, drawings and verbal conversations.

Returned signed sheets by fax at your earliest convenience so production will not be delayed.

WCJ Architectural Sales



104.144
Charleston Glass 0472

295

CUSTOMER MAKE SIZE ORDER FORM SHEET 1 OF _____

☒ JOB NAME: Ship Watch

☐ EFCO JOB #: _____

DESIGN PRESSURE _____

EFCO PRODUCT TYPES

WINDOW SERIES: 3015 Sliding doors

SHIPPING INSTRUCTIONS

SPECIAL SHIPPING INSTRUCTIONS REQUIRED

☐ YES

☐ NO _____

FINISH TYPE AND COLOR:

CLEAR
ANODIZED

☐ CLASS 1 (AA-M12-C22-A41) 215-R1

CLASS 2 (AA-M12-C22-A31) 204-R1

CLASS 3 (AA-M12-C22-A21) 202-R1

~~COLOR
ANODIZED~~

☒ CLASS 1 (AA-M12-C22-A44) .7 MILL

☐ CLASS II (AA-M12-C22-A34) .4-.7 MILL

☐ COMMERCIAL - LESS THAN .4 MILL

☒ DARK BRONZE
RANGE

☐ MED. BRONZE
RANGE

☐ LIGHT BRONZE
RANGE

☐ CHAMPAGNE RANGE

☐ BLACK

NOTE:
COLOR ANODIZED (ULTRALOK) FINISHES ARE BASED ON
AN APPROVED RANGE. EFCO CANNOT GUARANTEE A
SPECIFIC COLOR WITHIN ANY GIVEN COLOR RANGE.

PAINT

☐ FLUOROCRYL (30%)

☐ KYNAR (70%)

☐ ACROFLUR (50%)

☐ OTHER

☐ TWO COAT

☐ THREE COAT

COLOR DESCRIPTION:

APPROVAL & AUTHORIZATION SIGNATURE:

SIGNATURE

DATE _____

104.144
Charleston Glass0473

GLAZING SCHEDULE

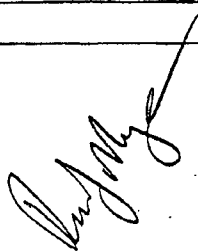
SHEET 2 OF -----

NOTE: EFCO RESERVES THE RIGHT TO SUPPLY, AT OUR DISCRETION ANY OF THE FOLLOWING SPACER TYPES. INSULATED GLASS WARRANTY WILL BE THE SAME FOR EITHER SPACER PROVIDED.
 1) TUBULAR GLASS SPACER. 2) P.P.G. WARM EDGE SPACER. 3) ANY COMBINATION OF BOTH.

GLAZING TYPE	DESCRIPTION
(1)	1" IG (1/4" bronze temp. - 1/2" A.S. - 1/4" clear temp.)
(2)	
(3)	
(4)	

ANY SPECIAL FABRICATION INSTRUCTIONS

7482 Subframe e head
 3184 Starter Sill


☐ BLINDS BLIND COLOR: _____

☐ 1" BLIND THICKNESS

☐ 5/8" BLIND THICKNESS

WINDOW HARDWARE:

LOCKING: S.S. dead lock w thumb turn

OPERATING: S.S. Rollers

OTHER: _____

☐ LIMITED OPENING (PROJECTED) _____

☐ SASH TRAVEL (HUNG/SLIDER) _____

LIMIT DEVICE _____

INSECT SCREENS

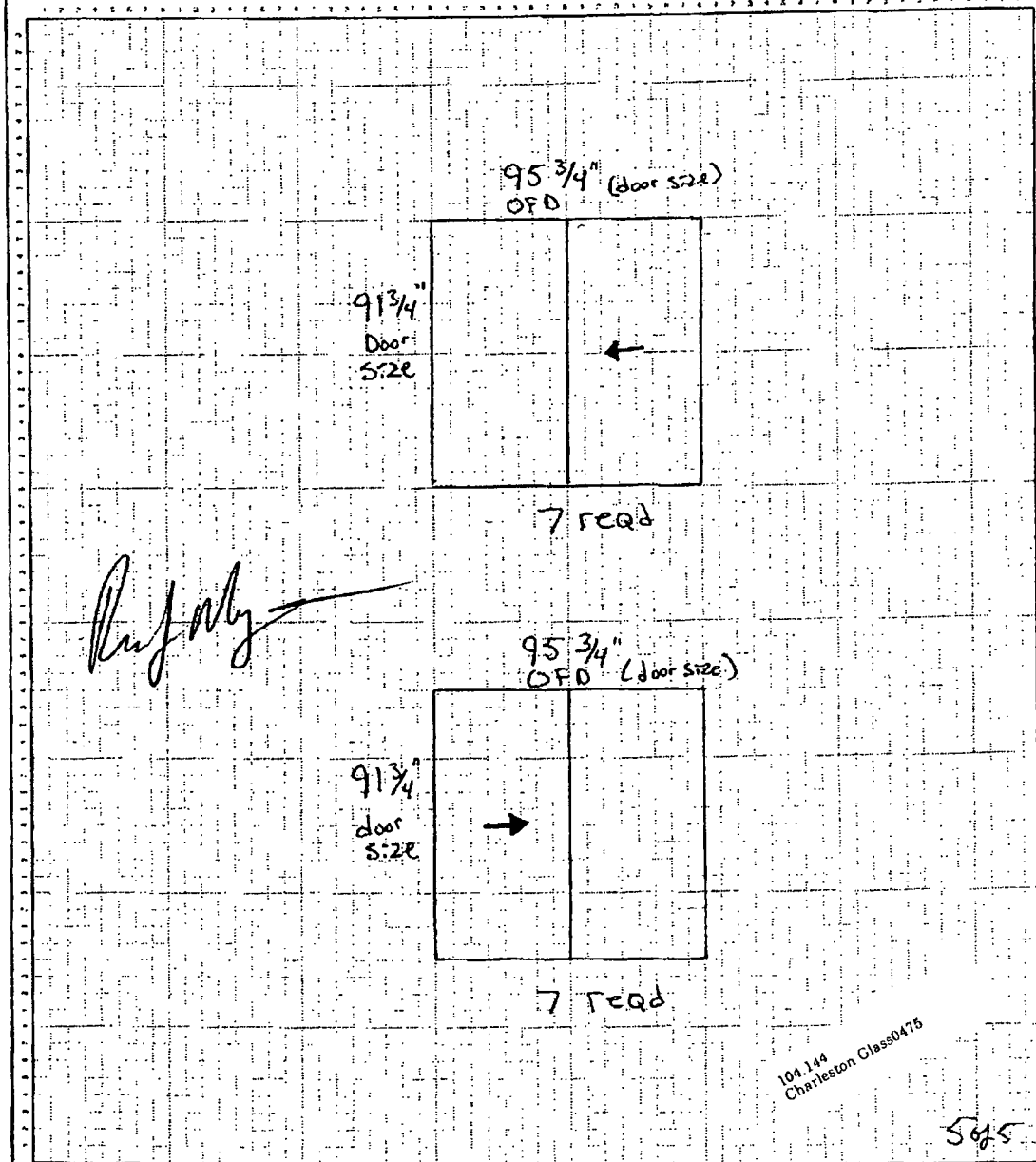
ALUMINUM MESH	FIBERGLASS MESH
☐ CUMMETAL	☒ CHARCOAL
☐ BRITE COAT	☐ SILVER GRAY
☐ OTHER	☐ OTHER
TYPE: _____	TYPE: _____

 104.144
 Charleston Glass0474



4101 Wardscrabble Road
Columbia, SC 29223
Phone: 803-788-9040
Fax: 803-788-4201

JOB _____
SHEET NO. _____ OF _____
CALCULATED BY _____ DATE _____
CHECKED BY _____ DATE _____
SCALE _____



Transmission Report

Date/Time 12-02-2009 01:27:38 p.m. Transmit Header Text
 Local ID 1 8437470188 Local Name 1 charleston glass and mirror
 Local ID 2 Local Name 2

This document : Confirmed
 (reduced sample and details below)
 Document size : 8.5"x11"

WC Johnston Architectural Sales
 PHONE 803-788-9040 FAX 803-788-4201

FACSIMILE TRANSMISSION SHEET

TO: Randy Morgan/Tracey		FROM: James Stout	
COMPANY: Charleston Glass		DATE: 12/2/2009	
FAX NUMBER:		TOTAL NO. OF PAGES:	
PHONE NUMBER:		SENDER'S REF. NUMBER:	
REF: Shipwatch		YOUR REF. NUMBER:	
☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY			

NOTES/COMMENTS:

Randy/Tracey

Please find attached the make size order that I need for you to check and sign if everything is correct. I based this on the last order, so please make sure that everything is correct.

The cost for these is \$25,569.00. I will add this to your purchase order if you do not have any objection.

I will not have a definite ship date until this is signed and sent to Efc, but they are running approximately eight weeks.

Please sign and fax back to release for production.

thanks

James

12-2-09
 Please shoot for
 1-18-10
 Huts.
 Ret

104.144
 Charleston Glass0476

145

Total Pages Scanned : 5

Total Pages Confirmed : 5

No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
001	472	8037884201	01:25:44 p.m. 12-02-2009	00:01:02	5/5	1	EC	HS	CP26400

Abbreviations:

HS: Host send
 HR: Host receive
 WS: Waiting send

PL: Polled local
 PR: Polled remote
 MS: Mailbox save

MP: Mailbox print
 CP: Completed
 FA: Fail

TU: Terminated by user
 TS: Terminated by system
 RP: Report

G3: Group 3
 EC: Error Correct

738

3/15

01' 5 p.m. C9-08-2010

charleston glass and m

8437475188

GLAZING SCHEDULE

SHEET 2 OF _____

NOTE: EFCO RESERVES THE RIGHT TO SUPPLY, AT OUR DISCRETION ANY OF THE FOLLOWING SPACER TYPES. INSULATED GLASS WARRANTY WILL BE THE SAME FOR EITHER SPACER PROVIDED.
1) TUBULAR GLASS SPACER. 2) P.P.G. WARM EDGE SPACER. 3) ANY COMBINATION OF BOTH.

GLAZING TYPE	DESCRIPTION
(1)	1" IGU (1/4" bronze temp - 1/2" A.S. - 1/4" clear temp.)
(2)	
(3)	
(4)	

ANY SPECIAL FABRICATION INSTRUCTIONS

7482 Sub head
3184 Starter Sill

- ☐ BLINDS BLIND COLOR: _____
- ☐ 1" BLIND THICKNESS
- ☐ 5/8" BLIND THICKNESS

WINDOW HARDWARE:

LOCKING: S.S. dead lock w/ flange

OPERATING: S.S. Rollers

OTHER: _____

- ☐ LIMITED OPENING (PROJECTED) _____
- ☐ SASH TRAVEL (HUNG/SLIDER) _____
- LIMIT DEVICE _____

INSECT SCREENS

ALUMINUM MESH		FIBERGLASS MESH	
☐	CUNNETAL	☒	CHARCOAL
☐	WHITE COAT	☐	SILVER GRAY
☐	OTHER	☐	OTHER
TYPE: _____		TYPE: _____	

3/15

WCJAI 020

WILKINSON4101 Wardscrabble Road
Columbia, SC 29223
Phone: 803-788-9040
Fax: 803-788-4201

JOB _____

SHEET NO. _____

OF _____

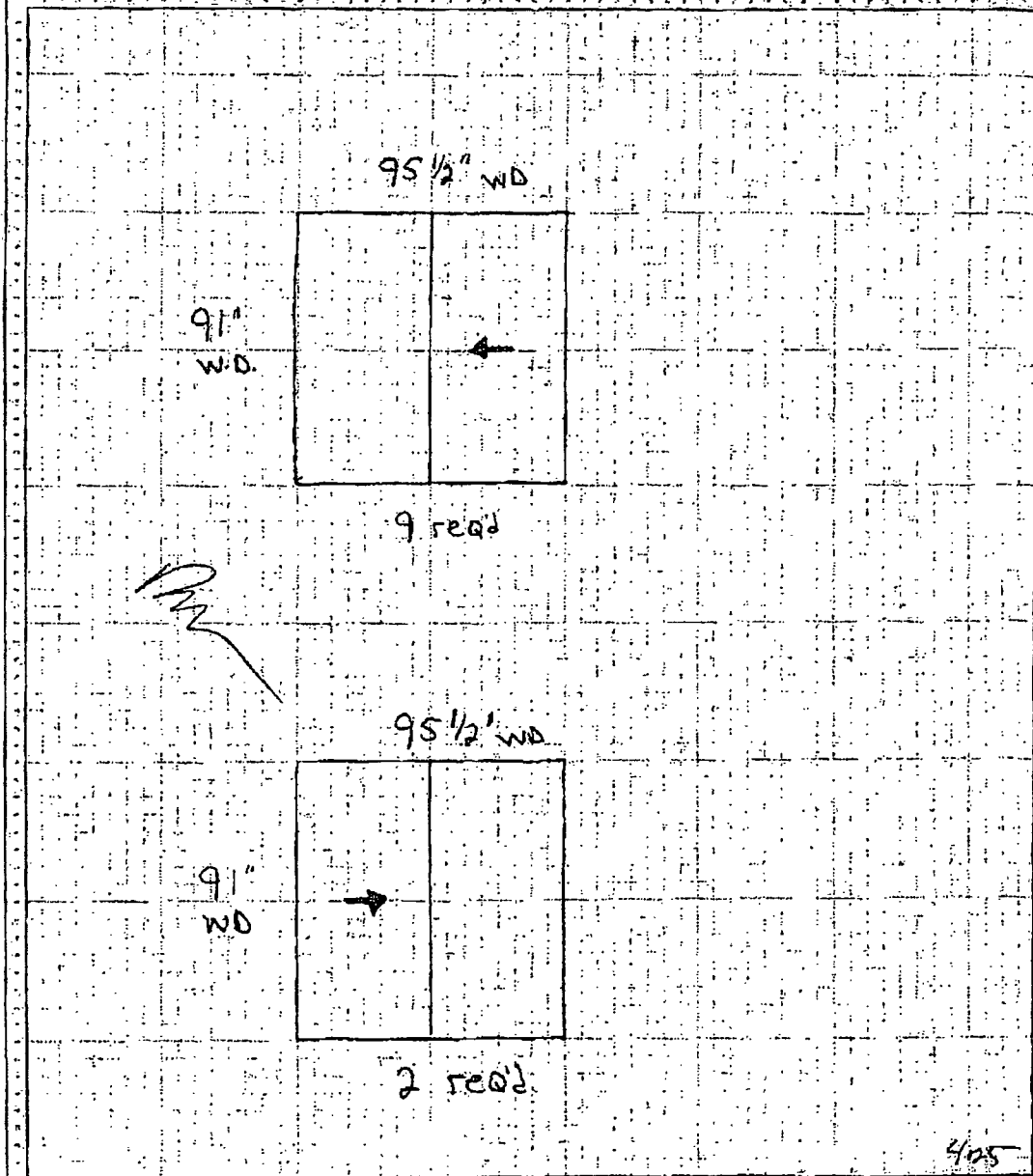
CALCULATED BY _____

DATE _____

CHECKED BY _____

DATE _____

SCALE _____



WCJA1 022



WINDOWS • CURTAIN WALLS • ENTRANCES • STOREFRONTS

w w w . e f c o c o r p . c o m

EFCO CORPORATION LIMITED WARRANTY

EFCO CORPORATION warrants to the first retail purchaser only, that all articles, materials and work will be free from material defects in manufacture. EFCO Corporation's liability extends only to its buyer and is limited to repair or replacement of defective material.

EFCO CORPORATION'S warranty on the product(s) shall extend from the issue date as follows:

Glass	10 year(s)
Window	3 year(s)
Storefront	Not Applicable
Curtainwall	Not Applicable
Finish	Not Applicable

EFCO CORPORATION excludes any implied warranties of merchantability and fitness for a particular purpose.

EFCO's liability will not extend beyond repair or replacement of the defective material. EFCO will not be responsible for any consequential damages caused by its products.

There are no warranties which extend beyond the description on the face hereof.

Job Name: SHIPWATCH II
EFCO Job No.: 0785302
Customer Name: CHARLESTON GLASS COMPANY
Issue Date: 2003-12-22

Architectural Window, Curtain Wall
Storefront Systems

See reverse side for additional terms and conditions.

EXHIBIT

6

HEADQUARTERS: EFCO CORPORATION • 1000 COUNTY ROAD • MONETT, MO 65708 • 800.221.4169 • FAX: 417.235.7313

WARRANTY TERMS AND CONDITIONS

PRODUCTS LIMITED WARRANTY

The limited warranty for INSULATED GLASS UNITS warrants the glass units will be free from material obstruction of vision as a result of dust or film formation on the internal glass surfaces caused by failure of the hermetic seal due to defects in material or workmanship.

The limited warranty for BAKED-ON FLUROPOLYMER PAINT COATINGS warrants that paint finishes will not chip, crack, blister, or peel.

WHAT EFCO CORPORATION WILL DO

If any material shall be found to be defective in material or workmanship, such material shall be replaced or repaired at the option of EFCO, after inspection by a representative of EFCO, and with the consent of EFCO, without charge.

If after inspection by EFCO, it is determined the organic coating became defective under the conditions of this warranty, EFCO agrees to refinish the defective material on the site, with a conventional refinishing material as specified by EFCO.

EXCLUSIONS TO THE LIMITED WARRANTY

EFCO CORPORATION will not be responsible for defects caused by accidents, modification to products, abuse, (including failure to perform reasonable and necessary maintenance), failure to follow instructions, exposure to salt spray, corrosive chemicals, lightning, fire, and other acts of nature. All outside manufactured parts will be limited to the specific manufacturer's warranty and are expressly excluded from the EFCO limited warranty.

EFCO shall not be liable for materials damaged in handling or installation; or not installed in accordance with the EFCO Installation Manual Guidelines.

EFCO assumes no responsibility for failure of insulated glass units on account of faulty installation, building construction, or building design; or failure of units installed in high moisture environments such as swimming pool enclosures and greenhouses. EFCO does not assume responsibility for glass breakage caused by stresses resulting from temperature differentials over the glass surfaces or edges.

The EFCO limited warranty excludes any damage caused to the material or finish due to post forming.

The EFCO limited warranty excludes any liability for environmental hazards including but not limited to mold.

The EFCO limited warranty extends to EFCO manufactured product only, as outlined in AAMA 502-90, test method A. Perimeter conditions, caulking, sealants, etc. are explicitly excluded from the EFCO limited warranty. The EFCO limited warranty is based upon the system itself, no consideration is given to the method of installation.

WHAT EFCO WILL NOT DO

EFCO will not be responsible or liable for any incidental, consequential or collateral damages or for any expense incurred by anyone as a result of the use, or sale of defective or unsatisfactory material.

Any implied warranty arising from course of performance, course of dealing, or usage of trade is hereby excluded or disclaimed.

EFCO shall not be liable for back charges nor any work performed or materials placed by anyone other than EFCO in connection with the installed products covered by this warranty, except when authorized over the signature of an officer of the EFCO CORPORATION.

Materials will not be repaired or replaced until paid for in full.

This warranty sets forth all the responsibilities of EFCO CORPORATION regarding the products. EFCO will not be responsible for any costs or damages resulting from removal, installation or reinstallation of any products or components. Replacement of defective parts at the EFCO factory is the exclusive remedy. There are no other expressed or implied warranties from EFCO.



EFCO CORPORATION

1000 County Road • Monett, MO 65708 • 800.221.4169

EFCO CORPORATION LIMITED WARRANTY

EFCO CORPORATION warrants to the first retail purchaser only, that all articles, materials and work will be free from material defects in manufacture. EFCO Corporation's liability extends only to its buyer and is limited by the Terms and Conditions stated on the reverse side of this form.

EFCO CORPORATION'S warranty on the product(s) shall extend from the issue date as follows:

Glass	10 year(s)
Window	3 year(s)
Storefront	Not Applicable
Curtainwall	Not Applicable
Finish	Not Applicable

EFCO CORPORATION excludes any implied warranties of merchantability and fitness for a particular purpose.

EFCO's liability will not extend beyond repair or replacement of the defective material. EFCO will not be responsible for any consequential damages caused by its products.

There are no warranties which extend beyond the description on the face hereof.

Job Name: SHIP WATCH II

EFCO Job No.: 9156101

Customer Name: CHARLESTON GLASS COMPANY

Issue Date: 2008-02-26

Rep: 3300

**Architectural Window, Curtain Wall
Storefront Systems**

See reverse side for additional terms and conditions.

EXHIBIT

tabbies

7

Where windows are just the beginning.

WARRANTY TERMS AND CONDITIONS

PRODUCTS LIMITED WARRANTY

The limited warranty for INSULATED GLASS UNITS warrants the glass units will be free from obstruction of vision as a result of dust or film formation on the internal glass surfaces caused by failure of the hermetic seal due to defects in material or workmanship.

The limited warranty for BAKED-ON FLUOROPOLYMER PAINT COATINGS warrants that paint finishes will not chip, crack, blister, or peel. EFCO Corporation does not warrant any paint finishes for filiform corrosion in Coastal environment.

Corrosion of any product or component caused by exposure to salt atmosphere, acid rain, alkaline, or other extreme conditions is not covered. EFCO disclaims all liability for and with respect to any material which has been subject to abuse, alteration, modification, neglect, misuse, abnormal use, accident, fire, war, flood, earthquakes, or acts of God.

This warranty covers factory-applied finishes on exposed aluminum surfaces against peeling, checking, cracking, chalking, and change of color, per applicable AAMA standards 2603, 2604, 2605, or 611 in force at the time of bidding. This limited warranty applies only when the finish types recommended for the atmospheric environment of the project site are used. EFCO reserves the right to refinish defective components in the field or replace at its sole discretion.

WHAT EFCO CORPORATION WILL DO

If any material shall be found to be defective by EFCO in material or workmanship, such material shall be replaced or repaired at the option of EFCO, after inspection by a representative of EFCO, and with the consent of EFCO, without charge.

If after inspection by EFCO, it is determined the organic coating became defective under the conditions of this warranty, EFCO agrees to refinish the defective material on the site, with a conventional refinishing material as specified by EFCO.

EXCLUSIONS TO THE LIMITED WARRANTY

EFCO CORPORATION will not be responsible for defects caused by accidents, modifications to products, abuse, (including failure to perform reasonable and necessary maintenance), failure to follow instructions, exposure to salt spray, corrosive chemicals, lightning, fire, and other acts of nature. All outside manufactured parts will be limited to the specific manufacturer's warranty and are expressly excluded from the EFCO limited warranty.

EFCO shall not be liable for material damaged in handling or installation; or not installed in accordance with the EFCO Installation Manual Guidelines.

EFCO assumes no responsibility for failure of insulated glass units due to faulty installation, building construction, or building design; or failure of units installed in high moisture environments such as swimming pool enclosures and greenhouses. EFCO does not assume responsibility for glass breakage caused by stresses resulting from temperature differentials over the glass surfaces or edges.

The EFCO limited warranty excludes any damage caused to the material or finish due to posting.

The EFCO limited warranty excludes any liability for environmental hazards including but not limited to mold.

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EFCO Corporation excludes any implied warranties of merchantability and fitness for a particular purpose. EFCO Corporation will not be responsible for incidental or consequential damages.

WHAT EFCO WILL NOT DO

EFCO CORPORATION will not be responsible or liable for any incidental, consequential, or collateral damages or for any expense incurred by anyone as a result of the use, or sale of defective or unsatisfactory material.

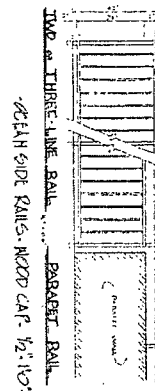
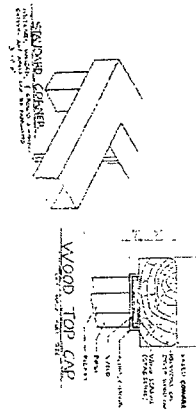
Any implied warranty arising from course of performance, course of dealing, or usage of trade is hereby excluded or disclaimed.

EFCO shall not be liable for back charges nor any work performed or materials placed by anyone other than EFCO in connection with the installed products covered by this warranty, except when authorized by the signature of an officer of the EFCO CORPORATION.

Materials will not be repaired or replaced until paid for in full.

The warranty sets forth all the responsibilities of EFCO CORPORATION regarding the products. EFCO will not be responsible for any costs or damages resulting from removal, installation or reinstallation of any products or components. Replacement of defective parts at the EFCO factory is the exclusive remedy. There are no other express or implied warranties from EFCO Corporation.

QAF 19.16, Rev. 0, November 1st, 2005



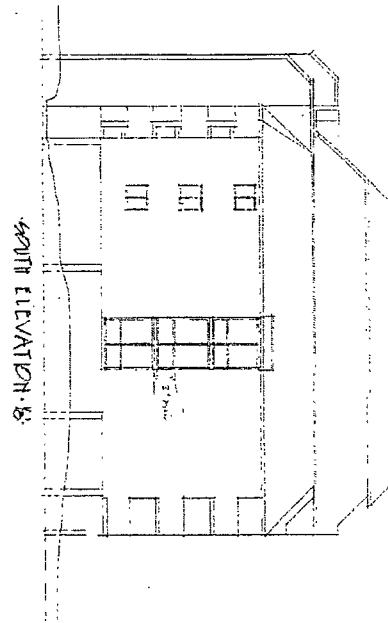
WOOD SIDE RAIL - WOOD CAP 1/2" x 1/2"

Street Windows

L1 - 6
L2 - 6
L3 - 6
L4 - 8

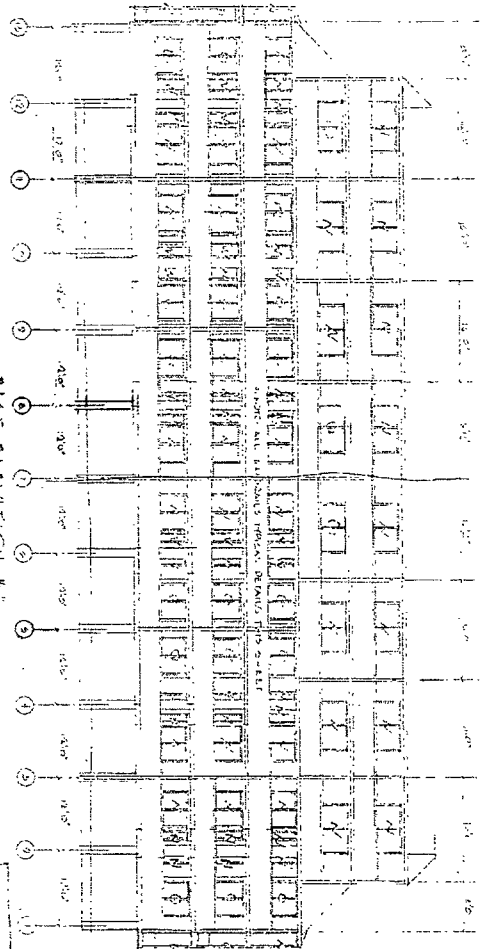
26 / Blot

104 / po



SOUTH ELEVATION

N - New
O - Old
New Slides - 31
New Fixed - 36
Old Slides - 21
Old Fixed - 0



EAST ELEVATION

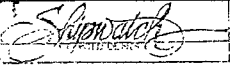
3 w/ sliding end
6 w/ sliding body
2 w/ sliding project

Building A

15 sheet
58 slides/body
32 slides/project

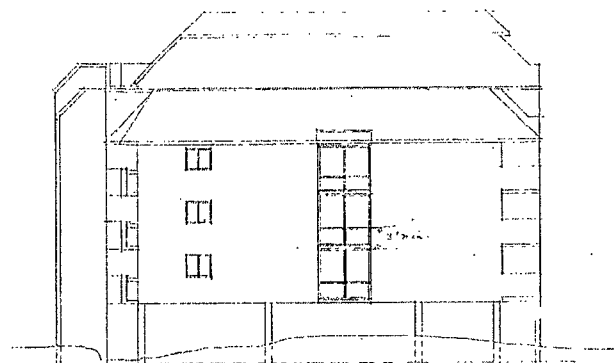
16.8 slides
36.6 slides
36.5 fixed

16.8 slides	36.6 slides	36.5 fixed
144.6 slides	144.6 slides	144.3 fixed

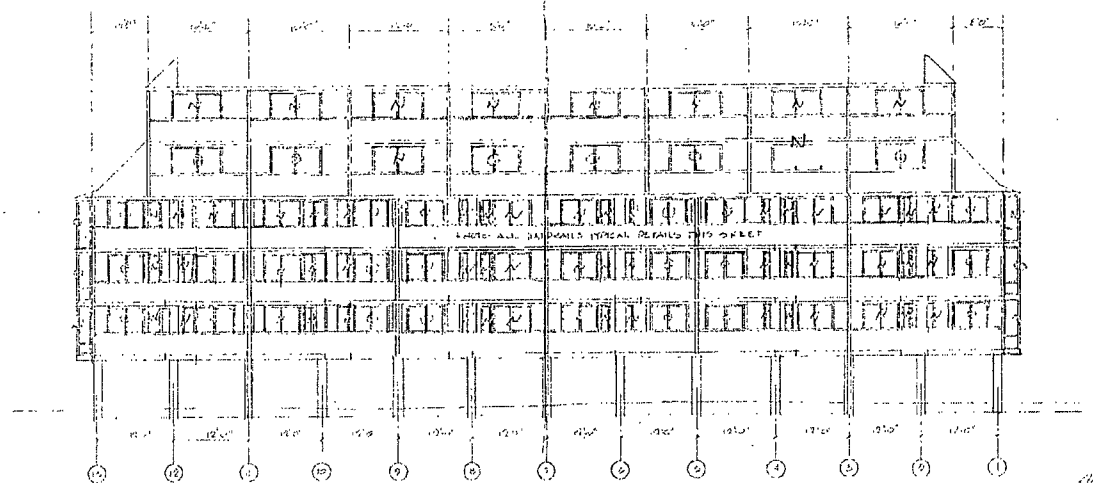


DEPOSITION EXHIBIT

ISSUES 57



SOUTH ELEVATION - 1/2"



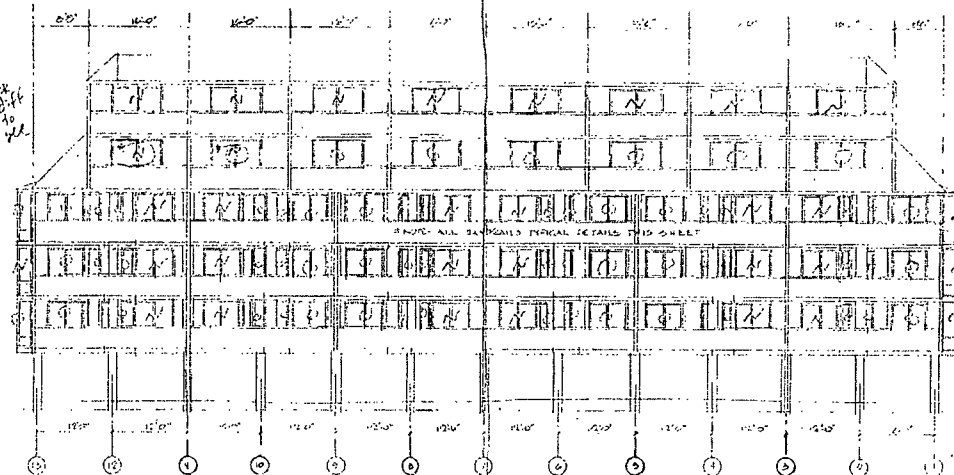
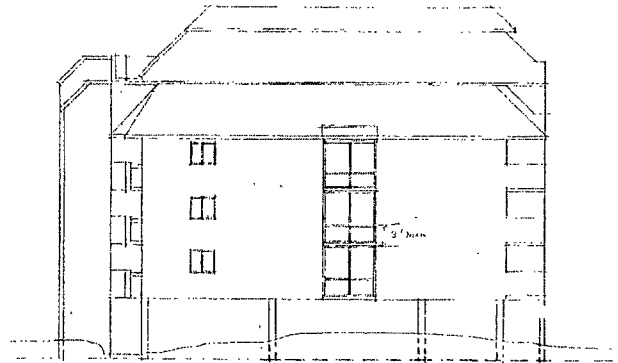
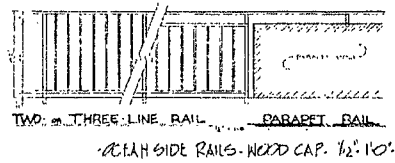
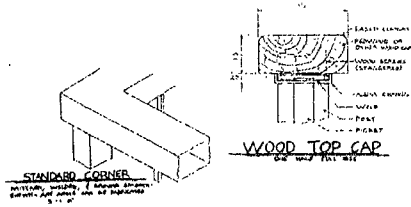
EAST ELEVATION, 1/2".

Vol. 10. 15

New Sliders - 28
New Fixed - 36
Old Sliders 24
Old Fixed - 0

[illegible][illegible]

747

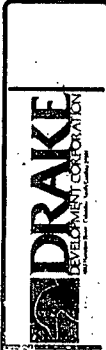


New Slides - 26
New Fixed - 0
Old Slides - 26
Old Fixed - 36

TOTAL OCEAN	A	B	C	D	
New Slide	31	28	26	26	111
New Fixed	36	36	0	0	72
Old Slide	21	24	26	26	97
Old Fixed	0	0	36	36	72

Building D

REVISIONS	BY



DATE	3.7.65
SCALE	1/2" = 1'-0"
BY	10

4

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 1/2" 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 Sonneguard 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.

**DEPOSITION
EXHIBIT**

JERNIGAN 103

PL 05112

August 12, 2008

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

door	3,855.00
instal	6745.00
Total	10,600.

PL 05113

From: Gary Freeman <gary@garyfreemanarchitect.com>
Sent: Wednesday, November 3, 2010 7:01 PM
To: Bob Wiggins <ccsrockdoc@aol.com>
Cc: Linda Jernigan <iopship@bellsouth.net>
Subject: Shipwatch Condominiums

**DEPOSITION
EXHIBIT**

JERNIGAN 129

Bob,

Yesterday, I received the attached from Linda. It originated with Randy Morgan.

I called Mr. Broadway to discuss his calculations hoping he would answer some of my concerns. He told me that he had received a one page fax from Randy requesting he look at the storefront framing and provide a calculation on the framing for a 30 psf rating. I asked Mr. Broadway if the 30 psf was adequate and he said he wasn't sure and that he'd have to do a complete calculation and code search. He only based his calculation on what Randy gave him. When asked what he'd expect to be a DP requirement for this building type at the ocean, he said something more in the range of 40 to 45 psf or higher. He said that he knew nothing about the building - not location or size or anything.

I then called Randy and did go no satisfaction on his answers either. He said he had based his 30 psf requirement on the psf rating of the slider doors that were installed some time ago. He did not know if there was a drawing, design, specification or whatever that required any of this. When asked about the installation and fastener spacing, he said that "they are being installed as they always do and that he had asked his guys to add another screw to both jambs to give them better strength once he heard I had asked the questions.

I spoke to Brian Pietras to get his opinion on storefront windows three stories above parking like Shipwatch. He agreed that they should probably be in the range of 45 psf. He also said they'd probably need to be impact rated.

This info received yesterday does not answer my questions. I see nothing about fastener spacing. Nor do I see anything stating what the code required DP rating of the windows should be or if they are "impact rated" or not. What concerns me is that over 50% of the windows have been installed and as I understand it, slider door install is to begin next week. So here are the same questions I asked originally on 10/20.

1. What DP rating is required for these windows?
2. What EFCO window type is being used?
3. Pass along the testing data for that particular window type. I'll want to see the fastener configuration required for the window assembly to meet the desired test.
4. Are the windows impact rated? Is it required?

Please respond to me on what you intend to do to clear this matter up.

Gary D. Freeman, AIA, CCS
President
Gary Freeman Architect Inc.
1469 Diamond Boulevard
Mt. Pleasant, SC 29466
c 843.693.2149
f 843.884.6506

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PL022008

From: Gary Freeman <gary@garyfreemanarchitect.com>
Sent: Friday, November 5, 2010 6:09 PM
To: Bob Wiggins <ccsrockdoc@aol.com>
Cc: Linda Jernigan <iopship@bellsouth.net>
Subject: Shipwatch

**DEPOSITION
EXHIBIT**

JERNIGAN 130

Bob,

I would like to meet with you, Randy Morgan, and Linda next Wednesday afternoon at 2:30 p.m. to discuss the design and installation of the storefront window system. As you read in my email Wednesday, I am not satisfied with the response I received this week from Randy. Please bring all the requested information to that meeting so that we can discuss the issues.

1. What is the designed window system to be installed? I.e. product model number and manufacturer.
2. What is the required design pressure rating per the design documents OR what is the DP rating of the "installed" system?
3. What I'm particularly interested in is the required screw type and spacing for the units.
4. Is Impact Glazing required?

These questions will also apply to the slider doors that are going to be installed beginning next week. Please call me prior to the meeting so that we can discuss.

Gary D. Freeman, AIA, CCS

President
Gary Freeman Architect Inc.
1469 Diamond Boulevard
Mt. Pleasant, SC 29468
c 843.693.2149
f 843.884.6506

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PL022014

10 pages

CHARLESTON GLASS COMPANY
4231 SPRUILL AVENUE
NORTH CHARLESTON, SC 29405
(843) 747-7371
(843) 747-0188

DEPOSITION
EXHIBIT

JERNIGAN 132

November 11, 2010

TO: CAROLINA CONSTRUCTION
ATT: BOB WIGGINS
FROM: RANDY MORGAN
RE: SHIPWATCH

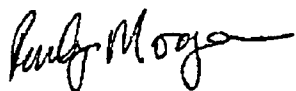
Over the last several years we have installed non impact patio sliders based on the SBC1997 Building Code and request from Shipwatch directors and Carolina Concrete. We also have 11 more sliders that are non impact ready to install.

We have just currently installed 72 fixed windows based on our previous contracts, proposals, conversations and this building code.

I have enclosed test reports that the sliders exceed the requirements of the SBC1997 and I previously submitted a report from Jason Broadway and a performance sheet on the glass that states the same. I have also enclosed my drawing that they made there calculations from.

We will verify the head attachments and if required add (3) #14 screws to this area today.

If I can be of further assistance please don't hesitate to call.



Fixed Street Front Windows

Vista Wall - 3000 Thermal
Same as Bay Window

- JASON BROADWAY

CCS 1505

From: Gary Freeman <gary@garyfreemanarchitect.com>
Sent: Friday, November 12, 2010 1:36 PM
To: Linda Jernigan <iopship@bellsouth.net>
Subject: Shipwatch at Wild Dunes

**DEPOSITION
EXHIBIT**
JERNIGAN 133

Linda,

I would like to offer the following findings and opinions based on my review of information presented to me on the project that is currently underway at Shipwatch.

1. The aluminum storefront and glazing system that has been installed at the 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. The framing system used according to CCS is an EFCO system. I have requested on several occasions the specific model or system number but have not received that information yet. According to EFCO the system that they manufacture that has been tested to meet impact requirements is the S526 System. The size of the S526 frame members is 5" x 2 1/2". The size of the frames that are being used at Shipwatch are 4 1/2" x 2" in size.
2. According to the Isle of Palms Building Department, windows on the first three floors of buildings on the oceanfront must meet a Design Pressure rating of 50 min. and they must be "impact rated" or otherwise the opening must have protection such as shutters, plywood, etc. This applies to both new and existing construction. I have asked on several occasions what the tested rating for the windows are at Shipwatch. According to EFCO, they have no test information on their "basic" storefront window systems supporting the impact code requirements other than the system mentioned earlier.
3. The permit that CCS is using for the current construction was issued in the 2003 time frame when the first part of the work began. That work is ongoing as part of a multi-phased approach now in its 7th year. Bob told me that the work currently being done (namely the windows) meets the 1997 ed. of the Standard Building Code which according to Bob was the code in effect when the permit was issued in 2003. He believes that the permit is still in effect. My research on the IOP website indicates that "work must be commenced within 6 months or the permit will be revoked". I do not believe that the original permit is still valid for the work being done today nor do I believe that the code that the original work may have met still applies to the current work 7 years later.
4. The AIA contract that I received yesterday is not dated and the copy I received was not signed by a representative of the regime. Is there a signed copy? I am listed as the architect. That is not true as there was no original design architect. I am; however, providing architectural services in the form of limited construction administration per my agreement with the regime initiated by me on 9/21/2010.
5. The only design document mentioned in the contract is the proposal from CCS dated 4/26/2010. On the last page of that letter, it says that "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." According to Bob Wiggins, the current contract amount does not include costs for permits and as mentioned earlier in this email, the project is being constructed under the original permit.

If you have any questions based on these statements, please do not hesitate to call.

Gary D. Freeman, AIA, CCS
President
Gary Freeman Architect Inc.
1469 Diamond Boulevard
Mt. Pleasant, SC 29466
c 843.693.2149
f 843.884.8506

PL022027

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PL022028

Shipwatch

Gary Freeman

From: Shipwatch [lopship@bellsouth.net]
Sent: Tuesday, December 07, 2010 10:30 AM
To: 'Gary Freeman'
Subject: RE: Shipwatch Slider Doors

**DEPOSITION
EXHIBIT**

JERNIGAN 134

Gary,

The board considers the sliding doors regular maintenance, they chose the doors they wanted and approved the installation in 2002, so is not requesting your assistance in this project.

I will call Bob right now about the Vista Wall information you are requesting.

Thanks
Linda

From: Gary Freeman [mailto:gary@garyfreemanarchitect.com]
Sent: Tuesday, December 07, 2010 10:23 AM
To: Bob Wiggins
Cc: Linda Jernigan
Subject: Shipwatch Slider Doors

Bob,

Same questions for the doors that I had for the windows:

What is their DP Rating?
What are the manufacturer's requirements for installation in the opening?
Need Manufacturer's info, data sheets, etc.

Also, I never received anything from Randy other than the structural engineers letter. Can you have him send me the Vista Wall product data on the system he is using for the windows?

Gary D. Freeman, AIA, CCS
President
Gary Freeman Architect Inc.
1469 Diamond Boulevard
Mt. Pleasant, SC 29466
c 843.693.2149
f 843.884.6505

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Charleston Glass Co.
4231 SPRUILL AVE.
NORTH CHARLESTON, SOUTH CAROLINA 29405
(843) 747-7371
(FAX) 747-0188

January 18, 2008

TO: CAROLINA CONCRETE
ATT: BOB WIGGINS
FROM: RANDY MORGAN
RE: SHIPWATCH JOB

WE PROPOSE THE FOLLOWING FOR 16 OPENINGS

1. Remove and dispose of each sliding glass door
2. Furnish and install a temporary plywood opening
3. Furnish and install a new Efco sliding glass door after new curbs have been installed (curb by others)
4. Seal new doors at perimeters and make final adjustments

Doors will match previous doors.

Excludes final cleaning.

Doors will be ordered by January 21, 2008 and Efco will try to ship February 22, 2008.

TOTAL MATERIAL, TAX, AND LABOR \$63,120.00

OK
Bob Wiggins

**DEPOSITION
EXHIBIT**
JERNIGAN 139

CCS 1086

2011 doors
actually installed

Sept 2010
(would usually be installed Jan 2011)

JERNIGAN 140

$$\begin{array}{rcl} 16 \text{ gbr} & = & 59 \\ 16 & = & 37 \end{array}$$

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
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.

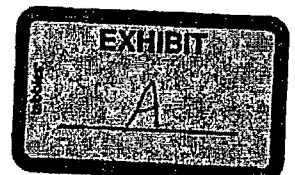
PLAINTIFF'S AMENDED ANSWERS TO
W.C. JOHNSTON ARCHITECTURAL
SALES, INC.'S INTERROGATORIES

TO: MORGAN S. TEMPLETON, ESQUIRE AND WALL TEMPLETON &
HALDRUP, P.A., ATTORNEYS FOR THE DEFENDANT W. C. JOHNSTON
ARCHITECTURAL SALES, INC.

The Plaintiff hereby answers Defendant W.C. Johnston Architectural Sales, Inc.'s

Interrogatories as follows:

1. Give the names and addresses of persons known to the parties or counsel to be
witnesses concerning the facts of the case and indicate whether or not written or recorded statements
have been taken from the witnesses and indicate who has possession of such statements.



Randy Crabb
Maintain, Inc.
1215 Schirmer Avenue
Mount Pleasant, SC 29464
(843) 375-5950

Mr. Crabb is a principal with Maintain, Inc., which is an independent contractor engaged by the Shipwatch Condominium Association, Inc. for the purpose of general routine building maintenance issues.

No statements have been taken from these witnesses.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: The Plaintiffs have a substantial amount of file material which may contain the information requested. To the extent that material exists in the Plaintiffs' files, is relevant and is not privileged, it is available for inspection and/or copying at a mutually convenient time at the offices of Robertson Hollingsworth & Flynn, 177 Meeting Street, Suite 300, Charleston, South Carolina, 29401.

3. List the full names, addresses and telephone numbers of any expert witnesses whom you or your counsel has consulted, whether or not you or your counsel expects to use such expert as a witness at the trial of the case.

ANSWER:

Jeffrey S. Miller PE
Manager, Building Solutions Group
SKA Consulting Engineers, Inc.
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. Material relating to the investigation performed by Mr. Miller and his colleagues is available for review and/or copying at the offices of Plaintiffs' counsel at a mutually convenient time.

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 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

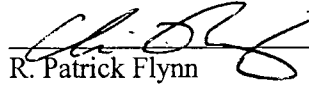
CBC is serving in a capacity as a non-testifying consulting expert witness for the Plaintiffs at this time.

4. For each expert witness listed above, please set forth the opinion held by such expert, the grounds for such opinion, and the substance of the facts to which such opinion is expected to testify.

ANSWER: See answer to Interrogatory No. 3 above.

Certificate of Appellant

I hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



R. Patrick Flynn
Christopher M. Ramsey
ROBERTSON HOLLINGSWORTH & FLYNN
177 Meeting Street, Suite 300
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Phone: 843-723-6470
Attorneys for Appellants

May 26, 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

Circuit Case No. 2012-CP-10-3858

Appellate Case No. 2014-002765

RECEIVED
JUN 17 2015
SC Court of Appeals

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.

CERTIFICATE OF SERVICE

I, Frances Klotsch, an employee of Robertson Hollingsworth & Flynn, hereby certify that I have served parties in this action with a copy of the document(s) via U.S. Mail and Electronic Mail as follows:

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ATTORNEYS FOR GLASGOW ROOFING

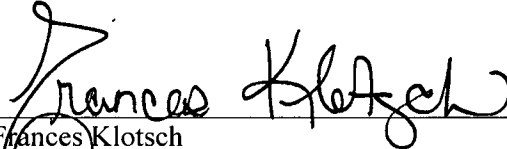
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(P) 843-559-5074
PRO SE DEFENDANT



Frances Klotzsch

June 15, 2015